

**QUEENSLAND INDUSTRIAL RELATIONS COMMISSION**

CITATION: *Declaration of General Ruling (State Wage Case 2021)* [2021] QIRC 293

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 Ltd**  
(Respondents)

CASE NOS: B/2021/51; B/2021/58; B/2021/59

PROCEEDING: Application for Declaration of General Ruling

DELIVERED ON: 30 August 2021

HEARING DATE: 16 August 2021

HEARD AT: Brisbane

MEMBERS: O'Connor VP  
Merrell DP  
Power IC

ORDERS:

1. **The wages or salaries for full-time adult employees in all state awards shall be increased by 2.5 percent from 1 September 2021.**
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 2.5 percent.**
3. **The minimum wage rate per week for all full-time employees in Queensland is \$808.50.**
4. **The above increases operate on and from 1 September 2021.**

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

*Declaration of General Ruling (State Wage Case 2018)* [2018] QIRC 113

*Declaration of General Ruling (State Wage Case 2019)* [2019] QIRC 169

*Annual Wage Review 2020-21* [2021] FWCFB 3500

APPEARANCES:

Mr A. Borg for the Queensland Council of Unions.

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

Mr T. McQuillan for The Australian Workers' Union of Employees, Queensland.

Mr A. J. James and Mr T. Brauns, Office of Industrial Relations, for the State of Queensland.

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

## Reasons for Decision

### Background

- [1] The Queensland Council of Unions ('QCU'),<sup>1</sup> Together Queensland, Industrial Union of Employees ('Together')<sup>2</sup> and The Australian Workers' Union of Employees, Queensland ('AWU')<sup>3</sup> have, respectively, applied to the Queensland Industrial Relations Commission ('the Commission') seeking the following:
- (a) a general ruling to amend all state award to increase wages by 2.5 percent;
  - (b) a general ruling to amend all state awards to increase the existing award allowances which relate to work conditions which have not changed by 2.5 percent;
  - (c) an increase to the Queensland Minimum Wage ('QMW') by 2.5 percent; and
  - (d) a determination that items (a) to (c) be operative from 1 September 2021.

### Legal framework

- [2] Section 3 of the *Industrial Relations Act 2016* (Qld) ('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

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<sup>1</sup> Application filed by the Queensland Council of Unions on 25 June 2021.

<sup>2</sup> Application filed by Together Queensland, Industrial Union of Employees on 12 July 2021.

<sup>3</sup> Application filed by The Australian Workers' Union of Employees, Queensland on 13 July 2021.

- (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 submits that it has been a consistent approach of the Commission to have regard to the Fair Work Commission ('FWC') Annual Wage Review ('AWR') decision and the matters the FWC considers in its reasons.<sup>4</sup>
- [8] The QCU submits that the present State Wage Case ('SWC') is conducted against a backdrop of:
  - wage forbearance in the 2020 SWC as a cautionary approach to the onset of the COVID-19 pandemic;

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<sup>4</sup> *Application for Declaration of General Ruling (State Wage Case 2014)* [2014] QIRC 129, [12]-[13].

- a quicker and greater economic recovery from the effects of the COVID-19 pandemic than anticipated in 2020, including a lower rate of unemployment;
- historically low Wage Price Index ('WPI'); and
- the expert panel of the FWC awarding a 2.5 percent increase to the National Minimum Wage ('NMW') and federal modern awards.

[9] The QCU submits that lagging wage growth has been a feature of the Australian and Queensland economies which remains unaddressed. The QCU highlighted the FWC AWR decision, where the Full Bench observed, *inter alia*, that the wage growth across the Australian economy was revised from 1 percent to 1.5 percent for the June quarter of 2021 and from 1.5 percent to 1.75 percent for the December quarter of 2021.<sup>5</sup> Comparatively, Queensland's annual WPI has slowed to an historic low of 1.25 percent in 2021. The QCU submits that wage settings need to be adjusted upwards for Queensland to experience sustainable economic growth.

[10] The QCU submits that an increase which is less than the increase in prices and living costs would amount to a real wage cut, resulting in some of the lowest-paid workers being further disadvantaged. Further, a failure to pass on adequate wage increases to low-paid workers would hamper Queensland's recovery efforts; as government stimulus winds down, elevated consumer spending levels out and the housing activity cycle expires.

### ***Together***

[11] Similar to the submissions of the QCU, Together submits that the Commission has historically afforded considerable weight to the FWC AWR decision, having regard to the particular circumstances of Queensland. Together outlined that the Full Bench in the AWR noted, *inter alia*, the following matters:

- a. The domestic economy performed better than was expected in the second half of 2020, particularly in the December quarter, which caused the RBA to revise favourably several of its forecasts for 2021.
- b. The labour market has been performing strongly following the effects of the first nationwide lockdown, when the unemployment rate peaked at 7.4 per cent in July 2020; lower than forecast by both the RBA and Treasury.
- c. Both measures of labour productivity improved over the year to the March quarter 2021. Gross Domestic Product (GDP) per hour worked increased by 2.5 per cent and Gross Value Added (GVA) per hour worked (in the market sector) rose by 2.8 per cent.
- d. The single most important shift between this Review and the last Review has been the economic recovery.
- e. Moderate and regular increases in minimum wages do not result in significant disemployment effects.
- f. The requirement to take into account relative living standards and the needs of the low paid supports an increase in the NMW and modern award minimum wages.

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<sup>5</sup> *Annual Wage Review 2020-21* [2021] FWCFB 3500.

- g. Women are more likely to be in low-paid employment and to be paid at the award rate. Further, higher-paid award-reliant employees are more likely to be female (58.7 per cent) than male (41.3 per cent). (footnotes omitted)

- [12] Together outlined that the FWC Full Bench noted that although there was a stronger Australian economic performance in the latter part of 2020 and an improvement in economic forecasts, both the RBA and Treasury do not expect an increase in the rate of wage growth and forecasts for WPI growth, being 1.25 percent, were unchanged.
- [13] Together refers to the Queensland Government's 2020/21 Budget which forecasts the Queensland economy to return to marginal growth of 0.25 percent in 2020-21, and then rebound to 3.5 percent in 2021-22, followed by ongoing solid growth of around 2.75 percent in 2022-23 and 2023-24. Together further highlights, as noted in the Budget, that Queensland is the only state where employment and hours worked have rebounded to above their pre-COVID-19 levels, with a rapid and strong recovery in the Queensland labour market.
- [14] Together notes the following submission of the Queensland Government to the FWC AWR:

Queensland recognises that stagnant wage growth has been widely identified as a significant problem in recent years and that rising income inequality has become an issue of significant social concern. The Governor of the RBA, Phillip Lowe, has argued this is a major problem, suggesting that flat real wages are diminishing our sense of shared prosperity and the lack of real wage growth is one of the reasons why some in our community question whether they are benefiting from our economic success.<sup>6</sup>

and submits that the Queensland economy is rebounding strongly and there is nothing to indicate that the negative factors considered in the AWR decision disproportionately impact Queensland. Further, the rise in the Superannuation Guarantee is of limited effect to employers under state and local governments.

- [15] Together also submits that there are no particular factors which exacerbate the current economic challenges to the extent that Queensland is suffering an overall impact greater than other states. Additionally, an increase of the quantum decided by the FWC that maintains the value of real wages and the living standards for award wage reliant workers is economically responsible and protects low paid workers.

### *AWU*

- [16] The AWU submits that the awarding of the application will provide low-paid workers with a fair increase in wages and further develop Queensland's economy through:

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<sup>6</sup> Queensland Government Submission to the Fair Work Commission Annual Wage Review 2020–21, March 2021, page 15.

- increased consumption as a result of high wages;
- maintaining and improving on safety of minimum employment conditions; and
- assisting with the collective bargaining process.

[17] The AWU submits that in maintaining real wages, low paid award-reliant workers will be able to acquire fair and reasonable living standards and no adverse effects to unemployment in Queensland will arise in the awarding of the application. The AWU estimates that approximately 7,000 employees will be directly affected by the general ruling. However, it submitted that the Commission should not discount the flow-on effects for the approximate other 250,000 employees of the State of Queensland and 36,000 employees of local governments whose employment is subject to a certified agreement.

[18] The AWU seeks the same outcome awarded by the FWC in the AWR this year, where the Full Bench of the FWC opined that a 2.5 percent increase was appropriate and would not lead to any adverse inflationary outcome or have any negative impact on workers.<sup>7</sup> The AWU submits that the application is economically appropriate, sustainable and affordable and will increase the living standards of low-paid workers.

### *State of Queensland*

[19] The State of Queensland ('the State') supports:

- an increase in the QMW of 2.5 percent;
- a fair and reasonable increase to minimum pay rates and relevant work-related allowances in state modern awards; and
- and operative date of 1 September 2021.

[20] The State submits that it is a matter for the Commission to decide on any increase to state awards and relevant work-related allowances, after considering all relevant information.

[21] The State highlights two categories of employees likely to be affected by the SWC. The first category are approximately 7,000 employees who are covered by an award but are not covered by a certified agreement, who represent 1.8 percent of all employees subject to Queensland's jurisdiction. The second category are those employees who are covered by a certified agreement where the rate of pay prescribed in the agreement may be subject to adjustment by the outcome of the SWC. The number of employees affected in this

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<sup>7</sup> [2021] FWCFB 3500, [27].

category will vary depending on the quantum of increase awarded to the relevant award rate by the Commission.

[22] The State submits that there are factors distinguishing the commonwealth and state industrial jurisdictions which should be considered by the Commission. The State submits that:

- the AWR is heard and determined within the context of minimum and modern award rates for private sector workers within the national industrial relations jurisdiction;
- employees in the state jurisdiction are almost exclusively employed in state and local government sectors and the composition is significantly different from those in the federal jurisdiction, most specifically in terms of industry sectors and the manners in which wage increases are determined;
- as at 1 March 2021, certified agreements in the state and local government sectors cover 98.2 percent of employees subject to the Queensland industrial relations jurisdiction;
- there has been an increase in the proportion of private sector employees who rely on national modern awards for their actual rate of pay which places a greater emphasis on the AWR Panel's consideration of NMW and national modern award increases; and
- section 145 of the IR Act allows for the flow-on of provisions from certified agreements into a relevant state modern award which allows for wages and conditions in an award to be lifted to a level consistent with the prevailing standard achieved by collective bargaining within a specific cohort of employees, rather than any broader standard prevailing in the community.

[23] The State notes that, of all jurisdictions, Queensland currently has the highest minimum wage at \$789.00 per week and is currently \$16.40 above the NMW as of 1 July 2021. The State submits that an increase of 2.5 percent will increase the QMW to approximately \$808.50 per week and consequently, the QMW will be \$35.90 above the NMW.

[24] The State provides an extensive outline of the current economic conditions and outlook with respect to the national and Queensland economy, where *inter alia*:

- the economic recovery in Australia as a result of COVID-19 is underway and stronger than initially anticipated, with the Australian economy move 1.1 percent higher than the pre-pandemic period a year earlier. This is reflected in the recently upgraded, albeit contrasting, economic forecasts from the Commonwealth Treasury and the Reserve Bank of Australia, where:

- the Commonwealth Treasury is now expecting a real GDP growth of 1.25 percent, CPI growth of 1.75 and wage growth of 1.5 percent through the year to June quarter 2022, and 2.25 percent CPI and wage growth through the year to June quarter 2023, implying no growth in real wages over the next two financial years; and
- the Reserve Bank of Australia is forecasting a real wage growth over the next two financial years, CPI growth is forecast to be 1.25 percent through the year to June quarter 2022 and 2 percent through the year to June quarter 2023, below expected annual wage price growth of 2 percent and 2.25 percent over the corresponding periods;
- strong momentum has persisted in the national labour market, with the unemployment rate falling from 7.4 percent in July 2020 to 5.1 percent in May 2021; and
- the economic recovery in Queensland as a result of COVID-19 has been stronger than that nationally, with the State's labour market rebounding strongly and the Queensland Treasury expecting economic growth to continue to be stronger than the rest of Australia.

[25] The State submits that modest expense growth has been achievable due to the government implementing strategies to contain increases while maintaining the expenditure needed to deliver frontline services, targeted support for jobs and the economy, and measures to enhance longer-term productivity. Further, the current State Budget has limited capacity for additional expenditure pressures and the government is also acting prudently to stabilise debt, directing revenue improvements toward economic recovery priorities and a return to surplus.

[26] The State notes that collective bargaining by employees and employers, in good faith and with a view to reaching agreement, is intended to be the primary basis under the IR Act on which wages and employment conditions are decided. There is the potential for SWC outcomes to work against this legislative intent and to impede, disincentivise or protract collective bargaining negotiations, particularly in the State public sector where certain award wages and conditions have been lifted to a level consistent with the prevailing standard achieved by collective bargaining within a specific cohort of employees, rather than any broader standard prevailing in the community.

[27] The State acknowledges that, should a determination be made to flow-on the AWR outcome of 2.5 percent to state jurisdiction award rates of pay, there will be no immediate impact upon the rates of pay bargained and in place across the Queensland public sector in 2021-22.

*Local Government Association of Queensland Ltd*

[28] The Local Government Association of Queensland Ltd ('LGAQ') submits that given the significant disruption caused by COVID-19, relying on national economic conditions and concomitant effects on employment markets as a means of determining wage outcomes for local government workers in Queensland is fraught with risk at this time.

[29] The LGAQ supports:

- a 2.5 percent increase to the QMW;
- a 2.26 percent increase to award wages;
- a 2.26 percent increase to existing and applicable award allowances 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 1 September 2021.

[30] The LGAQ submits that focusing on external circumstances such as the federal and state economies to determine an appropriate award increase poses risks for councils and are unreliable as trustworthy predictors of resourcing availability and operational sustainability for local governments. In supporting an increase of 2.26 percent, the LGAQ took into consideration:

- the circumstances of councils whose workers are paid pursuant to award levels;
- the financial capacity of these councils to pay increases in labour costs;
- the current pay levels of staff of these councils; and
- the current and potential for further impact of the pandemic on councils across Queensland.

[31] The LGAQ submits that the state wage award increase will directly impact 1,200 to 1,500 employees, with the majority being engaged in First Nations councils. The LGAQ submits that local government's capacity to pay correlates with the size of its workforce and notes that, while local government numbers have risen across the sector post 2016, First Nations councils overall recorded a reduction in staffing numbers over the same period. This reduction correlates with SWC increases whose quantum has exceeded general increases in grant monies allocated to these councils. Consequently, the capacity of First Nations councils to pay has not matched the increasing cost of labour. Further, First Nations councils do not have the capacity to raise money through rates and the grants available in lieu of their rate-raising capacity which is indexed at CPI levels.

- [32] The LGAQ submits that over 80 percent of councils reported impacts on their workforce due to changes in services provided by councils as a result of the pandemic. Adverse economic events such as 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. The higher a council's own source revenue means a greater independence and capacity to influence revenue, however, that may also increase potential revenue volatility whenever the residents and businesses are reliant on the economic sector. Consequently, a disaster will have a greater impact on those councils who rely on a higher percentage of own source revenue.
- [33] The LGAQ does not oppose a 2.5 percent increase to the QMW given its minimal implications for local government. Such an increase also maintains the margin by which the QMW exceeds the NMW and is consistent with the purposes prescribed under s 4(a) and (b) of the IR Act in that the wage level as proposed remains highly competitive with the national economy as well as other state economies.
- [34] In reliance on the same premise as 2020 with respect to the increase of awards and allowances, the LGAQ submits that the increase sought is designed to maintain existing levels of parity with similar workers of other councils and not fall further behind. The LGAQ has opted for a similar 2.0 percent increase but increased the claim by 0.26 percent in recognition of the difference in the amount sought in 2020 (2.0 percent) and the amount subsequently awarded (1.75 percent) by the Commission. A 2.26 percent increase provides a fair and reasonable wage increase for affected workers and will support and encourage council efforts to keep workers in employment.
- [35] The LGAQ submits that, within the current economic environment and the significant and continuing level of uncertainty for councils as employers, an increase of the level supported by the LGAQ and less than that of the NWC would send a clear message that the Commission recognises and acknowledges the challenges confronting local governments as employers, prioritises jobs and job retention during difficult times and acknowledges employer efforts to retain staff.
- [36] The LGAQ relies on the submissions of the other parties with respect to the state of the economy and a common-sense appreciation of the pandemic on the business operations of all businesses, private and public sector. However, the LGAQ notes the recent report 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 minimise any additional risk of unsustainability to councils. Additionally, councils have confirmed a desire to pay their staff fair wages and a need to balance that desire with the risk of having to further downsize staff to accommodate any increased costs.
- [37] The LGAQ submits that it had previously raised the reference in the State's submission that higher state award pay rises might serve to disincentivise employers and workers

from participating in enterprise bargaining has merit. However, it is acknowledged that there are other factors in play that contribute to the aversion of some councils and workers from the pursuit of enterprise bargaining as the preferred mechanism to set wages for council staff.

- [38] The LGAQ submits that a 2.26 percent increase in awards is fair as it represents a genuine wage increase for lower paid workers, is generally affordable for councils and assists affected councils to maintain reasonable wage parity with staff in other local governments who rely on enterprise bargaining to set wage levels.

*QCU response*

- [39] In response, the QCU contends that the submissions of the State and LGAQ do not disclose cogent reasons to not follow the FWC AWR and provide no evidence that weighs against following the FWC AWR.

- [40] With respect to the State's submissions regarding award rates, the QCU submits that the State offers no direct evidence for the Commission to consider. Rather, it consists of assertions about 'protracted bargaining' and attributes this to award rates of pay overtaking certified agreement rates of pay without proper justification. Further, the State invites the Commission to speculate about the re-emergence of award rates of pay overtaking those contained in certified agreements and how this does not guarantee 'bargaining would be able to be resolved through negotiated outcomes'.

- [41] It is argued that any alleged 'protracted bargaining' would be evidence of bargaining taking place under the framework envisaged by the IR Act, which includes access to arbitration as a last resort.

- [42] The matter of 'flow-on' provisions was considered in the 2019 SWC, where the State invited the Full Bench to conclude that negotiating parties to the *State Government Entities Certified Agreement 2019* ('CORE') had not been able to reach agreement due to the SWC. However, the Full Bench found:

There is no evidence produced by the State that would enable us to conclude that the reason the CORE is in arbitration is because of the State Wage Case decision. There may well be a number of reasons, given the potential complexity of the matters the parties are negotiating, as to why the CORE is in arbitration. In the absence of direct, or otherwise cogent evidence, we are not inclined to draw such an inference.<sup>8</sup>

- [43] In support to the LGAQ assertion that the uncertainty created by the COVID-19 pandemic provides a 'strong justification' to depart from the AWR, the QCU submitted that the effects of COVID-19 were extensively considered in the 2020 SWC and AWR, where the Full Bench declined to depart from the AWR.

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<sup>8</sup> *Declaration of General Ruling (State Wage Case 2019)* [2019] QIRC 169, [69].

### *Together response*

- [44] Noting the difference of impact between the AWR and SWC, Together submits that while the 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 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'.<sup>9</sup>
- [45] Together asserts that the submissions of the State regarding the difference between federal and state economic factors and growth highlight differences that support a ruling consistent with the AWR.
- [46] Referring to the State's submissions on the 'flow-on' of Certified Agreement rates into Awards, Together submits the matter was considered in detail in the 2019 SWC, where the Full Bench noted:

It appears incongruous with the State's submissions before the 2018 State Wage Case that all existing awards in the State provided for fair and just employment conditions to now, one year later, seek to treat a class of such an award differently.<sup>10</sup>

- [47] Once the Commission has decided that the wage 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'. Together submits that the State has not offered any new reasoning that would justify departing from the approach taken in 2019 regarding this issue.
- [48] In relation to the impact of Award increases from the SWC on collective bargaining, Together highlights that it is noted by the State that despite its fears of a barrier to bargaining existing, it has been proven not to be the case as all public sector agreements in this bargaining round, with the exception of one, have reached settlement.

### **Consideration**

- [49] The Commission is mindful, consistent with the legislative framework, 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.
- [50] 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. This approach

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<sup>9</sup> *Declaration of General Ruling (State Wage Case 2018)* [2018] QIRC 113, [48].

<sup>10</sup> *Declaration of General Ruling (State Wage Case 2019)* [2019] QIRC 169, [63].

was clearly articulated by the Commission in respect of the SWC in the SWC 2014,<sup>11</sup> where the Full Bench said:

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

[13] 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.<sup>12</sup>

[51] The Full Bench of the FWC in 2020 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'.<sup>13</sup>

[52] Some twelve months on, that statement still rings true, and our State and Nation continue to be gripped by the COVID-19 pandemic. It is against this background that the Full Bench must once more make its determination.

[53] It was the general consensus of the parties that the Queensland economy has, to this point, weathered the COVID-19 pandemic relatively well and is returning to positive growth. Consumer and business sentiment has rebounded. However, as the recent lockdown in South East Queensland and the most recent lockdowns in both Sydney and Melbourne demonstrate, further outbreaks of the Delta strain of the virus represent a risk to the ongoing recovery. For the Queensland economy, it must be acknowledged that the

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<sup>11</sup> *Application for Declaration of General Ruling (State Wage Case 2014)* [2014] QIRC 129.

<sup>12</sup> *Ibid* [12]-[13].

<sup>13</sup> [2020] FWCFB 3500, [24].

impact on industry sectors, in particular tourism will continue to be uncertain particularly having regard to the implementation of interstate border and intrastate restrictions. Moreover, the removal of the Commonwealth Government's JobKeeper scheme and the winding back of the stimulus measures will no doubt have an impact on our State's economy.

- [54] Whilst early indications are that the overall economic recovery will ameliorate any adverse impact of the withdrawal of stimulus measures, and the most recent ABS labour force data tend to support the view that there has not been any clear aggregate impact, some level of volatility in the State economy is likely.
- [55] Employees likely to be directly affected by a decision in the SWC fall within two categories:
- (a) employees who are covered by an award, but who are not covered by a certified agreement (i.e. state award-reliant employees); and
  - (b) 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.
- [56] An increase of 2.5 per cent to the QMW is supported by the State, the QCU, Together, the AWU and LGAQ. Currently, the QMW is \$789.00 per week which is \$16.40 above the NMW. A 2.5 per cent will increase the QMW to approximately \$808.50 per week and consequently, the QMW will be \$35.90 above the NMW.
- [57] 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.
- [58] The State argues that there is the potential for SWC outcomes to work against this legislative intent and to impede, disincentivise or protract collective bargaining negotiations. The State contends that this is particularly so in the state public sector where certain award wages and conditions have been lifted to a level consistent with the prevailing standard achieved by collective bargaining within a specific cohort of employees, rather than any broader standard prevailing in the community.
- [59] However, whilst the LGAQ may share a similar view to the State, that higher state award pay rises might serve to disincentivise employers and workers from participating in enterprise bargaining, they nevertheless fairly acknowledge that there are other factors in play that contribute to the aversion of some councils and workers from the pursuit of enterprise bargaining as the preferred mechanism to set wages for council staff.

[60] The State identifies what it says are points of difference between the State and Commonwealth contexts. In particular, it identifies s 145 of the IR Act being the provision which allows for a flow-on of provisions from certified agreements into a relevant State modern award. The number of public sector awards that have received a full or partial flow-on is submitted to be 18.

[61] The Explanatory Note to the 2016 IR Bill contains the following:

Clause 145 is based on the historical provision at section 129 of the IR Act (pre-2012) and provides that in certain circumstances, the commission may include in a modern award provisions that are based on a certified agreement. This clause also provides for when the commission must, upon application and agreement of the parties to a certified agreement, vary a modern award to include provisions based on a certified agreement.

[62] The State observes that employees with the coverage of awards that have been subject to a successful flow-on application are in a unique position of being able to benefit from both future collective bargaining outcomes and from outcomes of an increase to the SWC.

[63] Notwithstanding the above concerns, the State acknowledges that should the Commission determine to flow-on the AWR outcome of 2.5 percent to state jurisdiction award rates of pay, there will be no immediate impact upon those rates of pay bargained and in place across the Queensland public sector in 2021-2022.

[64] In our view, if it is considered that some inequity or inconsistency rises by operation of the statutory provision, then that is a matter for the legislature and not for the Commission to determine.

[65] The LGAQ contends that a 2.26 percent increase represents a genuine wage increase for lower paid workers and, at the same time, is affordable for councils. It is asserted that limiting the increase to 2.26 percent will assist affected councils maintain reasonable wage parity with staff in other local governments who rely on enterprise bargaining to set wage levels.

[66] Mr Goode outlined to the Full Bench that the pandemic has impacted local councils in various ways. Of note is the impost that border restrictions have had on both the income received by councils which adjoin the New South Wales border and the expenditure required by those councils in ensuring that there is no cross-border transmission of the Delta variant.

[67] The Commission recognises and acknowledges, within the current economic environment, the significant and ongoing challenges confronting local governments as employers and the desire of local authorities to prioritise jobs and job retention during

difficult times. Further, it is acknowledged that First Nation Councils continue to face significant financial challenges.

- [68] However, whilst mindful of the fact that many of the LGAQ's members are small rural and regional employers, the difference between an increase of 2.26 percent and 2.5 percent to award wages is minimal. It is not suggested by the LGAQ nor does the evidence before the Full Bench support a position that should the Commission grant an increase of 2.5 percent that councils would have to shed staff or freeze new hires. Equally, it is difficult for the Commission to adopt a blanket approach. There are, no doubt, some councils which are financially better situated than others. Some of the larger councils would be in a better position to carry the 2.5 percent increase than others which may struggle to do so. To adopt a blanket approach would be disadvantageous to employees of those councils which have the capacity to pay.
- [69] The Commission is not persuaded by the submission of the LGAQ that only a 2.26 percent should be granted.
- [70] An increase of 2.5 percent to the QMW is supported by all parties to these proceedings. 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 2.5 per cent to the QMW.
- [71] The QCU, Together and the AWU support an increase of 2.5 percent to the state awards and existing award allowances which relate to work conditions which have remained unchanged. The State, while expressing caution, leaves that determination to the Commission. Only the LGAQ submits that the Commission should adopt a 2.26 percent increase.
- [72] On balance, the Commission is of the view that an increase of 2.5 percent should apply to all state awards and existing award allowances (other than expense related allowances) relating to work or to conditions which have remained unchanged.
- [73] Consistent with the approach adopted in previous SWCs, 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.

## **Conclusion**

- [74] It is ordered that:

- 1. The wages or salaries for full-time adult employees in all state awards shall be increased by 2.5 percent from 1 September 2021.**

- 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 2.5 percent.**
- 3. The minimum wage rate per week for all full-time employees in Queensland is \$808.50.**
- 4. The above increases operate on and from 1 September 2021.**

[75] A declaration of General Ruling giving effect to the orders made will be issued concurrently with this Decision.