

APPENDIX A

**DECLARATION OF A MINIMUM STANDARD
OF SEVERANCE PAYMENTS
ON TERMINATION OF EMPLOYMENT FOR REDUNDANCY PURSUANT TO
SECTION 72B(1) OF THE FAIR WORK ACT 1994
4465 of 2005**

**BY THE FULL INDUSTRIAL RELATIONS COMMISSION:
His Honour President Judge WD Jennings
Deputy President KM Bartel
Commissioner DG Steel**

DECLARATION

Thursday 4 May 2006

The Full Industrial Relations Commission hereby declares as follows:

1. Scope of the Standard

1.1 This Minimum Standard of Severance Payments (“the Standard”) is made pursuant to section 72B(1) of the *Fair Work Act 1994* (“the Act”).

1.2 The Commission may, on application by:

- (a) an employee or group of employees; or
- (b) a registered association acting on behalf of an employee or a group of employees,

make an order applying the Standard in such manner as the Commission thinks fit.¹

1.3 An application referred to in 1.2 above may be made if (and only if):

- (a) the relevant employee or employees have been given notice of a pending redundancy or the employment of a relevant employee or employees has been terminated for redundancy,² and
- (b) the application is made within 21 days after the notice is given or the employment is terminated.³

¹ Section 72B(5) of the Act.

² Section 72B(6)(a) of the Act.

1.4 This Standard will not apply to persons covered by any Awards that are subsequently excluded pursuant to section 72A(6) of the Act.

2. Definitions

For the purposes of this Declaration:

2.1 **Redundancy** means the loss of employment due to the employer no longer requiring the job the employee has been doing to be performed by anyone, and **redundant** has a corresponding meaning.

2.2 **Small Business** means an employer who employs fewer than 15 employees.

2.3 **Week's pay** means the ordinary time rate of pay for the employee concerned. Such rate shall exclude:

- overtime;
- penalty rates;
- disability allowances;
- shift allowances;
- special rates;
- fares and travelling time allowances;
- bonuses; and
- any other ancillary payments of a like nature.

2.4 **Continuous service**

2.4.1 Maintenance of continuous service

Except as otherwise indicated, service is deemed to be continuous despite:

- Absence of the employee from work in accordance with the employee's contract of employment or any provision of the employee's Award.
- Absence of the employee from work for any cause by leave of the employer.
- Absence from work on account of illness, disease or injury.

³ Section 72B(6)(b) of the Act.

- Absence with reasonable cause. Proof of such reasonable cause lies with the employee.
- Interruption or termination of the employee's service by an act or omission of the employer with the intention of avoiding any obligation imposed by the employee's Award, this Declaration, the Act or the *Long Service Leave Act 1987*.
- Interruption or termination of the employee's service arising directly or indirectly from an industrial dispute if the employee returns to the service of the employer in consequence of the settlement of the dispute.
- Transfer of the employment of an employee from one employer to a second employer where the second employer is the successor or assignee or transferee of the first employer's business. In this case, service with the first employer is deemed to be service with the second employer.
- Interruption or termination of the employee's service by the employer for any reason other than those referred to in this clause if the worker returns to the service of the employer within two months of the date on which the service was interrupted or terminated.
- Any other absence from work for any reason other than those referred to in this clause, unless written notice is given by the employer that the absence from work is to be taken as breaking the employee's continuity of service. Such notice must be given during the period of absence or no later than 14 days after the end of the period of absence.

2.4.2 Calculation of period of service

Where an employee's service is deemed to be continuous under this clause, the period of absence from work is not to be taken into account in calculating the employee's period of time served with the employer except:

- to the extent that the employee receives or is entitled to receive pay for the period; or
- where the absence results from a decision of the employer to stand the employee down without pay.

2.4.3 Service with two or more corporations

Where an employee has been employed by two or more corporations that are associated corporations, or by two or more corporations that are related to each other within the meaning of section 50 of the *Corporations Act 2001*, the service of the employee with each such corporation must be included in the calculation of the employee's continuous service for the purpose of determining the employee's entitlements in accordance with this Declaration.

- 2.5 For the purposes of this Declaration, *employee* does not include a casual employee or an employee employed for a specific period of time or a specific task or tasks unless the Commission makes a contrary direction in the context of a specific application pursuant to section 72B(5) of the Act.

3. The Standard

3.1 Severance pay - employees of a *small business*

An employee of a *small business* as defined in 2.2 whose employment is terminated by reason of *redundancy* is entitled to the following amount of severance pay in respect of a period of *continuous service* from the dates as set out in the table below:

Period of continuous service	Severance pay as at 4 May 2006	Severance pay as at 30 June 2007	Severance pay as at 30 June 2008
Less than 1 year	Nil	Nil	Nil
1 year and less than 2 years	4 weeks' pay	4 weeks' pay	4 weeks' pay
2 years and less than 3 years	6 weeks' pay	6 weeks' pay	6 weeks' pay
3 years and less than 4 years	7 weeks' pay	7 weeks' pay	7 weeks' pay
4 years and less than 5 years	8 weeks' pay	8 weeks' pay	8 weeks' pay
5 years and less than 6 years	8 weeks' pay	10 weeks' pay	10 weeks' pay
6 year and less than 7 years	8 weeks' pay	10 weeks' pay	11 weeks' pay
7 years and over	8 weeks' pay	10 weeks' pay	12 weeks' pay

* *Week's pay* is defined in 2.3.

3.2 Severance pay - other than employees of a small business

3.2.1 An *employee*, other than an *employee* of a *small business* as defined in 2.2, whose employment is terminated by reason of *redundancy*, is entitled to the following amount of severance pay in respect of a period of *continuous service*:

Period of continuous service	Severance pay
Less than 1 year	Nil
1 year and less than 2 years	4 weeks' pay
2 years and less than 3 years	6 weeks' pay
3 years and less than 4 years	7 weeks' pay
4 years and less than 5 years	8 weeks' pay
5 years and less than 6 years	10 weeks' pay
6 years and less than 7 years	11 weeks' pay
7 years and over	12 weeks' pay

3.2.2 Additional severance pay for employees aged over 45 years with 10 years or more continuous service

In addition to the severance pay in 3.2.1, an *employee* with not less than 10 years' *continuous service*, who is over the age of 45 years, is entitled to an additional 4 weeks' severance pay.

* *Week's pay* is defined in 2.3.

Continuity of service will be calculated in the manner prescribed by 2.4.

4. Principles to be applied in considering an application for a variation of the Standard

Pursuant to section 72B(7)(b) of the Act the Commission may provide for the variation of the Standard as set out in 3. above in the circumstances of a particular case and where the Commission is satisfied that there are cogent reasons for doing so.

Without limiting the generality of the matters that may constitute "cogent reasons", the following matters may be taken into account in assessing an application for a variation of the Standard:-

4.1 Where the severance payment prescribed in this Declaration exceeds the amount that the employee would have earned if employment with the employer had

proceeded to the employee's agreed date of retirement or the employee's eligibility date for social security benefits.

- 4.2 Where a severance payment is already provided for or included in the contributions which the employer has made, over and above those required by law, to a superannuation scheme, and which are paid or payable to the employee on redundancy occurring.
- 4.3 An employer's capacity to pay.
- 4.4 Where the employer obtains acceptable alternative employment for an employee.
- 4.5 Where an employer contrives arrangements wholly or partly to deprive employees of the severance pay set out in 3.2.
- 4.6 Where a *transmission* of business has occurred and:
 - 4.6.1 the employee is offered employment by the *transmittee*;
 - 4.6.2 the offer is made before the *transmission* of the business, undertaking, establishment or part of it;
 - 4.6.3 the terms and conditions of the new employment offered:
 1. are not substantially different from those applying to the employment with the *transmittor*; or
 2. are substantially different, but the offer constitutes an offer of suitable employment in relation to the employee; and
 - 4.6.4 the employee unreasonably refuses to accept the offer.

For the purposes of 4.6, *transmission*, without limiting its ordinary meaning, includes transfer, conveyance, assignment or succession, whether by agreement or operation of law and *transmitted* has a corresponding meaning.

This clause may apply where a business, undertaking or establishment, or any part of it, has been transmitted from an employer (the *transmittor*) to another employer (the *transmittee*).

5 Date of effect and review

This Standard will come into force on and from 4 May 2006 and will remain in force subject to review by the Full Commission on application by a peak entity in accordance with section 72B(2) of the Act.

APPENDIX B

Length of service	1987 SAIRC test case ⁴	2005 Severance Pay Agreement (SA) ⁵	AIRC ⁶	NSW ⁷	Qld ⁸	WA ⁹
0 – 1 year	Nil	Nil	Nil	Nil	Nil	Nil
1 – 2 years	4	4	4	4	4	4
2 – 3 years	6	6	6	7	6	6
3 – 4 years	7	7	7	10	7	7
4 – 5 years	8	8	8	12	8	8
5 – 6 years	8	10	10	14	9	10
6 – 7 years	8	11	11	16	10	11
7 – 8 years	8	12	13	16	11	13
8 – 9 years	8	12	14	16	12	14
9 – 10 years	8	12	16	16	13	16
10 – 11 years	8	12	12	16	14	12
11 – 12 years	8	12	12	16	15	12
12 – years and over	8	12	12	16	16	12

NB: Small business is defined as a business employing fewer than 15 employees, other than in Qld where it is defined by employees working less than a total of 550 hours per week.

⁴ (1987) 54 SAIR 258.

⁵ *Severance Pay Case* [2005] SAIRComm 22. The 2005 Severance Pay Agreement provides for an additional 4 weeks pay to employees (other than those employed by small businesses) who are over 45 years of age and have at least 10 years of service. Employees of small businesses receive only the existing 1987 Test Case severance payments.

⁶ *Redundancy Case* PR032004. Employees of small businesses receive severance payment equivalent to the 1987 Test Case.

⁷ *Re: Redundancy Awards Case* (1994) 53 IR 419. Employees older than 45 years of age get an additional 25% of the prescribed severance payments. Small businesses are exempt from the requirement to make severance payments.

⁸ 173 QGIG 1417. Employees of small businesses receive severance payments equivalent to those set out in the 1987 Test Case.

⁹ 2005 WAIRC 01341. Small businesses are exempt from the requirement to make severance payments.