QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 2016 s 458

The Australian Workers' Union of Employees, Queensland
Applicant

and

State of Queensland
Respondent

Matter No. B/2023/46

APPLICATION FOR A DECLARATION OF GENERAL RULING - STATE WAGE CASE

SUBMISSIONS IN REPLY OF THE AUSTRALIAN WORKERS' UNION OF EMPLOYEES, QUEENSLAND

Introduction

1. In accordance with the Directions Order of 31 July 2023, the Australian Workers' Union of Employees, Queensland ("**AWUEQ**") makes these submissions in reply to the submissions of the State of Queensland filed 14 September 2023.

2. The AWUEQ has had the benefit of reading the draft submissions in reply of the QCU and Together, and agrees with those submissions.

3. The AWUEQ does not agree with the State's submission that the Commission should exercise its discretion under section 459(2) of the IR Act so that agreement-covered employees should have their award wages increased by 0%, and make the following submissions in support of the Commission exercising its discretion to apply the State Wage Case decision to all awards.

The role of enterprise bargaining in setting wages

4. The State's submissions make multiple references to the term "primacy of collective bargaining.[1]

5. The State's submissions provide no statutory or other cogent basis for the claimed "primacy of collective bargaining". That phrase does not appear in the *Industrial Relations Act 2016* (Qld) ("**IR Act**"),[2] and, in our submission, this broad term cannot be imported into the IR Act by any proper construction of the Act's objects.

---

[1] Submissions of the State of Queensland at [11], [47], [87].
[2] cf IR Act s 4(h)(ii), which refers to 'the primacy of collective agreements over individual agreements'.

Bargaining positions of parties

6. The State claims that applying SWC outcomes to awards for agreement-covered employees "distorts the starting position for wage increases in bargaining".[3]

7. We do not agree with that claim, and submit that enterprise bargaining can only occur effectively if bargaining starts from a basis of properly-maintained award rates that provide a fair and reasonable position for parties to a proposed collective agreement.

8. The State says in their submissions that "[a]ward reliant employees will have their wages increased annually through the AWR in the Federal jurisdiction and through the SWC in the Queensland jurisdiction".[4]

9. We agree with this proposition but note that this claim is silent on what we submit is a critically important reason for maintaining awards in both the federal and state systems, that being for awards to provide a meaningful platform for employees to bargain in both jurisdictions. We say that this meaningful platform is underpinned by the Better of Overall Test in the federal jurisdiction, and the No Disadvantage Test in the Queensland system.

10. If the Commission accepts the State's arguments, we submit that the bargaining positions for many employees for their next collective agreement will be significantly worse than it would be had the SWC decision been applied to their awards. We say this on the basis that their award rates will be lower, and significantly so in a high-inflation period such as we are currently in, than they would be if the QIRC had applied the State Wage Case outcome to their awards.

11. Accordingly, the AWUEQ submits that the real distortion in bargaining position would result from the Commission deviating from the long-established practice of applying the SWC outcome to awards underpinning the wages for agreement-covered employees. The State's submissions in this respect should be rejected.

Safety net clauses in agreements

12. We submit that collective bargaining outcomes would be undermined by any decision of the Commission not to increase award rates for workers solely because those workers are covered by collective agreements.

13. Specifically, Attachment 1 to the State's submissions identifies workers who have negotiated clauses in their collective agreements so that their wages will not be lower than wages provided for in their award. Those agreements, including those clauses, have been agreed between employees and the State of Queensland and we submit that there is no cogent reason provided by the State that means that the Commission should disturb those bargains.

---

[3] Submissions of the State of Queensland at [73]-[77].
[4] Submissions of the State of Queensland at [79].

14. Counter this, the State submits that “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.” We do not agree with that submission. Clauses of this nature were specifically added by unions to ensure that awards provided a safety net against low agreement wage rises, similar to the safety net provided by section 206 of the *Fair Work Act 2009* (Cth), which has no equivalent in the IR Act.

Conclusion

15. The AWUEQ submits that the State has provided no proper basis for the Commission to exercise its discretion under section 459(2) of the IR Act so that agreement-covered employees should have their award wages increased by 0%.

The Australian Workers' Union of Employees, Queensland
28 September 2023