

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 2016

Matters No. B2024/50-51


INDUSTRIAL REGISTRAR

20 AUG 2024


QUEENSLAND

STATE OF QUEENSLAND SUBMISSIONS

Introduction

1. On 4 June 2024, Together Queensland, Industrial Union of Employees (TQ) and Queensland Council of Unions (QCU) made applications to the Queensland Industrial Relations Commission (the Commission) to commence the 2024 State Wage Case (SWC) seeking a general ruling pursuant to s458 of the *Industrial Relations Act 2016* (IR Act) amending all wages and salaries prescribed by all state awards by a wage adjustment of 3.75%, increasing existing allowances in all state awards which relate to work or conditions which have not changed in service increments by 3.75%, and increasing the Queensland Minimum Wage (by 3.75% (QCU), and to \$915.90 per week or \$24.10 per hour (TQ)) with an operative date of 1 September 2024.

Queensland Government Position

2. The Queensland Government supports:
 - a fair and reasonable increase to all State award rates of pay;
 - a fair and reasonable increase to modern award allowances which relate to work or conditions which have not changed in service increments;
 - a fair and reasonable increase in the QMW; and
 - an operative date of 1 September 2024.

Context

Industrial Relations Act 2016

3. Legislative provisions relevant to the State Wage Case have been detailed in previous decisions of the Commission.
4. In summary, section 458(1) of the *Industrial Relations Act 2016* (IR Act) provides that 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
5. Section 458(2) requires the full bench of the Commission to ensure a general ruling about a QMW for all employees is made at least once each calendar year.

6. The objects of the IR Act require the Commission to balance economic and social factors in making determinations on matters such as state wage cases.
7. In economic terms, there is a need to ensure wage outcomes are consistent with economic performance. In social terms, there is a need to ensure that people 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.
8. These economic and social objectives are encapsulated in the main purpose of the IR Act and how it is primarily achieved; which is to provide a framework for industrial relations that supports economic prosperity and social justice:

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

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

...

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

...

(j) ensuring equal remuneration for work of equal or comparable value.

9. The IR Act has a strong focus on the importance of ensuring fair and just wages and employment conditions with reference to prevailing community standards.
10. The IR Act also includes equal remuneration considerations for the Commission in exercising its power (e.g. Section 4(j) excerpted above) and Chapter 5 of the Act.
11. In addition to the reference in the main purpose of the IR Act and how it is to be achieved, sections 141, 142 (2) and 447(1) place obligations on the Commission to ensure fairness in wages is maintained through awards and minimum wages.

Employees affected by the State Wage Case

12. The State Wage Case applies to employees under the IR Act. Broadly, this is employees within the state and local government sectors and Parents and Citizens' associations. The Queensland public sector workforce is reported to be approximately 308,033 employees (headcount) at March 2024¹. The Queensland local government workforce is estimated to be approximately 45,000 and employees of Parents and Citizen's associations have been estimated to be approximately 3500 across Queensland².
13. Employees likely to be affected by a decision in the State Wage Case to increase award rates of pay can be separated into two categories:
- a. those employees who are covered by an award, but are not covered by a certified agreement (i.e. award-reliant employers in the state's industrial relations jurisdiction); and
 - b. those state industrial relations jurisdiction employees who are covered by a certified agreement where the rate of pay prescribed in the agreement may be subject to adjustment by the State Wage Case outcome, or where the relevant award rate of pay may exceed the agreement rate and the award rate is to apply. This applies to certified agreements in the Queensland public sector and also in a small number of local governments, either by operation of the certified agreement or by administrative arrangement.
14. In regard to group 'a.' above, there are approximately 7000 employees who are state award-reliant. This estimate is based upon:
- a. the Local Government Association of Queensland (LGAQ) has previously estimated that between 1200 and 1500 local government employees are award-reliant;
 - b. approximately 2000 auxiliary firefighters employed by Queensland Fire and Emergency Services (generally each of whom works an average of 0.10 full-time equivalent as an auxiliary firefighter and holds other employment);
 - c. approximately 3500 employees of Parents and Citizens' Associations; and
 - d. 15 employees of the Darling Downs Moreton Rabbit Board.
15. It is estimated award-reliant employees in Queensland's industrial relations jurisdiction represent approximately 2% of all employees subject to Queensland's jurisdiction.

¹ Public Sector Commission: [State of the sector report 2024 Queensland public sector](#).

² The local government workforce is an unpublished estimate based on 30 June 2023 (latest available) annual workforce census data. Employee headcount for Parent and Citizen's associations is an estimate.

16. As with previous years, the number of affected employees covered by a certified agreement whose rates of pay may fall below the relevant award rate of pay will vary, depending on the quantum of the increase awarded to the relevant award rate by the Commission.

State and Commonwealth Contexts

17. Since 2011, the QIRC has mirrored the outcome of the Expert Panel of the FWC in its decision in the AWR. While the Commission is not bound to follow the AWR outcome, the Commission has observed on several occasions that it requires a ‘compelling argument’ to depart from mirroring the AWR outcome in its SWC decision.

18. Further, the Declaration of General Ruling (State Wage Case 2022), recognised that whilst the Full Bench will have regard to the FWC conclusions, in exercising its statutory function, the Commission is required to bring an independent mind to the task of determining whether, in all the circumstances, the FWC's determination ought to be properly adopted. This was also reiterated in the Declaration of General Ruling (State Wage Case 2023).

19. It is noted that 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.

20. 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.

21. Significantly, employees within the Queensland jurisdiction actively participate in collective bargaining. Certified agreements in the State and Local government sectors cover approximately 98% of the employees subject to the Queensland industrial relations jurisdiction.

22. As noted in the Queensland Government’s submission to the 2024 AWR, there has been a consistent increase in the proportion of private sector employees who rely on national modern awards for their actual rate of pay since 2010. The proportion of Queensland employees who are national modern award reliant increased from 17.2%³ in 2010 to 24.1%⁴ by 2023.

The Annual Wage Review

³ Based on ABS Employee Earnings and Hours, reference period May 2010.

⁴ Based on ABS Employee Earnings and Hours, reference period May 2023.

23. Each year, the Expert Panel of the Fair Work Commission (FWC) conducts the Annual Wage Review (AWR) and issues a decision and National Minimum Wage (NMW) order. The annual wage review directly affects employees in the national system who are not covered by a modern award or a transitional instrument, or not covered by either an award or agreement.
24. On 3 June 2024, the Expert Panel for the AWR handed down its decision to increase the NMW and all modern award minimum wages by 3.75% effective from 1 July 2024.
25. The FWC noted primary consideration was given in relation to cost-of-living pressures that modern award reliant employees, particularly those who are low paid and live in low-income households, continue to experience notwithstanding that inflation is considerably lower than it was at the time of the previous year's Review.
26. The FWC also considered it not appropriate to increase award wages by any amount significantly above the inflation rate, principally because labour productivity is no higher than it was four years ago and productivity growth has only recently returned to positive territory.
27. The FWC also noted Stage 3 tax cuts which came into effect on 1 July 2024 and other cost-of-living measures at state and federal level.
28. The Expert Panel have also determined to establish a program for the timely resolution of gender undervaluation in respect of certain modern awards to address the gender pay equity issue.

Queensland Minimum Wage (QMW)

29. The QMW is currently \$882.80 per week. This is currently \$33.10 per week lower than the NMW.

Other States' Wage Reviews

30. On 15 and 17 November 2023, the New South Wales Industrial Relations Commission delivered its decision to treat the AWR 2023 decision as a "National Decision" under section 50 of the *Industrial Relations Act 1996* (NSW) and increased the minimum wage rate to \$882.80 per week consistent with the AWR and increased award rates of pay and work-related allowances 5.75% from 1 September 2023 (with increases able to be offset against any or both of (a) any equivalent over award payment and (b) award wage increases other than State Wage Case adjustments).
31. On 12 June 2024, the Western Australia (WA) Industrial Relations Commission delivered its decision in relation the state minimum wage and pay rates in all WA effective from 1

July 2024. The state minimum wage for employees 21 and over will increase to \$917.80 per week.

32. No other State Wage Cases have yet been determined for 2024 at the time of writing.

33. The guaranteed minimum wages in other States are:

- a. New South Wales: \$882.80
- b. Tasmania: \$812.60
- c. South Australia: \$827.60

Economic evidence

34. In support of the State's position, the affidavit of Ms Kate Copland appends to her affidavit relevant economic information she had caused to be prepared by Queensland Treasury.⁵

Queensland Government Position

35. The Queensland Government supports:

- a fair and reasonable increase to all State award rates of pay;
- a fair and reasonable increase to modern award allowances which relate to work or conditions which have not changed in service increments;
- a fair and reasonable increase in the QMW; and
- an operative date of 1 September 2024.

36. With respect to any increase to state awards and existing award allowances which relate to work conditions which have not changed, it is the Queensland Government's submission that this is a matter for the Commission to decide after considering all relevant information, including the information provided to the Commission by this submission.

37. The Government notes that the Commission is obliged to work towards achieving the main purpose of the IR Act of ensuring a framework for cooperative industrial relations that is fair and balanced and supports the delivery of high-quality services, economic prosperity and social justice for Queenslanders. In respect to wages and employment conditions, this purpose is achieved by providing for fair standards in relation to living standards prevailing in the community.

38. The Government notes that collective bargaining by employees and employers, in good faith and with a view to reaching agreement, is intended to be the primary basis under the IR Act on which wages and employment conditions are decided.

⁵ Affidavit of Ms Kate Copland filed 20 August 2024.

39. The Queensland Government further 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: the different State and Commonwealth contexts for the consideration of annual general wage increases; and 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; the potential for SWC outcomes to impede, disincentivise or protract enterprise bargaining negotiations, particularly in the State public sector; and the state of Queensland economy and the Queensland Government fiscal position and strategy.
40. The Government notes that if an Award increase of 3.75 percent were to be provided as part of the General Ruling, the discretion under section 459A would be enlivened for 20 Queensland State Public Sector Certified Agreements. The State notes this provision does not capture Auxiliary firefighters, P&C employees and Rabbit Board employees who are award reliant employees who do not bargain. The Full Bench had previously considered that the existence of particular clauses within Queensland Government Certified Agreements and Minister for Industrial Relations Directive 12/12 ('Directive 12/12') would tend against the exercise of any discretion enlivened under section 459A (see paras 144-153 of the 2023 decision).⁶ Since the decision delivered by the Full Bench on 10 May 2024, the relevant Certified Agreement provisions and Directive 12/12 are still extant and accordingly, the State does not seek that the Full Bench exercise its discretion under either sections 459(2) or 459A.

Response to the Applicants' Submissions

41. The Queensland Government notes the submissions filed by the QCU and TQ on 7 August 2024 which seek an increase of 3.75 percent.
42. These submissions seek to justify the increase:
- a. On the basis that the economic indicators for Queensland "are consistent with the economic considerations nationally".⁷

⁶ Declaration of General Ruling (State Wage Case 2023) (No. 3) [2024] QIRC 111

⁷ Submissions of the Queensland Council of Unions, filed 7 September 2024, [16]. The submissions of Together Queensland describe them as "largely similar" at paragraph 24.

- b. On the basis that a number of modern Award classifications are currently below what they consider to be the “Queensland low paid benchmark”⁸ and that they consider it to be “economically responsible.”⁹
 - c. In the case of TQ they seek to rely upon the evidence of Professor Peetz in the 2023 SWC indicating “high rates of collective agreement coverage is a feature of the public sector in both the federal and state jurisdictions”, and proffer a view that “there is no reason to believe this position has changed.”¹⁰
43. We note these submissions and instead the State would contend it is more appropriate to give consideration to each of the range of the legislative criteria relevant to the State Wage Case and all of the circumstances relevant to the State jurisdiction in order to arrive at a ‘fair and reasonable’ outcome.
44. Insofar as it concerns the first argument raised jointly by the unions regarding economic similarities, the State submits that:
- a. The submissions of the QCU should be corrected insofar as they refer to the Full Bench concluding that: “where the economic data indicates that the economic analysis conducted by the FWC of the national economy is substantially the same as that of the Queensland economy, there is no cogent reason to depart from the FWC decision.”¹¹ The wording of the decision was not so broad, and omits the remainder of the sentence which expressly referred to the “5.75% increase” specific to 2023. It is appropriate therefore for the Full Bench to continue to consider distinctions between economic conditions in Queensland and nationally both in the present State Wage Case and future iterations.
 - b. The State does not seek to dispute the economic evidence proffered by the QCU and adopted by TQ. Rather the State notes that this evidence itself outlines distinctions between the State and National economies which are relevant to the criteria required to be considered by the Full Bench, in particular with reference to inflation and labour market trends which, when compared with previous years continue to suggest economic conditions in Queensland are more favourable than nationally.
 - i. In particular, the QCU’s submissions refer to the evidence of Professor Peetz indicating that a difference of 0.3% in the inflation rate is “not significant”.¹²

⁸ Ibid at [25].

⁹ Submissions of Together Queensland, filed 7 August 2024, [30(b)].

¹⁰ Ibid at [27]-[28].

¹¹ Above (n 7), at [20].

¹² Above (n 7), at [19].

The State notes that this year the difference between the two figures reported by the QCU is slightly higher at 0.4% and would appear to continue a trend when looking back to the 2023 State Wage Case of circumstances where Brisbane's CPI figure appears lower than the national figure as identified by the Full Bench.¹³

- ii. Similarly, the trends in the labour market identified in the evidence of the QCU continue to suggest that Queensland continues to outperform the national economy in this regard consistent with data provided in 2023.¹⁴
 - c. The State contends that, consistent with the legislative scheme, these distinctions should nevertheless be considered in the context of the legislative scheme to determine what amounts to a fair and reasonable outcome for the Queensland jurisdiction.
45. The QCU submits that the increase of 3.75% can be justified having regard to a number of classifications within relevant modern Awards being “below the Queensland low income threshold” in order to support the needs of the low paid. It should be noted that with respect of those examples provided by the QCU, the relevant State public sector Certified Agreement rate remains payable. Further, the State acknowledges the need for a fair and reasonable outcome that meets the needs of the low paid as one of a number of considerations which should be taken within the broader context of the legislative scheme and relevant circumstances specific to Queensland. This includes a need to have regard to the prevailing employment conditions for Queensland state public sector employees which include:
- a. High levels of certified agreement coverage and a regular bargaining cycle.
 - b. High levels of permanent employment (82.95% of Public Sector employees are permanent).
 - c. High levels of employment on a full-time basis (60.95% of Public Sector employees are employed on a full-time basis).
 - d. A significant proportion of employees (117,523 out of a total 258,012) earn in excess of \$100,000 per annum.¹⁵
 - e. Other entitlements provided for including wage increases, cost of living adjustment payments and benefits provided for under Directives.

¹³ Above (n 6) [30].

¹⁴ Affidavit of Mr Dennis Molloy filed 14 September 2023.

¹⁵ Above (n 1).

46. The State considers that these conditions can be contrasted with those relevant to the Award increases provided for in the AWR decision which is directed at employees who:
- a. Are predominantly female (58.1%).
 - b. Predominantly work part-time hours (65.2%).
 - c. Are disproportionately casual employees (49.7%).
 - d. Are younger than the workforce as a whole (34.8 years of age when compared with 40.1 years of age).
 - e. Are more likely to be employed by a small business (35.6%) than for the workforce as a whole (25.7%).
 - f. Are more likely to be low paid (36.1%) than the workforce as a whole (21.1%) with a significantly lower average hourly wage of \$28.60 (when compared with the average wage of the rest of the workforce \$46.10).¹⁶
47. The State notes the arguments made by Together Queensland that “high rates of collective agreement coverage is a feature of the public sector in both the federal and state jurisdictions.” The State submits that in the context of considering high rates of bargaining across the public sectors, the appropriate consideration is whether the increase of 3.75% is appropriate for Queensland in light of the contrasts between the jurisdictions outlined above.

Conclusion

48. This submission has examined the background and context for the 2024 State Wage Case, features of the Queensland industrial relations jurisdiction and the key social and economic factors that are relevant for consideration in this matter, consistent with the provisions of the IR Act.
49. The Queensland Government supports:
- a fair and reasonable increase to all State award rates of pay;
 - a fair and reasonable increase to modern award allowances which relate to work or conditions which have not changed in service increments;
 - a fair and reasonable increase in the QMW; and
 - an operative date of 1 September 2024.

¹⁶*Annual Wage Review* [2024] FWCFB 3500 14 [30].