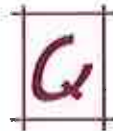


State Wage Case 2018
Application B/2018/12
Queensland Council of Unions
Submissions in Reply

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**Queensland
Council of Unions**

Contents

Introduction.....	1
Response to Queensland Government Submission	2
Response to Local Government Association of Queensland Submission.....	4
Conclusion	13
Bibliography	13

Introduction

This Queensland Council of Unions (QCU) submission responds to the two employer submissions to the 2018 State Wage Case. There is a brief submission in response to the Queensland Government, which has adopted a position of consent to the quantum sought by the QCU application (3.5 per cent). There is a brief discussion of the respective merits of applying a percentage increase to all levels and to applying the equivalent of the percentage increase to the C10 trade equivalent to all rates of pay at C10 and below. The QCU has a preference for the latter. This submission also includes reference to the possibility of some employees' rates of pay temporarily being set by the award rate rather than agreement. The QCU submits that Queensland Government consent is sufficient to deal with the matter of the relationship between rates contained in the award and corresponding collective agreements.

The remainder of the submission is devoted to refuting submissions made by the Local Government Association of Queensland (LGAQ) in support of their preferred wage increase of 2.5 per cent. The QCU vehemently opposes the LGAQ proposition and submits that there is no justification to be found in the LGAQ submission as to why the Commission should depart from the practice of awarding an increase in the same terms as the Fair Work Commission has done in the most recent National Wage Review. As has been remarked upon by the Commission in previous decisions, there would need to be particular and very specific reasons for a departure from this practice. At paragraph [13] of the 2014 State Wage Case decision, the relationship between the

“...we broadly agree 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” (QIRC 2014).

The LGAQ fails, in our submission, to provide that special reason that would be needed for such a dramatic departure from this well-established practice.

Response to Queensland Government Submission

The Queensland Government consents to the QCU amended application in so far as quantum is concerned. The difference between the respective position of the Queensland Government and the QCU is whether the Commission should award a flat dollar increase up to the C10 equivalent or a percentage increase for all wage levels.

The Commission has been disposed to flow on the outcome from the national wage review in both approaches being advocated by the QCU and the Queensland Government in this State Wage Case. The rationale for the flat dollar amount up to C10 is to maximise the outcome of the State Wage Case, in a jurisdiction that is so heavily dominated by bargaining, towards the lowest paid workers in the jurisdiction. The contrary argument is that flat increases compress relativities. There is no doubt that flat increases do compress and the previous submissions of parties to State Wage Cases have proven that point. However, in the QCU submission the compression of relativities commenced long before the relatively recent practice of awarding flat dollar increases up to C10. The awarding of flat dollar safety net adjustments in the 1990s did as much to compress relativities, if not more, as the more recent decisions of the Commission.

It is noted that the Commission has in more recent decisions has adopted the principle that the relativities are more of a concern than is maximising the result for the lowest paid workers in the jurisdiction. Nonetheless the QCU maintains the policy position of using the State Wage Case to maximise the outcome for the lowest paid.

In the 2017 State Wage Case decision, the Commission asked a range of questions, many of which has application to the Queensland Government. These questions have been answered to the best of the parties' abilities. It appears the Commission had some reservations about wages contained in awards reaching that of rates contained in collective agreements. The agreements reached between unions and the Queensland Government enable the payment of the higher rate in these circumstances. With respect, we reiterate our earlier submission that this is a matter for the parties to determine. It has long been the case, in this jurisdiction and the federal jurisdiction, that the Commission has no discretion in approving agreements so long as they meet certain minimum standards and do not contain provisions that contravene other aspects of the legislation.

In our submission it is a positive outcome for workers to ensure that awards do not drastically fall behind collective agreements, particularly regarding rates of pay. Recent QCU submissions have focused on the wage growth crisis being experienced in Australia. A range of reasons exists for the wage growth crisis, one of which is the capacity of employers to withdraw from agreements and return to the modern award (Oliver and Yu 2018). This prospect has been made far more probable in the federal jurisdiction in recent years following case law that changed precedent in relation to the public interest test required for the withdrawal from agreements. In our submission the intent of the legislation in Queensland is quite clearly against the use of withdrawal from agreements being used as a bargaining chip by employers.

In Queensland, the potential for employers to use the threat of withdrawing from negotiated agreements was identified as part of the review (Gardner 1998), undertaken some 20 years ago now, that resulted in the *Industrial Relations Act 1999*. Provisions enabling the flowing-on provisions from certified agreements to the award remain today and have been utilised primarily in the public sector. In our submission the relationship between the various public-sector awards and the collective agreements is as contemplated by the legislation. The Queensland Parliament would not have included a provision such as section 145 in the *Industrial Relations Act 2016* had it not intended to enable parties to agreements to include rates of pay from collective agreements in awards. Moreover, in consent cases where the parties to the award are also the parties to the agreement, there is no discretion on the part of the Commission, it must include such provisions.

In our submission, the consent of the Queensland Government to the 3.5 per cent wage increase being sought by the QCU is sufficient for the Commission to overcome any concerns with respect to its potential application. There is the possibility that some workers, whose rates of pay are set by collective agreements, may benefit from the State Wage Case to some extent. That benefit, in our submission, is an early payment of a wage increase that they would otherwise receive by way of bargaining. This in no way contravenes any of the statutory obligations the Commission needs to consider when awarding a decision in the State wage Case.

Response to Local Government Association of Queensland Submission

The Local Government Association of Queensland (LGAQ) opposes the application sought by the QCU. In our respectful submission, it should be noted that the LGAQ has opposed every application that has been made by the QCU in State Wage Cases in recent years, regardless of the quantum sought. In most cases over the past decade the QCU has sought to flow on the same increase that was awarded in the corresponding National Wage Review. Even where the QCU sought to flow on more modest increases from the National Wage Review the LGAQ felt the need to argue for a lower wage increase. In our submission the continual opposition from the LGAQ detracts from its credibility in relation to the State Wage Case. For this reason and other reasons set out below in this submission, we urge the Commission to pay little regard to the LGAQ submission.

The LGAQ submission ignores the major thrust of the QCU submissions that wages growth is stagnant. This has been identified as the major economic challenge facing Australia. In our submission, it is incumbent upon tribunals such as the Fair Work Commission and the Queensland Industrial Relations Commission to address this wherever possible. The LGAQ continues to make submissions that low wage growth is in itself a justification for awarding a lower wage increase. Therein lies the problem of the wage growth crisis and continuing to follow the low wage increase policy advocated by the LGAQ, will do nothing to alleviate the nation's number one economic challenge. To the contrary it will exacerbate it.

The LGAQ continues to argue that the Queensland Minimum Wage is higher than the National Minimum Wage in order to advocate for a lower wage increase. As has been submitted previously the difference is attributed to the erratic behaviour of the Fair Pay Commission for the brief period of time that it had responsibility for the setting of minimum wages.

In our submission, the LGAQ submission makes the following contribution to the discussion about the quantum of the increase:

- The State Wage Case has little application in local government sector with an absolute maximum of 6.2 per cent of the local government workforce being impacted by the State Wage Case whether directly or indirectly;

- As a corollary to the small number of local government employees impacted upon by the State Wage Case, there is no relationship between the level of employment in the local government sector and state wage cases;
- That funding issues are the reason for financial concerns within the local government sector in Queensland and that those have concerns have recently improved;
- That the Queensland and Australian economies are substantially similar for most economic indicators; and
- The submission falls short of capacity to pay argument and does not demonstrate any adverse outcomes from the increase of 3.3 per cent increase awarded by the Commission in 2017.

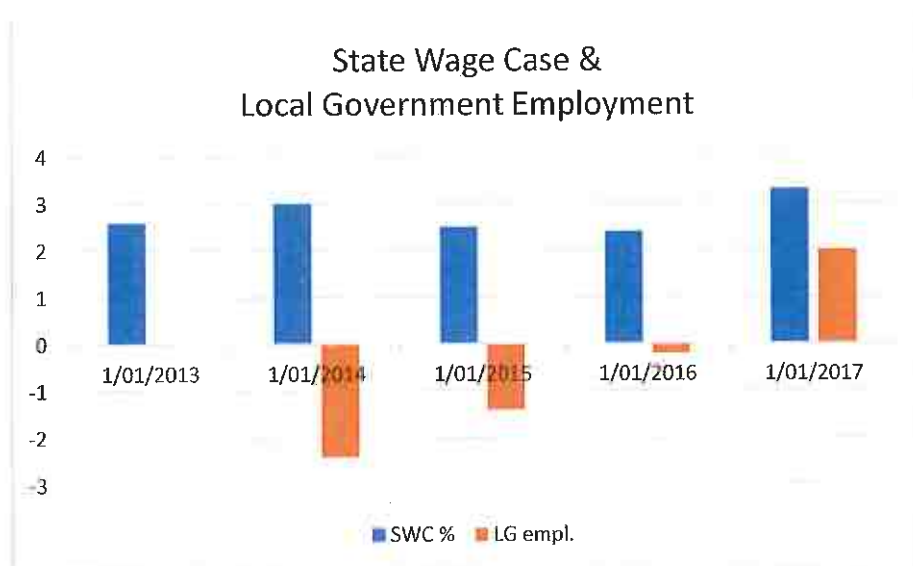
Taking that last dot point first, in the past it has been the practice of industries and sectors to seek to defer (rather than avoid) increases brought by state wage cases. A capacity to pay argument requires substantial justification that does not appear in the LGAQ submission. Moreover, the same logic can be applied in this case that was applied by the Fair Work Commission in the most recent National Wage Review. None of the parties that were arguing for increases considerably lower than the 3.3 per cent increase awarded in the 2017 case were able to point to adverse effects of that decision. It can also be said of the LGAQ submission that it fails to demonstrate an adverse impact of the last decision of this Commission.

At paragraph 23 (page 7) the LGAQ submission states that “(w)ages too large undermine councils’ efforts to maximise and maintain and maximise a sustainable workforce”. This statement is not the subject of any evidence of reference, nor does it attempt to define what is “too large”. Presumably, in the opinion of the LGAQ, the 3.5 per cent being sought by the QCU is “too large” as it is being opposed. If 3.5 per cent is “too large”, then it follows that the 3.3 per cent awarded by the Commission in the 2017 State Wage Case was also “too large”. There is no evidence to suggest that the 3.3 per cent increase awarded in 2017 was excessive or in any way adversely impacted upon employment anywhere within the Queensland jurisdiction.

The issue of increases to minimum wages and the subsequent impact on employment has been dealt with in previous submissions to both the State Wage Case and the Annual Wage Review. It is pleasing to see that the Queensland Government submissions have dropped the previous unattributed assertion that any wage increase adversely impacts upon employment. This logic

appears to be driving the LGAQ submission regarding the undefined “too large”. The unnumbered table on page 7 appears to be contradicting this hypothesis as employment within local government is said to have increased by 2 per cent in 2017, the year in which the Commission awarded a 3.3 per cent wage increase. It may well be that the 2018 figures could be even more illuminating in relation to the impact of State Wage Case decisions and employment within the local government sector in Queensland. The following graph compares the percentage increases contained in the unnumbered table on page 7 of the LGAQ submission.

Figure 1 Percentage increases state wage case and employment in local government sector 2013 to 2017



Source State Wage Case decisions QIRC and LGAQ submission in 2018 Wage Case

However, there is little doubt, in our submission, that the answer for the apparent increase in employment in the local government sector in 2017 pertains to funding. As is stated in the LGA submission at paragraph 38, the State Government Financial Assistance (SGFA) grants that had been frozen in 2012 were indexed again in 2017. Aside from extinguishing the argument in relation to State Wage Cases and employment in the local government sector, this strikes at the very heart of the problems facing local government. Funding is the issue and the downturn in employment, which is within a range of four per cent in the period 2012 to 2016 can squarely be attributed to the freezing of grants. Although there may have been other reasons for councils downsizing in the period of the SGFA freeze, it is a reasonable assumption

that it impacted employment, based on the upturn of employment following the reintroduction of indexation.

That there is no perceivable relationship between the awarding of State Wage Cases should hardly come as a surprise. The LGAQ submission in paragraphs 26 to 30 (on pages 8 and 9) discuss the actual application of the State Wage Case to employees within the local government sector. By calculating the estimates of employees provided by the LGAQ submission as a proportion of the local government workforce, the absolute maximum percentage of the local government workforce to which the State Wage Case applies is 6.2 percent. As the LGAQ points out, those councils that are likely to employ that small percentage of the workforce are the most likely to be facing financial concerns. Again, this is hardly surprising in that those councils that struggle with financial administration are likely to be those councils without a dedicated human resource function that might have led to the adoption of enterprise bargaining some time over the past quarter of a century.

At pages 9 and 10 of the LGAQ submission the main purposes contained in section 4 of the *Industrial Relations Act 2016* are, partially, set out. The LGAQ submission accurately includes the purposes contained in paragraphs (a) and (g); conflates the purposes contained in paragraphs (h) and (j); and conveniently ignores the purpose contained in paragraph (d) of section 4. For the sake of completeness that purpose is as follows:

providing for a fair and equitable framework of employment standards, awards, determinations, orders and agreements.

A continual submission made by employers in opposition to wage increases, either in this jurisdiction or federally, is the supposed disincentive to bargain if wage increases are too high. This argument was dealt in previous QCU submissions and has been dispensed with by the Fair Work Commission in consideration of the National Wage Review. The primary reason for a departure for considering the disincentive to bargain argument is that the decision to bargain or not, particularly if no bargaining has occurred in a quarter of a century, is taken by the employer. Moreover, as is continually submitted by the QCU, the extensive coverage of bargaining in the Queensland jurisdiction makes this consideration an irrelevance to the State Wage Case deliberations.

Purpose (h), to which the disincentive to bargain argument would rely, reads as follows (again for sake of completeness):

h) promoting collective bargaining, including by—

(i) providing for good faith bargaining; and

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

The express ways in which collective bargaining is to be promoted under the *Industrial Relations Act 2016* are twofold. One is by providing for good faith bargaining and the other is to establish the primacy of collective agreements over individual agreements. The emphasis in our submission is the promotion of collective bargaining over individual bargaining that had been the feature of amendments to the previous Act between 2012 and 2015.

The LGAQ submission includes outcomes of bargaining within the local government sector which are consistent with the QCU submission and demonstrate that the most likely wage increase contained in collective agreements is 2.5 per cent. The LGAQ submission also refers to Queensland Government wages policy as being 2.5 per cent. These two figures do coincide with the quantum being advocated by the LGAQ. The QCU would distinguish these bargaining outcomes from the State Wage Case in that the former has application to workers who have had the benefit of decades of bargaining.

Commencing on page 15 the LGAQ submission addresses Queensland economic conditions. At page 16 of the LGAQ submission the outrageous statement is made that the Queensland economy is performing poorly. The entire justification for this clearly inaccurate statement is appendix 3 of the LGAQ submission, the CommSec State of the States which ranks Queensland in sixth place. It is instructive to consider the other comments that are made in relation to Queensland in that appendix which might also make the sixth place ranking a little incongruous. “Queensland continues to lead the way on employment growth and population growth is at a four-year high” is the headline for the discussion concerning Queensland. That employment growth is the strongest of any state with a 4.3 per cent annual increase. Housing finance increased by 5.3 per cent and home building approvals by 9.1 per cent. Equipment spending, which suffered a natural decline following the completion of substantial projects in Queensland, is at a four-year high. Retail sales increased by 9.6 per cent and export receipts increased by 26 per cent.

The LGAQ submission makes the assertion that much of the employment growth in Queensland is attributed to public sector growth. There is no evidence to support this statement

nor is there a reference upon which the statement can be based. As has been discussed in our previous submissions, unemployment does remain stubbornly high in Queensland. This matter was dealt with in our supplementary submission, in that the major factor here is the increased participation rate that is explained by previously discouraged workers re-entering the workforce. As noted previously Queensland also has an increasing population. This also contributes to pressure for employment and belies the suggestion that employment growth is directly because of the public sector.

A range of charts are included in pages 17 through to 22 of the LGAQ submission. The charts, in our submission, demonstrate the similarities between Australia and Queensland with the one possible exception of unemployment. As has been stated in submissions time and again, this statistic is of little consequence given the relatively small impact of the State Wage Case, having regard to its limited application. Aside from unemployment, in our submission the remarkable similarity in a range of economic indicators provides further justification as to why the Commission should award the equivalent of that awarded by the National Wage Review.

The chart contained on page 23 includes the Queensland Council Cost Index which has demonstrated bottoming-out in recent years. The fact that 50 per cent of the Queensland Council Cost Index is made up of the Wage Price Index goes to prove the major submission of the QCU that wages growth is in a crisis. It might well be prudent for councils to reconsider this measure as its utility for adjusting rates and charges as it will be adversely influenced by relying upon the Wage Price Index. It is particularly curious that it would apply such a high weighting to the Wage Price Index considering the proportion of operating expenses attributed to labour costs in the unnamed table contained on pages 25 and 26 of the LGAQ submission. If that table is properly understood, when including depreciation as an expense, only two councils listed (Charters Towers Regional Council and Hinchinbrook Shire Council) would approach having 50 per cent of their operating costs being labour. If one excludes depreciation, 42.9 per cent of councils listed would approach or exceed 50 per cent of operating costs being attributed to labour.

At paragraph 67, the LGAQ submission includes a table showing the percentage of councils in deficit. This table demonstrates the percentage of councils in deficit has decreased from 51 per cent in 2015/16 to 36 per cent in 2016/17. As previously submitted the aggregate reduction of the number of councils in deficit is potentially attributable to the restoration of funding indexation by the SGFA. As has been submitted elsewhere a deficit *per se* is not necessarily a

bad thing, it is when there are perpetual deficits that it becomes a problem (QAO 2018:21). Deficits are likely to have causes other than wages and a lack of budgetary controls may also feature as a reason. This table demonstrates that the financial position of councils has improved as it is better than when the Commission awarded 3.3 per cent last year.

The LGAQ submission also includes appendices 1 and 2 which are Custom Regional Profiles generated by the Queensland Government Statistician's Office. These appendices purport to answer a question that was posed by the Commission in the 2017 State Wage Case in relation to prevailing wages and employment conditions in various local government areas. The LGAQ submission does not go on to describe how those appendices address that particular question.

The QCU has also undertaken a custom workforce profile (people who work in the region) from the Queensland Government Statistician's Office for the local government area of Aurukun. In our submission an analysis of people who work in the region is a far more useful comparison than the residential profiles (those who live in the region) as was appended to the LGAQ submission. We say this because of the nature of the communities and the high level of unemployment and payment by way of Community Development Program (CDP) in regions particularly indigenous communities. It would not be appropriate to compare rates contained in awards of the Commission with unemployment benefits or CDP which is, in itself, controversial.

According to the 2016 Census, Aurukun has a labour force of 371 persons and a total number employed of 231 persons. This provides for an unemployment rate of 37.7%. The 2016 Census also has 506 persons not in the workforce and it assumed that a proportion of these people will be on CDP receiving payments of \$11.20 per hour.

The following table sets out some comparative annual incomes derived from various sources.

Table 1 Aurukun Comparative Rates in the Community

	Per annum	Estimated Number
Median Income 2016	\$42,293	
Median Income (apply WPI*)	\$44,402	
Local Government (Stream A) Award	Proposed including 3.5%	57
Trade equivalent Level 1.4	\$43,217	
3-year degree qualified Level 2.3 (start)	\$43,420	
4-year degree qualified Level 3.1 (start)	\$47,469	
Queensland Government employees**		
Administrative Officer 2	\$46,428	16
Police Officer (2 nd year constable)	\$62,993	14
Registered Nurse (proposed rate***)	\$65,899	5
Teacher (1st year)	\$73,507	21
Private Sector Employees Modern Award		
CW 1	\$40,118	15
CW 3	\$43,544	
General Retail****	\$41,028	20

*1.9% to March 2017 and 2.1 March 2018 ABS 6345.0 - Wage Price Index, Australia, Mar 2018

**NB QG rates of pay do not include any form of allowance or loading but merely the base rate

*** this rate of pay is currently the subject of a ballot of employees for approval

**** annual rate used for point of comparison only

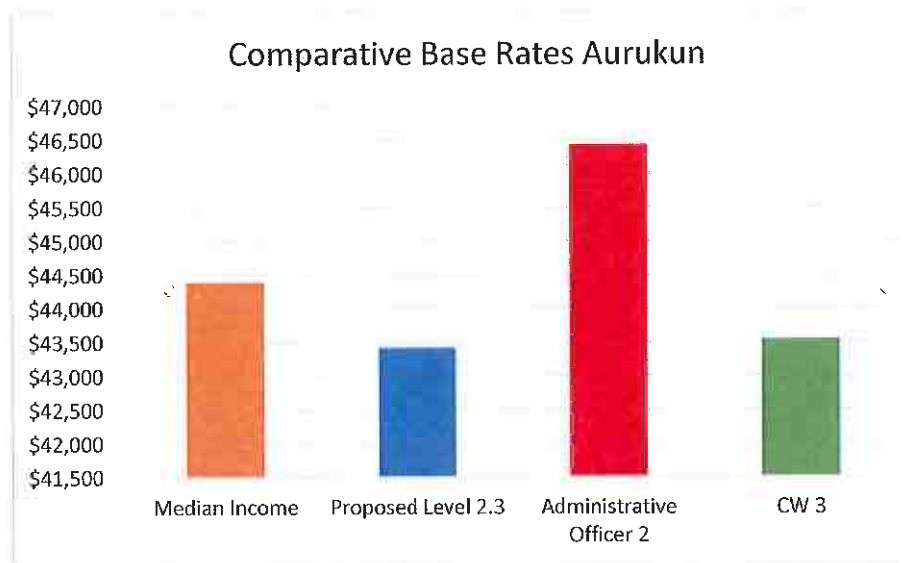
Source ABS 2016 Census, Wage Price Index, Queensland Regional Profiles Queensland Government Statistician's Office, Modern Awards FWC; agreements QIRC and proposed agreement to cover Nurses in Queensland Health; numbers of QG employees supplied by OIR

Employment within Aurukun is mostly public sector with public administration and safety, education and training and health care and social assistance combining to provide for 62.1 per cent of employment. 40.2 per cent of employees have an income in excess of \$65,400 per annum and professionals make up 21.6 per cent of the workforce in Aurukun. These percentages are higher than the Queensland state average of 37.9 per cent being paid in excess of \$65,400 per annum and 19.9 per cent of employees being professionals.

There are six registered business in Aurukun, three in construction employing a total of 15 employees and three in retail employing a total of 20 employees. It is for this reason that Table 1 includes rates of pay from the modern awards of the Fair Work Commission, the *Building and Construction General On-site Award 2010* and the *General Retail Industry Award 2010*. These awards would presumably cover a majority of employees in the registered businesses in Aurukun.

A graphic representation of some of the selected per annum figures places them into perspective. The following graph compares the rates for the median income (including adjustment for the WPI from 2016 census); the rate of pay for Level 2.1 *Queensland Local Government Industry (Stream A) Award – State 2017* including the 3.5% sought by the QCU in this State Wage Case; the base rate of pay for Administrative Officer Level 2; and the rate of pay (weekly award rate x 52) for the trade level under the *Building and Construction General On-site Award 2010*.

Figure 2 Comparative Base Rates of Pay Aurukun



Source Table 1 above

This figure, in our submission, provides an illustration of how moderate the rate of pay being sought by the 2018 State Wage Case is by comparison to other rates of pay prevailing within the Aurukun community. It cannot be over-stressed that the rates used for comparison are base rates which exclude a range of allowances and loadings that would otherwise apply to employees in Aurukun. It is also important to understand that the base rates chosen are for the

lowest paid for the type of employee of the Queensland Government. Administrative Officer level 2 is chosen as the lowest classification level possible for an adult and many of the administrative and professional positions would be well in excess of Level 2.

To return to the chart on page 26 of the LGAQ submission, the Aurukun Shire Council revenue is attributed as follows: 3 per cent “Rates”; 54 per cent “Grants”; 27 per cent “Contract Work;” and 15 per cent “Other”. If that table is to be understood it proposes that rates would need to be increased by 44 per cent in order to cover a wage increase of 3.5 per cent. In our submission this is an absurd suggestion for a council that relies upon rates for 3 per cent of its revenue would seek to cover the wage increase by an increase in rates. It is also noted that this absurd exercise was not replicated for the 2.5 per cent increase being advocated by the LGAQ.

Conclusion

The QCU relies upon its initial submissions and supplementary submissions to justify the wage increase sought by our amended application. In so doing, we rely upon the consent of the major employer in the jurisdiction. We are also asking the Commission to continue with the practice of flowing on the increase awarded by the Fair Work Commission in the most recent National Wage Review.

The LGAQ submissions, the only submission advocating an increase of less than that awarded by the Fair Work Commission, do not provide the justification for a departure from the established practice of flowing on the quantum from the National Wage Review. A series of questions asked by the Commission in the 2017 State Wage Case decision have also been answered to the best of the parties ability. The answers to those questions do not, in our submission, provide any justification for an increase of less than 3.5 per cent.

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