

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 2016 – s 458

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

Re: STATE WAGE CASE 2022 – Matter Nos B/2022/52, B/2022/53 and B/2022/54

Submissions in Response

**Together Queensland, Industrial Union of Employees
August 2022**


INDUSTRIAL REGISTRAR
15 AUG 2022

QUEENSLAND




Introduction

1. These Submissions are in response to those filed by the State of Queensland on 3 August 2022.
2. **The Claim.** Together Queensland, Industrial Union of Employees (Together), is seeking the Queensland Industrial Relations Commission issue the following decisions:
 - (a) To make a general ruling amending all state awards by a wage adjustment of \$40/week or 4.6% whichever is higher.
 - (b) To make a general ruling amending all state awards by increasing existing award allowances which relate to work or conditions which have not changed in service increments by 4.6%.
 - (c) Increase the Queensland Minimum Wage as it applies to all employees by 5.2%.
 - (d) Determine that the operative date for these amendments be 1 September 2022.
3. These applications effectively seek that the State Commission follow the ruling of the Federal Tribunal, as has customarily occurred.

State of Queensland Response

4. In response the Queensland Government has supported:
 - a. an increase in the Queensland Minimum Wage (QMW) of 5.2%;
 - b. a fair and reasonable increase to minimum pay rates and relevant work-related allowances in State modern awards, but not greater than the 2022 AWR decision in relation to Federal modern awards; and
 - c. an operative date of 1 September 2022.
5. With respect to any increase to state awards and relevant work-related allowances which relate to work conditions and have not changed, the Queensland Government's submission is that this is a matter for the Commission to decide after considering all relevant information, including:
 - a. The different State and Commonwealth contexts for the consideration of annual general wage increases;
 - b. The current rates of pay in public sector awards, the history of how those rates have been determined and the requirements of the IR Act with respect to determining award rates of pay, including section 141;

- c. The potential for SWC outcomes to impede, disincentivise or protract enterprise bargaining negotiations, particularly in the State public sector; and
- d. The state of the Queensland economy and the Queensland Government fiscal position and strategy.

6. **The difference between the Federal AWR and Queensland State Wage Case in terms of impact.** The State submits that the composition of workers in the State Jurisdiction, being almost exclusively employed in the state and local government sectors is significantly different to the federal jurisdiction. Further, the State submits that employees within the Queensland jurisdiction actively participate in collective bargaining.

7. While this is true, it is not a new development. On 1 January 2010, Queensland's industrial relations for the private sector moved from a state system to a national system, legislated through the Fair Work Act 2009. The 2009 SWC decision was said to affect up to 172,000 employees, predominately in the retail; accommodation and food services; health care and community services; and property and business services sectors.

8. The Fair Work (Commonwealth Powers) and Other Provisions Act 2009 (Qld) then referred the majority of the remaining employees other than those in the Local Government or Queensland public sector. As a result, the 2010 SWC was said to only affect up to 7,000 award reliant employees of the State Government (1,000), Local Government (2,000) and Parents and Citizen's Associations (P&Cs) (3,000 to 4,000).¹

9. The overall numbers affected by the 2009 decision are identical to those the Queensland Government submits will be affected by the current application. The State submits this decision will directly affect approximately 7,000 employees with a breakdown as follows: P&Cs (3,500), Auxiliary Firefighters (2,000), Local Government (between 1,200 and 1,500) and 15 permanent employees of the Darling Downs Moreton Rabbit Board.²

¹ [Queensland Council of Unions AND Local Government Association of Queensland Ltd 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](#) at [10]

² [State Wage Case 2022 – Queensland Government Submissions](#) at [16]

10. There is no marked change in the numbers of award-reliant employees affected by the SWC changes that would justify a different treatment than has been applied since Queensland's industrial relations for the private sector moved from a state system to a national system.

11. The State has also referred in paragraph 9 in their submissions that the number of employees covered by a certified agreement will vary, depending on the quantum of the increase awarded. The State provides no detail on the cohort of members that could be affected if an increase of 4.6% was granted.

12. It is also noteworthy that the State first started suggesting the AWR not be flowed on to certain Queensland Modern Awards because of the impact on bargaining in their submissions to the 2019 SWC dated 9 September 2019. Despite that, the following agreements have been certified after that date and included clauses to the effect that no employee would be paid less than the parent Award:

- a. Child Safety and Youth Justice Certified Agreement 2021
- b. CITEC Certified Agreement 2019
- c. Department of Education Certified Agreement 2019
- d. Health Practitioners and Dental Officers (Queensland Health) Certified Agreement (No. 3) 2019
- e. Office of the Queensland Ombudsman – Certified Agreement 2020
- f. Parliamentary Service Electorate Staff Certified Agreement 2020
- g. QBuild Office Staff Certified Agreement 2019
- h. Queensland Corrective Services – Correctional Employees' Certified Agreement 2021
- i. Queensland Police Service Protective Services Officers Certified Agreement 2019
- j. Queensland Public Health Sector Certified Agreement (No. 10) 2019
- k. State Government Entities Certified Agreement 2019
- l. TAFE Queensland Educators Certified Agreement 2019
- m. TAFE Queensland (TAFE Services Employees) Certified Agreement 2019
- n. Tourism and Events Queensland Certified Agreement 2019
- o. Transport and Main Roads Enterprise Bargaining Agreement 2019
- p. WorkCover Employing Office – Certified Agreement 2018
- q. Youth Detention Centre Certified Agreement 2019

13. So, while it is the case that the Qld SWC may have an indirect effect on the wage rates of some employees whose certified agreements include provisions which will entitle them to receive all, or part, of the improvements under the Qld SWC this is, as the Full Bench noted in the 2018 SWC Decision, “a result of decisions made by the employers of such employees, not this Commission.”³

14. Any suggestion that the differences in the groups of employees affected by the Federal AWR and the State SWC now provides a justification to depart from the practice of following the ruling of the federal tribunal in the Federal NMW is made without cogent reasons as to why 2022 should be treated any differently from previous years.

15. On the contrary, the submissions by the State regarding the difference between the federal and State economic factors highlight differences that support the ruling of the Federal Tribunal, as a minimum, being followed. Those submissions include:

- a. *“In December quarter 2021, Queensland’s domestic economy, as measured by state final demand, was 6.9 per cent higher than its pre-pandemic level in March quarter 2020, much stronger than the 5.1 per cent increase in the rest of Australia.”⁴*
- b. *“...employment in Queensland in December 2021 was more than 128,400 persons higher than pre-covid levels and the unemployment rate had fallen to 4.6 per cent, the lowest in almost 13 years.”⁵*
- c. *“...Queensland’s overall domestic activity still rose in March quarter 2022, to be 7.8 per cent higher than the pre-pandemic level, and maintained its stronger performance compared with the major southern states during the COVID-19 crisis.”⁶*
- d. *“Annual growth in Brisbane’s consumer price index (CPI) has been stronger than anticipated. Brisbane’s CPI strengthened to 2.1 per cent on 2020-21, up from 1.2 per cent during the height of the COVID-19 pandemic in 2019-20. However, inflationary pressures continued to build in 2021-22, with CPI rising by 7.3 per cent over the year to June quarter 2022.”⁷*

³ [Declaration of General Ruling \(State Wage Case 2018\) \[2018\] QIRC 113](#) at [48]

⁴ [State Wage Case 2022 – Queensland Government Submissions](#) at [51]

⁵ *Ibid* at [51]

⁶ *Ibid* at [53]

⁷ *Ibid* at [71]

- e. *“While housing and automotive fuel have been the key drivers of headline consumer inflation, more recently food prices have also begun to increase.”*⁸

16. **Other State’s Wage Reviews.** The State’s submissions relate to wage increases in other States flowing from decisions in NSW and SA applying 2021 AWR review outcomes and Tasmania applying the 2020 AWR. The only decision relating to the 2022 AWR is the WAIRC decision.

17. **The ‘flow-on’ of Certified Agreement rates into Awards.** The State submits another point of difference is the legislated provision that allows for the flow-on of provisions from certified agreements into a relevant State modern award (section 145 of the IR Act). The State submits that the flow-on certified agreement provisions into the relevant award has only been applied in the Queensland public sector and that employees within the coverage of awards that have been subject to a successful flow-on application are in a unique position of being able to benefit from both future collective bargaining outcomes and from the outcomes of an increase to the SWC.⁹

18. Given that the Queensland Government submissions on this point relates only to Awards covering public sector employees, the State’s submissions with respect to public sector awards should be viewed as those of an employer not as an ‘amicus curiae’.

19. The relevant Awards that received a flow on, did so through s129 of the *Industrial Relations Act 1999* in 2011 and the respective decisions. In making those decisions the Commission was required to have regard to a number of provisions in the *Industrial Relations Act 1999*, most particularly the following sections:

- a. s. 3 - Principal object of the Act, which relevantly provided:

“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 ...

⁸ Ibid at [73]

⁹ [State Wage Case 2022 – Queensland Government Submissions](#) at [33] to [37]

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

b. s. 126 - Content of Awards, which relevantly provided:

"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 ..."*

20. Principle 8 of the 2010 and 2011 State Wage Case Statement of Policy also provided the following:

"8. Award Amendment to Give Effect to a Certified Agreement

*Subject to s. 129 of the Act the Commission may include in an award provisions that are based on a certified agreement whether or not there be consent by all parties to be bound. Without limiting the matters to be taken into account by the Commission, **the Commission should consider whether inclusion of the provision will act as a disincentive to enterprise bargaining.** If the effect of grant of the application will be to increase wages payable under the award, the Commission is to insist on submissions about how future state wage increases are (if at all) to be absorbed into the increase. [The Commission is not restricted to hearing submissions about future state wage increases.] Where such increases distort relativities, the Commission must ensure that the relativities and the wage increases are separately expressed.” (emphasis added)*

21. The submission by the State that amendments to the precursors of the Queensland Public Service Officers and Other Employees Award – State 2015 (QPS Award) and the General Employees (Queensland Government Departments) and Other Employees Award – State 2015 (GE Award) (among others) should be taken into account years later was considered in detail in the 2019 State Wage Case. As noted by the Full Bench in that decision, *“It appears incongruous with the State’s submissions before the 2018 State Wage Case that all existing awards in the State provided for fair and just employment conditions to now, one year later, seek to treat a class of such an award differently.”*¹⁰

22. Wages rates are set in Awards by a variety of paths, whether that be the inclusion of a wage structure as part of a new Award, adopting new rates as part of an equal remuneration order or incorporating certified agreement rates. Once the Commission has decided that the rates are appropriate, taking into account those matters it is required to do so by law, those rates assume the equal status as *‘secure, relevant and consistent wages and employment conditions’*.

23. The State’s submissions continue contentions advanced without evidence by the State’s submissions in previous years that suggest that the application of Award increases since 2011 that each, in each annual decision, provided “fair standards for employees in the context of living standards generally prevailing in the community” somehow, in aggregation, have exceeded such a standard.¹¹

¹⁰ [Declaration of General Ruling \(State Wage Case 2019\) \[2019\] QIRC 169](#) at [63]

¹¹ See [State Wage Case 2019 – Queensland Government Submissions](#) at [35]-[46] and [State Wage Case 2021 – Queensland Government Submissions](#) at [32]-[33] and [84] – [93];

24. Again, this invitation for the Commission to reach such a conclusion is made without evidence and ignores the State's contribution to the movement of wages in Collective Agreements compared to Award wages. The evidence of Mr McKay in reply demonstrates that differential bargaining outcomes and unilateral actions by the State, as employer, has a significant effect on the gap between Award and Agreement rates.

25. While it is the case that in 2011 a number of Awards had their rates of pay updated to incorporate expired agreement rates, at the time the average gap between Award rates and State Government Departments Certified Agreement 2009, the agreement covering most Government Departments, was around 6%. Successive Government wages policies since that time have suppressed wages below the Wage Prices Index and the benchmark for fair wages that is CPI plus Labour Productivity. As a result, that gap narrowed to the extent that Award wages overtook a number of Certified Agreement rates in 2017.

26. The evidence of Mr McKay supports a conclusion that the overtaking of Award wages has not resulted solely from the incorporation of agreement rates over a decade ago, nor is it only a product of the annual Award increases that, by their very nature, have been found by the presiding Full Benches of the QIRC to be fair and just. It is a result of Government wage caps to a significant degree.

27. It should be noted that the statement that State Government wage caps are suppressing wages is supported by no lesser authority than the Governor of the Reserve Bank, Philip Lowe who, in evidence before the House of Representatives Economics Committee on August 9, 2019, made mention of the fact that he "would like to see stronger wage growth in the country" and drew attention to the way in which the public sector "wage caps are cementing low wage norms across the country.

28. Dr Lowe told the Committee that:

"... the wage caps in the public sector are cementing low wage growth across the country because the norm is now two to 2½ per cent, and partly that's coming from decisions that are taken by the state governments."

He also told the Committee that:

"In the medium term, I think wages should be increasing at three point something. The reason I say that is that we are trying to deliver an average rate of inflation of 2½ per cent. I'm hoping labour productivity growth is at least one percent – and I'm hoping we can do better than that – but 2½ plus

one equals 3½. I think that's a reasonable medium-term aspiration; I think we can do better, but I think we should be able to do that. So I would like to see the system return to wage growth starting with three. We have seen that with the minimum wage increase in the last three years. I think we had 3.3, 3.5 and three. They seem reasonable outcomes. Over time, I hope the whole system, including the public sector, could see wages rising at three point something.

We are in a situation now where wage norms have drifted down to two to 2½ per cent. At the Reserve Bank we talk a lot about inflation expectations lowering as a result of low inflation. But what is really important is the wage norms in the country. Most people are accepting wage increases of two to 2½ per cent. And the public sector wage norm I think is to some degree influencing private sector outcomes as well—because, after all, a third of the workforce work directly or indirectly for the public sector.”

29. It is notable that Dr Lowe talks about the minimum wage increases of 3.3%, 3.5% and 3% being reasonable, because these are the very wage increases that were applied in the State Wage Cases of 2017, 2018 and 2019.

30. **The impact of Award increases from the SWC on collective bargaining.** The State Submission’s again raise concerns of a potential to “impede, disincentivise or protract collective bargaining negotiations”.¹² This issue was also considered in detail in the 2019 State Wage Case decision. At that time, the State’s submissions¹³ included the following:

- 37. In the period following the 2018 State Wage Case, evidence has emerged of an impact on collective bargaining, specifically in relation to the CORE.
- 38. Bargaining between the negotiating parties for a replacement to the CORE²⁷ broke down and in the first instance was referred to conciliation before the Commission. Conciliation was unsuccessful and the matters were referred to arbitration before the Commission.²⁸
- 39. 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.

31. In considering those submissions the Full Bench stated:

“Given that there is presently no evidence to support the State's position about the present impact on bargaining let alone how it will be further exacerbated in the future if award rates of pay continue to overtake certified agreements rates of pay, we decline to draw such an inference.”¹⁴

¹² [State Wage Case 2022 – Queensland Government Submissions](#) at [94]

¹³ [State Wage Case 2019 – Queensland Government Submissions](#)

¹⁴ [Declaration of General Ruling \(State Wage Case 2019\) \[2019\] QIRC 169](#) at [74]

32. Events have proved that decision wise, despite the Queensland Government's fears as set out in their submissions to the 2021 SWC of a barrier to bargaining existing, that has proved not to be the case as all public sector agreements in that bargaining round, including in Queensland Corrective Services, reached settlement.¹⁵

33. The State has not offered any new reasoning that would justify departing from the approach taken in 2019 regarding this issue.

34. Together submits that if the State is seeking the Commission apply differential Award outcomes pursuant to s.459(2) or any future changes from Bills not yet passed then the onus is on the State to provide comprehensive evidence supported by detailed submissions. This is preferable to continuing to ask the Commission to consider the sort of imprecise statements regarding public sector rates of pay as epitomised in paragraph [97] of the State's submissions.

Conclusion

35. Together submits:

- a. Historically, the QIRC State Wage Case has followed the national tribunal decision unless there are compelling reasons not to do so.
- b. The evidence is that Queensland is dealing with the current economic challenges better than other parts of the country, yet Queensland workers are subject to the 2nd highest increases in annual inflation of all Australian states.
- c. An increase of the quantum decided by the FWC will still see a reduction in the value of real wages but will assist in maintaining the living standards for award wage reliant workers and protect the low paid.
- d. A general ruling in the terms requested is fair and appropriate.

Together Queensland, Industrial Union of Employees

¹⁵ [State Wage Case 2021 – Queensland Government Submissions](#) at [88]