

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Declaration of General Ruling (State Wage Case 2019)* [2019] QIRC 169

PARTIES: **Queensland Council of Unions**

and

Together Queensland, Industrial Union of Employees

and

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

v

State of Queensland (Office of Industrial Relations)
(First Respondent)

and

Local Government Association of Queensland
(Second Respondent)

CASE NO: B/2019/32; B/2019/33; B/2019/34

PROCEEDING: Application for Declaration of General Ruling

DELIVERED ON: 7 November 2019

HEARING DATE: 9 October 2019

HEARD AT: Brisbane

MEMBERS: O'Connor VP
Thompson IC
Hartigan IC

ORDERS:

1. The wages or salaries for full-time adult employees in all modern awards shall be increased by 3% from 1 September 2019.
2. The wage rates of full-time junior employees shall be increased by applying the percentage in the wage rates clause applicable to the junior employee concerned to the wage rate payable to an equivalent full-time adult employee under the applicable award.
3. The wage rates of part-time and casual employees shall be increased in the manner prescribed in each award or, if no manner is prescribed, on a *pro rata* basis appropriate to the increase in the wage rate payable to an equivalent full-time adult employee under the applicable award.
4. The wage rates in the *Training Wage Award – State 2012* and *Schedule 8 of the Parents and Citizens Associations Award – State 2016* shall be increased by the Registrar in accordance with past practice based on a 3% increase at the C10 level in the *Building, Engineering and Maintenance Services Employees (Queensland Government) Award – State 2016*.
5. The unit or per piece rate for a pieceworker shall be increased by 3%.
6. Monetary allowances (other than expense related allowances) in all modern awards that relate to work or to conditions, which have not changed, are to be increased by 3%.
7. The minimum wage rate per week for all full-time employees in Queensland, the Queensland Minimum Wage, is \$775.60 per week. (Note: The term "employee" is defined in section 8 of the *Industrial Relations Act 2016*).

LEGISLATION:

Industrial Relations Act 2016 (Qld), s 3, s 4, s 141, s 142, s 143(1)(i), s 145, s 458, s 459

Industrial Relations Act 1999 (Qld), s 129

CASES:

Application for Declaration of General Ruling (State Wage Case 2014) [2014] QIRC 129

Application for Declaration of General Ruling (State Wage Case 2015) [2015] QIRC 154

Application for Declaration of General Ruling (State Wage Case 2016) [2016] QIRC 088

Application for Declaration of General Ruling (State Wage Case 2017) [2017] QIRC 081

Application for Declaration of General Ruling (State Wage Case 2018) [2018] QIRC 113

Annual Wage Review 2018-19 [2019] FWCFB 3500

APPEARANCES:

Dr J. Martin for the Queensland Council of Unions

Mr C. Massey of counsel for Together Queensland, Industrial Union of Employees

Mr A. Santelises for The Australian Workers' Union of Employees, Queensland

Mr C. Murdoch QC of counsel for the State of Queensland instructed by the Office of Industrial Relations

Mr T. Goode for the Local Government Association of Queensland

Reasons for Decision

Background

- [1] The Queensland Council of Unions ('QCU')¹, The Australian Workers' Union of Employees, Queensland ('AWU')² and Together Queensland, Industrial Union of Employees ('Together')³ have, respectively, applied to the Queensland Industrial Relations Commission ('the Commission') for relief seeking, in summary:

- (a) a general ruling to amend all state awards to increase wages by 3%;

¹ Application filed by QCU on 3 June 2019.

² Application filed by the AWU on 4 June 2019.

³ Application filed by Together on 3 June 2019.

- (b) a general ruling to amend all state awards to increase the existing allowances which relate to work conditions, which have not changed by 3%;
- (c) an increase to the Queensland Minimum Wage ('QMW') by 3%; and
- (d) a determination that items (a) to (c) herein be operative from 1 September 2019.

[2] The State of Queensland ('the State') filed submissions dated 9 September 2019 which set out the State's response to the applications as follows:

...

- (a) supports a 3.0 % increase to the QMW;
- (b) supports a 3.0 % increase to the rates of pay in state awards other than those that apply to state public sector employees which have received a 'flow on' from certified agreement rates of pay by virtue of section 129 of the repealed *Industrial Relations Act 1999* (repealed IR Act) or section 145 of the *Industrial Relations Act 2016* (IR Act);
- (c) submits that there be no increase to the rates of pay in state awards that apply to state public sector employees which have received 'flow on' from certified agreement rates by virtue of section 129 of the repealed IR Act or s 145 of the IR Act (the awards for which this position is advanced are in **Attachment 1**);
- (d) supports a 3.0% increase to existing allowances which relate to work conditions, which have not changed, in all state awards; and
- (e) supports an operative date of 1 September 2019 for any increases awarded.

[3] The Local Government Association of Queensland ('LGAQ') filed submissions dated 23 September 2019 wherein it stated its position as supporting:

...

- (a) a 2.5% increase to Award wages; and
- (b) a 2.5% increase to existing and applicable award allowances in awards which relate to work or conditions and which have not changed nor have mechanisms in the award for varying the amounts; and
- (c) a 2.5% increase to the Queensland Minimum Wage (QMW); and
- (d) an operative date of the first Monday of the month following the release of the QIRC decision on the 2019 State Wage Case.

[4] In its submissions,⁴ the State acknowledges its position in the 2019 State Wage Case represents a departure from its position during previous State Wage Cases. The State has not previously sought to exclude a class of award from receiving the benefit of an increase following the ruling of the Fair Work Commission ('FWC').

⁴ Submissions of the State of Queensland filed 9 September 2019 at [6].

- [5] The FWC delivered its *Annual Wage Review 2018 – 19*⁵ decision on 30 May 2019. In its decision, the FWC determined to increase the National Minimum Wage ('NMW'), as well as minimum award rates contained in federal modern awards, by 3%.
- [6] The union applicants submit that the increase delivered by the FWC in this year's annual review should be mirrored in the state jurisdiction by the same percentage increase being applied to the QMW and state modern awards.
- [7] Historically,⁶ this Commission has, in considering the State Wage Case, placed considerable weight on the Annual Wage Review of the relevant federal tribunal whilst having regard to the economic conditions of the state of Queensland at the time.⁷ Whilst the Commission is not bound to follow the FWC's determination in the Annual Wage Review it will do so unless there are compelling reasons not to. The position was set out by the Commission in the 2014 State Wage Case⁸ in the following terms:
- ... Having regard to the submissions of the parties in these proceedings, we broadly agree that, unless there are cogent reasons for not doing so, we should follow the ruling of the Federal Tribunal, with any necessary or desirable modifications, having regard to the particular circumstances of Queensland.⁹
- [8] This position has been adopted by subsequent Full Benches when considering the State Wage Case.¹⁰ We also adopt those observations. Whilst the Full Bench in the 2018 State Wage Case¹¹ decision, did not formally adopt that statement, it did, nonetheless, record that it intended to follow the same approach.
- [9] The impact of the change in position of the State is that it wishes to exclude some State Awards that receive a 'flow on' from certified agreements¹² from being the beneficiary of a general ruling to increase rates of pay and allowances to awards. Otherwise, the State indicates that it supports a 3% increase to the QMW and a 3% increase to the rates of pay in state awards other than those the State wishes to have excluded from the general ruling.
- [10] At the hearing of the matter, the State provided a draft declaration of general ruling in which it identified the relevant awards it said should be excluded from the increase. The State's draft order identified that the wages or salaries in the following modern awards *not* be increased:

⁵ [2019] FWCFB 3500.

⁶ *Application for Declaration of General Ruling (State Wage Case 2014)* [2014] QIRC 129, [12]; *Application for Declaration of General Ruling (State Wage Case 2015)* [2015] QIRC 154, [7]; *Application for Declaration of General Ruling (State Wage Case 2016)* [2016] QIRC 088, [7]; *Application for Declaration of General Ruling (State Wage Case 2017)* [2017] QIRC 081, [33].

⁷ *Application for Declaration of General Ruling (State Wage Case 2014)* [2014] QIRC 129, [12].

⁸ [2014] QIRC 129.

⁹ *Ibid* at [13].

¹⁰ *Application for Declaration of General Ruling (State Wage Case 2014)* [2014] QIRC 129, [12]; *Application for Declaration of General Ruling (State Wage Case 2015)* [2015] QIRC 154, [7]; *Application for Declaration of General Ruling (State Wage Case 2016)* [2016] QIRC 088, [7]; *Application for Declaration of General Ruling (State Wage Case 2017)* [2017] QIRC 081, [33].

¹¹ *Application for Declaration of General Ruling (State Wage Case 2018)* [2018] QIRC 113, [43].

¹² By virtue of the operation of s 129 of the repealed IR Act and s 145 of the IR Act.

- *Ambulance Service Employees Award – State 2016*
- *Award for Operational Employees in Disability and Forensic Services – State 2016*
- *Correctional Employees Award – State 2015*
- *Hospital and Health Service General Employees (The Queensland Health) Award – State 2015*
- *Legal Aid Queensland Employees Award – State 2015*
- *Medical Officers (Queensland Health) Award – State 2015*
- *Parks and Wildlife Employees Award – State 2016*
- *Queensland Agricultural Colleges Award – State 2015*
- *Queensland Fire and Emergency Service Employees Award – State 2016*
- *Queensland Parliamentary Service Award – State 2015*
- *Queensland Public Service Offices and Other Employees Award – State 2015*
- *TAFE Queensland Award – State 2016*
- *Teaching in State Education Award – State 2016*
- *Tourism and Events Queensland Employees Award – State 2015*
- *WorkCover Queensland Employees Award – State 2015*
- *Youth Detention Centre Employees Award – State 2016*

[11] The State's draft orders further identify its position that the wages or salaries in the following modern awards shall not be increased save for the identified salary streams:

- *General Employees (Queensland Government Department) and Other Employees Award – State 2015 save for: Aircrew Stream, Hospitality Stream, South Bank Stream, Forestry Stream and Rabbit Board Stream.*
- *Building, Engineering and Maintenance Services Employees (Queensland Government) Award – State 2016 save for: Building Trades Stream, Engineering Stream not including Schedule 8 and Forepersons Stream.*

[12] As a result of the State's position this Full Bench will consider whether the State has presented cogent reasons as to why the ruling of the FWC should not be followed, in so far as the State seeks to exclude some state awards from receiving any minimum pay rate increase.

- [13] As such, this decision will firstly consider the matters raised by the State seeking to exclude some state awards from the general ruling, and, secondly, consideration will then be had as to what percentage increase, if any, should be made to the QMW and the minimum pay rates in relevant state awards.

Relevant legislation

- [14] The statutory scheme relevant to the relief sought in the applications was referred to in each of the submissions of the parties.

Provisions relevant to the Commission's power to issue the general ruling

- [15] Section 3 of the IR Act identifies the main purpose of the Act to be as follows:

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 Queensland.

- [16] Section 4 sets out how the purpose of the IR Act is to be achieved in, relevantly, the following terms:

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
- ...
- (d) providing for a fair and equitable framework of employment standards, awards, determinations, orders and agreements; and
- ...
- (f) providing for a guaranteed safety net of fair, relevant and enforceable minimum employment conditions through the Queensland Employment Standards; and
- (g) ensuring wages and employment conditions provide fair standards in relation to living standards prevailing in the community; and
- (h) promoting collective bargaining, including by—
 - (i) providing for good faith bargaining; and

- (ii) establishing the primacy of collective agreements over individual agreements; and

...

- (o) being responsive to emerging labour market trends and work patterns; and
- (p) providing for effective, responsive and accessible mechanisms to support negotiations and resolve industrial disputes; and

...

[17] Section 141 of the IR Act provides the general requirements for the Commission in exercising its powers under Chapter 3 as follows:

141 General requirements for commission exercising powers

- (1) In exercising its powers under this chapter, the commission must ensure a modern award –
 - (a) provides for fair and just wages and employment conditions that are at least as favourable as the Queensland Employment Standards; and
 - (b) generally, reflects the prevailing employment conditions of employees covered, or to be covered, by the award.
- (2) For subsection (1), the commission must have regard to the following –
 - (a) relative living standards and the needs of low-paid employees;
 - (b) the need to promote social inclusion through increased workforce participation;
 - (c) the need to promote flexible modern work practices and the efficient and productive performance of work;
 - (d) the need to ensure equal remuneration for work of equal or comparable value;
 - (e) the need to provide penalty rates for employees who –
 - (i) work overtime; or
 - (ii) work unsocial, irregular or unpredictable hours; or
 - (iii) work on weekends or public holidays; or
 - (iv) perform shift work;
 - (f) the efficiency and effectiveness of the economy, including productivity, inflation and the desirability of achieving a high level of employment.

[18] Section 142 identifies the general requirement about minimum wages as follows:

142 General requirement about minimum wages

- (1) To the extent the commission's powers under this chapter relate to setting, varying or revoking minimum wages in a modern award, the commission must establish and maintain minimum wages that are fair and just.
- (2) For subsection (1), the commission must have regard to the following—
 - (a) the prevailing employment conditions of employees covered by the modern award;
 - (b) the matters mentioned in section 141(2)(a) to (d) and (f);
 - (c) providing a comprehensive range of fair minimum wages to—
 - (i) young employees; and
 - (ii) employees engaged as apprentices and trainees; and
 - (iii) employees with a disability.

[19] Section 143 prescribes what may and may not be included in the content of a modern award. Relevantly, for the purpose of this application, s 143(1)(i) states:

143 Content of modern awards

- (1) The commissioner must ensure a modern award-

...

 - (i) provides fair standards for employees in the context of living standards generally prevailing in the community; and

...

[20] Section 458 of the IR Act sets out the power of the Full Bench to make general rulings as follows:

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.

[21] Section 459 identifies the requirements for a general ruling in the following terms:

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.

Provisions relevant to 'flow on' from certified agreements

- [22] The State, during the course of its submissions, referred to s 129 of the repealed IR Act and s 145 of the IR Act.
- [23] Section 129 of the repealed IR Act relevantly states:

129 Flow-on of certified agreements

- (1) The commission may include in an award provisions that are based on a certified agreement only if satisfied the provisions—
 - (a) are consistent with principles established by the full bench that apply for deciding wages and employment conditions; and
 - (b) are not contrary to the public interest.
- (2) However, the commission must include in an award provisions that are based on a certified agreement if –
 - (a) the parties to the certified agreement agree; and
 - (b) the parties to the certified agreement are bound by the award.
- (3) The provisions included under subsection (2) must apply only to the parties to the certified agreement.

- [24] Section 145 of the IR Act relevantly states:

145 Flow-on provisions from certified agreements

- (1) The commission may, on the application of a party to a modern award, include in the award provisions that are based on a certified agreement only if satisfied the provisions—
 - (a) are consistent with principles established by the full bench that apply for deciding wages and employment conditions; and
 - (b) are not contrary to the public interest.
- (2) However, the commission must, on the application of a party to a modern award, include in the award provisions that are based on a certified agreement if—
 - (c) the parties to the certified agreement agree; and
 - (d) the award applies, or will apply, to the parties to the certified agreement.
- (3) The provisions included under subsection (2) must apply only to the parties to the certified agreement.

2018 State Wage Case

- [25] The parties referred to both the 2017 State Wage Decision and the 2018 State Wage Decision during the course of the hearing. The 2018 State Wage Case decision¹³ had regard to a series of questions that were posed by a separate Full Bench in the 2017 State Wage Case decision.¹⁴
- [26] The matters raised in the 2017 State Wage Case decision relate to matters relevant to the consideration of the State's position in this State Wage Case.
- [27] The Full Bench in the 2017 State Wage Case decision¹⁵ stated that it would be desirable, without constraining a future Full Bench, for the parties in the 2018 State Wage Case to address such questions as:
- *Should future General Ruling decisions be limited to setting a Queensland Minimum Wage?*
 - *Should awards which contain safety net wage rates receive a higher level of increase in 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 potential ever-increasing wage differential?*
- ...

¹³ [2018] QIRC 113, [4].

¹⁴ [2017] QIRC 081, [67].

¹⁵ *Ibid*, [69].

- *Should awards which have been varied in accordance with s 129 of the 1999 IR 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 section 145 of the 2016 IR Act?*

[28] During the 2018 State Wage Case, the QCU and the State each addressed the matters raised in the 2017 State Wage Case. It is relevant to consider, in the context of the 2019 State Wage Case, the position the parties previously asserted with respect to these matters.

[29] The 2018 State Wage Case decision referred to submissions made by the QCU¹⁶ which, in summary, included that:

- (a) the statutory obligations placed upon the Commission under the IR Act involved a return to that which had existed prior to the legislative amendments undertaken between 2012 and 2014 namely:
 - (i) it was irreconcilable that any State Wage Case outcome which denied any wage movement to an award-reliant employee would be consistent with such objectives;
 - (A) objects for "ensuring wages ... provide fair standards in relation to living standards prevailing in the community" (s4(g)); and
 - (B) 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..." (s141(1)(a) and s 143 (1)(i));
 - (b) whilst 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 in that 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; and
 - (c) separate treatment of awards would provide a level of complexity that was both unnecessary and undesirable.

[30] The 2018 State Wage Case referred to the submissions made on behalf of the State¹⁷ including that:¹⁸

¹⁶ [2018] QIRC 113, [7]-[11].

¹⁷ Ibid, [14]-[16].

¹⁸ Ibid, [14] and [15].

...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:

- ... (a) fair and equitable framework of employment standards, awards, determinations, orders and agreement (s3(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 (s4(d)); and
- ensuring wages and employment conditions provide fair standards in relation to living standards prevailing in the community (s4(f)).

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

- ensure modern awards 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 s 141(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)).

[31] The Full Bench relevantly included the following extract¹⁹ from the State's submissions:

... 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.

[32] These submissions of the State are relevant in that the State submitted, during the course of the 2018 State Wage Case, that the existing awards were made in conformity with the provisions under the repealed IR Act, and, through the award modernisation process, provided for fair and just employment conditions.

[33] After considering the submissions of the parties with respect to these matters, the Full Bench in the 2018 State Wage Case relevantly concluded:

[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-

¹⁹ *Declaration of General Ruling (State Wage Case 2018)* [2018] QIRC 113, [16].

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.

The State's submissions with respect to the exclusion of some awards

[34] As noted above, the State acknowledges a departure from its position in previous State Wage Cases. The point of departure arises because the State submits²⁰ that, in 2019, there are cogent reasons for the Commission to depart from its practice of following the ruling of the Federal Tribunal with respect to awards applicable to state public sector employees that have received a 'flow on' from certified agreement rates of pay by virtue of s 129 of the repealed IR Act or s 145 of the IR Act.

[35] Relevantly, during the course of the oral hearing, Mr Murdoch QC, appearing for the State, submitted that:²¹

... but it is also important from the State's perspective to say plainly that it is no part of the State's submissions that the award rates that have had the effect and benefit of a flow-on are not fair and just; rather, the submission is that they don't, in 2019, require an increase of three per cent to remain fair and just, whereas awards that have not had the benefit of a flow-on as with federal awards, do require the three per cent increase, and that's consistent with the approach the government has taken in this case.

[36] The state submits there is a fundamental difference between the Federal Annual Wage Review and the Queensland State Wage Case in terms of its impact.

[37] The State submits that Queensland is unique when compared to the federal industrial jurisdiction, in that it also provides a legislative framework that facilitates the flow on of provisions from certified agreements, including rates of pay, into awards.

[38] The State contends that the Commission is being asked to flow on the same increase awarded by the FWC despite the fact that the respective tribunals are dealing, in the main, with a markedly different group of employees. The State argues that the State Wage Case is now having the effect of increasing award rates for workers who are already covered by agreements, and whose awards have already been increased through the 'flow-on' of agreements rates of pay.

[39] The State submits,²² that it considers the approach previously taken to be no longer tenable, and instead, the focus of the State Wage Case ought to be on wage increases for low-paid workers in the jurisdiction who rely on the award or the minimum wage increases through bargaining and who have also received the benefit of having their award updated to reflect agreement rates of pay under the flow-on provisions in state industrial laws.

²⁰ Submissions of the State of Queensland filed 9 September 2019 at [10].

²¹ T1-24, L12-15.

²² Submissions of the State of Queensland filed 9 September 2019 at [17].

[40] The State argues, with the assistance of graphs contained in its submissions,²³ that if not for flow-on provisions, there would have been a clear and substantial, ongoing differential between the awards and agreement rates of pay.

[41] Further, the State acknowledges²⁴ that its submissions for the 2018 State Wage Case supported flowing on the 2018 AWR decision of 3.5% increase to all state award rates of pay. In doing so, the State submits that it identified the impact this would have on public sector certified agreements, and in particular on the State Government Entities Certified Agreement 2015 ("the CORE") which was (then) due to nominally expire on 1 September 2018. The state notes that its submissions²⁵ made during the 2018 State Wage Case where it stated, *inter alia*:

... The State observes the principal way that increases to wages have occurred in the past have been through negotiated outcomes between parties (i.e. certified agreements) but that occasionally increases to award rates of pay have also overtaken certified agreement rates of pay. **The State observes this had not seen a decline in collective bargaining when this has occurred.** The State also observes that collective bargaining is about more than just agreeing on the wage rates to pay employees. Bargaining also determines a range of rights and obligations which affect the employment relationship.

(Emphasis added).

[42] The State now submits that in the period following the 2018 State Wage Case, evidence has emerged of an impact on collective-bargaining, specifically in relation to the CORE, arising out of the State Wage Case.

[43] The 'evidence' referred to by the State in support of its submission is that bargaining between the negotiating parties for a replacement to the CORE broke down, and in the first instance, was referred to conciliation before the Commission and, following unsuccessful conciliation, was referred to arbitration before the Commission. The State submits that it is open to the Commission to *infer* that a reason that replacement certified agreements for the CORE have not been able to be made between the parties is because of the effect the 2018 State Wage Case had on award rates of pay.

[44] The State further submits that, notwithstanding that the negotiating parties continue to go through the process of collective bargaining, unlike 2018, there is now evidence to suggest that this process is less likely to result in a certified agreement being made between the parties where a flow on has contributed to award rates of pay overtaking certified agreement rates of pay and creates a disincentive for bargaining.

[45] The State submits that the Commission ought to *infer* that the impact on bargaining will be further exacerbated if award rates of pay continue to overtake certified agreement rates of pay.

²³ Submissions of the State of Queensland filed 9 September 2019 at [33].

²⁴ *Ibid* [35].

²⁵ *Ibid* [36].

[46] The State concludes²⁶ the thrust of its submissions on this point in the following terms:

... where award rates of pay have been increased by virtue of a 'flow on' they ought not be increased through the State Wage Case. These awards should instead continue to be maintained through the application of the 'flow on' provision. To this end, the State would until the hearing and application of the decision in the 2020 State Wage Case support future applications to 'flow on' expired (superseded) certified agreement rates of pay into awards where the rates of pay would not overtake a certified agreement rate of pay, because this would maintain a relativity to current certified agreement rates of pay and not be a disincentive to bargain. It would also prevent any possibility of awards falling too far behind certified agreements as referred to by the QCU at the top of page 23 of their submissions.

[47] In further support of its submission the State refers²⁷ to the fact that the Commission has ordered the negotiations to replace the *Queensland Corrective Services – Correctional Employees Certified Agreement 2016* be referred to arbitration.

[48] Whilst the State acknowledges²⁸ that the bargaining and industrial matters in issue between the parties in Queensland Corrective Services are complex, the State submits that it can be *inferred* that a relevant factor that has led to the matter going to arbitration is the issue of the underlying award rates of pay being greater than the certified agreements rates of pay.

[49] The State submits²⁹ that, previously, the combination of flow on which significantly increased some award rates of pay in the public sector, with the State Wage Case process, had not caused any great concern in that it had achieved outcomes that were consistent with the objects of the IR Act. The State submits that this is no longer the case.

[50] The State concludes its submissions³⁰ with respect to the impact on bargaining by the State Wage Case process by stating that the Commission ought to be satisfied considering all the circumstances before it that:

- (a) the objects and purpose of the IR Act are presently met for awards which have received a 'flow on', particularly with respect to the requirements of section 141 and section 142;
- (b) awards which have received a 'flow on' ought not to be increased through the 2019 State Wage Case because:
 - (i) this will create an artificial 'floor' for award rates of pay that are in excess of those required to be maintained by the Commission under the IR Act; and

²⁶ Submissions of the State of Queensland filed 9 September 2019 at [45].

²⁷ *Ibid* [47].

²⁸ *Ibid* [50].

²⁹ *Ibid* [58]-[59].

³⁰ *Ibid* [63].

- (ii) this will exacerbate the present distortion where awards have been the subject of a 'flow on' and act as a disincentive to bargain and reach agreement; and
 - (iii) this will likely lead to further deleterious effects on collective bargaining and making certified agreements, which the IR Act promotes; and
 - (iv) it is unnecessary to do so having regard to the purposes of the IR act
- (c) for awards that have previously had a 'flow on', the State is open to future applications being consented to under s 145(2), to flow on expired certified agreement rates, to provide for award pay rate maintenance.

[51] Finally, the State in its submissions³¹ referred to indicative modelling it had prepared to support its submission as to the impact of a decision which increases all state award rates of pay by 3%. Perhaps not surprisingly, the modelling identifies an increase in the base labour costs to the State as a result of an increase of 3%. It was clarified by Mr Murdoch QC,³² that by putting indicative costs of any increase forward the State was not arguing that there was a capacity to pay issue, should an increase of 3% be awarded with respect to all state awards, but rather, noted that there would be costs associated with such an increase.

[52] Each of the union applicants oppose the State's position with respect to the exclusion of awards containing flow on provisions and filed extensive submissions in reply. In summary, their positions in response include:

- (a) the State's change of position is motivated by the arbitration of the CORE;
- (b) the State's position conflates the arbitration of an agreement with an absence of bargaining;
- (c) the State apports blame for the rates contained in awards reaching those contained in agreements to the 2018 State Wage Case;
- (d) the effect of the State's submission is that the relevant awards, which were a product of the prevailing legislative regime and then confirmed to be 'a minimum safety net of employment conditions that is fair and relevant' under award modernisation are to be treated differently to other awards for the purpose of this general ruling; and
- (e) the fact that the percentage increases of the FWC rulings have begun to outstrip the 2.5% wages policy demonstrates the inadequacy of the current

³¹ Submissions of the State of Queensland filed 9 September 2019 at [64]-[69].

³² T1-31, L14-18.

wages policy and/or is a product of bargaining rather than an outcome of State Wage Cases.

[53] The LGAQ does not specifically address the State's change of position.

Consideration

[54] As noted above, this Full Bench adopts the approach taken in previous State Wage Case decisions. That is, unless there are cogent reasons for not doing so, the Full Bench will follow the ruling of the FWC, with any necessary or desirable modifications, having regard to the particular circumstances of Queensland.

[55] Such an approach is consistent with, and may be adopted against, the Queensland legislative background including with respect to matters the Full Bench must have regard to in exercising its powers pursuant to the IR Act. In this regard, the approach acknowledges that necessary or desirable modification may be made having regard to the particular circumstances of Queensland.

[56] The approach recognises that should cogent reasons be presented to the Full Bench, it may not follow the ruling of the FWC.

[57] We consider cogent reasons to be reasons that are compelling and/or persuasive.

[58] Accordingly, in this matter, it is for the State to present cogent reasons to not follow the FWC ruling insofar as the State wishes to exclude those awards containing 'flow on' provisions.

[59] As noted above, the State identified³³ the relevant "issue" for consideration as being that the State Wage Case is now having the effect of increasing award rates for workers who are already covered by agreements, and whose awards have already been increased through the 'flow on' of agreement rates of pay.

[60] If this is the issue, as identified by the State, the question then arises: why has this become an issue now?

[61] When referring to the 2018 State Wage Case above, reference was had to the State's position that, as at 2018, Queensland's existing awards were made in conformity with the obligations imposed under the repealed IR Act and were, through award modernisation, modernised to continue to provide fair and just employment conditions.

[62] The "issue" (as described by the State) is a consequence of the then prevailing relevant statutory scheme and has been a present component, during past State Wage Cases.

[63] The State's position seems to be premised on the notion that a general ruling in a State Wage Case affecting the QMW and minimum wage rates in awards is an appropriate

³³ Submissions of the State of Queensland filed 9 September 2019 at [16].

vehicle to treat a class of award differently to other awards by denying them the benefit of the general ruling. It appears incongruous with the State's submissions before the 2018 State Wage Case that all existing awards in the State provided for fair and just employment conditions to now, one year later, seek to treat a class of such an award differently. As will be explored below, the reasons presented by the State do not provide a compelling reason to adopt such an approach.

- [64] The difference, the State now argues, is that in the period following the 2018 State Wage Case, evidence has emerged of an impact on collective-bargaining, specifically in relation to the CORE being in arbitration.
- [65] The State invites the Commission to *infer* that a reason that the replacement certified agreements for the CORE have not been able to be made between the parties is because of the effect of the State Wage Case.
- [66] Further, the State submits that, unlike in 2018, there is now evidence to suggest that this process is less likely to result in a certified agreement being made between parties where a 'flow on' has contributed to award rates of pay overtaking certified agreement rates of pay and create a disincentive for bargaining.
- [67] The State invites this Full Bench to conclude that the negotiating parties to the CORE have not been able to reach agreement because of the State Wage Case.
- [68] The State produces no direct evidence or other cogent reason in support of this proposition but, rather, invites the Full Bench to draw an inference based on the fact that the CORE has been referred to arbitration.
- [69] There is no evidence produced by the State that would enable us to conclude that the reason the CORE is in arbitration is because of the State Wage Case decision. There may well be a number of reasons, given the potential complexity of the matters the parties are negotiating, as to why the CORE is in arbitration. In the absence of direct, or otherwise cogent evidence, we are not inclined to draw such an inference.
- [70] The State further relies on the arbitration of certified agreements in support of its position that the presence of a flow on provision presents a disincentive for bargaining. It is noted that the State's submissions primarily pointed to the negotiations (without canvassing the detail of those negotiations) with respect to the CORE and Queensland Corrective Services.
- [71] Again, the State presents no direct or otherwise cogent evidence in support of its position. There is no evidence that the State or other parties have not engaged in the collective-bargaining process following the 2018 State Wage Case. Similarly, there is no evidence that any relevant party has refused to engage in collective-bargaining. Indeed, the material before the Commission indicates that the parties have been engaged in the collective-bargaining process with respect to, at least, the CORE and Queensland Corrective Services. It cannot be said that, because those matters have proceeded to

arbitration, that there has been a failure to collectively bargain. Rather, the matters have proceeded to arbitration because the parties, during the course of the collective-bargaining process, did not reach agreement. We do not accept that there is any evidence to suggest that, since 2018, the parties have not engaged in the collective-bargaining process.

- [72] Further, there is no evidence to suggest that there is presently a disincentive to collectively bargain.
- [73] The State further invites the Full Bench to *infer* that the impact on bargaining will be further exacerbated if award rates of pay continue to overtake certified agreement rates of pay. As noted above, the State has included indicative modelling which depicts the purported increase in labour costs brought about by an increase of 3%. Further modelling is included with respect to *possible* further increases made in future State Wage Cases. Other than identifying that labour costs will increase, the State does not call any additional evidence with respect to the proposed impact of the increase in such costs. As noted above, the State does not raise any capacity to pay arguments.
- [74] Given that there is presently no evidence to support the State's position about the present impact on bargaining let alone how it will be further exacerbated in the future if award rates of pay continue to overtake certified agreements rates of pay, we decline to draw such an inference.
- [75] For the forgoing reasons, we are not satisfied that the State has produced cogent reasons as to why this Full Bench should not follow the FWC ruling with respect to the awards it sought to exclude from the general ruling. We will consider the application for a general ruling in the context that such a ruling will apply to all state modern awards.

General ruling with respect to the QMW and minimum pay rates in modern awards

- [76] As noted above each of the union applicants sought an increase of 3% to the QMW and minimum pay rates in awards. Putting aside the awards it sought to exclude, the State has identified its position as supporting a 3% increase in conformity with the position of the QCU and AWU.
- [77] The LGAQ supports an increase to the QMW and the minimum rates in modern awards but says that increase should be limited to 2.5%.

Submissions of the parties

FWC ruling

- [78] Each of the QCU, Together and the AWU had regard in their submissions to the determination made by the FWC following the Annual Wage Review. Together noted³⁴ that in handing down the decision the FWC observed that:

³⁴ Submissions of Together filed 26 August 2019 at [9].

... The prevailing economic circumstances provide an opportunity to improve the relative living standards of the low-paid, and to enable them to better meet their needs, by awarding a real increase in the NMW and modern award minimum wages. No party identified any data which demonstrated adverse employment or other effects arising from the previous two Review decisions, each of which resulted in real wage increases for NMW and award reliant employees.

- [79] Together also relies³⁵ on the reasoning of the FWC with respect to the effects of the level of the increase decided as follows:

We are satisfied that the level of increase we have decided upon will not lead to any adverse inflationary outcome and nor will it have any measurable negative impact on employment. However, such an increase will mean an improvement in real wages for those employees who are reliant on the NMW and modern award minimum wages and an improvement in their living standards.

Economic Conditions and Outlook

- [80] The LGAQ sets out in its submissions³⁶ that it did not intend to submit detailed submissions on the state economy but notes that the July 2019 CommSec State of the States analysis rated Queensland at number five behind Victoria, New South Wales, Tasmania and ACT in relation to economic performance. It notes that Queensland rates even lower when it comes to unemployment.
- [81] The LGAQ argues³⁷ that the proposed 2.5% increase is well above CPI, provides real wage growth for affected workers, poses less risk for worker employment security and aligns closely with wage increases in those councils relying on enterprise bargaining to establish wage levels. The LGAQ further recognises that the workers most affected by state wage increase 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.
- [82] The LGAQ further submits that the increases proposed by the LGAQ for the local government awards do not pose a significant risk of jeopardising local government financial sustainability and consequent employment security for existing staff in those communities where workers are paid as per the award. Further, the LGAQ submits that the proposed 2.5% increase which exceeds CPI in Queensland provide staff with a real and significant wage increase and ensures a level of wages that is fair and relevant to the living standards in their communities.

Economic Growth

- [83] The QCU noted³⁸ that whilst there is disappointing economic growth nationally, Queensland, leads the mainland states and territories for domestic economic growth.

³⁵ Submissions of Together filed 26 August 2019 at [10].

³⁶ Submissions of LGAQ filed 23 September 2019 at [27].

³⁷ Ibid [10].

³⁸ Submissions of the QCU filed 26 August 2019 page 2.

Gross State Product for Queensland was 3% for 2019 – 20. The Forecast economic growth in Queensland is to 2.75% which exceeds the forecast of 2.25% for the remainder of Australia.

- [84] Together refers³⁹ to the figures contained in the Queensland Budget paper and noted that 2019 – 20, is expected to be the third consecutive year in which Queensland growth will outstrip national economic growth. The AWU refers to similar growth rates.

Inflation

- [85] The QCU noted⁴⁰ that one of the concerns often stated against general wage movement is their inflationary impact. The QCU argues that the current inflationary statistics mean that there is no need for concern that any increase granted is likely to create an inflationary problem. It further argues that the next-to-zero inflationary environment is a product of the wage growth crisis faced by Australia and other OECD nations.
- [86] The QCU includes in its submissions⁴¹ a table of the CPI at June 2019 wherein Brisbane's CPI was 1.7% and the weighted average of the other eight capital cities within Australia was 1.6%. The QCU also refers to Queensland Treasury forecasts of 2% inflation in 2019 – 20 and 2.25% in 2020 – 21.
- [87] The AWU's submissions⁴² noted that the RBA has estimated that inflation is likely to remain subdued across most of the economy, only reaching the targeted 2% to 3% band in 2021.

Unemployment

- [88] The QCU submits that unemployment is an indicator that is traditionally taken into consideration for the purposes of awarding wage increases in various Tribunals. It notes that in previous submissions, the QCU has relied upon literature that would support the notion that moderate wage increases have no negative impact upon employment at an aggregate level. The QCU submits that there is some evidence to suggest that in some circumstances an increased minimum wage increases employment. Moreover, the QCU argues, this proposition had been adopted by the FWC in handing down the AWR.
- [89] The QCU submits⁴³ that the unemployment rate in Queensland has remained remarkably stable over the last decade and the current level of employment does not detract from the awarding of the increase sought.

³⁹ Submissions of Together filed 26 August 2019 at [19] and [21].

⁴⁰ Submissions of the QCU filed 26 August 2019 at page 3.

⁴¹ Ibid.

⁴² Submissions of the AWU filed 26 August 2019 at [40].

⁴³ Submissions of the QCU filed 26 August 2019 at pages 6-7.

- [90] Together referred⁴⁴ to the "exceptionally strong level" of employment growth in 2017 - 18 of 4.1%. However, it noted that despite the strong employment growth, the unemployment rate remained largely unchanged.
- [91] The AWU referred to the seasonally adjusted employment rate in Queensland as having grown 2.3% in the year July 2019, while the unemployment rate at July 2019 was 6.4% (up from 6.1% in July 2018).

Wage movement

- [92] The QCU submits⁴⁵ that wage growth remains undesirably low. The QCU describes a wage growth crisis. It refers to the Wage Price Index ('WPI'), which is a measure of the price of wages and submits that the WPI has steadily declined since 2012, with the WPI remaining below 2.5% in 2019.
- [93] Similarly, Together notes⁴⁶ that Australia has experienced a sustained period of subdued wage growth. It submits that real pay has become de-linked from labour productivity, and the national share of income going to workers has reduced.
- [94] The AWU submits⁴⁷ that the RBA has repeatedly warned of the danger of caps on wages growth, particularly those in the public sector, and has encouraged further increases in wages growth.

The LGAQ submissions

- [95] In supports of its position of a 2.5% increase, the LGAQ submitted that,⁴⁸ given the relatively low number of workers directly affected by the outcomes of this matter, the impact of any state wage decision would have an insignificant effect on national and state economic performance indicators; and no effect of the majority of workers covered by state awards.
- [96] The LGAQ further argued that the quantum of any wage increase potentially has very real and possibly adverse consequences for award reliant councils and their workforces due to the council's inherent capacity to pay (or lack thereof) and the lack of alternative employment opportunities for displaced workers in the communities.
- [97] The LGAQ concedes that it is not able to definitively state that a Council would need to reduce its workforce in the face of a wage increase of a prescribed level as it is the nature of councils to continue to seek alternative means to ensure that workforce redundancies remain the last possible option for the council.

⁴⁴ Submissions of Together filed 26 August 2019 at [27].

⁴⁵ Submissions of the QCU filed 26 August 2019 at page 8.

⁴⁶ Submissions of Together filed 26 August 2019 at [29].

⁴⁷ Submissions of the AWU filed 26 August 2019 at [37].

⁴⁸ Submissions of the LGAQ filed 23 September 2019 at [18].

[98] The union applicants and the State were in agreement that the operative date of any ruling be 1 September. The LGAQ opposed the operative date of 1 September. They submitted that whilst it recognises the recent history of the operative date as being 1 September, it notes that the date usually postdates the handing down of the State Wage Case decision. Given that there has been delay in the hearing of the State Wage Case this year a retrospective backdating of the State Wage Case would require the councils to bear further substantive and administrative costs.

Consideration

[99] Other than the LGAQ, the parties were in conformity with respect to the quantum of the increase to the QMW and the minimum rates of pay in modern awards being 3%.

[100] In its decision in the *State Wage Case 2014* the Commission said:⁴⁹

[12] This Commission has historically attached considerable weight to the National Wage/Annual Wage Review decisions of its federal counterpart, whilst always having regard to the particular economic conditions of the state of Queensland at the time. A significant reason for having regard to the decisions of the federal tribunal (now called the Fair Work Commission) is because the federal commission has the benefit of considerable material about the economic position of Australia. In the federal Annual Wage Review parties present detailed statistical data in relation to the Australian economy and to the economies of the various states and territories. The decision of the Fair Work Commission affects the majority of award reliant employees throughout Australia, including those in Queensland.

[13] Given that this year the unions' claims essentially mirror the increase awarded by the Fair Work Commission and that none of the parties, other than the LGAQ, sought an outcome greatly at variance with that of the Fair Work Commission, the scope of our inquiry has been significantly narrowed. Indeed, the LGAQ submitted that unless there are convincing reasons to depart from the Fair Work Commission' ruling, that ruling should be adopted. The other parties' submissions also made significant mention of the decision of the Fair Work Commission. Having regard to the submissions of the parties in these proceedings, we broadly agree that, unless there are cogent reasons for not doing so, we should follow the ruling of the federal tribunal, with any necessary or desirable modifications, having regard to the particular circumstances of Queensland.

[101] Following this approach, we have had regard to the FWC Annual Wage Review decision and the matters the FWC considered in its reasons. As noted above, the FWC was satisfied that the level of increase would not lead to any adverse inflationary outcome or have a measurable negative impact on unemployment.

[102] The Commission has been greatly assisted by the submissions of the parties with respect to the relevant economic conditions and outlook in the state of Queensland. The parties have not identified any basis upon which the economic conditions or outlook warrant a separate finding for Queensland.

⁴⁹ *Application for Declaration of General Ruling (State Wage Case 2014)* [2014] QIRC 129, [12] and [13].

- [103] Whilst there is some variation in Queensland compared to the national level, in respect of unemployment and inflation, the variance is not of such a degree so as to impact upon, or vary, the quantum of the increase sought by the unions and agreed to by the State.
- [104] We note in particular, that whilst the unemployment rate remains comparatively high, the inflation rate remains below the RBA target rate. Wage growth in Queensland, and nationally, remains low. Having regard to the particular economic conditions and outlook in Queensland, we have determined that there are sound reasons to adopt the ruling of the FWC such that there will be an increase of 3% to the QMW and to minimum rates in awards.
- [105] All parties, other than the LGAQ, agree that the general ruling should be operative from 1 September 2019. The LGAQ argues that there will be substantive and administrative costs arising from the retrospective operation of the general ruling.
- [106] It is noted that, historically, the State Wage Case is heard before 1 September each year and the decision takes affect from 1 September. This provides all interested parties with some certainty with respect to the timing of the operation of State Wage Case decisions from year to year.
- [107] For reasons outside the control of the parties and the Commission, the State Wage Case was not heard until after 1 September this year. It is expected that in 2020, the State Wage Case will be heard prior to 1 September.
- [108] It is acknowledged that there may be substantive and administrative costs associated with an operative date of 1 September 2019, however, we have determined the general ruling will operate from 1 September 2019 having regard to the consent positions of the union applicants and the State, and in the interests of ensuring consistency and certainty with respect to the operative periods of each respective State Wage Case.

Decision

- [109] Our decision is that:
- (a) The wages or salaries for full-time adult employees in all modern awards shall be increased by 3% from 1 September 2019.
 - (b) The wage rates of full-time junior employees shall be increased by applying the percentage in the wage rates clause applicable to the junior employee concerned to the wage rate payable to an equivalent full-time adult employee under the applicable award.
 - (c) The wage rates of part-time and casual employees shall be increased in the manner prescribed in each award or, if no manner is prescribed, on a *pro rata* basis appropriate to the increase in the wage rate payable to an equivalent full-time adult employee under the applicable award.

- (d) The wage rates in the *Training Wage Award – State 2012* and Schedule 8 of the *Parents and Citizens Associations Award – State 2016* shall be increased by the Registrar in accordance with past practice based on a 3% increase at the C10 level in the *Building, Engineering and Maintenance Services Employees (Queensland Government) Award – State 2016*.
- (e) The unit or per piece rate for a pieceworker shall be increased by 3%.
- (f) Monetary allowances (other than expense related allowances) in all modern awards that relate to work or to conditions, which have not changed, are to be increased by 3%.
- (g) The minimum wage rate per week for all full-time employees in Queensland, the Queensland Minimum Wage, is \$775.60 per week. (Note: The term "employee" is defined in section 8 of the IR Act).

[110] A Declaration of General Ruling giving effect to this decision will be issued concurrently with this Decision.