

Pay Equity

Acronyms used in this Fact Sheet

EBA	Enterprise Bargaining Agreement
ERO	Equal Remuneration Order
FWA	Fair Work Australia
SACS	Social & Community Services
SCHCADS	Social, Community, Home Care and Disability Services Award

Implementation Issues FAQ

Overview

Fair Work Australia is currently hearing an application by the Australian Services Union for an Equal Remuneration Order for community sector, home care and disability workers across the country. Already, FWA has accepted that current rates of pay are low relative to comparable workers in the public sector; and that this wage disparity is largely based on the gendered nature of the community sector workforce, where 85% of the workforce are women (FWA interim decision, 16 May 2011). FWA has called for further evidence on the value of that unequal pay, before making an order to redress it.

The ERO presents an opportunity to start addressing the problem of poor pay, which is one of the key factors undermining the sector's viability. SACOSS and its members have been seeking commitments from funders to fully fund the outcome of the ERO.

Implementation of any ERO raises some issues that can only be addressed following the final decision of FWA. However, there are many important implications of an ERO that must now be considered by the sector. This SACOSS *Fact Sheet*, produced in conjunction with Jobs Australia, examines the key issues associated with any ERO. Responses to questions have been prepared by Jobs Australia.

Coverage

*Will an ERO apply to workers in community services not covered under the SCHCADS?
Will an ERO apply to all workers covered under the SCHCADS (e.g. including administration)?*

ANSWER The amended claim from the Union clarifies that it will only apply to workers employed in SACS, crisis assistance, and disability support worker classifications in SCHCADS. Other community services workers will not be covered (e.g. home care workers). The definition of the SACS classifications in SCHCADS includes clerical, administrative and managerial workers and so the ERO will apply to them.

Form of ERO

What are the implications of the form of an equal remuneration order? I.e. whether the ERO takes the form of an addition to rates in the modern award or an amount is included in the award itself?

ANSWER As discussed below in relation to Enterprise Bargaining Agreements, the main implication relates to the effect of the ERO on the better off overall test for enterprise bargaining. The original Union claim was worded as a separate order to the Award, which could have had the effect of applying beyond SCHCADS. However that has now been changed and the claim now clearly relates only to SCHCADS. The form of the ERO might also have a bearing on whether or not future national wage increases will be added. We have argued that national wage increases should be added, as otherwise the value of the ERO will be eroded and wages will quickly become uncompetitive again (assuming the ERO is for a significant amount).

Paying the increased rates

How can we ensure that an ERO actually results in an increase in wages? I.e. if governments fund an increase, how can we ensure the funds flow through to wages?

ANSWER An ERO will be a statutory entitlement. The situation will be essentially the same as when the award increases each year for the national wage case. An employee on a particular classification level will be entitled to be paid the ERO rate. It is the employer's responsibility to ensure the correct rate is paid.

This is separate to the issue of funding. If government provides extra funding, they could make it a term of the funding contract that the money is used only for wages. However, it seems that usually governments are reluctant to be that specific. This was an issue in Queensland where government provided funding for wage increases for employers who were not technically covered by the Queensland pay equity order. Theoretically those employers could make a choice whether to flow the funding on to wages if the pay equity order did not apply to them. The situation for the national ERO is different – all SCHCADS employees in SA will be covered by the ERO so there won't be the option to not pay the increase.

Phase-in arrangements

What are the proposed transitional arrangements? What is the likely phase-in period?

ANSWER It remains to be seen what the final ERO provides. The current claim is for increases to not commence until 6 months after the decision, then be phased in over a period of up to 4.5 years. This reflects the agreement between the ASU and the Commonwealth. This means the first installment is unlikely to be before February 2012 (to coincide with the current timetable for transition to the Modern Award). Future installments could be spread out as far as mid 2016, although this is likely to depend on the magnitude of the increases. If it is only a small increase, there might not need to be such a long phase-in period.

Enterprise Bargaining Agreements

How will an ERO impact on existing collective agreements where an ERO takes the award above the Enterprise Bargaining Agreement (EBA)? How will an ERO impact on existing collective agreements where an ERO takes the award to still below the EBA? Will an ERO impact on other parts of the EBA (e.g. no disadvantage and better off overall tests)? What proportion of employees is under collective agreements?

ANSWER The answer to this may depend on the precise form of an ERO. The interim decision flags that these are issues for further consideration. If the ERO forms part of the Award, then existing EBAs will need to pay no less than the ERO. If an EBA has higher rates, the higher rates continue. If the Award rates are higher, then employees on an EBA with lower rates will be entitled to have their pay increased to match the Award/ERO. In this case, the ERO will form part of the safety net for the better off overall test when a new agreement is negotiated. However, if the ERO is made as a standalone order of FWA, separate from the Award, then we are not certain whether the ERO will have the same effect as if it were part of the Award. However, the Union did amend its claim to clarify that it sought an ERO to operate as part of the Award.

There is conflicting evidence about the coverage of collective agreements in the SACS sector. Jobs Australia believes it is probably around 10% or less. This is consistent with Union evidence in the case, and our own membership statistics. DEEWR statistics suggest between 5-20% depending on the particular statistic used. The Australian Government claimed 50% of employees are covered by collective agreements, based on the ABS Employee Earnings survey. However, we believe this is simply wrong and probably picks up health and aged care workers as well as community services. The case has revealed that there is very little reliable data that focuses on the SACS sector without picking up other sectors such as aged care and health.

Paying above-award rates

How will agencies that currently pay above award be impacted by an ERO? Will they be obliged to pass on a pay increase? Will they be able to access government funding to maintain their competitive advantage?

ANSWER Usually statutory increases in Award rates are worded to allow employers to absorb the increase into over-Award payments. We will be arguing for the same to occur for the ERO and expect this will be the case. So employers paying above Award should only have to pay extra once the ERO rates overtake their above-Award rates. But we will need to see the final wording of the ERO to be certain about this.

There would be nothing preventing such employers seeking funding to maintain their competitive advantage. However, it seems unlikely government would agree to fund more than required by the ERO. Those employers may therefore need to consider new strategies for creating competitive advantage (e.g. non-cash Human Resource Management strategies).

Non-government funded wages

Given that organisations not funded by government, which are covered by SCHCADS, will have to pay according to the new rates, how will organisations in receipt of philanthropic and other sources of funding be impacted by any industry support package? Will they be able to access new government funding to maintain their existing staff levels?

ANSWER There is no guarantee that there will be any industry support package or that government will fund philanthropic activities not currently funded by government. This is why the campaign for full funding run by ACOSS and the state/territory COSSs needs to be supported. If there is not some additional funding, then self-funded programs will need to either find alternative income (philanthropy, sales, fee for service, etc), or look at cutting costs, which might include staffing reductions. The campaign tries to highlight that a consequence could be cuts to services that will have detrimental social effects as well as a political impact for local members of parliament. This is also one of the reasons we support the phasing-in process proposed by the ASU and the Commonwealth. Phasing in over several years will assist organisations to adjust.

Funding amount

How will an appropriate amount for additional government funding be arrived at? How will that funding be distributed?

ANSWER That is something that is currently being discussed. FWA is seeking information from government about costs and budgetary impact. ASU, the COSS network and employers are seeking commitments from governments about this. Part of the problem is that governments do not know the precise structure of current funding arrangements, so it is difficult for them to identify exactly who will need funding and how much. Our claim is for full funding, but no one can put a precise figure on what that amounts to.

Please note: This Fact Sheet is intended to provide general information. While it draws attention to, and comments upon, aspects of industrial law, it is not intended to provide legal advice in this area. It should also be noted that the answers to some of the questions raised will depend on future decisions of Fair Work Australia and relevant governments, and so the answers are to some extent speculative.

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For further information regarding this fact sheet
contact SACOSS on 8305 4222 or email sacoss@sacoss.org.au