



INDUSTRIAL REGISTRAR

24 JUL 2020



QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 2016 – s 458

**APPLICATION FOR A DECLARATION OF GENERAL RULING
STATE WAGE CASE**

Re: STATE WAGE CASE 2020 – Matter Nos B/2020/40, B/2020/41 and B/2020/43

**Submissions - Together Queensland, Industrial Union of Employees
July 2020**



Introduction

1. **The Claim.** Together Queensland, Industrial Union of Employees (Together Qld), is seeking the Queensland Industrial Relations Commission issue the following decisions:

- a. A general ruling amending all state awards by a 1.75% wage adjustment,
- b. A general ruling amending all state awards by increasing award allowances which relates to work or conditions which have not changed in service increments by 1.75%,
- c. Increase the Queensland Minimum Wage as it applies to all employees by 1.75%, and
- d. Determine the operative date of the above from 1 September 2020.

Legislative Parameters

2. **General Ruling.** Subdivision 1, Division 4, Part 2 of the *Industrial Relations Act 2016* (the Act), relevantly provides:

458 Power to make general rulings

- (1) The full bench may make general rulings about—
 - (a) an industrial matter for employees bound by an industrial instrument if multiple inquiries into the same matter are likely; or
 - (b) a Queensland minimum wage for all employees.
- (2) The full bench must ensure a general ruling about a Queensland minimum wage for all employees is made at least once each year.
- (3) Before conducting a hearing about the ruling, the full bench must—
 - (a) give reasonable notice, in the way it considers appropriate, of its intention to conduct the hearing; and
 - (b) give all interested persons an opportunity to be heard.

459 Requirements for general rulings

- (1) A ruling—
 - (a) must state a date (the *stated date*) on and from which it has effect; and
 - (b) has effect as a decision of the full bench on and from the stated date.
- (2) A ruling may exclude from the operation of any of its provisions—
 - (a) a class of employers or employees; or
 - (b) employers or employees in a particular locality; or
 - (c) an industrial instrument or part of an industrial instrument.
- (3) As soon as practicable after making a ruling, the registrar must publish a notice of the ruling and the stated date on the QIRC website.
- (4) The notice, on and from the stated date, replaces a notice of a ruling on the same subject matter previously published.
- (5) The ruling continues in force until the end of the day immediately before the stated date for a subsequent ruling on the same subject matter.

3. Objects of the Act.

460 Relationship with industrial instruments

- (1) If a ruling takes effect while an industrial instrument, other than an industrial instrument or part of an industrial instrument excluded under section 459(2), is in force—
 - (a) the industrial instrument is taken to be amended so it is consistent with the ruling on and from the stated date; and
 - (b) the amendment has effect as an industrial instrument on and from the stated date.
- (2) The registrar may amend an industrial instrument taken to be amended under subsection (1) as the registrar considers appropriate—
 - (a) on an application made under the rules; or
 - (b) on the registrar's own initiative.
- (3) This section applies despite chapter 3.

4. Since 1997, the administrative process for awarding wage and allowance increases has been by way of general ruling.¹

5. As set out in s3 of the Act, the main purpose of the Act is to provide for a framework for cooperative industrial relations that:

- (a) is fair and balanced; and
- (b) supports the delivery of high quality services, economic prosperity and social justice for Queenslanders.

(a) For the purposes of this matter, s4 relevantly provides that the above purpose is to be achieved by:

- (d) providing for a fair and equitable framework of employment standards, awards, determinations, orders and agreements, and...
- (f) providing for a guaranteed safety net of fair, relevant and enforceable minimum employment conditions through the Queensland Employment Standards; and...
- (g) ensuring wages and employment conditions provide fair standards in relation to living standards prevailing in the community;

(b) Further, the Act requires the Commission to:

- a. ensure modern awards provide for "fair and just" wages and employment conditions that are at least as favourable as the Queensland Employment Standards, which includes the QMW (s 141(1)(a));

¹ See *Workplace Relations Act 1997 (Qld)*, s132

- b. ensure that a modern award generally reflects the prevailing employment conditions of employees covered by the award (s 141(1)(b));
- c. establish and maintain minimum wages that are fair and just, having regard to those matters mentioned in s141(2)(a) to (d) and (f); and
- d. ensure a modern award provides fair standards for employees in the context of living standards generally prevailing in the community (s 143(1)(i)).

6. **Operative date.** s459(1) provides that a ruling must state a date on and from which the ruling applies and that the ruling has effect as a decision of the full bench on and from the stated date.

7. s148 applies to an order varying a modern award and provides that the order takes effect of the day stated in the order and that the stated day must not be earlier than the day on which the order is made unless:

- a. the variation removes an ambiguity or uncertainty or corrects an error; and
- b. the Commission is satisfied exceptional circumstances justify stating an earlier day; and
- c. the order does not adversely affect an employee.

8. The operative date for such general rulings has generally been 1 September of that year. Together seeks a continuation of this operative date to ensure employees relying on the State Wage Case outcome receive an annual increase.

9. Considerations regarding operative date raised by the National Wage Review are discussed below.

National Wage Review

10. **National minimum wage.** The Fair Work Commission has handed down a decision to award an increase of 1.75 per cent raising the national minimum wage to \$753.80 per week or \$19.84 per hour. In making that decision the Fair Work Commission noted:

“The Australian economy is going through a significant downturn and is almost certain to enter a technical recession upon the release of the June quarter ABS National Accounts, the first in almost 30 years. It has been caused by an unprecedented health crisis and the impact of government measures to prevent the spread of the COVID-19 virus. There was also some indication of slowing in the economy before the pandemic, as a result of the bushfires experienced in parts of Australia.”²

² [2020] FWCFB 3500 at [12]

and,

*“there are significant downside risks in the period ahead. These include that the international outlook remains highly uncertain, the future of fiscal support to the domestic economy (including through JobKeeper) is unknown and there is the risk of a second wave of COVID-19 infection and the reimposition of extensive restrictions.”*³

and that,

“The Australian Government urged the Panel to take a cautious approach in light of the continuously emerging and wide-ranging potential impacts of the COVID-19 pandemic and to prioritise keeping Australians in jobs and maintaining the viability of businesses.”

Economic Factors

11. **Australian Economy.** The Australian economy is going through a significant shock caused by the COVID-19 health crisis and the impact of government measures to prevent the spread of the virus. This exacerbated any slowing in the economy resulting from the bushfires experienced in parts of Australia, especially severely in NSW and Victoria.

12. The most recent statement by RBA Governor, Phillip Lowe, released on 7 July 2020, summarises the current environment as follows:

“The Australian economy is going through a very difficult period and is experiencing the biggest contraction since the 1930s. Since March, an unprecedented 800,000 people have lost their jobs, with many others retaining their job only because of government and other support programs. Conditions have, however, stabilised recently and the downturn has been less severe than earlier expected. While total hours worked in Australia continued to decline in May, the decline was considerably smaller than in April and less than previously thought likely. There has also been a pick-up in retail spending in response to the decline in infections and the easing of restrictions in most of the country.

*Notwithstanding the signs of a gradual improvement, the nature and speed of the economic recovery remains highly uncertain. Uncertainty about the health situation and the future strength of the economy is making many households and businesses cautious, and this is affecting consumption and investment plans. The pandemic is also prompting many firms to reconsider their business models. As some businesses rehire workers as demand returns, others are restructuring their operations.”*⁴

13. Table 1.1 of the Fair Work Commission decision sets out the marked changes in actual outcomes for key economic indicators compared to the 2018/19 and 2019/20 budget forecasts. That table is reproduced below.

³ [2020] FWCFB 3500 at [101]

⁴ RBA (2020), Statement by Philip Lowe, Governor: Monetary Policy Decision, 7 July.

Table 1.1: Budget forecasts and actual outcomes for selected economic indicators, per cent

Indicator	Information at time of 2018–19 Review			Information at time of 2019–20 Review		
	Data at time of 2018–19 Decision	Budget forecast for 2018–19	Budget forecast for 2019–20	Latest data	RBA forecast for 2019–20	RBA forecast for 2020–21
Gross domestic product	2.3 (Dec qtr 2018)	2¼	2¾	1.4 (Mar qtr 2020)	–8	7
Consumer Price Index	1.3^ (Mar qtr 2019)	1½	2¼	2.2^ (Mar qtr 2020)	–1	2¾
Wage Price Index	2.3 (Mar qtr 2019)	2½	2¾	2.1 (Mar qtr 2020)	2	1½
Unemployment rate	5.1# (April 2019)	5	5	7.1 (May 2020)	10	8½
Employment growth	2.5# (April 2019)	2	1¾	–5.4 (May 2020)	–7	4

Source: [2019] FWCFB 3500 at [28]; ABS, *Australian National Accounts: National Income, Expenditure and Product, Mar 2020*, Catalogue No. 5206.0; ABS, *Consumer Price Index, Australia, Mar 2020*, Catalogue No. 6401.0; ABS, *Wage Price Index, Australia, Mar 2020*, Catalogue No. 6345.0; ABS, *Labour Force, Australia, May 2020*, Catalogue No. 6202.0; RBA (2020), *Statement on Monetary Policy, May*, Appendix: Forecasts.

Note: Data in seasonally adjusted terms unless otherwise indicated. RBA forecasts are percentage changes over the year to the June quarter and are based on the 'baseline scenario'. ^Data in original terms. #Data in trends terms.

14. In its consideration the Full Bench noted the following points, among others:
- a. economic considerations weigh in favour of greater moderation in terms of the outcome of the Review⁵,
 - b. high level of underemployment warrants more weight being given to the potential impact of increasing minimum wages on hiring and re-employment⁶,
 - c. an increase in minimum wages will have a modest impact on aggregate demand⁷,
 - d. there are some indications that the economy is beginning to recover⁸,
 - e. the proportion of low-paid households experiencing financial stress has increased and some low-paid households are plainly experiencing significant disadvantage⁹,
 - f. a decision to grant no increase in this Review would mean that the living standards of low-paid award-reliant employees would fall¹⁰, and

⁵ [2020] FWCFB 3500 at [92]

⁶ Ibid. at [93]

⁷ Ibid. at [98]

⁸ Ibid. at [100]

⁹ Ibid. at [113]

¹⁰ Ibid. at [114]

- g. Gender pay equity also favours an increase in minimum wages. Women are more likely to be in low-paid employment and are more likely to be paid at the award rate¹¹.

15. **Timing of Increases.** The Full Bench noted that the *Fair Work Act 2009* indicates a preference for consistent dates of effect of variation determinations and NMW orders, generally being applied at the start of an employee's first full pay period starting on or after 1 July in the next financial year.¹²

16. Despite that general position, a number of submissions from employer groups advocated a significantly delayed date of operation¹³ In contrast, ACTU opposed any deferral an submitted that the 'exceptional circumstances' required to justify such a deferral had not been made out.¹⁴

17. The Full Bench was not satisfied that the 'exceptional circumstances' required to justify a delay to the date the National Minimum Wage order took effect from 1 July 2020. However, the bench did determine different operative dates for three different groups of modern awards. The makeup of those groups, and date of award adjustments is set out below:

a. **Group 1 Awards – operative date 1 July 2020**

- *Aboriginal Community Controlled Health Services Award 2020;*
- *Aged Care Award 2010;*
- *Ambulance and Patient Transport Industry Award 2020;*
- *Banking, Finance and Insurance Award 2020;*
- *Cemetery Industry Award 2020;*
- *Children's Services Award 2010;*
- *Cleaning Services Award 2020;*
- *Corrections and Detention (Private Sector) Award 2020;*
- *Educational Services (Schools) General Staff Award 2020;*
- *Educational Services (Teachers) Award 2010;*
- *Electrical Power Industry Award 2020;*
- *Fire Fighting Industry Award 2020;*
- *Funeral Industry Award 2010;*
- *Gas Industry Award 2020;*
- *Health Professionals and Support Services Award 2020;*
- *Medical Practitioners Award 2020;*
- *Nurses Award 2010;*
- *Pharmacy Industry Award 2020;*
- *Social, Community, Home Care and Disability Services Industry Award 2010;*
- *State Government Agencies Award 2020; and*

¹¹ *Ibid.* at [115]

¹² *Ibid.* at [144]

¹³ *Ibid.* at [149] – [152]

¹⁴ *Ibid.* at [154]

- *Water Industry Award 2020.*

b. Group 2 Awards – operative date 1 November 2020

- *Aluminium Industry Award 2020;*
- *Animal Care and Veterinary Services Award 2020;*
- *Aquaculture Industry Award 2020;*
- *Architects Award 2020;*
- *Asphalt Industry Award 2020;*
- *Australian Government Industry Award 2016;*
- *Black Coal Mining Industry Award 2010;*
- *Book Industry Award 2020;*
- *Broadcasting, Recorded Entertainment and Cinemas Award 2010;*
- *Building and Construction General On-site Award 2010;*
- *Business Equipment Award 2020;*
- *Car Parking Award 2020;*
- *Cement, Lime and Quarrying Award 2020;*
- *Clerks—Private Sector Award 2020;*
- *Coal Export Terminals Award 2020;*
- *Concrete Products Award 2020;*
- *Contract Call Centres Award 2020;*
- *Cotton Ginning Award 2020;*
- *Dredging Industry Award 2020;*
- *Educational Services (Post-Secondary Education) Award 2020;*
- *Electrical, Electronic and Communications Contracting Award 2010;*
- *Food, Beverage and Tobacco Manufacturing Award 2010;*
- *Gardening and Landscaping Services Award 2020;*
- *Graphic Arts, Printing and Publishing Award 2010;*
- *Higher Education Industry-Academic Staff-Award 2020;*
- *Higher Education Industry-General Staff-Award 2020;*
- *Horticulture Award 2010;*
- *Hydrocarbons Field Geologists Award 2020;*
- *Hydrocarbons Industry (Upstream) Award 2020;*
- *Joinery and Building Trades Award 2010;*
- *Journalists Published Media Award 2020;*
- *Labour Market Assistance Industry Award 2020;*
- *Legal Services Award 2020;*
- *Local Government Industry Award 2020;*
- *Manufacturing and Associated Industries and Occupations Award 2020;*
- *Marine Towage Award 2020;*
- *Maritime Offshore Oil and Gas Award 2020;*

- *Market and Social Research Award 2020;*
- *Meat Industry Award 2020;*
- *Mining Industry Award 2020;*
- *Miscellaneous Award 2020;*
- *Mobile Crane Hiring Award 2010;*
- *Oil Refining and Manufacturing Award 2020;*
- *Passenger Vehicle Transportation Award 2020;*
- *Pastoral Award 2010;*
- *Pest Control Industry Award 2020;*
- *Pharmaceutical Industry Award 2010;*
- *Plumbing and Fire Sprinklers Award 2010;*
- *Port Authorities Award 2020;*
- *Ports, Harbours and Enclosed Water Vessels Award 2020;*
- *Poultry Processing Award 2020;*
- *Premixed Concrete Award 2020;*
- *Professional Diving Industry (Industrial) Award 2020;*
- *Professional Employees Award 2020;*
- *Rail Industry Award 2020;*
- *Real Estate Industry Award 2020;*
- *Road Transport (Long Distance Operations) Award 2020;*
- *Road Transport and Distribution Award 2020;*
- *Salt Industry Award 2010;*
- *Seafood Processing Award 2020;*
- *Seagoing Industry Award 2020;*
- *Security Services Industry Award 2020;*
- *Silviculture Award 2020;*
- *Stevedoring Industry Award 2020;*
- *Storage Services and Wholesale Award 2020;*
- *Sugar Industry Award 2020;*
- *Supported Employment Services Award 2020;*
- *Surveying Award 2020;*
- *Telecommunications Services Award 2010;*
- *Textile, Clothing, Footwear and Associated Industries Award 2010;*
- *Timber Industry Award 2010;*
- *Transport (Cash in Transit) Award 2020;*
- *Waste Management Award 2020; and*
- *Wool Storage, Sampling and Testing Award 2010.*

c. **Group 3 Awards – operative date 1 February 2021**

- *Air Pilots Award 2020;*

- *Aircraft Cabin Crew Award 2020;*
- *Airline Operations-Ground Staff Award 2020;*
- *Airport Employees Award 2020;*
- *Alpine Resorts Award 2020;*
- *Amusement, Events and Recreation Award 2020;*
- *Commercial Sales Award 2020;*
- *Dry Cleaning and Laundry Industry Award 2020;*
- *Fast Food Industry Award 2010;*
- *Fitness Industry Award 2010;*
- *General Retail Industry Award 2010;*
- *Hair and Beauty Industry Award 2010;*
- *Horse and Greyhound Training Award 2020;*
- *Hospitality Industry (General) Award 2020;*
- *Live Performance Award 2010;*
- *Mannequins and Models Award 2020*
- *Marine Tourism and Charter Vessels Award 2020;*
- *Nursery Award 2020;*
- *Professional Diving Industry (Recreational) Award 2020;*
- *Racing Clubs Events Award 2010;*
- *Racing Industry Ground Maintenance Award 2020;*
- *Registered and Licensed Clubs Award 2010;*
- *Restaurant Industry Award 2020;*
- *Sporting Organisations Award 2020;*
- *Travelling Shows Award 2020; and*
- *Vehicle Repair, Services and Retail Award 2020.*

Matters for Consideration.

18. The Queensland Industrial relations Commission has historically attached considerable weight to the National Wage/Annual Wage Review decisions of its federal counterpart, whilst always having regard to the particular economic circumstances of Queensland at the time.¹⁵

19. In the 2019 Decision the Commission stated:

“Whilst the Commission is not bound to follow the FWC's determination in the Annual Wage Review it will do so unless there are compelling reasons not to.”¹⁶

¹⁵ See Declaration of General Ruling (State Wage Case 2014) [2014] QIRC 129 at [12]; Declaration of General Ruling (State Wage Case 2015) [2015] QIRC 154 at [7],[8]; Declaration of General Ruling (State Wage Case 2016) [2016] QIRC 081 at [7],[8].

¹⁶ Declaration of General Ruling (State Wage Case 2019) [2019] QIRC 169 at [7]

20. **Quantum.** The Queensland economy remains in a strong position to respond to the COVID-19 crisis. *The Queensland Government's Economic and Recovery Strategy: Unite and Recover for Queensland Jobs* notes:

"...the Queensland Government was the first to act in Australia with a \$6 billion support package to respond to COVID-19.

The Queensland Government was only able to provide this support because Queensland was in a strong economic position well ahead of the virus.

*As we unite and recover, the Queensland Government is focused on rebuilding a stronger and more resilient economy."*¹⁷

21. The national factors taken into account by the federal tribunal apply to Queensland as they do every other state but, as the above strategy notes, Queensland was in a strong economic position to respond. There is nothing to indicate that the negative factors considered in the National Wage Case decision disproportionately impact Queensland.

22. Together submits that there are not the circumstances present that would require the moderate and cautious increase applied nationally to be departed from.

23. **Timing.** Historically, the State decision has adopted a 1 September operative date. Notably, in 2019 where the General Ruling was delivered on 7 November 2019, a 1 September operative date was maintained, "*having regard to the consent positions of the union applicants and the State, and in the interests of ensuring consistency and certainty with respect to the operative periods of each respective State Wage Case.*"¹⁸

24. Together Queensland, Industrial Union of Employees, as a state union, predominately consists of members covered by those Awards applying to the Public Sector, in particular it is listed in the coverage of the following Awards:

- *Award for Operational Employees in Disability and Forensic Services – State 2016*
- *Building, Engineering and Maintenance Services Employees (Queensland Government) Award – State 2016*
- *Correctional Employees Award – State 2015*
- *General Employees (Queensland Government Department) and Other Employees Award – State 2015*
- *Health Practitioners and Dental Officers (Queensland Health) Award – State 2015*

¹⁷ *The Queensland Government's Economic and Recovery Strategy: Unite and Recover for Queensland Jobs*, https://www.covid19.qld.gov.au/_data/assets/pdf_file/0025/128194/economic-recovery-strategy.PDF

¹⁸ Declaration of General Ruling (State Wage Case 2019) [2019] QIRC 169 at [108]

- *Hospital and Health Service General Employees (The Queensland Health) Award – State 2015*
- *Legal Aid Queensland Employees Award – State 2015*
- *Medical Officers (Queensland Health) Award – State 2015*
- *Miscellaneous Administrative Employees Award – State 2016*
- *Queensland Agricultural Colleges Award – State 2015*
- *Queensland Fire and Emergency Service Employees Award – State 2016*
- *Queensland Parliamentary Service Award – State 2015*
- *Queensland Public Service Officers and Other Employees Award – State 2015*
- *Stadiums Queensland Employees Award – State 2016*
- *TAFE Queensland Award – State 2016*
- *Teaching in State Education Award – State 2016*
- *Tourism and Events Queensland Employees Award – State 2015*
- *WorkCover Queensland Employees Award – State 2015*
- *Youth Detention Centre Employees Award – State 2016*

25. Together submits that the type of work done by employees in these Awards best aligns to the Group 1 Awards listed in the FWC decision and reproduced at paragraph 17a. of this submission. The group contains a number of Awards covering similar public sector functions, the following having direct parallels with State Awards:

- *Ambulance and Patient Transport Industry Award 2020;*
- *Corrections and Detention (Private Sector) Award 2020;*
- *Educational Services (Schools) General Staff Award 2020;*
- *Educational Services (Teachers) Award 2010;*
- *Fire Fighting Industry Award 2020;*
- *Health Professionals and Support Services Award 2020;*
- *Medical Practitioners Award 2020;*
- *Nurses Award 2010;*
- *Water Industry Award 2020.*

26. These “Group 1” Award adjustments will maintain the normal 1 July operative date federally. On that basis Together submits maintenance of the customary 1 September operative date is appropriate for those State Awards listed in paragraph 24.

Conclusion

27. Together Qld submits:

- a. Historically, the QIRC State Wage Case has followed the national tribunal decision unless there are compelling reasons not to do so.

- b. There are no particular factors which exacerbate the current economic challenges to the extent that Queensland is suffering an overall impact greater than other states.
- c. The FWC decision is moderate, cautious and takes into account the current economic pressures.
- d. an increase of the quantum decided by the FWC that maintains the value of real wages as well as the living standards for award wage reliant workers is economically responsible and protects the low paid.
- e. A general ruling in the terms requested is fair and appropriate.