

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Declaration of General Ruling (State Wage Case 2020)* [2020] QIRC 131

PARTIES: **Queensland Council of Unions**

and

Together Queensland, Industrial Union of Employees

and

The Australian Workers' Union of Employees, Queensland
(Applicants)

v

State of Queensland (Office of Industrial Relations)

and

Local Government Association of Queensland
(Respondents)

CASE NOS: B/2020/40; B/2020/41; B/2020/43

PROCEEDING: Application for Declaration of General Ruling

DELIVERED ON: 26 August 2020

HEARING DATE: 24 August 2020

HEARD AT: Brisbane

MEMBERS: O'Connor VP
Knight IC
Hartigan IC

ORDERS:

1. **The wages or salaries for full-time adult employees in all state awards shall be increased by 1.75 per cent from 1 September 2020.**
2. **Monetary allowances (other than expense related allowances) in all state awards that relate to work or to conditions which have not changed, and service increments, are to be increased by 1.75 per cent.**
3. **The minimum wage rate per week for all full-time employees in Queensland is \$789.00.**
4. **The above increases operate on and from 1 September 2020.**

LEGISLATION:

Industrial Relations Act 2016 (Qld), s 3, s 4, s 458, s 459, s 460
Public Health Act 2005 (Qld), s 319, s 362B

CASES:

Application for Declaration of General Ruling (State Wage Case 2014) [2014] QIRC 129
Annual Wage Review 2019-20 [2020] FWCFB 3500

APPEARANCES:

Dr J. Martin for the Queensland Council of Unions.

Mr M. Thomas for Together Queensland, Industrial Union of Employees.

Mr A. Santelises for The Australian Workers' Union of Employees, Queensland.

Ms L. Wilkinson and Mr A. J. James, Office of Industrial Relations, for the State of Queensland.

Mr T. Goode for the Local Government Association of Queensland.

Reasons for Decision

Background

- [1] The Queensland Council of Unions (QCU),¹ Together Queensland, Industrial Union of Employees (Together)² and The Australian Workers' Union of Employees, Queensland (AWU)³ have, respectively, applied to the Queensland Industrial Relations Commission (the Commission) seeking the following:
- (a) a general ruling to amend all state awards to increase wages by 1.75%;
 - (b) a general ruling to amend all state awards to increase the existing allowances which relate to work conditions, which have not changed by 1.75%;
 - (c) an increase to the Queensland Minimum Wage (QMW) by 1.75%; and
 - (d) a determination that items (a) to (c) herein be operative from 1 September 2020.

The legislative parameters

- [2] Section 3 of the *Industrial Relations Act* 2016 (the IR Act) identifies the main purpose of the IR Act to be 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.

- [3] Section 4 sets out how the purpose of the IR Act is to be achieved in, relevantly, the following terms:

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

...

¹ Application filed by the Queensland Council of Unions on 23 June 2020.

² Application filed by Together Queensland, Industrial Union of Employees on 24 June 2020.

³ Application filed by The Australian Workers' Union of Employees, Queensland on 24 June 2020.

- (d) providing for a fair and equitable framework of employment standards, awards, determinations, orders and agreements; and
- ...
- (f) providing for a guaranteed safety net of fair, relevant and enforceable minimum employment conditions through the Queensland Employment Standards; 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; and
- ...
- (o) being responsive to emerging labour market trends and work patterns; and
- (p) providing for effective, responsive and accessible mechanisms to support negotiations and resolve industrial disputes; and
- ...

[4] Section 458 of the IR Act sets out the power of the Full Bench to make general rulings as follows:

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.
- (3) Before conducting a hearing about the ruling, the full bench must -
 - (a) give reasonable notice, in the way it considers appropriate, of its intention to conduct the hearing; and
 - (b) give all interested persons an opportunity to be heard.

[5] Section 459 of the IR Act identifies the requirements for a general ruling in the following terms:

459 Requirements for general rulings

- (1) A ruling -
 - (a) must state a date (the *stated date*) on and from which it has effect; and
 - (b) has effect as a decision of the full bench on and from the stated date.
- (2) A ruling may exclude from the operation of any of its provisions -
 - (a) a class of employers or employees; or
 - (b) employers or employees in a particular locality; or
 - (c) an industrial instrument or part of an industrial instrument.
- (3) As soon as practicable after making a ruling, the registrar must publish a notice of the ruling and the stated date on the QIRC website.
- (4) The notice, on and from the stated date, replaces a notice of a ruling on the same subject matter previously published.
- (5) The ruling continues in force until the end of the day immediately before the stated date for a subsequent ruling on the same subject matter.

[6] Section 460 of the IR Act provides as follows:

460 Relationship with industrial instruments

- (1) If a ruling takes effect while an industrial instrument, other than an industrial instrument or part of an industrial instrument excluded under section 459(2), is in force -
 - (a) the industrial instrument is taken to be amended so it is consistent with the ruling on and from the stated date; and
 - (b) the amendment has effect as an industrial instrument on and from the stated date.
- (2) The registrar may amend an industrial instrument taken to be amended under subsection (1) as the registrar considers appropriate -
 - (a) on an application made under the rules; or
 - (b) on the registrar's own initiative.
- (3) This section applies despite chapter 3.

Submissions of the parties

QCU

- [7] The QCU supported a 1.75 per cent increase to award rates of pay within the Queensland jurisdiction to reflect the Fair Work Commission's (FWC) most recent Annual Wage

Review (AWR).⁴ Historically, the Commission attaches weight to the AWR (and the predecessor National Wage Cases and Safety Net Adjustments) and on this basis the QCU requests the same quantum to be awarded.

Novel Coronavirus (COVID-19)

- [8] In advancing arguments in support of an adoption of the AWR, the QCU submits that consideration be given to the impact of COVID-19 in preventing economic recovery. The QCU notes that the industries considered to be most severely impacted by COVID-19 closures are those with the highest rate of casual employment. Workers in insecure employment are identified to have been disproportionately affected by shutdowns due to COVID-19.

AWR

- [9] Further, the QCU argues it would be an understatement to consider the influence of the AWR to solely impact the 21.8 per cent of workers whose method of pay-setting is categorised as 'award only'.⁵ Rather, it is estimated that pay-setting arrangements for one third of the workforce may be influenced by the AWR.
- [10] The QCU highlighted the existence of Australia's ongoing low public sector wage growth due to protracted negotiations which have the practical effect of a wage freeze. It is argued that low public sector wage growth has a 'demonstrator effect' where private sector employers take their lead from such trends in the public sector. Therefore, the AWR is considered the predominant force remaining to address what the QCU described as a current wage growth crisis.⁶

Economic Circumstances

- [11] The QCU submitted that Australia is now facing its first recession for decades and this application, based on the FWC's AWR, reflects these circumstances. The QCU urged the Commission not to adopt an austerity agenda as advocated by several employer organisations to the FWC in the recent AWR.
- [12] The QCU's submission identifies the increase as a necessary response to the possibility of deflation faced by the Australian economy. Considering the emerging recession, the QCU contends that there is no justification for reducing entitlements or cutting wages as this will not create employment and wage stagnation will further weaken consumer sentiment.
- [13] The QCU countered the common hesitancy around the inflationary impact of general wage movements with the suggestion that the main contributor to current low levels of inflation may rather be the ongoing wage growth crisis. It continued that the current

⁴ [2019] FWCFB 3500.

⁵ Queensland Council of Unions' submission filed on 24 July 2020, p 4.

⁶ Ibid, p 6.

inflationary statistics do not indicate that an increase in wages is likely to create an inflationary impact.

- [14] As per its submissions in previous years, the QCU submits that moderate wage increases have no negative impact upon employment. The QCU contends that the rise in unemployment experienced throughout Australia is not a basis for the Commission to depart from the practice of flowing on the quantum of the AWR.
- [15] Low wage growth has been a central feature of recent QCU submissions to State Wage Cases (SWC). Even before the most recent economic impacts arising out of bushfires and COVID-19, weak wage growth undermined consumer spending. The QCU expressed concern that record low wage growth has become the norm, making movement away increasingly difficult.⁷
- [16] The QCU stated that calculations of data from the Australian Bureau of Statistics illustrate the wage crisis in Australia by comparing the Wage Price Index (WPI), Consumer Price Index (CPI) and Real Wage Growth and reveal there has been a real wage decline and stagnation since the 2008 global financial crisis (GFC) with a spike in 2011-12. The positive relationship between WPI and CPI concludes that a greater increase in wages will assist in achieving the target inflationary objective.
- [17] Finally, the QCU submitted that whilst the SWC has limited application, it still is applicable to those workers who remain award reliant and it is therefore important that rates of pay be maintained through mechanisms such as the SWC.

TOGETHER

- [18] In support of their application, Together references the impact of the COVID-19 health crisis and the devastating bushfires on the Australian economy.
- [19] Together referred the Commission to the summary given by the Governor, Reserve Bank of Australia (RBA), Phillip Lowe on 7 July 2020:

The Australian economy is going through a very difficult period and is experiencing the biggest contraction since the 1930s. Since March, an unprecedented 800,000 people have lost their jobs, with many others retaining their job only because of government and other support programs. Conditions have, however, stabilised recently and the downturn has been less severe than earlier expected. While total hours worked in Australia continued to decline in May, the decline was considerably smaller than in April and less than previously thought likely. There has also been a pick-up in retail spending in response to the decline in infections and the easing of restrictions in most of the country.

Notwithstanding the signs of a gradual improvement, the nature and speed of the economic recovery remains highly uncertain. Uncertainty about the health situation and the future strength of the economy is making many households and businesses cautious, and this is affecting consumption and investment plans. The pandemic is also prompting many firms to reconsider their business

⁷ Queensland Council of Unions' submission filed on 24 July 2020, p 15.

models. As some businesses rehire workers as demand returns, others are restructuring their operations.⁸

- [20] In relation to the FWC Decision, Together submits there are not circumstances present that would require the moderate and cautious increase applied nationally to be departed from. Together is seeking a general ruling be issued in the terms requested as fair and appropriate.

AWU

- [21] The AWU submitted the awarding of the application will support future economic growth in Queensland through the provision of higher wages. Further, in maintaining real wages low paid award-reliant workers will be able to acquire fair and reasonable living standards. The AWU estimates approximately 6,000 employees will be directly affected by the general ruling.
- [22] The AWU seeks the same outcome awarded by the FWC⁹ in the AWR this year. They advocate the claim is economically appropriate, sustainable and affordable and will increase the living standards of low-paid workers.¹⁰

State of Queensland

- [23] The State of Queensland (the State) submitted the 2020 SWC is being conducted in the unprecedented circumstances of a global pandemic caused by the spread of COVID-19 which emerged globally in January 2020. This has caused significant social and economic dislocation and uncertainty.
- [24] The World Health Organisation officially declared COVID-19 to be a pandemic on 11 March 2020.¹¹
- [25] The State acted quickly and responsibly by introducing measures to suppress the outbreak of the virus within the Queensland community and provide economic support to sustain industries and workplaces. The 'Roadmap to easing access restrictions'¹² was provided by the State which indicated the continuing conditions necessary through the pandemic in preparation for recovery.
- [26] In June 2020, as part of the State's response to the pandemic emergency, the IR Act was amended to defer wage increases in the general government sector that were scheduled for the 2020-21 financial year to maximise the protection of public sector employment

⁸ Lowe, P. Governor, Reserve Bank of Australia, *Monetary Policy Decision*, 7 July 2020.

⁹ [2020] FWCFB 3501.

¹⁰ The Australian Workers' Union of Employees' submissions filed on 24 July 2020, para 52.

¹¹ Submission of the Queensland Government 2020 filed 3 August 2020, para 54.

¹² Ibid, Attachment A.

and to assist the Government's fiscal position. In this context these submissions take account of those circumstances.

- [27] The State supports an increase in the QMW by 1.75 per cent with an operative date of 1 September 2020, noting the increase is consistent with the increase awarded to the NMW by the FWC in the AWR.
- [28] With respect to any increase to state awards and existing award allowances relating to work conditions which have not changed, the State suggests a cautious approach in light of the COVID-19 pandemic and its continuing impact upon Queensland.

Federal Wage Review Decision

- [29] On 19 June 2020 the FWC issued a split AWR decision with the majority supporting an increase of 1.75 per cent to the NMW and an increase of 1.75 per cent to award wages with different commencement dates depending on the 'group' that the awards fell into:
 - a. Group 1 - 1 July 2020 (the traditional commencement date of the AWR);
 - b. Group 2 - 1 November 2020; and
 - c. Group 3 - 1 February 2021.
- [30] The FWC found that government enforced measures to reduce the spread of the virus has impacted industries at various levels. The FWC identified three industry clusters in relation to their impact on job losses as a direct result of the restrictions imposed in response to the COVID-19 pandemic.¹³
- [31] The three different operative dates based on award coverage in industries are considered to mitigate the impact on businesses deemed hardest hit by the pandemic. The FWC estimated that 25 per cent of employees covered by Group 1 are award reliant, 40 per cent of employees covered by Group 2 are award reliant and approximately 1/3 of workers covered by Group 3 are award reliant.
- [32] The State observes that the majority of awards relating to government and public sector related workforces at both a federal and state level are contained in Group 1.
- [33] In the absence of a Commonwealth Budget for 2020-21 being released, the FWC relied on the RBA baseline forecasts for gross domestic product (GDP), real net national disposable income, profits share of total factor income, labour productivity, unemployment rate, hours worked, participation rate and wage growth.¹⁴

¹³ [2020] FWCFB 3500, p 15-16.

¹⁴ Submission of the Queensland Government 2020 filed 3 August 2020, para 17.

- [34] The FWC observed a fall in GDP as the most significant since the GFC in the September quarter 2009 and that rising unemployment figures were being masked by declining participation rates during the period. As well, inflation increased from 1.6 per cent to 1.8 per cent over the year to March quarter 2020.¹⁵

Current economic conditions and outlook

- [35] The COVID-19 pandemic and associated restrictions on business and personal activities have severely impacted economic activity globally and within Australia.
- [36] Economic downturns are likely to be experienced and the OECD expects World GDP to fall by 6.0 per cent in 2020 with forecasts the US economy is likely to fall 7.3 per cent, the UK down 11.5 per cent, the Euro areas down 9.1 per cent and Japan down 6.0 per cent in a single-wave scenario.¹⁶
- [37] Before COVID-19 reached Australia, the GDP had risen 0.5 per cent in the December quarter 2019, to be 2.2 per cent higher over the year. Following the national emergency health response implemented in March 2020 there was a decline of 0.3 per cent in the March quarter, to be 1.4 per cent higher over the year. Data on the impact of the virus on Queensland's GDP is not yet available.¹⁷
- [38] In late April the RBA's Governor stated:
- GDP is likely to fall by around 10 per cent over the first half of 2020, with most of this decline taking place in the June quarter;
 - total hours worked in Australia are likely to decline by around 20 per cent over the first half of this year; and
 - the unemployment rate is likely to be around 10 per cent by June, although the unemployment rate would have been much higher than this without the government's *Jobkeeper* wage subsidy.¹⁸

- [39] Further, in June 2020, the International Monetary Fund's World Economic Outlook Update forecasted Australia's GDP to decline 4.5 per cent in 2020.¹⁹

- [40] The State claims that recent data from the ABS Household Impact of COVID-19 Survey shows tentative signs of improvement in the national labour market concerning consumer sentiment and unemployment. However, the substantial impact felt by the Queensland labour market remains unprecedented. Employment rates are reported to have fallen 6.6 per cent and hours worked have fallen 8.4 per cent across April and May. Additionally, the unemployment rate has risen from 5.6 per cent in March to 7.9 per cent in May.²⁰

¹⁵ Submission of the Queensland Government 2020 filed 3 August 2020, para 18.

¹⁶ Ibid, para 35.

¹⁷ Ibid, para 36.

¹⁸ Ibid, para 38.

¹⁹ Ibid, para 41.

²⁰ Ibid, para 46.

- [41] The RBA has also identified the pandemic to have a significant impact on wages as the national WPI is forecast to fall from growth of 2.1 per cent up until March quarter 2020 to growth of 1.5 per cent by December quarter 2020.²¹

Queensland Minimum Wage

- [42] The State emphasised the purpose of the IR Act is to provide an industrial relations framework which supports economic prosperity and social justice and highlighted the importance of ensuring wages and employment conditions are fair to achieve this.
- [43] The current minimum wage rate per week for full-time employees in Queensland is \$775.50 per week.²²
- [44] The State submits that while concerns have been expressed in the federal jurisdiction as to the impact of increasing minimum wages on the employment of low-skilled workers, there is no evidence to suggest that net adjustments have any significant adverse employment effects.²³ In this context, the State maintains that the proposed increase of 1.75 per cent is appropriate for maintaining living standards of the low paid.

Number of employees affected by State Wage Case

- [45] There are approximately 7,000 employees reported to be state award reliant.²⁴
- [46] The State identifies the cost of a 1.75 per cent increase to public sector awards will be approximately \$74 million and will affect approximately 57,530 full-time equivalent public sector workers in 18 public sector certified agreements.²⁵ These estimated costs are based on the 2019 Core and Core related agreements which represent the bulk of employees who would be impacted by the Commission's decision to increase award rates of pay.²⁶
- [47] In concluding, the State submits its support for an increase in the QMW by 1.75 per cent with an operative date of 1 September 2020 and encourages a cautious approach considering the COVID-19 pandemic and its ongoing impact on the State.

Local Government Association of Queensland

- [48] The Local Government Association of Queensland (LGAQ) supports:

- a 1.75 per cent increase to the QMW; and

²¹ Submission of the Queensland Government 2020 filed 3 August 2020, para 47.

²² Ibid, para 83

²³ Ibid, para 81

²⁴ Ibid, para 88.

²⁵ Ibid, para 91.

²⁶ Ibid, para 92.

- a 2.0 per cent increase to award wages; and
- nil increase to existing and applicable award allowance in awards which relate to work or conditions which have not changed nor have mechanisms in the award for varying the amounts; and
- an operative date of 7 September 2020.

- [49] In formulating its proposal for this year's SWC, the LGAQ considered the National Wage case decision; the state of the Australian and Queensland economies; the current state of operational uncertainty affecting local governments as employers; the impact of the pandemic on councils' finances; the circumstances of those councils most affected by any SWC decision, and the ongoing risk for council employees from a continuing pandemic.
- [50] The LGAQ submitted that the capacity of local governments to pay correlates with the size of its workforce establishment and in recent years the workforce of councils collectively has risen due to increased availability of funds through state government grants and increases in their own revenues. However, First Nation Councils have recorded a reduction in staffing numbers. This reduction correlates with SWC increases where quantum has exceeded general increases in grant monies allocated to these councils.
- [51] The effects of the pandemic on local government were sought from 51 councils which confirmed they are facing a challenging and uncertain period as they respond to and recover from the impacts of COVID-19. Impacts included reduction in cash positions; deferment of planned capital expenditure; many councils were expecting to require or increase borrowings or working capital facilities in 2020-21. Councils were committed to keeping their workforce employed to stimulate local economies, many were changing the manner in which they worked and an excess of 1,800 employees were redeployed or stood-down with more identified at risk of being stood-down.
- [52] Further, the LGAQ stated that the local communities in many Queensland rural and remote councils were already dealing with the combined adverse impacts of flooding events, drought conditions or recovering from recent bushfires.
- [53] The financial impact related to significant shortfalls in revenue because of COVID-19 restrictions negatively affecting the fees associated with campgrounds, childcare, airports, development applications and the myriad of other fee-for-services provided by councils. Local governments do not have access to the federal government's *Jobkeeper* and child-care payments made available to other sectors.
- [54] The LGAQ provided a graph outlining Operating Revenue Sources by Council Category²⁷ which demonstrates that 91 per cent of indigenous councils' revenue was

²⁷ Local Government Association of Queensland submission filed on 13 August 2020, para 26.

generated from external funding sources with only 9 per cent generated from their own source revenue. Whereas within south east Queensland, coastal and rural regional councils, more than 60 per cent of revenue was generated as own source revenue

- [55] The extra \$250 million of Federal Assistance Grants was normal grant money specifically brought forward to assist councils keep their local economies operating. The state funded stimulus programs provided an extra \$250 million in Works for Queensland to be expended, preferably to create additional jobs and benefit the community.
- [56] Apart from the direct impact on services provided by local governments, many relief packages and other services were and are being offered by councils, further drawing on finite resources. These included First Nation Councils providing advice on health, border restrictions and travel as well as redeploying staff to assist with roadblocks and other emergency service responsibilities during community lockdowns.
- [57] The LGAQ does not support an increase in allowances as many, if not most, Queensland councils pay allowances as per the award, regardless of whether their employees are covered by a certified agreement. The LGAQ is seeking the Commission to recognise and acknowledge the serious challenges confronting local governments as employers prioritise and retain jobs during difficult times.
- [58] Any additional costs, regardless of size, contribute to councils' bottom line and not increasing allowances will support and encourage council efforts to keep workers in employment.
- [59] The LGAQ traditionally has not lodged ambit claims during its SWC submissions. It has independently arrived at a fair position for councils and their workforce as affordable and relevant to the circumstances. In particular, non-contract workers in First Nation Councils are remunerated less than those employees performing similar roles across other councils. First Nation Councils are seeking to rectify this. In seeking a 2 per cent increase, the LGAQ believes that councils can meet this level of increase without having to shed staff or freeze new hires.
- [60] In concluding, the LGAQ submits it does not object to a 1.75 per cent increase being awarded to the QMW but contends that sufficient cause exists for the Commission to support employers to retain staff by not awarding any increase to allowances contained in awards.
- [61] The LGAQ also submits that an appropriate operative date be 7 September 2020, the first Monday of the month and that by commencing on a Monday allows for greater ease in administration.

QCU response

- [62] In response to the State's and the LGAQ's submissions, the QCU submits all of the parties to these proceedings consent to the increase sought in the QMW, however the LGAQ seeks to not increase allowances which relate to work or conditions. The QCU states there is no cogent reason advanced for the departure of long-standing policy to adjust allowances as part of the SWC.
- [63] The QCU submitted that Brisbane CPI decreased by 1.0 per cent for the 12 months to June 2020 and by 2.2 per cent in the June 2020 quarter.²⁸ The ABS attributes this decline to:
- Automotive fuel (-19.2%);
 - Electricity (-14.8%); due to the Queensland Government's \$200 utility rebate; and
 - Preschool and primary education (-11.7%), which included free preschool in term 2.
- [64] The QCU noted that two of the three major reasons for the decline in the CPI in Queensland could be attributed to government intervention (utility rebate and free preschool).
- [65] In response to the State's request for a 'cautious approach' to be taken by the Commission, the QCU states that 1.75 per cent is demonstrably a cautious approach and the Australian Government urged the FWC to take a similar approach in the recent AWR.
- [66] In referring to the State's submissions that any increase in wages will lead to an increase in unemployment, the QCU submitted that so few workers are impacted, either directly or indirectly by the SWC, that is unlikely to have any impact on employment at an aggregate level.
- [67] The QCU referred to the LGAQ's submission advising the delaying of some capital expenditure by councils and that various other strategies will be adopted such as drawing down on cash reserves. It also noted in the LGAQ's submission that local government will receive substantial stimulus spending from both Commonwealth and Queensland Governments. The QCU state they do not find any justification for not increasing allowances or delaying the operative date of the increase from 1 September 2020 to 7 September 2020.

AWU response

- [68] The AWU submits that the LGAQ support a 1.75 per cent increase to the QMW and a 2 per cent increase to award rates of pay in particular circumstances, observing it is somewhat unique that an employer organisation is advocating for a higher increase than an employee organisation. Should the Commission make a finding that there is capacity

²⁸ ABS Catalogue 6401.0 - Consumer Price Index, Australia, June 2020.

in the Queensland economy to sustain a 2 per cent increase to award rates, the AWU supports such a position.

- [69] The AWU confirms all aspects of its application with the 1.75 per cent increase to all award rates of pay, if not the 2 per cent increase sought by the LGAQ.

Consideration

- [70] The 2020 SWC is unique in that it is being determined against a backdrop of an unprecedented health and economic crisis.
- [71] Pursuant to s 319 of the *Public Health Act* 2005 (Qld) (the PH Act), the Minister for Health and Minister for Ambulance Services made an order declaring a public health emergency in relation to COVID-19. The public health emergency area specified in the order is for 'all of Queensland'. Its duration has been extended by regulation to 2 October 2020 and may be further extended.
- [72] The Chief Medical Officer has issued a series of Directions pursuant to s 362B of the PH Act and in accordance with emergency powers arising from the declared public health emergency to impose social distancing protocols and to otherwise prohibit non-essential gatherings of persons.
- [73] The Full Bench of the FWC²⁹ succinctly described the impact of the COVID-19 Pandemic in the following terms:

While predominately a public health issue, federal and state government-imposed restrictions to contain the spread of the virus, have had a profound economic impact. The restrictions have included travel restrictions (both international and domestic) and social distancing rules. The social and economic consequences of these measures have been unprecedented and have led to business closures and job losses. All but 'essential workers' were forced to stop work or modify their work arrangements. These actions have significantly reduced domestic activity and resulted in 'a large and near simultaneous contraction across the global economy.'

- [74] It has been a consistent approach adopted by this Commission to have regard to the FWC AWR decision and the matters the FWC considered in its reasons.
- [75] The general approach to be taken by the Commission in respect of the SWC was set out in the SWC 2014³⁰ where the Full Bench said:

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. A significant reason for having regard to the decisions of the federal tribunal (now called the Fair Work Commission) is because the federal commission has the benefit of considerable material about the economic position of Australia. In the federal Annual Wage Review parties present detailed statistical data in relation to the Australian economy and to the economies of the various states and territories. The decision of the Fair Work

²⁹ [2020] FWCFB 3500, [24].

³⁰ *Application for Declaration of General Ruling (State Wage Case 2014)* [2014] QIRC 129, [12] and [13].

Commission affects the majority of award reliant employees throughout Australia, including those in Queensland.

Given that this year the unions' claims essentially mirror the increase awarded by the Fair Work Commission and that none of the parties, other than the LGAQ, sought an outcome greatly at variance with that of the Fair Work Commission, the scope of our inquiry has been significantly narrowed. Indeed, the LGAQ submitted that unless there are convincing reasons to depart from the Fair Work Commission' ruling, that ruling should be adopted. The other parties' submissions also made significant mention of the decision of the Fair Work Commission. Having regard to the submissions of the parties in these proceedings, 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.

- [76] Employees likely to be directly affected by a decision in the SWC fall within two categories:
- (i) employees who are covered by an award, but who are not covered by a certified agreement (i.e. state award-reliant employees); and
 - (ii) employees who are covered by a certified agreement and whose rate of pay prescribed in the agreement may fall below the relevant award rate of pay.
- [77] Consistent with the legislative framework, the Commission is mindful of its overarching responsibility to ensure, amongst other things, that employees are covered by fair and reasonable wages that allow them to participate in society and that those who do not benefit from bargaining are not left behind.
- [78] In determining this year's SWC, the Commission has also taken into account the current economic circumstances and the impact of COVID-19 on the State of Queensland. The Full Bench is conscious of the current level of unemployment and the prospect of reduced inflation. We have considered the submission of the LGAQ concerning the capacity of local governments to bear the cost of increases and, at the same time, maintain current levels of employment.
- [79] We note that Queensland's unemployment rate rose from 5.6 per cent in March to 7.9 per cent in May 2020. However, inflation is expected to remain relatively low at 1 per cent over the year to the December quarter 2020, rising to 1.25 per cent in 2022. Whilst it is accepted that the forecast for the Queensland economy is broadly aligned with the RBA and IMF national outlook, the Queensland economy is expected to contract in 2020. It is impossible to determine how the recent decision to reimpose further restrictions and the potential for a border closure until December 2020 may impact on the State's economy.
- [80] An increase of 1.75 per cent to the QMW is supported by the State, the QCU, Together, the AWU and LGAQ. Currently, the QMW is \$775.50 per week which is \$21.70 above the NMW. An increase of 1.75 per cent would result in a \$13.57 per week increase to the QMW bringing it to \$789.07 (rounded to \$789.00) resulting in a margin between the QMW and the NMW of approximately \$35.00.

- [81] Having regard to the consistent approach adopted by the parties and considering the prevailing economic conditions and outlook in Queensland, we have determined that there are sound reasons to adopt the ruling of the FWC such that there will be an increase of 1.75 per cent to the QMW.
- [82] In respect of increases to the state awards and existing award allowances relating to work conditions which have remained unchanged, the State has submitted that the Commission should adopt a cautious approach. It does so on the basis that the COVID-19 pandemic will have continuing impact on Queensland's economy. However, when pressed, the State was unable to articulate in any meaningful way the exact nature of the caution which should be exercised.
- [83] The QCU, Together and the AWU support an increase of 1.75 per cent to the state awards and existing award allowances which relate to work conditions which have remained unchanged.
- [84] The LGAQ took a more radical approach, advocating for a 2 per cent increase to award wages but arguing that there should be no increase to the existing award allowances relating to work conditions which have remained unchanged. In their oral submission before the Commission, the LGAQ submitted that between 1200 and 1700 employees will be affected by the SWC, the majority of whom are engaged in First Nation Councils. The LGAQ also submitted that the average salary levels remain lower for employees in the First Nation Councils than other councils.
- [85] The Full Bench is reluctant to adopt the LGAQ's submission in the absence of modelling to demonstrate how a 2 per cent increase to award wages, coupled with no increase to the existing award allowances, is consistent with the legislative framework in which the Commission must determine the SWC. In particular, the Commission is concerned as to how such an approach will remain fair and not have an adverse impact on low-paid workers.
- [86] On balance, the Commission is of the view that an increase of 1.75 per cent should apply to the state awards and existing award allowances relating to work conditions which have remained unchanged.
- [87] All parties, with the exception of the LGAQ, agree that the general ruling should be operative from 1 September 2020. The LGAQ argues that administratively 7 September 2020 would be more practical.
- [88] The Commission takes the view that the general ruling should take effect from 1 September. The continuation of this approach provides all interested parties with certainty with respect to the timing of the operation of SWC decisions from year to year.
- [89] Accordingly, the Commission has determined the general ruling will operate from 1 September 2020 having regard to the consent positions of the union applicants and the

State, and in the interests of ensuring consistency and certainty with respect to the operative periods of each respective SWC.

Conclusion

[90] A Declaration of General Ruling giving effect to this decision will be issued concurrently with this Decision.

[91] It is ordered that:

- 1. The wages or salaries for full-time adult employees in all state awards shall be increased by 1.75 per cent from 1 September 2020.**
- 2. Monetary allowances (other than expense related allowances) in all state awards that relate to work or to conditions which have not changed, and service increments, are to be increased by 1.75 per cent.**
- 3. The minimum wage rate per week for all full-time employees in Queensland is \$789.00.**
- 4. The above increases operate on and from 1 September 2020.**