**QUEENSLAND INDUSTRIAL RELATIONS COMMISSION**

*Industrial Relations Act 2016* – s 458

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

**Re: STATE WAGE CASE 2018 – Matter Nos B/2019/32, B/2019/33 and B/2019/34**

# Submissions in Reply

## Together Queensland, Industrial Union of Employees
## October 2019

**Introduction**

1. **The Claim.** The Queensland Council of Unions (QCU), Together Queensland, Industrial Union of Employees (Together Qld) and the Australian Workers Union (AWU) are seeking the Queensland Industrial Relations Commission decide the following:

   a. A general ruling amending all state awards by a 3% wage adjustment,

   b. A general ruling amending all state awards by increasing award allowances which relates to work or conditions which have not changed in service increments by 3%,

   c. Increase the Queensland Minimum Wage as it applies to all employees by 3%, and

   d. Determine the operative date of the above from 1 September 2019.

2. These applications effectively seek that the State Commission follow the ruling of the Federal Tribunal, as has customarily occurred.

3. In response the Queensland Government has radically departed from the approaches of previous Governments in respect of Award increases and is seeking a General Ruling that, in appearance, follows the Federal ruling but, through swingeing exemptions to its application, excludes over half of all extant Modern Awards, leaving those rates with no increase at all.

4. Equally remarkably, the Queensland Government's submission proposes that in the case of two Awards; the *General Employees (Queensland Government Departments) and Other Employees Award* and the *Building, Engineering and Maintenance Services Employees (Queensland Government) Award – State 2016*; that the ruling be applied to some of the classification streams within the Awards, but not others.

**Queensland Government Submission**

5. The Queensland Government submission supports the following elements of the applications made by the QCU, Together and AWU with respect to the State Wage Case (SWC):

   a. 3.0% increase to the QMW.

   b. a 3.0% increase to existing allowances which relate to work conditions, which have not changed, in all state awards.

   c. an operative date of 1 September 2019 for any increases awarded.

6. The Queensland Government submission does not support the request for a general ruling amending all state awards by a 3% wage adjustment, in so far as the Government seeks to limit Award increase to state Awards "other than those that apply to state public sector employees which have received

a 'flow on' from certified agreement rates of pay by virtue of s.129 of the repealed Industrial Relations Act 1999 (repealed IR Act) or s.145 of the Industrial Relations Act 2016 (IR Act).

7. For those Awards the Government submits that the Award rates should receive no increase to prevent Award rates of pay to overtake certified agreement rates of pay.[1]

8. This submission is remarkable when the history of Qld Government submissions is considered in light of the Federal Annual Wage Review (Federal AWR).

| Year | Federal AWR | QCU Claim | Qld Gov Position | QIRC SWC Decision |
|---|---|---|---|---|
| Bligh Government (ALP) | | | | |
| 2009 | Nil (AFPC) | $27.80 | 2.5% award increase up to level C10 of the *Engineering Award – State 2012*, or $16.15 above | 2.5% up to C10, or $16.20 above* |
| 2010 | $26.69 increase to award wages | $26 | "moderate increase to maintain the real value of Award wages" | $20 |
| 2011 | 3.4% increase to award wages | 4.2% award increase above C10 and flat $28 below | moderate increase to maintain the real value of Award wages | $22 |
| Newman Government (LNP) | | | | |
| 2012 | 2.9% increase to award wages | 3.8% award increase above C10 and flat $26 below | "a cautious approach to setting wages for award reliant workers" | $20.50 up to C10, or 2.9% above |
| 2013 | 2.6% increase to award wages | 4.9% award increase above C10 and flat $30 below | "a cautious approach to setting wages for award reliant workers" | $15.80 up to C10, or 2.6% above |
| 2014 | 3% increase to award wages | 3% award increase above C10 and flat $22.30 below | Adopt a cautious approach | $22.30 up to C10, or 3% above |
| Palaczszuk Government (ALP) | | | | |
| 2015 | 2.5% increase to award wages | 2.5% award increase above C10 and flat $19.20 below | 2.5% increase to all award wages and allowances | $19.20 up to C10, or 2.5% above |
| 2016 | 2.4% increase to award wages | 2.4% award increase above C10 and flat $18.90 below | 2.5% increase to award wages above C10 and flat rate equivalent below | 2.4% increase to all award wages |
| 2017 | 3.3% increase to award wages | 5.7% award increase above Lvl 3 of P&C Award and flat $43.60 increase below | 3.3% increase to all award wages | 3.3% increase to all award wages |
| 2018 | 3.5% increase to award wages | 7.2% award increase above C10 of *Qld Local Government Industry (Stream C) Award* and flat $60.10 increase below | 3.5% increase to all award wages | 3.5% increase to award wages |

* Differential due to QIRC practice of rounding to nearest 10c

[1] See Queensland Government submissions at [43].

9. It is notable that no government in the last decade has advocated in the SWC for no increase to Awards applying to state public sector wages as the Qld Government has in this matter. It is also salient that the Queensland Government submission relates only to Awards covering public sector employees. In that light the State's submissions with respect to public sector awards should be viewed as those of an employer not as an 'amicus curiae'.

10. This Commission has historically attached considerable weight to the National Wage/Annual Wage Review decisions of its federal counterpart, whilst always having regard to the particular economic conditions of the state of Queensland at the time.[2]

11. In the 2016 SWC the Full Bench said: "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."[3]

12. The Full Bench in the 2017 SWC observed that there were "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;"[4]

13. In that decision the Full Bench set out a comparison of the movement in Award Rates, and Minimum Wage levels in both the Federal and State jurisdiction at Table 1, the close correlation of the Federal and State movement is stark.

14. While the Full Bench in the 2018 SWC did not formally adopt the 2016 statement it followed the same approach.

15. Adopting the language of the Full Bench in 2016, the State submits this year that there are cogent reasons for the Commission to depart from its practice of following the ruling of the federal tribunal in the Federal AWR. This is confined to awards applicable to state public sector employees that have received a 'flow on' from certified agreement rates of pay by virtue of s.129 the repealed Industrial Relations Act 1999 or s.145 of the Industrial Act.

16. These 'cogent' reasons are not clearly specified but appear to be:

a. The difference between the Federal AWR and Queensland State Wage Case in terms of impact.

b. The 'flow-on' of Certified Agreement rates into Awards.

c. The impact of Award increases from the SWC on collective bargaining.

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[2] See Application for Declaration of General Ruling (State Wage Case 2014) [2014] QIRC 129 at [12]; Application for Declaration of General Ruling (State Wage Case 2015) [2015] QIRC 154 at [7], [8]; Application for Declaration of General Ruling (State Wage Case 2016) [2016] QIRC 088 at [7], [8].

[3] Application for Declaration of General Ruling (State Wage Case 2016) [2016] QIRC 088 at [23].

[4] Declaration of General Ruling (State Wage Case 2017) [2017] QIRC 081 at [60].

**The difference between the Federal AWR and Queensland State Wage Case**

17. The Qld Government submits that there is a fundamental difference between the Federal AWR and the Qld SWR in that the Federal AWR affects large part of the Australian workforce reliant on Awards whereas the Qld SWC only directly affects a relatively small proportion of the workforce, the bulk being on collective agreements.

18. While this is true, it is not a new development. On 1 January 2010, Queensland's industrial relations for the private sector moved from a state system to a national system, legislated through the *Fair Work Act 2009*. The 2009 SWC decision was said to affect up to 172,000 employees, predominately in the retail; accommodation and food services; health care and community services; and property and business services sectors.

19. The *Fair Work (Commonwealth Powers) and Other Provisions Act 2009* (Qld) then referred the majority of the remaining employees other than those in the Local Government or Qld public sector. As a result, the 2010 SWC was said to only affect up to 7,000 award reliant employees of the State Government (1,000), Local Government (2,000) and Parents and Citizen's Associations (P&Cs) (3,000 to 4,000).

20. By way of comparison, the 2018 decision was said to directly affect 6,000 employees from P&Cs (3,000), Auxiliary Firefighters (2,000), Local Government (1,000) and 15 permanent employees of the Darling Downs Moreton Rabbit Board.

21. While it is the case that the Qld SWC has an indirect effect on the wage rates of some employees whose certified agreements include provisions which will entitle them to receive all, or part, of the improvements under the Qld SWC this is, as the Full Bench noted in the 2018 SWC Decision, "a result of decisions made by the employers of such employees, not this Commission."[5]

22. Any suggestion that the differences in the groups of employees affected by the Federal AWR and the State SWC now provides a justification to depart from the practice of following the ruling of the federal tribunal in the Federal AWR is not supported by history.

**"Flow on" of certified agreement rates**

23. At [19] to [46] of the State's submission, it submits that the State Wage Case outcome should not apply to Awards which had the certified agreement rates from 2006 flowed on in 2011. This contention is erroneous and should not be accepted. The contention advanced by the State ignores:

a. the matters that the Commission was required to take into account when it decided to flow the 2006 rates on in 2011;

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

b. the determination of the Commission, when making the current Modern Awards that the pay rates provided were appropriate for providing *a fair minimum safety net of enforceable conditions of employment for employees*;

c. the improper elevation of the importance of one element by which the purpose of the Act is to be achieved over other elements;

d. the unavoidable consequences of the State's parsimonious approach to bargaining since 2011.

24. It is necessary to deal with each of these errors in turn.

25. **Statutory consideration in dealing with Award flow on application.** The Qld government at [31] of its submissions references the 'flow on' increases on 13 December 2011 to the precursors of the Queensland Public Service Officers and Other Employees Award – State 2015 (QPS Award) and the General Employees (Queensland Government Departments) and Other Employees Award – State 2015 (GE Award) (among others)

26. The context regarding the particular decisions to incorporate expired Certified Agreement rates into Awards must be understood in considering the effect the incorporation. Attached at Schedule 1 is a table setting out the Awards that received a flow on through s129 of the *Industrial Relations Act 1999* in 2011 and the respective decisions.

27. In making those decisions the Commission was required to have regard to a number of provisions in the *Industrial Relations Act 1999*, most particularly the following sections:

a. Section 3 - Principal object of the Act, which relevantly provided:

"*The principal object of this Act is to provide a framework for industrial relations that supports economic prosperity and social justice by – ...*

*(b) providing for an effective and efficient economy, with strong economic growth, high employment, employment security, improved living standards, low inflation and national and international competitiveness; and ...*

*(d) ensuring equal remuneration for men and women employees for work of equal or comparable value; and*

*... (f) promoting the effective and efficient operation of enterprises and industries; and (g) ensuring wages and employment conditions provide fair standards in relation to living standards prevailing in the community; ...*"

b. Section 126 - Content of Awards, which relevantly provided:

"*The commission must ensure an award - ...*

*(d) provides for secure, relevant and consistent wages and employment conditions; and*

*(e) provides for equal remuneration for men and women employees for work of equal or comparable value; and*

*(f) provides fair standards for employees in the context of living standards generally prevailing in the community; and*

*(g) is suited to the efficient performance of work according to the needs of particular enterprises, industries or workplaces; and*

*(h) takes account of the efficiency and effectiveness of the economy, including productivity, inflation and the desirability of achieving a high level of employment; and ...*"

28. Principle 8 of the 2010 and 2011 State Wage Case Statement of Policy also provided the following:

"***8. Award Amendment to Give Effect to a Certified Agreement***

*Subject to s. 129 of the Act the Commission may include in an award provisions that are based on a certified agreement whether or not there be consent by all parties to be bound. Without limiting the matters to be taken into account by the Commission,* ***the Commission should consider whether inclusion of the provision will act as a disincentive to enterprise bargaining****. If the effect of grant of the application will be to increase wages payable under the award, the Commission is to insist on submissions about how future state wage increases are (if at all) to be absorbed into the increase. [The Commission is not restricted to hearing submissions about future state wage increases.] Where such increases distort relativities, the Commission must ensure that the relativities and the wage increases are separately expressed.*" (emphasis added)

29. The Government's submissions at [43] that the incorporation of certified agreement rates in 2011 has now created a disincentive to bargaining almost a decade later is, in effect, seeking to retrospectively undo numerous Full Bench decisions to raise the safety net Award in accordance with the Act and, by implication, attack the validity of those decisions. The appropriate time for this argument to be made was during the application in 2011. No such argument was made because there was no proper basis for it given the large gap between the Award rates and the certified agreement rates. The gap only narrowed because of failure to reach a bargained outcome in 2012 and 2013. This was compounded by the limited 2.2% increases provided by way of directive in December 2013 and 2014.

30. The Government's submissions also appear to suggest that it is proper for the Commission to second guess the validity of Award rates that have been inserted by previous Benches in accordance with the extant provisions of the Act at the time. Such an approach infers an Orwellian view that some wages are more 'secure, relevant and consistent' than others.

31. Wages rates are set in Awards by a variety of paths, whether that be the inclusion of a wage structure as part of a new Award[6], adopting new rates as part of an equal remuneration order[7] or incorporating certified agreement rates. Once the Commission has decided that the rates are appropriate, taking into account those matters it is required to do so by law, those rates assume the equal status as '*secure, relevant and consistent wages and employment conditions*'.

32. **Setting of Modern Award rates.** The Qld Government's submission at [44] is that no increase to the rates of pay in state awards that apply to state public sector employees which have received a 'flow on' from certified agreement rates by virtue of s.129 of the repealed IR Act or s.145 of the IR Act. The government lists two groups of Awards affected. The first group would be wholly excluded from any increase and the second group would see increases limited to specific classifications.

33. As far as Together can ascertain, none of the Awards in either group have had certified agreement rates incorporated under s145 of the IR Act since they were made. Any incorporation of certified agreement rates occurred in the predecessor repealed Awards under the repealed IR Act. If that is the case, the rates of pay in the Awards listed are those set when the Modern Awards were made adjusted for subsequent State Wage Case rulings and, in some cases, corrections of error.

34. The making of the Modern Awards was required by virtue of a request (the Request) by the Attorney-General and Minister for Health pursuant to section 140C(1) of the Industrial Relations Act 1999 (the Act). A copy of the final consolidated request from the then Minister for Employment and Industrial Relations, Minister Grace, is attached at Appendix 1. In the "Statement of Intent" it noted relevantly that:

> "*The purpose of award modernisation is to ensure awards remain relevant and provide for the rights and responsibilities that ensure economic advancement and social justice for all employees and employers. Award modernisation is not intended to reduce or remove employee entitlements and conditions from what is available in pre-modernisation awards. Having regard to this, the Commission shall ensure wages and employment conditions continue to provide fair conditions in relation to the living standards prevailing in the community and what is afforded to employees and employers in the relevant pre-modernisation award/s.*"

and

> "*The outcome of award modernisation is to provide for a fair and just industrial relations system underpinned by clear, certain and stable modern awards.*"

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[6] E.g. Health Practitioners and Dental Officers (Queensland Health) Award - State 2014 (discussed later).
[7] E.g. Child Care Industry Award - State 2003 (Matters B/2003/2133).

35. In making Modern Awards, the Commission was required to consider the Object of Modernising Awards, as set out below:

> "***140BA Object of modernising awards***
>
> *The principal object of this part is to provide for the modernisation of awards so they-*
>
> *(a) are simple to understand and easy to apply; and*
>
> *(b) together with the Queensland Employment Standards,* ***provide for a fair minimum safety net of enforceable conditions of employment for employees****; and*
>
> *(c) are economically sustainable, and promote flexible modern work practices and the efficient and productive performance of work; and*
>
> *(d) are in a form that is appropriate for a fair and productive industrial relations system; and*
>
> *(e) result in a certain, stable and sustainable modern award system for Queensland"* (emphasis added).

36. Wage rates in all Modern Awards, including those Awards listed in Attachment 1 to the Queensland Government submissions, were made with consideration of the same Award Modernisation Request from the Minister, and all in accordance with the relevant provisions of the Act.

37. Importantly, the wage rates in each Modern Award were all deemed to be part of a "fair minimum safety net". There is no basis upon which those safety nets should now be somehow classified into different categories of 'fairness'.

38. The setting of wage rates in a Modern Award was explicitly considered in the making of the *Health Practitioners and Dental Officers (Queensland Health) Award - State 2014* (HPDO Award).

39. Contrary to the Queensland Government submissions, the wages rates in the HPDO Award were not as a result of a "flow on' by virtue of s. 129 of the repealed IR Act or s. 145 of the current IR Act. Prior to the making of the HPDO Award, Health Practitioners and Dental Officers were covered by the repealed *District Health Services Employees' Award—State 2012*. The HP classification structure was not a feature of that Award, but instead had been created as part of the *Health Practitioners (Queensland Health) Certified Agreement (No. 1) 2007 (CA/2007/63)*.

40. The considerations of the Full Bench in the making of the HPDO Award are directly relevant to understanding how the provisions of the Act at the time were considered and applied and relevant passages from the decision[8] are set out in full below:

[8] Matters MA/2014/130, MA/2014/131, MA/2014/132, MA/2014/133 and MA/2014/134.

**"Minimum Salary Levels - clause 12**

[41] The salary rates contained in the proposed award were prepared by the AMOD Team using the methodology proposed by Queensland Health.

[42] Section 140D(1) of the Act requires the commission to ensure that modern awards, together with the Queensland Employment Standards, provide a minimum safety net of employment conditions that is fair and relevant.

[43] Although the DHSEA covers health professionals and dental officers the classification structure in that award does not reflect the classification structure that in practice applies to those employees under HPEB2. The current rates in the DHSEA are based on the enterprise bargaining salary rates for employees covered by that award as at on September 2007 and increased by the amounts awarded by State Wage Case General Rulings since that time. The same methodology has been used to arrive at the rates contained in the proposed award.

[44] The unions submit that the existing certified agreement rates should be the minimum rates provided for by the Award. We do not accept this submission. The rates proposed by the unions would not represent a properly fixed minimum safety net.

[45] As the rates appearing in the proposed award do not reflect the September 2014 State Wage Case General Ruling, Queensland Health has provided an amended schedule of rates incorporating those increases. It is those rates that will be included in clause 12 of the Award."

41. Importantly, the methodology proposed by the State, and used by the Award Modernisation (AMOD) Team in setting "a minimum safety net of employment conditions that is fair and relevant" was the methodology previously accepted and agreed to in altering Awards under s129 of the repealed IR Act.

42. The Government's submissions are now to the effect that those minimum, fair and relevant safety nets should be treated differently for the purposes of a general ruling.

43. Those minimum, fair and relevant safety nets have existed in Awards for many years and have been treated equally in previous General Rulings. Where incorporation of Certified Agreement rates under s129 of the repealed IR Act features, the wage rates were set in Awards in accordance with the prevailing legislative requirements of the time and then confirmed as a part of a minimum safety net of employment conditions that is fair and relevant during the making of Modern Awards.

44. The Qld Government, in its capacity as an employer, now seeks that effect of those safety net rates to be undone and the validity of the decisions of numerous Full Benches of the Commission be questioned. In short, the State now contends that the rates provided for in the relevant Awards are not fair and just and otherwise appropriate. With respect that contention should be rejected.

45. **Achieving the main purpose of the Act.** The Qld Government's submissions at [51] to [59] erroneously elevate the importance of collective bargaining in achieving the purpose of the Act over other elements set out in s. 4.

46. In *Certain Lloyds Underwriters v Cross* (2012) 248 CLR 378, French CJ and Hayne J described the proper approach to statutory construction at [24] to [26]. In those paragraphs their Honours emphasised that the purpose of legislation must be derived from what the legislation says, and not from any assumption about the desired or desirable reach or operation of the relevant provisions. See also *The Electrical Trades Union & Ors v Brisbane City Council; The Australian Workers' Union v Brisbane City Council* (No. 2) [2018] QIRC 15 at [42].

47. Section 3 of the Act sets out the main purpose of the Act.

> *"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."*

48. Section 4 of the Act then sets out how that main purpose is to be achieved. They also relevantly include:

> *"**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*
>
> *(ii) establishing the primacy of collective agreements over individual agreements..."*

49. When considering the equivalent provisions of the *Fair Work Act 2009* (Cth) a Full Bench in *Re Aurizon Operations Ltd* (2015) 249 IR 55 observed at [144] and [145][9]:

> *"Paragraphs (a)-(g) of s 3 are not properly described as objects of the Act. The object of the Act is as stated in the previous paragraph.*
>
> *The means by which this object is to be achieved is then set out in the paragraphs which follow in paras (a)-(g). The means chosen do not have any particular hierarchy or precedence. It seems clear from the structure of the section that each of the means individually, and the means collectively are intended to achieve or further the object."*

50. The appropriate approach is to read the Act as whole and ascertain the purpose of the legislation from words used. In this respect the approach urged by the State contains three major errors.

51. Firstly, contrary to what was said in *Re Aurizon* the State seeks to elevate the purpose contained in (h) over (d). In focussing on subclause (h) the State submissions fail to acknowledge the negative effect the proposal to not increase Award rates would have on improving living standards as contemplated by subclause (a). It also seeks to raise the status of agreements above awards and determinations in the "fair and equitable" framework considered in subclause (d). Further, by seeking to depart from the historical practice of following the national tribunal, it detracts from the aim of subclause (c) to ensure wages and employment conditions provide fair standards in relation to living standards prevailing in the community.

52. Secondly, it ignores the scheme of the Act as whole. The Act does not require that the Commission consider Award interaction with Collective Agreements when making a general ruling of this type. Section 141 of the IR Act sets out the general requirements for the Commission exercising its powers under Chapter 3, relevantly:

> ***"Section 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;*

[9] These passages were approved by the Full Court of the Federal Court in *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia and Others v Aurizon Operations Ltd* (2015) 233 FCR 301 at [22].

> *(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;*
>
> ...
>
> *(e) the efficiency and effectiveness of the economy, including productivity, inflation and the desirability of achieving a high level of employment.*

53. The scheme of the IR Act involves the making of Awards which provide *fair and just wages and employment conditions*. The IR Act then permits parties to bargain for collective agreements which are more beneficial than the outcomes contained in the Award – see ss. 199 and 210 of the IR Act.

54. The Qld Government submissions invite the Commission to have regard to an irrelevant consideration and should be rejected. The Legislative scheme is that the Commission sets Awards that provide fair and just wages and employment conditions and that Collective Bargains can be made that provide no disadvantage when compared to those Awards. However, the State seeks to invert that process and limit the wages set in an Award so as to enable the State, as an employer, to make a bargain which involves lower wages that it desires to pay.

55. The third error involves the State's approach to Chapter 4 of the IR Act, which deals with collective bargaining. The Queensland Government at [54] quotes only subclause (a) of s163 which outlines the purpose of the Chapter. While it does note that there is provision for arbitration it refers back to the Bill's explanatory notes to add that arbitration should only be as a last resort. Section 163 relevantly provides in full:

> ***Section 163 Purpose of chapter***
>
> *The purpose of this chapter is—*
>
> *(a) to facilitate collective bargaining by employees and employers, in good faith and with a view to reaching agreement, as the primary basis under this Act on which wages and employment conditions are decided; and*
>
> *(b) if the negotiating parties can not reach agreement, to provide for the commission to—*
>
> *(i) help the parties reach agreement or, if agreement can not be reached, reduce the matters in dispute; and*
>
> *(ii) arbitrate the matter if conciliation is not successful; and*
>
> *(c) if the negotiating parties reach agreement, to enable the parties to—*
>
> *(i) make an agreement and apply to the commission for the agreement to be certified; or*

*(ii) in particular circumstances, apply to the commission for the making of a bargaining award and revocation of the modern award that covers the negotiating parties; and*

*(d) to recognise the right of negotiating parties to take protected industrial action, if particular requirements are satisfied, as part of the collective bargaining process..."*

56. The process of arbitration is an integral part of the section and not provided any lesser importance in achieving the overall purpose of the Chapter than any other element. While the explanatory notes do state that arbitration should only occur as a last resort, it is important to note that aim is significantly achieved by the extensive minimum period of 6 months of negotiation after expiry, including 3 months of conciliation, which is required before a party can unilaterally pursue arbitration that was introduced as part of the Act.

57. Nothing in Chapter 4 or the IR Act as whole suggests that the power to determine Award rates should be exercised in such a way so as to assist the parties reaching a voluntary bargain.

58. **Queensland Government Wages Policy impacts on bargaining.** The State is driven to advance the case that the outcome from the State Wage Case should not be extended to various Public Sector Awards because bargaining has become dysfunctional due to the actions of the State from 2012 till 2015 where in a number of instances negotiations for new Agreements proved unsuccessful.

59. In many areas of the Public Service no annual increases to wages occurred in 2012 and 2.2% p.a. pay increases were applied unilaterally by the Government by Directive, Regulation or Administrative in 2013 and 2014. Whilst bargaining resumed after 2015, that bargaining has been constrained by the implementation of a 2.5% Wages Policy in circumstances where underlying cost of living increases have exceeded that amount.

60. The underlying problem the Qld Government is trying to resolve is clearly the perceived impacts an increase in Award rates will have on collective bargaining while the current Wages Policy of 2.5% on existing agreement rates is maintained.

61. In prosecuting this argument seeks to raise matters currently before the Commission elsewhere in arbitration. It is Together's general submission that matters raised by Government regarding specific bargains are not a matter for this Bench but a matter for bargaining. However, having been raised some observations are appropriate.

62. Firstly, the Government suggests that because some outcomes of collective bargaining have resulted in referrals to arbitration collective bargaining itself is being undermined. This betrays a fundamental misunderstanding of the legislative framework.

63. Arbitration is not an alternative to collective bargaining under the Act, the provisions concerning Arbitration are contained in Division 2, Part 3 of Chapter 4 – Collective Bargaining. As such arbitration is an intrinsic element of the Collective Bargaining framework and facilitates good faith bargaining by providing a mechanism for an independent assessment of the merits of the positions of the negotiating parties were agreement cannot be reached.

64. Such a process encourages collective bargaining by providing a disincentive for negotiating parties to adopt unmeritorious bargaining positions.

65. The examples in the Government's submission are instances where Award rates have overtaken collective bargaining rates and the Government's Wages Policy is such that this will remain the case unless Award rates are frozen. The merits of this Wages Policy will be canvassed in detail in those arbitrations. The Government's submissions seek to 'change the goal posts' in those matters.

66. Secondly, the Government is selective in its choice of Agreements to mention. It fails to note that in the current bargaining cycle numerous agreements have been reached in bargaining. Including where in-principle agreement has been given, these include:

a. The Medical Officers' (Queensland Health) Certified Agreement (No.5) 2018

b. Department of Education Teachers Aides Certified Agreement 2018

c. Department of Education Cleaners Certified Agreement 2018

d. Office of the Information Commissioner CA 2018

e. QFleet Certified Agreement 2019

f. South Bank Employing Office Certified Agreement 2019

g. Queensland Fire and Emergency Service Certified Agreement 2016

h. TAFE Queensland Educators Certified Agreement 2016

i. Department of Education and Training State School Teachers' Certified Agreement 2016

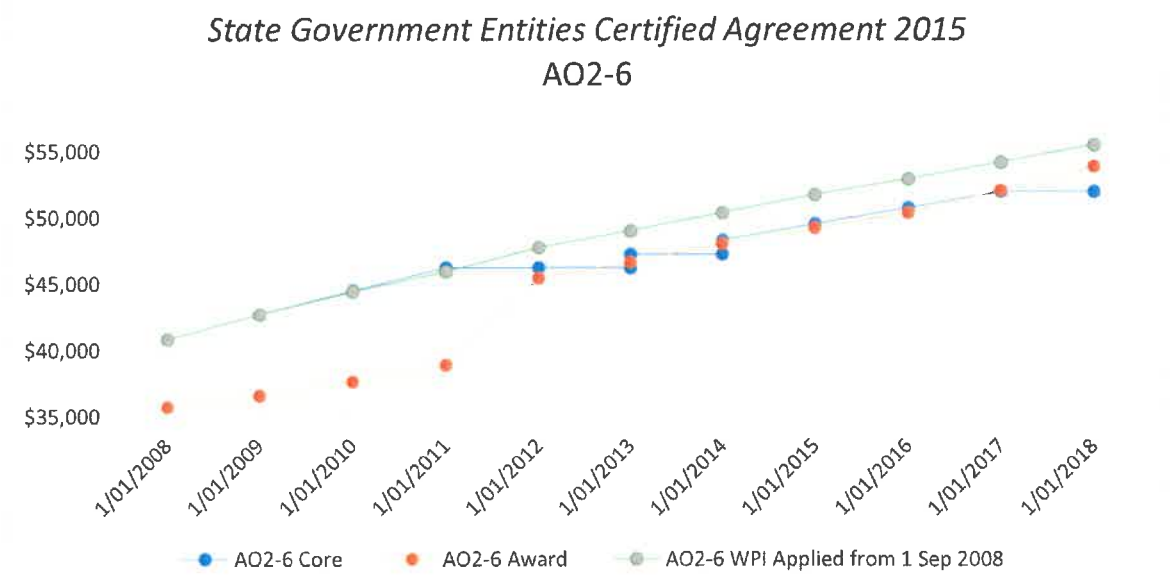
67. All of the above Agreements have underpinning Awards where Certified Agreement rates have been incorporated[10] and where previous State Wage Case rulings have been applied without being a barrier to agreement being reached.

[10] Note, contrary to the Qld Government submissions in Attachment 1, the predecessor of the *Workcover Queensland Award –State 2012* included rates from the WorkCover Queensland Agreement 2000 - Certified Agreement as at 1 January 2002.

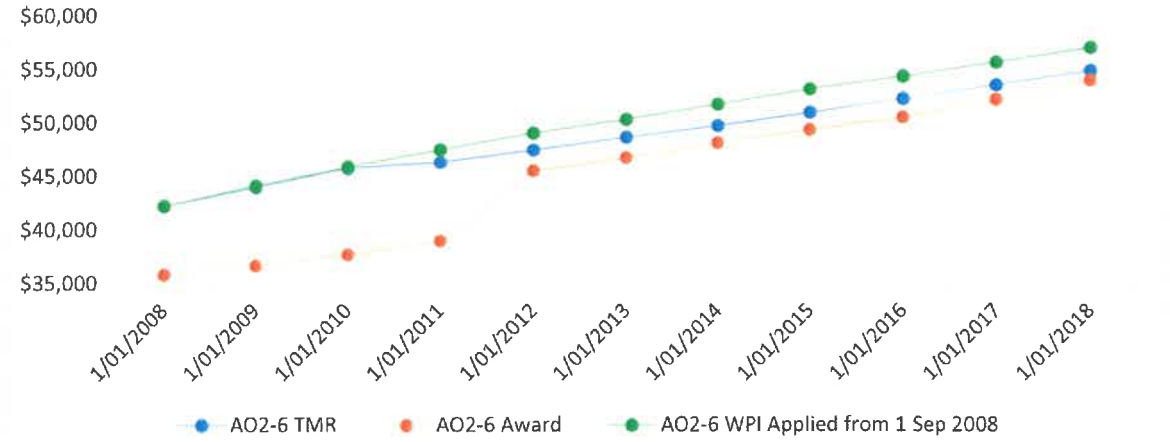
68. Thirdly, in Graphs 1 and 2 of the submissions the Queensland Government tracks how wages rates in the State Government Entities Certified Agreement 2015 have been overtaken by Award rates and proposes that the culprit is the increase to safety net rates in 2011 discussed above.

69. The difficulty with the State's position is that this approach ignores the role the Government's Wages Policy has had over time with respect to the relativities between Agreement and Award rates in the State public sector. A comparison of the relative changes over time of Agreement and Award rates against the Public Sector Wage Price Index (WPI) trend figures released by the ABS is instructive.

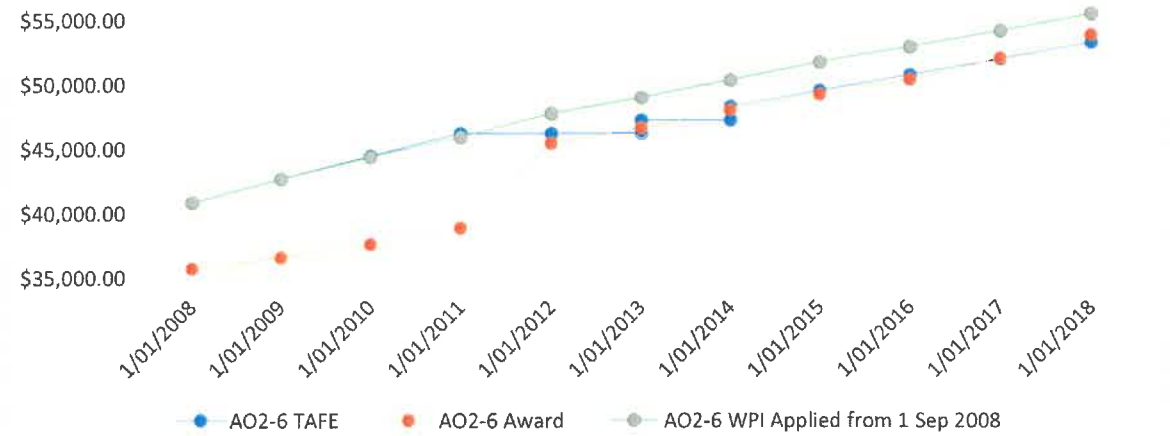
70. The graphs below show the relativities in a number of Public Sector agreements and demonstrate that, notwithstanding the raising of Award safety nets that occurred in 2011, Award rates in the Public Sector have generally tracked against public sector WPI movements. In contrast, public sector collective agreement rates that have only increase in line with the Government Wages policy have grown below the public sector WPI, falling back towards (and in some cases below) Award rates.



*Transport and Main Roads Enterprise Bargaining Certified Agreement 2016*
AO2-6




TAFE (Services Employees)
AO2-6




71. The above graphs demonstrate that had wages in Public Sector collective agreements increased at the rate of the public sector WPI the gap between the Award safety net between the 2011 and 2019 would have been maintained, despite some slight narrowing. It is because the Government Wages Policy since 2011 has suppressed public wage increases below the rate of WPI, exacerbated by the failure to achieved bargained outcomes in the 2012-2015 period, that the gap between Award and Agreement rates has reduced or disappeared.

72. That being the case, the Award safety net is doing exactly what it is supposed to do.

73. Public Sector Wage Policies have been the subject of recent comment, including from the Governor of the Reserve Bank, Philip Lowe. It has been noted that public sector wage suppression has reinforced private sector wage deceleration, in part, by establishing a highly visible benchmark for wage

determination in the private sector.[11] In his recent address to the Federal House of Representatives Standing Committee on Economics the Governor of the Reserve Bank made the following relevant observations:

> *"Caps of wages growth in public sectors right across the country are another factor contributing to subdued wage outcomes."*

and

> *"In the medium term, I think wages in Australia should be increasing at three point something. The reason I say that is that we are trying to deliver an average rate of inflation of 2½ per cent. I'm hoping labour productivity growth is at least one per cent—and I'm hoping we can do better than that—but 2½ plus one equals 3½. I think that's a reasonable medium-term aspiration; I think we can do better, but I think we should be able to do that. So I would like to see the system return to wage growth starting with three. We have seen that with the minimum wage increase in the last three years. I think we had 3.3, 3.5 and three. They seem reasonable outcomes. Over time, I hope the whole system, including the public sector, could see wages rising at three point something."*

and

> *"Most people are accepting wage increases of two to 2½ per cent. And the public sector wage norm I think is to some degree influencing private sector outcomes as well—because, after all, a third of the workforce work directly or indirectly for the public sector. So I think it is an issue but, on the other side of the ledger here, it is important that state governments manage their budgets prudently. I have spoken to a number of state treasurers. They say, 'We'd like to do more here but we've got a tough budget situation.' So there is a balancing act to be completed here. But I hope that, over time, that balance could shift in a way that would allow wage increases, right across the Australian community, of three point something."*[12]

74. The effect of the Government Wages Policy is that, for some Collective Agreements, wage rates in those agreements have fallen below the Award rates. Further wage suppression could see a similar outcome occur in more and more Agreements.

75. However, this is not a problem of the Commission's making whether it be through decisions to incorporate certified agreement rates in Awards according to law, or by making of modern Awards or awarding State Wage increases generally in line with rulings of the federal tribunal, with any necessary or desirable modifications, having regard to the particular circumstances of Queensland.

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[11] Stewart, Stanford and hardy (eds) 2018, *The Wages Crisis in Australia*, Adelaide University Press 2018-19, p 124.

[12] Australia, House of Representatives 2019, *Standing Committee on Economics*, viewed on 22 September 2019, https://parlinfo.aph.gov.au/parlInfo/download/committees/commrep/eea5d0b8-72e9-4b5e-acf8-52ed46888ced/toc_pdf/Standing%20Committee%20on%20Economics_2019_08_09_7100_Official.pdf;fileType=application%2Fpdf#search=%22committees/commrep/eea5d0b8-72e9-4b5e-acf8-52ed46888ced/0000%22.

76. The fact that over the last decade Award wage rates have started to overtake agreement rates is a result of the employer's position in bargaining. The submissions of the Government, as an employer, to freeze Award rates in order to improve its bargaining position need to be seen in that light.

**Conclusion**

77. Together Qld submits that the position adopted by the Commission in previous State Wage Cases should be continued. That is, that unless there are cogent reasons for not doing so, the ruling of the federal tribunal, with any necessary or desirable modifications, having regard to the particular circumstances of Queensland should be followed.

78. The Qld government's reasons for advocating a change to that general position are based upon avoiding problems created by their own wages policy and bargaining behaviour, not by any objective consideration of maintaining secure, relevant and consistent wages and employment conditions; or providing fair standards for employees in the context of living standards generally prevailing in the community.

79. On that basis it is submitted that there are no cogent reasons to depart from previous practices and the applications sought by the QCU, Together and the AWU should be granted.

settled by Mr CA Massy, of Counsel

## "Flow on" Decisions in 2011 under s. 129 of the *Industrial Relations Act 1999*

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|---|---|
| Ambulance Service Employees' Award – State 2016 | A/2011/7 |
| Award for Employees in Direct Client Services- Disability Services Queensland 2003 | A/2011/19 and A/2011/36 |
| Community Education Counsellors Interim Award - State 2003 | A/2011/18 |
| Conservation, Parks and Wildlife Employees' Award- State Government 2003 | A/2011/35 |
| Crime and Misconduct Commission Employees Award - State 2006 | A/2011/16 |
| Department of Corrective Services Correctional Employees' Award - State 2005 | A/2011/20 |
| District Health Services - Senior Medical Officers' and Resident Medical Officers' Award - State 2012 | A/2011/24 |
| District Health Services Employees' Award - State 2003 | A/2011/10 and A/2011/33 |
| Employees of Queensland Government Departments (Other Than Public Servants) Award - State 2003 | A/2011/38 |
| Legal Aid Queensland Employees' Award - State 2003 | A/2011/27 |
| Medical Superintendents with Right of Private Practice and Medical Officers with Right of Private Practice - Queensland Public Hospitals Award - State 2003 | A/2011/28 |
| Parliamentary Service Award - State 2003 | A/2011/30 |
| Queensland Building Services Authority Award - State 2003 | A/2011/26 |
| Queensland Building Services Authority Award - State 2003 | A/2011/26 |
| Queensland Fire and Rescue Service Communications Centres Award - State 2003 | A/2011/14 |
| Queensland Fire and Rescue Service Interim Award - State 2003 | A/2011/15 |
| Queensland Public Service Award - State 2003 | A/2011/9 |
| Residential Tenancies Authority Employees' Award - State 2002 | A/2011/22 |
| Safe Food Qld - Employees' Award 2003 | A/2011/21 |
| Safe Food Qld - Employees' Award 2003 | A/2011/21 |
| Senior College Teachers' Award - State 2003 | A/2011/12 |
| TAFE Teachers' Award - State 2003 | A/2011/6 |
| Teachers' Award - State 2003 | A/2011/13 |
| Youth Workers' Award - Department of Communities 2003 | A/2011/31 |