

Summary of Commonwealth Submission to the ASU Equal Pay Case.

Prepared by the ASU as at 22 November 2010

Introduction

In 2009 the Commonwealth Government signed a Heads of Agreement with the Australian Services Union, agreeing to support the Union's application for an Equal Remuneration Order (ERO) for social and community sector and disability workers. The Commonwealth committed to provide evidence and research for the case and to support an agreed statement of facts. On 18 November 2010 the Commonwealth Government filed its submission in the case to Fair Work Australia.

The Commonwealth's submission makes some important points about the problem that low pay rates pose for the community sector. It supports the argument that attraction and retention of staff are key challenges in the community sector and that wages are a significant factor in this respect.

4.91 "Some employers in the non-government sector have commented that the low levels of remuneration, compared with equivalent positions in the public sector, and the lack of job security due to funding arrangements, has contributed to the recruitment and retention difficulties experienced."

It also acknowledges that overall levels of pay for SACS workers are below average. This is extremely important in arguing for a pay increase as the community sector is exceptional for the number of workers earning award rates (and therefore minimum) or just above.

5.4. The Government contends that the combination of high levels of award reliance and below average pay outcomes in bargaining contributes to the low wage levels of SACS sector employees.

5.33. "Compared to the general workforce, a large proportion of employees in the SACS sector have their pay and conditions determined by awards"

However the Commonwealth's submission also makes numerous problematic assertions about the remedy that Fair Work Australia applies in the outcome of the case. These are detailed below.

Problems with the Commonwealth Submission

Commonwealth argues that FWA must discount comparators that are not gender based.

The Commonwealth has argued that FWA must discount comparators that are not gender based. This ties in with the Commonwealth's argument that comparing SACS wages to the Public Service are not a true comparison as the higher wages in the Public Service are a result of Enterprise Bargaining that has occurred in that industry.

The ASU's application has always argued that the SACS Industry's inability to bargain around matters like wages (due to the nature of being funded organisations) is one of the main reasons that we require an Equal Remuneration Order as this is the only way to increase wages in the industry.

In the public sector, negotiations in relation to pay are generally done on a broad basis covering all groups of employees. Therefore public sector employees performing work which is the same or similar to work in the SACS industry are only one element of a much larger workforce. The wages of such employees are therefore maintained alongside other groups of employees, some of which include male dominated occupations and sectors.

7. "The Government further submits that if FWA decides to issue an equal remuneration order, consideration should be given to a range of factors in determining the appropriate remedy or fair rate of pay, having regard to the objects of the FW Act and considering the implications that a considerable wage increase may have on SACS services, SACS funders and the broader economy. This includes discounting comparator rates of pay which may have been relied upon in establishing undervaluation for factors which are not gender based and considering whether compensation is required for loss of relativity even where previous work value adjustments have been made."

2.69. "Where a comparator is used by an applicant for an equal remuneration order, the question may also arise as to the appropriateness of using a comparator group whose remuneration has been determined through enterprise bargaining"

Commonwealth argues that if the ASU claim is successful it would impact on the commonwealth budget

The Commonwealth has argued that in making a decision, Fair Work Australia must consider the Government's fiscal strategy to return the budget to surplus. This is outrageous. To argue that achievement of equal pay should be compromised because of ability to pay is a seriously troubling precedent. This argument would hold back the achievement of equal pay in every other industry if wages must now be set on the basis of an employer's ability to pay higher wages.

Budgets are about priorities. This submission argues that the government's priorities should not be paying those who support the most vulnerable members of our society, rather a budget surplus. For too long community workers have been expected to personally pay the cost of wage inequity.

6.48. "The Government contends that it is important that FWA finds the right balance between equal remuneration for SACS employees and the broader implications of any wage increase in reaching its decision".

11. "Depending on the decision of FWA, the potential fiscal cost to the Commonwealth of significant wage increases in the SACS sector could be considerable, even taking into account a phased implementation. The Government's fiscal strategy – which is aimed at ensuring fiscal sustainability and returning the budget to surplus –

will influence the Government's ability to support the sector in meeting additional wage costs. If any additional Government funding is provided, it would likely come at the expense of other Government funded services."

Commonwealth argues that if the ASU claim is successful it would impact on service delivery and job losses

The Commonwealth has submitted that as a major funder of the industry, if Equal Pay were to be awarded the government would need to reduce other services to pay the higher wages. This is an outrageous attempt to hold the workers in the industry to ransom. It is not the responsibility of employees in the industry to subsidise services. It is the responsibility of Governments to make budget priorities to provide services to the most vulnerable members of our community.

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6.33. "Increased funding to the sector would ease pressure on SACS employers to reduce employment (and therefore service delivery), however any supplementation by the Commonwealth would likely come at a cost to other Commonwealth funded services (see section on Commonwealth Fiscal Strategy)."

6.34. "Without supplementation, the full wage price pressure of the decision would fall on the SACS sector employers and their clients. Organisations would then be likely to reassess their capacity to meet the deliverables under their funding agreements which in turn could risk employment and the range and level of services provided to the community by these organisations. However, the Government contends that solutions to cost pressures for SACS sector employers arising from significant wage increases should not fall to supplementation alone. Organisations should, as a matter of course, look to implement measures that boost productivity to offset some of the cost pressures."

6.45. "The Government acknowledges that there is likely to be an impact on service delivery in the SACS sector, should FWA grant a significant increase in the award. Any decision may also impose implications on other sectors and the broader economy."

Commonwealth argues that collective bargaining and productivity improvements is the solution to low wages

One of the Key aspects of the ASU's application for the Equal Pay Case is that the SACS Industry is largely reliant on Awards. We further know through ACOSS research that most Enterprise Agreements do not deal with the matter of wages, or offer very little difference to award wages. This is due to the nature of the industry and the makeup of the industry. Most SACS employers are small employers with no capacity to bargain. Further SACS organisations are largely Not for Profit organisations reliant on Government funding. This does not allow organisations a budget with which to bargain around wages.

9. "The Government notes that any significant increase to wages in the SACS sector, holding all else constant, will impose greater cost pressures on organisations delivering SACS services. Such increased pressures may have

adverse impacts on service delivery standards within the SACS sector. However, it needs to be noted that these cost pressures can be at least partially mitigated through the Government and SACS service providers continuing to identify and implement more efficient ways of operating. For instance, the Government's recently announced commitment to develop a common contract for dealing with the not-for-profit sector and to review the efficiency and effectiveness of current tendering, contracting and acquittal arrangements in the sector should reduce the compliance overheads incurred by the not-for-profit sector. Beyond this, the Government would encourage SACS service providers, their employees and relevant unions to bargain collectively at the enterprise level on improvements in pay and conditions and employment and productivity. This will assist providers in offering competitive pay and conditions which, in turn, will assist in attracting and retaining skilled employees."

Commonwealth argues that Salary Packaging must be considered in assessing the value of wages.

The ability of an organisation to offer salary packaging to their employees is reliant upon the organisations status as a Public Benevolent Institution (PBI). This is not universal across the industry and causes an already existing inequity amongst the industry (for example most community legal centres do not have PBI status). We also know that the benefit provided by salary packaging is not the same for all employees. Employees with a HECS debt for example are disadvantaged by salary packaging. Research shows that currently 60% of SACS workers hold a tertiary qualification.

We also know that the benefit of salary packaging is not legally required to be passed on in its entirety to employees. Some organisations do take some, or all of the benefit of salary packaging to fund services, not increase wages.

Even the highest level of salary packaging (up to \$16050 per year tax free) in no way compares with the differential for community sector workers wages (approximately \$30,000 per year). Salary Packaging is not a substitute for fair and real wages, and is reliant not on Awards but tax law which can be altered at any time.

16. "However, Government data also shows that almost one third of the SACS workforce utilises salary sacrifice arrangements. The high take up of these arrangements in the SACS sector is due to the FBT exemption available to Public Benevolent Institutions (PBIs), which covers many SACS sector organisations. These arrangements, when passed on to employees, can have a considerable impact on the net earnings of employees' take home pay and are therefore relevant to FWA's assessment of employees' real rates of remuneration."

5.66. "This information suggests that around a third of SACS sector employees utilise salary sacrifice arrangements, and that the impact on an employee's take home pay can be substantial. Take home pay rates when salary sacrifice arrangements are accessed are obviously higher than rates in the Modern Award or, the Government would contend, in bargaining arrangements. As such, they should be taken into consideration by FWA when considering the actual pay levels provided to some SACS sector employees."

5.71. "In addition to high levels of award and bargaining reliance, salary sacrifice arrangements are likely to be a feature of the employment conditions of many SACS employees. The Government contends that FWA should also consider the potential positive impact that salary sacrifice arrangements may have on SACS employees' take home pay when considering this case."