

CITATION: *Queensland Council of Unions AND Queensland Government and the Local Government Association of Queensland Ltd (B/2013/30)*
The Australian Workers' Union of Employees, Queensland AND Queensland Government and the Local Government Association of Queensland Ltd (B/2013/36)
Decision
<<http://www.qirc.qld.gov.au>>

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 287- application for declaration of a general ruling

Queensland Council of Unions AND Queensland Government and the Local Government Association of Queensland Ltd (B/2013/30)

and

The Australian Workers' Union of Employees, Queensland AND Queensland Government and the Local Government Association of Queensland Ltd (B/2013/36)

STATE WAGE CASE 2013

VICE PRESIDENT LINNANE
INDUSTRIAL COMMISSIONER FISHER
INDUSTRIAL COMMISSIONER BLACK

29 August 2013

DECISION

- [1] The Queensland Council of Unions (QCU) lodged an application on 3 June 2013 in B/2013/30 seeking a general ruling pursuant to s. 287 of the *Industrial Relations Act 1999* (Act). The general ruling is sought in regard to the following:
- (i) a \$30.00 wage adjustment for workers employed at award classification rates equivalent to, or below, the *Engineering Award - State 2012* C10 classification;
 - (ii) a 4.9% wage adjustment for workers employed at award classification rates above the *Engineering Award - State 2012* C10 classification;
 - (iii) a 4.9% allowance adjustment for award employees;
 - (iv) a \$30.00 adjustment, pursuant to s. 287(2) of the Act, to the Queensland Minimum Wage as it applies to all employees;
 - (v) a Statement of Policy, pursuant to s. 288 of the Act, in regard to a statement of principles that may be generated as a result of the aforementioned general ruling; and
 - (vi) an operative date of 1 September 2013.
- [2] On 13 June 2013 The Australian Workers' Union of Employees, Queensland (AWU) filed a similar application in B/2013/36. At a preliminary hearing on 17 June 2013, and with the consent of the parties, the QCU and the AWU applications were joined.

Submissions

- [3] As a result of directions issued on 17 June 2013 submissions were received from the following organisations:
- the QCU on 5 July 2013;
 - AWU on 5 July 2013;
 - the Queensland Government on 19 July 2013;
 - the Local Government Association of Queensland (LGAQ) on 19 July 2013;
 - the QCU in reply on 2 August 2013; and
 - AWU in reply on 2 August 2013.
- [4] **General QCU Submissions:** The QCU submitted that its claim sought to deliver a flat-dollar increase to workers employed at rates of pay equivalent to, or lower than, the C10 rate in the *Engineering Award - State 2012*. The resulting effect was said to benefit the lower paid workers with a proportionally higher increase than other

employees: see the decision of the Full Bench in *Queensland Council of Unions AND The Crown and Ors* (State Wage Case 2006).¹

- [5] It was further submitted that the Commission is obliged, under s. 287(2) of the Act, to ensure that a general ruling about the Queensland Minimum Wage is made at least once each calendar year. The operative date for any such increase has generally been 1 September in any year and the QCU sought a continuation of that operative date.
- [6] The QCU submitted that it was unaware of any employees of the Queensland Government whose weekly rate of pay would be directly impacted by the QCU's claim. From the QCU's perspective, fewer than 2,000 employees of local government were award-reliant, either directly, by being paid in accordance with the relevant award or by being covered by a certified agreement that provided for a wage to be paid in excess of the relevant award.
- [7] Granting the increase sought to the Queensland Minimum Wage and award rates of pay would, according to the QCU, have a minor impact on State employers because of the limited extent of the Queensland jurisdiction and the minimal extent of award dependence in the jurisdiction. The QCU submitted, however, that the increase sought would maintain the relevance of the Queensland Minimum Wage.
- [8] **General AWU Submissions:** The AWU submitted that the current economic growth in the Australian economy had placed the real growth in the Gross Domestic Product in the vicinity of its long-run rate even though it had slowed in the second half of 2012. The AWU contended that this supported a real increase in minimum wages. According to the AWU, the Australian economy was performing extremely well in the current climate and the awarding of the AWU's claim, as sought, would ensure that low-paid workers would share in Australia's prosperity.
- [9] The AWU further submitted that increased levels of consumption arising from an increase in wages would further stimulate economic growth in both the Australian and Queensland economies. The Australian economy had performed well throughout 2012 and 2013 and the Australian economy was sufficiently robust to support the increase sought in the current application.
- [10] **General Queensland Government Submissions:** In its submission, the Queensland Government urged the Full Bench to consider:
- a cautious approach to setting wages for award reliant workers in the Queensland industrial relations system;
 - an approach which was consistent with achieving an unemployment rate of 4 per cent in the medium term; and
 - an operative date of 1 September 2013 for any increase awarded.
- [11] The Queensland Government submitted that the Queensland Minimum Wage was currently \$630.70 i.e. \$8.50 above the current national minimum wage of \$622.20 per week as of 1 July 2013. Thus the Queensland Minimum Wage was above the National Minimum Wage following the decision of the Fair Work Commission in the *Annual Wage Review 2012-2013*.² The Queensland Government submission did not propose any quantum increase to the Queensland Minimum Wage.
- [12] The Queensland Government further submitted that the vast majority of Queensland based private sector employees had moved to the federal jurisdiction and were thus covered by the *Fair Work Act 2009* and decisions of the Fair Work Commission. According to the Queensland Government, very few of its employees would be directly impacted by an increase to award rates of pay by this Full Bench. Employees engaged by small organisations that fall outside the Core Agreement such as employees of the Darling Downs Rabbit Board would be the exception. The Queensland Government also contended that relatively few employees in the local government sector would be affected by the outcome of these applications. The exceptions would be those in regional and remote local councils that do not have enterprise agreements, including some indigenous councils. Any decision in these applications would however affect between 3,000 and 4,000 employees of the 1,250 Parents and Citizen's Associations as these employees would be award reliant.
- [13] **General LGAQ Submissions:** The LGAQ objected to the increases being sought by the QCU and the AWU in these applications. In the alternative, the LGAQ submitted that a more appropriate increase would be:
- a flat 2.5% increase to the Queensland Minimum Wage and all award rates of pay;

¹ *Queensland Council of Unions AND The Crown and Ors* [2006] 182 QGIG 565 at [282]

² *Annual Wage Review 2012-2013* [2013] FWCFB 4000

- a 2.5% increase to award allowances; and
- an operative date of 1 September 2013.

[14] According to the LGAQ, an increase of this quantum would:

- preserve the real wages of award reliant employees in Queensland given the most recent national consumer price level numbers;
- it would leave the Queensland Minimum Wage at \$646.50 i.e. over \$24.00 per week higher than the National Minimum Wage (i.e. \$622.20);
- assist to maintain the integrity of differences in work value corresponding to differing classification levels in local government awards. A flat dollar increase would have the effect of further distorting these relativities;
- be consistent with the Queensland Government's position that the Full Bench should be cautious in setting wages for award-reliant employees in Queensland; and
- be consistent with achieving a 4% unemployment level.

International Economic Conditions

[15] The Queensland Government submitted that the international global economic conditions were expected to improve over the next few years but it was anticipated that growth in advanced economies would remain below trend. Whilst China's growth outlook had moderated somewhat, their economy was still expected to grow solidly, and the Queensland Government expected that China's demand for overseas resources would not wane.

Australian Economy

[16] In respect of the claims sought, the QCU and AWU relied upon the data utilised by the Australian Council of Trade Unions (ACTU) in both its Submission to the 2012/13 Annual Wage Review and its Post-Budget Submission to the same Review insofar as the Australian economic data. The interpretation placed on that data differed somewhat amongst those parties who provided written submissions.

[17] Given this position of the QCU and AWU, the Full Bench has noted the conclusion reached by the Fair Work Commission on the Australian Economy as follows:³

"[320] Economic conditions over the past year have remained reasonably strong, particularly in the context of economic conditions in other OECD countries. The outlook remains favourable, with the Australian economy expected to continue outperforming most of the developed world, albeit with some moderation of growth forecast over the next year. The rapid growth and evolution of the resources sector and the continuing shift to demand for services will continue to cause strains for other parts of the economy.

[321] Real GDP grew by in excess of 3 per cent over the past year. Labour market conditions, although softer, remain sound, with continuing low levels of unemployment and continuing high levels of labour force participation. Employment grew by 1.4 per cent over the year to April 2013, but more slowly than the labour force, resulting in a slight increase in the unemployment rate. Some softness is reflected in the lesser growth in total hours worked (0.8 per cent) than employment, continuing high levels of youth unemployment and a decline in the full-time employment of adult men.

[322] Following earlier volatility, annual inflation has been subdued over the past year, at around 2.5 per cent per annum on all CPI based measures over the year to the March quarter 2013 and lower still using the LCI measure. Inflation remains comfortably within the RBA target range. Wages growth, reflected in the WPI and bargaining outcomes, has moderated, growing at their lowest rate for a decade (excluding the global financial crisis impact in 2008). There was a substantial lift in labour productivity and profits in the non-mining economy have risen. Real unit labour costs have risen, as a result of a fall in the price index, rather than higher rates of compensation of employees.

[323] On all measures, labour productivity increased over the year to the December quarter 2012. Although short-term measures of productivity should be interpreted with some caution, the recent improvement in

³ *Annual Wage Review 2012-13* [2013] FWCFB 4000 at paras [320] to [332]

labour productivity, if sustained, could provide the capacity to address the declining relative position of the low paid and for them to share in increasing community living standards.

[324] Looking beyond the aggregate position, structural change continued to exert a major effect on economic outcomes, with considerable variation in economic indicators between industry sectors. That variation is reflected in differential output and employment growth, with particular pressures evident in relation to trade-exposed sectors not benefitting from strong growth in the resources sector. The diversity in outcomes in respect of output, profits, employment and wages between and within the award-reliant industries suggests that factors other than recent minimum wage increases have driven outcomes within those industries.

[325] There is continuing evidence that, whilst difficult for some employers, the economy has responded relatively well to the significant structural change evident in recent years. There has been a continuing low aggregate unemployment rate, an absence of increased variation in the unemployment rates across the country, the accommodation of variation in labour demand through labour mobility and changes in relative wages, and an absence of inflationary pressures or wages pressures in the non-resources sectors of the economy.

[326] The outlook for the Australian economy remains favourable, with solid growth, relatively low unemployment and continuing moderate inflation anticipated in the near future. Global conditions are expected to gradually improve as growth in emerging market economies picks up and the United States continues to recover, although continuing risks from the euro zone remain.

[327] GDP growth is expected to ease to slightly below trend growth of 2¾ per cent in 2013-14, before resuming at 3 per cent growth in 2014-15. Nominal GDP growth is expected to remain subdued, reflecting the falling terms of trade and the effect of the persistently high Australian dollar on profits and prices in many sectors of the economy, particularly those that are trade-exposed.

[328] The impetus to growth from business investment, largely driven by the resources sector, although remaining strong and contributing to aggregate growth, is expected to ease over the coming two financial years, as the resources boom shifts from the investment phase into the production and export phase. Greater impetus for economic growth is expected from housing investment, household consumption and non-rural commodity exports.

[329] A risk to the domestic economy is that transition to the new drivers of growth in the context of a transition away from the investment phase towards production and exports will be less than seamless, with continuing pressures on businesses in the trade-exposed sectors of the economy from the high Australian dollar and some mismatch between employee skills and the skills wanted by employers, leading to increased structural and/or frictional unemployment.

[330] The labour market is expected to remain sound with employment growing at recent levels of around 1¼ per cent in 2013-14 and unemployment remaining at historically low levels, although forecast to rise from the current level of 5½ per cent to 5¾ per cent in 2013-14. Inflation, which has been at the lower end of the RBA target range of 2-3 per cent over the past year, abstracting for the carbon price, is expected to remain subdued at 2¼ - 2½ per cent in the immediate future. Wages growth is expected to remain at current subdued levels.

[331] The most award-reliant sectors of the economy continue to have a mixed experience. Most have had a fall in hours worked and in employment, although rises in profitability and output have been stronger. The Retail trade industry in particular has improved in both sales and profitability, while wages growth and employment in this sector have been well below average.

[332] In summary, the economic outlook remains favourable, notwithstanding some easing of growth and increase in unemployment in 2013-14. However, the outlook for growth remains uneven, with continuing pressures on businesses in the trade-exposed sectors of the economy outside of the resources sector."

- [18] **Additional QCU Submission on the Australian Economy:** The QCU submitted that the medium and long-term outlook for the Australian economy was positive, with global prospects starting to strengthen and the demand for Queensland natural resources set to increase.

- [19] Gross Domestic Product (GDP) was said to increase in both trend terms and seasonally adjusted terms. In seasonally adjusted terms, a major contributor to expenditure on GDP was net exports (1 per cent) and in trend terms, exports increased 1.7 per cent to the March quarter and 7.1 per cent over the year.⁴
- [20] The Reserve Bank of Australia in its May 2013 Statement on Monetary Policy commented on this topic as follows:⁵

"Export volumes are estimated to have grown moderately in the March quarter. Growth in resource exports appears to have slowed, reflecting both a fall in crude oil exports and more subdued growth in coking coal volumes due to floods in Queensland in early 2013, although the disruptions have been smaller than occurred in 2011. Iron ore exports are estimated to have increased at a pace similar to the past three quarters, as producers continue to ramp up production. Outside the resource sector, services exports appear to have grown in the quarter. The number of overseas arrivals has softened recently, although liaison suggests that tourism exports in 2013 are likely to continue to be boosted by growth in arrivals from China. Liaison also indicates that education exports have stabilised. Rural and manufactured exports appear to have been little changed in the quarter."

- [21] According to the QCU, labour productivity grew by 3.5 per cent which was the fastest growth in more than a decade. The average in the past decade had been 1.2 per cent per annum and growth in the Consumer Price Index (CPI) was well within the Reserve Bank of Australia's target. Interest rates were at an historically low rate and this, according to the QCU, demonstrated the strength of the economy and provided the necessary conditions for the granting of the QCU claim.
- [22] The QCU supported the view of the Fair Work Commission in submitting that a modest increase in minimum wages would have a very small or even zero, effect on employment.⁶ It was thus submitted that unemployment levels should not be a major consideration for the Full Bench in this application. The unemployment rate remained static at 5.5 per cent in May 2013 and the QCU relied upon a Statement by the then Federal Treasurer in the Treasurer's economic note No 23 of 2013 as follows:⁷

"We have an unemployment rate of 5.5 per cent, low by historical standards and one of the lowest in the developed world. In fact, the average unemployment rate across the OECD has remained stubbornly high at around 8 per cent. Australia's unemployment rate is less than half that of the euro area, which recently reached a new euro-era high last month of 12.2 per cent, and our rate also remains much lower than the 7.6 per cent unemployment seen in the US."

- [23] Further, the QCU submitted that the unemployment rate had remained low and was currently relatively stable. Total employment also continued to grow in Australia. The Australian labour market was forecast to remain steady with an anticipation of improvement in the short to medium term. Employment growth within Australia was expected to grow 1.25 per cent through the year to the June quarter of 2013 and by a further 1.5 per cent through the year to the June quarter of 2014.⁸ Consistent with the Reserve Bank of Australia's Statement on Monetary Policy, the Australian Government in its Federal Budget for 2013-14 noted that:⁹

"Australia starts this transition from a position of impressive resilience, with some of the strongest economic fundamentals in the world. Economic growth is solid, the unemployment rate is low, inflation is well contained, and public finances are strong."

- [24] The QCU further submitted that the CPI increased by 0.4 per cent over the March quarter 2012 with an increase of 2.5 per cent over the year. This was well within the Reserve Bank of Australia's target and consistent with predictions. The Full Bench was referred to the commentary concerning inflation from the Reserve Bank of Australia in its Statement on Monetary Policy in May 2013 as follows:¹⁰

"The low March quarter outcome was in part due to declines in the prices of fruit, vegetables and automotive fuel, which are relatively volatile. However, it also reflected a more broad-based decline in tradables prices, with pronounced falls in the prices of consumer durables and a range of traded food items. In contrast, new dwelling cost inflation picked up in the quarter. Taken together, the various measures suggest that underlying inflation in the quarter was slightly lower than had been expected, at a little under 0.5 per cent. In

⁴ Australian Bureau of Statistics, 5.206.0 - Australian National Accounts: National Income, Expenditure and Product, March 2013

⁵ Reserve Bank of Australia - Statement on Monetary Policy - May 2013

⁶ *Annual Wage Review 2012-13* [2013] FWCFB 4000 at para [40]

⁷ Treasurer's Economic Note, Number 23 - June 2013

⁸ Australian Government Budget Strategy and Outlook 2012-2013 - Budget Paper Number 1 - Statement 2

⁹ Australian Government Budget Strategy and Outlook 2012-2013 - Budget Paper Number 1 - Statement 2

¹⁰ Reserve Bank of Australia - Statement on Monetary Policy - May 2013

year-ended terms, underlying inflation was a little under 2.5 per cent in the March quarter, unchanged from the December ... These outcomes are broadly consistent with earlier expectations that the introduction of the carbon price would have only a modest effect on underlying inflation, although it is not possible to identify this effect precisely...".

[25] **Additional AWU Submission on the Australian Economy:** The AWU identified the following progressive indicators of economic activity:

- increased consumer sentiment in January, February and March 2013;
- domestic final demand was forecast to be at a rate of 3¾ per cent in 2012-2013 and this would be likely to stimulate economic growth which in turn would absorb increases in award rates of pay;
- household consumption was expected to increase steadily at 3 per cent in 2013-2014;
- new business investment was expected to grow by 8 per cent in 2013-2014;
- both imports and exports were forecast to increase;
- the terms of trade was forecast to fall in 2012-2013 but then increase again in 2013-2014;
- compensation to employees was expected to increase by 5½ per cent in 2013-2014 as a result of strong employment growth and a solid growth in wages; and
- underlying inflation was expected to increase steadily to reach 2½ per cent by June quarter 2013.

[26] The Australian labour market was, according to the AWU, expected to remain robust with employment to rise. The unemployment rate was said to remain at 5.4% notwithstanding the strong employment growth.

[27] **Queensland Government Submission on the Australian Economy:** The Queensland Government submitted that in respect of national economic growth it was expected to be below trend over the next few years. The Commonwealth Treasury forecasted national economic growth of 2.75 per cent in 2013-14 and 3 percent in 2014-15. The subdued near-term outlook reflected the approaching peak in mining investment, ongoing public sector fiscal consolidation nationally, subdued but recovering global economic conditions and an assumption that the Australian dollar would remain high. It was however expected that the transition from strong growth in resources investment, towards exports and the non-resources sector would provide support for overall economic activity.

[28] Household consumption spending was expected to grow around its long-run average over the next couple of years, while residential construction was expected to continue to recover and the outlook for national exports was expected to be quite strong. National labour market conditions remained subdued. Along with moderate employment growth in the near-term, the national unemployment rate was expected to continue drifting higher until mid-2014, reaching around 6 per cent. Inflation was expected to remain well contained at 2.25 per cent in the year to June 2013 and within the Reserve Bank of Australia's target range out to June 2015. National wage growth was expected to remain moderate at around 3¼ - 3½ per cent per annum out to 2014-15.

Queensland Economy

[29] The QCU and AWU relied upon the economic data provided in the Queensland Government Submission insofar as the Queensland economy was concerned although their interpretation of that data is somewhat different to the Queensland Government.

[30] **Queensland Government Submission:** The Queensland Government estimated that the severe weather conditions experienced in Queensland in early 2013 would have detracted one quarter of a percentage point from Gross State Product growth in 2012-2013. Queensland Gross State Product was expected to grow 3.5 per cent in 2012-2013 with the major contributors to this growth being household consumption and business investment. The Queensland Gross State Product was expected to grow to 6 per cent by 2015-2016 due predominately to increased exports arising from the significant level of investment in the resources sector over recent years.

[31] Year-average employment growth was estimated to moderate in 2012-2013 although some improvement had occurred since late 2012. Employment was only expected to grow by a ¼ per cent in 2012-2013 while the unemployment rate was expected to rise to 6 per cent. Employment growth of 2¼ per cent was expected in 2013-2014 and a growth of 2½ per cent was expected in 2014-2015. The unemployment rate was expected to fall to 5¾ per cent in 2014-2015.

- [32] Queensland's Wage Price Index was expected to grow 3¼ per cent in 2012-2013. Beyond this, productivity gains were expected to enable nominal wages to continue to grow faster than inflation, implying further real wage growth in coming years in those sectors with capacity to pay.
- [33] The Queensland Government however referred the Full Bench to the key downside risks to the economic outlook including:
- a worsening in global economic conditions;
 - a further weakening in commodity prices; and
 - the potential for a weaker business investment profile than currently forecast.
- [34] An upside risk identified by the Queensland Government was a weaker than expected profile for the Australian dollar.
- [35] For Queensland, the major domestic risk surrounded the timing and the pace of the unwinding of Liquid Natural Gas (LNG) investments which were due for completion between 2014 and 2016. Given the large size of the three major LNG projects, any pick-up in growth from other parts of the Queensland economy may not be enough to prevent economic growth slowing more rapidly than currently expected, particularly in 2014-2015.
- [36] **QCU Comment on Queensland Economy:** The QCU submitted that the Queensland Government had two completely different descriptions of the Queensland economy. In a document released on 30 June 2012 to potential international investors, the Queensland Government portrayed the Queensland economy in a positive light and significantly better than the position advanced in the media by the Queensland Government and significantly different to that portrayed in the Commission of Audit Report.
- [37] The QCU submitted that the true picture of the Queensland economy was that articulated by the Queensland Treasurer in the 2013-2014 Budget Speech i.e. that "the Queensland economy remains strong and is growing". Growth in Queensland's Gross State Product was 4.0 per cent and was one of four states to exceed the national Gross Domestic Product growth rate of 3.4 per cent.¹¹
- [38] Household consumption grew by 2.1 per cent to the September 2012 quarter. Employment and wages growth has slowed but remained firm.¹² As for inflation and prices, the figures reveal that there is a similarity between Brisbane and the Australian average over time. The QCU therefore submitted that it followed that the same observations that were made about the national inflation figures hold true for Queensland.
- [39] In trend terms the total number of employed persons in Queensland increased in May 2013 with employment growth in Queensland rising 0.5 per cent over the year consistent with the continual growth in the Queensland workforce. The unemployment rate increased slightly from May 2012 to May 2013. It peaked at 6.2 per cent in September 2012. The QCU submission was that the unemployment rate in Queensland was well below historical unemployment levels and this demonstrated the resilience of the Queensland economy.
- [40] The QCU submitted that future projects in Queensland provided a platform for future economic and employment growth. In the 2013-2014 Budget Speech, the Queensland Treasurer articulated an optimistic projection for the State as follows:¹³
- "The ramp up in LNG production by 2015-16 will lead to growth in overseas exports of 23 per cent in 2015-16 which, combined with a stronger domestic sector, will boost economic growth to 6 per cent in that year. While these figures underpin our confidence for the future we need to recognise they are the product of the export of gas. We need to continue our work to strengthen and grow the other pillars of the economy that employ so many Queenslanders.
- In this Budget, we see a strengthening household sector and increasing exports which will support a recovery in employment growth from 2013-14 onwards and a steady improvement in the unemployment rate, from 6 per cent in 2013-14 down to 5.5 per cent in 2015-16.
- Employment growth is forecast to rise to 2.75 per cent per year by 2015-16."
- [41] **AWU Comment on Queensland Economy:** The AWU referred to the Budget Strategy and Outlook 2013-14 where the Queensland Treasury noted that the Queensland economy was expected to deliver solid growth of

¹¹ Australian Bureau of Statistics, 5220.0 - Australian National Accounts: State Accounts, 2011-2012

¹² Queensland Economic Review - Queensland Treasury and Trade, January 2013

¹³ Queensland Government State Budget 2013-2014 Budget Speech - Budget Paper Number 1

3 percent over the 2013-2014 and 2014-2015 financial years.¹⁴ The Queensland Treasury Corporation predicted a 3½ per cent growth. The AWU in its submission referred to the following economic indicators:

- growth in household income was expected to accelerate from 2013-2014 onwards;¹⁵
- business investment was also expected to strengthen from 2014;¹⁶
- exports for 2012-2013 were expected to remain similar to 2011-2012;¹⁷
- inflation was expected to remain contained over 2013-2014 at 2½ per cent and this was well within the Reserve Bank of Australia's bandwidth; and
- the reduction in interest rates was likely to have a positive impact on the economy.¹⁸

[42] Employment rose for the fourth consecutive month in January 2013 although the trend employment rate was lower over the year to January 2013. Queensland's trend unemployment rate fell 0.1 percentage point to 5.9% in January 2013. In trend terms, the unemployment rate had fallen to 5.9% from a recent peak of 6.1% in October 2012. The Queensland labour market had thus remained stable throughout the year with only slight movements in the unemployment rate. Thus the Queensland labour market has remained healthy.

[43] As for the labour market forecast, the AWU submitted the following:

- employment growth within Australia was expected to grow by 1½ per cent by the June quarter of 2014. Any rise in the consumer sentiment index tended to see an increase in the pace of employment growth;¹⁹
- the unemployment rate within Australia was forecast to be 5½ per cent in the June quarter of 2013 and remain at that rate in 2013-2014;²⁰
- employment growth in Queensland was expected to increase over 2013-2014 as household spending picked up; and
- the Commonwealth Bank of Australia expected a fall in the unemployment rate in Queensland to 5¾ per cent in 2013-2014.

[44] **LGAQ Submission on Queensland Economy:** In support of its submission, the LGAQ provided a detailed consideration of the Queensland economy which we have briefly summarised as follows:

- the rate of growth in the Queensland economy seen in 2011-2012 had not been repeated through the 2012-2013 period and was not likely to be repeated for the 2013-2014 financial years. Growth in the order of 3 per cent is predicted;
- whilst unemployment levels for Queensland had come in well above the Queensland Treasury forecast of 6.4 per cent seasonally adjusted for the twelve months to June 2013, the national unemployment rate was only 5.7 per cent. The general trend in Queensland has been for increasing unemployment since July 2012, rising from 5.2 per cent. As at June 2013, Queensland's unemployment rate stood at its highest level than at any other time over the past decade. The LGAQ cautioned that the unemployment rate for Queensland, in coming months, was likely to deteriorate further from the June 2013 figure. The LGAQ submitted that the Full Bench in any decision on these applications should place significant weight on what is a clear trend of increasing unemployment and slowing wages growth in the Queensland economy;
- that, insofar as the QCU's comparison between the Queensland Minimum Wage and the aggregate Average Weekly Ordinary Time Earnings (AWOTE) figures for Queensland was concerned, the LGAQ submitted that it was misleading. In support of this submission, the LGAQ said that the Australian Bureau of Statistics Average Weekly Earnings series attempted to calculate a hypothetical "average" figure which was prone to distortion due to the use of aggregate data. The LGAQ also referred the Full Bench to the explanatory notes of the Australian Bureau of Statistics Average Weekly Earnings data

¹⁴ Stage Budget 2013-2014, Budget Strategy and Outlook 2013-2014 - Budget Paper Number 2

¹⁵ Stage Budget 2013-2014, Budget Strategy and Outlook 2013-2014 - Budget Paper Number 2

¹⁶ Stage Budget 2013-2014, Budget Strategy and Outlook 2013-2014 - Budget Paper Number 2 at p. 36

¹⁷ Stage Budget 2013-2014, Budget Strategy and Outlook 2013-2014 - Budget Paper Number 2 at p. 40

¹⁸ Stage Budget 2013-2014, Budget Strategy and Outlook 2013-2014 - Budget Paper Number 2 at p. 31

¹⁹ Australian Government Budget Strategy and Outlook 2012-2013 - Budget Paper Number 1 - Statement 2

²⁰ Australian Government Budget Strategy and Outlook 2012-2013 - Budget Paper Number 1 - Statement 2

series, and in so doing, submitted that changes in the averages from year to year may be affected not only by changes in the level of earnings of employment, but also by the changes in the overall composition of the wage and salary earner segment of the labour force. The LGAQ argued that the national trend in AWOTE would also be reflected in Queensland specific AWOTE figures.

In their submissions in reply, both the QCU and AWU questioned the LGAQ's position in respect of the relationship between the Queensland Minimum Wage and AWOTE. The QCU contended that this comparison had been adopted as a reasonable measure by tribunals over an extended period of time and that nothing in the LGAQ's submission provided the Commission with any justification for a departure from this analysis. The QCU further submitted that the LGAQ's comparison of net wages was overly simplistic. It was submitted that the LGAQ failed to provide any adequate submission as to why the Commission should not take some steps to address the growing disparity between the small number of award-reliant employees remaining within the Queensland jurisdiction and the remainder of the Queensland workforce.

Additional Submissions

- [45] **QCU:** In its submission the QCU also referred the Full Bench to a number of social considerations which it contended should be considered. Firstly, the QCU maintained that the Full Bench must consider the needs of the low paid and in that regard consideration must be given to those employees who rely upon movements to awards to keep pace with inflation and those employees fortunate enough to be covered by other arrangements. There is a widening gap between the Queensland Minimum Wage and the AWOTE. The ongoing gap between these two figures demonstrated the necessity for some intervention from the Full Bench to maintain the relevance of the Queensland Minimum Wage.
- [46] Secondly, the Full Bench was referred to the fact that enterprise bargaining has been the major means by which employees obtain wage increases for more than 20 years. Further, wage increases that have flowed from enterprise bargaining have demonstrably exceeded that of minimum wage increases awarded in the various state wage cases.
- [47] In *Queensland Council of Unions AND Local Government Association of Queensland Ltd and Others and The Australian Workers' Union of Employees, Queensland AND Local Government Association of Queensland Ltd and Others* (State Wage Case 2012)²¹ at the Full Bench made reference to the AWOTE as a measure of gauging the performance of the economy and making comparison between award-reliant employees and those employees who benefit from collective agreements. In the most recent decision of the Fair Work Commission in *Annual Wage Review 2012-13*²² the Full Bench described the matters to be taken into consideration for a general wage movement and placed those considerations into three broad categories:
- economic;
 - social; and
 - collective bargaining.
- [48] The Full Bench undertook an exercise in comparing the National Minimum Wage and the AWOTE and concluded that, as a proportion of the AWOTE, the National Minimum Wage had fallen over time. The Queensland Minimum Wage, as a proportion of the AWOTE, has also fallen dramatically over the past ten years. In 2003, the Queensland Minimum Wage was more than half of the ordinary time earnings of Queensland employees, however, over the recent ten year period this has decreased by 10.3 per cent relative to the AWOTE. The general trend has been for a continual decline in the relationship between the Queensland Minimum Wage and what Queenslanders are actually being paid. Whilst the Queensland Minimum Wage was discounted because of the Global Financial Crisis no such reduction occurred in the AWOTE.
- [49] In conclusion, the QCU submitted that notwithstanding results of similar reviews that have occurred in other jurisdictions, specific circumstances existed in Queensland for the awarding of a more substantial increase having regard to the growing disparity between the wage increase awarded by way of general wage movements and the broader community.
- [50] **AWU:** The AWU submitted that the Queensland economy was the cornerstone of a strong Australian economy given the mining and resources boom. As the Queensland economy was one of the better performing state economies and was part of a strong Australian economy, it was submitted that it was well positioned to absorb the claim sought by the AWU and commended its claim to the Full Bench.

²¹ *Queensland Council of Unions AND Local Government Association of Queensland Ltd and Others (B/2012/14) and The Australian Workers' Union of Employees, Queensland AND Local Government Association of Queensland Ltd and Others (B/2012/15) - Decision* - <<http://www.qirc.qld.gov.au>>

²² *Annual Wage Review 2012-13* [2013] FWCFB 4000 at para [14]

[51] **Queensland Government:** The Queensland Government submitted that whilst it recognised that there were cost of living pressures being faced by Queenslanders and that such cost of living pressures were most acute for the lowest paid workers who are most affected by the Queensland State Wage Case, it was taking steps to reduce cost of living pressures in Queensland. The steps identified in the Queensland Government submission were as follows:

- registration fees for the family car had been frozen;
- the principle place of residence concession on the purchase of a family home had been reinstated;
- public transport fare increases had been halved with regular commuters rewarded with the nine trip cap on weekly Go Card use;
- the Government was taking steps to reduce the price of water to residents; and
- the Government was aiming considerable effort at reducing cost of living pressures on Queenslanders.

[52] **LGAQ:** The LGAQ asked that the Full Bench consider the economic and social situation prevailing in communities where the Full Bench's decision will have its greatest impact and that special consideration be given to the Queensland indigenous local councils.

[53] The LGAQ estimated that approximately 2,000 local government employees would be directly impacted by the Full Bench's decision in these applications as they are solely award-reliant. Of those 2,000 employees who are solely award-reliant, the employees are disproportionately consolidated within certain remote Queensland local councils which have their own significant and unique social and economic challenges, quite distinct from the broader community. Thus it was submitted that the Full Bench's decision would have a disproportionate impact on this particular group of local government employers and employees. Queensland's sixteen indigenous councils have recorded a drop in employment numbers of approximately 10 per cent in the last twelve months.

[54] The LGAQ submitted that the Full Bench must then place a disproportionately heavier weight on the economic and particular social issues prevailing in those communities, rather than by reference to Australia broadly or Queensland generally. The LGAQ strongly argued that an important social consideration should be to ensure that there remains a strong capacity for these councils to retain maximum levels of employment given the significant level of unemployment prevailing in those respective council area communities. In many of these areas the local council is the primary employer and the primary vehicle for labour market participants to attain relevant skills and experience so as to gain a foot hold in the broader labour force.

[55] The LGAQ submitted that neither the QCU nor the AWU could argue that a wage increase of the size sought by them would not have a detrimental impact on the capacity of those councils to maintain current employment levels in those regions, given the unique circumstances experienced within those regions.

[56] The LGAQ provided the Full Bench with an analysis of the local government area, the number of unemployed persons in the area, the unemployment rate in the area and the number of persons in the labour force in the area. Of the total estimated labour force in the thirteen identified Council regions (8,772 in 2013), the local government councils employed a total of 1,802 employees i.e. around 20% of the total labour force in those regional areas. Thus, the local councils in those particular areas were very significant employers, employing around one fifth of the total labour force. Within those regional areas, the median unemployment rate is currently in excess of 18 per cent although one council is identified as having an unemployment rate of 65.6 per cent. The LGAQ referred the Full Bench to a Report to the Queensland Parliament titled *Results of Audits: Local Government Entities 2011-12* which was prepared by the Queensland Audit Office. In assessing the financial sustainability of the above councils it was stated:²³

"We assessed councils using the three financial sustainability measures required by the new Local Government Regulation 2012, and the sustainability targets set by the Department of Local Government, Community Recovery and Resilience.

Based on these measures, 16 of the 68 councils audited are at higher risk of becoming unsustainable, including 11 of the 14 indigenous councils audited to date. This result is largely because these 16 councils incurred operating losses over the last three years."

[57] Compounding this, the LGAQ submitted that these councils have now been subjected to a minimum 10 per cent cut to State Government Financial Aid program funding. The granting of a claim as sought by the QCU and AWU would, in the LGAQ's view, be detrimental to these councils' capacity to maintain current staffing numbers.

²³ Queensland Audit Office - Results of Audits: Local Government Entities 2011-2012 - Report to Parliament 10: 2012-13, April 2013 at p.5

As these councils are sizeable employers in these regions, the granting of any such application would likely result in undesirable social implications for those broader communities.

- [58] The LGAQ submitted that a positive influence in rectifying the disparity between the Queensland Minimum Wage and the AWOTE referred to in the QCU's submission, was the effect of the change to marginal income tax rates from 1 July 2012. From that date the threshold in which the lowest marginal tax rate commenced was pushed up from \$6,000 to \$18,200. Whilst the marginal tax rate payable on wages over \$18,200 did increase from 15 per cent to 19 per cent, the net result was a proportionally more beneficial tax break for a person on the Queensland Minimum Wage when compared to a person earning a salary equal to the AWOTE. An analysis of the net effect of these changes in marginal tax rates would result in an improvement in take home pay for a person on the 2012 Queensland Minimum Wage equal to \$1,246.60 whereas a person in receipt of the AWOTE would only have benefited by \$221.77 net. This led to an effective increase in take home pay of 4.33 per cent for those in receipt of the Queensland Minimum Wage and resulted in an approximate 4% higher increase in take home pay when compared with a person who was in receipt of a rate equivalent to the AWOTE.
- [59] According to the LGAQ, another contributing cost which would also be disproportionately incurred by Queensland indigenous councils, is the increase to the *Superannuation Guarantee Charge* effective from 1 July 2013 which will flow to the direct benefit of all local government employees who are not otherwise considered "permanent employees" for the purpose of the *Local Government Act 2009*. Because of the tenuous nature of funding arrangements to indigenous councils, typically indigenous councils maintain nearly double the number of non "permanent" employees within their workforce. This group constitutes well in excess of 25 per cent of their overall workforce.

Decisions of other Tribunals

- [60] **Fair Work Commission Decision:** On 3 June 2013, the Fair Work Commission released its decision in the *Annual Wage Review 2012-13*.²⁴ In that decision the Fair Work Commission increased all award rates of pay by 2.6 per cent and increased the National Minimum Wage by \$15.80 to \$622.20 as and from 1 July 2013. In its decision the Full Bench took into consideration the 0.25 per cent increase in the superannuation guarantee levy and the effect of the carbon tax on inflation. Before the Fair Work Commission, the ACTU supported a similar increase to that currently being proposed by both the QCU and AWU. The Australian Government supported a fair and economically responsible increase to the National Minimum Wage and award wages that reflected changes in living costs and other changes in the economic environment during the previous twelve months. The Queensland Government's submission urged a cautious approach to setting wages for award-reliant workers that would be consistent with achieving an unemployment rate of 4 per cent in the medium term.
- [61] **Western Australia:** The Western Australian Industrial Relations Commission's decision was released on 12 June 2013.²⁵ That decision granted an increase to award wages of \$18.20 per week from the first pay period on or after 1 July 2013. This increased the Western Australian Minimum Wage from \$627.70 to \$645.90 per week. In that matter the Western Australian Government supported an increase of 2.75 per cent in the minimum wage and a similar increase to award wages.

Conclusion

- [62] **Legislative Framework:** The legislative provisions that the Commission is obliged to consider in determining the applications currently before us are as follows:

"3 Principal object of this Act

The principal object of this Act is to provide a framework for industrial relations that supports economic prosperity and social justice by -

...

- (b) providing for an effective and efficient economy, with strong economic growth, high employment, employment security, improved living standards, low inflation and national and international competitiveness; and

...

- (d) ensuring equal remuneration for men and women employees for work of equal or comparable value; and

...

²⁴ *Annual Wage Review 2012-13* [2013] FWCFB 4000

²⁵ Western Australian Industrial Relations Commission State Wage Case 2013 (on the Commission's own motion) 2013 WAIRC 00347

- (f) promoting the effective and efficient operation of enterprises and industries; and
- (g) ensuring wages and employment conditions provide fair standards in relation to living standards prevailing in the community; and
- ...
- (p) ensuring that, when wages and employment conditions are determined by arbitration, the following are taken into account –
 - (i) for a matter involving the public sector - the financial position of the State and the relevant public sector entity, and the State's fiscal strategy;
 - (ii) for another matter - the employer's financial position."

"126 Content of awards

The commission must ensure an award -

- ...
- (d) provides for secure, relevant and consistent wages and employment conditions; and
- (e) provides for equal remuneration for men and women employees for work of equal or comparable value; and
- (f) provides fair standards for employees in the context of living standards generally prevailing in the community; and
- (g) is suited to the efficient performance of work according to the needs of particular enterprises, industries or workplaces; and
- (h) takes account of the efficiency and effectiveness of the economy, including productivity, inflation and the desirability of achieving a high level of employment; and
- ..."

"273 Commission's functions

- (1) The commission's functions include the following -
 - (a) establishing and maintaining a system of non-discriminatory awards that provide fair wages and employment conditions;
 - ..."

"320 Basis of decisions of the commission and magistrates

- (1) ...
- (5) In making a decision, other than a decision made under section 149, the commission must consider the public interest, and to that end must consider -
 - (a) the objects of this Act; and
 - (b) the likely effects of the commission's decision on the community, local community, economy, industry generally and the particular industry concerned.
 - ..."

[63] It was acknowledged by those who provided written submissions, that the Commission, in giving effect to these legislative provisions, is required to balance economic and social factors in making any decision on these applications. This fact has been referred to in a number of State Wage Case decisions, including the 2007 Full Bench decision which stated as follows:

"In economic terms, there is a need to ensure wage outcomes are consistent with strong economic performance. In social terms, there is a need to ensure that people are covered by fair and reasonable wages that allow them to participate in society and that those who do not benefit from bargaining are not left behind." : *Queensland Council of Unions AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others and The Australian Workers' Union of Employees,*

*Queensland AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (State Wage Case 2007).*²⁶

- [64] **Impact of Commission's Decision:** As has been outlined earlier in this decision, the impact of the Commission's decision in these applications is rather limited because of the referral of the Queensland industrial relations powers with respect to private sector employment which took effect on 1 January 2010. When that occurred the vast majority of Queensland based private sector employees moved to the federal jurisdiction and are now covered by determinations of the Fair Work Commission. The jurisdiction of this Commission is now limited to Queensland public sector employers/employees and Queensland local government employers/employees. The great majority of these employees are employed pursuant to the terms of enterprise bargains certified by this Commission and therefore are not directly reliant on any decision of the Commission in these applications.
- [65] The Queensland Government estimates that the employees directly impacted by any decision of this Full Bench are as follows:
- somewhere between 3,000 and 4,000 persons employed by 1,250 Parents and Citizen's Associations who are award reliant; and
 - employees of some small government organisations that fall outside the Core Agreement e.g. the Darling Downs Rabbit Board.
- [66] The LGAQ estimate that approximately 2,000 employees of regional and indigenous local councils will be directly affected by the Commission's decision as they are solely award-reliant.
- [67] **Economic Considerations:** As a result of an examination of the economic data relied upon by the respective parties, we have formed the view that the Queensland economic position is generally positive and that the forward outlook is also positive. We do however acknowledge that the severe weather conditions experienced in Queensland in early 2013 has detracted one quarter of a percentage point from Gross State Product growth in 2012-13. It is further acknowledged that the Queensland economy is not as strong as it has been in some past years. It is however noted that it is the Queensland Government's expectation that the Queensland Gross State Product will grow to 6 per cent by 2015-16 rather than the expected growth of 3.5 per cent in 2012-2103.
- [68] The Queensland Government has identified three risks to its forecasts i.e. a worsening in the global economic conditions, a further weakening in commodity prices and the potential for a weaker business investment profile than currently forecast. It has also identified the major domestic risk as being the timing and the pace of the completion of the three LNG projects in Queensland, the construction of which are expected to be completed between 2014 and 2016.
- [69] It is however the current international, Australian and Queensland economic conditions that must be assessed in these applications. Whilst there is a possibility of the abovementioned matters occurring, they are not matters that currently impact upon the Australian and Queensland economies.
- [70] We have also considered the economic situation prevailing in those communities where this decision will have a great impact i.e. those local councils that employ the approximately 2,000 local government employees who are award reliant. We accept that these employees are disproportionately consolidated within certain remote Queensland local councils and that these councils have their own significant and unique social and economic challenges. We have considered that the local councils in the indigenous regions employ a substantial proportion of those employed in the particular region and that Queensland's sixteen indigenous councils have recorded a drop in employment numbers in the last twelve months of approximately 10 per cent.
- [71] In this regard we have also considered the impact of the Australian Government's change to the marginal income tax rates as and from 1 July 2012 which has particularly benefited the low paid. We have also taken note of the impact on these councils of the changes to the *Superannuation Guarantee Charge* legislation and the fact that it has, as of 1 July 2013, meant an additional impost on these councils over and above that placed on employers generally.
- [72] **Social Considerations:** As has been acknowledged by the parties, any decision by the Commission is to be made in both an economic and social context. The Queensland Government submitted that, in economic terms, there is a need to ensure that wage outcomes are consistent with strong economic performance. In social terms, there is a need to ensure that people are covered by fair and reasonable wages that allow them to participate in society and that those who do not benefit from bargaining are not left behind.

²⁶ *Queensland Council of Unions AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others and The Australian Workers' Union of Employees, Queensland AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (2007) 185 QGIG 422*

[73] As was indicated by the Full Bench in *Queensland Council of Unions AND Local Government Association of Queensland and Others and The Australian Workers' Union of Employees, Queensland AND Local Government Association of Queensland Ltd and Others* (State Wage Case 2011)²⁷, the legislative charter requires the Full Bench to "balance a number of competing factors" in making any decision on these applications, including:

- the interests of employees;
- the interests of employers;
- economic factors (such as strong economic growth, high employment etc.);
- improving living standards;
- ensuring wages provide fair standards in relation to living standards prevailing in the community; and
- ensuring equal remuneration for men and women employees for work of equal or comparable value.

[74] Clearly in recent years, the Queensland Minimum Wage has not kept pace with real wage growth as measured by the AWOTE. It is of concern to us that this gulf is not further widened as s. 3(g) of the *Industrial Relations Act 1999* requires us to ensure wages provide fair standards in relation to living standards prevailing in the community. Thus a reasonable increase in minimum wages would appear to be warranted and we are not amenable to the proposal of the LGAQ to award an across the board percentage increase. We consider however that the quantum of increases determined by the Fair Work Commission in the Annual Wage Review 2012-2013, suitability adopted to the Queensland environment are appropriate.

[75] **Decision:** In respect of the two applications before the Full Bench, we have determined to award the following increase:

- a \$15.80 per week increase in award wage rates for employees at award classification rates below the C10 classification in the *Engineering Award - State 2012*;
- a 2.6 per cent increase in Award wage rates for employees at award classification rates equivalent to or above the C10 wage level in the *Engineering Award - State 2012*;
- an increase of 2.6 per cent in existing award allowances which relate to work or conditions which have not changed and service increments;
- an increase of \$15.80 per week in the level of the Queensland Minimum Wage as it applies to all employees;
- an operative date of 1 September 2013.

[76] A Declaration of General Ruling giving effect to this decision will issue at the same time as this decision.

[77] The parties were in agreement that the current statement of principles should continue with the necessary amendments to reflect changes to the operative date, the quantum of wage and allowance adjustments awarded in this decision and any other consequential amendments. Thus a new Statement of Policy with respect to wage fixation principles will also be issued with this decision.

[78] The Commission determines and orders accordingly.

D.M. LINNANE, Vice President

G.K. FISHER, Industrial Commissioner

G.D. BLACK, Industrial Commissioner

Hearing Details:

2013 June 17
August 23

Released: 29 August 2013

Appearances:

Mr J. Martin, for the Queensland Council of Unions.

Ms C. Woodhouse with Mr M. Raguse for The Australian Workers' Union of Employees.

Mr S. Blaney with Mr K. Hunt for the Local Government Association of Queensland Limited.

²⁷ *Queensland Council of Unions AND Local Government Association of Queensland and Others (B/2011/17) and The Australian Workers' Union of Employees, Queensland AND Local Government Association of Queensland Ltd and Others (B/2011/19) - Decision* - <<http://www.qirc.qld.gov.au>>