

Article Information

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Balancing the Scales - The Fair Work Commission's Annual Wage Review 2022-23 revealed

The Fair Work Commission's [Annual Wage Review](#) in 2022-23 is now complete and will hopefully act as a positive step towards the ongoing pursuit of fair and equitable wages for workers across Australia. As inflation rates continue to rise, this review held particular importance in addressing the challenges faced by many.

Wage Increases

The Fair Work Commission, entrusted with the responsibility of setting minimum wages, carefully addressed various factors including economic indicators, employment trends, and the needs of those at lowest end of the pay scale.

In an effort to help those employees who are amongst the lowest paid in Australia, the Fair Work Commission has announced that the minimum rates of pay under the modern awards will increase by 5.75%.

This change will come into effect from 1 July 2023.

In handing down its decision, the Fair Work Commission attributed the increase in the rate of pay to:

- high inflation;
- low productivity growth; and
- recent performance of the labour market.

The 5.75% increase will see the national minimum wage increase to \$23.23 per hour, and \$882.80 per week (based on a 38 hour week) thus providing a "modest contribution" to total wages growth in 2023 and towards 2024. The Fair Work Commission remains optimistic that this increase will not contribute to any wage-price spiral.

Adjustment to the National Minimum Wage

In addition to the increase in the minimum rates of pay, the Fair Work Commission also announced that it would be ending the alignment between the National Minimum Wage and the C14 Classification wage rate in modern awards.

The Commission's reasoning behind this decision is based on the C14 Classification only being a transitional entry rate in modern awards, and it "does not constitute a proper minimum wage safety net for award and agreement free employees in ongoing employment."

The Commission acknowledged that a further review will be required but until such time, the National Minimum Wage will be aligned with the current C13 classification wage rate and this rate will of course see the 5.75% increase as well.

New Minimum Rates of Pay

With such increases coming into effect for minimum rates of pay, businesses must take the time to review their wages and ensure that employees are receiving at least the minimum entitlements they are owed under the relevant industrial instrument (whether that's the National Employment Standards, modern awards or enterprise agreements).

For businesses with employees under modern awards, rates of pay (and other entitlements) must be at least the same as the new minimum rates under such awards, following the increase.

For business with employees under an enterprise agreement, the increase will only apply if your enterprise agreement specifically refers to the Annual Wage Review, or if your rates have fallen below the equivalent modern award rates as a result (in which case they must be brought up to at least the same as those rates, in accordance with section 206 of the *Fair Work Act 2009* (Cth)) (**FW Act**).

Wage Theft

Underpaying employees is unlawful under the FW Act and can incur civil penalty provisions. In addition to this, the Federal Government is proposing new terms which propose to create a criminal offence for wage underpayments, as well as increasing the maximum penalties related to wage theft and exploitation. This may involve reforming and strengthening the compliance framework within the FW Act.

The Federal Government has commenced a consultation process, with the view to reform and strengthen the compliance framework under the FW Act, and include a graduated scale of penalties and enforcement tools.

This may end up looking similar to Victoria's wage theft laws that came into effect in 2021, applying fines and potential jail time for companies and individuals that deliberately or dishonestly underpay, or withhold, wages, superannuation or other entitlements, falsify or avoid keeping employee records to gain financial advantage.

The changes are still under consultation, however the Criminalising Wage Theft Consultation Paper (produced by the Department of Employment and Workplace Relations) suggests a number of proposals, such as:

- criminalising wage theft (as discussed above);
- a new offence related to record-keeping misconduct;
- circumstances where multiple offences could be charged as a 'course of conduct' under a single offence;
- a significant increase to the maximum civil penalties already available under the FW Act (potentially up to \$4mil maximum against companies); and
- further amendments to the sham contracting provisions, providing a defence if the employer reasonably believed the contract to be one for services rather than employment.

Such penalties and offences are unlikely to apply to inadvertent or isolated instances of underpayments. However, seriously negligent, repeated or wilful exploitation and underpayment of workers could eventually lead to significant civil and criminal penalties under the FW Act, should the Government bring their proposed changes into effect.

The next round of amendments to the FW Act are expected to be brought before Parliament late this year.

Key takeaways

- Minimum rates of pay under modern awards will increase by 5.75% from the first full pay period after 1 July 2023;
- The national minimum wage will be increased to \$882.80 per week;
- Going forward, the national minimum wage will now be aligned with C13 Classification wage rates in modern awards, where it has, until now, been aligned with C14 rates; and
- The Federal Government has foreshadowed increased scrutiny, and potential criminalisation of wage theft, in upcoming reforms, meaning employers and business, more importantly than ever, must review their rates of pay and ensure compliance.

For other changes being implemented by the Fair Work Commission, please ensure you read [the insight](#) by Emily Harr and Aneisha Bishop.