

28 SEP 2023

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION
Industrial Relations Act 2016



Queensland Council of Unions

Applicant

v

State of Queensland

Respondent

Matter No. B/2023/48

**APPLICATION FOR A DECLARATION OF GENERAL RULING
STATE WAGE CASE 2023**

QUEENSLAND COUNCIL OF UNIONS – SUBMISSIONS IN REPLY

Introduction

1. The Queensland Council of Unions (the QCU) makes the following submissions in reply to the submissions filed by the Local Government Association of Queensland (the LGAQ) and the State of Queensland (the State) on 14 September 2023.

The LGAQ Position

2. The QCU note that the LGAQ submit that:
 - (a) the ‘economic circumstances that exist throughout all of the State... are not confined to employers and employees in the Local Government sector’,¹ and
 - (b) ‘local government employees in Queensland are fully entitled to fair and responsible wage increases’,² and

¹ Submission of the Local Government Association of Queensland, 14 September 2023 [16].

² Ibid [17].

- (c) '[t]he utilisation of Local Government Awards throughout the sector varies significantly',³ but that 'in some cases... the award is the standard upon which wages and conditions are paid',⁴ and
- (d) '[the] variable impacts of an increase in award rates should [not] be a factor that influences the determination of the Full Bench in relation to the quantum of any increase in wages in these proceedings',⁵ and
- (e) '[l]ocal authorities throughout Queensland... [have] difficulty attracting and retaining experienced and capable staff' and that 'the only remedy available to [address] that circumstance is to ensure that wages paid in the local government sector are kept as high as can be reasonably afforded by councils',⁶ and
- (f) 'a reasonable and fair increase to the underpinning awards will significantly improve the circumstances of the lowest paid'.⁷
3. However, we note that the LGAQ does not make any submissions in relation to what they consider to be a 'reasonable and fair' increase,⁸ nor do they make any submissions in relation to incapacity to pay.⁹ The LGAQ also seeks to rely on the information and submissions provided by other parties to this matter in relation to the economic considerations.¹⁰ These submissions, at least as far as all of the Applicants are concerned, are primarily underpinned by the expert evidence of Adept Economics and Professor Emeritus David Peetz (Prof. Peetz).¹¹
4. The QCU therefore submits that the LGAQ has not presented any cogent evidence to support a departure from the approach of the Fair Work Commission (the FWC), and that their submissions are generally in support of the increases sought by the Applicants in this matter following consideration of the expert evidence.

The State's Position

5. The QCU note that, in summary, the State's position is as follows:

³ Ibid [19].

⁴ Ibid [20].

⁵ Ibid [23].

⁶ Ibid [25]–[26].

⁷ Ibid [31].

⁸ Ibid [29].

⁹ Ibid [16].

¹⁰ Ibid [28].

¹¹ Which demonstrates that there is no convincing basis for considering the FWC's economic analysis does not apply to Queensland (Exhibit DP-1 [163]).

- (a) '[T]here should be a fair and reasonable increase to the [Queensland minimum wage]... without a realignment to the C13 [classification] rate',¹² and
 - (b) The economic conditions in Queensland 'support a lower increase than that provided in the [Annual Wage Review] decision',¹³ and
 - (c) 'In the State public sector, there are limited groups of Award reliant workers who would be directly impacted' by the State Wage Case',¹⁴ and
 - (d) 'The State supports a fair and reasonable increase for award-reliant low-paid employees',¹⁵ but seeks a 0% increase to award rates for all employees or classes of employees whose wages 'have been settled through bargaining or by an arbitration determination of the Commission',¹⁶
6. The State rely on two principal submissions in support of their position:
- (a) That the economic conditions have changed since the FWC made their Annual Wage Review (AWR) decision,¹⁷ and
 - (b) That should the Commission adopt the FWC's decision, some public sector employees will receive a further wage increase under the terms of their certified agreement because they have bargained in good faith and agreed with the State that they will not receive a rate of pay under their certified agreement which is less than the corresponding rate of pay in their award.¹⁸
7. The QCU submits that the State's position is misguided, and we provide the following to support this view.

1 No Sufficient Evidence to Warrant Deviating from Prof. Peetz's Economic Analysis

8. The State's economic submissions principally rely on the affidavit of Mr Dennis Molloy, Deputy Under Treasurer, Queensland Treasury (Mr Molloy). At [13] to [26] of his affidavit, Mr Molloy provides a summary of the 'prevailing economic conditions in Queensland'. Attached to these submissions and marked 'Annexure A' is a table comparing the information provided by Mr Molloy with the economic conditions reported and considered by the FWC and/or Prof. Peetz when forming their respective views. It is evident from this comparison that the information provided by Mr Molloy is almost entirely consistent with

¹² State of Queensland Outline of Submissions for the State Wage Case Hearing, 14 September 2023 [16(a)].

¹³ Ibid [34].

¹⁴ Ibid [3].

¹⁵ Ibid [11].

¹⁶ Ibid [16(b)].

¹⁷ See, eg, ibid [20].

¹⁸ See, eg, ibid [80]–[85].

the economic conditions reported and considered by Prof. Peetz and/or the FWC at the time of making their AWR decision.

9. Further, the QCU note that the Australian Bureau of Statistics (the ABS) recently reported that the monthly Consumer Price Index (CPI) indicator rose 5.2% annually to August 2023,¹⁹ and that this appears to suggest that CPI is still tracking towards the forecasted 4.5% in December 2023 as reported in Table 14.4 in the *Statistical Report – Australian Wage Review 2022-23*.

10. The QCU therefore submits that Prof. Peetz’s analysis is still relevant. To iterate, Prof. Peetz advises the following:

“[I]t would take quite a large difference between a Queensland estimate and the national estimate on any particular matter for me to conclude that there was potentially something specific about Queensland that raised doubts about the relevance of the FWC’s analysis of the economic situation to Queensland. I see no such large differences in the patterns for Queensland and nationally, and therefore conclude that, whatever the rights or wrongs of the FWC’s analysis, there is no basis for considering it does not apply to Queensland.”²⁰

11. In the alternative, the QCU submits that any changes in the economic conditions since the FWC made their decision are not sufficient to warrant the Commission deviating from Prof. Peetz’s economic analysis and in turn the FWC’s decision. This accords with the view expressed by the Full Bench in the *State Wage Case 2014* about a similar matter.²¹

2 *The State’s Position Undermines Entitlements That Were Bargained in Good Faith*

12. The State submits that, in determining the relevant State Wage Case increase to award rates, ‘the whole “basket” of condition[s] received by employees are relevant and must be considered’,²² but then asks the Commission ‘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’.²³

¹⁹ <https://www.abs.gov.au/media-centre/media-releases/monthly-cpi-indicator-rose-52-annually-august-2023>.

²⁰ Exhibit DP-1 [129].

²¹ *Declaration of General Ruling (State Wage Case 2014)* [2014] QIRC 129 [30].

²² State of Queensland Outline of Submissions for the State Wage Case Hearing, 14 September 2023 [12].

²³ *Ibid* [11].

13. The State further submits that ‘98.2% of workers in the State industrial relations jurisdiction successfully engage in collective bargaining to settle their wages and conditions’ and that ‘further augmentation through the State Wage Case is not necessary’.²⁴
14. However, the ‘whole basket of conditions’ received by most State public sector employees includes a certified agreement entitlement, that was bargained in good faith and agreed to by the State, that ensures no employee covered by the relevant agreement receives a base rate of pay which is less than the corresponding rate of pay in the relevant parent award.²⁵
15. It is only as a direct result of this agreed entitlement that any ‘further augmentation’ may occur. Had the State not agreed to the inclusion of the relevant clauses in most State public sector certified agreements, the certified agreement rates would prevail over the award rates irrespective of whether the award rates were higher.²⁶ The matter of award rates exceeding certified agreement rates would then become a matter relevant to the ‘no-disadvantage test’ for the making of any subsequent certified agreement.²⁷
16. As can be seen in the affidavit of Ms Veronica Semple (Ms Semple), representative unions of the affected employees considered the entitlement to be part of the offer made by the State to settle certified agreements, including as they relate to wages.²⁸
17. It is disingenuous for the State to now submit to the Commission that the consequence of a certified agreement commitment, which was recently bargained and agreed to in good faith, should be a moderating factor in the Commission’s determination of fair and just minimum wages in modern awards. The State repeatedly emphasise ‘the primacy of bargaining’ yet they seek the Commission’s assistance to evade a bargained entitlement. In effect, they also seek the Commission’s assistance to reduce the entitlements of employees under their relevant certified agreement, something they have agreed not to do for the life of the relevant certified agreements.²⁹
18. The Commission relevantly considered this matter in the *State Wage Case 2018*, which it described as an ‘indirect effect’ of the State Wage Case and ‘a result of decisions made by the employers of such employees, not [the] Commission’.³⁰ While the QCU concede that the *Industrial Relations Act 2016* (the Act) has been amended since 2018,³¹ we implore the

²⁴ Ibid [15].

²⁵ Ibid [81], Attachment 1. The State has identified only 4 public sector certified agreements that don’t include this entitlement, and in principle agreement has been reached on one of them to include this entitlement.

²⁶ *Industrial Relations Act 2016* s 19.

²⁷ Ibid s 210.

²⁸ Affidavit of Veronica Therese Semple filed 28 September 2023 [23]–[25].

²⁹ Ibid [18]–[20].

³⁰ *Declaration of General Ruling (State Wage Case 2018)* [2018] QIRC 113 [45].

³¹ The *Industrial Relations Act 2016* was amended on 3 November 2022 and now includes s 459A.

Commission to adopt the same approach at this stage of the proceedings for the following reasons:

- (a) The jurisdictional facts identified in s 459A(1)(a) and (b) of the Act do not exist because the Commission has not yet made a general ruling under s 458(1)(a) of the Act;³² and
- (b) Therefore, the discretion under s 459A(2) of the Act cannot yet be triggered;³³ and
- (c) The onus rests on the State to seek an order to persuade the Full Bench that it has jurisdiction to exercise its discretion under s 459A(2) of the Act;³⁴ and
- (d) This matter has pragmatically been scheduled by the Commission to be dealt with after the State Wage Case Hearing;³⁵ and
- (e) Therefore, the relevant consideration for the Commission at this stage of the proceedings is if it should exercise its discretion under section 459(2) of the Act; and
- (f) The Commission should not be persuaded to do so because:
 - (i) doing so will undermine a certified agreement entitlement that was bargained in good faith which has the potential to break down trust and confidence in the employment relationship of the affected employees and risks causing disputation with the unions that represent them;³⁶ and
 - (ii) it accords with the functions of the Commission to promote cooperative and productive workplace relations and take measures to prevent disputes;³⁷ and
 - (iii) the issue described by the State is entirely within their control to remedy, or at the very least attempt to remedy, but they have made no attempt to do so (e.g., numerous certified agreements have been bargained and made since the last State Wage Case that have maintained the relevant entitlement, including at least 8 since these proceedings commenced,³⁸ the State offered

³² *Declaration of General Ruling (State Wage Case 2023)* [2023] QIRC 263 [12].

³³ *Ibid* [18].

³⁴ *Ibid* [20].

³⁵ Directions Order [10]–[13].

³⁶ Affidavit of Veronica Therese Semple filed 28 September 2023 [26]–[27].

³⁷ *Industrial Relations Act 2016* s 447.

³⁸ *In the making of the Office of the Queensland Ombudsman Certified Agreement 2022* [2023] QIRC 177; *In the making of the Queensland Health Building, Engineering & Maintenance Services Certified Agreement (No. 8) 2022* [2023] QIRC 179; *In the making of the WorkCover Employing Office – Certified Agreement 2022* [2023] QIRC 198; *In the making of the QBuild Field Staff Certified Agreement 2022* [2023] QIRC 221; *In the making of the QFleet Certified Agreement 2022* [2023] QIRC 223; *In the making of the Queensland Police Service Protective Services Officers Certified Agreement 2022* [2023] QIRC 244; *In the making of the Tourism and Events Queensland Certified Agreement 2022* [2023] QIRC 254; *In the making of the Transport and Main Roads Certified Agreement 2022* [2023] QIRC 268.

to maintain the entitlement at the very beginning of bargaining with relevant unions where it already existed in certified agreements,³⁹ in principle agreement has recently been reached for at least one certified agreement to insert a new clause that prescribes this entitlement,⁴⁰ and Directive 12/12 has neither been revoked or amended); and

- (iv) the relevant entitlement is a longstanding provision,⁴¹ and has existed in public sector certified agreements since at least 2003;⁴² and
- (v) there has been no diminution in collective bargaining because of the issue described by the State. It was identified in the *State Wage Case 2018* (some 5 years ago),⁴³ and has been occurring for at least 10 years,⁴⁴ and since the *State Wage Case 2018* there has been two rounds of collective bargaining for most public sector employees and no evidence of any QCU affiliate opting out of collective bargaining; and
- (vi) the State has not presented an ‘incapacity to pay’ argument and would likely be unable to demonstrate any serious or extreme economic adversity given the record surplus in 2022-23 and surpluses forecast for 2024-25, 2025-26 and 2026-27.⁴⁵

3 No Primacy Attached to Any of the Relevant Matters the Commission Must Consider

19. The State makes several submissions about the potential impact on collective bargaining as part of their rationale for seeking no increase in modern award minimum wages.⁴⁶ However, the QCU submit that there is no primacy attached to this matter over any of the other relevant matters the Commission must consider in determining the State Wage Case.

20. The Commission must maintain minimum wages in modern awards that are fair and just,⁴⁷ and in doing so it must have regard to the matters prescribed in s 142(2) of the Act. The

³⁹ Affidavit of Veronica Therese Semple filed 28 September 2023 [23].

⁴⁰ State of Queensland Outline of Submissions for the State Wage Case Hearing, 14 September 2023 [81], Attachment 1.

⁴¹ Affidavit of Veronica Therese Semple filed 28 September 2023 [24].

⁴² We have reviewed Together Queensland’s draft submissions in reply and understand they have provided evidence that this entitlement has existed since 2003; see cl 2.3(2) of the *State Government Departments Certified Agreement 2003*.

⁴³ *Declaration of General Ruling (State Wage Case 2018)* [2018] QIRC 113 [45].

⁴⁴ We have reviewed Together Queensland’s draft submissions in reply and understand they have provided evidence of this issue dating back to 2013.

⁴⁵ Affidavit of Mr Dennis Patrick Molloy [48].

⁴⁶ See, eg, State of Queensland Outline of Submissions for the State Wage Case Hearing, 14 September 2023 [90]–[95].

⁴⁷ *Industrial Relations Act 2016* s 142(1).

need to promote collective bargaining is not prescribed as a matter the Commission ‘must have regard to’. However, the Commission must consider the main purpose of the Act in making its decision,⁴⁸ and in turn the ways in which the main purpose of the Act is to be achieved (which includes ‘promoting collective bargaining’).⁴⁹

21. The Act does not prescribe any primacy to the matters in s 4 of the Act over the matters in s 142(2) of the Act, and in so far as they are relevant to the context of the State Wage Case, no particular primacy is attached to any of the matters prescribed in s 4 of the Act over other matters prescribed in that section (e.g., ‘promoting collective bargaining’ is no more important of a consideration than ‘providing for a fair and equitable framework of employment standards, awards, determinations, orders and agreements’ or ‘promoting productive and cooperative workplace relations including by recognising mutual obligations of trust and confidence in the employment relationship’).⁵⁰
22. The QCU submits that it is therefore incumbent on the Commission to make a determination that appropriately balances all of the relevant considerations (including those in s 4 and s 142(2) of the Act), and where the evidence on these matters demonstrates, on balance, that an increase is required to maintain fair and just minimum wages in modern awards, an increase ought to be awarded by the Commission.
23. The QCU further submits, in consideration of the expert evidence of Prof. Peetz and the submissions made at [8]–[18] above, that:
 - (a) an increase is required to ensure that fair and just minimum wages in modern awards are maintained; and
 - (b) the increase ought to mirror the FWC’s AWR decision as there are no cogent reasons not to do so; and
 - (c) the potential impacts on bargaining as described by the State should not be a factor that moderates the quantum of the increase.

4 The State’s Position Would be More Deleterious to Collective Bargaining

24. The potential impact on collective bargaining raised by the State, at [90] to [95] of their submissions, should not be given any significant weight by the Commission. The potential impact the State describes merely reflects what was bargained and agreed to in good faith.

⁴⁸ Ibid s 531(5).

⁴⁹ Ibid s 4.

⁵⁰ Ibid s 4(d), (e) and (h).

The bargained outcome is not ‘usurped’ by the State Wage Case as asserted by the State,⁵¹ relevant employees will simply be provided with the appropriate wage rates prescribed in their certified agreement (i.e., they will receive the bargained outcome).

25. The State’s position however undermines agreements that were struck in good faith,⁵² and breaks down trust and confidence in bargained outcomes.⁵³ This not conducive to cooperative and productive workplace relations and may result in unions having to review how they approach bargaining in the future.⁵⁴
26. The QCU therefore submits that the State’s position would be more deleterious to collective bargaining than any impact caused by the Applicants’ position.

5 Prevailing Employment Conditions

27. The State submits that the outcomes of bargaining ‘should be considered as a leading indicator of the prevailing employment conditions of employees’,⁵⁵ and that ‘it is reasonable for the Commission to be less inclined to amend award rates for public sector awards’ because relevant employees have bargained wages and employment conditions in excess of those prescribed in the award.⁵⁶
28. The QCU submits that this is incongruous with the Commission’s ‘overarching responsibility to ensure, amongst other things, that employees are covered by fair and reasonable wages that allow them to participate in society and that those who do not benefit from bargaining are not left behind’⁵⁷. However unlikely the Commission may view the circumstances to be, there is the prospect that employees who currently benefit from bargaining may not in the future. It is therefore fundamental to a fair and equitable framework of employment standards, awards, determinations, orders and agreements that fair and just minimum wages continue to be maintained in underpinning awards.⁵⁸ If they are not, there can be no doubt that relevant employees will be ‘left behind’ in the unlikely event they revert to modern award minimum wages.

⁵¹ State of Queensland Outline of Submissions for the State Wage Case Hearing, 14 September 2023 [95].

⁵² See [12]–[18] of these submissions.

⁵³ Affidavit of Veronica Therese Semple filed 28 September 2023 [26]–[28].

⁵⁴ Ibid [28].

⁵⁵ State of Queensland Outline of Submissions for the State Wage Case Hearing, 14 September 2023 [60].

⁵⁶ See, eg, Ibid [67].

⁵⁷ See, eg, *Declaration of General Ruling (State Wage Case 2022)* [2022] QIRC 340 [22].

⁵⁸ *Industrial Relations Act 2016* s 4(d).

29. Further, it appears to the QCU to be an absurdity for enhanced employment conditions, as prescribed in a prevailing industrial instrument,⁵⁹ to be used as the basis for freezing award wages, particularly in a time when real wage growth is a significant problem.⁶⁰
30. The State infer that several ‘additional benefits’ received by public sector employees, including conditions of employment that are prescribed in modern awards as supplementing the Queensland Employment Standards (e.g., parental leave and long service leave entitlements), should be a factor that moderates any increase to minimum wages in public sector awards.⁶¹
31. However, many of the ‘additional benefits’ outlined in the State’s submissions reflect longstanding employment arrangements that have not previously moderated State Wage Case increases. The QCU submits that the Commission should adopt the same approach in 2023.

6 Award Variations Made by Consent

32. The State support their position, in part, with reference to recent award variations made by consent.⁶² The QCU submits the following to clarify the circumstances:
- (a) The variation to the *Nurses and Midwives (Queensland Health) Award – State 2015* (the Nurses and Midwives Award) was made following a bargained agreement between the Queensland Nurses and Midwives’ Union of Employees and the State (Queensland Health);⁶³ and
 - (b) The rates included in the Nurses and Midwives Award were ordinary rates and not ‘rolled up rates’;⁶⁴ and
 - (c) The rates included in the Nurses and Midwives Award were ‘around 9.1 per cent to 9.3 per cent’ less than the relevant certified agreement at the time;⁶⁵ and
 - (d) The relevant parties to the Nurses and Midwives Award agreed that the rates included would not be a disincentive to bargaining.⁶⁶

⁵⁹ *Industrial Relations Act 2016* s 19.

⁶⁰ *Australian Government Submission to the Fair Work Commission Annual Wage Review 2022-23* (31 March 2023) [6]; *Queensland Government Submission to the Fair Work Commission Annual Wage Review 2022-23* (March 2023) 16.

⁶¹ State of Queensland Outline of Submissions for the State Wage Case Hearing, 14 September 2023 [68 – [71].

⁶² *Ibid* [88]–[89]; *Re: Application to include provisions, based on a certified agreement, in the Nurses and Midwives (Queensland Health) Award - State 2015* [2022] QIRC 010.

⁶³ Affidavit of Veronica Therese Semple filed 28 September 2023 [5].

⁶⁴ *Ibid* [15].

⁶⁵ *Ibid* [12].

⁶⁶ *Ibid*.

33. For the reasons set out at [32] above, the QCU submits that this matter should not be considered by the Commission to be a moderating factor. Further, the Commission should relevantly consider this matter in the context of the State's current Public Sector Bargaining Framework which seeks to prevent unions from making these types of award variations in future.⁶⁷

7 *Auxiliary Firefighters' Are Award Reliant*

34. At [43] of their submissions, the State contends that 'with limited exception, all public sector employees are subject to the process of enterprise bargaining' and then lists particular cohorts of public sector employees it says are the exceptions. However, the State has failed to include employees covered by the *Auxiliary Firefighters' Award – State 2016* (Auxiliary Firefighters).

35. It is not clear if this omission has been made in error, or if the State seek for the Commission to exclude Auxiliary Firefighters from the State Wage Case 2023 General Ruling. The QCU therefore submit, for the record, that Auxiliary Firefighters do not engage in collective bargaining and are therefore award reliant. Accordingly, their wage rates are only adjusted annually by the State Wage Case.

Other Relevant Matters

1 *The Rate of Collective Bargaining in the Queensland Public Sector is Comparable to Other Jurisdictions*

36. The State submits that the high rate of collective bargaining in the Queensland public sector (98%) is a relevant consideration in support of their position for a 0% increase to modern award minimum wages.⁶⁸ However, this is not unique to the Queensland jurisdiction.

37. In his expert evidence, Prof. Peetz reports that 'national agreement coverage (including both federal and state jurisdiction agreements) in the public sector in 2021 remained above 90 per cent in every mainland state except New South Wales (where several public sector agreements are classed by the ABS as 'awards')'.⁶⁹ This includes jurisdictions such as South Australia that, much like Queensland, cover State and Local Government sectors

⁶⁷ Ibid [16]–[17].

⁶⁸ State of Queensland Outline of Submissions for the State Wage Case Hearing, 14 September 2023 [19], [53].

⁶⁹ Exhibit DP-1 [126].

only,⁷⁰ and the QCU notes that the South Australian Employment Tribunal (the SAET) still views AWR decisions as ‘a sound basis to consider what increase should be made to minimum wages’.⁷¹

2 *An Interim Step Regarding the Queensland Minimum Wage is Reasonable*

38. Regarding the Queensland minimum wage, the State provide the Western Australian Industrial Relations Commission’s (the WAIRC) *2023 State Wage Case* decision as an example for the Commission not to take the interim step of realigning the Queensland minimum wage with the C13 classification rate.⁷² However, unlike the national minimum wage and the Queensland minimum wage, the minimum wage in Western Australia was established with some reference to the needs of the low paid. This is explained in the WAIRC’s decision at [88]:

“As opposed to the setting of the NMW, which the Fair Work Commission in its *Annual Wage Review 2022-23* decision at [107] noted was established without any reference to needs of the low paid, that is not the case in this jurisdiction. In the case of the rate set under the *MCE Act* prior to 2002, whilst in the absence of specific statutory criteria at the time, various approaches were adopted by the Commission in its recommendations to the Minister, they broadly included an assessment of the needs of an unskilled 21 year old fulltime employee, based on surveys of household expenditure; rates of pay established in both State and National Wage Cases; and an assessment of community wage movements generally (See for example the *39th Annual Report of the Chief Commissioner of the Western Australian Industrial Relations Commission 1 July 2001 to 30 June 2002* at pp 11-13)”.

39. Further, there is a nexus between the minimum wage and the minimum award rate in Western Australia that does not exist in the Queensland jurisdiction.⁷³ When the Queensland minimum wage was established in 1997, it ‘was not inserted automatically in all awards, but was included only on application’ and ‘[a]s a result there [were] a number of awards without this new minimum wage’, including ‘a small number of awards that [had] minimum wages below the “minimum wage” because of this process’.⁷⁴

⁷⁰ *State Wage Case 2022* [2022] SAET 166 [54].

⁷¹ *Ibid* [90].

⁷² State of Queensland Outline of Submissions for the State Wage Case Hearing, 14 September 2023 [39]; 2023 WAIRC 00330.

⁷³ 2023 WAIRC 00330 [87]–[91].

⁷⁴ Industrial Relations Taskforce, *Review of Industrial Relations Legislation in Queensland*, December 1998 40.

40. The QCU therefore submits that the ‘history and legislative setting’ of the Queensland minimum wage shares more similarities to the national minimum wage than the minimum wage in Western Australia. It is for this reason that an interim step, such as realigning the Queensland minimum wage with the C13 classification rate, is reasonable.
41. As stated at [40] of our initial submissions, we accept a ‘wider review’ of the Queensland minimum wage is required to ensure it is appropriately set having proper regard to the needs of the low paid. A review of this nature will require considerable time and careful consideration, including of any outcomes arising from the FWC’s ‘wider review’ of the national minimum wage. However, this should not prevent a reasonable interim step being taken by the Commission, particularly given the circumstances in Queensland are similar to the circumstances described in the AWR decision.

3 *Western Australian 2023 State Wage Case Decision is Not Relevant*

42. At [23] of their submissions, the State submits the WAIRC’s *2023 State Wage Case* decision as an example for the Commission to diverge from the FWC’s AWR decision.⁷⁵ However, the Commission should not be persuaded by this example for the following reasons:

- (a) The Western Australian industrial relations system (the WA system) is markedly different than Queensland covering, in addition to Local Government employers and State public sector agencies:
- (i) Private sector businesses that operate as sole traders, unincorporated partnerships, or unincorporated trust arrangements; and
 - (ii) Individuals who are household employers who personally and directly employ someone to provide domestic services in a private home and their employees; and
 - (iii) Incorporated associations and other not-for-profit organisations that are not constitutional corporations and their employees;⁷⁶ and
- (b) There is a high level of award reliance in industry sectors such as retail and accommodation and food services in the unincorporated sectors in the WA system;⁷⁷ and

⁷⁵ 2023 WAIRC 00330.

⁷⁶ See <https://www.commerce.wa.gov.au/labour-relations/guide-who-wa-state-system>.

⁷⁷ 2023 WAIRC 00330 [45].

- (c) Agreement making in the unincorporated small business sector in the WA system is very low;⁷⁸ and
- (d) The relevant impact on small businesses' capacity to pay for award increases was a key consideration of the WAIRC;⁷⁹ and
- (e) Inflation was tracking lower in Western Australia than nationally,⁸⁰ whereas Queensland has followed broadly similar patterns over recent years to the circumstances nationally and experienced a greater gap in inflation between non-discretionary and discretionary items than nationally in recent quarters.⁸¹

4 *South Australian State Wage Case 2022 Decision is Not Relevant*

43. At [24] of their submissions, the State submits the SAET's *State Wage Case 2022* decision as an example for the Commission to diverge from the FWC's AWR decision.⁸² However, the Commission should not be persuaded by this example for the following reasons:

- (a) The SAET expressed the view that 'the conclusions reached by FWC Expert Panels, in their Annual Review proceedings, are arrived at after careful and thorough analysis of cogent evidence based on exhaustive statistical data and on comprehensive submissions',⁸³ and
- (b) The SAET expressed the view that '[i]n the South Australian context, and within the operation of the FW Act, it is evident that in arriving at its conclusions the FWC Expert Panel took into account information regarding South Australia... [and] we are therefore confident, that the Panel considered, and made its decisions, with the whole of Australia in mind, including South Australia';⁸⁴ and
- (c) The SAET concluded that 'the 2021-22 Review decision provides a sound basis to consider what increase should be made to minimum wages... [and we] see no cogent reason therefore to depart from the exhaustive and careful analysis of all relevant factors as undertaken by the FWC Expert Panel in its 2021-22 Review decision',⁸⁵ and

⁷⁸ Ibid.

⁷⁹ 2023 WAIRC 00330 [56]–[58], [92].

⁸⁰ Ibid [94].

⁸¹ Exhibit DP-1 [108].

⁸² *State Wage Case 2022* [2022] SAET 166.

⁸³ Ibid [88].

⁸⁴ Ibid [89].

⁸⁵ Ibid [90].

(d) The SAET received submissions that they ‘should accept modifications to the principles enunciated in the 2021-22 Review decision, in South Australia, with regards to minimum award wages’ which was not opposed by the State Government who considered ‘that the 0.6% difference between the 5.2% and 4.6% figures, is not seen as being significant in economic terms’.⁸⁶

44. It is evident from the above that the SAET was responding to a consent position from the parties to the matter. This is not analogous to the State Wage Case 2023.

Conclusion

45. For the reasons set out above, and in our initial submissions, the QCU submits that the State has not presented any cogent evidence to support a departure from the approach of the FWC.

46. Therefore, we iterate our position that it is fair and just for the Commission to adopt the FWC’s decision.

Dated: 28 September 2023

⁸⁶ Ibid [91], [93].

Annexure A

Comparison between the economic information provided in Mr Molloy's affidavit and the economic conditions reported and considered by the FWC and/or Prof. Peetz

Economic Condition	Molloy Affidavit	FWC Decision	Prof. Peetz Report
<p>The situation nationally and the impact on Queensland</p>	<p>'After rising 3.4 per cent in 2022-23, the Reserve Bank of Australia... expects national Gross Domestic Product (GDP) growth to slow to 1 per cent in 2023-24 before picking up marginally to 1¼ per cent in 2024-25' [15].</p>	<p>At [62] and Table 4, the FWC reference the RBA forecasts contained in the 'Statement of Monetary Policy', <i>Reserve Bank of Australia</i> (May 2023).</p> <p>When Table 5.1 in the 'Statement of Monetary Policy', <i>Reserve Bank of Australia</i> (May 2023) is compared with Table 5.1 in the 'Statement of Monetary Policy', <i>Reserve Bank of Australia</i> (August 2023), it is evident that the forecasts are not different enough to warrant special consideration. These tables are attached for reference.</p> <p>In May 2023, the RBA forecast was 1¼ per cent for 2023-24 and 1¾ per cent for 2024-25. The 2023-24 forecast was updated in August 2023 to 1 per cent, but the forecast for 2024-25 remains the same at 1¾ per cent for 2024-25.</p>	<p>At [106] of his report, Prof. Peetz comments that 'Chart 1.1 [in Adept Economics' Statistical Report] shows annual and quarterly state final demand growth following a pattern that is not different enough to the national GDP growth patterns to warrant special consideration'.</p>
<p>Budget forecasts for Gross State Product (GSP) growth</p>	<p>'Based on 2023-24 Queensland State Budget forecasts, after</p>		<p>Prof. Peetz reports the same. At Table 7 of his report, he</p>

	growing 4.4 per cent in 2021-22, GSP growth is estimated to have averaged 2 per cent in 2022-23, before strengthening to 3 per cent in both 2023-24 and 2024-25' [16].		reproduces Table 2.3 from the 2023-24 Queensland State Budget, which provides exactly the same information.
Components of growth	<p>'In Queensland, household consumption has risen 3.5 per cent in 2021-22 and 3.0 per cent in 2022-23. However, as significant increases in borrowing costs continue to filter through to household budgets, spending growth is expected to slow materially in 2023-24' [17].</p> <p>AND</p> <p>'Overseas exports of goods and services are expected to have grown by 3½ per cent in 2022-23' [18].</p>		<p>Prof. Peetz reports the same. At Table 7 of his report, he reproduces Table 2.3 from the 2023-24 Queensland State Budget, which provides exactly the same information.</p> <p>AND</p> <p>Prof. Peetz reports the same. At Table 7 of his report, he reproduces Table 2.3 from the 2023-24 Queensland State Budget, which provides exactly the same information.</p>
National unemployment rate and Queensland unemployment rate	<p>'[T]he RBA expects that employment growth will slow from the 3.2 per cent recorded over the year to June quarter 2023 to 1.2 per cent in the year to June quarter 2024 and 1.1 per cent the following year' [19].</p>	<p>'The RBA's forecast is for employment growth to slow to 1.1 per cent over the year ending June 2024' [73].</p>	

	<p>AND</p> <p>‘[T]he RBA expects that the Australian unemployment rate will rise from 3.5 per cent recorded in June quarter 2023 to 4.2 per cent in June quarter 2024 and 4.5 per cent the following year’ [19].</p> <p>AND</p> <p>‘Queensland employment growth is expected to moderate to one per cent in 2023-24 and 1½ per cent in 2024-25’ [20].</p> <p>AND</p> <p>‘The unemployment rate is forecast to edge slightly higher, but remain low by historical standards, averaging 4¼ per cent in 2023-24 and 4½ per cent in 2024-25’ [20].</p>	<p>AND</p> <p>‘[T]he unemployment rate [is] to increase to 3.6 per cent in the June quarter 2023 and 4.2 per cent for the June quarter 2024’ [73].</p>	<p>Prof. Peetz reports the same. At Table 7 of his report, he reproduces Table 2.3 from the 2023-24 Queensland State Budget, which provides the same information.</p> <p>AND</p> <p>As above.</p>
<p>Wage growth</p>	<p>‘[T]he RBA expects annual year-ended growth in the Wage Price Index (WPI) to strengthen to 4 per cent over the year to June quarter 2024’ [21].</p> <p>AND</p>	<p>‘The RBA forecasts a pick-up in growth in the WPI in this year [2023] and next year [2024] to around 4 per cent’ [80].</p> <p>AND</p>	

<p>CPI for last 12 months at national level and for Queensland and inflation</p>	<p>‘Wage growth is then expected to slow to around 3.6 per cent by the end of 2025’ [21].</p> <p>AND</p> <p>‘In the recent <i>2023-24 Queensland State Budget</i>, the Queensland WPI is forecast to strengthen to 3¾ per cent in 2022-23, up from 2.5 per cent in 2021-22’ [22].</p> <p>AND</p> <p>‘[W]ages growth is forecast to strengthen further to 4 per cent in 2023-24... and then stabilise at an annual growth rate of 3½ per cent thereafter’. [22].</p>	<p>Table 9 in the FWC decision includes both RBA and Australian Government 2023-24 Budget forecasts which expect wage growth to slow to 3.7 per cent or 3.25 per cent respectively by June 2025.</p>	<p>Prof. Peetz reports the same. At Table 7 of his report, he reproduces Table 2.3 from the 2023-24 Queensland State Budget, which provides the same information.</p> <p>AND</p> <p>As above.</p>
<p>CPI for last 12 months at national level and for Queensland and inflation</p>	<p>‘The national consumer price index increased by 6.0% over the year to June quarter 2023, down from the recent peak of 7.8% in the year to December quarter 2022’ [23].</p> <p>AND</p> <p>‘The inflation rate in Brisbane was marginally higher at 6.3% in</p>	<p>Table 5 in the FWC decision shows that CPI was forecast for 2022-23 as 6% (through-the-year growth rate to the June quarter). This is also demonstrated at [70] with the RBA forecast for CPI reported as 6.3% and the Budget forecast as 6%.</p>	<p>‘There are minor differences between inflation in Brisbane and</p>

	<p>the year to June quarter 2023' [23].</p> <p>AND</p> <p>'Monthly data show annual national inflation has continued to moderate in the early parts of September quarter 2023... down from 5.4% in June to 4.9% in July' [24].</p> <p>AND</p> <p>'Headline CPI has moderated from a peak of 8.4% in December 2022' [24].</p> <p>AND</p> <p>'The RBA expects the national inflation rate to continue to decline gradually' [25].</p> <p>AND</p> <p>'Annual year ended CPI inflation is forecast to fall to 3.6 per cent over the year ended June quarter 2024, followed by 3.1 per cent the following year and 2.8% by the end of 2025' [25].</p>	<p>Table 14.4 in the Statistical Report – Annual Wage Review 2022-23 demonstrates the RBA forecast CPI to moderate over the coming months, forecasting 4.5% in December 2023. The FWC at [70] also identified that '[t]he Budget expects inflation to reduce more quickly'.</p> <p>As above.</p> <p>'The RBA forecast is... 3.6 per cent over the year to the June quarter 2024 and 3.0 per cent over the year to the June quarter 2025' [70].</p>	<p>nationally... but the two have followed broadly similar patterns over recent years' [108].</p>
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	<p>AND</p> <p>'The Queensland State Budget forecasts Brisbane's consumer price index to moderate to 3¾ per cent in 2023-24... and then 3 per cent in 2024-25. This is a similar outlook to nationally' [26].</p>		<p>Prof. Peetz reports the same. At Table 7 of his report, he reproduces Table 2.3 from the 2023-24 Queensland State Budget, which provides the same information.</p>
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Table 5.1: Output Growth and Inflation Forecasts^(a)

Per cent

	Year-ended					
	Dec 2022	June 2023	Dec 2023	June 2024	Dec 2024	June 2025
GDP growth	2.7	1¾	1¼	1½	1¾	2
(previous)	(2¾)	(2¼)	(1½)	(1½)	(1½)	(1¾)
Unemployment rate ^(b)	3.5	3½	4	4¼	4½	4½
(previous)		(3½)	(3¾)	(4)	(4¼)	(4½)
CPI inflation	7.8	6¼	4½	3½	3¼	3
(previous)		(6¾)	(4¾)	(3½)	(3¼)	(3)
Trimmed mean inflation	6.9	6	4	3¼	3	3
(previous)		(6¼)	(4¼)	(3¼)	(3)	(3)
Year-average						
	2022	2022/23	2023	2023/24	2024	2024/25
GDP growth	3.7	3¼	1¾	1¼	1½	1¾
(previous)	(3¾)	(3½)	(2¼)	(1½)	(1½)	(1¾)

(a) Forecasts finalised 1 May. The forecasts are conditioned on a path for the cash rate broadly in line with expectations derived from surveys of professional economists and financial market pricing. The cash rate is assumed to peak at around 3¾ per cent before declining to around 3 per cent by mid-2025. Other forecast assumptions (assumptions as of February *Statement* in parenthesis): TWI at 60 (62); A\$ at US\$0.66 (US\$0.69); Brent crude oil price at US\$78/bbl (US\$82/bbl). The rate of population growth is assumed to be in line with forecasts from the Australian Government's Centre for Population. Forecasts are rounded to the nearest quarter point. Shading indicates historical data, shown to the first decimal point.

(b) Average rate in the quarter.

Sources: ABS; RBA

consumption growth has slowed recently as high inflation and rising interest rates have weighed on households' disposable incomes in real terms and household wealth has fallen alongside housing prices over the past year. Another important source of uncertainty for the Australian economy is the outlook for global growth. Most notably, there is uncertainty around the pace of disinflation and so the future path of monetary policy and economic growth abroad. While financial stability concerns related to banking sector stresses have subsided, they would pose downside risks to the global economic outlook if the situation were to deteriorate again and financial conditions were to tighten substantially.

The forecasts are based on some technical assumptions. The path for the cash rate reflects expectations derived from surveys of professional economists and financial market pricing prior to the May Board meeting. The cash rate is assumed to peak at around 3¾ per cent before declining to around 3 per cent by mid-2025, broadly in line with the assumed path in February. The exchange rate is assumed to be unchanged at its level prior to the May Board meeting, which is 4 per cent below its level three months ago on a trade-weighted basis. Petrol prices are assumed to be broadly unchanged around their recent level, which is around 10c/L higher than in early February. The level of the population has been revised higher and population growth

Table 5.1: Output Growth and Inflation Forecasts^(a)

Per cent

	Year-ended					
	June 2023	Dec 2023	June 2024	Dec 2024	June 2025	Dec 2025
GDP growth	1½	1	1¼	1¾	2	2¼
(previous)	(1¾)	(1¼)	(1½)	(1¾)	(2)	(n/a)
Unemployment rate ^(b)	3.6	4	4¼	4½	4½	4½
(previous)	(3½)	(4)	(4¼)	(4½)	(4½)	(n/a)
CPI inflation	6.0	4¼	3½	3¼	3	2¾
(previous)	(6¼)	(4½)	(3½)	(3¼)	(3)	(n/a)
Trimmed mean inflation	5.9	4	3¼	3	3	2¾
(previous)	(6)	(4)	(3¼)	(3)	(3)	(n/a)
Year-average						
	2022/23	2023	2023/24	2024	2024/25	2025
GDP growth	3	1½	1	1¼	1¾	2
(previous)	(3¼)	(1¾)	(1¼)	(1½)	(1¾)	(n/a)

(a) Forecasts finalised 2 August. The forecasts are conditioned on a path for the cash rate broadly in line with expectations derived from surveys of professional economists and financial market pricing. The cash rate is assumed to peak at around 4¼ per cent before declining to around 3¼ per cent by the end of 2025. Other forecast assumptions (assumptions as of *May Statement* in parenthesis): TWI at 61 (60); A\$ at US\$0.66 (US\$0.66); Brent crude oil price at US\$80/bbl (US\$78/bbl). The rate of population growth has been revised higher in the near term but is expected to gradually decline to around its pre-pandemic average. Forecasts are rounded to the nearest quarter point. Shading indicates historical data, shown to the first decimal point.

(b) Average rate in the quarter.

Sources: ABS; RBA.

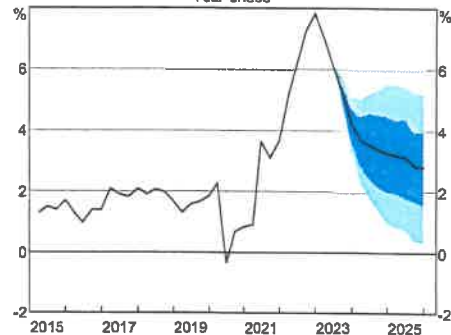
goods price inflation in the June quarter. Inflation is forecast to decline to around 3¼ per cent by the end of 2024, and to be within the target range at 2¾ per cent by the end of 2025.

As has been the case for some time, energy prices are forecast to add significantly to inflationary pressures over the coming year. The average change in household and business electricity prices remains uncertain; however, the impact of increases in electricity prices on the CPI will be partially offset by government rebates under the Australian Government's Energy Price Relief Plan and various state government initiatives. Electricity prices are forecast to add around ¼ percentage point to headline inflation over the 2023/24 financial year, similar to the forecast three months ago.

Goods price inflation is forecast to moderate further in the period ahead as the easing in global upstream costs continues to be passed

Graph 5.1

Headline Inflation Forecast*



* Confidence intervals reflect RBA forecast errors since 1983, with the 70 per cent interval shown in dark blue and the 90 per cent interval shown in light blue.

Sources: ABS; RBA.