

## QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Declaration of General Ruling (State Wage Case 2018)*  
[2018] QIRC 113

PARTIES: **Queensland Council of Unions**

**The Australian Workers' Union of Employees,  
Queensland**  
(Applicants)

**and**

**The State of Queensland**

**Local Government Association of Queensland Ltd**  
(Respondents)

CASE NOS: B/2018/12  
B/2018/17

PROCEEDING: Application for Declaration of General Ruling

DELIVERED ON: 29 August 2018

HEARING DATE: 9 August 2018

HEARD AT: Brisbane

MEMBERS: Deputy President Bloomfield  
Industrial Commissioner Thompson  
Industrial Commissioner Black

ORDERS:

- 1. The wages or salaries for full-time adult employees in all modern awards shall be increased by 3.5 per cent.**
- 2. Junior rates are to be increased in the manner specified in applicable awards.**
- 3. 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, are to be increased by 3.5 per cent.**
- 4. Expense related allowances in all modern awards are to be increased in the manner specified in applicable awards.**
- 5. The minimum rate per week for all full-time employees in Queensland, the Queensland Minimum Wage, is \$753.00 per week.**

- 6. The above increases operate on and from 1 September 2018.**
- 7. The State Wage Case 2013 Statement of Policy, dated 29 August 2013, issued under s 288 of the *Industrial Relations Act 1999*, be rescinded.**

## LEGISLATION:

*Industrial Relations Act 1999*, s 3, s 129, s 288  
*Industrial Relations Act 2016*, s 3, s 4, s 126, s 141, s 143,  
s 458, s 459  
*Fair Work Act 2009* (Cth), s 134, s 284, s 286

## CASES:

*Annual Wage Review 2017-18* [2018] FWCFC 3500  
*State Wage Case 2017* [2017] QIRC 081  
*State Wage Case 2016* [2016] QIRC 088  
State Wage Case 2013 Statement of Policy  
<<http://www.qirc.qld.gov.au>>

## APPEARANCES:

Dr J. Martin, on behalf of the Queensland Council of Unions.  
Mr B. Watson, on behalf of The Australian Workers' Union of Employees, Queensland.  
Mr T. Brauns, with Mr A. James, on behalf of the State of Queensland (Office of Industrial Relations).  
Mr A. Goode, on behalf of the Local Government Association of Queensland Ltd.

## Reasons for Decision

### Background

- [1] By applications lodged on 21 March 2018 and 10 April 2018, respectively, the Queensland Council of Unions (QCU) and The Australian Workers' Union of Employees, Queensland (AWUEQ) applied to the Queensland Industrial Relations Commission (the Commission) for:
- a general ruling pursuant to s 458 of the *Industrial Relations Act 2016* (the Act) regarding wage and allowance adjustments for award employees;
  - a general ruling in relation to the Queensland Minimum Wage as it applies to all employees; and
  - the rescission of the State Wage Case 2013 Statement of Policy issued by the Commission on 29 August 2013.
- [2] Each of the QCU and the AWUEQ applied for the following decision:
- a \$60.10 per week wage adjustment for workers employed at award classification rates equivalent to or below the *Queensland Local Government Industry (Stream C) Award – State 2017* C10 classification;

- a 7.2 per cent wage adjustment for workers employed at award classification rates above the *Queensland Local Government Industry (Stream C) Award – State 2017* C10 classification;
- an increase of 7.2 per cent in service increments and to existing award allowances which relate to work or conditions which have not changed;
- an increase of \$60.10 to the Queensland Minimum Wage as it applies to all employees; and
- an operative date of 1 September 2018.

[3] Subsequently, following the release of the *Annual Wage Review 2017 – 2018* decision<sup>1</sup> by the Fair Work Commission on 1 June 2018, each union amended its application to seek:

- a \$29.20 per week wage adjustment for workers employed at award classification rates equivalent to or below the *Queensland Local Government Industry (Stream C) Award – State 2017* C10 classification;
- a 3.5 per cent wage adjustment for workers employed at award classification rates above the *Queensland Local Government Industry (Stream C) Award – State 2017* C10 classification;
- an increase of 3.5 per cent in service increments and to existing award allowances which relate to work or conditions which have not changed;
- an increase of \$29.20 to the Queensland Minimum Wage as it applies to all employees; and
- an operative date of 1 September 2018.

### **The Commission's approach to the applications**

[4] In the course of the 2017 State Wage Case decision<sup>2</sup> a differently constituted Full Bench of the Commission recorded (at paragraph [67]) that during the course of the proceedings members of the Bench had raised a number of questions with the parties about the way the Act should be interpreted in light of:

- the meaning of terms such as "fair and just", "fair standards" and the like;
- the impact of the operation of s 129 in the *Industrial Relations Act 1999* (the 1999 Act), between April 2005 and November 2013, during which time many public sector unions successfully applied to "flow on" previous enterprise bargaining wages outcomes into the related award;
- the "gap" between wage rates in such awards and those in other awards where no such "flow on" had occurred;
- the increase in such gaps which had developed over time between award wage rates as successive state wage case decisions delivered percentage increases; and
- the potential for such gaps to continue to grow in the future and how such outcome might be accommodated by the Commission as it sought to comply with the obligations imposed on it by the new provisions in the Act.

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<sup>1</sup> [2018] FWCFC 3500.

<sup>2</sup> [2017] QIRC 081 [67].

- [5] Given such matters, the Full Bench also indicated (at paragraph [69]) that it would be desirable – without constraining a future Full Bench – if the parties in the 2018 State Wage Case addressed such questions as:
- Should future General Ruling decisions be limited to setting a Queensland Minimum Wage (QMW)?
  - Should awards which contain safety net wage rates receive a higher level of increase than awards which have been varied in accordance with s 129 of the 1999 Act and/or s 145 of the Act so as to avoid a potentially ever-increasing wages differential?
  - Should awards which have been varied in accordance with s 129 of the 1999 Act and/or s 145 of the Act be excluded from General Ruling decisions, with wage rates in such awards being varied upon application by the parties in accordance with s 145 of the Act?
- [6] Only the QCU and the State of Queensland directly responded to the matters raised immediately above. While the AWUEQ spoke about the Commission's obligations under the Act regarding the setting of wage rates, it did so in context of its submissions in support of its claims rather than in response to the points raised in the last State Wage Case.
- [7] The QCU observed that the provisions in the Act referenced by the 2017 Full Bench, in paragraphs [36] to [43] inclusive, essentially involved a return to provisions in the 1999 Act which existed prior to legislative amendments undertaken by the Newman government between 2012 and 2014. In the QCU's submission, the statutory obligations placed upon the Commission under the Act simply involved a return to that which had existed previously. In so submitting, the QCU said that prior to the amendments undertaken by the Newman government, the 1999 Act included:
- objects for "ensuring wages... provide fair standards in relation to living standards prevailing in the community" (s 3(g)); and
  - requirements for awards to provide "... relevant and consistent wages... and fair standards for employees in the context of living standards generally prevailing in the community..." (s.126(d) and (f)).
- [8] These objects and requirements are to be compared to provisions in the Act, which contain:
- objects for "ensuring wages ... provide fair standards in relation to living standards prevailing in the community" (s 4(g)); and
  - requirements for awards to provide "fair and just wages...(and) fair standards for employees in the context of living standards generally prevailing in the community..." (s 141(1)(a) and s 143(1)(i)).
- [9] The QCU was unequivocal in its opposition to any suggestion that future general rulings be limited to setting a QMW only. This was because the scheme of the legislation had returned to that which applied prior to amendments being made by the Newman government. Section 4(e) of the Act obliged the Commission to ensure wages and employment conditions provide fair standards in relation to living standards prevailing in the community. As such, the QCU

said, it was irreconcilable that any State Wage Case outcome which denied any wage movement to an award-reliant employee would be consistent with such an object. Indeed, the employer parties to the present proceedings each recognised the need to provide for some wage increase to employees who are award-reliant, notwithstanding that they may differ as to the quantum of the increase. Further, none of the parties in previous State Wage Case proceedings have ever suggested such a proposition.

- [10] In terms of the gap between wage rates prescribed in awards, where previous enterprise bargaining wages outcomes had been incorporated into some awards but not others, the QCU submitted that there would be considerable debate about which awards should be excluded from State Wage Case outcomes because the adjustment of awards had occurred precisely as it was intended under the provisions of both the 1999 Act and the current Act. The genesis of the flow-on of certified agreement rates into awards was a concern among unions that employees would be left vulnerable as bargaining continued to provide for outcomes well in excess of award outcomes. The threat of returning to the award rate, from the higher rate negotiated via enterprise bargaining, has the capacity to tilt the balance of power to employers.
- [11] The QCU also said that while some award wage rates had moved close to comparable wage rates set out in certified agreements, such a situation had not stopped enterprise bargaining occurring in the Queensland jurisdiction. Parties continued to negotiate new certified agreements and it was a matter for them to decide whether any State Wage Case outcome flowed, in whole or part or not at all, to employees covered by a certified agreement. Further, separate treatment of awards, in separate applications, would provide a level of complexity that was both unnecessary and undesirable.
- [12] In responding to the points raised at paragraph [67] of the 2017 State Wage Case Decision, the State of Queensland (the Government) submitted that the use of terms such as "fair and just", "fair and balanced" and "fair and equitable" with regard to industrial matters was not new to the Queensland industrial relations jurisdiction. Similar terminology had been used and defined in Queensland's industrial relations legislation since the introduction of the *Industrial Relations Act 1990*. In prior legislation, dating from 1961, a similar term of "fair and right" had been used.
- [13] The inclusion of such terms in the Act had been recommended in the Report of the Industrial Relations Legislative Reform Reference Group (the McGowan report)<sup>3</sup> which stated:
- The reference group is of the view that the objects of the (1999 Act) are deficient in that they do not articulate a fundamental principle of an industrial relations framework related to imperatives such as balance, fairness and justice.
- [14] The Government submitted that the main purpose of the Act provides for cooperative industrial relations which are "fair and balanced" and which support the delivery of high quality services, economic prosperity and social justice for Queenslanders. The main purpose of the Act is achieved, inter-alia, by:

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<sup>3</sup> Queensland Treasury *A review of the industrial relations framework in Queensland* (2015).

- ... (a) fair and equitable framework of employment standards, awards, determinations, orders and agreements (s 3(a));
- providing for a guaranteed safety net of fair, relevant and enforceable minimum employment conditions through the Queensland employment standards, of which the QMW was part (s 4(d)); and
- ensuring wages and employment conditions provide fair standards in relation to living standards prevailing in the community (s 4(f)).

[15] Further, the Act requires the Commission to:

- 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));
- ensure that a modern award generally reflects the prevailing employment conditions of employees covered by the award (s 141(1)(b));
- 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
- ensure a modern award provides fair standards for employees in the context of living standards generally prevailing in the community (s 143(1)(i)).

[16] In the Government's submission:

... Queensland's existing awards, and the conditions contained within them, were made in conformity with the obligations imposed upon the Commission under s 125 of the 1999 Act (pre-2013 amendments) and were, through the award modernisation process, modernised to continue to provide fair and just employment conditions.

[17] The submissions of both the QCU and the Government have been helpful insofar as they record those party's views on the statutory obligations on the Commission in approaching applications lodged pursuant to s 458 of the Act. Indeed, having considered the submissions in light of the matters raised by the Full Bench in the 2017 State Wage Case decision, this Full Bench is satisfied that, apart from differences in terminology and expression, the relevant legislative provisions dealing with the obligations on the Commission concerning the setting of wage rates in modern awards, as well as the QMW, are essentially the same as those which applied to pre-modernisation awards and the QMW under the 1999 Act, prior to amendments made during the period between 2012 and 2014.

[18] Accordingly, we intend to deal with the present applications in the way the Commission has traditionally dealt with applications for General Rulings in State Wage Case proceedings.

### **Submissions of the parties regarding wage increases**

[19] Each of the QCU, the AWUEQ and the Government submitted that both the National and Queensland economies were well placed to cater for a 3.5 per cent increase in the QMW and modern award wage rates generally.

[20] In advancing its submission, the QCU provided the following table replicated from the Queensland Government's "Budget Strategy and Outlook 2018-19":

Queensland economic forecasts/projections <sup>1</sup>

	Actual	Estimated Actual	Forecasts		Projections	
	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
Gross State Product <sup>2</sup>	2.5	2.75	3	2.75	2.75	2.75
Employment <sup>3</sup>	1.8	2.75	1.5	1.75	1.75	2
Unemployment rate <sup>4</sup>	6.2	6.25	6.25	6	6	5.75
Inflation <sup>5</sup>	1.7	1.75	2	2.5	2.5	2.5
Wage Price Index <sup>5</sup>	1.9	2.25	2.5	3	3	3
Population <sup>5</sup>	1.5	1.75	1.75	1.75	1.75	1.75

1. Unless otherwise stated, all figures are annual percentage change.  
2. Chain volume measure (CVM), 2015-16 reference year.  
3. Through-the-year growth rate to the June quarter (seasonally adjusted).  
4. Seasonally adjusted rate for the June quarter.  
5. Annual percentage change, year-average.  
Sources: ABS 3101.0, 6202.0, 6345.0, 6401.0 and Queensland Treasury.

[21] In other parts of its submissions, the QCU said:

- the projected net operating surplus in the 2018-19 Budget is \$1.512 billion;
- the projection for this period in the 2017-18 Budget was for a \$146 million surplus which had been revised to a \$485 million surplus in the Mid-Year Fiscal and Economic Review (MYFER);
- an operating surplus of \$148 million is forecast for 2018-19, with surpluses forecast across the forward estimates;
- the current position of the Queensland budget is considerably better than that which existed when the Commission issued its 2017 State Wage Case decision;
- this stronger economic position had enabled the Government to continue to reduce debt, with the cost of servicing debt down from 4.7 per cent of state revenue in 2013-14 to around 3 per cent in the current budget;
- while unemployment rates were higher than the national level, this was generally blamed on a greater participation rate as previously discouraged workers re-entered the workforce;
- both total employment and unemployment (for the reasons immediately above) would increase in the next year or so as a result of the roll out of \$45.8 billion of capital works programs announced in the Budget – with 65 per cent of the infrastructure spend outside of Brisbane; and

- in light of the Budget position, Moody's Investors Services has maintained its rating of Aa1 for the Queensland Government and Standards and Poors has maintained its AA+ rating.

[22] Finally, the QCU also highlighted that whereas Annual Wage Review decisions of the Fair Work Commission were estimated to directly impact approximately 2.3 million, or 22.7 per cent, award-reliant employees covered by the federal jurisdiction, only something like 6,000-7,000, or 2-2.3 per cent, award-reliant employees covered by the Queensland system will be affected by the 2018 State Wage Case decision. This is because the great majority of Queensland public sector and local government workforces are covered by certified agreements. Given such low numbers, the economic impact of a 3.5 per cent increase for award-reliant employees in the Queensland industrial relations system will be insignificant.

[23] After referring to what was portrayed as a healthy national economy, with GDP growth rates of 2.75 per cent and 3.25 per cent predicted for the June 2018 and December 2018 periods respectively, the AWUEQ indicated:

In the coming years, Queensland is expected to maintain its status as one of Australia's best performing and strongest growing economies, with projected growth rates from 2.75 per cent in 2018 to 3.25 per cent in 2019 and beyond.

In doing so, Queensland's growth is forecast to outpace that of Victoria, New South Wales and South Australia by 2019 and is better positioned to sustain an increase to the minimum wage than Australia as a whole.

[24] The AWUEQ also highlighted that aspect of its claim which sought a flat-dollar level of increase to workers who are employed at rates of pay equivalent to, or lower than, the *Queensland Government Industry (Stream C) Award – State 2017 C10* classification level and a percentage increase for workers employed at award rates higher than prescribed for that level.

[25] In advancing this submission, the AWUEQ said:

Flat rate increases for employees engaged in lower classifications prevents greater levels of wage disparity between employees of differing classifications. The decision to award both a flat and relative increase in (previous) State Wage Cases has assisted in closing the gap between wages at the higher and lower ends of the classification spectrum. Awarding both a flat and percentage increase on the grounds as sought by the claim will assist in redressing existing disparities in wage classifications and will prevent a further widening in the gap. It will go some way to providing salary justice for workers, ensuring their salary continues to increase in real terms as they progress through the salary scale that is applicable to their employment.

[26] In discussing the current economic conditions and outlook, the Government's submission highlighted a number of aspects, including:

- global growth exceeded expectations in 2017, picking up to its fastest pace since 2011. Strong economic momentum has been seen across most advanced and emerging economies, indicating that the global cycle is better synchronised than it has been for some time;
- momentum in the Australian economy strengthened in the second half of 2017, with solid contributions from both household consumption and non-mining business investment;
- real GDP is expected to grow by a solid 2.75 per cent in 2017-18 and to accelerate further to 3 per cent growth in 2018-19 as well as 2019-20;
- household consumption is forecast to grow by 2.75 per cent in 2017-18 and in 2018-19, increasing to 3 per cent in 2019-20. This is expected to be supported by income growth from solid employment outcomes and strengthening wage growth;
- the labour market strengthened in 2017, with robust growth in full-time jobs and broad-based employment growth across the states and territories. While the labour market has experienced broad-based improvements, wage growth remains subdued. The wage price index rose by 2.07 per cent through the year to the March quarter 2018;
- wage growth is forecast to pick up to 2.25 per cent through the year to the June quarter 2018, 2.75 per cent through the year to the June quarter 2019 and 3.25 per cent through the year to the June quarter 2020 as economic growth strengthens to be above its potential rate and excess capacity in the labour market is absorbed;
- consumer price inflation remains subdued, with the CPI increasing by 1.9 per cent through the year to the March quarter 2018;
- economic growth in Queensland is expected to strengthen to 2.75 per cent in 2017-18, reflecting a rebound in business investment and a recovery in coal exports following severe tropical Cyclone Debbie. This follows growth of 2.5 per cent in 2016-17, due largely to subdued growth in household consumption, a further decline in business investment and a strong increase in overseas imports;
- economic growth is forecast to accelerate to 3.0 per cent in 2018-19 as household consumption growth gathers momentum and imports ease;
- business investment in Queensland has almost halved since the peak of the LNG investment boom and detracted from economic growth in each of the four financial years prior to 2017-18. However, there are now clear signs of recovery, with non-residential construction, engineering construction and machinery and equipment investment increasing strongly in 2017-18;
- despite moderating in early 2018, employment growth has strengthened significantly in 2017-18. Trend employment rose 70,400 persons (or 2.9 per cent) over the year to May 2018, with 49,800 of these jobs being full-time. Employment growth has been largely concentrated in the healthcare and social assistance and education sectors;
- employment growth is estimated to be 2.75 per cent over the year to the June quarter 2018. However, because of the slowdown in apartment construction, employment growth is expected to return to more sustainable rates of 1.5 per cent

and 1.75 per cent in the near term (year to June quarter 2018 and year to June quarter 2019);

- strong employment growth has encouraged jobseekers to re-enter the labour force, seeing participation rates in Queensland around their highest in almost 4 years. As a result, the unemployment rate is forecast to remain at 6.25 per cent in the near term, eventually easing to 6 per cent by the June quarter 2020;
- wage growth in Queensland is expected to remain modest at 2.25 per cent in 2017-18 and 2.5 per cent in 2018-19; and
- inflation is expected to be 1.75 per cent in 2017-18 and 2 per cent in 2018-19, implying further modest growth in real wages.

[27] In response to the points raised at a paragraph [51] in the 2017 State Wage Case decision - about the types of matters parties should consider addressing in their submissions in future State Wage Case proceedings - the Government indicated:

- the estimated general government sector operating surplus for 2017-18 was \$1.512 billion.
- the forecast operating surplus for 2018-19 is \$148 million, \$160 million in 2019-20 and \$110 million in 2020-21;
- while the government does not generally comment on rating agencies' comments about the Queensland government's budgetary position, the statement released by Moody's Investors Services after the State Budget indicated that the Service would maintain its rating of Aa1 for debt issues offered by the Queensland Treasury Corporation, whose debt is guaranteed by the State of Queensland;
- the government's wages policy continues to provide for a maximum headline wage increase of 2.5 per cent per annum;
- 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:
  - employees who are covered by an award, but who are not covered by a certified agreement (i.e. state award-reliant employees); and
  - employees who are covered by a certified agreement and whose rate of pay may fall below the relevant award rate of pay;
- the number of affected employees who are award-reliant will remain unchanged regardless of the quantum awarded by the Commission;
- award-reliant employees include those employed by Parents and Citizens' Associations, approximately 20 local governments, the Darling Downs Moreton Rabbit Board (15 employees) and approximately 2000 auxiliary firefighters, each of whom works an average of 0.10 FTE;
- in terms of those public sector employees covered by a certified agreement whose rates of pay may fall below the relevant award rate of pay, *Directive 12/12: State Wage Case and Certified Agreements* provides "where a State Wage Case has the effect that an award provides for wages which are greater than a certified agreement that applies to the employees covered by the award, the award wages prevail";

- modelling undertaken by the Government to understand the impact of a 3.5 per cent increase to award wage rates disclosed that if a 3.5 per cent increase is awarded in the State Wage Case, then approximately 19,000 employees of the government would be entitled to receive a wage increase because of the operation of the Directive or a corresponding provision in a certified agreement. The cost to the budget, taking into account a likely increase to certified agreement rates of 2.5 per cent from 1 September 2018, in line with the Government's wages policy, would be of the order of \$7.5 million per annum.

[28] The Local Government Association of Queensland (LGAQ) proposed a 2.5 per cent increase in award wage rates, the QMW and in award allowances. By way of a summary of its arguments in support of this position, the LGAQ said:

Roughly half of all Queensland Councils are presently running operating deficits. Councils are under increasing pressure from both the Queensland Government and their respective communities to enhance their financial sustainability, keep rates and charges increases to a minimum and reduce operating costs. Increasing wages at unaffordable levels will place considerable pressure on council budgets and ultimately result in the need to review staffing levels to reduce operational costs. For these reasons and more the proposed increases by unions and the state for those on the award wage cannot be justified given the information available. Such increases are well in excess of what is required to maintain the real value of wages. It is questionable as to whether affected councils' budgets can sustain this level of increase as it would result in a considerable deterioration in their operating positions and place further pressure on their financial sustainability. The LGAQ's proposed increase is well above CPI, provides real wage growth for affected workers, poses less risk for worker employment security and aligns with wage increases in those councils relying on enterprise bargaining to establish wage levels. Most importantly, it recognises that the workers most affected are in communities where it is important that any additional costs do not impede the efforts of councils to protect local employment and build resilience into local economies.

[29] In the course of its submission, the LGAQ forcefully argued that the commission should continue to follow the practice it adopted in the 2016 State Wage Case<sup>4</sup> decision wherein it abandoned the practice of awarding flat rate increases to wage rates below the C10 level in the *Engineering Award - State 2012*. In making that decision, the 2016 Full Bench observed that when the exercise of establishing properly fixed relativities in the award was conducted in 1989, the notional relativity between the C14 and C10 rates was 79 per cent. However, because of flat rate increases, the notional relativity had increased to 87.5 per cent by 2015.

[30] Elsewhere in its submissions the LGAQ stated:

- The LGAQ maintains that awarding flat dollar wage increases over a period of time serves to compress the relative Award wages under different classifications within Awards, which the QIRC has historically set based on differences in comparative work value. Such compression does not arise when a consistent percentage increase is applied;
- The LGAQ maintains that compressed wage levels do not encourage or support skill acquisition. Where there is relatively little difference or a decreasing value in wages paid to lower level classifications in comparison to classifications which reflect higher skilled work, there is minimal

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<sup>4</sup> [2016] QIRC 088

financial incentive, or at least a lowered incentive, to attain higher skills to be able to perform higher skilled work. This is to the detriment of the employer and employee; and

- Increasing minimum wages in Awards and the QMW by a percentage increase still delivers a real increase in wages. Importantly, a percentage increase will preserve wage relativities in state Awards as they currently stand which, while more compressed than under the National System, will not contribute to further compression.

[31] The LGAQ submission identified 16 councils with a combined total of just over 1,410 employees who, it said, were not covered by a certified agreement and were thus reliant on the three local government awards as the source documents for pay and conditions. Of these workers, the LGAQ estimated slightly under 1,000 employees would be affected by an award increase arising out of the State Wage Case decision (the difference is attributed to more senior employees whose employment conditions are prescribed by common-law contracts). However, taking into account the terms contained in several certified agreements to the effect that wage rates payable to employees would be a certain amount above the award rate, the LGAQ estimated that the number of employees likely to be affected by the State Wage Case decision will be in the range of 1,200 to 1,500.

[32] The LGAQ also presented lengthy written and oral submissions in support of its proposal for a 2.5 per cent increase in award wage rates, the QMW and allowances. While we have considered all of the submissions presented by the LGAQ we have chosen not to refer to them in detail. However, in summary, the LGAQ argued:

- councils seek to pay their workers what they consider is fair and what the council can afford. This varies significantly between communities;
- wage rises that are too large undermine councils' efforts to maintain and maximise a sustainable local workforce;
- when a council indicates a limited capacity to pay higher wage rises, it is most likely that the Council simply does not have the resources to do so, or has higher community priorities requiring the available resources;
- a 2.5 per cent increase in award wages and allowances is consistent with the main purpose of the Act as well as its objects;
- the QMW proposed by the LGAQ (\$745.70) is markedly greater than the National minimum wage level as well as the minimum wage rate applying in other states;
- recent wage bargaining outcomes in the local government sector are concentrated around the 2.5 per cent per annum level and a higher level of increase through the State Wage Case decision would likely see increased pressure for higher level outcomes in future bargaining;
- a 2.5 per cent outcome would deliver an actual wage increase to employees, given that CPI increases are running at levels of less than 2 per cent per annum, and the wage price index remained at a modest 2.2 per cent in Queensland in the year to March 2018;
- labour costs as a proportion of total operating expenditure comprises 45 per cent of total operating costs across the local government sector. As such, a 2 per cent

increase in wage costs generally requires a council to increase its rates and charges by 4 per cent, so as to cover the actual costs; and

- half of all Queensland councils are presently running operating deficits. Increasing wage rates beyond that occurring elsewhere in the economy will place considerable pressure on council budgets and ultimately result in the need to review staffing levels to reduce operational costs.

[33] Unlike the other parties in the proceedings, the LGAQ sought the retention of the Statement of Policy issued in 2013. In arguing for its retention, the LGAQ indicated that the content of the Statement had recently been identified as "a valuable source document" for less experienced industrial practitioners in that it provided them with an understanding of how the Queensland jurisdiction works. As such, it would be useful to retain the Statement.

[34] Finally, the LGAQ requested that the operative date of the State Wage Case outcome be the first full pay period beginning on or after Monday 3 September 2018. In requesting this operative date, the LGAQ submitted it was much easier for pay office staff to adjust wage rates from the beginning of a pay cycle rather than from a date which might be part way through a cycle.

### **Decision**

[35] It is convenient to deal with the matters raised by the LGAQ, immediately above, before turning to other aspects of these proceedings requiring decision.

[36] Section 459(1)(a) of the Act requires that a General Ruling of the Commission "must state a date (the *stated date*) on and from which it has effect". This is to be compared with s 286(4) of the *Fair Work Act 2009* (Cth) which provides that decisions emanating from the Fair Work Commission through its Annual Wage Review are to apply "from the first full pay period to commence on or after" a given date. Consequently, in light of the requirements imposed on this Commission by the Act, we see no reason to depart from the traditional date of operation of State Wage Case decisions, *viz* 1 September, and determine accordingly. Indeed, at paragraph [34] of the 2017 State Wage Case decision a table of increases arising from State Wage Case decisions reveals that, apart from one instance, 1 September has been the operative date since 2004.

[37] In terms of the LGAQ's submissions concerning the retention of the 2013 Statement of Policy, the Government's submission questioned whether the Statement, which was issued pursuant to the then s 288 of the 1999 Act, had any force and/or effect because there was no savings arrangement inserted when s 288 was removed from the 1999 Act in 2013<sup>5</sup>. Given this submission, and the support by the QCU and the AWUEQ for the rescission of the 2013 Statement of Policy, we are not persuaded by the arguments of the LGAQ that the Statement of Policy should be retained and, to make its status abundantly clear, we formally rescind it.

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<sup>5</sup> See Act no. 61 of 2013, s 58.

If the LGAQ, or any other party, wishes to seek a new Statement of Policy an application seeking same can be lodged pursuant to s 462(1) of the Act.

[38] Based upon the submission of the parties, it appears that our decision in this matter will directly affect approximately 6,000 employees within this jurisdiction who are all award-reliant, as follows:

- approximately 3,000 employees\* of Parents and Citizens' Associations - the majority of whom are thought to be employed on a part-time or casual basis (\*Note: the submissions of the Government (at paragraph 45) suggest that there are approximately 3,000 employees of P&C Associations in Queensland. Based on information provided to the Commission during the award modernisation program, this estimate would appear to be more accurate than the estimate of 3,000-4,000 used in previous State Wage Cases and we adopt it.);
- approximately 2,000 Auxiliary Firefighters - who appear to work an average of roughly 4 hours per week;
- approximately 1,000 employees of local governments who, we suspect, are mainly full-time employees; and
- 15 permanent, full-time, employees of the Darling Downs Moreton Rabbit Board.

[39] Notwithstanding that only something of the order of 1,000 award-reliant local government employees will be directly impacted by this decision, the LGAQ urged us to grant a 2.5 per cent increase in award wage rates, the QMW and award allowances. In doing so, the LGAQ submission seemed to suggest that our decision in this matter will impact the whole of the local government workforce of some 40,000 employees across the state.

[40] However, the provisions of s 19 of the Act quite clearly provide that where both a modern award and a certified agreement apply to an employee, the terms of the certified agreement prevail to the extent of any inconsistency. As such, every local government employee covered by a certified agreement which includes wage rates (some 39,000 employees) will not be impacted by the State Wage Case decision unless the terms of the certified agreement provide for outcomes arising from State Wage Case decisions to flow, in whole or part, to the employees covered by such agreements. Based on the submissions of the LGAQ, it appears that there are some 200-500 employees in this position.

[41] Notably, as observed during the proceedings, the LGAQ submissions in support of a 2.5 per cent increase were pressed in relation to the *whole* of the local government sector – irrespective of the number of employees who might be directly, or indirectly, impacted by this decision or the financial position of each council. In particular, there was no "incapacity to pay" argument presented in relation to *any* council, let alone the whole of the local government sector.

[42] In the 2017 State Wage Case the Full Bench referred to a statement recorded in the 2016 State Wage Case, as follows:

[23]... we adhere to the view expressed by the Full Bench of this Commission in the 2014 and 2015 decisions 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 regards to the particular circumstances of Queensland.<sup>6</sup>

[43] Without formally adopting the above statement, we nonetheless record that we intend to follow the same approach in the current proceedings. In doing so, we note that decisions of the Fair Work Commission in its Annual Wage Reviews are made against a legislative background which requires that Tribunal to take into account a number of specific considerations, including relative living standards and the needs of the low paid when setting minimum wage rates (see s 134(1)(a) and s 284(1)(c) of the *Fair Work Act 2009*).

[44] In this respect, it is to be noted that *all* of the employees who will be directly impacted by this decision are engaged under awards of this Commission which could generally, in terms of wage rates at least, be described as minimum rates awards. As such, and noting that:

- the applications by both the QCU and the AWUEQ, with one exception, seek to deliver the same 3.5 per cent increase in award wage rates, the QMW and award allowances decided by the Fair Work Commission; and
- the Government supports an outcome which will see a 3.5 per cent increase in award wage rates, QMW and award allowances,

we have decided to, again, follow the federal tribunal's decision.

[45] In so deciding, we note that while our decision will directly affect only some 6,000 award-reliant employees in the Queensland jurisdiction it will *indirectly* affect some 200-500 local government employees and approximately 19,000 public sector employees whose conditions of employment - via the terms of certified agreements or *Directive 12/12: State Wage Case and Certified Agreements* - include provisions which will entitle them to receive all, or part, of the 3.5 per cent wage and allowance adjustment delivered by this decision. However, the *indirect* effect of this decision is as a result of decisions made by the employers of such employees, not this Commission.

[46] We have also decided not to accede to the submissions of both the QCU and the AWUEQ in relation to the awarding of a flat rate level of increase for workers employed at award classification rates equivalent to or below the *Queensland Local Government Industry (Stream C) Award – State 2017 C10* classification. Instead, we propose to accept the submissions of the LGAQ and to continue the practice adopted by the Full Bench in the 2016 State Wage Case to the effect that percentage increases should be awarded so as to prevent further compression of relativities between classification levels.

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<sup>6</sup> [2016] QIRC 088 [23].

[47] Our formal decision is that:

- the wages or salaries for full-time adult employees in all modern awards shall be increased by 3.5 per cent;
- junior rates are to be increased in the manner specified in applicable awards;
- 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, are to be increased by 3.5 per cent;
- expense related allowances in all modern awards are to be increased in the manner specified in applicable awards;
- the minimum rate per week for all full-time employees in Queensland, the Queensland Minimum Wage, is to be \$753.00 per week; and
- the above increases operate on and from 1 September 2018.

[48] A Declaration of General Ruling giving effect to this decision will issue concurrently with this Decision.

[49] The State Wage Case 2013 Statement of Policy, dated 29 August 2013, issued under s 288 of the *Industrial Relations Act* 1999 is rescinded.

[50] We determine and Order accordingly.