Queensland Council of Unions
Submission in Reply
State Wage Case 2019

Queensland
Council of Unions

Contents

Introduction

The 2018 State Wage Case decision[1] was based on the following logic:

> [42] In the 2017 State Wage Case the Full Bench referred to a statement recorded in the 2016 State Wage Case, as follows:
>
> > [23]… we adhere to the view expressed by the Full Bench of this Commission in the 2014 and 2015 decisions that unless there are cogent reasons for not doing so, we should follow the ruling of the federal tribunal, with any necessary or desirable modifications, having regards to the particular circumstances of Queensland.
>
> [43] Without formally adopting the above statement, we nonetheless record that we intend to follow the same approach in the current proceedings. In doing so, we note that decisions of the Fair Work Commission in its Annual Wage Reviews are made against a legislative background which requires that Tribunal to take into account a number of specific considerations, including relative living standards and the needs of the low paid when setting minimum wage rates (see s 134(1)(a) and s 284(1)(c) of the Fair Work Act 2009).

The QCU application is seeking the same outcome as the 2018 decision and various recent decisions. That is, the awarding of the same increase in wages as was awarded by the Fair Work Commission in the 2019 National Wage Review[2]. Contrary to the submissions of the Queensland Government and the Local Government Association, we contend that the increase sought (3 per cent) is modest and rely upon paragraph [195] of the most recent National Wage Review[3] for that definition:

> The recent research, and that discussed in previous Reviews, is consistent with the position adopted by the Panel that modest and regular minimum wage increases do not result in disemployment effects or inhibit workforce participation. The assessment of what constitutes a 'modest' increase has developed over time and the research and

[1] Declaration of General Ruling (State Wage Case 2018) [2018] QIRC 113
[2] Annual Wage Review 2018–19 (C2019/1) [2019] FWCFB 3500
[3] Annual Wage Review 2018–19 (C2019/1) [2019] FWCFB 3500 at [195]

available evidence confirms that the increases granted by the Panel in the previous 2 Reviews, and as we have adopted in this Review, fall within that category. Further, the research is supportive of the notion that increases in minimum wages do increase the earnings of the low paid.

This submission in response, sets out the legislative framework within which the Commission is required to consider this application. That legislative framework speaks of the maintenance of fair and just wages. The QCU application is consistent with that legislative framework and the interpretation of that framework made by recent State Wage Benches.

This submission in reply then goes on to address matters raised in the submissions made on behalf of the Queensland Government and the Local Government Association of Queensland.

Legislative Framework

There are a range of act provisions that guide the Commission in relation to modern awards and maintaining wages. This section of this submission in reply addresses those provisions in the context of the respective submissions made by the Queensland Government and the Local Government Association of Queensland.

The main purposes of the legislation, previously named the principal objects of the Act, are contained in section 4 of the *Industrial Relations Act 2016* (IRA 2016) and came into effect on 1 March 2017. The following main purposes, contained in section 4, are of particular relevance to the matter before the Commission:

> (d) providing for a fair and equitable framework of employment standards, awards, determinations, orders and agreements;
> (g) ensuring wages and employment conditions provide fair standards in relation to living standards prevailing in the community;
> (o) being responsive to emerging labour market trends and work patterns;
> (q) establishing an independent court and tribunal to facilitate fair, balanced and productive industrial relations.

Section 141 of the IRA 2016 sets out the general requirements for the Commission exercising powers in relation to awards. Those general requirements include that a modern award:

- provides for **fair and just wages** and employment conditions that are at least as favourable as the Queensland Employment Standards [section 141 (1) (a)] **(emphasis added)**; and
- generally reflects the prevailing employment conditions of employees covered, or to be covered, by the award. [section 141 (1) (b)].

The wording of section 141 (1) (b) appears to be consistent with the previous wage principle that referred to first awards and extension of existing awards. The requirement to reflect prevailing conditions is consistent with the Commission maintaining fair and just rates of pay in modern awards.

Section 142 (General requirement about minimum wages) of the IRA 2016 requires that the Commission must establish and maintain minimum wages that are fair and just. The phrase "fair and just" is repeated for both sections 141 and 142 in subsection (1). Section 142 (2) (a) also requires the Commission to have regard to "the prevailing employment conditions of employees covered by the modern award". This provision demonstrates the intention of Parliament that award rates must keep up with prevailing standards rather than be a safety net.

Section 143 (Content of modern awards) (1) (b) (i) of the IRA 2016 provides fair standards for employees in the context of living standards generally prevailing in the community. This provision further reinforces that modern awards are not a safety net. This aspect of the legislation that requires reflection upon living standards in the community is dealt with by Table 6 in the QCU submissions in chief wherein the comparison between proposed rates (resulting from this application) are compared to others paid to employees in the community of Aurukun.

The 2018 State Wage Case decision dealt with a range of matters including the various obligations placed upon the Commission by sections 3, 4, 141, and 143. In relation to these obligations that decision read as follows:

> [16] In the Government's submission:
>
> > ... Queensland's existing awards, and the conditions contained within them, were made in conformity with the obligations imposed upon the Commission under s 125 of the 1999 Act (pre-2013 amendments) and were, through the award modernisation process, modernised to continue to provide fair and just employment conditions.

> [17] The submissions of both the QCU and the Government have been helpful insofar as they record those party's views on the statutory obligations on the Commission in approaching applications lodged pursuant to s 458 of the Act. Indeed, having considered the submissions in light of the matters raised by the Full Bench in the 2017 State Wage Case decision, this Full Bench is satisfied that, apart from differences in terminology and expression, the relevant legislative provisions dealing with the obligations on the Commission concerning the setting of wage rates in modern awards, as well as the QMW, are essentially the same as those which applied to pre-modernisation awards and the QMW under the 1999 Act, prior to amendments made during the period between 2012 and 2014.
>
> [18] Accordingly, we intend to deal with the present applications in the way the Commission has traditionally dealt with applications for General Rulings in State Wage Case proceedings.

Further 447 (Commission's functions) requires that the Commission exercise its functions by:

> establishing and maintaining a system of non-discriminatory modern awards that, together with the Queensland Employment Standards, provide for fair and just conditions of employment for employees;

All of these provisions, in so far as they pertain to modern awards are able to be defined by what has been omitted rather than the language it contains. By comparison to the objects contained in the *Fair Work Act 2009* (Cth) the absence of the reference to "safety net" is telling in that the Commission is not constrained by setting minimum conditions but rather "a fair and equitable framework". The expressions "fair and just" and "fair and equitable" are repeated throughout the legislation.

In our submission, the QCU application is consistent with the provision of a fair and equitable framework and is pursuant to maintaining fair and just wages in modern awards. The QCU submission is also consistent with the interpretation that 2018 State Wage Bench placed on its various obligations under the IRA 2016 towards the creation and maintenance of awards and rates of pay. The scheme of the Queensland legislation is no longer concerned with modern awards being minimum safety nets but rather setting realistic rates of pay. The safety net, where it is referred to, is in relation to minimum conditions contained in the Queensland Employment Standards. Treating awards as a safety net has contributed to low wage growth that was the basis of the QCU submission in chief.

Purpose (o) above is also relevant to the substandard wage growth in Australia and Queensland. Low wage growth may not exactly be "emerging", however the de-coupling of wages growth from productivity growth and a range of the other economic indicators has emerged over recent years. The de-coupling of wages and labour productivity has been the subject of previous submissions and will be discussed later in this submission. This new purpose, in our submission, obliges the Commission to take into consideration the low wages growth and in conjunction with the legislative framework set by the IRA 2016 to act, as limited as the application of the State Wage Case may be, to rectify low wage growth. By awarding the QCU application the Commission would be sending a signal that low wage growth has become a problem not just in terms of social considerations but also in terms of economic considerations.

The final purpose raised above is that of the independence of the Commission in setting wages and conditions of employment. This purpose is in stark contrast to the previous legislation which the Commission was obliged to consider the Government's fiscal policy. The *Industrial Relations (Fair Work Harmonisation) and Other Legislation Act 2012* introduced a requirement that the Commission was to consider the State's financial position and fiscal strategy, including the financial position of the relevant public sector entity, when determining wage negotiations by arbitration. It also sought to provide a process whereby the Treasury Chief Executive was able to brief the Commission about the State's financial position, fiscal strategy and related matters. Whilst these 2012 amendments were in relation to the arbitration of bargaining outcomes, they were criticised at the time for interfering with the independence of the Commission by seeking to bring the tribunal's conduct into line with the fiscal policy of the government of the day. In our submission purpose (q) unequivocally emphasises the independence of the Commission that would enable the tribunal to judge this application on its merits rather than the preference of the government of the day. The Queensland Government submission appears to suggest that the Commission should be in some way bound by government wages policy which it clearly is not.

Aside from the purposes of the Act upon which this submission relies, it is also noteworthy to consider the wording of the purpose that is usually considered to be a handbrake on the awarding of anything other than negligible wage increases. Purpose (h) requires the Commission promote collective bargaining. This type of purpose or object has been interpreted by tribunals in the past to justify modest increases to wages, in cases such as this one, to ensure that unions and workers are motivated to adopt collective bargaining as the primary means of

setting wages. There are a couple of points that need to be made in relation to this purpose and the interpretation that would see it retard wage increases.

Firstly, as has been the subject of several previous submissions to State Wage Benches, within the Queensland jurisdiction there is a finite and reasonably stable number of employers. If those employers have not availed themselves of collective bargaining either as a voluntary policy position or at the insistence of their workforce by this stage, chances are that they never will. Collective bargaining has been the primary means of wage settlement in the Queensland jurisdiction for well over two decades. It follows that if providing for low wage increases has not had the result of encouraging more collective bargaining in the Queensland jurisdiction, it likely never will.

Secondly, it would appear that at a federal level that the strategy of awarding low wage increases has not had the desired effect of promoting bargaining. Perhaps to the contrary of the conventional wisdom of promoting collective bargaining, it is possible that the low wage outcomes of National Wage Reviews is providing incentive for employers not to bargain. A shift away from collective bargaining towards award reliance could reasonably be interpreted in this way. In non-unionised workplaces, it could reasonably be assumed that the decision to bargain or not to bargain is a decision unilaterally made by the employer. A research report into trends in bargaining made the following observations (Peetz and Yu 2017:15):

> Previous surveys have shown it is managers, not unions, who initiate or motivate a majority of agreements, so the decline of union density probably reduces the incentive on managers to initiate negotiations. To the extent that unions initiate bargaining, declining union density also reduces the capacity of unions to do so. There is little indication that non-union bargaining is rising in response to the drop in union bargaining, which probably reflects a tendency for collective bargaining to mostly occur either through a union, or not at all. While some employers might use non-union agreement-making (and the restrictions on industrial action that it generates) as a means of discouraging unionisation, the decline in union density reduces the incentive on employers to use non-union agreement making for that purpose, so there is no need for non-union bargaining to rise to 'take up the slack' when union bargaining declines.

In the 2017 National Wage Review the Fair Work Commission made the following observations:

> [81] In general terms, there has been a slight trend away from collective bargaining and an increase in award reliance in recent times. Research Report 4/2017—Explaining recent trends in collective bargaining examined factors that have influenced recent changes in collective agreement coverage. It is clear from that report—the findings of which were not challenged by any party—that there are issues of statistical classification as well as economic, structural and societal changes that have contributed to the overall trend towards an increase in award reliance and that the level of minimum wages has not had a significant effect.
>
> [82] As the Panel observed in the 2013–14 Review decision, the available research does not reveal any particular relationship between the incentive to bargain and increases in the [2017] FWCFB 3500 NMW and modern award minimum wages. Instead it points to a complex mix of factors that may contribute to employee and employer decision-making about whether or not to bargain.

At a national level the deterrent aspect of awarding a substantial wage increase has now been completely dispensed with in the thinking as to determine how collective bargaining ought be promoted. In the submission of the QCU, if there had ever been any justification for such an approach in Queensland there is certainly none now.

Finally, with respect to purpose (h) as contained in Section 4 of the IRA 2016, the incentives to bargaining that are expressly mentioned are "providing for good faith bargaining" and "establishing the primacy of collective bargaining over individual agreements". Neither placita i) or ii) in section 4 contemplates the suppression of wages as a means of promoting collective bargaining. This submission is explored further in relation to the Queensland Government's submission, in the context of the primacy of collective bargaining.

The purpose of a general rule section 458 "if multiple inquiries into the same matter are likely". State Wage Cases have ordinarily taken the form of a general ruling with the possible exception of those cases that required specific undertakings to be given in order to access the wage increase provided for by the state wage case in question. It would appear that the Queensland Government submission is seeking an outcome other than a general ruling.

The QCU submission is that the new legislative framework enables the Commission to determine a level of wage increase based on prevailing factors. It is not inhibited by legislation that prevents the granting of anything other than a minimal wage increase. The next section of this submission deals with specifically with the Queensland Government submissions.

Queensland Government Submission

The Queensland Government submission appears to suggest that there is a new set of circumstances that requires a change in practice from the Commission. For example, paragraph 6 includes "circumstances that now prevail" and paragraph 17 that passing on the same quantum as the National Wage Review to all awards is "no longer a tenable position" would indicate that there has never previously been circumstances in which award rates of pay have been in advance of those contained in collective agreements. There have been examples of wage rates in awards exceeding those in certified agreements in the Queensland jurisdiction on a number of occasions. This factor was noted by the State Wage Bench in 2018 wherein at paragraph [45] the following observations were made:

> In so deciding, we note that while our decision will directly affect...approximately 19,000 public sector employees whose conditions of employment - via the terms of certified agreements or Directive 12/12: State Wage Case and Certified Agreements - include provisions which will entitle them to receive all, or part, of the 3.5 per cent wage and allowance adjustment delivered by this decision. However, the indirect effect of this decision is as a result of decisions made by the employers of such employees, not this Commission.

The change of attitude towards this is quite clearly as a result of the arbitration of the Core Agreement and this much is evident from the amount attention it is paid in the Queensland Government submission. As has been stated in the QCU submission we maintain that the agreement, or in this case determination, is the vehicle by which the parties should determine the relationship between awards and certified agreements.

Primacy of Collective Bargaining

Collective bargaining is given primacy in terms of the objects of the *Industrial Relations Act 2016* (the Act). This is one of the justifications that is relied upon in the Queensland Government submission. However, the existence of a main purpose pertaining to collective bargaining does not advance the Queensland Government's arguments. Firstly, the primacy of collective bargaining that is so rightly articulated in section 4 (h) (ii) is by "establishing the primacy of collective agreements **over individual agreements**" (emphasis added). The use of

individual agreements to subvert workers' rights to collectively bargain has been the subject of considerable political fallout. The 2007 federal election was largely determined by the ill-fated *WorkChoices* legislation that brought additional focus on statutory individual contracts when the No Disadvantage Test was abolished and later reinstated (Gardner 2008:37; Peetz 2012:273; Pittard 2013:95; Sheldon and Kohn 2007:128). The use of statutory individual contracts was replicated by the Newman Government in relation to higher paid Queensland Government employees in the health and education areas of employment (Bailey and Peetz 2013:424). It is for this reason that *Industrial Relations Act 2016* included section 4 (h) (ii) to reflect commitments towards collective bargaining in accordance with the International Labour Organisation *Right to Organise and Collective Bargaining Convention, 1949, No. 98* which is also mentioned as a means by which the main purposes of the Act are to be achieved in section 4 (r).

Secondly there is no evidence that there has been any departure from a commitment to bargaining in Queensland. To the contrary, the extensive coverage of collective bargaining within public sector employment has been the subject of much of the deliberations of State Wage Case benches since the complete removal of the private sector from the Queensland jurisdiction in 2009 when the remaining unincorporated employers were transferred to the federal system[4] (Stewart 2018:32). There is no evidence that can be provided that would demonstrate that any State Wage Case decision has been detrimental to bargaining or the parties' continued commitment to collective bargaining. This is also the case for the 2018 State Wage Case where the Queensland Government submission would have us believe that there has been something new in that award rates have exceeded those contained in certified agreements. As previously stated, this is not something that has only occurred as a result of the 2018 State Wage Case decision.

In the Queensland Government submission, it is apparent that the Core agreement arbitration is a major motivator for the changing attitude of the Queensland Government. Paragraph 39 of the Queensland Government's submissions states:

> The State submits that it is open to the Commission to infer that a reason that replacement certified agreements for the CORE have not been able to be made between the parties is because of the effect the 2018 State Wage Case had on award rates of pay.

[4] Fair Work (Commonwealth Powers) and Other Provisions Bill 2009

Later at paragraph 44, perhaps even more boldly the Queensland Government submissions states:

> The Commission ought to also infer that the impact on bargaining will be further exacerbated if award rates of pay continue to overtake certified agreement rates of pay.

The recently concluded enterprise bargaining negotiations between unions and Queensland Government agencies proves that such an inference cannot be made. This attitude also conflates the arbitration of an agreement with an absence of bargaining. These submissions presuppose that the arbitration of an agreement, again nothing new in the Queensland jurisdiction, in some way demonstrates a lack of commitment to collective bargaining. In our submission the access to arbitration is reasonable adjunct to the system of bargaining under the Queensland legislation. That Queensland enterprise bargaining regime differs remarkably from the Fair Work system in relation to the access to arbitration. Access to arbitration, unless it is by consent, within the Fair Work system requires a very high threshold, in which protected action is terminated, usually for threatening public health and safety[5] or the economy[6] (Stewart 2018:169). The Act in Queensland allows for parties to access arbitration as a last resort (as stated in paragraph 52 of the Queensland Government submission) however the scope by which a party can access arbitration requires a process, including time passed.

In our submission, the access to arbitration under the Queensland Act is far more appropriate in the scheme of bargaining. Parties are able to seek assistance where there is a deadlock in negotiations. This contrasts to the Fair Work system where it is evident that the balance of bargaining power has been tilted increasingly in favour of employers. In the QCU submissions in chief we have discussed the collapse of bargaining in the private sector that has been influenced by a range of factors including the ability of employers to terminate agreements and the threat of loss of conditions of employment that goes with that ability to terminate agreements. Similarly, the inability of workers to have a matter arbitrated unless the extraordinarily high bar in the federal system is reached leaves unions and workers with little option but to accept substandard offers or increasingly no offer at all from the employer.

Wages Policy

[5] Section 424 Fair Work Act 2019
[6] Section 431 Fair Work act 2019

The Queensland Government submission apportions blame for the rates contained in awards reaching those contained agreements to the 2018 State Wage Case decision. The alternative way of looking at this set of circumstances is that it is the 2.5 per cent wages policy of the Queensland Government that has led to the eclipsing of the rate contained in agreements. We return to the central fact in this matter that this phenomenon is most acutely apparent in the case of the Core Agreement. As National Wage Reviews have been awarded in excess of 2.5 per cent, the difference between awards and agreements that are by policy limited to 2.5 per cent is going to narrow over time. In fact, the rigidity of a previous wage policy of 2.5 per cent has been remarked upon by the Commission in relation to the arbitration of a determination for employees of the Queensland Police Service in 2011[7] as follows (QIRC 2011):

> [217] Further to those comments, the Full Bench adds the following.
>
> [218] A continuing matter for concern in this Decision relates to the "one size fits all" Government offer to its employees within the public sector.
>
> [219] Witnesses for the Government have stated that it has held firm to its Revised Wages Policy outcome of 2½%, 2½ % and 2½% per annum over three years for all public sector employees seeking to make enterprise bargains with the Government post 2 September 2009. However, during the course of this claim, it is a matter of fact that there were different and better outcomes reached between some public sector employees and the Government since the adoption of its Revised Wages Policy.
>
> [220] Other than for the "matters at issue" before the Commission, there has been, quite rightly, no reference to any previous history between the parties and attempts to settle this matter upon other grounds prior to the matter coming before the Commission for a Determination.
>
> [221] We are curious as to how a fixed offer can be made by the Government to its workforce without any apparent or obvious consideration being given to the type of industry under consideration. For the purposes of this Decision and the Legislation, if an "industry" can be identified within that context, then the work of policing is an "industry". It may be that within the public sector, "industry" could cover similar work

[7] Queensland Police Service AND Queensland Police Union of Employees and The Queensland Police Commissioned Officers' Union of Employees (CA/2010/12)

performed within different agencies/departments - i.e. work falling under the general heading of "emergency services".

[222] We are unsure of what consideration has been given to the fact that, within the public sector, employees are often engaged in a range of diverse activities. Further, in offering a fixed wage offer, there appears to be little consideration given to the fact that each bargaining party may have, and usually do have, a different set of claims to be considered.

[223] This matter involves the determination of an appropriate enterprise bargaining outcome for employees of the QPS. The "industry" in question, i.e. that of policing, is inherently different and discrete to other sectors within the public service - a claim that could arguably be made by many other sections within the public service.

[224] It is up to the parties negotiating with the State Government as to whether they agree to accept a fixed wages offer. However, if an enterprise bargaining negotiation has not been resolved between parties and a s. 149 application is made, the requirement is that the Commission adhere to the requirements of the Act and particularly to the statutory direction to act with equity, good conscience and the substantial merits of the case.

[225] Against that background, it would not be unusual that outcomes achieved through a s. 149 of the Act application may produce different results.

It is worthy of note that the agreement rates that were flowed on to awards in the Queensland jurisdiction, that has now become the subject of controversy, also occurred in 2011. In our submission, that percentage increases awarded by the Fair Work Commission have begun to outstrip the 2.5 per cent wages policy demonstrates the inadequacy of the current wages policy. This is a view that has also been recently articulated by the Reserve Bank Governor. As was briefly alluded to in the QCU submissions in chief, Dr Lowe made the following comments to the House of Representatives Standing Committee on Economics on 9 August 2019 (Commonwealth of Australia 2019):

> Turning now to the Australian labour market, the unemployment rate, at 5.2 per cent, is a little higher than when we met six months ago, and this is despite employment growth having been stronger than we had expected. What's happened is that increased demand for labour has been met with more labour supply, especially by women and

older Australians. Reflecting this, a higher share of the Australian adult population is participating in the labour market than has ever been the case before. I want to be clear: this is very good news. But one of the side-effects of this flexibility of labour supply is that it's proving harder to generate a tighter labour market and so, in turn, it's been hard to generate a material lift in aggregate wages growth.

Looking forward, while some slowing in employment growth is expected, the central scenario is for the unemployment rate to move lower to reach five per cent again in 2021. If things evolve in line with this central scenario, it's probable that we will still have some spare capacity in the labour market for a while yet, especially taking into account underemployment. This means that the upward pressure on wages growth over the next couple of years is likely to be only quite modest and less than we were earlier expecting. **Caps on wages growth in public sectors right across the country are another factor contributing to subdued wage outcomes**. At the aggregate level, my view is that a further pick-up in wages growth is both affordable and desirable (emphasis added).

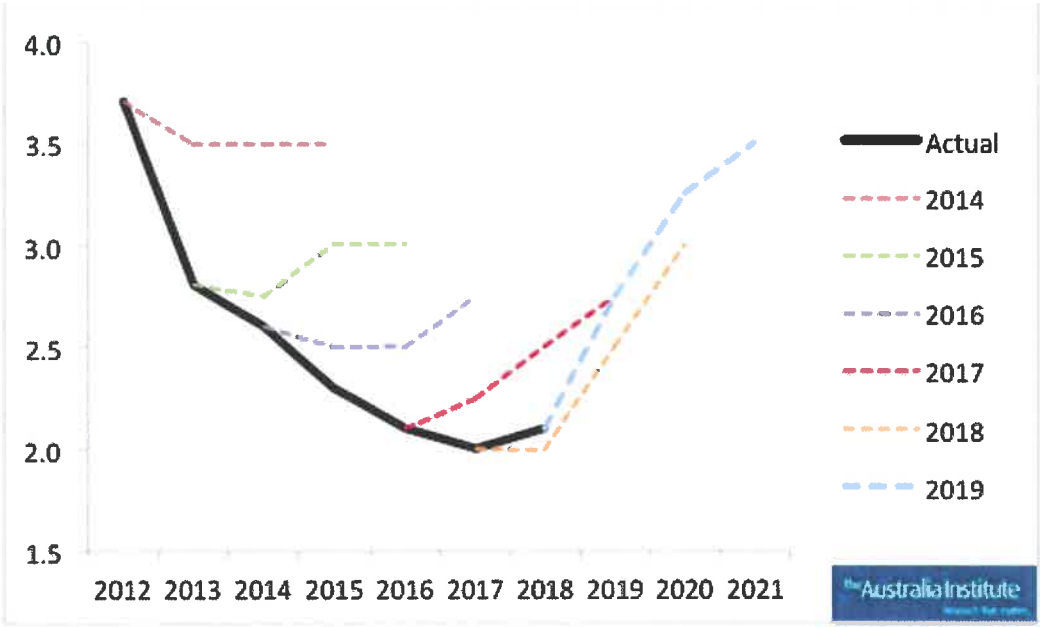
Attachment 4 to the Queensland Government's submission sets out a range of economic observations. Attachment 4 is very selective in relation to its commentary concerning low wage growth which has elsewhere been described as being in a "crisis". At paragraphs 13 and 27 of Attachment 4, inflationary expectations and underemployment are said to provide partial explanation of the low wage growth currently being experienced. The QCU submission outlines a range of reasons that low wage growth is at these crisis levels in Australia including:

- shift in bargaining power towards employers;
- a continued decline in union density;
- an associated rapid decline in collective bargaining coverage in the private sector;
- fissuring of industry which includes practices such as outsourcing and franchising;
- increase in regulatory evasion, known more colloquially as wage theft; and
- sham contracting and other forms of precarious employment.

Moreover, there has also recently been conjecture about employers' monopsony power within the labour market as an explanation as to why employees are not moving to higher paying jobs in order to increase earnings (Peetz 2019). The various manifestations of low wage growth were also outlined in the QCU submission. Chief among the concerns for the union movement has been the decoupling of wage growth from increases in productivity.

At paragraph 14 of Attachment 4, the Queensland Government submission relies upon wage growth expectations of 3 ¼ per cent into 2021. It is difficult to consider that Australian government projections concerning wage growth have any credibility at all. The following chart developed by the Australia Institute compares predicted wage growth to actual wage growth (Grundorff 2018).

Figure 1 Wage Growth Predictions



Source Grundorff 2018

Consumer Spending

Attachment 4, at paragraph 8 relevantly states that "consumer spending growth moderated in the second half of 2018, with spending on discretionary items particularly soft. However, household consumption growth is forecast to pick up beyond 2018–19, underpinned by continued growth in employment and increasing wage growth". It is apparent that consumer spending is "soft" and that this directly relates to the crisis in wage growth. Paragraphs 13 and 20 of Attachment 4 discuss the relevant economic indicators of the Wage Price Index (to March quarter 2019) and Household Consumption (2017-18) that ironically are both recorded at 2.3 per cent. Despite this possibly coincidental statistic, it is open to any objective commentator to predict an improvement in household expenditure based on either wages or employment.

Firstly, as demonstrated above, the prediction in wage growth is highly unlikely to occur (Grundorff2018; Marin-Guzman2019; Scutt 2019). Secondly, we have seen that the traditional link between wage increases and increased levels of employment has apparently been broken (Peetz 2019).

The other aspect of note from Attachment 4 is that it confirms the economic growth forecasts for Queensland that are relied upon in the QCU submissions. Interestingly economic growth forecasts for Queensland have been understated by comparison to the actual result which is quite the reverse of Australian government predictions for wage growth. Attachment 4 at paragraph 30 does highlight some risks associated with geopolitical global situations particularly concerning coal exports. It is noteworthy that LNG exports, which were also attributed to the rapid growth in Queensland exports, were not mentioned in this note of caution.

Cost of Application

The Queensland Government submission includes a range of costings that were derived from Attachment 3. At paragraph 65, the Queensland Government submission estimates that this application, if granted to all awards, operative 1 September 2019 would be a figure of $18.9 Million. It is accepted that this is not an insubstantial amount of money, but it might be instructive to compare that figure to the Queensland Budget estimated expenditure for 2019-20 which is $60,198 Million (Queensland Treasury 2019). The amount of $18.9 Million would represent 0.03 per cent of total expenses. It would also follow that some amount of money would need to be made available to increase rates of pay for the workers covered by the agreements listed in paragraph 65 of the Queensland Government submissions.

As has been the case for several Local Government Association submissions a discussion about the cost of an application is tantamount to a capacity to pay argument. As with the LGA submissions in relation to cost there is no evidence of an incapacity to pay.

Local Government Association of Queensland Submissions

The Local Government Association of Queensland (LGAQ) is proposing an increase of 2.5 per cent and in this regard, they are at least consistent. In every recent State Wage Case, the LGAQ asks for wages to be increased by an amount less than that awarded by the Fair Work Commission in the Annual Wage Review. As has been noted in previous QCU State Wage Case submissions, even in cases where the result of the Annual Wage Review was more modest, the LGAQ could not find its way clear to consent to the flowing on of that modest increase.

Moreover, the LGAQ submission again predicts that disaster that will occur if the Commission grants a 3 per cent wage increase, however the granting of a 2.5 wage increase will result in no difficulties at all. There is no evidence before the Commission that the granting of the increase sought by the QCU would adversely impact upon employment or services provided by the various councils. There is no evidence that the granting of the increase sought by the QCU would in any way stunt enterprise bargaining in the local government sector in Queensland. We know this because of the experience of the last several state wage cases where the same submission has been run.

In the 2014 State Wage Case[8] remarkably similar arguments were being run concerning 3 versus 2.5 per cent wage increase, albeit that in 2014, the QCU was seeking a flat dollar increase up to the trade equivalent classification where we are not in those proceedings. At the request of the State Wage Bench, a table was submitted illustrating the difference between the QCU claim and that proposed by the LGAQ. It might be instructive to replicate that table for the Engineering and Electrical/Electronic Services classifications that are contained in the *Queensland Local Government Industry (Stream C) Award – State 2017* to provide some perspective. Table 1 (over page) sets out current rates, the rates proposed by the QCU application and the rates if the LGAQ submission was adopted by the Commission.

[8] Application for Declaration of General Ruling (State Wage Case 2014) [2014] QIRC 129

Table 1 Engineering and Electrical/Electronic Services Classifications Local Government (Stream C)

Classification	Award Rate Per Week $[2]	QCU Claim Per Week $[2]	LGAQ Per Week $[2]	Difference Per Week $[2]
C14	784.50	808.00	804.10	3.90
C13	784.50	808.00	804.10	3.90
C12	808.00	832.20	828.20	4.00
C11	831.00	855.90	851.80	4.10
C10	864.00	889.90	885.60	4.30
C9	887.50	914.10	909.70	4.40
C8	913.00	940.40	935.80	4.60
C7	937.00	965.10	960.40	4.70
C6	989.00	1,018.70	1,013.70	5.00
C5	1,016.50	1,047.00	1,041.90	5.10
C4	1,042.00	1,073.20	1,068.00	5.20
C3	1,095.00	1,127.90	1,122.40	5.50
C2(a)	1,121.50	1,155.10	1,149.50	5.60
C2(b)	1,168.50	1,203.50	1,197.70	5.80

For sake of completeness the Table 2 (over page) replicates this exercise for administrative officers under the Queensland Local Government Industry (Stream A) Award – State 2017.

Table 2 Administrative, Technical and Community Services Classifications Local Government (Stream A)

Classification	Award Rate[1] Per Week $	QCU claim Per Week $	LGAQ Per Week $	Difference Per Week $
Administrative, Technical and Community Services				
Level 1, year 1	784.50	808.00	804.10	3.90
Level 1, year 2	808.00	832.20	828.20	4.00
Level 1, year 3	831.00	855.90	851.70	4.20
Level 1, year 4	831.00	855.90	851.70	4.20
Level 1, year 5	851.50	877.00	872.80	4.20
Level 1, year 6	864.00	889.90	885.60	4.30
Level 2, year 1	887.50	914.10	909.70	4.40
Level 2, year 2	913.00	940.40	935.80	4.60
Level 2, year 3	937.00	965.10	960.40	4.70
Level 2, year 4	937.00	965.10	960.40	4.70
Level 3, year 1	963.00	991.90	987.10	4.80
Level 3, year 2	963.00	991.90	987.10	4.80
Level 3, year 3	989.00	1,018.70	1,013.70	5.00
Level 3, year 4[3]	996.50[3]	1,026.40	1,021.40	5.00
Level 4, year 1	1,016.50	1,047.00	1,041.90	5.10
Level 4, year 2	1,042.00	1,073.30	1,068.10	5.20
Level 4, year 3	1,068.00	1,100.00	1,094.70	5.30
Level 4, year 4	1,068.00	1,100.00	1,094.70	5.30
Level 5, year 1	1,095.00	1,127.90	1,122.40	5.50
Level 5, year 2	1,121.50	1,155.10	1,149.50	5.60
Level 5, year 3	1,121.50	1,155.10	1,149.50	5.60
Level 6, year 1	1,168.50	1,203.60	1,197.70	5.90
Level 6, year 2	1,213.50	1,249.90	1,243.80	6.10

Annual Wage Reviews and the predecessors perennially deal with the orthodox, employer-organisation notion that any increase to wages, under any circumstances will result in a loss of

employment. As noted in the introduction to this submission, we rely upon the decision of the Fair Work Commission in the most recent Annual Wage Review. That decision reflects the same experience of the Fair Work Commission in which employer organisations run the perpetual argument that any increase will cause unemployment[9]:

> [191] Of particular interest for this Review is the broad conclusion that the extensive and increasingly sophisticated recent research continues to find, first, that increases in minimum wages which have been the subject of examination do increase the earnings of the low paid and second, that they do not, for the most part, cause job losses or increase unemployment.

At paragraph 15 the LGAQ submission concedes that employment in local government is a product of funding rather than the outcome of the State Wage Case. This has been established in previous QCU State Wage Case submissions and replies. In fact, Graph 1 of the LGAQ submission demonstrates an increase in employment of 2.9 per cent in local government in 2019. This increase compares favourably with employment growth generally with 2.5 per cent increase in employment for Queensland (ABS 2019C).

Again, the LGAQ proposes a departure from the consistent practice of the Commission without providing evidence of an incapacity to pay. In the 2018 State Wage Case decision, the Commission made the following observation in dismissing the LGAQ submissions for a 2.5 per cent increase[10]:

> Notably, as observed during the proceedings, the LGAQ submissions in support of a 2.5 per cent increase were pressed in relation to the whole of the local government sector – irrespective of the number of employees who might be directly, or indirectly, impacted by this decision or the financial position of each council. In particular, there was no "incapacity to pay" argument presented in relation to any council, let alone the whole of the local government sector.

There are a number of statements in the LGAQ submission that need to be addressed by the QCU. In previous submissions the QCU has, by way of reply to LGAQ submissions, compared the economic performance of Queensland to Western Australia and South Australia. The continued reliance upon the *State of the States* (ComSec 2019) publication by the LGAQ now

[9] Annual Wage Review 2018–19 (C2019/1) [2019] FWCFB 3500
[10] Declaration of General Ruling (State Wage Case 2018) [2018] QIRC 113 at [41]

behoves the QCU to compare the Queensland economy to Tasmania based on its performance according to that publication.

The assessment that rates Tasmania ahead of Queensland appears to be based on home loan approvals, retail spending and relative population growth. It appears extraordinary to select relative population growth as an indicator that would rank Tasmania ahead of Queensland. Relative population growth pertains to the current level of population growth compared to decade-average rate. It is worth noting that Queensland's population growth (as opposed to relative population growth) was in excess of that of Tasmania (ABS 2019A). Queensland's population increased by 1.8 per cent for the 12 months to March 2019 whereas Tasmania's population increased by 1.2 per cent, below the national figure of 1.6 per cent. The relative population figure demonstrates that the population growth in Tasmania had been so low over the past 10 years that even the below national average figure of 1.2 per cent was relatively high. In this regard it is instructive to consider the quarterly figures between June 2009 and March 2019 for "Change Over Previous Quarter" wherein the average increase in population for Queensland was 19,273 per quarter whereas the average increase in population for Tasmania was 747 per quarter. It is also noteworthy that in six quarters during this 10-year period, the population Tasmania actually decreased where the population of Queensland increased in every quarter. It would follow that population growth is not a valid indicator to rate the Tasmanian economy above Queensland.

Similarly, the relative retail spend indicates that whilst both Queensland and Tasmania are well above their 10-year average it is instructive to put those figures into some form of perspective. Retail turnover in Queensland was $5.5 Billion for the month of July 2019 whereas the equivalent figure for Tasmania was $534.8 Million (ABS 2019B). The Queensland figure represents 20.7 per cent of national total and Tasmania represents 2.0 per cent. House price experienced an increase in Tasmania and a slight decrease in Queensland however median house prices in Brisbane still exceed those in Hobart by quite a margin (Australian House Prices 2019).

Gross State Product could be considered a reasonable measure of economic growth. As the *State of the States* publication concedes, comparison with decade averages disadvantages the resource rich jurisdictions of Queensland, Western Australia and the Northern Territory. Nonetheless Queensland still outperformed Tasmania in this vital indicator. Queensland (3.4 per cent) and Tasmania (3.3 per cent) both exceeded Australia's national Gross Domestic

Product growth rate of 2.8 per cent in 2017-18 (ABS 2018). As was stated in the QCU submissions-in-chief economic growth in Queensland to 13 months of record exports, including metallurgical coal and LNG with Queensland exports topping $85 billion for the 12 months to April 2019 (Queensland Treasury 2019:1).

In the QCU submission more than the patently arbitrary ranking of Queensland in the *State of the States* would need to be convincing that the Queensland economy could not sustain the modest increase sought that has application to a very limited number of workers. Indeed, the LGAQ submission does not address the fundamental economic consideration upon which the QCU submission is based in that wage growth is at a record low. The LGAQ submission at paragraph 27 seeks to disparage Treasury forecasts on the basis that they do not always "eventuate as forecast" without providing an example of such an occurrence. This assertion is at odds with the recent experience of Queensland budgets in which the surplus in 2017-18 was more than three times the forecast in the Mid Year Fiscal and Economic Review in the previous December (Queensland Treasury 2017).

Paragraph 28 of the LGAQ submission appears to indicate that there is some risk of sustainability of the councils by virtue of the increase sought by the QCU application. It does not however demonstrate how this is the case for a 3 per cent increase but not for 2.5 per cent increase. This submission repeats previous submissions of the LGAQ and there no evidence of financial collapse resulting from modest wage increases awarded by the Commission. If the recent experience is any indicator, then the granting of 3 per cent by this Commission will not result in the financial collapse of any council in Queensland.

The final point that needs to be addressed in the LGAQ submission is the fallacy that the awarding of the modest increase sought would in some way hinder further bargaining. This question was extensively considered in the most recent National Wage Review where at least it could be said by employers that there was indication of a decline in bargaining. In response to those arguments the Fair Work Commission made the following conclusion[11]:

> When the wide range of factors which impact on collective bargaining are taken into account, it is unlikely that the adjustments to wages made by the Panel in recent Reviews have discouraged collective bargaining, particularly in light of the increase in collective agreement coverage in at least some of the award-reliant industries. Further,

[11] Annual Wage Review 2018–19 (C2019/1) [2019] FWCFB 3500 at [386]

the rate of the decline in collective agreement making from the peak around 2010 has not increased significantly to the extent where it could be concluded that wages outcomes from recent Reviews have discouraged collective bargaining.

In the Queensland jurisdiction no such a claim of declining bargaining coverage can be made. Pages 15, 16 and 17 of the QCU submissions in chief list current collective agreements operating in Queensland. As was noted in the submission in chief, 39 Agreements (or 46.9 per cent) of those agreements listed on the Commission's web site had been made since 2018 when the Commission awarded an increase higher than the one sought by this application. In light of this evidence it is nothing short of absurd to claim that the increase sought by the QCU will adversely impact upon the level of bargaining in the local government sector in Queensland.

Conclusion

This submission has demonstrated that the legislative framework and economic conditions in Queensland are as favourable, it not more favourable, than those operating at a national level in which the Fair Work Commission was able to award the modest increase of 3 per cent. The submissions in chief of the QCU were based upon the wage growth crisis that exists in Australia that we say behoves tribunals such as the Commission to follow policy that will mitigate that crisis rather than further entrench it.

The recent practice of the Commission has been to follow the outcome of the Annual Wage Review unless there are cogent reason to not do so. In our submission no such a cogent reason exists. The Queensland Government are seeking a departure from this practice in order to resolve one specific bargaining/arbitration outcome. As was noted earlier, the Commission in deciding to award the increase sought by the QCU in the 2018 State Wage Case, concluded that it was not the result of the State Wage Case that impacted upon those but rather the result of bargaining outcomes. In our submission bargaining, or in this instance arbitration of a determination is where the matters between the parties to the Core Agreement should be resolved. The Queensland Government proposal to treat various modern awards of this Commission in different ways is in our submission both unnecessary and undesirable. The scheme of the Queensland legislation is to maintain fair and reasonable pay in modern awards. In our submission, for the Commission to depart from the long-standing practice of awarding

the same increase as the Annual Wage Review would be inconsistent with that legislative scheme.

The LGAQ submission is a familiar call for an increase less than that awarded at the national level. The LGAQ submission hints at financial disaster if the QCU claim succeeds but provides no evidence that any such financial collapse would take place. To the contrary, we know from previous State Wage Cases and employment growth within the local government sector that it is funding that will impact on employment not the State Wage Case. The glib reliance on the State of the States publication to cast doubt as to the performance of the Queensland economy does not bear scrutiny. The LGAQ submission that the awarding of the increase of 3 per cent is contrary to the promotion of collective bargaining as required by the IRA 2016 is inconsistent with the undisputed evidence in the QCU submissions in chief.

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