

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 2016 – s 458

**APPLICATION FOR A DECLARATION OF GENERAL RULING
STATE WAGE CASE**

Re: STATE WAGE CASE 2022 – Matter Nos B/2022/52, B/2022/53 and B/2022/54

**Submissions - Together Queensland, Industrial Union of Employees
28 July 2022**



Introduction

1. **The Claim.** Together Queensland, Industrial Union of Employees (Together Qld), is seeking the Queensland Industrial Relations Commission issue the following decisions:

- (a) To make a general ruling amending all state awards by a wage adjustment of \$40/week or 4.6% whichever is higher.
- (b) To make a general ruling amending all state awards by increasing existing award allowances which relate to work or conditions which have not changed in service increments by 4.6%.
- (c) Increase the Queensland Minimum wage as it applies to all employees by 5.2%
- (d) Determine that the operative date for these amendments be 1 September 2022.

Legislative Parameters

2. **General Ruling.** Subdivision 1, Division 4, Part 2 of the *Industrial Relations Act 2016* (the Act), relevantly provides:

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.

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.

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.

4. Since 1997, the administrative process for awarding wage and allowance increases has been by way of general ruling.¹

5. As set out in s3 of the Act, the main purpose of the 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.
- (e) For the purposes of this matter, s4 relevantly provides that the above purpose is to be achieved by:
- (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;
- (f) Further, the Act requires the Commission to:
- a. ensure modern awards provide for "fair and just" wages and employment conditions that are at least as favourable as the Queensland Employment Standards, which includes the QMW (s 141(1)(a));
 - b. ensure that a modern award generally reflects the prevailing employment conditions of employees covered by the award (s 141(1)(b));

¹ See *Workplace Relations Act 1997 (Qld)*, s132

- c. establish and maintain minimum wages that are fair and just, having regard to those matters mentioned in s141(2)(a) to (d) and (f); and
 - d. ensure a modern award provides fair standards for employees in the context of living standards generally prevailing in the community (s 143(1)(i)).
6. **Operative date.** s459(1) provides that a ruling must state a date on and from which the ruling applies and that the ruling has effect as a decision of the full bench on and from the stated date.
7. s148 applies to an order varying a modern award and provides that the order takes effect of the day stated in the order and that the stated day must not be earlier than the day on which the order is made unless:
- a. the variation removes an ambiguity or uncertainty or corrects an error; and
 - b. the Commission is satisfied exceptional circumstances justify stating an earlier day; and
 - c. the order does not adversely affect an employee.
8. The operative date for such general rulings has generally been 1 September of that year. Together seeks a continuation of this operative date to ensure employees relying on the State Wage Case outcome receive an annual increase.
9. Considerations regarding the application raised by the National Wage Review are discussed below.

Economic Factors

10. **Australian Economy.** The Australian economy continues to recover from the significant shocks caused by the COVID-19 health crisis.
11. The Fair Work Commission National Wage Review Panel (the Panel) noted:

“The latest National Accounts for the March quarter 2022 show that gross domestic product (GDP) grew by 0.8 per cent in the quarter and by 3.3 per cent over the year... Throughout the year, growth was particularly strong in the December quarter 2021 (3.6 per cent) following a decline in the September quarter (-1.8 per cent) that was affected by the Delta outbreak. Annual GDP growth was higher than over the previous year to the March quarter 2021 (1.4 per cent), while there was also an improvement in GDP per capita (2.5 per cent compared with 1.3 per cent) and gross value added (GVA) (4.2 per cent compared with 0.6 per cent)”²

12. This accords with the comments of the Reserve Bank of Australia contained in the RBA Board minutes of 5 July 2022 which included:

² [2022] FWCFB 3500 at [24]

“...the resilience of the Australian economy continued to be evident in the labour market. Full-time employment had risen strongly again in May, to be around 6 per cent higher than its pre-pandemic level. The participation rate and employment-to-population ratio had also risen to record highs. The unemployment rate was at its lowest level in nearly 50 years, and broader measures of spare capacity were at their lowest levels in many years.”³

13. The Panel also noted:

- *“The labour market has rebounded strongly from the impacts of the pandemic. The unemployment and underemployment rates are at their lowest for some time, and the participation rate at its highest, in more than 10 years.”⁴*
- *“...all measures of labour productivity have grown since the beginning of the pandemic. GDP per hour worked increased by 1.7 per cent in the March quarter 2022 to be 2.8 per cent higher over the year.”⁵*
- *“Total company gross operating profits increased by 25.3 per cent over the year to the March quarter 2022, which is above the 5-year and 10-year averages (Table 1). The profits share was 31.1 per cent in the March quarter 2022, reaching a new peak. This indicates that, despite some declines, business profits have been able to recover. The wages share fell to 49.8 per cent.”⁶*
- *“Wages growth, as measured by the Wage Price Index (WPI), reached 2.4 per cent over the year to the March quarter 2022, the highest since the December quarter 2018. Annual WPI growth has been below 3 per cent since the March quarter 2013. The WPI grew by 0.7 per cent in the quarter, the second in a row, which is the highest quarterly growth since the March quarter 2014.”⁷*

14. **Queensland Economy.** The Queensland Government Budget Strategy and Outlook 2022-23 also evidences a strong rebound from the pandemic:

“Queensland led the nation in its health response and economic recovery from COVID-19, with the state’s domestic economy growing much faster than the rest of Australia. Queensland has created significantly more jobs than any other jurisdiction since the onset of the pandemic.”⁸

and

“Queensland’s economy and labour market has outperformed the rest of the nation since the onset of the COVID-19 pandemic, including the largest rise in employment in the country, with 206,000 more Queenslanders employed in May 2022 than before the pandemic.”⁹

³ RBA (2022), Minutes of the Monetary Policy Meeting of the Reserve Bank Board, 5 July 2022

⁴ [2022] FWCFB 3500 at [29]

⁵ [2022] FWCFB 3500 at [32]

⁶ [2022] FWCFB 3500 at [33]

⁷ [2022] FWCFB 3500 at [35]

⁸ The State of Queensland (Queensland Treasury) - 2021–22 Queensland Budget, Budget Paper No. 2 at p1

⁹ The State of Queensland (Queensland Treasury) - 2021–22 Queensland Budget, Budget Paper No. 2 at p3

15. **Superannuation Guarantee Rate Increase.** Full Bench factored in the 0.5% increase to the Superannuation Guarantee rate that occurred on 1 July 2022 by operation of the *Superannuation Guarantee (Administration) Act 1992*. In doing so, the Full Bench stated:

“The increase in the SG rate and the removal of the threshold will increase employment costs and for that reason they are moderating factors in our consideration of the adjustment to minimum wages.”¹⁰

16. This is notable given that this discounting impact does not have application for the vast majority of employees covered by Queensland Modern Awards given State and Local Governments already pay higher levels of superannuation.

Fair Work Commission Annual Wage Review 2021-22 Decision

17. **National minimum wage.** The Fair Work Commission has handed down a decision to award an increase of 5.2 per cent raising the national minimum wage to \$812.60 per week or \$21.38 per hour. In making that decision the Fair Work Commission noted:

“We accept the need for moderation in order to constrain the inflationary pressures arising from our decision. The SG rate and threshold changes, and the 2022–23 Budget measures are also moderating factors. That said, we are 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 last year have resulted in a fall in the real value of the NMW and modern award minimum wages.

Taking all the relevant considerations into account have led us to award an increase of \$40 to the NMW, which amounts to an increase of 5.2 per cent. The NMW will be \$812.60 per week or \$21.38 per hour. The hourly rate has been calculated by dividing the weekly rate by 38, on the basis of a 38-hour week for a full-time employee. This level of increase will protect the real value of the wages of the lowest-paid workers.”¹¹

18. **Award minimum Wages.** The Panel also increase modern award minimum wages by 4.6 per cent subject to a minimum increase to adult award classifications of \$40 per week. Though the Panel noted that:

“We acknowledge that the increases we have determined will mean a real wage cut for some award reliant employees. This is an issue that can be addressed in subsequent Reviews.”

19. This real wage cut will be of greater magnitude than was known at the time of Panel’s decision given the Australian Bureau of Statistics release on 27 July 2022 of the latest inflation figures showing inflation over the year to June 2022 at 6.1% nationally and 7.3% in Brisbane over the year to June (see Figure 1).

¹⁰ [2022] FWCFB 3500 at [144]

¹¹ [2022] FWCFB 3500 at [179] – [180]

All groups CPI, quarterly and annual movement (%)

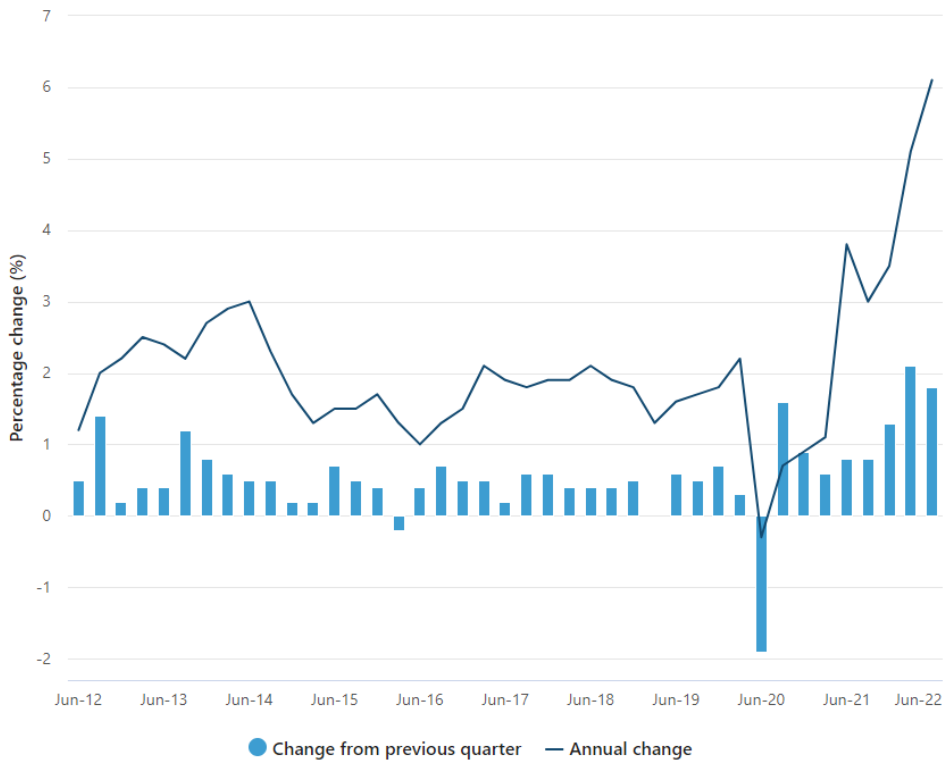


Figure 1

Matters for Consideration – State Wage Case.

20. The Queensland Industrial Relations 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 circumstances of Queensland at the time.¹²

21. In the 2021 Decision, the Commission stated:

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 was clearly articulated by the Commission in respect of the SWC in the SWC 2014,11 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

¹² See Declaration of General Ruling (State Wage Case 2014) [2014] QIRC 129 at [12]; Declaration of General Ruling (State Wage Case 2015) [2015] QIRC 154 at [7],[8]; Declaration of General Ruling (State Wage Case 2016) [2016] QIRC 081 at [7],[8].

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.*¹³

22. **Quantum.** In its submission to the Fair Work Commission Annual Wage Review 2021–22, the Queensland Government noted:

*“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.”*¹⁴

23. The national factors taken into account by the federal tribunal apply to Queensland as they do every other state but, as noted above, the Queensland economy is rebounding strongly. There is nothing to indicate that the negative factors considered in the National Wage Case decision disproportionately impact Queensland and the rise in the Superannuation Guarantee is of limited effect to employers in the State Jurisdiction (predominately, State and Local Governments).

24. Together submits that there are not the circumstances present that would require the increase applied nationally to be departed from.

Conclusion

25. Together Qld submits:

- a. Historically, the QIRC State Wage Case has followed the national tribunal decision unless there are compelling reasons not to do so.
- b. 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.

¹³ Declaration of General Ruling (State Wage Case 2021) [2021] QIRC 293 at [50]

¹⁴ Queensland Government Submission to the Fair Work Commission Annual Wage Review 2020–21, May 2022 2021, at p15 <https://www.fwc.gov.au/documents/wage-reviews/2021-22/submissions/qldgov-sub-awr2122.pdf>

- c. an increase of the quantum decided by the FWC that maintains the value of real wages as well as the living standards for award wage reliant workers is economically responsible and protects the low paid.
- d. A general ruling in the terms requested is fair and appropriate.

Together Queensland, Industrial Union of Employees