

**IN THE QUEENSLAND INDUSTRIAL
RELATIONS COMMISSION**

Matter Number: B/2022/53

BETWEEN:

QUEENSLAND COUNCIL OF UNIONS
Applicant

AND

STATE OF QUEENSLAND
First Respondent

AND

THE LOCAL GOVERNMENT ASSOCIATION OF QUEENSLAND
Second Respondent

INDUSTRIAL REGISTRAR
15 AUG 2022
APPLICATION FOR A DECLARATION OF GENERAL RULING
STATE WAGE CASE
QUEENSLAND

SUBMISSIONS IN REPLY OF THE QUEENSLAND COUNCIL OF UNIONS

I - INTRODUCTION

[1] These submissions are made in reply to those filed by the Queensland Government (“the State”) on 3 August 2022 and the Local Government Association of Queensland (“LGAQ”) on 9 August 2022.

[2] In response to the applications for a Declaration of General Ruling of the QCU, Together Queensland, Industrial Union of Employees (“Together”), The Australian Workers’ Union of Employees, Queensland (“AWU”), the State seeks:

(a) An increase to the Queensland Minimum Wage (“QMW”) of 5.2 per cent;

Date of document: 15 August 2022
Prepared by the **Queensland Council of Unions**
Level 5, 16 Peel Street, South Brisbane Q 4101

T: (07) 3010 2555
E: info@qcu.asn.au

- (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.

[3] The State has declined to press a specific percentage increase to State modern awards and, instead, submits that any increase is a matter for the QIRC to decide after considering all relevant information, including the information provided in their submission pertaining to:

- (a) alleged differences in the State and Commonwealth contexts;
- (b) 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 section 141;
- (c) the alleged potential for SWC outcomes to impede, disincentivise or protract enterprise bargaining negotiations, particularly in the public sector; and
- (d) the state of the Queensland economy and the Queensland Government fiscal position and strategy.¹

[4] For its part, the LGAQ seeks:

- (a) An increase to the QMW of 5.2 per cent;
- (b) A 3 per cent increase to Award wages;
- (c) A 3 per cent increase to Award to existing and applicable award allowances which relate to work or conditions which have not changed and have no mechanisms for variation in the award; and
- (d) An operative date of 1 September 2022, albeit asserting a preference for an increases to be made from the first Monday of September.²

[5] It has been a consistent approach adopted by the QIRC to have regard to the FWC AWR decision and the matters the FWC considers in its reasons and to follow the ruling of the FWC unless there are cogent reasons for not doing so.

¹ Paragraph 97, Submissions of the State.

² Paragraphs 7 and 35, Submissions of the LGAQ.

[6] The submissions of the State and the LGAQ disclose no cogent reasons for not following the FWC AWR.

II - THE QIRC SHOULD ADOPT THE DETERMINATION OF THE AWR

(A) STATE AWARDS

The State's Submissions – Award Rates

[7] With regard to paragraphs 35-37 of the submissions of the State, the State submits that the Queensland jurisdiction can be distinguished from the Commonwealth jurisdiction insofar as the State jurisdiction provides a legislative framework that facilitates “flow-on” of provisions from certified agreements, including rates of pay, into awards.

[8] Accordingly, whilst the State submits that any increase to State awards and allowances is a matter for the Commission, it also submits that the matter of “flow-on” provisions be considered as “relevant information” put before it.³

[9] The matter of “flow-on” provisions was considered in the 2019 SWC⁵, in which the State invited the Full Bench to conclude that the negotiating parties to the *State Government Entities Certified Agreement 2019* (“CORE”) had not been able to reach agreement because of the State Wage Case. In SWC 2019, 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.”

[10] Similarly, in its present submission, the State offers no direct evidence for the Commission to consider. Rather, it consists of theories about flow-on provisions potentially

³ Paragraph 97, Submission of the State.

⁵ Declaration of General Ruling (State Wage Case 2019) [2019] QIRC 169.

impeding, disincentivising, and protracting collective bargaining and attributes such potentialities (without proper justification) to award rates of pay overtaking certified agreement rates of pay.

[11] The Commission cannot entertain the submissions of the State. That “protracted” bargaining is alleged to have occurred, if anything, is evidence of bargaining taking place under the framework envisaged by the IR Act, which includes access to arbitration as a last resort. It is not the place of the QIRC to make the task of collective bargaining easier on one party or the other through the SWC, particularly where the IR Act further provides for remedies where bargaining has reached an impasse or where bargaining parties are not complying with their good faith bargaining requirements.

[12] The Commission cannot be satisfied that the State has produced cogent reasons as to why it should not follow the FWC ruling with respect to State awards with regard to any “flow-on” from certified agreements or alleged difficulties pertaining to the task of bargaining.

[13] Further, the State has made no mention of its updated wages policy.

The State’s Submissions – Economic Outlook

[14] The State’s submissions provide no economic rationale to not follow the AWR.

[15] The Expert Panel had the benefit of extensive material on the state of the economy overall, to which the Queensland economy is intrinsically linked. The QIRC has the benefit of the Expert Panel’s deliberations, which relied on the State’s submissions to the AWR amongst a significant amount of other material.

The Submissions of the LGAQ

[16] The LGAQ considers that the effects and uncertainty created by the COVID-19 pandemic invite the QIRC to depart from the AWR and submits that an increase of 3 per cent to State awards is warranted in view of:

- (a) The alleged circumstances of councils whose workers are paid pursuant to award levels;
- (b) The alleged financial capacity of these councils to pay increases in labour costs;

- (c) The current pay levels of staff of these councils; and
- (d) The current and potential for further impact of the pandemic on councils across Queensland.

[17] In the 2020 and 2021 SWC and AWR, the effects and uncertainty of the COVID-19 pandemic were considered. Notwithstanding, the Full Bench declined to depart from the AWR on both occasions.

[18] As in the 2021 SWC, the Full Bench should be reluctant to adopt the LGAQ's submission in the absence of modelling to demonstrate how a 3 per cent increase to award wages is consistent with the legislative framework in which the Commission must determine the SWC, noting also that the effects of COVID-19 were extensively considered in the AWR.

[19] In particular, the Commission should have regard to how adopting the LGAQ's position would create unfairness and disenfranchisement for low-paid workers in Queensland.

[20] The LGAQ has provided no evidence and, accordingly, no cogent reason for the Commission to divert from the determination of the AWR.

(B) QMW

[21] An increase of 5.2 per cent to the QMW is supported by all parties to these proceedings. Currently, the QMW is \$808.50 per week, which is \$4.00 below the NMW. An increase of 5.2 per cent would result in a \$42.04 per week increase to the QMW and bring it to \$850.54 resulting in a margin between the QMW and the NMW of approximately \$38.00.

[22] Having regard to the positions adopted by the parties and considering the prevailing economic conditions and outlook in Queensland, the QIRC should determine that there are sound reasons to adopt the ruling of the FWC and pass on an increase to the QMW of 5.2 per cent.

III - CONCLUSION

[23] The State and the LGAQ have provided no evidence that weighs against following the AWR.

[24] Accordingly, the Full Bench should determine:

- (a) to increase the QMW rate per week for all full-time employees in Queensland to \$850.54 (*pro rata* for part-time and casual employees);
- (b) to increase wages or salaries for full-time adult employees in all awards by 4.6 per cent or \$40 per week (whichever the greater) in all awards (*pro rata* for part-time and casual employees);
- (c) to increase monetary allowances (other than expense-related allowances) in all modern awards that relate to work or to conditions, which have not changed, and service increments, by 4.6 per cent; and
- (d) that the General Ruling shall apply on and from 1 September 2022.

Dated:

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Name: Ash Borg

Telephone: (07) 3010 2555

Email: ashb@qcu.asn.au