

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 2016

s.458

(Matter No. B/2023/46, B/2023/47, and B/2023/48)

APPLICATION FOR A DECLARATION OF GENERAL RULING

STATE WAGE CASE 2023

SUBMISSION OF THE
LOCAL GOVERNMENT ASSOCIATION OF QUEENSLAND

14 SEPTEMBER 2023

Introduction

1. The Queensland Industrial Relations Commission (“QIRC”) is empowered by section 458 of the Industrial Relations Act (the “IR Act”) to make general rulings about, *inter alia*, a Queensland minimum wage for all employees, and is required by that section to ensure that it does so at least once each year.
2. The traditional primary mechanism by which the general ruling is given effect to, is by an overarching order of a Full Bench increasing the rates of pay and allowances prescribed in all awards of the QIRC (and the Queensland Minimum Wage), by percentage rates or money amounts.
3. Usually, the QIRC has, although not bound to do so, largely adopted increases of an order of magnitude determined and applied in the National wage Case proceedings of the Fair Work Commission and its predecessors.
4. In recent years, this relatively uncomplicated process has been rendered more complex, by changes to the IR Act and the Fair Work Act which have changed the manner in which minimum award rates, which are the primary target of general rulings, are increased over time.
5. In particular, the enactment of section 145 of the IR Act has altered the traditional landscape as described above, by permitting the inclusion in an award of provisions that are based on a certified agreement. This provision, if utilised, has the capacity to cause award conditions to exceed those conditions provided in contemporaneous enterprise bargaining agreements, by the combined effect of the flow on of provisions from past agreements and the award increases made under general rulings, both of which relate to the same award in the same timeframe.
6. To an extent, section 459A of the IR Act gives the QIRC a discretion to ameliorate this effect, however the matter and the extent to which the QIRC might exercise that discretion in relation to the outcome of these proceedings is yet to be fully determined.
7. These mechanisms, discretions and limitations do not exist under the Fair Work Act, with the result that the long-standing practice, which has been questioned in recent years, of adopting outcomes reached in the FWC in relation to similar matters, are no longer necessarily applicable or relevant.
8. Hence it is submitted that a different approach, which is more suited to contemporary circumstances, and the variations in the state of the awards that are likely to be affected by the Full Bench Decision, by reason of the operation of provisions such as section 145, is warranted and less prescriptive approach.
9. It is important to note that the IR Act does not prescribe any specific standards to which the QIRC must have regard in formulating any increases to be applied in the annual general ruling. As Professor Peetz points out (at 34-38), it may be inferred that the QIRC will adopt the legislative standards applicable to setting minimum wage rates in awards, however State Wage Case increases are not award rates.
10. That said, the LGAQ is content to submit that the criteria set out in section 141 and 142 of the IR Act, and in the Objects of the Act provide at least substantial guidance as to the performance of the task in these proceedings by the Full Bench.

Application

- 11.** Consistently with the traditional approach identified above, the Australian Workers' Union (AWU) (B/2023/46), the Together Queensland (Industrial Unions of Employees (B/2023/47), and the Queensland Council of Unions (QCU) (B/2023/48) have each filed applications in the QIRC and are seeking a general ruling in the following terms:
- a) To make a general ruling amending all state awards by a wage adjustment of 5.75%.
 - 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 5.75%.
 - c) To increase the Queensland minimum wage by at least 5.75%.
 - d) Determine that the operative date for these amendments be 1 September 2023.
- 12.** LGAQ is not presently aware of the nature of the response on the part of the State of Queensland to these applications. However, the LGAQ is conscious that the circumstances outlined above in paragraphs 5 through 8 will undoubtedly influence the consideration by the QIRC relating to state government agencies.

The Local Government context

- 13.** However, those same considerations mentioned in paragraphs 5 through 8, do not apply to the local government sector, as none of the Local Government sector awards of the QIRC have been the subject of increases from "external" sources such as applications under section 145 of the IR Act.
- 14.** For this reason, the LGAQ submits an approach specific to the local government sector should be taken by the Full Bench in relation to Local Government awards. Section 459 (2) provides that a general 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.*
- 15.** It is therefore submitted to be within the capacity of the Full Bench to make a differential provision in a general ruling for local government employers and employees, as distinct from other State public-sector employers and employees, and to exclude particular industrial regiments or parts of industrial instruments from the general ruling that might be made to suit certain circumstances.

Queensland Minimum Wage

16. The LGAQ makes no submissions in relation to matters such as incapacity to pay, and defers to the experience and general knowledge of the QIRC as to the tight economic circumstances that exist throughout all of the State, and which are not confined to employers and employees in the Local Government sector.
17. The LGAQ accepts that local government employees in Queensland are fully entitled to fair and responsible wage increases and encourages the QIRC assess and apply its judgement and the evidence before it in these proceedings to determine the quantum of a fair and reasonable increase to the local government awards of the QIRC, reflecting the prevailing economic conditions at the time of the Decision.
18. The only qualification which the LGAQ places on this submission is that the increase awarded by the Fair Work Commission to the Federal minimum wage, which is now equal to the C13 rate in all modern awards, should be taken as a maximum figure that might be awarded in the circumstances, and that clear guidance is also provided by a recent decision in the Western Australian industrial jurisdiction of an increase of 4.6%.
19. The utilisation of Local Government Awards throughout the sector varies significantly depending upon the size, circumstances, and industrial history of individual councils. As set out in detail in the report of Professor Peetz, of the 77 local government bodies in Queensland, there are a variety of mechanisms by which the underpinning effect of the modern awards apply in practice.
20. In some cases of smaller and less financially sustainable councils, the award is the standard upon which wages and conditions are paid, and any increase in the award will automatically reflect in increases paid to employees.
21. At the other end of the scale, in cases such as the Brisbane City Council, enterprise bargaining agreements exist which contain conditions significantly in excess of the prevailing Awards, so that moderate increases in those awards are unlikely to result in any increase in payments to employees.
22. Between those two extremes, there are circumstances in which in-term enterprise bargaining agreements apply, with a minimal margin between the rates in those agreements and the rates and conditions in the underpinning awards, and an increase in the underpinning awards may, or may not, depending on the circumstances of those councils, result in a direct increase in payment to employees. There are also circumstances in which expired enterprise bargaining agreements continue to exist, and the rates actually paid to employees are increased by agreement with employees on a periodic basis, on terms that relate to, or are equal to, relevant increases in the underpinning awards.

- 23.** For clarity, the LGAQ does not submit that such variable impacts of an increase in award rates should be a factor that influences the determination of the Full Bench in relation to the quantum of any increase in wages in these proceedings. The LGAQ and its members accept that the maximum impact of such increase should be able to be accessed by employees, in accordance with the legal and industrial arrangements in force and effect at the time that the determination is made.
- 24.** The variation as between councils in relation to those legal and industrial arrangements is an existing structural fact that arises from the vast disparity in the population, financial sustainability and circumstances between and amongst local government authorities throughout Queensland, and is not a matter which this Full Bench can or should address in its determination.
- 25.** Local authorities throughout Queensland suffer a common problem of difficulty in attracting and retaining experienced and capable staff, particularly in circumstances where private sector wages and State public sector wages have, for a variety of reasons increased more rapidly than those provided under the awards and enterprise bargaining agreements applying to the local government sector.
- 26.** It is accepted by the LGAQ and its members that the only remedy available to that circumstance is to ensure that wages paid in the local government sector are kept as high as can be reasonably afforded by councils within the constraints of their rate revenue, or in the case of the First Nations councils their levels of government subsidies.

Awards and Allowances

- 27.** Increases to Allowances ordinarily follow a similar path to increases to award rates. That usual approach is submitted to be appropriate in this matter.

The Economic Case

- 28.** The LGAQ does not intend to make further detailed submissions on the state of the economy and relies on the information and submissions provided by other parties in these proceedings. At the hearing of the proceedings, it may be that issues raised will be sought to be addressed in oral submissions, but such submissions should not occupy any significant period of the time of the Commission.

Conclusion

- 29.** The LGAQ accepts that local government employees are entitled to the full benefit of the judgement and assessment of the Full Bench in these proceedings as to appropriate and fair increase in the underpinning awards, in the current economic circumstances. It is for this reason that, subject to the observations in paragraph 18 above, no specific amount of an increase has been sought in the submissions.
- 30.** It is accepted that it is difficult to definitively describe the consequential impact which that increase will have on the actual wages and conditions of potentially affected employees in the local government sector, having regard to the significant variety of industrial circumstances that apply throughout local authorities in Queensland, the operation of which will be affected in some way by an alteration in the awards.
- 31.** It can however be said with some certainty that a reasonable and fair increase to the underpinning awards will significantly improve the circumstances of the lowest paid cohort who are award, or substantially award dependent. That improvement in conditions will tend to reduce as the level of enterprise bargaining conditions progressively rise above the modern award conditions, in those councils who have been able to make such arrangements.
- 32.** However it is the underpinning award conditions which provide the foundation for the enterprise bargaining that has given rise to enhanced conditions, and it remains extremely important for the local government sector generally, that this Full Bench maintain the local government awards at fair and responsible levels, so that they can continue to provide a stable minimum safety net of actual wages for the smaller and less financially sustainable councils, and a realistic basis for enterprise bargaining and other related arrangements that successfully co-exist in the local government sector.

Operative Date

- 33.** The LGAQ agrees that the operative date of 1 September 2023 should be applied.