



QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 2016
s.458

(No. B/2020/40, B/2020/41 and B/2020/43)

APPLICATION FOR A DECLARATION OF GENERAL RULING

STATE WAGE CASE 2020

SUBMISSION OF THE LOCAL GOVERNMENT
ASSOCIATION OF QUEENSLAND

AUGUST 2020

Introduction

1. The Queensland Council of Unions (QCU), the Australian Workers' Union (AWU,) and the Together Queensland, Industrial Union of Employees (Together Union) have filed application in the Queensland Industrial Relations Commission (the Commission) seeking a general ruling to provide:
 - an amendment to all state awards by an increase of 1.75%
 - an amendment to all state awards by increasing existing allowances which relate to work conditions which have not changed by 1.75%
 - an increase to the Queensland Minimum Wage (QMW) by 1.75% and
 - an operative date of 1 September 2020.
2. In response to these applications the State of Queensland (the 'State') has indicated it:
 - supports a 1.75% increase to the QMW;
 - considers that any increase for state awards and allowances is a matter for the Commission to determine after reviewing all relevant circumstances but does suggest a cautious approach given the COVID 19 pandemic and concomitant implications for the state.
 - supports an operative date of 1 September 2020 for any increases awarded.

The Local Government of Queensland (LGAQ) position

3. The LGAQ supports:
 - a 1.75% increase to the Queensland Minimum Wage (QMW); and
 - a 2.0% increase to Award wages; and
 - No (0) 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.

The LGAQ Supporting submissions

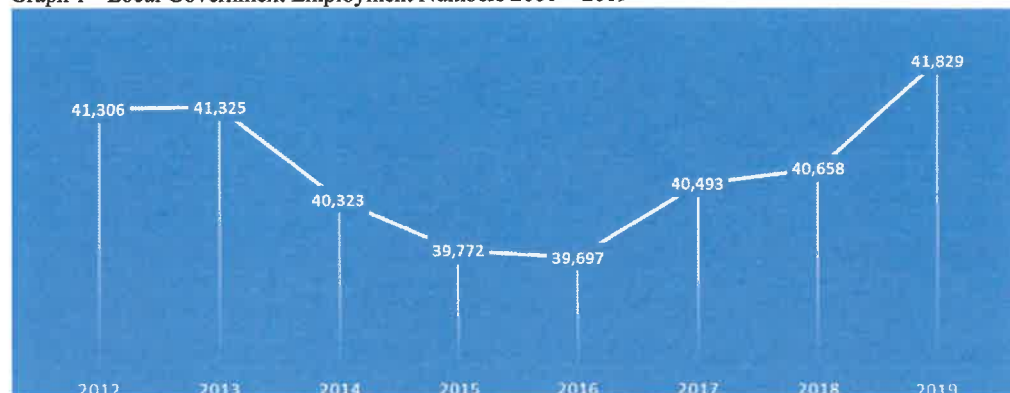
4. As the state points out in its submission, the 2020 State wage case is being conducted in unprecedented circumstances given the current COVID19 pandemic. This pandemic has impacted significantly on the Australian, State and local government economies and poses serious business challenges to private sector companies and governments alike. Significantly, the pandemic is not over with the full impacts yet to be realized.
5. On 19 June 2020, the Fair Work Commission (FWC) issued its National Wage Case (NWC) decision, awarding a 1.75% increase to the National Minimum Wage and a similar increase to award wages, albeit with a range of commencement dates for different groups of awards.
6. The decision of the FWC panel reflected their concerns for the economy as well as the continuing high level of uncertainty for government and business in the wake of the continuing pandemic and threat of a second wave of significant infections and concomitant societal responses. Given the Victorian situation, and the flow-on effects and implications for other states, their concerns seem well-founded.
7. From the outset, the LGAQ acknowledges the responsible approach of Queensland unions in supporting a similar increase of 1.75% (modest by recent state wage case standards) to Queensland awards and the QMW.

8. In its decision in the State Wage Case 2014, the Commission stated ‘...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.’
9. The Commission endorsed these observations in the State Wage Case decisions in 2015⁴ and 2016⁵. The Commission in 2017, 2018 and 2019, along with supporting explanation, also opted to adopt the same increase as the federal decisions.
10. In 2017 and 2018, the LGAQ provided a comprehensive analysis of the performance of the state’s economy and detailed analysis of the performance of those councils who are most impacted by the State Wage Case outcomes. Given the QIRC was not persuaded by those arguments to deviate from the federal rulings, the LGAQ opted not to make similar detailed submissions on those matters in 2019.
11. In lieu, the LGAQ focused on the proposition that its request for a 2.5% increase, though below that of the National Wage Case increase, was well above CPI, provided real wage growth for affected workers, posed less risk for worker employment security and aligned closely with wage increases in those councils relying on enterprise bargaining to establish wage levels. Most importantly, the LGAQ position recognised that the workers most affected by a state wage increase are in communities where it is important that any additional labor costs do not impede the efforts of councils to protect local employment and build resilience into local economies. The increase awarded by the QIRC decision in 2019 again mirrored that of the FWC.
12. In formulating its proposal for this year’s State Wage case, the LGAQ had regard to:
 - The National Wage case decision;
 - The state of the Australian and Queensland economies (addressed in the state government submissions);
 - 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 state wage case decision;
 - The ongoing risk for council employees from a continuing pandemic.

The Local Government context

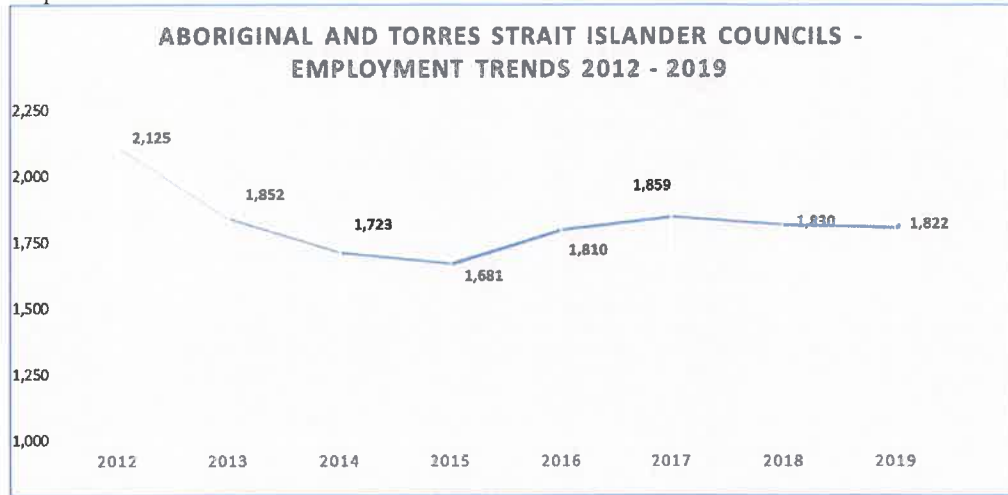
13. Local government’s capacity to pay understandably correlates with the size of its workforce establishment. In recent years, the workforce of councils collectively has risen due to increased availability of funds through recent state government grants (mainly Works for Queensland) and increases in own source revenues. However, while across the sector Local government numbers have risen post 2016, First Nation councils recorded a reduction in staffing numbers. This reduction correlates with State Wage Case increases whose quantum has exceeded general increases in grant monies allocated to these councils.

Graph 1 - Local Government Employment Numbers 2001 – 2019



Source: LGAQ 2019 Workforce census

Graph 2



Source: LGAQ 2019 Workforce census

14. Effectively, the capacity of First Nation councils to pay has not matched the increasing cost of labour over this time. These councils do not have the capacity to raise money through rates and the grants available to these councils in lieu of their rate-raising capacity is indexed at CPI levels. First Nation Councils have been active in seeking additional revenues and driving efficiencies in their operations to keep people working and remunerated fairly.
15. The LGAQ 2018 State Wage Case submission provided a detailed breakdown of award and certified agreement coverage. Those submissions confirmed that roughly just over 1400 employees were directly reliant on the award for wage levels while there are councils with certified agreements which call up any award rises. Accordingly, the LGAQ remains confident with its prediction that anywhere between 1200 and 1500 employees may be directly impacted by a state wage award increase, with the majority of these being engaged in First Nation councils.
16. LGAQ Annual Workforce Census data also confirms that the average salary levels of employees in First Nation Councils remains lower than that of employees in other council segment categories, the majority of which are paid pursuant to enterprise agreements.

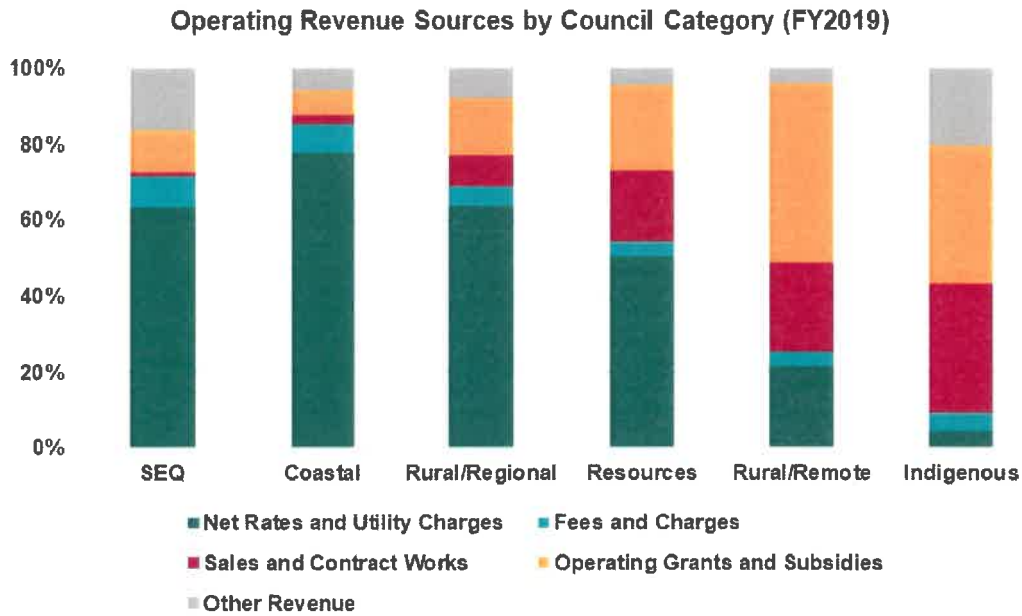
Effect of the Pandemic on local government

17. In April 2020, the Department of Local Government, Racing and Multicultural Affairs (DLGRMA) and the LGAQ worked collaboratively to gather up-to-date information and forecasts from Councils about the impacts COVID-19 was having on Council workforces, financial positions and related matters. Information gathered from across 51 councils provided an interim but important ‘point in time’ assessment of the known and expected workforce and financial impact of the COVID-19 pandemic on Councils. *(Note: The report on this exercise is yet to be published.)*
18. The information confirmed that Queensland’s Councils are facing a challenging and uncertain period, as they respond to and recover from the impacts of COVID-19. Impacts included:
 - Cash positions were reducing as Councils drew down on available cash holdings to support ongoing operations;
 - Councils expect to defer more than \$330 million in planned capital expenditure out of 2019-20 into future years;
 - Many Councils were expecting to require new or increased borrowings or working capital facilities in 2020-21;
 - Councils were committed to keeping their workforce working to stimulate local economies; and

- Despite this commitment, Council workforces were disrupted by COVID-19, with many changing the manner in which they worked and more than 1,800 employees re-deployed or stood-down and more identified at risk of being stood-down.
19. Examples of expected losses in council revenue included circa \$1 million in camping related fees for a small rural council, \$500,000 in lost airport fees for a small coastal northern council and up to several million dollars in lost application fees for a large SEQ council.
 20. The data returns suggested that due to the uncertainty of the times, Councils will need to be diligent in making informed financial decisions, including:
 - Closely monitoring their cashflows and cash position;
 - Reviewing expenditure to identify savings or costs that can be deferred;
 - Reviewing service levels;
 - Revisiting the timing of capital projects and reprioritising where necessary.
 21. The exercise also confirmed that the financial impact of COVID-19 will extend past the 2019-20 financial year. The expected adverse revenue impacts are yet to be fully realised and will be seen more significantly in 2020-21 with more operating deficits forecast. The continuing nature of the pandemic suggests the uncertainty will extend further than initially anticipated.
 22. For many of Queensland's rural and remote Councils, the COVID-19 pandemic comes at a time when local communities are already dealing with the combined adverse impacts of flooding events, drought conditions or recovering from recent bushfires. The impact COVID-19 is having on local communities, local governments and business is still evolving.
 23. Adverse economic events like COVID-19 do not have a uniform or equal impact on all Councils. The extent of Councils services and the nature of the local industries in turn affect Councils' revenue sources. A Council with significant reliance on Government grant and subsidy funding may not be as materially impacted compared to a Council with a reliance on rates and utility charges. The higher the Councils own source revenue means a greater independence and capacity to influence revenue (i.e. the power to levy charges and influence revenue growth). The higher a Councils own source revenue may also increase potential revenue volatility whenever the residents and businesses are reliant on the economic sector such as Tourism. A disaster will have a greater impact on those councils who do rely on a higher percentage of own source revenue.

Financial Impact

24. As referenced above, many councils reported significant shortfalls in revenue because of the COVID19 restrictions. These shortfalls relate to fees associated with campgrounds, childcare, airports, development applications and the myriad of other fee-for-services provided by councils. While the revenue from the services was significantly reduced, there was minimal effect on expenditure for the councils in maintaining the facilities, meeting the reduced demand and retaining staff. Local governments do not have access to federal government's Jobkeeper and child-care payments made available to other sectors.
25. The following highlights the different Council sectors and their reliance on specific revenue sources.



This demonstrates that, prior to COVID19:

- *91 per cent of Indigenous Councils' revenue was generated from external funding sources with only 9 per cent generated from own source revenue. Therefore, as long as the external funding sources remain intact (such as Federal and Queensland State Government grants funding), the financial impact on these Councils to exogenous events should not be as significant as that experienced by Councils with higher own sourced revenue.*
- *75 per cent of Remote and Regional Councils revenue was from external funding, with limited own source revenue (approximately 25 per cent)*
- *61 per cent of own source revenue was generated for Resources Councils with less reliance on external funding*
- *More than 60 per cent of revenue received by South East Queensland, Coastal and Rural and Regional Councils was generated as own source revenue*

26. Councils will be the recipients of funds from some economic stimulus programs of the state and federal governments. These funds however do not represent additional sources of revenues for councils to expend at their discretion. Rather they serve as acknowledgement of the unique capacity of councils to stimulate locally-distressed economies quickly and meaningfully through job creation and direct investment in local businesses. Councils can do this as they know their local community intimately, at any time have a range of shovel-ready projects available if and when funds are available, and have a proven agility to manage expenditure expeditiously, demonstrably and responsibly.
27. For example, the extra \$250 million of FAGS (Federal Assistance Grants) announced is not new money but merely normal grant money specifically brought forward to assist councils keep their local economy operating. For state funded stimulus programs, such as the extra \$250 million Works for Queensland money, the dollars are to be expended preferably to create additional jobs and /or utilizing local businesses but can be used in some cases in keeping existing workers in work. These funds are generally fixed-term in nature and require councils to acquit the investment with clear evidence of job generation and community benefit.

Workforce

28. Over 80% of councils reported impacts on their workforce due to changes in services provided by councils. While many workers adjusted their working conditions (mainly working from home), other workers were redeployed to alternative duties as a means of keeping them in work. Regrettably, a number of workers across councils needed to be stood down with the majority of

these understandably being casual staff. Councils also reported that more staff will need to be stood down if COVID19 continues to affect services and council revenue and expenditure.

29. The main reason Councils stood down rather than redeployed employees was affordability though some were stood down due to the lack of available and meaningful work for the skill sets of the stood down staff.

Other effects

30. 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 include:
 - All First Nation councils (and many non-indigenous councils) provided advice on health, border restrictions and travel. First Nation Councils also redeployed staff to assist with roadblocks and other emergency service responsibilities when their communities were in complete lockdown.
 - Councils provided relief packages to businesses in the form of waiving or reducing fees as well as rent relief for lessees of council properties.
 - Extensions to rate payment and freeze on interest on overdue rates
 - Provision of quarantine and isolation facilities.
 - Monitoring care of at-risk residents and providing meal and grocery deliveries where needed.
31. The information collected from councils confirmed that the COVID19 pandemic poses significant concerns and risk for councils and their workforces. Moreover, the data confirmed that the full impacts of the pandemic are yet to be realized and that a significant level of uncertainty continues to plague councils' capacity to forecast and rely on future revenue sources. Any continued hits to council's revenue sources or requiring additional expenditure will impact councils' capacities to sustain their local workforces.

Legislative Framework

32. Section 3 of the Industrial Relations Act prescribes the main purpose of the Act *is to provide a framework for co-operative industrial relations that is fair and balanced and supports the delivery of high-quality services, economic prosperity and social justice for Queenslanders.*
33. Section 4 of the Industrial Relations Act 2016 Act provides:

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*
 - (b) ensuring wages and employment conditions provide fair standards in relation to living standards prevailing in the community; and*
 - (c) ensuring equal remuneration for work of equal or comparable value; and*
 - (d) promoting collective bargaining,*
34. The IR Act requires the Commission to balance ensuring fair wages and employment conditions and supporting high employment and job security. The LGAQ considers its position aligns with these objectives.

Queensland Minimum Wage

35. Given the level of uncertainty facing Queensland's economy, including the level of debt being incurred by the state in its response to the pandemic, and the serious threats posed by the second wave of COVID19 infections since the National Wage Case (NWC) decision was handed down, any increase above that of the NWC would be unwarranted.
36. While an argument could be made for a lesser amount or even no increase at all, the LGAQ supports a 1.75% increase to the QMW, given its benefits for lowest paid workers. This increase of 1.75% also maintains the margin by which the QMW exceeds the national minimum wage.

37. An increase of 1.75% is consistent with the purposes prescribed in Section 4 (a) and (b) of the legislation in that the wage level as proposed remain highly competitive with the national economy as well as other state economies.

Allowances

38. Many, if not most, Queensland councils pay allowances as per the award, regardless of whether their employees are covered by a certified agreement.
39. The LGAQ does not support an increase in allowances. As has been demonstrated, councils have been seriously impacted as employers by the COVID19 pandemic. Councils have seen, and will continue to see, their discretionary revenues decline due to government-imposed restrictions and reduction in demand for some council services while at the same time being required to provide additional supporting measures for the community.
40. Throughout the pandemic, and despite the challenges, Councils have demonstrated their commitment to keeping their local workforce in work. This will not change. As has been shown, affordability or capacity to pay remains central to councils' efforts to keep their workers in employment and productive. While many businesses and other spheres of government are shedding staff, or placing them on Jobseeker, or imposing wage freezes, councils are looking to honour current agreements and to look for ways to keep current staff in employment.
41. Any additional costs for councils add further constraints on their efforts to retain staff. Consistent with the views of Professor Mark Wooden as the dissenting member of the panel assisting the FWC in the NWC, with the current economic environment and the significant and continuing level of uncertainty for employers, it is suggested that a zero increase to allowances would send a clear message that the Queensland Industrial Relations Commission recognises and acknowledges the serious challenges confronting local governments as employers, prioritises jobs and job retention during difficult times and is supportive of employer efforts to retain staff.
42. While other parties have previously argued that wage increases do not demonstrably lead to redundancies or job losses, councils and other employers are finding themselves navigating new territory with the current pandemic. It is the cumulative effect of revenue loss, increasing expenditure and rising costs that impact upon councils capacity to sustain its workforce. Any additional costs, regardless of their size, contributes to council's bottom line. Not increasing allowances will support and encourage council efforts to keep workers in employment and the LGAQ would contend, be acceptable to many if not all workers if it assisted their retention in paid work.

Awards

43. The LGAQ traditionally has not lodged ambit claims during its state wage case submissions. Rather, it has independently arrived at what it considers to be fair for councils and for their workforce, affordable and relevant to the circumstances. In arriving at its position of support for a 2% increase for local government awards, it is particularly cognisant of the circumstances of those councils who are most impacted upon award changes. In so doing, it has examined the capacity of these councils to afford a pay increase, councils' aspirations for its workforce as well as the interests of its workers.
44. The LGAQ re-examined this 2% position on the release of the NWC decision but ultimately determined to maintain this position. As stated earlier in this submission, non-contract workers in First Nations Councils are remunerated less than those employees performing similar roles across other councils. This is a situation that First Nations Councils continue to look to rectify. Councils do not wish to have their employees further disadvantaged in contrast to other local government employees and consider that a 2% increase will maintain existing levels of parity. Importantly, councils consider that they can meet this level of increase without having to shed staff or freeze new hires.
45. Support for a 2% increase is mindful of First Nation Councils' minimal reliance on own source revenue and local governments' support for a 0% increase in allowances.

The Economic Case

46. The LGAQ does not intend to submit detailed submissions on the state of the economy and relies on the information provided by other parties and a common sense appreciation and knowledge of the impacts of the pandemic on the business operations of all businesses, private and public sector.
47. The LGAQ also notes the 2019 findings of the Queensland Audit Office confirming the continuing high risk of unsustainability of the councils reliant on the award to set wage levels for staff. The increases proposed by the LGAQ for the local government awards will not pose any additional risk of unsustainability to councils.

Conclusion

48. The LGAQ considers that current circumstances do provide cogent reasons, namely the continuing pandemic and uncertainty as to its longevity and concomitant effects on the economy and business, for the QIRC to consider not following in toto the ruling of the federal tribunal in its national Wage Case decision.
49. The LGAQ does not object to a similar increase (1.75%) being awarded to the Queensland Minimum Wage but contends that sufficient cause exists for the Commission to support employers efforts to retain staff by not awarding any increase to allowances contained in awards.
50. The LGAQ does however support a 2% increase in awards having regard to:
 - The circumstances of councils whose workers are paid pursuant to award levels;
 - The capacity of these councils to pay any increase;
 - The current pay levels of staff of these councils, principally First Nation Councils;
 - The current impact of the pandemic on councils across Queensland;

Operative Date

51. The LGAQ submits that an appropriate operative date would be the 7th September being the first Monday of the month. Commencing on a Monday allows for greater ease in administration.

Dated: August 2020