Article Information

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The Fair Work Commission awards a 3.3 per cent increase to the national minimum wage and minimum modern award wages

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***Shauna Roeger**, **Lawyer**, summarises the key aspects of the decision.*

Background

Each year, the *Fair Work Act 2009* (Cth) (**FW Act**) requires the Fair Work Commission's Expert Panel to conduct a review of the national minimum wage (**NMW**) and minimum wages in modern awards. The Expert Panel is required to take into account the objectives in the FW Act, in the context of the prevailing economic and social environment. The review involves considering the available economic and social data, to assess the changes in the past year as well as longer-term trends.

Many different parties lodged written submissions and participated in consultation as part of the Annual Wage Review, including the State and Commonwealth Governments, various employer and employee organisations, and industry associations. The submissions ranged widely, with the Australian Industry Group proposing a 1.5% increase, the Australian Retail Association proposing a 1.2% increase, and the Australian Council of Trade Unions a 6.7% increase.

The Annual Wage Review decision

The Expert Panel decided that it was appropriate to increase the NMW by 3.3 per cent. This means that from the first full pay period on or after 1 July 2017, the NMW will be $694.00 per week, or $18.29 per hour. This is an increase of $22.20 per week to the weekly rate, or 59c per hour to the hourly rate. The Expert Panel also decided to increase Modern Award minimum rates of pay by 3.3 per cent.

The key changes of the economic environment that influenced the Expert Panel's decision were subdued inflation, higher labour productivity and strong profit growth. According to the Expert Panel, these economic circumstances provided "*an opportunity to improve the relative living standards of the low paid*."

In addition to the economic indicators, the Expert Panel took into account social considerations, including the "promotion of social inclusion through increased workforce participation", "relative living standards and the needs of the low paid", "the principle of equal remuneration for work of equal or comparable value", and the "need to encourage collective bargaining".

Notably, the Expert Panel cited research findings from the UK that suggested that modest and regular wage increases do not result in disemployment effects. The Expert Panel went on to comment that in past annual wage reviews, the Expert Panel may have been "*overly cautious*" in its assessment of what constitutes a "modest" increase. As the table below shows, this decision provides the largest increase in the NMW in recent years. It will be interesting to see whether the Expert Panel's acceptance of the UK research will lead to continued rises in years to come.

Increases to the NMW over the years

	Annual Wage Review 2012-13	Annual Wage Review 2012-13	Annual Wage Review 2013-14	Annual Wage Review 2014-15	Annual Wage Review 2015-16	Annual Wage Review 2016-17
Percentage increase to the NMW	2.9%	2.6%	3.0%	2.5%	2.4%	3.3%

The Expert Panel acknowledged that the proposed increase to minimum wages in awards would not lift *all* award-reliant employees out of poverty, particularly those households with dependent children and a single-wage earner. However, the Expert Panel concluded that the increase would still provide for an improvement in the relative living standards of these employees, without being likely to have any measurable negative impact on employment.

The relevance of the Penalty Rates decision

Earlier this year, the Fair Work Commission issued a much-publicised decision dealing with weekend and public holiday penalty rates in certain modern awards in the hospitality and retail sectors (read our guide to the decision here). On 5 June 2017, one day before the Annual Wage Review decision was handed down, the Commission determined the transitional arrangements for the penalty rate deductions.

During the consultation for the Annual Wage Review, a number of parties made submissions to the Expert Panel about whether and how the Expert Panel should consider the Penalty Rates decision. The Australian Industry Group submitted that a compensatory increase to the NMW was inappropriate, because this would "*negate the intended beneficial effects*" of the penalty rate reductions. On the other hand, the South Australian government proposed that when the Penalty Rates decision was implemented, a special national minimum wage should be set for the class of employees affected.

The Expert Panel concluded that it was not appropriate to take the Penalty Rates decision into account in some "*quantifiable or mechanistic way*" to support a particular level of wage increases. Nonetheless, it was said to be part of the "*broad factual matrix*", and could be taken into account to a limited extent.

Implications for employers

The increases to the NMW and minimum award rates apply from the first full pay period starting on or after **1 July 2017**.

Employers who pay their employees at the NMW or minimum award rates of pay will need to increase those rates accordingly. Employers who currently pay above the NMW or minimum award rates of pay are not necessarily required to increase their rates of pay, but must ensure the rates are at least as much as the minimum wages, once the 3.3% increase is applied.

Employers with enterprise agreements should also take note of the increases to the NMW and minimum award rates. Section 206 of the FW Act provides that the base rate of pay for each employee covered by an enterprise agreement cannot fall below the minimum rate set by any relevant award, or the NMW. If the base rates of pay in an enterprise agreement are below the minimum award rates or the NMW when the 3.3% increase is applied, then the base rates of pay must be automatically increased to match the new minimum rates.

In relation to future enterprise agreements, the new minimum award rates of pay will be the new standard for testing whether a proposed enterprise agreement passes the better off overall test.

Should your organisation need advice as to what your employees are entitled to be paid, please contact a member of Piper Alderman's Employment Relations team.