

# QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Declaration of General Ruling (State Wage Case 2022)*  
[2022] QIRC 340

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)

FILE NO/S: B/2022/52; B/2022/53; B/2022/54

PROCEEDING: Application for Declaration of General Ruling

DELIVERED ON: 30 August 2022

HEARING DATE: 18 August 2022

MEMBERS: Davis J, President, O'Connor VP, McLennan IC

ORDERS: **1. The wages or salaries for full-time adult employees in all state awards shall be increased by 4.6 per cent or \$40 per week, whichever is the greater.**

**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 4.6 percent.**

**3. The minimum wage rate per week for all full-time employees in Queensland is \$850.50**

**4. The above increases operate on and from 1 September 2022.**

LEGISLATION: *Industrial Relations Act 2016 (Qld) s 3, s 4, s 8, s 458, s 459, s 460*  
*Industrial Relations and Other Legislation Amendment Bill 2022, s 495A*

- CASES: *Annual Wage Review 2021-22* [2022] FWCFB 3500  
*Declaration of General Ruling (State Wage Case) 2014*  
 [2014] QIRC 129  
*New South Wales v Commonwealth* (2006) 229 CLR 1
- APPEARANCES: Mr M Thomas, Together Queensland, Industrial Union of Employees (applicant in B/2022/52)  
 Mr A Borg, Queensland Council of Unions (applicant in B/2022/53)  
 Mr G Taylor and D Marr, Australian Workers' Union, Industrial Union of Employees (applicant in B/2022/54)  
 Mr T James, Mr S Donovan, Mr T Brauns, Office of Industrial Relations for the State of Queensland (First Respondent)  
 Ms K Jones, Local Government Association of Queensland (Second Respondent)

## Background

- [1] Together Queensland, Industrial Union of Employees (TQ),<sup>1</sup> The Queensland Council of Unions (QCU),<sup>2</sup> and The Australian Workers' Union of Employees, Queensland (AWU)<sup>3</sup> have 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 4.6 per cent or by \$40.00 (whichever is higher);
  - (b) a general ruling to amend all state awards to increase the existing allowances which relate to work conditions, which have not changed by 4.6 per cent;
  - (c) an increase to the Queensland Minimum Wage (QMW) by 5.2 per cent; and
  - (d) a determination that items (a) to (c) herein be operative from 1 September 2022

## 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.”

<sup>1</sup> Application filed by Together Queensland, Industrial Union of Employees on 6 July 2022.

<sup>2</sup> Application filed by the Queensland Council of Unions on 6 July 2022.

<sup>3</sup> Application filed by The Australian Workers' Union of Employees, Queensland on 7 July 2022.

- [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
- ...
- (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**

[7] This arbitration comprises of four discreet points raised by the parties. They are:

1. the operative date;
2. increase to the Minimum Wage;
3. increases to award wages;
4. increases to allowances.

#### **1 Operative Date**

[8] The three applicant unions, and the State of Queensland seek an operative date of 1 September 2022. The Local Government Association of Queensland seeks an operative date being the first Monday in September of each year.

[9] 1 September has been the operative date for wage amendments in the past, and for the reasons expressed below, the Full bench sees no reason to deviate from this practice now.

#### **2 Minimum Wage Increase**

[10] All three applicants seek an increase to the State Minimum Wage (SMW) of 5.2 per cent.<sup>4</sup> That percentage accords with the Fair Work Commission's Annual Wage Review (AWR) Decision of 15 June 2022.<sup>5</sup> Each union buttresses their respective submissions with an extract from this Commission's 2014 wage decision. It relevantly reads:

“[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

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<sup>4</sup> Together Queensland submissions, [1]; Queensland Council of Union Submissions, [2]; Australian Workers' Union Submissions, [5].

<sup>5</sup> [2022] FWCFB 3550.

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's 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>6</sup> (emphasis added).

- [11] The State of Queensland<sup>7</sup> and the Local Government Association of Queensland<sup>8</sup> support the applications of the QCU, TQ and AWU to increase the QMW by 5.2 per cent, noting that the increase sought to the QMW is consistent with the increase awarded to the national minimum wage.
- [12] Together Queensland makes clear in its submissions that the superannuation guarantee as a “moderating” factor in the state context has less force, as the State tends to pay higher superannuation to begin with,<sup>9</sup> although Mr Thomas for the Union rightly points out that the Fair Work Commission does not state equivocally or otherwise the extent to which the Superannuation Guarantee reduced the AWR increase (if at all).<sup>10</sup>
- [13] The applicants, in particular the QCU, argued in oral submissions that a “cogent” reason to depart from the AWR could well in this context be the increase of the CPI beyond what it was at the time the AWR occurred.<sup>11</sup>
- [14] On the day prior to the hearing Mr Borg for the QCU filed an affidavit containing annexures of Australian Bureau of Statistics data. The attached excerpts show an increase in the Consumer Price Index of 6.1 per cent since June of 2021. On those figures the unions suggested that the Full Bench could deviate from the AWR, not by awarding less of an increase, but a *greater* increase than the Fair Work Commission. As this was not canvassed in written submissions the point was not heavily pressed. Nevertheless it was the Unions’ position that a greater than 5.2 per cent increase could be reasonable if

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<sup>6</sup> Declaration of General Ruling (*State Wage Case*) 2014 [2014] QIRC 129 [12]–[13].

<sup>7</sup> Submission of the Queensland Government, 3 August 2022 [91].

<sup>8</sup> Submission of the Local Government Association of Queensland, 9 August 2022, [7].

<sup>9</sup> Together Queensland Submissions 28 July 2022, 8 [23].

<sup>10</sup> T 1-19 ll 1-2.

<sup>11</sup> T 1-10 ll 27-47.

the Full Bench considered such a course to be appropriate based on the evidence before it.<sup>12</sup>

### **3 Increases to Award Wages and allowances**

- [15] Together Queensland (TQ), the Queensland Council of Unions (QCU) and the Australian Workers' Union (AWU) all seek an increase across all awards of 4.6 per cent or \$40.00 per week, whichever is higher.<sup>13</sup> With respect to allowances the figure sought is 4.6 per cent.

#### **The State's position**

- [16] The State of Queensland supports:

- (a) an increase in the Queensland Minimum Wage (QMW) of 5.2 per cent;
- (b) a fair and reasonable increase to minimum pay rates and relevant work-related allowances in State modern awards, but not greater than the 2022 AWR decision in relation to Federal modern awards; and
- (c) an operative date of 1 September 2022.

- [17] In respect of an increase to state awards and relevant work-related allowances (which relate to work conditions and have not changed), the position of the State of Queensland is that it is a matter for the Commission to decide after considering all relevant information. However, in oral submissions before the Commission it was accepted that an increase of 4.6 per cent would be fair and reasonable.

- [18] Whilst the State of Queensland supports a 5.2 per cent increase in the SMW, it submits that any increase to State awards and allowances is a matter for the Commission after it considers all relevant information put before it, including:

1. the different State and Commonwealth contexts for the consideration of annual general wage increases;
2. the current rates of pay in public sector awards, the history of how those rates have been determined and the requirements of the IR Act with respect to determining award rates of pay, including s 141; and
3. the potential for SWC outcomes to impede, disincentivise or protract enterprise bargaining negotiations, particularly in the State public sector; and the state of the Queensland economy and the Queensland Government fiscal position and strategy.

- [19] In the written submissions of the State of Queensland, differences between the State and Commonwealth Contexts were raised as an issue. The State submitted:

“26. The Government submits that there are factors which distinguish the Commonwealth and State industrial jurisdictions which the Commission is asked to consider when determining the State Wage Case outcome decision.

<sup>12</sup> T 1-17 ll 4-8.

<sup>13</sup> Together Queensland submission 28 July 2022, [1](a); QCU Submission 28 July 2022, [2](a); AWU Application filed 7 July 2022.

27. The AWR is heard and determined within the context of minimum rates and modern award rates for private sector workers within the national industrial relations jurisdiction. Moreover, workers impacted by the AWR have experienced low wage rate outcomes over the past decades and have no or extremely limited opportunity to secure wage increases through the auspices of bargaining.
28. The Queensland industrial relations jurisdiction includes a number of unique features which impact upon award rates outcomes for workers covered by the State system. These features are not subject to consideration by the Expert Panel when it determines the outcome of its AWR given the scope of its jurisdiction.
29. Following the Queensland Government's referral of its residual private sector industrial relations powers to the Commonwealth in 2010, employees in the State jurisdiction are almost exclusively employed in state and local government sectors. The composition of workers in the State jurisdiction is therefore significantly different from those in the federal jurisdiction, most specifically in terms of industry sectors and the manners in which wage increases are determined.
30. Significantly, employees within the Queensland jurisdiction actively participate in collective bargaining. As at 1 March 2021, certified agreements in the State and Local government sectors cover 98.2 per cent of the employees subject to the Queensland industrial relations jurisdiction.
31. As noted in the Queensland Government's submission to the 2022 AWR, there has been an increase in the proportion of private sector employees who rely on national modern awards for their actual rate of pay. In 2010, 17.2 per cent<sup>2</sup> of Queensland employees were national modern award reliant. By 2021, this had increased to 21.2 per cent<sup>3</sup>. The submission also noted the concerning decline in the number of private sector agreements and employee coverage under collective bargaining in the national system over the past five years.
32. This situation places a greater emphasis on the AWR Panel's consideration of national minimum wage and national modern award increases in the context of providing a safety net for those 21.2 per cent of private sector workers who do not bargain for increases. This is in contrast to the Queensland industrial relations jurisdiction where only 1.8 per cent of employees are award-reliant for their actual rate of pay.
33. Another unique feature of the Queensland industrial relations jurisdiction is the legislated provision that allows for the flow-on of provisions from certified agreements into a relevant State modern award (section 145 of the IR Act). This feature 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. In practice, the facility to flow-on certified agreement provisions into the relevant award has only been applied in the Queensland public sector. The number of public sector awards that have received a full or partial flow-on is 18.

34. Employees within 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 the outcomes of an increase to the SWC.
35. The Queensland Government notes that since 2011, the Queensland Industrial Relations Commission (the Commission) has determined the SWC by applying the same increase awarded in the AWR to State award minimum wages. In its previous judgements, the Commission has repeatedly observed that it requires compelling argument to depart from mirroring the federal AWR decision and not apply that increase to award wages.
36. In the 2021 State Wage Case the State argued that there is the potential for SWC outcomes to work against legislative intent and to impede, disincentivise or protract collective bargaining negotiations. The Commission indicated in its decision that if it is considered that some inequity or inconsistency rises by operation of certain statutory provision, then that is a matter for the legislature and not for the Commission to determine.”

[20] The State has made no submission on a specific percentage increase to award rates. Rather, it submits that the specific percentage increase is, “...a matter for the Commission to decide”.<sup>14</sup>

### **Local Government Position**

[21] The LGAQ advocates for a three per cent increase to award wages and a three per cent 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.

### **Consideration**

[22] Consistent with the legislative framework, the Commission has approached its consideration of the SWC 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.

[23] 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. Moreover, the Full Bench is conscious of the current level of unemployment and the prospect of continuing high inflation.

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<sup>14</sup> Submission of the State of Queensland filed 3 August 2022, [92].

- [24] There would be few workers on low wages in Queensland who consider that their wages are increasing by the same proportion as their living costs, placing them in a state of financial stress or hardship.
- [25] The Full Bench recognises that many households are experiencing significant and sustained price increases, in particular with respect to the cost of essential goods and services with the resultant erosion of the purchasing power of their wages.
- [26] The Consumer Price Index provides a key measure of price inflation. The latest CPI figures released on 27 July 2022 record an annual rise for Brisbane of 6.1 per cent and a quarterly rise of 1.8 per cent.<sup>15</sup>
- [27] Further, we note that Queensland's unemployment rate sits at 3.8 per cent as of July 2022 with a national unemployment rate of 3.4 per cent.<sup>16</sup> However, inflation remained relatively high at 6.1 per cent to June 2022, rising to 7.75 per cent in the December quarter 2022.<sup>17</sup>
- [28] Underpinning the FWC's consideration of the setting of a NMW and minimum award wages, is the acceptance of the need for moderation in order to constrain the inflationary pressures. The FWC noted that the 0.5 per cent increase in the Superannuation Guarantee rate, removal of the \$450/month superannuation threshold, and the 2022–23 Budget measures as moderating factors.<sup>18</sup>
- [29] The FWC was conscious that the low paid are particularly vulnerable in the context of rising inflation. Further, given the sharp rise in the cost of living since last year's Review, the increases awarded in 2021 have resulted in a fall in the real value of the NMW and modern award minimum wages.
- [30] The FWC recognised that the increase of 5.2 per cent to the NMW was calculated to likely maintain the real value of the wages of the NMW and award reliant employees.
- [31] Importantly, in the reasons for decision of the FWC it was observed:
- “[194] We accept that the approach we have adopted will result in some, albeit minor, compression in relativities, but that consideration is to be balanced against the need to provide greater relief to low-paid workers in the context of rising cost of living pressures. Given the current strength of the labour market the adjustment we propose to make will not have a significant adverse effect on ‘the performance and competitiveness of the national economy’”
- [32] The Full Bench of this Commission observes that no cogent evidence has been advanced to support a departure from the approach of the FWC this year.

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<sup>15</sup> Australian Bureau of Statistics, “Consumer Price Index, Australia”, (Web Page, 23 August 2022) <<https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/latest-release>>

<sup>16</sup> Queensland Treasury, “Labour and employment” (Web Page, 23 August 2022) <Labour and employment: State Queensland Government Statistician's Office (qgso.qld.gov.au)>; Affidavit of Ashley Borg, filed 23 August 2022, annexure B.

<sup>17</sup> Hansard, Commonwealth (House of Representatives), 28 July 2022, 206.

<sup>18</sup> *Annual Wage Review 2021-22* [2022] FWCFB 3500 [24]-[66].

- [33] Accordingly, having regard to the statutory principles of the IR Act, the current economic and labour market in this State and in light of the position set out in the submissions received from the union parties and the State of Queensland we are satisfied that we should adopt the FWC's decision.
- [34] An increase of 5.2 per cent to the QMW is supported by the State, the QCU, Together, the AWU and LGAQ. Currently, the QMW is \$808.50 per week which is \$4.10 below the NMW. An increase of 5.2 per cent would result in a \$42.00 per week increase to the QMW bringing it to \$850.50 resulting in a margin between the QMW and the NMW of approximately \$37.90.
- [35] Together Queensland (TQ), the Queensland Council of Unions (QCU) and the Australian Workers' Union (AWU) all seek an increase across all awards of 4.6 per cent or \$40.00 per week, whichever is higher.<sup>19</sup>
- [36] The State of Queensland adopts the position that 4.6 per cent is the “ceiling” above which an increase could not properly be called fair and reasonable, but that in the State of Queensland's submission, 4.6 per cent nevertheless is reasonable.<sup>20</sup> The submission relates to both wages and allowances.<sup>21</sup>
- [37] The LGAQ has expressed disquiet at the Unions' submission of a 4.6 per cent increase. It submits an increase of 3.0 per cent is an appropriate figure given the potential impact 4.6 per cent would have on smaller, particularly First Nations Local Governments.<sup>22</sup> It reasons that the capacity for First Nations Councils to pay employees, “...has not matched the increasing cost of labour [since 2016]”.<sup>23</sup>
- [38] What can be gleaned from the submission, both written and oral, is that underpinning the LGAQ submission is a concern primarily for the viability of First Nations Councils ("FNCs") and to a lesser extent those Councils which might be described as “marginal”.
- [39] A further directions order was issued requiring the LGAQ to file documentation which supports their submission on an increase of 3.0 per cent as opposed to 4.6.<sup>24</sup>

### ***LGAQ Further Submissions***

- [40] The further submissions confirm that there are seventeen First Nations Councils in Queensland, with five of them being covered by a certified agreement.<sup>25</sup> The submissions place particular emphasis on the 2.5 per cent cap on funding increases for the affected councils.<sup>26</sup> They articulate that the funding per capita has decreased by several hundred dollars over the last decade.<sup>27</sup>

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<sup>19</sup> Together Queensland submission 28 July 2022, [1](a); QCU Submission 28 July 2022, [2](a); AWU Form 2 Application filed 7 July 2022, 3[1].

<sup>20</sup> T 1-47 ll 1-39.

<sup>21</sup> State of Queensland submission of 3 August 2022, [91](b).

<sup>22</sup> Local Government Association of Queensland Submission, [22].

<sup>23</sup> Local Government Association of Queensland Submission, [13].

<sup>24</sup> Direction Order issued 18 August 2022.

<sup>25</sup> Agreed statement of facts filed 22 August 2022.

<sup>26</sup> Further submissions filed by the LGAQ 22 August 2022, [7]-[11].

<sup>27</sup> Further submissions filed by the LGAQ 22 August 2022, [11](d).

- [41] The submissions also traverse the history of the LGAQ's State Budget submissions which shows the funding granted by the SGFA repeatedly falls short of what was requested by councils.<sup>28</sup>
- [42] The LGAQ notes that a majority of Local Government employees are covered by a certified agreement which pay in excess of award rates. However, there are a number of councils whose employees are award reliant or those covered by a certified agreement where the rates of pay may be subject to the outcome of the SWC, the majority of whom are engaged in First Nations Councils. The LGAQ submitted that the average salary levels remain lower for employees in the First Nations Councils than other councils.
- [43] On the figures set out in the LGAQ submission, it is estimated that the local government workforce as of 2021 was approximately 42,092.<sup>29</sup> Within First Nations Councils, the workforce figure in 2021 was 1,798 employees.<sup>30</sup>
- [44] 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. In particular, we note the submission that First Nations Councils are within some of Queensland's most disadvantaged communities.
- [45] The LGAQ submits that it is important that additional labour costs do not impede the efforts of councils to protect local employment and build resilience into local economies. In the submissions of 22 August, the LGAQ makes the following submission with respect to the difference between 3.0 and 4.6 per cent.

“21. The Queensland Audit Office (QAO) reports that First Nations Councils are at high risk of being financially unsustainable. First Nations councils have represented the bulk of those councils identified as being at higher risk of being financially unsustainable by the QAO in all of their recent annual reports to Queensland Parliament.

22. The QAO assesses the operating surplus ratio of councils. The QAO 2021 report includes that the target range for the operating surplus ratio is between zero and 10% and explains:

‘A negative result indicates an operating deficit, and the larger the negative percentage, the worse the result. Operating deficits cannot be sustained in the long term. A positive percentage indicates that surplus revenue is available to support the funding of capital expenditure, or to hold in reserve to offset past or future operating deficits.’

...

24. An operating surplus ratio of less than negative 10% represents insufficient revenue being generated to fund operations and asset renewal. The QAO uses a 5-year average when assessing the operating surplus as it notes that this metric is a long term

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<sup>28</sup> Further Submissions.

<sup>29</sup> T 1:32 ll 15-42.

<sup>30</sup> Local Government Association of Queensland submissions 9 August 2022, 3-4.

indicator.<sup>13</sup> First Nations councils have a less than negative 10% average operating surplus ratio.

25. The QAO also assesses the financial sustainability of councils. The 2021 QAO report assessed all First Nations councils, with the exception of the Aboriginal Shire Councils of Cherbourg, Hope Vale, Lockhart (assessed at amber) and Pormpuraaw, sitting on red at Higher Risk. The QAS assessment puts circa 81% of the First Nations councils in receipt of SGFA at Higher Risker in terms of financial sustainability. By comparison, only 1.65% of non-First Nations councils (9 of 60) were assessed at Higher Risk in terms of financial sustainability.”

- [46] The Full Bench does not accept the LGAQ submission. The LGAQ has failed to outline the methodology adopted by it to support its submission for a 3 per cent increase to award wages. The further material filed on 22 August does not address why a 4.6 per cent increase is not reasonable, or, more precisely, why 3 per cent *is*.
- [47] Notwithstanding the data provided which show the difficulties FNCs have returning surpluses that fall within comfortable margins, there is no specific evidence that points to which (if any) councils would be in surplus with a 3 per cent increase but fall into deficit with 4.6 per cent.<sup>31</sup> Similarly there is nothing in the data which points to specific councils being able to survive (albeit with some difficulty) with a 3 per cent increase but be in a position of undue financial pressure with an increase of 4.6 per cent.<sup>32</sup>
- [48] On the LGAQ’s own submission it is recognised that the salary levels of First Nations Councils remain lower than other councils. Notwithstanding that submission, what is submitted by the LGAQ will only go to exacerbate an already serious problem.
- [49] There is of course a broader issue of concern. Should the LGAQ’s submission be adopted, the vast majority of employees in the local government sector would be disadvantaged solely on the basis that First Nations Councils are chronically underfunded.
- [50] Consistently with the legislative framework in which the Commission must determine the SWC, the obligation on the Full Bench is to ensure that employees are covered by fair and reasonable wages. The Commission is concerned as to how such an approach will remain fair and not have an adverse impact on low-paid workers in the local government sector.
- [51] On balance, the Commission is of the view that an increase of 4.6 per cent or \$40.00 per week, whichever is the greater should apply to the state awards and existing award allowances relating to work conditions which have remained unchanged.
- [52] Historically, the parties to these proceedings have submitted that the principles from the FWC Expert Panel’s Review decision be adopted in respect of the SMW, and that any award rate increases should also reflect the FWC approach. However, it should be recognised that whilst regard will be had to the FWC conclusions, the function of this Commission is not to slavishly follow the FWC’s decision. The Full Bench in exercising

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<sup>31</sup> [21]–[25].

<sup>32</sup> Ibid.

its statutory function must bring an independent mind to the task of determining whether, in all the circumstances, the FWC's determination ought to be properly adopted.

- [53] The Commission in *Declaration of General Ruling (State Wage Case) 2014*,<sup>33</sup> held that the scope of the Commission's work has narrowed and that unless there are cogent reasons for not doing so, the Full Bench should follow the ruling of the Federal Tribunal, with any necessary or desirable modifications, having regard to the particular circumstances of Queensland.
- [54] The relevant passage from the 2014 State Wage Case is set out at paragraph [10] of these reasons. Those statements must be properly understood and their limitations recognised.
- [55] There is no principle of law that the FWC's ruling must be accepted unless there are cogent reasons for departure. There is no principle of law that the correctness of the FWC's ruling must be accepted at all in a Queensland State Wage Case.
- [56] Australia's constitutional arrangements are such that the Commonwealth controls significant economic power. Income tax is controlled nationally. By the use of the corporation's power commercial activity is largely centrally controlled. The Work Choices case<sup>34</sup> is an example. The result is that many economic factors have nationwide influence.
- [57] Therefore, evidence of the economic impact of factors upon the national industrial environment will generally be relevant to determination of the Queensland State Wage Case. The FWC considers these matters and consequently its determination will be relevant to the State Wage Case.
- [58] It is a mistake to assume that the FWC's determination can be a substitute for a proper forensic inquiry into the impact of economic factors upon the wages of workers in Queensland who are not national system employees.<sup>35</sup>
- [59] If the forensic exercise is to commence with receipt into evidence of the FWC ruling, then it is necessary to receive evidence identifying relevant differences between the national workforce and Queensland workers who are not national scheme employees. It is also necessary to identify economic and perhaps social conditions which may be peculiar to Queensland and relevant to the Full Bench's determination of the State Wage Case. Once those things are identified, proper evidence (expert if necessary) should be led as to their impact upon the issues in the State Wage Case.
- [60] Queensland industrial conditions are different, at least in relation to workers who are not national scheme employees. A large proportion of that workforce is covered by certified agreements. These agreements must have satisfied the no disadvantage test so those workers are, by definition, better off than under the award which covers them. Some certified agreements tie wage increases to the State Wage Case, yet those agreements were not identified, nor were the terms and conditions under which those employees work.

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<sup>33</sup> [2014] QIRC 129 [12]–[13].

<sup>34</sup> *New South Wales v Commonwealth* (2006) 229 CLR 1.

<sup>35</sup> *Industrial Relations Act 2016*, s 8(2).

- [61] As revealed in paragraph [19] of these reasons, the State identified various differences between the Commonwealth and Queensland industrial environments, but then led no evidence as to the effect of those differences upon the issues for our determination.
- [62] As can be seen from paragraph [19] of these reasons, the State of Queensland contends that there is the potential for SWC outcomes to impede, disincentivise or protract collective bargaining negotiations in cases where award rates are lifted to an extent that they are commensurate with collective bargaining standard.<sup>36</sup> That submission was couched in terms of increases to award rates being so high that enterprise bargaining stagnates.<sup>37</sup> That submission was rejected by the Unions.<sup>38</sup>
- [63] The Full Bench is alive to the need to ensure that steps are not taken which would see a diminution in collective bargaining by employees and employers, in good faith and with a view to reaching agreement. This approach, of course, reflects a key object of the IR Act. No evidence though was led upon which proper assessment could be made of the impact of increases upon collective bargaining.
- [64] The Commission was advised that on 23 June 2022, the Hon Grace Grace MP, Minister for Education, Minister for Industrial Relations and Minister for Racing, introduced the *Industrial Relations and Other Legislation Amendment Bill 2022* (the Bill) into the Queensland Parliament. The Bill includes, amongst other things, a new s 459A which relevantly provides:

“459A Provision about general ruling for State wage case

- (1) This section applies if—
- (a) the commission makes a general ruling under section 458(1)(a) that increases the wages payable to employees under 1 or more awards; and
  - (b) applying the increase to the wages payable to employees, or a class of employees, under a particular award would result in the wages payable to the employees under the award equalling or exceeding the wages payable to employees in relation to the same employment under—
    - (i) a certified agreement or arbitration determination; or
    - (ii) a ruling under the *Public Service Act 2008*.
- (2) Without limiting section 459(2), the ruling may provide that the increase does not apply to the wages payable to the employees, or the class of employees, under the award.”

- [65] The proposed section of the Bill gives the Commission a discretion not to apply a general ruling to the wages payable to employees, or the class of employees, under an award. If

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<sup>36</sup> State of Queensland submission of 3 August 2022, [94].

<sup>37</sup> T 1:46 ll 1-11.

<sup>38</sup> T 1:54 ll 31-38.

the amendment is passed, then the Full Bench will need to consider each award and each certified agreement when amending future State Wage Cases.

- [66] As no real evidence other than the FWC rulings was received, the Full Bench will follow the Fair Work Commission. It should not be assumed that in future State Wage Cases following the FWC will be accepted in place of a proper forensic exercise based on relevant evidence.

### ***Commencement***

- [67] All parties, with the exception of the LGAQ, agree that the general ruling should be operative from 1 September 2022. The LGAQ argues that administratively the first Monday in September each year would be more practical.
- [68] 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.
- [69] Accordingly, the Commission has determined the general ruling will operate from 1 September 2022 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**

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