

**STATE OF QUEENSLAND OUTLINE OF SUBMISSIONS FOR THE STATE WAGE
CASE HEARING**

INTRODUCTION

1. On 12 June 2023, the Queensland Council of Unions (QCU), Together Queensland, Industrial Union of Employees (TQ) and the Australian Workers' Union of Employees, Queensland (AWU) lodged SWC applications seeking a general ruling pursuant to s 458 of the *Industrial Relations Act 2016* (IR Act) for an increase of not less than 5.75% to the Queensland Minimum Wage (QMW), and a 5.75% increase to all Queensland award wages and work-related allowances, with an operative date of 1 September 2023.

Statutory Framework

2. The State of Queensland (the State) relies upon its submissions filed on 14 and 18 August 2023 in response to the applicants' application for a declaration on the proper construction of section 459A, and which set out the legislative regime for the making of general rulings in sections 458-460 of the IR Act.

State Wage Cases

3. Section 458(2) of the *Industrial Relations Act 2016* (IR Act) requires the Full Bench of the Commission to hear and decide the SWC each year. The SWC provides an annual increase to the QMW and to state award wages and existing allowances which relate to work or conditions which have not changed in service increments by 5.75%. The SWC is particularly relevant for low-paid, award reliant workers in the local government sector and in Parents and Citizens Associations. In the State public sector, there are limited groups of Award reliant workers who would be directly impacted these include Level 5 employees under the *Workcover Queensland Employees Award – State 2015*, Auxiliary Firefighters, Community Visitors, particular classifications of Dental Officers under the *Health Practitioners and Dental Officers Award* and particular classifications of Communications Officers under the *Queensland Fire and Emergency Services Award – State 2016* as well as particular classifications under the *Teaching in State Education Award – State 2016* and particular classifications under the

Correctional Employees Award – State 2015.

4. The QMW is currently \$850.50 per week. The Commission has historically flowed on the Fair Work Commission (FWC) Annual Wage Review (AWR) ruling each year to the QMW and the Award rates.
5. In the 2022 SWC decision, the QIRC made clear that it is not bound to follow the AWR outcome¹ and put the parties to the SWC on notice of its expectations that the 2023 SWC will require evidence of economic and industrial relations jurisdictional arrangements which may be peculiar to Queensland and relevant to the Full Bench's determination of the SWC.²

The Annual Wage Review

6. On 2 June 2023, the FWC Expert Panel handed down its AWR decision providing increases to the National Minimum Wage (NMW) and award wages and relevant allowances effective from 1 July 2022.³
7. With respect to award wages, the FWC Expert Panel provided for an increase to award wages of 5.75%.
8. With respect of the NMW, the decision provided:
 - (a) a realignment of the NMW from the C14 rate to the higher C13 rate; and
 - (b) a further increase of 5.75% on top of the realigned rate.
9. Taking into consideration the realignment and the 5.75% increase, the NMW was increased by a total of 8.6% bringing it to \$882.80 per week (or \$23.23 per hour).
10. The FWC Expert Panel made clear that this realignment to the C13 was an interim step pending a wider review.

The State's Position

11. The State supports a fair and reasonable increase for award-reliant low-paid employees; and asks the Commission to exercise its discretion not to apply any increase to State public sector award rates where wages and conditions for State public sector employees are set through collective bargaining. The State's position is based on industrial relations considerations such as the primacy of collective bargaining. These considerations are supported with reference to the prevailing economic conditions in Queensland.

¹ *Declaration of General Ruling (State Wage Case 2022)* [2022] QIRC 340 at [52].

² *Ibid* at [54]-[58].

³ *Annual Wage Review* [2023] FWCFB 3500.

12. The IR Act prescribes the QIRC's powers relating to modern awards. The QIRC must have regard to the prevailing employment conditions of employees covered by the modern award. Therefore, the whole 'basket' of conditions received by employees are relevant and must be considered.
13. Further, the QIRC must have regard to, amongst other things, relative living standards and the needs of low-paid employees. The IR Act requires the QIRC to ensure, amongst other things, that a modern award provides fair standards for employees in the context of living standards generally prevailing in the community.
14. In regard to minimum wages in a modern award, to the extent the QIRC's powers relate to setting, varying or revoking minimum wages in a modern award, the QIRC must establish and maintain minimum wages that are fair and just. In doing so the QIRC must have regard to, amongst other things, the prevailing employment conditions of employees covered by the modern award.
15. While noting the relevance of the AWR and SWC to support low-paid award-reliant workers who do not collectively bargain, 98.2% of workers in the State industrial relations jurisdiction successfully engage in collective bargaining to settle their wages and conditions, State public sector workers who engage in collective bargaining also receive a range of benefits beyond headline wages, and should bargaining fail to reach agreement, the IR Act provides a direct pathway to arbitration. As such, further augmentation through the State Wage Case is not necessary.
16. The State submits:
 - (a) there should be a fair and reasonable increase to the QMW that reflects the prevailing economic conditions at the time the decision is made without a realignment to the C13 rate until such time as comprehensive consideration can occur noting the realignment was an interim decision by the Fair Work Commission only;
 - (b) there should be a fair and reasonable increase to state awards and work-related allowances reflecting the prevailing economic conditions at the time the decision is made. However, applying s 459(2) of the IR Act, where the wages payable to employees or classes of employees under those awards relevant to the Queensland public sector have been settled through bargaining or by an arbitration determination of the Commission, the State submits the increase should be 0%; and

- (c) should the Commission determine to award an increase to wages payable to employees or classes of employees under those awards relevant to the Queensland public sector, the State seeks the Commission to exercise its discretion under section 459A of the IR Act such that the SWC increase is not applied to wages payable to employees or classes of employees under those awards relevant to the Queensland public sector where bargaining sets the wage rates and applying the SWC increase would cause the relevant award wage rate to exceed the corresponding bargained wage rate.
- (d) an operative date of 1 September 2023.

The State's evidence

17. The State's evidence focuses on Queensland's prevailing economic conditions and the unique features of Queensland industrial framework.
18. These features impact upon award rate outcomes for State public sector workers. While the State makes submissions to the Fair Work Commission in AWR, those submissions are relevant to Queensland workers who participate in the federal system. The industrial landscape in Queensland for workers regulated under the IR Act has little relevance to those private sector workers and the AWR is not determined with the IR Act system in mind.
19. The State submits there are factors which distinguish the national and State industrial jurisdictions in relation to the minimum wage determinations. Workers impacted by the AWR have experienced low wage rate outcomes over a significant period and are predominantly award-reliant with 20.5% of the employee workforce being paid at rates specified in the FWC's modern awards.⁴ Employees in the Federal jurisdiction have historically had limited ability to participate in collective bargaining and limited recourse to arbitration except in exceptional circumstances.⁵ In contrast, the State jurisdiction is such that 98.2% of workers participate in collective bargaining, where only 1.8% of all workers are Award reliant. The legislative scheme in Queensland gives primacy to collective bargaining and provides a defined pathway to arbitration for any party where agreement cannot be reached.
20. Further, the State submits the particular economic conditions prevalent at the time of

⁴ Ibid at [Table 1].

⁵ Department of Employment and Workplace Relations (DEWR), *Trends in federal enterprise bargaining, June quarter 2022*, (Canberra: DEWR, 2022). For a succinct overview of this debate, see Jonathan Hamberger, 'Reviving Australia's system of enterprise bargaining', *Journal of Industrial Relations*, 62, no. 3, (22 March 2020): 461–476.

making the Annual Wage Review decision have changed. Where the FWC provided an increase of 5.75% as the “most that can reasonably be justified in the current economic circumstances” with reference to the rate of inflation, the State considers that these economic circumstances have changed since the making of that decision - as can be seen in the affidavit of Mr Dennis Molloy, Deputy Under Treasurer, Queensland Treasury (the **Molloy Affidavit**). The moderation of those economic factors relied upon by the FWC is such that the State considers the particular quantum reached in the AWR is not justifiable.

The objects and purposes of the IR Act

21. Section 3 of the IR Act sets out the main purpose of the IR Act. The IR Act provides a framework for cooperative industrial relations that is fair and balanced and supports the delivery of high-quality services, economic prosperity and social justice for Queenslanders.
22. Section 4 of the IR Act provides how the main purpose is to be achieved. In part, this section provides the main purpose is to be achieved primarily by:
 - (a) promoting high-performing, apolitical State government and local government sectors responsive to democratically decided priorities and focused on the delivery of public services in a professional and non-partisan way;
 - (b) providing a fair and equitable framework of employment standards, awards, determinations, orders and agreements;
 - (c) ensuring wages and employment conditions provide fair standards in relation to living standards prevailing in the community; and
 - (d) promoting collective bargaining.

State Wage Case - Other Jurisdictions

23. On 22 June 2023, the Western Australian Industrial Relations Commission (WAIRC) issued a ruling in their state wage determination which increased the state minimum wage by 5.3 per cent, bringing it to \$863.40 per week from 1 July 2023.⁶ It also ordered an increase in award rates by 5.3% from 1 July 2023.⁷ Relevantly, the WAIRC is required to consider ‘providing fair wage standards in the context of living standards generally prevailing in the community and protecting employees who may be unable to

⁶ 2023 State Wage Order Pursuant to Section 50A of the Act, 2023 WAIRC 00337 at Order [3] and [9].

⁷ 2023 State Wage Order Pursuant to Section 50A of the Act, 2023 WAIRC 00337 at Order [10].

reach an industrial agreement'.⁸ In reaching their decision, the WAIRC considered economic conditions particular to their state and used those as the basis for a divergence from the AWR; for instance, that inflation was tending lower in Western Australia when compared with the national figures relied upon in the AWR.⁹ The State considers a similar divergence would be justifiable in the present circumstances.

24. On 14 December 2022, the South Australian Employment Tribunal (SAET) delivered its decision in the 2022 State Wage Case.¹⁰ The SAET took into consideration the findings of the Expert Panel of the FWC in the 2022 AWR which was to provide a 5.2% increase to the NMW and a 4.6% increase to modern award wages. The SAET considered the principles established in the 2022 AWR were relevant - however in recognition of the increasing inflationary pressures at the time of their decision, they adopted a moderated approach by applying 5.2% increase to the minimum wage and to award rates.¹¹

Prevailing economic conditions in Qld

25. At the time of making its decision the expert panel noted that “the level of wage increase we have determined is, we consider, the most that can reasonably be justified in the current economic circumstances.”¹²
26. In determining the amount by which all modern award wages would increase, the expert panel indicated they had placed “significant weight on the impact of the current inflation.”¹³
27. The State notes the economic material considered in the Adept and Peetz reports.
28. The State considers the information outlined in the Molloy affidavit represents the prevailing economic conditions relevant to the decision under section 459.
29. The Molloy Affidavit provides an overview of the prevailing economic conditions in Queensland. This includes information regarding:
- (a) slowing national economic growth in line with declining global economic growth,¹⁴

⁸ 2023 State Wage Order Pursuant to Section 50A, 2023 WAIRC 00330 at [6].

⁹ 2023 State Wage Order Pursuant to Section 50A, 2023 WAIRC 00330 at [94].

¹⁰ State Wage Case 2022 [2022] SAET 166.

¹¹ State Wage Case 2022 [2022] SAET 166 at [95].

¹² Annual Wage Review [2023] FWCFB 3500 at [10].

¹³ Annual Wage Review [2023] FWCFB 3500 at [9].

¹⁴ Affidavit of Dennis Molloy filed 14 September 2023 at [15].

- (b) an expected deficit of \$2.182 billion in State Budget outlook for financial year 2023-24;¹⁵
 - (c) expectations for marginal surpluses in financial years 2024-25; 2025-26, 2026-27;¹⁶
 - (d) slow growth in employment over the coming financial year;¹⁷
 - (e) moderation in the national inflation figures from the peak of 8.4% in December 2022 to 4.9% in July 2023, with an expectation of further decline predicted in the coming years;¹⁸ and
 - (f) the Queensland State Budget forecasts of moderation in Brisbane's consumer price index to 3¼% in 2023-24 (in year average terms) and then 3% in 2024-25.¹⁹
30. The State submits the information in Molloy affidavit is indicative of a change in the economic conditions prevalent in Queensland when compared with those economic conditions prevalent nationally at the time of the AWR.
31. In contemplating the change in economic conditions, and the significant weight attached to inflationary measures in the AWR decision, the State submits the economic indicators which supported that decision no longer apply.

Queensland Minimum Wage

32. The State supports the SWC as a mechanism to enable workers who are dependent on the QMW to secure a pay rise through the SWC in line with living standards generally prevailing in the community.²⁰
33. The State submits the Commission ought to determine an increase to the QMW (currently \$850.50 per week) it deems fair and reasonable and that reflects the prevailing economic conditions;
34. Taking into account the prevailing economic conditions in Queensland, the factors identified at [31] support a lower increase than that provided in the AWR decision.
35. The State acknowledges that as part of the application, the Applicants have sought the Commission take into consideration adjustments made by the FWC to realign the NMW from the C14 to the C13 classification rate and to subsequently adjust the C13

¹⁵ Affidavit of Dennis Molloy filed 14 September 2023 at [48].

¹⁶ Affidavit of Dennis Molloy filed 14 September 2023 at [48] and [49].

¹⁷ Affidavit of Dennis Molloy filed 14 September 2023 at [20].

¹⁸ Affidavit of Dennis Molloy filed 14 September 2023 at [24] and [25].

¹⁹ Affidavit of Dennis Molloy filed 14 September 2023 at [26].

²⁰ *Industrial Relation Act* 2016 s 4(g) and 143(1)(i).

rate by a 5.75% increase.

36. The State has considered the rationale of the AWR 2023 decision to re-align the minimum wage. That consideration included re-aligning the QMW to the C13 rate of the *Building, Engineering and Maintenance Services Employees (Queensland Government) Award—State 2016* (the BEMS Award).
37. The C14 classification in the BEMS award is currently \$850.60 per week (which includes an adjustment of \$4.20 on the fortnightly rate). This rate currently aligns with the QMW. The C13 classification in the BEMS award is currently \$868.50 per week. This rate is 2.1% higher than the current QMW. If the Commission adopted an approach to align the QMW with the BEMS rates similar to the AWR decision, and applied the same general ruling increase of 5.75%, this would result in the QMW increasing from \$850.50 per week to \$918.44 per week (an increase of approximately 8%).
38. The State does not support this option, noting the FWC has undertaken to perform a wider review concerning the needs and circumstances of low-paid award and agreement free employees; and that the alignment to the National Minimum Wage with the current C13 classification wage rate is an ‘interim step’. The State opposes the interim alignment adjustment and will further consider its position in 2024, after the FWC has completed its ‘wider review’.
39. This would be consistent with the approach taken by the WAIRC in their State Wage Case where it was determined that the realignment of the minimum wage would require “a fulsome examination of the history and legislative setting, to ensure there are no unintended consequences of such a change”.²¹
40. The State notes that if a 5.75 % increase were to be applied to the QMW it would increase to a rate of \$899.40 per week. If such an increase were to be applied the QMW would exceed the NMW which is currently \$882.80 per week.
41. Given the factors referred to in paragraph 31 this would not appear to be appropriate in the circumstances.

There should be no increase to award wages where collective bargaining sets the wage rates

42. The State submits the Commission should exercise its discretion under section 459(2)

²¹ 2023 State Wage Order Pursuant to Section 50A, 2023 WAIRC 00330 at [91].

in respect of those State public sector workers for whom enterprise bargaining sets the wage rates.

43. The State contends that, with limited exception, all public sector employees are subject to the process of enterprise bargaining - the exceptions being:
 - (a) community visitors who will soon be provided with coverage under the replacement Core Agreement; and
 - (b) a limited number of employees at particular classifications or pay points under three Awards where these classifications or pay points are not replicated under certified agreements. These include:
 - (i) level 5 employees under the *WorkCover Employees Award – State 2015*;
 - (ii) particular pay points of dental officers under the *Health Practitioners and Dental Officers Award – State 2016*;
 - (iii) particular pay points of communications officers under the *Queensland Fire and Emergency Services Award*;
 - (iv) particular classification levels in the *Correctional Employees Award – State 2015*; and
 - (v) particular classifications under the *Teaching in State Education Award – State 2016*.
44. The State submits these cohorts should be exempt from consideration under s 459(2).
45. Further, the State notes that, with one exception, all public sector employees with coverage under an enterprise agreement engage in the process of collective bargaining and therefore have a dedicated mechanism for achieving enhanced terms and conditions of employment at least every four years, the exception being the *Major Sports Event Day Staff Certified Agreement 2005* which the State accepts should be exempt from consideration under s 459(2).
46. In contrast to State public sector employees engaging in the process of collective bargaining, award-reliant employees do not have a regular opportunity to review their terms and conditions of employment to ensure that they continue to be in accordance with those employment conditions prevailing generally. For this reason, the State submits a fair and reasonable increase to award wages is appropriate for these employees having regard to particular criteria, including the prevailing economic conditions.

47. The State submits the IR Act provides for collective bargaining as the primary means upon which wages are determined. While noting the importance of the SWC in providing support to award reliant workers who do not collectively bargain, 98.2 % of workers in the State jurisdiction engage in collective bargaining to settle their wages and conditions, taking into consideration the prevailing employment conditions of the workforce and cost of living factors. The State submits additional augmentation through the State Wage Case to wages payable to State public sector workers who engage in collective bargaining is not appropriate and undermines the primacy of collective bargaining.
48. Further, the State submits such an outcome would give rise to an inconsistent and inequitable circumstance where State public sector workers benefit from multiple headline wage increases in the course of the year, and an ability to regularly renegotiate their terms and conditions. This is inequitable when compared with the award reliant and QMW reliant workforce who only receive the benefit of a single annual headline wage increase while also not receiving an opportunity to negotiate for other terms and conditions in contrast with the State public sector.

The AWR is directed to a different population of employees to Queensland's State public sector

49. The AWR is relevant to private sector workers earning the minimum rate or who are subject to the modern award rates within the national industrial relations jurisdiction.
50. There are significant differences between workers in Queensland participating in the national system to those in the State jurisdiction - the principal and most relevant difference is that almost all workers in the State jurisdiction engage in collective bargaining to set their wages and conditions of employment.
51. The AWR provides an increase for low-paid workers who are generally unable to bargain, who are award-reliant or who rely on the NMW to set their wage, and who have no other mechanism for increasing their rate of pay. The number of employees whose wage is set by the AWR is 20.5% according to the AWR decision. The AWR statistical report indicates that the proportion of employees whose wages are reliant on federal modern awards has grown over a ten-year period when compared with those employees who are covered by agreements or individual arrangements.
52. Nationally, 20.5% of private sector workers do not bargain for their wages and are

reliant in awards, equating to 2.37 million people.²² In Queensland, the equivalent population of award-reliant workers who rely upon increases via the SWC is approximately seven thousand, and an even smaller number of workers who are dependent on the QMW.²³

Bargaining is the primary means for establishing wages and conditions in the Queensland State public sector

53. In contrast to the workers dependent on the AWR for wage increases, the majority of public sector workers in Queensland are able to collectively bargain for better wages and other conditions of employment. Indeed, there is near total coverage of bargaining for collective agreement making across the Queensland public sector.
54. Where the wages payable to employees or classes of employees under those awards relevant to the Queensland public sector have been settled through bargaining or by a determination of the Commission, the increase should be 0%.
55. It is not necessary that any increase determined by the Commission be applied to those workers because:
 - (a) they have already struck bargains;
 - (b) they have bargained for their wages and other conditions of employment where it was accepted they are better off under the agreement than under the award (the 'no disadvantage' test);
 - (c) through collective agreements and other relevant instruments, Queensland public sector workers receive remuneration and additional benefits such as a cost-of-living allowance, 12.75% superannuation, enhanced parental and personal leave entitlements and permanency of employment;
 - (d) an increase will distort the starting position for wage increases in bargaining; and
 - (e) an increase will result in rates of pay in excess of those required to be maintained at a fair and reasonable rate; and
 - (f) many of those employees have had the benefit of flow on increases into their modern award from previous certified agreements.
56. This position reflects the objects of the Act including that the primary method of achieving wage increases is through enterprise bargaining.

²² *Annual Wage Review* [2023] FWCFB 3500 [Table 1].

²³ Those workers are found mostly in local government.

*Prevailing employment conditions*²⁴

57. There is no definition or exposition offered in the IR Act as to a benchmark for what is considered a ‘low-paid employee’, or the meaning of ‘relative living standards prevailing in the community’.
58. In regard to a benchmark for a ‘low paid employee’ the FWC considers an amount of two thirds of median adult full-time ordinary earnings to be a benchmark for low-paid. On this benchmark, a low-paid employee would receive \$1,017 per week. Based on Australian Bureau of Statistics (ABS) Characteristics of Employment (COE) data published in August 2022, the low paid threshold is \$1,016.67 per week. Professor Peetz has also made this observation in his expert report.²⁵ He notes the average weekly earnings in Queensland is slightly lower than the national average at \$1,000 per week.
59. In reviewing wages provided for under agreements and awards in the public sector, entry-level adult wages generally exceed this rate, and their terms and conditions are further enhanced through collective bargaining. For instance, an employee under the *Youth Detention Centres Award* would commence at the OO3.1 level and have weekly earnings of \$1,131.87. Under the *Youth Detention Centre Certified Agreement 2019* they would have weekly earnings of \$1,136.79 and be eligible for an operational employee allowance of \$26.90. Under its proposed successor instrument, the employee would have weekly earnings of \$1,182.26 and be eligible for the operational employee allowance payable at a rate of \$176.90 per week, as well as up to three Cost of Living Adjustment payments. Such an employee may also be eligible for a newly created Youth Detention Skilled Worker Allowance of \$45 per fortnight under the proposed new instrument.
60. In regard to what are the ‘standards prevailing in the community’ and ‘the prevailing employment conditions of employees’, the State submits it reasonable to consider these with reference the outcomes of bargaining for employers and employees relevant to the award. The State submits a bargained outcome should be considered as a leading indicator of the ‘prevailing employment conditions of employees’, and generally above what is considered to be the ‘standards prevailing in the community, considering that workers, and their representatives generally bargain to secure wages above the award prescription.

²⁴ *Industrial Relations Act* 2016 s 141(1)(b) and s 142(2)(a).

²⁵ Affidavit of David Peetz filed 25 August 2023, Exhibit 1 at [119].

61. Further, certified agreements will reflect the prevailing employment conditions of the employees to be covered by the proposed agreement. They are not developed in a vacuum and will have regard to the particular nature of the work performed by the employees proposed to be covered, including the ways it may have changed, challenges in attraction and retention, unique ways of working and requirements as to skills and training.
62. For instance, the recently negotiated *Building Engineering and Maintenance Services (Queensland Health) Certified Agreement 2022*; *QBuild Field Staff Certified Agreement 2022* and the proposed *Transport and Main Roads Operational Employees Certified Agreement 2022* each make provision for the skill infrastructure delivery and maintenance allowance.
63. It provides in each of these agreements as follows:
- (a) all employees, including apprentices, will be entitled to the Skill Infrastructure Delivery and Maintenance Allowance of \$45 per fortnight in recognition of the unique labour market challenges associated with this workforce, including the comparatively high rates of pay in the private sector, coupled with economic pressures associated with the increasing cost of living.
 - (b) the Skill Infrastructure Delivery and Maintenance Allowance will be paid as an all-purpose allowance, to be paid as ordinary time earnings for the purposes of superannuation treatment and will be indexed in line with annual headline wage increases.
 - (c) the Skill Infrastructure Delivery and Maintenance Allowance will be paid on a pro-rata basis for part-time and casual employees.
64. This particular allowance was negotiated between the parties in recognition of competitive rates of pay in the private sector as well as cost of living pressures. It was created as an all-purpose allowance in recognition of the employment conditions of this workforce who may be required to perform work out of hours, on weekends or public holidays.
65. Cost of Living Adjustment payments are found in 19 certified agreements.²⁶ These clauses make provision for up to three payments where in a relevant agreement year CPI measured at the Brisbane March quarter exceeds the wage increase payable for that

²⁶ Affidavit of Tony James filed 14 September 2023, Exhibit TJ-3.

year to a cap of 3% and payable with reference to the base wages earned by an employee during the relevant agreement year.

66. The State submits the Cost of Living Adjustment payments serve as a contemporary counter measure that addresses inflationary/cost of living pressures based on the prevailing economic conditions and within the context of collective bargaining. They effectively act as a 'top up payment' where any cost of living pressures within the community, measured through CPI, exceed the wage increase payable under the agreement and will ensure that the employee's conditions are reflective of living standards generally prevailing in the community.
67. The State submits it is reasonable for the Commission to be less inclined to amend award rates for public sector awards on the basis of the prevailing economic conditions this year as it can have confidence the collective bargaining process provides for this. Under this mechanism Government has paid (through relevant agreements) a 3% payment this year following the March quarter data CPI release (Nurses, Teachers, Doctors etc) and has further determined to offer a Cost of Living Adjustment payment of 3% for employees in all existing State public sector agreements referable to the 2023 year for those agreements with a later operative date. The effect of this is such that all State public sector workers covered by existing certified agreements will have a payment based on the 2023 prevailing economic conditions.

Queensland public sector workers receive remuneration and additional benefits

68. At present the State government has made an offer for all employees under certified agreements to be provided with a Cost of Living Adjustment payment of 3% referable to the 2023 year.
69. Additional benefits include:
 - (a) recent enhancements to superannuation arrangements to provide for 12.75 % in employer superannuation contributions for State public sector employees on ordinary time earnings (not superannuable salary) provided through the *Superannuation (State Public Sector) Deed 1990*, a higher rate of 18 % applies in the case of police officers and 14.25% for fire service officers. These rates are higher than the Commonwealth's superannuation guarantee rate of 11%;

- (b) enhanced parental leave entitlements when compared with the QES,²⁷ and
 - (c) enhanced long service leave entitlements when compared with the QES.²⁸
70. State public sector employees are also afforded unrivalled fairness in their employment including a legislative basis for preferring tenure in employment and legislative reviews available of their employment status where it is temporary or casual in nature under the *Public Sector Act 2022* including the ability to request a review of their employment status after 12 months service, and an obligation on the employer to review their employment status on completion of 2 years' service. In contrast the National Employment Standards only provide eligibility for casual employees to request conversion in limited circumstances. Employees also have access to appeal rights under the *Public Sector Act 2022* in relation to a range of matters.
71. Relevantly as well, the State jurisdiction provides particular mechanisms to ensure terms and conditions of employment are not barriers to equal remuneration. These include particular legislative requirements in certifying an agreement to ensure that it contains information about the way the employer has implemented, will implement, or is implementing equal remuneration for work of equal or comparable value in relation to the employees to be covered by a certified agreement.
72. In addition to this, negotiating parties to a number of certified agreements have agreed a range of terms, conditions and initiatives relevant to their workforce groups which support equal remuneration, these include:
- (a) dedicated projects to identify and make recommendations in relation to potential pay gaps and barriers to greater representation at senior levels;
 - (b) increases to penalty rates to accord with those provided in other agreements;
 - (c) agreement to investigate greater ability for employees with caregiving responsibilities to be supported to work flexibly; and
 - (d) agreement to investigate ways in which further efforts can be made to increase gender diversity across all levels of the organization.

Distorts the starting position for wage increases in bargaining

²⁷ The *Minister for Industrial Relations Directive 05/20: Paid Parental Leave* provides for 14 weeks paid parental leave, whereas the QES only provides for an unpaid entitlement. This Directive also provides for a variety of other paid leave types for the purposes of adoption, surrogacy, and spousal support.

²⁸ *Minister for Industrial Relations Directive 05/17: Long Service Leave* provides eligible employees with 13 weeks paid long service leave on the completion of ten years continuous service. In contrast the QES provides 8.6667 weeks long service leave for ten years continuous service.

73. During the last round of enterprise bargaining negotiations which ran from 2018 to 2022, a number of agreements were resolved while in arbitration including:
- (a) *The State Government Entities Certified Agreement 2019*;
 - (b) *Child Safety Youth Justice Certified Agreement 2019*;
 - (c) *Youth Detention Centre Certified Agreement 2019*; and
 - (d) *Department of Education Certified Agreement 2019*.
74. A key contention in these arbitration proceedings was whether the wage increase provided for in the first year of the agreements should be payable with reference to the award or agreement rate in a circumstance where a SWC outcome had provided for the award rate to overtake that of the previous certified agreement rate.
75. This was in contention given that Public Sector Wages Policy increases had historically been payable on the previous agreement rates of pay and were proposed to be so on the Public Sector Wages Policy at the time.
76. However, in formulating the revisions to Public Sector Wages Policy for the current bargaining round, the Government considered it appropriate to provide that in the first year of an agreement the headline wage increase of 4% would be payable on the higher of the award or agreement rate in recognition of previous challenges in reaching agreement where the Award rate had, as a result of SWC increases, surpassed that of the previous agreement rate at the time of bargaining. In 2022, the SWC outcome was 4.6% payable on Award rates from 1 September, rendering the Award rate payable (as it had exceeded the agreement rate) for employees, or a class of employees, under 22 agreements.²⁹
77. This resulted in the first increase payable under the replacement agreement being paid for employees, or a class of employees, on the Award rate which had overtaken the agreement rate as a consequence of the SWC outcome. Therefore, the starting position for the application of any new agreement rates is the award, not the agreement rate, with the result that employees receive a ‘double’ increase within one year.

Will result in rates of pay in excess of those required to be maintained at a fair and reasonable rate in line with living standards generally prevailing in the community

78. As was observed in *Australian Hotels Association v and United Workers' Union*, fairness is to be assessed from the perspective of the employees and employers covered

²⁹ Affidavit of Tony James filed 14 September 2023, Exhibit TJ-5.

by the modern award in question.³⁰

79. Award reliant employees will have their wages increased annually through the AWR in the Federal jurisdiction and through the SWC in the Queensland jurisdiction.
80. State public sector employees have their wages set through a combination of enterprise bargaining or through SWC outcomes where these provide for a rate of pay that exceeds that provided in an agreement.
81. This wage setting overlap occurs through particular clauses contained in certified agreements and Minister Assisting the Premier Directive No. 12/12. A table outlining the number of agreements impacted is provided at Attachment 1.
82. The State submits neither these clauses nor Directive 12/12 were intended to produce a situation where despite the process of collective bargaining providing for increases to agreements, the SWC award increases would become payable.
83. Directive 12/12 has the effect of providing certainty as to the operation of SWC increases and wage increases in certified agreement-making. The Directive made clear that increases awarded through the SWC can only impact a State award, not a certified agreement itself.
84. Nevertheless, due to SWC outcomes and a number of other factors, this has led to a situation whereby State public sector employees may get both an Agreement increase and an Award increase in the course of a 12-month period.
85. For instance, an AO7 under the *Department of Education Certified Agreement 2022* received the award rate following the 2022 State Wage Case outcome of 4.6 % on 1 September 2022, and subsequently would have received a further 4 % increase upon certification of the agreement on 24 May 2023, before receiving a further 4 % increase to agreement rates on 1 September 2023 as well as Cost of Living Adjustment payments.

There is no need for further augmentation

86. The IR framework in Queensland system not only gives primacy to the collective bargaining process, but provides a direct path to arbitration where parties cannot reach agreement after a defined period.
87. The arbitration process supports the primacy of the collective bargaining process by allowing the parties access to the independent support of the Commission to reach an

³⁰ *Australian Hotels Association v and United Workers' Union* [2020] FWCFB 1574.

outcome on matters that cannot otherwise be agreed, while not negating those outcomes that have been agreed by the parties prior to the arbitration process.

88. Agreements in some cases have also led award variations by consent to ensure that the award continues to meet the needs of the workforce and reflect what is considered by the parties (and certified by the commission) as reflective of the prevailing employment conditions.
89. A recent example of this occurred in relation to the *Nurses and Midwives (Queensland Health) Award – State 2015* in 2022 where rolled up rates from a previous agreement were inserted in the award together with other changes in employment conditions which had been bargained for between the parties.³¹

The potential impact on bargaining if increase is applied across all awards

90. A variety of industrial mechanisms provide for the award rate to become payable in circumstances where it exceeds that of a certified agreement. That is an important protection where bargaining is not occurring or where there are significant delays in new agreements being certified. However, neither of these situations are current.
91. If the outcome of the AWR is flowed on to State public sector awards effective 1 September 2023 then based on an assessment of certified agreement rates at that date, 22 of 35 certified agreements would be impacted by the SWC.
92. Relevantly however, in principle agreement has been recently reached for the following agreements:
 - (a) The replacement to the *State Government Entities Certified Agreement 2019*;
 - (b) The replacement to the *Child Safety and Youth Justice Certified Agreement 2019*;
 - (c) The replacement to the *Queensland Parliamentary Services – Electorate Officers Certified Agreement 2019*; and
 - (d) The *Youth Detention Certified Agreement 2019*.
93. The agreement rates for each of these agreements are currently between 0.41% and 1.86% above the relevant awards for the majority of employees under these agreements, and have been negotiated with an operative date of 1 July 2023.
94. This means that the wage increase for each of the replacement agreements once

³¹ *Re application to include provisions, based on a certified agreement, in the Nurses and Midwives (Queensland Health) Award – State 2015* [2022] QIRC 010.

certified will be 4% above the previous agreement rate.

95. In considering the timeframes for drafting, approvals, consultation, ballot and certification, the State considers it more than likely that once certified the agreement rates of pay which have been negotiated for these employees in good faith by the parties, will have been superseded by the Award rates of pay in the event of a State Wage Case outcome in excess of 4.59%. The result being that the bargained outcome is usurped by the SWC.

Disposition

96. Effective 1 September, there ought to be:
- (a) a fair and reasonable increase in the QMW reflecting the prevailing economic conditions at the time the decision is made; and
 - (b) a fair and reasonable increase to state awards and work-related allowances reflecting the prevailing economic conditions at the time the decision is made. However, where the wages payable to employees or classes of employees under those awards relevant to the State public sector have been settled through bargaining or by an arbitration determination of the Commission, the increase should be 0%.

C J Murdoch KC

M J Brooks

Counsel for the State of Queensland

14 September 2023

Scan of impacts of clauses and 12/12

Agreement	Would a higher award rate (by virtue of the SWC) apply to employees covered by this Agreement either through the Agreement itself or through 12/12?	Agreement contains award or agreement whichever is higher clause yes or no	Award or agreement whichever is higher clause	Agreements where Directive 12/12 is applicable (i.e. public service employees under a certified agreement)
Tourism and Events Queensland Certified Agreement 2019 (CB/2020/16)	Yes	Yes	"1.3 Relationship with Parent Award... This Agreement shall be read and interpreted in conjunction with the <i>Tourism and Events Queensland Award – State 2025</i> . In the event of any inconsistency with the Award, the terms of this Agreement will take precedence. If the annual salary in the TEQ award adjusted for a 38 hour week is higher than the annual salary for the corresponding level in TEQ agreement, employees employed at that level shall be paid the award adjusted annual salary."	N/A
Youth Detention Centre Certified Agreement 2019 (CB/2020/56)	Yes	Yes	"2.19 No Further Claims... (6) It is a term of this Agreement that no person covered by this Agreement will receive a rate of pay which is less than the corresponding rate of pay in the relevant parent award."	Yes
Stadiums Queensland Staff Certified Agreement 2019 (CB/2020/35)	Yes	Yes	"1.9 Relationship to Awards... 1.9.2 It is a term of this Agreement that no employee will receive a rate of pay, which is less than the corresponding rate of pay, in the <i>Stadiums Queensland Employees Award – State 2016</i> ."	N/A
Queensland Ambulance Service Certified Agreement 2022 (CB/2023/9)	Yes	Yes	"5. No Further Claims... 5.9 No employee covered by this Agreement will receive a base wage rate for their classification and increment which is less than the base wage rate prescribed for the corresponding classification and increment in clause 12.2 of the Award applicable to their work."	N/A
Offices Certified Agreement 2018 (CB/2020/91)	Yes	Yes	"2.3 No Further Claims... Notwithstanding sub-clause (3) herein, it is a term of this Agreement that no person covered by this Agreement will receive a rate of pay which is less than the corresponding rate of pay in the relevant parent award."	Yes
Transport and Main Roads Enterprise Bargaining Certified Agreement 2019 (CB/2020/166)	Yes	Yes	"2.19 Award Maintenance... It is a term of this Agreement that no person covered by this Agreement will receive a rate of pay, which is less than the corresponding rate of pay in the relevant parent award."	Yes
Transport and Main Roads Operational Employees' Certified Agreement 2019 (CB/2020/181)	Yes	No		Yes
Maritime Aircrew 3rd Maritime Operations Certified Agreement 2018 (CB/2020/85)	Yes	No		Yes
Parliamentary Service Electorate Staff Certified Agreement 2020 (CB/2020/64)	Yes	Yes	"2.7 No Further Claims... (6) It is a term of this Agreement that no person covered by this Agreement will receive a rate of pay which is less than the corresponding rate of pay in the relevant parent award."	N/A
Build Field Staff Certified Agreement 2019 (CB/2020/74)	Yes	Yes	"1.10 No Further Claims... (3) The following changes may be made to employees' rights and entitlements during the life of the FSA10: (a) general rulings issued by the Queensland Industrial Relations Commission (QIRC) that provide conditions that are not less favourable than current conditions; and (b) reclassifications. (7) Notwithstanding sub-clause (3) herein, it is a term of this Agreement that no person covered by this Agreement will receive a rate of pay which is less than the corresponding rate of pay in the <i>BIMS Award</i> ."	Yes
Build Office Staff Certified Agreement 2019 (CB/2022/128)	Yes	Yes	"2.3 No Further Claims... (3) The QIRC State Wage Increases awarded during 2019 and thereafter will not be in addition to the wage increases provided by this Agreement. (6) Notwithstanding sub-clause (3) herein, it is a term of this Agreement that no person covered by this Agreement will receive a rate of pay which is less than the corresponding rate of pay in the relevant parent award."	Yes
Department of Education State School Teachers' Certified Agreement 2024 (CB/2022/135)	Yes	Yes	"2.15 No Further Claims... (6) It is a term of this Agreement that no person covered by this Agreement will receive a rate of pay which is less than the corresponding rate of pay in the relevant parent award."	Yes
Queensland Police Service Protective Services Officers Certified Agreement 2019 (CB/2020/160)	Yes	Yes	"1.14 Award and Certified Agreement wages... (b) However, where a State Wage Case has the effect that an award provides for wages which are greater than a certified agreement that applies to the employees covered by the Award, the Award wages prevail. (c) It is a term of this agreement that no Teacher Aide will receive a rate of pay which is less than the corresponding rate of pay in the <i>General Employees (Queensland Government Departments and Other Employees Award – State 2025</i> ."	Yes
Department of Education Teacher Aides' Certified Agreement 2018 (CB/2020/24)	Yes	Yes	"2.3 No Further Claims... (3) The Queensland Industrial Relations Commission State Wage Increases awarded during 2018 and thereafter will not be in addition to the wage increases provided by this Agreement. (4) Notwithstanding sub-clause (3) herein, it is a term of this Agreement that no person covered by this Agreement will receive a rate of pay which is less than the corresponding rate of pay in the relevant parent award."	Yes
Office of the Information Commissioner Certified Agreement 2018 (CB/2020/90)	Yes	Yes	"2.6 Award Maintenance 2.6.2 It is a term of this Agreement that no person covered by this Agreement will receive a rate of pay which is less than the corresponding rate of pay in the Award."	N/A
Aboriginal & Torres Strait Islander Health Workforce (Qld Health) Certified Agreement (No. 1) 2019 (CB/2020/49)	Yes	Yes	"2.6 Award Maintenance 2.6.6 It is a term of this Agreement that no person covered by this Agreement will receive a rate of pay which is less than the corresponding rate of pay in the relevant parent award."	Yes
Department of Education Certified Agreement 2019 (CB/2020/32)	Yes	Yes	"2.9 No Further Claims... 2.9.6 It is a term of this Agreement that no person covered by this Agreement will receive a rate of pay which is less than the corresponding rate of pay in the relevant parent award."	N/A
Queensland Health, Building, Engineering & Maintenance Services Certified Agreement (No. 7) 2019 (CB/2020/93)	Yes	Yes	"2.6 Award maintenance... 2.6.2 It is a term of this Agreement that no person covered by this Agreement will receive a rate of pay which is less than the corresponding rate of pay in the relevant parent award."	N/A

