

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/2023/46, B/2023/47 and B/2023/48

**Submissions - Together Queensland, Industrial Union of Employees
14 September 2023**



Introduction

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

- a. To make a general ruling amending all state awards by a wage adjustment of 5.75%.
- 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 5.75%.
- c. Increase the Queensland Minimum wage by at least 5.75%.
- d. Determine that the operative date for these amendments be 1 September 2023.

2. This claim is the same as those made by the Queensland Council of Unions and the Australian Workers Union of Employees, Qld.

Legislative Parameters

3. **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.

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 directive under the *Public Sector Act 2022*.
- (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.

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.

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

6. 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.

(a) 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...

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

- (g) ensuring wages and employment conditions provide fair standards in relation to living standards prevailing in the community;

(b) 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));
- 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)).

7. **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.

8. 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.

9. 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.

Context of the 2023 State Wage Case

10. The 2022 State Wage Case² ruling included the following passage:

"[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.

² Declaration of General Ruling (State Wage Case 2022) [2022] QIRC 340

[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."

11. There are two key bodies of evidence before the Commission to assist in that 'forensic exercise' in the form of reports provided by expert witnesses agreed by the parties.
12. The report of Adept Economics provides data for Queensland comparable to the data presented in the Fair Work Commission's (FWC's) Statistical Report-Annual Wage Review.³
13. The report of Professor David Peetz⁴:
 - a. Contrasts the legislative framework attached to, on the one hand, the annual wage review (AWR) and the national minimum wage (NMW) and, on the other hand, the SWC and Queensland minimum wage (QMW);
 - b. identifies the relevant differences between the workforces the subject of the AWR and SWC outcomes and the NMW and QMW;
 - c. the relevance and significance for the SWC of the economic indicators provided in the AWR Statistical report (and identified in the AWR decision), and the Queensland Statistical Report produced by Adept Economics; and
 - d. identifies any additional matters that, in Professor Peetz's view, appear relevant to Queensland's industrial relations jurisdiction for the purposes of the SWC.
14. The submissions:
 - a. Review the Fair Work Commission Annual Wage Review 2022/23 Decision.
 - b. Discuss the evidence related to the economic factors that underpinned the Fair Work Commission's decision in the 2022/23 Annual Wage Review in order to identify any economic aspects which may be peculiar to Queensland and relevant to the Full Bench's determination of the State Wage Case.
 - c. Discuss any differences between the workers within Together's coverage in State Awards and similar workers in Federal Awards.
 - d. Identify other matters that would support the decision sought.

³ Tunney, G and Espinoza, A. 2023. *Adept Economics Statistical Report, 2023 State Wage Case*, Adept Economics, p3

⁴ Peetz, D. 2023. *Report to Queensland Industrial Relations Commission for 2023 State Wage Case*

Fair Work Commission Annual Wage Review 2021-22 Decision

15. **National minimum wage (NMW).** The FWC decision with respect to the minimum wage was significant, in that it ended the alignment between the NMW and the C14 classification wage rate in modern awards – an alignment which had existed since 1997. In doing so, the Full Bench stated:

“The C14 rate is the lowest modern award minimum wage rate but was only ever intended to constitute a transitional entry rate for new employees. As such, it does not constitute a proper minimum wage safety net for award/agreement free employees in ongoing employment. A wider review, including supporting research, concerning the needs and circumstances of low paid award/agreement free employees is required, but the interim step we have decided to take in this Review is to align the NMW with the current C13 classification wage rate, which in nearly all relevant awards is the lowest modern award classification rate applicable to ongoing employment.”⁵

16. The Full Bench then increased the rate of the NMW based on that C13 classification wage rate by 5.75% to \$23.23 per hour or \$882.80 per week based on a 38-hour week.

17. Together has reviewed and supports the submissions of the Queensland Council of Unions with respect to the Queensland Minimum Wage.

18. **Award minimum Wages.** The Full Bench also increase modern award minimum wages by 5.75% per cent. In doing so, the Panel noted that:

“In determining this amount, we have placed significant weight on the impact of the current rate of inflation on the ability of modern award-reliant employees to meet their basic financial needs. Inflation is reducing the real value of these employees’ incomes and causing households financial stress. We have also taken into account the recent robustness of the labour market, and the fact that increases to modern award minimum wage rates will provide a disproportionate benefit to female workers and may contribute to narrowing the aggregate gender pay gap across the entire employee workforce. Moderating factors we have taken into account include the forthcoming increase to the Superannuation Guarantee contributions rate, the effect that an expected weakening in the labour market may have on casual employees and particular industries which have a higher proportion of modern award-reliant employees, the need to avoid entrenching high inflation expectations by taking a perceived wage indexation approach, and the recent weak performance in productivity growth.”⁶

19. The decision also noted the following:

“The level of wage increase we have determined is, we consider, the most that can reasonably be justified in the current economic circumstances. We acknowledge that this increase will not maintain the real value of modern award minimum wages nor reverse the reduction in real value which has occurred over the last two years. In the medium to long term, it is desirable

⁵ [2023] FWCFB 3500 at [8]

⁶ Ibid at [9]

that modern award minimum wages maintain their real value and increase in line with the trend rate of national productivity growth. A return to that path is likely to be possible in future Reviews when there is a reversion to a lower inflationary environment and trend productivity growth.”

20. As the review of economic factors below demonstrates, Queensland workers under the State industrial jurisdiction are not immune to these issues of inflation, the reduction in real wages over the past two years and the current levels of financial stress.

Economic Factors

21. The Adept Economics Queensland Statistical Report provides the statistical data to compare the national economic factors considered in the Fair Work Commission’s decision with the relevant Queensland figures. Professor Peetz’s report comments upon that comparison and Together concurs with Professor Peetz’s assessment. His statement at paragraph 129, is worth noting in full:

*Inevitably, there are differences between the economic and other data available for Queensland, and nationally. **The surprising thing, for this author, is that the differences were not larger.** Given the impact of sampling error on the award coverage data — it is impossible to be certain whether in reality there was, or was not, a meaningful difference in trajectories of award coverage in Australia and Queensland — it would take quite a large difference between a Queensland estimate and the national estimate on any particular matter for me to conclude that there was potentially something specific about Queensland that raised doubts about the relevance of the FWC’s analysis of the economic situation to Queensland. **I see no such large differences in the patterns for Queensland and nationally, and therefore conclude that, whatever the rights or wrongs of the FWC’s analysis, there is no basis for considering it does not apply to Queensland.** (emphasis added)*

22. A review of Professor Peetz’s report looking at his commentary of each individual factor in the Fair Work Commission’s (FWC’s) Statistical Report-Annual Wage Review and the comparative data contained in the Adept Economics Queensland Statistical report shows why he reached that conclusion. Table A sets out each of the economic indicators and relevant passages from Professor Peetz’s report.

Factor	Comment	Ref
Inflation	<i>There are minor differences between inflation in Brisbane and nationally — typically, annual inflation is a little lower in Brisbane than nationally — but the two have followed broadly similar patterns over recent years, both peaking last year.</i>	[108]
The labour market	<i>Underemployment in Queensland is slightly higher than the national average, labour force participation almost the same</i>	[109]
	<i>Growth in Queensland employment has been quite similar to national employment growth</i>	[110]
	<i>The unemployment forecasts in the Queensland Budget are consistent with those in the Commonwealth Budget and RBA forecasts</i>	[110]

Wages Growth	<i>The wage price index, the single most important measure of wages growth, grew by identical amounts in Queensland and nationally (3.7 per cent) over the year to March quarter 2023.</i>	[112]
Business conditions	<i>As in the national data, business bankruptcy rates have continued to decline in Queensland in the period to March quarter 2023</i> <i>While business survival rates in Queensland... are very slightly below the national average... they follow the national pattern in being at the highest rate in any four-year period since June 2011.</i>	[115] [115]
Productivity	<i>Over the current (multi-year) productivity cycle, however, Queensland labour productivity has, so far, grown at a slightly slower annual pace (0.9 per cent) than the national average (1.2 per cent). In the previous productivity cycle, Queensland's average (1.9 per cent) was slightly higher than the national average (1.7 per cent).</i>	[118]
Needs of the low paid	<i>The FWC uses, as its benchmark for 'low paid', two thirds of median adult full-time ordinary earnings. In Queensland this figure is slightly lower (\$1000 per week) than the national average (\$1017 per week)</i> <i>Over the decade to December 2022, the real national minimum wage grew by \$34.98 or 4.5 per cent, while the real Queensland minimum wage grew by \$32.88 or 4.0 per cent.</i>	[119] [120]
Gender Equality	<i>The FWC published four measures of the gender pay gap. For the three for which Queensland data were available, the gender pay gap in Queensland was greater than that for Australia, by between 0.6 and 1.3 percentage points (that is, by between 3 and 10 per cent)</i>	[121]
Job Security	<i>On employment growth, the FWC commented that most of the job growth in the 12 months to April 2023 was in full-time work. While this is also true of Queensland, it is a smaller majority in Queensland (72 per cent) than nationally (90 per cent) of the job growth that is represented by full-time employment.</i>	[123]
Collective bargaining	<i>The federal enterprise bargaining system has fared differently nationally and in Queensland.</i> <i>That said, according to EEH, national agreement coverage (including both federal and state jurisdiction agreements) in the public sector in 2021 remained above 90 per cent in every mainland state except New South Wales (where several public sector agreements are classed by the ABS as 'awards'). Hence changes in public sector agreement coverage account for only about one tenth of the national decline in agreement coverage since 2014. In Queensland, agreement coverage is still over 98 per cent in the public sector.</i>	[126] [126]

Federal and State Award Coverage

23. In previous State Wage Cases submissions have been made, without supporting evidence, that there are factors which distinguish the Commonwealth and State industrial jurisdictions which the Commission is asked to consider as part of the SWC deliberations⁷. Those factors have been said to include:

- a. 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.
- b. 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.
- c. Employees within the Queensland jurisdiction actively participate in collective bargaining while there has been an increase in the proportion of private sector employees who rely on national modern awards for their actual rate of pay.

24. **Low wage outcomes.** While it is the case that some workers impacted by the AWR experience low wage outcomes and have limited bargaining opportunities, there are many other groups in the Federal system where that is not the case. The AWR increases apply to workers that have both high Award wage rates and positive bargaining outcomes, examples include:

- a. *Air Pilots Award 2020* contains wage rates from \$74, 491 p.a. for a Second Officer to \$210, 690 p.a. for a Captain on a wide body, double deck aircraft. Pilots are also covered by many Enterprise Agreements that have higher wage outcomes than the Award. (e.g., QANTAS Airways Limited Pilots (Short Haul) Enterprise Agreement 2020, Jetstar Airways Pilots' Enterprise Agreement 2019).
- b. *Medical Practitioners Award 2020* contains wage rates up to \$148, 152 p.a. and the *Nurses Award 2020* contains wage rates up to \$134, 789 p.a. Many of these employees are also covered by enterprise agreements. (e.g., Mater Health Services Visiting Medical Officers' Enterprise Agreement 2015).

25. **Employed in State and Local Government sectors.** It is correct that workers in the Queensland jurisdiction are those that were retained after the Queensland Government's referral of its residual private sector industrial relations powers to the Commonwealth in 2010, however that does not mean there are not comparable groups of workers in the Federal system. Victoria referred all of its industrial relations powers to the Commonwealth and the AWR applies to the following Federal Modern Awards covering workers in the Victorian State and Local Government sectors that are directly comparable to the workers covered by the Queensland jurisdiction:

⁷ For example, see [2022] QIRC 340 at [19]; [2021] QIRC 293 at [21]

- a. Victorian Public Service Award 2016 [MA000135];
- b. Victorian State Government Agencies Award 2015 [MA000134];
- c. Victorian Local Government Award 2015 [MA000132]; and
- d. Victorian Government Schools Award 2016 [MA000155].

26. **Participation in Collective Bargaining.** The evidence of Professor Peetz indicates high rates of collective agreement coverage is a feature of the public sector in both the federal and state jurisdictions⁸. As Professor Peetz notes, while collective agreement coverage in Queensland is extremely high at 98%, national agreement coverage (including both federal and state jurisdiction agreements) in the public sector in 2021 remained above 90 per cent in every mainland state except New South Wales (where several public sector agreements are classed by the ABS as ‘awards’).

27. There are some classes of workers in Federal Jurisdiction that are not comparable to those in the State Jurisdiction but there are also classes of workers that are directly comparable.

Other Matters for Consideration

28. **Low paid considerations in the Public Service.** Professor Peetz notes at [119] that the FWC uses, as its benchmark for ‘low paid’, two thirds of median adult fulltime ordinary earnings. That national average is \$1017 per week and the Queensland figure is slightly lower at \$1000 per week.

29. The effective entry pay rate under the *Queensland Public Sector Officers and Other Employees Award – State 2015* is that of A02-1, that rate is the same as OO2-1, TO1-4 and PO1-4 and is the lowest rate someone 21 and over may be paid under the Award. The current rate under the Award is \$2,056. That rate is just 1.08% above the federal low paid benchmark and 2.8% above the Qld benchmark.

30. A general ruling of the amount sought by the unions would ensure entry level Public Service pay rates remain above the low paid benchmark.

31. **Gender Pay Gap.** The FWC 2023 AWC decision indicates that the gender pay gap (as measured by AWOTE) narrowed slightly in the period to 2018 but has remained at approximately the same level over the last five years and continues to be significant. As set out by the Queensland Council of Unions, in their submissions, Queensland public sector gender pay equity data and workforce profile data demonstrates that these matters are also relevant to the particular circumstances of the workers affected by the SWC. Together supports those submissions.

32. The Gender Pay Equity Dashboard attached as Annexure A to the QCU submissions reveals that in the core Government departments workers on base salary at June 2023 are predominately female,

⁸ Peetz, D. Op Cit at [126]

with percentages ranging from 52.58% in the Department of Environment and Science to 78.53% in the Department of Education.

33. Professor Peetz's evidence is that the state employees affected by awards surpassing agreements tend to be the lower paid workers covered by those agreements⁹. Therefore, a General Ruling of the amount sought would benefit these lower paid female workers, reducing the gender pay gap in this workforce and furthering the main purpose of the Act in supporting social justice for Queenslanders.

34. **Value of Real Wages.** The FWC notes in its 2023 AWC decision that there has been a reduction in Award reliant employees' real wages over the last two years, which has resulted in a reversal of steady progress made in earlier AWR decisions to improve the real wages of such workers. The inflation data for Queensland set out in Table 7 of Professor Peetz's evidence shows that inflation for the 2021/22 and 2022/23 financial years was 5.4% and 7.25% respectively with inflation forecast at 3.75% for the coming 2023/24 financial year.

35. In contrast the SWC general rulings over the previous two years have been 2.5% on 1 Sep 2021 and 4.6% on 1 September 2022, resulting in a drop in the real value of Award wages of 5.55%. Even if the 5.75% increase sought in this application was granted, there would still be a 3.55% reduction in the real value of Award wages over the three-year period.

Conclusion

36. While noting the statements by the Commission in the 2022 SWC decision set out in paragraph 10 above, nevertheless, it is the case that 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.¹⁰

37. In the 2022 Decision, the Commission observed:

"[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

⁹ Ibid at [158]

¹⁰ 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].

of the corporation's power commercial activity is largely centrally controlled. The Work Choices case³⁴ 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."¹¹

38. **Quantum.** In its submission to the Fair Work Commission Annual Wage Review 2022–23, the Queensland Government noted:

*"Queensland recognises that declining real 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 previously 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."*¹²

39. That statement applies equally to the workers in the Queensland jurisdiction. The national factors taken into account by the federal tribunal apply to Queensland as they do every other state.

40. 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. The evidence before the Commission discloses there are no particular factors which would indicate the Queensland economic and social indicators are manifestly different from those experienced by equivalent workers in the Federal system, in fact, the evidence reveals they are remarkably similar.
- c. An increase of the quantum decided by the FWC that maintains some of 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

¹¹ [2022] QIRC 340 at [54] – [57]

¹² Queensland Government Submission to the Fair Work Commission Annual Wage Review 2022-23, March 2023, at p16 <https://www.fwc.gov.au/documents/wage-reviews/2022-23/c20231-sub-qld-gov-280323.pdf>