



18th May 2011 | A: 16 Wexford Lane, BUNBURY WA 6230 | T: (08) 9792 4451 | F: (08) 9721 6208

Hi Kathy!

Modern SACS Award Ruling

The Fair Work Australia full bench has recently found that about 200,000 Social and Community Services employees are receiving less pay than public sector workers performing similar duties and that the disparity is partly gender-driven, but has urged parties to agree on a remedy before further hearings in August.

The bench came to the conclusion that 'for employees in the SACS industry there is not equal remuneration for men and women for work of equal or comparable value by comparison with workers in state and local government'.

It said gender 'has been important in creating the gap between pay in the SACS industry and pay in comparable state and local government employment'.

The bench said the next step involved identifying "the extent to which gender has inhibited wages growth in the SACS industry and to mould a remedy which addresses the situation".

It said that whilst it had reached preliminary conclusions about shaping such orders, it wanted to give the parties in the case the chance to make submissions on the matter.

It also indicated that any equal remuneration order it made would be on top of rates in the modern award, and could take the form of a dollar amount or a percentage increase. It indicated it would prefer the latter, which would recognise and preserve award relativities and provide for continuing adjustments when award rates are justified, thereby obviating the need for reviews.

Bench urges parties to reach agreement

The bench encouraged the parties to work towards agreement on a remedy, or at least to narrow their differences, and said it would provide a member to help the progress of negotiations.

Amongst other matters the bench also signalled that it had to grapple with complex issues in assessing how any equal remuneration order interacts with the modern award, including its phasing schedule.

The bench also made the following determinations:

- That it would be premature to issue a statement of equal remuneration principles to help to guide future cases, but said the recent decision and any further rulings in the case " will

- constitute a significant precedent in any event";
- That it recognised that the Fair Work Act's equal remuneration provisions were broader than those under previous legislation because they encompassed the concept of work 'of comparable value' rather than 'equal value' in previous legislation.
 - It accepted that unions didn't have to establish that there was discrimination against female employees or to provide comparisons to male workers.
 - It rejected unions 'view that any finding of gender-based inequity' meant FWA would be required to make an equal remuneration order. The bench said it retained the discretion 'to make an order or not', but if it made an order, it had to be satisfied it would be effective.
 - It rebuffed employer arguments that it should take into account salary sacrifice arrangements, after noting that only a third of SACS employees received such a benefit.

Best Regards,
The Workwise Team



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