

## QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Declaration of General Ruling* (State Wage Case 2017) [2017] QIRC 081

PARTIES: **Queensland Council of Unions**  
**The Australian Workers' Union of Employees, Queensland**  
(Applicants)

**and**

**The State of Queensland**  
**Local Government Association of Queensland Ltd**  
(Respondents)

CASE NOS: B/2017/16  
B/2017/19

PROCEEDING: Application for Declaration of General Ruling

DELIVERED ON: 5 September 2017

HEARING DATE: 7 August 2017

HEARD AT: Brisbane

MEMBERS: Deputy President Bloomfield  
Deputy President Kaufman  
Industrial Commissioner Fisher

ORDERS:

- 1. The wages or salaries for full-time adult employees in all modern awards shall be increased by 3.3 per cent.**
- 2. Junior rates are to be increased in the manner specified in applicable awards.**
- 3. Monetary allowances (other than expense related allowances) in all modern awards that relate to work or to conditions, which have not changed, and service increments are to be increased by 3.3 per cent.**
- 4. Expense related allowances in all modern awards are to be increased in the manner specified in applicable awards.**
- 5. The minimum rate per week for all full-time employees in Queensland is \$727.50 per week.**
- 6. The above increases operate on and from 1 September 2017.**

## CASES:

*Industrial Relations Act 1999*, s 129, s 140D, s 287  
*Industrial Relations Act 2016*, s 3, s 4, s 141, s 142,  
s 145, s 458  
*Fair Work Act 2009 (Cth)*, s 284, s 285  
*Fair Work (Commonwealth Powers) and Other  
Provisions Act 2009*  
*Workplace Relations Amendment (Work Choices)  
Act 2005*

*Annual Wage Review 2016-17* [2017] FWCFB 3500  
*Aurizon Operations Limited and Others* [2015]  
FWCFB 540  
*State Wage Case 2016* [2016] QIRC 088

## APPEARANCES:

Mr J. Martin, on behalf of the Queensland Council of  
Unions.  
Mr B. Watson, on behalf of The Australian Workers'  
Union of Employees, Queensland.  
Mr B. Feldman, with Mr A. James, on behalf of the  
State of Queensland.  
Mr A. Goode, on behalf of the Local Government  
Association of Queensland Ltd.

### Reasons for Decision

#### Background

- [1] By applications lodged on 19 May 2017 and 13 June 2017, the Queensland Council of Unions (QCU) and The Australian Workers' Union of Employees, Queensland (AWUEQ) applied to the Queensland Industrial Relations Commission (Commission) for:
- a general ruling pursuant to s 458 of the *Industrial Relations Act 2016* (the 2016 IR Act) regarding wage and allowance adjustments for award employees;
  - a general ruling in relation to the Queensland Minimum Wage as it applies to all employees; and
  - a statement of policy pursuant to s 461 of the 2016 IR Act in regard to a statement of principles that may be generated as a result of the aforementioned general rulings.
- [2] Each union applied for the following decision:
- a \$43.60 wage adjustment for workers employed at award classification rates equivalent to or below the *Parents and Citizens Award - State 2016* Level 3\* classification;
  - a 5.7 per cent adjustment for workers employed at award classification rates above the *Parents and Citizens Award - State 2016* Level 3\* classification;
  - an increase of 5.7 per cent in service increments and to existing award allowances which relate to work or conditions which have not changed;

- an increase of \$43.60 to the Queensland Minimum Wage as it applies to all employees; and
- an operative date of 1 September 2017.

[\*Note: this was clarified to be the Level 3 Retail Manager classification within the retail operations stream of the Award]

- [3] The Fair Work Commission (FWC) delivered its *Annual Wage Review 2016-17* decision<sup>1</sup> on 6 June 2017. In its decision, the FWC decided to increase the National Minimum Wage, as well as minimum award rates contained in federal modern awards, by 3.3 per cent operative from 1 July 2017.

### **Submissions of the parties**

- [4] Mr Martin, who appeared for QCU, highlighted that the QCU claim was for the same quantum of increase as was sought by the Australian Council of Trade Unions (ACTU) in the *Annual Wage Review 2016-17*. The QCU provided no other basis for seeking that particular level of increase. Mr Martin also noted that the considerable legislative change in the Queensland jurisdiction since the last State Wage Case, with the 2016 IR Act operating from 1 March 2017, now made it "conducive" to the Commission being able to grant the QCU application.
- [5] In this respect, he referred to certain provisions of the 2016 IR Act as follows:

#### **"3 Main purpose of Act**

The main purpose of this Act is to provide for a framework for cooperative industrial relations that–

- (a) is fair and balanced; and
- (b) supports the delivery of high quality services, economic prosperity and social justice for Queenslanders.

#### **4 How main purpose is primarily achieved**

The main purpose of this Act is to be achieved primarily by–

- (a) supporting a productive, competitive and inclusive economy, with strong economic growth, high employment, employment security, improved living standards and low inflation; and
- ...
- (d) providing for a fair and equitable framework of employment standards, awards, determinations, orders and agreements; and
- ...
- (g) ensuring wages and employment conditions provide fair standards in relation to living standards prevailing in the community; and
- (h) promoting collective bargaining, including by–
  - (i) providing for good faith bargaining; and

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<sup>1</sup> [2017] FWCFC 3500.

(ii) establishing the primacy of collective agreements over individual agreements; and

...

(o) being responsive to emerging labour market trends and work patterns; and

...

(q) establishing an independent court and tribunal to facilitate fair, balanced and productive industrial relations; and

..."

- [6] In referring to s 4(d), Mr Martin highlighted that whereas the FWC was required to view awards in terms of a "safety net", the Commission was not so constrained in that it was required to provide "a fair and equitable framework of employment conditions." As he put it:

"The scheme of the Queensland legislation is no longer concerned with awards being minimum safety nets but rather setting realistic rates of pay. Awarding the QCU claim would go some way to restoring awards of the QIRC to being a fair and equitable framework. Treating awards as a safety net has contributed to low wage growth..."

- [7] We note that no evidence was led in support of his contention that treating awards as a safety net has contributed to low wage growth.

- [8] Continuing with this latter point, Mr Martin said QCU's application relied upon the "crisis" in (low) wage growth that plagues Australia. Section 4(o) of the 2016 IR Act, in QCU's submission, obliged the Commission to take into consideration low wage growth which had become a problem, not just in terms of social considerations but also in terms of economic considerations. Such low wage growth was said to be caused by a number of factors, including:

- lower wage outcomes in the public sector;
- employees' willingness to accept lower wage increases due to their circumstances;
- a shift in the bargaining power of labour;
- flexibility in wage setting brought about by enterprise bargaining; and
- the proliferation of the use of labour hire.

[Again, we note the lack of evidence supporting these contentions.]

- [9] Mr Martin submitted that at a national level it had become much easier for employers to terminate collective agreements following the decision in *Aurizon Operations Limited and Others*<sup>2</sup> with more than 400 agreements being terminated in the first nine months of 2016. Such terminations had given employers a substantial negotiating advantage that was contributing to the weak wage growth at a national level.

- [10] Mr Martin also referred to various national and Queensland data concerning productivity, the disparity between labour productivity and the real National Minimum Wage, economic growth, inflation, unemployment levels, increasing

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<sup>2</sup> [2015] FWCFB 540.

household debt levels and reductions in the Queensland Minimum Wage by comparison to average weekly ordinary time earnings over the last decade - albeit that there had been some improvement since 2012.

- [11] Mr Watson, who represented AWUEQ, also drew our attention to ss 3 and 4 of the 2016 IR Act with particular emphasis on s 4(g) - ensuring wages and employment conditions provide fair standards in relation to living standards prevailing in the community. In doing so, he said that the granting of AWUEQ's application will assist in ensuring that the objects recorded at s 4(g) are met and will provide that workers covered by awards do not see a further decrease in their real wages.

[It is not clear to us on what basis Mr Watson claims that workers have seen a decrease in their real wages.]

- [12] In Mr Watson's submission:

"A decision to award the claim to Queensland's lowest paid award-reliant employees is wholly justified and reasonable in the circumstances. The increase will help promote workforce participation and social inclusion. The best way to encourage people to work is to provide decent work at decent rates of pay. The increase is sought to ensure an increase in the real value of the minimum wage so that award-reliant workers do not fall further behind other workers. The granting of the claim will go some way to addressing the persistent gender pay inequity that exists in Queensland where the majority of low-paid workers are women...

The AWU application is designed to benefit those greatest in need... [The] decision will have a minimal impact on Queensland's employers, given the limited size and low degree of award-dependency within the jurisdiction. The Queensland economy is able to accommodate this increase given its position as one of the better performing State economies in Australia. The claim is economically appropriate, sustainable and affordable and will increase the living standards of low-paid workers."

- [13] Like Mr Martin before him, Mr Watson also made submissions about the state of the Australian and Queensland economies, noting that the Australian economy grew by 2.5 per cent over 2016 with expected growth of between 2.75 per cent and 3.75 per cent by early 2018, while the Queensland economy was forecast to strengthen from 2.75 per cent in 2017-18 to 3 per cent in 2018-19. Mr Watson also submitted that in light of the current position of both the Australian and Queensland economies there was capacity to accommodate AWUEQ's wages claim.

- [14] Further, Mr Watson submitted that, "...the strong forecast for Australia's economic growth and the fact that the fundamentals of the Australian economy remain strong, support the claim." Relevantly, Queensland was expected to remain the top state for economic growth in the 2016-17 financial year and was expected to record the second highest growth of any State in 2017-18. This meant that Queensland is more able to sustain an increase in the minimum wage than Australia as a whole.

- [15] The State of Queensland (Queensland Government) supported a 3.3 per cent increase in the minimum wage and award wages to maintain real wages and living standards

and provide reward for measured productivity gains. In advancing this submission, it stated:

"The Queensland Government's support for this position applies solely in the context of considering an appropriate safety net increase for the discrete group of low-paid and award-reliant workers who continue to rely on the state wage case each year for an annual wage increase."

[We observe that no evidence of "measured productivity gains" was provided.]

[16] The submission also stated:

"9. The objects of the Act require the Commission to balance economic and social factors in making determinations on matters such as state wage cases. In economic terms, there is a need to ensure wage outcomes are consistent with strong economic performance. In social terms, there is a need to ensure that people 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.

10. These economic and social objectives are encapsulated in the main purpose of the Act and how it is primarily achieved; which is to provide a framework for industrial relations that supports economic prosperity and social justice...

11. The Act has a strong focus on the importance of ensuring fair wages and conditions with reference to prevailing community standards. In addition to the reference in the main purpose of the Act and how it is to be achieved, sections 141, 142 and 447(1) place obligations on the Commission to ensure fairness in wages."

[17] The Queensland Government's submission also referred to an Australian Bureau of Statistics data set<sup>3</sup> which estimated there were approximately 351,200 employees subject to the Queensland Industrial Relations jurisdiction in 2016. The bulk of these employees were employed by the State of Queensland, very few of whom were award-reliant because of the existence of a number of enterprise bargaining agreements and determinations and allowances above the Queensland Minimum Wage and the relevant award wage levels. It submitted that, "[c]onsequently the direct impact of the State Wage Case to reduce poverty and assist those who do not benefit from bargaining so as not to be left behind is limited."

[18] Turning to the current economic conditions and outlook, the submission noted that the Australian economy continues to transition from the investment phase to the production phase of the mining boom, with economic growth expected to increase as the economy transitions to broader-based growth supported by lower interest rates and a lower Australian dollar. The Queensland Government noted that, "[w]age growth and consumer price inflation remain weak. With spare capacity in the labour market expected to persist, growth in household incomes and domestic prices are forecast by Australian Treasury to remain subdued."

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<sup>3</sup> Cat. No. 6248 Employment and Earnings, Public Sector, 2015/16.

- [19] Additionally, the submission referred in detail to a variety of economic data at both the Australian and Queensland levels, including real GDP forecasts, export growth, business investment levels, dwelling investment and building approvals, household consumption, employment levels, the level of coal exports in Queensland, increase in tourism levels in Queensland and anticipated movements in inflation levels.
- [20] In concluding, the Queensland Government stated, "... it is submitted that an increase of 3.3 per cent is appropriate for maintaining living standards along with providing an increase for measured productivity gains for those who have been unable to benefit from enterprise bargaining."
- [No evidence was led relating to "measured productivity gains".]
- [21] LGAQ indicated its support for a 2.1 per cent increase in minimum award wages and the Queensland Minimum Wage, with the same level of increase to existing award allowances in awards that related to work or conditions. LGAQ opposed a flat dollar increase to minimum award rates corresponding to classifications at or below the equivalent of the Level 3 classification as sought by the unions.
- [22] In support of the level of increase proposed, Mr Goode, who represented the LGAQ, referred us to recent state wage case decisions where the Commission (in 2015) questioned the practice of awarding differential increases in award wage rates for employees classified below the trade level in the *Engineering Award - State* compared to those above that level. He further noted that the 2016 decision discontinued that practice and awarded a percentage increase only.
- [23] Mr Goode urged us to continue the practice adopted by the Commission in 2016 so as to better preserve existing relativities between job levels to reflect work values.
- [24] In advancing a suggested increase of 2.1 per cent, Mr Goode questioned the Queensland Government's position, stating that its proposed increase of 3.3 per cent was in direct conflict with its own wages policy of an increase of 2.5 per cent per annum - the same figure it had proposed to the Annual Wage Review conducted by the FWC.
- [25] In terms of the legislative framework within which the Commission now operated, following the commencement of the 2016 IR Act, Mr Goode submitted that awarding a 2.1 per cent increase to the Queensland Minimum Wage and award rates met the objectives of the Act, particularly those at ss 4(a) and (g).
- [26] Like those who appeared before him, Mr Goode also referred to a variety of economic data which recorded comparisons between Queensland and Australia and/or other States. These data included unemployment rates, building approval rates, changes in the consumer price index, movement in the wage price index and a comparison of movements in the wage price index, consumer price index and increases awarded via state wage case decisions.
- [27] Turning to the specific situation of Queensland's local governments, Mr Goode highlighted that employee costs comprise approximately 45 per cent of local government operating costs, excluding depreciation and finance costs, and 32.5 per

cent if such costs were included. Although no evidence was led in support of these figures, nobody sought to contest them. He concluded:

"As such, the employee cost indexation effects have a significant impact on the ability for Councils to produce a balanced budget and remain financially sustainable... This situation is exacerbated for regional, rural and remote Councils given their heavy reliance on external revenue sources such as government grants to fund operations. For example, most indigenous Councils (accounting for 20 per cent of all Queensland Councils) have no rates and charges revenue base and, as such, are almost solely reliant on increases in external funding to recoup increases in employee costs."

[28] In rural and remote Councils (accounting for 27 per cent of all Queensland Councils) rates and charges revenue only accounted for approximately 23 per cent of their income. As such, a 2 per cent increase in employee costs required a rate increase in excess of 4 per cent to cover those cost increases to ensure that the operating position did not deteriorate.

[29] Submitting that, currently, roughly half of all Queensland Councils were running operating deficits, Mr Goode said:

"Increasing wages beyond that occurring elsewhere in the economy will place considerable pressure on Council budgets and ultimately result in the need to review staffing levels to reduce operational costs given that 45 per cent of all costs incurred (excluding depreciation and financing) are in the form of employee costs."

[30] Mr Goode also said that a recent Queensland Audit Office Report recorded that a significant number of Councils (more than 27) had been assessed on a financial sustainability measure as being at moderate to high risk.

[31] Finally, LGAQ submitted:

"73. There is a discernible difference in the vast majority of employees affected by this decision, either directly or indirectly, and those impacted by the federal decision. Councils, by their very nature as local employers and responsible for the wellbeing of the local community and its residents, desire a strong and sustainable local workforce. Their employees are also residents of their communities, constituents, and in many cases friends and family.

74. As employers, Councils strive to maintain a local workforce to ensure that dollars spent on labour by Council remain within the local economy. Councils desire to pay their workers what they consider is fair and what the Council can afford and this varies significantly between communities. The more Council can pay their workers, the more money is available for circulation within their community. Any extra dollars obtained by Councils invariably is spent on the community, whether that be through labour or infrastructure or additional services.



75. When Councils indicate a limited capacity to pay generous wage rises, it can be taken that this is because Council simply does not have the resources. In their own way, Councils champion workers sharing in productivity gains whether that be through modest wage rises or improved services to workers as community members or, in most cases, a mixture of both.
76. Too significant a wage rise undermines Councils' efforts to maintain and maximise a sustainable local workforce."

[32] As has been the case with many submissions in this matter, many of the LGAQ's assertions were made without factual support.

### Consideration

[33] In the *State Wage Case 2016* the Commission said:

"[23] ... we adhere to the view expressed by the Full Bench of this Commission in the 2014 and 2015 decisions that unless there are cogent reasons for not doing so, we should follow the ruling of the federal tribunal, with any necessary or desirable modifications, having regard to the particular circumstances of Queensland." <sup>4</sup>

[34] In light of the history of national wage case decisions/reviews and state wage case decisions over more than a decade, as recorded in Table 1 (below), such a statement is not surprising.

**Table 1. Comparison of movement in Award Rates, and Minimum Wage Levels, Australia and Queensland - 2008 to 2017**

Date / Event	Federal		Queensland	
	Increase	Minimum Wage	Increase	Minimum Wage
May 2004 - AIRC	\$19.00	\$467.40		
1 September 2004 - SWC			\$19.00	\$467.40
June 2005 - AIRC	\$17.00	\$484.40		
15 August 2005 - SWC			\$17.00	\$484.40
1 September 2006 - SWC			\$19.40	\$503.80
1 December 2006 - AFPC	\$27.36 up to \$700 pw \$22.04 over \$700 pw	\$511.86		
1 September 2007 - SWC			\$24.60	\$528.40
1 October 2007 - AFPC	\$10.26 up to \$700 pw \$5.30 over \$700 pw	\$522.12		
8 July 2008 - AFPC	\$21.66	\$543.78		

<sup>4</sup> [2016] QIRC 088 [23].

1 September 2008 - SWC			\$23.60	\$552.00
1 July 2009 - AFPC	NIL	\$543.78		
1 September 2009 - SWC			\$16.20	\$568.20
1 July 2010 - FWA	\$26.12	\$569.90		
1 September 2010 - SWC			\$20.00	\$588.20
1 July 2011 - FWA	3.4%	\$589.30		
1 September 2011 - SWC			Higher of \$22.00 or 3.4%	\$610.20
1 July 2012 - FWA	2.9%	\$606.40		
1 September 2012 - SWC			Higher of \$20.50 or 2.9%	\$630.70
1 July 2013 - FWC	2.6%	\$622.20		
1 September 2013 - SWC			Higher of \$15.80 or 2.6%	\$646.50
1 July 2014 - FWC	3.0%	\$640.90		
1 September 2014 - SWC			Higher of \$22.30 or 3.0%	\$668.80
1 July 2015 - FWC	2.5%	\$656.90		
1 September 2015 - SWC			Higher of \$19.20 or 2.5%	\$688.00
1 July 2016 - FWC	2.4%	\$672.70		
1 September 2016 - SWC			2.4%	\$704.50
1 July 2017 - FWC	3.3%	\$694.90		
1 September 2017 - SWC			?	?

**Code:**

- AIRC - Australian Industrial Relations Commission
- AFPC - Australian Fair Pay Commission
- FWA - Fair Work Australia
- FWC - Fair Work Commission
- SWC - State Wage Case, Queensland

[35] As can be seen from the comparisons below of relevant sections of the *Industrial Relations Act 1999* (the 1999 IR Act), the *Fair Work Act 2009* (FW Act) and the 2016 IR Act, significant changes have been made in the 2016 IR Act that bear upon the matters required to be considered by the Commission when conducting General Ruling proceedings, including obligations imposed on it in terms of wages fixation and, in light of that consideration, to determine what changes, if any, are required to be made to the approach it had adopted in the past.

[36] Section 287 of the 1999 IR Act relevantly provided:

**"287 General rulings**

- (1) The full bench may make general rulings about–

- (a) for employees bound by an industrial instrument – an industrial matter, to avoid a multiplication of inquiries into the same matter; or
  - (c) a Queensland minimum wage for all employees.
- (2) The full bench must ensure a general ruling about a Queensland minimum wage for all employees is made at least once each calendar year.  
..."

[37] Section 458 of the 2016 IR Act provides:

**"458 Power to make general rulings**

- (1) The full bench may make general rulings about–
  - (a) an industrial matter for employees bound by an industrial instrument if multiple inquiries into the same matter are likely; or
  - (b) a Queensland minimum wage for all employees.
- (2) The full bench must ensure a general ruling about a Queensland minimum wage for all employees is made at least once each year.  
..."

[38] The obligations imposed on the FWC under the FW Act are somewhat different:

**"285 Annual wage reviews to be conducted**

- (1) The FWC must conduct and complete an annual wage review in each financial year.
- (2) In an annual wage review, the FWC:
  - (a) must review:
    - (i) modern award minimum wages; and
    - (ii) the national minimum wage order; and
  - (b) may make one or more determinations varying modern awards to set, vary or revoke modern award minimum wages; and
  - (c) must make a national minimum wage order.

..."<sup>5</sup>

[39] One important difference between the Queensland and Federal provisions is immediately apparent. Whereas the FWC must review both "modern award minimum wages" *and* the "national minimum wage" each financial year, the Commission is only required to ensure a general ruling about a Queensland Minimum Wage is issued each year. There is no requirement to review award wage rates, although such review has traditionally been undertaken "by convention" at the same time as the Queensland Minimum Wage has been reviewed (see Table 1).

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<sup>5</sup> Certain notes which refer to other parts of the FW Act have been omitted for ease of reading.

[40] Another important difference is that s 145 of the 2016 IR Act relevantly provides (at s 145(1)) that the Commission *may* include in an award provisions that are based on a certified agreement, which obviously includes increases in wage rates, if satisfied that certain conditions are met, but *must* (at s 145(2)) approve their inclusion if the parties agree.<sup>6</sup> There are no comparable provisions in the FW Act.

[41] In terms of the obligations imposed on the federal tribunal and the Commission, respectively, in relation to setting and maintaining award wage rates, the following provisions are relevant:

FW Act

**"Part 2-6 Minimum wages**

**Division 2 Overarching provisions**

**284 The minimum wages objective**

*What is the minimum wages objective?*

- (1) The FWC must establish and maintain a safety net of fair minimum wages, taking into account:
  - (a) the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth; and
  - (b) promoting social inclusion through increased workforce participation; and
  - (c) relative living standards and the needs of the low paid; and
  - (d) the principle of equal remuneration for work of equal or comparable value; and
  - (e) providing a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and employees with a disability.

This is the *minimum wages objective*.

..."

1999 IR Act

**"Chapter 5A Modern awards**

**Part 1 Preliminary**

**140D Modern awards objectives**

- (1) In exercising its chapter 5A powers, the commission must ensure modern awards, together with the Queensland Employment Standards, provide a minimum safety net of employment conditions that is fair and relevant.

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<sup>6</sup> Under the 1999 IR Act, which provided the Commission with a discretion, many public sector unions successfully applied to flow on wage increases into awards.

- (2) For subsection (1), the commission must have regard to the following–
- (a) relative living standards and the needs of low-paid employees;
  - (b) the need to promote social inclusion through increased workforce participation;
  - (c) the need to promote flexible modern work practices and the efficient and productive performance of work;
  - (d) the need to ensure equal remuneration for male and female employees for work of equal or comparable value;
  - ...
  - (i) the likely impact of the exercise of the chapter 5A powers on–
    - (i) employment growth and inflation; and
    - (ii) the sustainability, performance and competitiveness of the Queensland economy.
- (3) Also, to the extent the commission's chapter 5A powers relate to setting, varying or revoking minimum wages in modern awards, the commission must establish and maintain a minimum safety net of fair minimum wages, having regard to–
- (a) the matters mentioned in subsection (2)(a) to (d) and (i);"

## 2016 IR Act

### "Chapter 3 Modern awards

#### Part 1 Preliminary

#### 141 General requirements for commission exercising powers

- (1) In exercising its powers under this chapter, the commission must ensure a modern award–
- (a) provides for fair and just wages and employment conditions that are at least as favourable as the Queensland Employment Standards; and
  - (b) generally reflects the prevailing employment conditions of employees covered, or to be covered, by the award.
- (2) For subsection (1), the commission must have regard to the following–
- (a) relative living standards and the needs of low-paid employees;
  - (b) the need to promote social inclusion through increased workforce participation;
  - (c) the need to promote flexible modern work practices and the efficient and productive performance of work;
  - (d) the need to ensure equal remuneration for work of equal or comparable value;
  - ...

- (f) the efficiency and effectiveness of the economy, including productivity, inflation and the desirability of achieving a high level of employment.

#### **142 General requirement about minimum wages**

- (1) To the extent the commission's powers under this chapter relate to setting, varying or revoking minimum wages in a modern award, the commission must establish and maintain minimum wages that are fair and just.
- (2) For subsection (1), the commission must have regard to the following—
- (a) the prevailing employment conditions of employees covered by the modern award;
- (b) the matters mentioned in section 141(2)(a) to (d) and (f);  
..."

(our emphasis)

[42] In point form, we are required to have regard to the following:

- Section 3: Main purpose - provide for a framework for cooperative industrial relations that is fair and balanced and supports delivery of high quality services, economic prosperity and social justice;
- Section 4: achieved primarily by (a) competitive, etc. economy; (d) providing for a fair and equitable framework of employment conditions; (g) ensuring wages and employment conditions provide for fair standards in relation to the living standards prevailing in the community; (h) promoting collective bargaining; (o) be responsive to emerging labour market trends;
- Section 141: ensure modern awards provide for fair and just wages and employment conditions that are at least as favourable as the QES and generally reflect the prevailing employment conditions of relevant employees while having regard to relative living standards and needs of low paid employees, social inclusion through workforce participation, flexibility and efficient productive performance of work, ensure equal remuneration; and
- Section 142: ensure minimum wages in modern awards are fair and just, having regard to prevailing employment conditions of employees covered by the award.

[43] Our point form summary, above, discloses that there is a range of factors and aspirations that need to be taken into account when setting modern award wages and conditions. Some of these factors are arguably internally inconsistent. It is, however, tolerably clear that when making its general orders the Commission is dealing with minimum terms and conditions of employment.

[44] Beyond highlighting that the Commission is now required to establish and maintain minimum wages that are "fair and just" rather than establishing and maintaining "a safety net of fair minimum wages", a requirement that mirrored the obligations imposed on the Fair Work Commission in setting minimum wage levels, the parties

provided little assistance as to how we are to go about our task having regard to the matters we have outlined above. The unions seem to be of the view that the removal of the requirement to have a safety net somehow mandates the awarding of significantly greater increases than was previously the case.

[45] In these circumstances, without the assistance of submissions that go to the essence of the issues we need to decide, we must proceed with considerable caution in dealing with the applications before us.

[46] As has been noted in previous state wage case decisions, the number of employees covered by the IR Act is relatively small, comprising approximately:

- 250,000 employed by the State of Queensland, approximately 1,000 of whom were award-reliant;
- 39,000 employed by local governments, about 2,000 of whom were award-reliant; and
- between 3,000 and 4,000 employed by Parents and Citizens' Associations, all of whom were award-reliant.

[47] In the current proceedings the Queensland Government suggested there are approximately 351,200 employees subject to the Commission's jurisdiction.

[48] In any event, whether the number of employees within the Commission's jurisdiction is closer to 300,000 or 350,000, the fact remains that such employees are employed by three distinct groups of employers:

- the State of Queensland;
- local governments; and
- Parents and Citizens' Associations,

and that only approximately 6,000 - 7,000 of them are award-reliant.

[49] This year, as has been the case in the past, all the parties' submissions focussed largely on the status of the Australian and Queensland economies and their capacity, or otherwise, to deal with the level of wage increase advanced by the particular party. Given that any decision about the Queensland Minimum Wage, or award rates more generally, will be limited to the discrete group of employers and employees within our jurisdiction, we question the usefulness of such a heavy reliance on the state of the economies of Australia and Queensland. A greater emphasis on the three groups of employers, with particular reference to the requirements of the IR Act 2016, would seem to us to be of more utility.

[50] In terms of economic and other statistical data presented to the Commission in proceedings like these, we question the extent to which parties need to refer to national and/or Queensland data which, by and large, are more relevant to the private sector. Data concerning export levels, business investment, building investment, changes in tourism levels and the like would appear to have little relevance to the determination of the Queensland Minimum Wage and minimum award rates. This is because only some 2 to 2.3 per cent award-reliant employees of the 300,000 to 350,000 employees

in Queensland Government, local government and Parents and Citizens' Associations, are affected.<sup>7</sup>

[51] While some of the other economic and statistical data referred to on this occasion - such as changes in the inflation rate, movements in the wage price index, movements in average weekly ordinary time earnings in both the private and public sectors, and the like - are clearly relevant, what would seem more informative for our consideration of claims advanced in proceedings of this type is data concerning:

- the current budgetary position of the Queensland Government, including whether it is in surplus or deficit;
- projected budget forecasts;
- the Queensland Government's wages policy;
- rating agencies' (e.g. Moody's, Standard and Poors) comments about the state of the Queensland Government's budgetary position and any concerns they might have about its credit rating;
- the number of employees likely to be affected if a particular wage increase is awarded;
- the budgetary position of individual local governments;
- the capacity of individual local governments to generate their own income through rates and other charges;
- the extent to which individual local governments might be reliant upon government grants to fund their operations, both capital and recurring;
- the number of employees in local government covered by certified agreements and the level of wage increases reflected in those agreements;
- the prevailing wages and employment conditions of employees (not employed by local government) in the various local government areas;
- the numbers of employees employed by the various Parents and Citizens' Associations;
- the prevailing wages and employment conditions for employees performing comparable work to that performed by employees of Parents and Citizens' Associations; and
- the estimated number of award-reliant employees; etc.

[52] Apart from indicating that their applications exactly matched that made by the ACTU to FWC in its 2016 annual wage review, neither union advanced any particular reasons why their claims for a 5.7 per cent increase in wage rates and allowance should be granted, other than suggesting the new provisions in the 2016 IR Act required the Commission to set wage rates which were "fair and just." Despite persistent questioning on this issue, neither Mr Martin nor Mr Watson could assist the Commission in evaluating their claims.

[53] Accordingly we reject the claims for a 5.7 per cent increase sought by the unions.

[54] As noted in paragraph [15] above, the Queensland Government's submissions emphasised that its proposed 3.3 per cent increase was designed to deliver a wage

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<sup>7</sup> This is to be compared to the federal jurisdiction where the *Annual Wage Review 2016-17* decision recorded at [4] that some 2.3 million employees (22.7 per cent of all employees) had their pay set by an award in May 2016.



increase "for the discrete group of low-paid and award-reliant workers who continue to rely on the state wage case each year for an annual wage increase."

[55] However, the submission also noted that the terms of Directive No. 12/12 would deliver an actual wage increase to approximately 12,300 public sector employees if the Commission awarded an increase of 3.1 per cent. Mr Feldman, who represented the Queensland Government, described this figure as the "tipping point" at which a number of employees would start to receive an actual wage increase if the Commission awarded an increase at, or above, that figure. It seems to follow that an increase of the 3.3 per cent sought by it will affect a greater number of public servants than 12,300.

[56] LGAQ argued that a 3.3 per cent increase could not be justified in local government councils for a number of reasons, including:

- recent cost of living and wage growth outcomes, which were around the 2.1 per cent level proposed by LGAQ;
- past correlation between the outcome in state wage case decisions and overall wage growth outcomes;
- the financial impact it would have on Councils generally, especially those in rural and remote regions given their heavy reliance on Government grants to fund their operations as well as their relative incapacity to generate income through rates and charges;
- the relatively high proportion of Councils' expenditure represented by wages and employee expense costs, which made it difficult to absorb "generous" wage increases; and
- the financial position of Councils throughout the State, where roughly half of them were presently running operating deficits and many (more than 27) have been identified by the Queensland Audit Office to be at moderate to high risk in terms of their financial sustainability.

[57] Mr Goode did not challenge the figure of approximately 2,000 local government employees as being "award-reliant." However, he did suggest that a number of Councils had certified agreements which were wholly or partly reliant on state wage case decisions in terms of setting wage levels and that the level of increase decided by the Commission would flow to employees of those Councils.

[58] Be that as it may, it remains the situation that:

- the extent of the reliance - in terms of both quantum and the number of employees affected - has not been made known to us; and
- no "incapacity to pay" or similar argument was mounted or mooted; and
- there are approximately 2,000 local government employees who are award-reliant.

[59] It seems to be accepted by the parties that approximately 3,000 to 4,000 employees continue to be employed by Parents and Citizens' Associations and that *all* of them are award-reliant.

## Decision

[60] In the circumstances confronting us this year, we have decided to adopt the position advocated by the Queensland Government for a 3.3 per cent increase in all award wage rates and allowances for a number of reasons:

- neither the unions nor LGAQ advanced arguments or provided evidentiary material sufficient to cause us to accept their proposals for a 5.7 per cent or a 2.1 per cent increase;
- in the absence of submissions about the meaning and operation of the new provisions in the 2016 IR Act (referred to at paragraphs [42] to [45] above), we have approached the two union applications before us cautiously;
- no cogent reasons were advanced to us as to why we should depart from the views expressed in the 2016 State Wage Case decision (at paragraph [33] above) in relation to the relevance of the FWC Annual Wage Review decision;
- the number of award-reliant employees directly impacted by the decision is likely to be of the order of 2 to 2.3 per cent of the workforce within the Commission's jurisdiction;
- awarding a 3.3 per cent increase will deliver a level of increase in awards in this jurisdiction consistent with the level of increase awarded federally;
- the increase awarded may be absorbed into any existing over-award payment; and
- the increase is not payable where an employee is covered by an existing certified agreement, unless the terms of the certified agreement provide otherwise (or the employee is captured by the terms of Directive No. 12/12).

[61] In making the above decision, we emphasise that our decision is not intended to set some new standard or benchmark for certified agreement/enterprise bargaining negotiations and should not be regarded as such.

[62] Our formal decision is that:

- the wages or salaries for full-time adult employees in all modern awards shall be increased by 3.3 per cent;
- junior rates are to be increased in the manner specified in applicable awards;
- monetary allowances (other than expense related allowances) in all modern awards that relate to work or to conditions, which have not changed, and service increments are to be increased by 3.3 per cent;
- expense related allowances in all modern awards are to be increased in the manner specified in applicable awards;
- the minimum rate per week for all full-time employees in Queensland is to be \$727.50 per week; and
- the above increases operate on and from 1 September 2017.

[63] A Declaration of General Ruling giving effect to this decision will issue concurrently with this Decision.

[64] Neither QCU nor AWUEQ sought to progress that aspect of their respective applications which asked the Commission to establish a Statement of Policy pursuant to s 461 of the 2016 IR Act. They requested that that part of their respective applications be adjourned to allow them to further consider the matter. This request was not opposed by either the Queensland Government or LGAQ.

[65] However, rather than adjourn this aspect of the applications, we have decided that should either union seek to press for a Statement of Policy to be issued they will need to do so by way of separate Application. Their current applications will be dismissed.

[66] We determine and order accordingly.

### **Observations about future s 458 Applications**

[67] During the course of the proceedings, Members of the Full Bench addressed a number of questions to the parties about the way the 2016 IR Act should be interpreted and applied in light of:

- the meaning of terms such as "fair and just", "fair standards" and the like;
- the impact of the operation of s 129 in the 1999 IR Act, between April 2005 and November 2013, during which time many public sector unions successfully applied to "flow on" previous enterprise bargaining wages outcomes into the related award;
- the "gap" between wage rates in such awards and those in other awards where no such "flow on" had occurred;
- the increase in such gaps which had developed over time between award wage rates as successive state wage case decisions delivered percentage increases; and
- the potential for such gaps to continue to grow in the future and how such outcome might be accommodated by the Commission as it sought to comply with the obligations imposed on it by the new provisions in the 2016 IR Act.

[68] Unfortunately, none of the parties was able to address us in any meaningful way in relation to the above questions and issues.

[69] Consequently, and without being exhaustive nor, of course, constraining a future Full Bench, it seems to us that we should put the parties on notice that the matters to be addressed in the next State Wage Case might involve such questions as:

- Should future General Ruling decisions be limited to setting a Queensland Minimum Wage?
- If not, how can the differences in award types mentioned above be accommodated to ensure "fair and just" wage rates which reflect standards "prevailing in the community"?
- Should awards which contain safety net wage rates receive a higher level of increase than awards which have been varied in accordance with s 129 of the 1999 IR Act and/or s 145 of the 2016 IR Act so as to avoid a potentially ever-increasing wages differential?

- Should awards which have been varied in accordance with s 129 of the 1999 IR Act and/or s 145 of the 2016 IR Act be excluded from General Ruling decisions, with wage rates in such awards being varied upon application by the parties in accordance with s 145 of the 2016 IR Act?
- How should any future bargaining award made in accordance with the provisions of Chapter 4, Part 5 of the 2016 IR Act be treated?