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BEFORE THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

APPL 1 of 2018

BETWEEN

COMMISSION'S OWN MOTION

Applicant

v

(NOT APPLICABLE)

Respondent

2018 STATE WAGE ORDER PURSUANT TO SECTION 50A OF THE ACT

(PART HEARD)

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON WEDNESDAY, 6 JUNE 2018, AT 1:29 PM

Continued from 23 May 2018

COMMISSION IN COURT SESSION

CHIEF COMMISSIONER P E SCOTT
SENIOR COMMISSIONER S J KENNER
COMMISSIONER T EMMANUEL
COMMISSIONER D J MATTHEWS

MR B ENTREKIN appeared on behalf of the Honourable Minister for Commerce and Industrial Relations

MR K BLACK appeared on behalf of the Chamber of Commerce and Industry of Western Australia (Inc)

DR T DYMOND appeared on behalf of UnionsWA

MR C TWOMEY appeared on behalf of the WA Council of Social Service

SCOTT CC: Good afternoon. Please sit down.

Now, Mr Entrekin, you continue to appear for the Minister?

ENTREKIN, MR: I do, Chief Commissioner.

SCOTT CC: Thank you.

And Mr Black for CCIWA?

BLACK, MR: Yes, Chief Commissioner.

SCOTT CC: And Dr Dymond for UnionsWA?

DYMOND, DR: I do, Commissioner.

SCOTT CC: Thank you.

And Mr Twomey for WACOSS?

TWOMEY, MR: I do.

SCOTT CC: Yes.

TWOMEY, MR: Thank you.

SCOTT CC: Now, our purpose here this afternoon is twofold. Firstly, to address the Annual Wage Review decision of the Fair Work Commission issued on 1 June, and secondly, to deal with the issue of the Statement of Principles and those matters that were raised, particularly by you, Mr Entrekin, at our previous hearing.

So perhaps we can hear from you firstly, Mr Entrekin?

ENTREKIN, MR: Certainly. Thank you, Chief Commissioner.

So the Fair Work Commission has determined that minimum and award wages in the national jurisdiction will be increased by 3.5 per cent from 1 July. The Fair Work Commission's decision in the Annual Wage Review was based on a range of economic, social and collective bargaining considerations. The Minister notes that the Fair Work Commission's decision was influenced by a number of key business indicators at the national level that were fairly robust, including strong employment growth, increased rates of business confidence and profitability, lower unemployment and falling real unit labour cost.

Following the National Annual Wage Review, the Minister reiterates support for a \$19.20 per week increase in the State Minimum Wage and the State Award Wages. The Minister's proposed adjustment represents a smaller increase to the State Minimum Wage and Award Wages than what has been determined in the national jurisdiction. And the Minister's position is therefore fairly modest in the circumstances.

The Minister's position would also contribute to a further narrowing of the gap between the fulltime adult minimum wage for State employees and employees in the national jurisdiction. A \$19.20 per week increase in the State Minimum Wage would be \$5.10 less than the \$24.30 per week increase determined for the National Minimum Wage. This would result in the State Minimum Wage being only \$8.90 per week above the National Minimum Wage.

The outcome would be different in award rates of pay above the minimum, as the Minister's advocating a flat dollar increase, which amounts to a lower percentage for higher work award classifications. Importantly, however, the Minister's proposed increase would still provide a real wage increase for low-paid workers, helping to maintain a framework of fair wages and conditions of employment.

The Minister's position in the State Wage Case therefore represents a meaningful and sustainable approach which would contribute to improved living standards for workers, while also taking into account prevailing local conditions. For these reasons, the Annual Wage Review decision does not give rise to a change in the Minister's position in these proceedings.

I'll now talk to the Statement of Principles, if that's acceptable?

SCOTT CC: Thank you.

ENTREKIN, MR: In relation to the Statement of Principles, the Minister was able to have some productive discussions with the Section 50 parties and has provided a proposed update to the Statement of Principles as a result. While the Minister will let the other parties speak to the proposed updates, the Minister understands there is general support for the changes being advocated.

The Section 50 parties were in agreement that Principles 8.1 and 8.2 can be deleted as they are unnecessary. As mentioned previously, the deletions of Principles 8.1 and 8.2 will not remove the ability of parties to conduct the minimum rates adjustment process which continues to be available as specifically mentioned in Principle 4.2. The Section 50 parties also agree that Principle 8.3 can be deleted as that is also unnecessary given the State Wage Session is mentioned elsewhere in the State Wage Order.

If Principle 8 is deleted in its entirety there are several other minor consequential amendments that need to be made to other Principles. The Minister's proposed update to the Statement of Principles - that means Principle 3.1.1 to include reference to specific - to that specific part of Principle 4 that references previous State Wage increases. That is, that it references preference 4.1

What is currently Principle 3.1.5 has then been renumbered 3.1.2 and provides that wages can be adjusted to reflect total minimum rates pursuant to Principle 4.2 which deals with the minimum rates adjustment process. The rest of Principle 3 is then renumbered accordingly. The proposed changes to Principle 3 ensure that the references to other Principles are displayed in a logical order and that any references to Principle 8 are removed.

A minor adjustment to Principle 6.3 is also proposed by the Minister again just to remove the reference to Principle 8. The Minister proposes that Principle 8 itself simply be deleted but for simplicity the clause numbering of subsequent Principles hasn't been altered. The Minister has proposed a variety of amendments to Principle 9 to encapsulate the fact that the minimum adult award wage, which is the same as the adult minimum wage for the purposes of the Minimum Conditions of Employment Act, is based on a 38-hour week.

As the State system currently has a range of different hours' provisions for fulltime employees in awards, including several awards that have more than 40-hour weeks, the Minister has included some provisions outlining how the minimum adult award wage is prorated for fulltime employees working under awards that provide for other than a 38-hour week.

Similarly, the Minister has proposed some updated wording in regards to adult apprentices. To clarify, the adult apprentice wage is based on a 38-hour week and is prorated for fulltime employees - fulltime apprentices working under awards that provide for other than a 38-hour week. An additional paragraph has also been included clarifying that an adult apprentice working part-time is not to be paid less than pro rata the minimum adult apprentice wage according to the hours worked. At present the existing clause doesn't include any guidance on how the minimum adult apprentice wage applies for part-time employees.

In regard to junior employees, some additional wording has been added to clarify that no junior employee shall be paid less than any applicable minimum rate of pay prescribed by the Minimum Conditions of Employment Act. The Section 50 parties also agreed to a minor change - - -

SCOTT CC: Sorry, can you just - are you referring to the document you forwarded to my Associate earlier this morning?

ENTREKIN, MR: Yes, I am - - -

SCOTT CC: Yes.

ENTREKIN, MR: - - - Chief Commissioner.

SCOTT CC: I've got the adult apprentices. I see, yes. Thank you. I found what you're referring to, about the juniors.

ENTREKIN, MR: Sure.

SCOTT CC: Thank you.

ENTREKIN, MR: No problem.

The Section 50 parties also agreed to a minor change to Principle 9 to replace the reference to job skill placements just with a generic reference to government-approved work placement programs. The Minister's confirmed with the Commonwealth Department of Education and Training that the job skill program is no longer in place.

However, a generic reference to government-approved work placement programs would capture any similar Commonwealth programs operating from time to time, whatever they might be called. The Minister submits that the proposed changes to the Statement of Principles would help to ensure that they remain contemporary. It would remove several Principles that are obsolete and would ensure that the minimum adult award wage clause more accurately reflects the different hours, provisions in awards and is consistent with the application of the Minimum Conditions of Employment Act.

The Minister notes that updating the Statement of Principles will not in itself alter the wage rates listed in awards that are below the statutory minimum determined under the Minimum Conditions of Employment Act. The Minister notes that a separate exercise would still need to be undertaken to bring those rates of pay up to the statutory minimum.

The Minister has conducted further research and has identified 33 awards that appear to have rates of pay that are below the statutory minimum. However, the Minister hasn't had a chance to validate this information so it is possible there could be several more awards that are affected. In the majority of these awards the rates of pay that are below the statutory minimum are junior wages and the difference occurs because the award provides a formula for determining junior wages that is not sufficient to bring them up to the statutory minimum rate for the age level.

In almost all cases these provisions would predate the introduction of the Minimum Conditions of Employment Act in 1993. The Minister notes that in practice many of these junior rates would rarely, if ever, be used, as generally speaking students cannot leave school nowadays unless they are undertaking an approved form of education or training.

Some of the awards also cover industries that have largely ceased to exist or would be almost entirely covered by the national industrial relations system. A handful of awards that provide for a 40-hour week contain wage rates that are now marginally below the statutory minimum as a result of recent State Wage Orders applying an increase based on a 38-hour week to a 40-hour week award. In several other awards there are junior rates that are slightly below the statutory minimum due to different rounding methodologies used in the State Wage Case and under the Minimum Conditions of Employment Act.

In the State Wage Case rates of pay are rounded to the nearest 10 cents, whereas under section 13 of the Minimum Conditions of Employment Act wage rates for employees under 21 years of age are a prescribed percentage of the adult minimum wage rounded up to the next 10 cents. That can lead to a minor variation in the wage rates.

Several other 38-hour week awards contain adult wage rates that are below the statutory minimum, in particular several of the Engine Drivers' awards in the mining industry. In this regard the Minister notes that the mining industry operates almost entirely in the national industrial relations jurisdiction and it would also be extremely unlikely that somebody working in the mining industry would be in receipt of a rate of pay below the statutory minimum wage.

The Minister is happy to participate in a general order or other suitable process to help rectify those rates of pay that are below the statutory minimum. With the assistance of the Registry staff this should be a relatively simple process as it was previously done in 2008 and involves only a few dozen awards.

In relation to the Commission's suggestion that this could perhaps be done in conjunction with the process to collapse the base rate supplementary payments, arbitrated safety net adjustments and other associated payments into total minimum rates, the Minister has investigated this issue further and has identified at least 164 State Awards that don't have total minimum rates. This includes the vast majority of State Wages Awards including those in the public and private sector.

Many of the awards that don't have total minimum rates have very complicated wages clauses and the Minister suggests it would be a fairly significant body of work to combine all of the wages components into total rates in those 164 awards. For example, some awards got halfway through the minimum rates adjustment process but then never completed it. Other awards contained wages clauses that require the parties to report back to the Commission at some stage in the early 1990s to finalise award restructuring and it's not known if this occurred or what the outcome was.

Some awards contain supplementary payments in separate clauses to the minimum rates of pay and in other awards the junior wages are calculated as a percentage of minimum adult rates excluding the supplementary payments. So each one of the 164 awards would therefore have to be examined in great detail to determine total minimum rates. The Minister suggests that this is a much larger exercise that may not be simple to undertake and is perhaps best left until after the Ministerial Review has been completed.

In regard to equal remuneration, the Minister is happy to participate in the development of an Equal Remuneration Principle with the other Section 50 parties outside of the State Wage Case process and will provide whatever assistance is needed to achieve the same.

If it pleases the Commission in Court Session, that concludes the Minister's submission.

SCOTT CC: Thank you, Mr Entrekin.

Mr Black?

BLACK, MR: If the Commission pleases.

Today we are firstly considering the decision of the Expert Panel, the Fair Work Commission in the 2017/18 Annual Wage Review. The Fair Work Commission has handed down the decision to increase National Minimum Wage and Award Minimum Wage by 3.5 per cent payable from 1 July. This increase means a cumulative increase to the National Minimum Wage since the 2013/14 decision has been 15.6 per cent compared to that of CPI of 9.5 per cent.

This year's increase is a substantial one by any measure but particularly as it will apply to national system employers in WA, many of whom are small to medium-size businesses. CCIWA's submission to this year's Annual Wage Review urged the Expert Panel to consider the state of the WA economy, the fact that WA has yet to recover from the post-resources investment boom, the state of the WA labour market and the continuing challenges facing WA business.

It is incumbent upon the Fair Work Commission to make its determinations in a purely national context, however, as we know, the national economy is a composite of individual State and Territory economies, each with their own inherently different structural and geographic characteristics, industry and market sectors, labour market conditions and demographic characteristics that lead to significant variations in economic performance between the States and Territories at various stages of the economic cycle.

WA is lagging the remainder of the country on many important economic and labour market indicators. New South Wales and Victoria are experiencing robust economic performance at present courtesy of significant infrastructure projects. WA represents 14 per cent of the nation's total Gross State Product. New South Wales and Victoria, by the very size of their economic contribution of over 50 per cent of the combined Gross State Product and with almost 60 per cent of the national workforce, will appear front and centre in national considerations.

The national context in which the Annual Wage Review decision is made represents the aggregation of State and Territory economic and labour market performances and this aggregation disguises the various distortions and anomalies. This is an inescapable fact given the requirement of the Fair Work Commission to consider the national context.

In making its decision, the Fair Work Commission cited key changes to the economic indicators that pointed to a healthy national economy. Firstly, it reflected on strong employment growth, particularly employment growth at 3.1 per cent. That was significantly higher than the 1 per cent growth the previous year. This is not the case in WA. Fulltime employment in WA fell by 1.4 per cent over the year to April 2018 compared with an increase of 2.9 per cent the previous year.

Secondly, it reflected on an increase in total hours worked of 3.3 per cent over the year to April 2018 compared with 1.8 per cent the year earlier. This is not the case in WA. Monthly working hours remained flat over the last year and over the last five years have declined by 2.3 per cent. Thirdly, it noted strong contributions to GDP growth from non-mining business investment and household consumption. This is not the case in WA. Gross State Product fell by 7.2 per cent in 2016/17.

State Final Demand, the domestic economy, fell by 7.2 per cent in 2016/17 and is forecast in negative again in 2017/18 and 2018/19 by minus 0.25 per cent, however, the national accounts released today show that WA State Final Demand fell by 1.1 per cent in March Quarter and this fall was driven by reduced private capital investment. Business investment fell 28.5 per cent in 2016/17 and is forecast to fall by 7 per cent in 2017/18 and 14 per cent in 2018/19 and business investment is the main driver of jobs growth as was confirmed by the witness Mr Christmas on 23 May. Household consumption remains subdued.

Fourthly, the Commission cited business conditions as being generally robust. This is not the case in WA. Business trading conditions remain difficult. Retail sales have remained flat since August 2015 at around \$2.83 billion per quarter. Monthly average retail turnover in 2016 was \$2.83 billion and monthly average retail turnover in 2018 is \$2.83 billion. As previously submitted, the WA share of business-related bankruptcies has been increasing at an alarming rate, doubling from the level of 2012.

Fifthly, the Fair Work Commission cited declining unemployment and underemployment rates over the past year to April 2018. This is not the case in WA. WA's unemployment rate was 6.2 per cent through 2016/17 and the current unemployment rate is 6.05 per cent. Unemployment peaked at 6.9 per cent in March 2018. WA's underemployment rate was 9.5 per cent in April 2018, up from 9.2 per cent in March, and is back to the level it was in July of 2017. WA's underutilisation rate is 16 per cent, back to the level it was in April 2017. And WA continues to have significant spare capacity in the labour market.

Sixthly, the Fair Work Commission noted over the year to April 2018 the youth unemployment rate fell 0.3 percentage points to 12.6. This is not the case in WA. Youth unemployment reached a 22-year high in March 18, 17.1 per cent, and the youth unemployment over the last three months is an average of 16.6. Finally, the Panel concluded that the position at the time of the 2016/17 review, the economic indicators now point more equivocally to a national economy - sorry, a healthy national economy and labour market. This is not the case in WA. At paragraph 104 of its decision, the Panel stated that:

“To grant an increase the size as proposed by the ACTU” -

- a proposal replicated in this case by the UnionsWA -

- “Is likely to run a substantial risk of adverse employment effects, particularly reducing employment opportunities for low skilled workers including many young persons who are looking for work.”

With WA's high unemployment rate and record levels of youth unemployment, this is an even greater risk. At paragraph 11 of the summary of decision, the Fair Work Commission addresses the notion of fairness, as we have submitted in our primary submission and again before this Commission on 23 May. Referring to the requirements of the Fair Work Act:

“For the Commission to consider fair and relevant minimum safety net terms and conditions, the Panel confirmed the view that it expressed in the 2016/17 Review decision that fairness in this context is to be assessed from the perspective of the employees and the employers affected by the decision. These provisions are similar to those under the Industrial Relations Act.”

Well, this Commission in Court is required to consider the effects on the economy. It does so in the narrower context of WA-specific economic and labour market conditions and the likely effects of those decisions on the WA economy.

It is for that reason the CCIWA would submit that in the Commission's deliberations for this year's State Wage Order, the decision of the Fair Work Commission should be of little - limited influence. It is the specific considerations of the WA economy and labour market that are significant. The WA economy is not expected to approach recovery until 2019/20.

Importantly, the considerations by the Fair Work Commission and this Commission relate to two entirely different cohorts. The Fair Work Commission encompasses the range of incorporated businesses from small to medium to large that fall within the national system. This includes Australia's largest corporations and most profitable businesses that reside on the ASX through to small incorporated businesses all around the country.

In the context of the WA economy, a substantial increase handed by the Fair Work Commission decision will be hardest felt by those small and medium businesses falling under the national system in WA. The State Wage Order, on the other hand, encompasses small unincorporated private sector businesses within the jurisdiction of the State system.

As we have previously submitted, WA's challenge is to reduce the spare capacity in the labour market, to create job opportunities to reduce unemployment, particularly the unacceptably high level of youth unemployment, and to increase working hours to reduce underemployment. It is only with a reduction in the spare capacity that wage growth will occur.

The Reserve Bank has indicated this imperative on many occasions and the central importance of jobs growth. Creating opportunities to reduce spare capacity will impact wage growth. It is anomalous to consider it in reverse order. To do so would be to simply close out opportunities both for jobs and increased working hours. It would also add further stress to small business. Further, if household consumption is to be increased then this is best achieved by adding more consumers to the market. This will only come from the increased employment.

We say that the current economic conditions clearly inform the Commission that a large increase cannot be contemplated. We again submit that our recommended increase is responsible and sustainable in the current economic and business environment WA, with a domestic economy that will remain at best flat in the coming year and where business investment, the creator of jobs, will continue to fall. Importantly, we can only consider the economic conditions as they currently are, not as we expect or project them to be. Confidence is emerging and that confidence must be cautiously guided to fruition.

The relevant context for consideration is that cohort of small unincorporated businesses falling with the State system. They are businesses that have been hardest hit over the last four years and will be required to fund any awarded increase. They are the businesses, as we have submitted, that do not have the capacity to absorb costs, compress margins or reduce profit. Importantly, for the benefit of the economy they must be afforded the opportunity to recover, build their businesses and generate the necessary opportunities for the reduction in spare capacity.

To do so, any increase awarded must be sustainable for those small businesses who are required to fund them. We again urge the Commission to award an increase in the State Minimum Wage and award minimum wages of no more than 1.2 per cent.

With respect to the Principles as mentioned by the Minister, CCIWA, together with the other Section 50 parties, have met and discussed the Principles and other matters raised by the Minister for this Commission on 23 May. Referring to the draft forwarded to the Commission of those amendments to the Principles, CCIWA agrees with the amendments to the Principle 3 as proposed by the Minister. With respect to Principle 6, CCIWA agrees with the proposed amendment to 6.3. With respect to Principle 8, CCIWA agrees that Principle 8 can be deleted in its entirety.

With respect to Principle 9, firstly, CCIWA acknowledges the issues identified by the Minister with respect to minimum award wages and applicable junior and award wages that are below the Minimum Conditions of Employment Act. We also acknowledge the issue of awards that express ordinary weekly hours greater than 38 hours and the applicable rates of pay under those awards. These issues reflect the outdated state of awards and the fact that they have not been attended to over time.

Whilst CCI acknowledges that these matters require a correction, we would express our concern with the practical application of those proposed changes to Principle 9 and the potential implications and impacts that would arise from subsequent award amendments to reflect that correction. These concerns relate to cost impacts from award rate changes and the practical effects that may affect a business as a result of an instantaneous correction to award provisions. The separate process indicated by the Minister, I believe, is an opportunity where those concerns may be well and truly addressed.

With respect to equal remuneration - - -

SCOTT CC: Can I just take you - - -

BLACK, MR: Yes.

SCOTT CC: - - - back to the minimum - to Principle 9, though - are you distinguishing between amending the Principle and amending the awards?

BLACK, MR: Correct.

SCOTT CC: Yes.

BLACK, MR: Yes.

SCOTT CC: So you're happy with the Principle to be amended?

BLACK, MR: Indeed.

SCOTT CC: Yes. Thank you.

BLACK, MR: It's the application of the correction into the awards that I think needs to be thoroughly examined for impact and cost.

SCOTT CC: Yes.

BLACK, MR: Yes.

SCOTT CC: Thank you. All right.

BLACK, MR: With respect to equal remuneration, as the Minister mentioned at this hearing on 23 May, the proposition that Section 50 parties work together to develop a Principle by consent, CCI supports that in that establishing a Principle by consent is in our view the way to proceed forward to achieve an outcome that all the parties can work towards.

SCOTT CC: This is in relation to equal remuneration?

BLACK, MR: Correct, Commissioner. May it please the Commission.

SCOTT CC: Thank you, Mr Black.

Dr Dymond?

DYMOND, DR: May it please Commission in Court Session.

UnionsWA's position on the State Minimum Wage remains unchanged as a result of the Fair Work Panel decision for an increase of 3.5 per cent. We continue to request an increase to award wages and a statutory minimum wage by \$50 per week or 6.2 per cent, whichever is greater. And so for our claim this should mean that lower award rates to C10, C14 to C10 would be increased by \$50 and the higher rates from C19 upwards would be 6.2 per cent.

There are some aspects of the national decision that UnionsWA would like to highlight that we think are relevant to the State Wage Case's statutory considerations. UnionsWA, as does the ACTU, certainly welcomes a rise in wages, in a situation where the Fair Work Panel itself noted in paragraph 84 of its statement that:

"The real value of the National Minimum Wage has increased by about 5.8 per cent over the last decade and by 4.3 per cent over the last five years. However, this has not resulted in improvements to the actual relative living standards for many categories of National Minimum Wage and award-reliant households due to changes in the tax transfer system."

And it's with that in mind that UnionsWA is looking, like the ACTU, for minimum wage increases that act to restore a living wage, which we're looking at as 60 per cent of median wage, to ensure that fulltime workers in Western Australia, and in Australia as a whole of course, can survive. Now, at the moment it remains the case that low-wage earners continue to struggle to make ends meet in terms of their living costs and this situation is establishing an underclass of working poor.

And this is as the Panel points out - the Fair Work Panel, I should say, points out in paragraph 32 of its decision:

“The assessment of the needs of the low-paid requires an examination of the extent to which low-paid workers are able to purchase the essentials for a decent standard of living and to engage in community life as assessed in the context of contemporary norms.”

The Panel goes on to say in its paragraph 104 that:

“We accept that if the low-paid are forced to live in poverty then their needs are not being met and that those in fulltime employment can reasonably expect a standard of living that exceeds poverty levels.”

So UnionsWA maintains that the Panel has also missed an opportunity to actively assist business and to boost employment via a substantial minimum wage increase, and we refer you to the information on the stimulatory effects of a minimum wage increase that we referred to in our initial submission.

We'd also make the point that certainly the Fair Work Commission considers the national situation as opposed to simply a State situation, but of course the national situation, as has been said before is made up of States, and that within mind the Commission certainly shouldn't assume that the Panel has paid no consideration to the economic situation here in Western Australia.

The Panel itself also refers to claims in its previous decisions would have calamitous effects on employment. That's paragraph 81, that:

“No party was able to identify any economic indicator which demonstrated any discernible detriment arising from last year's decision.”

And goes on to say in the following paragraph that:

“We note that employment continued to grow strongly, and the economy generally, and it also grew in three of the four most award-reliant industries, and the increase did not lead to inflationary pressure.”

Given that Australia as a whole and Western Australia still has low wage growth across the board and is still combined nevertheless with strong profit numbers, we argue that there was far more scope for the Panel to increase minimum wage, but looking at the national consideration where it overlaps with some of the considerations for the State Wage Order arising from Section 50A(3) of the Act ensuring that Western Australians have a system of fair wages and conditions, the Panel points out in its paragraph 367 that:

“The minimum wage bite increased by about 0.8 points, but it nevertheless remains the case that a number of household types with single earner and children remained below the relative poverty line of 60 per cent of minimum income at both the National Minimum Wage.”

Once again we argue that given this situation the Panel should have prompted a larger national wage increase closer to that of the ACTUs claim because, as they point out in their own paragraph 89:

“Inequality of household income remains high in Australia relative to the past and in other comparable countries.”

To that end, the State Commission’s need - requirements to meet the needs of the low-paid, the Fair Work Panel’s decision, paragraph 276 says that:

“We remain of the view that low wage workers whose wages are likely to be affected by the National Minimum Wage or modern award wages are disproportionately located in the lower deciles of equivalised household disposable income.”

And this is similar to the position that UnionsWA’s initial submissions, paragraph 4.9, which also made the point that the WA Commission should:

“Reject all submissions which contend that the minimum wage workers do not need a substantial pay increase because their living arrangements may be in a household with higher income earners.”

With regard to the Industrial Relations Act, consideration 3, the need to provide fair wage standards in the context of living standards generally prevailing in the community, the Panel’s decision, paragraph 359, states that:

“Changes in the levels of financial stress and deprivation reported by low-paid households over time, both in absolute terms and relative to other households, is a way of assisting by which in its assessment that the extent to which the needs of the low-paid are being met and that minimum wages are fair.”

And while there has been - this is me again, sorry - while there has been some recent improvement in the proportion of households experiencing financial stress or deprivation, the Panel nevertheless points out that - in its paragraph 362, that:

“For low-paid households, their gains were either small, or in the case of two out of six indicators, the levels of deprivation rose.”

And they go on to mention points about, sort of, being able to afford meals, being able to afford second-hand clothes, et cetera, et cetera. Therefore, the consideration for the State Commission that their decision contribute to improved living standards for the employees, the Fair Work Panel remarked in its 360 - in its paragraph 366:

“Having regard to those directly affected, the panel’s decision is significant to the needs of the low-paid and their relative living standards, since workers who receive the National Minimum Wage or modern award minimum wage are disproportionately located in the lower deciles of employee household disposable income.”

However, the Panel did not draw, in our view, the right conclusion, that it should not preside over a minimum wage adjustments that merely tread water on the minimum wage as in the minimum wage compared to average weekly earnings. And we would argue that just as the WA Commission has led with maintaining a higher State than National Minimum Wage, it has taken account, at least historically, of higher costs of living in WA, so it should take the lead in reversing the erosion of relative living standards for the low paid. And therefore that should be what plays the part in maintaining a fair system of wages and conditions in Western Australia.

On the point for the State Commission of protecting employees who may be unable to reach an industrial agreement, in its paragraph 409, the panel observes that:

“Given the complexity of factors which may contribute to decision-making about whether or not to bargain, it’s difficult to predict the precise impact of minimum wage decisions.”

However, they were also of the view that it is likely that the increase they have determined in this review will impact on different sectors in different ways and will not in aggregate discourage collective bargaining. The Industrial Relations Act, of course, asks the WA Commission to protect employees who are unable to undertake this process. Now - - -

SCOTT CC: Ours doesn’t actually require us to promote bargaining in the way that the Fair Work Act does. It’s rather protecting those who can’t.

DYMOND, DR: Yes, indeed.

SCOTT CC: Yes.

DYMOND, DR: No, that’s an absolutely fair point, Commissioner.

And one of the points I was going to make here is in the most recent Monetary Policy Decision by the Reserve Bank Governor, the one that came out yesterday, the Governor pointed out that while, of course, there are various forward-looking indicators that indicate solid growth and employment for the period ahead, wages growth has remained low and indeed at best it has troughed, and this is despite reports that some employers are finding it more difficult to hire workers with the necessary skills.

So our point would be that I guess that - or rather, it reinforces the point made by UnionsWA in its initial submission, paragraph 5.16, namely that without minimum wage increases, there will be very little pressure for wage growth at the moment in Australia, and certainly in Western Australia. And so in the sense that protecting people who are unable to bargain, we’d argue that that illustrates the point that is necessary.

SCOTT CC: Further, I would have thought that given the lack of bargaining in the small business private sector, the fact that it’s almost nil would indicate that almost all employees in the State system at the minimum wage level are likely to not be subject to enterprise bargaining.

DYMOND, DR: That would be a fair assessment, I think.

Moving right along, the point about encouraging ongoing skills development, in its paragraph 204 and 205 of its decision, the Panel refers, in fact, to its decision the previous year about the impact of its increase on apprenticeships and trainees referring to a research report called helpfully, "Factors Affecting Apprenticeships and Trainees", published in February 2007, which concluded that the decline in government subsidies clearly contributed to the decline in apprenticeship commencements rates, while the decision made by the Full Bench in the 2013 Modern Awards Review, apprentices, decision to increase apprentice wages, it may have played a role but that effect appears to be minor.

And the Panel concluded from the research that sort of although both the removal of government subsidies and the apprentices decision contributed to a decline in commencement rates, the apprentices decision had only a minor effect. The latter conclusion was supported by the occurrence of overall repayments to apprentices and the lack of uniformity in commencement trends across industries. And to that end, UnionsWA would reiterate the points made in our initial submission, paragraphs 9.7 and 9.8, namely, the conclusion of the National Council for Vocational Education and Research Report that we cite, which says that:

"When apprentice productivity is measured against the wage paid to the apprentice, the relationship is shown to be very close. This results in employer's costs for wages effectively being neutralised by apprentice productivity."

So moving along to number 7 in the State - - -

SCOTT CC: Can I just take - take you back one step?

DYMOND, DR: Yes. Sorry.

SCOTT CC: It's my understanding that there have been real increases in costs for trainees and - and vocational training users arising in the State training system over the last 18 months that would affect, one would suggest, the - it might act as an impediment to people getting into training.

DYMOND, DR: That could certainly be the case, Commissioner. I mean, I think in previous wage cases, we have certainly cited increases in fees, increases in charges, certainly with regards to the TAFE system - - -

SCOTT CC: Yes.

DYMOND, DR: - - - and the vocational education and training system. To the extent that that interacts with the existing research that's been done both for Fair Work Commission decisions and of course generally in the apprentices system, to show that while of course apprentices and trainees can reasonably expect employment, sort of higher wages by virtue of their qualifications down the track, it simply remains the case that you need to stay in training now and you need to stay in training in the existing point in order to ensure that the payoff, if you like, occurs in a number of years' time.

And with that point - from that point of view, of course, we ask the Panel to bear in mind that while the - sort of the image of the apprentice and trainees is of a - sort of a young person, it is also the case that older people are also entering or re-entering the training system at any given time, and they conceivably have larger costs to do with supporting family, supporting sort of housing, et cetera, et cetera.

So moving along, if I may, to the consideration to provide equal remuneration for men and women for work of equal and comparable value. In its paragraph 97, the Panel says that:

“The gender pay gap is a factor in favour of an increase in minimum wages.”

And the Panel goes on to point out in its paragraph 436 that:

“Women are disproportionately represented among the low paid and hence an increase in minimum wages is likely to promote gender pay equity.”

Increases in minimum wages, particularly adjustments that might exceed increases evident through bargaining are likely to have a beneficial impact and this is so because of the dispersion of women within award classification structures and the greater propensity for women to be paid award rates.

So from that point of view UnionsWA ask the WA Commission to bear in mind, when considering the structure of the UnionsWA claim which, once again, by \$50 a week or by 6.2 per cent whichever is greater. Namely that it balances, in our view, delivering the largest proportionate increase of the low-paid while preserving the existing skills-based relativities within award classifications.

Moving along to considerations around the state of the economy in WA, particularly - in particular of levels of employment, inflation and productivity in Western Australia. The Fair Work Commission panel, of course, stated in paragraph 80 that they remained of the view that modest and regular minimum wage increases do not result in disemployment effects or inhibit workforce participation.

And notwithstanding their criticisms of the ACTU claim we would simply point out - reiterate the point that we made in our submission that - and, of course, that the Fair Work Commission responded to as well, that previous warnings about the potentially dangerous impacts of employment of raising the minimum wage by too much, there is precious little evidence that those sorts of impacts have come to pass.

SCOTT CC: It's a question of what is too much, and that still remains the case.

DYMOND, DR: That is indeed the case. We would also, I guess, on that point refer, as we often have, to a general broader point that we're making about the size of the minimum wage in that it needs to play its part in redressing overall inequality as well as sort of simply providing an increase to the low-paid. We obviously support the concept of having a real increase to the low-paid but it should be a substantial improvement rather than simply ticking over to a minor improvement from our perspective.

From that point of view the Panel goes on in its - the Panel - the Fair Work Commission Panel in its paragraph 82 points out that its proposed increase from last year, as said previously, did not lead to any inflationary pressure. And in its paragraph 122 the Panel points out that increases to minimum wages are more likely to stimulate productivity measures, as by some employers that are directly affected by minimum wage increases rather than be an inhibition to productivity.

UnionsWA, from that point of view, reiterates the point that's been made previously that short-term increases in productivity, labour productivity in the service sector are hard to measure. And this is best done - this is best measured, sort of, at the larger level over the long term. With that in mind, turning to the extent that it is relevant, the state of the national economy which is a consideration, of course, for the State Commission, the Panel states in its paragraph 69 that:

“Business conditions remain positive. Profits grew by 4.3 per cent in 2017 and 5.8 per cent in the non-mining sector.”

And which, of course, means that the profit share of total factor income has remained at its highest level since 2013. The business bankruptcy rate, of course, has been mentioned. The business bankruptcy rate at the national level, of course, has remained stable. And business survival rates are at their highest for at least a decade. And overall business conditions, once again the Panel is saying, are at their highest level since the Global Financial Crisis.

In UnionsWA's initial submission, paragraph 5.3 we noted that the most recent State - WA State Budget pointed out that while the labour market has moved to a less labour intensive production phase of major resource projects, hiring levels have been supported by a growing service sector workforce with the highest single increase being in the accommodation and food services industry. This has been occurring in the context of rising business confidence and job advertisements so from that point of view leading on to the consideration, the extent that it is relevant, the capacity of employers as a whole to bear the costs of increased wages, salaries, allowances and other remuneration.

The Fair Work Panel of course stated in its paragraph 133 that in last year's review, the information before the Panel was that real unit labour costs had fallen largely due to the rise in the terms of trade. Over the course of 2017, the terms of trade of course did fall as anticipated but only by a modest amount. Real unit labour costs subsequently only rose by a small amount which leads us at this point that real unit labour costs and labour share of the national income rise at - remain at unusually low levels.

So the Panel goes on to consider the situation of small business which is, of course, included in the national system as well as the State system and indeed is relatively more likely to be in a system where it's actually affected by increases to the minimum wage given that larger employers would be more likely to have collective agreements, enterprise agreements, et cetera, et cetera.

In the Panel's paragraph 146, it states that consistent with prior reviews, the Panel has considered relevant business surveys that the Australian Government and the Reserve Bank believe to be quite reliable predictors of output and employment growth, so referring to the - specifically to the National Australia Bank Survey which states that business conditions continue to look very healthy in the December Quarter. Investment expectations are looking strong for the year ahead with most industries outside retail sitting above long run average levels.

And then at paragraph 148, the Panel states that business conditions to small business, small businesses in the December quarter 2017 have risen quite strongly over the past two years to be at their highest level for 10 years and a separate NAB survey of small to medium enterprises finds that more small businesses are increasing rather than decreasing employment.

MATTHEWS C: If they're believing anything the banks have to say, they haven't been watching the news, Dr Dymond.

DYMOND, DR: No, indeed, but the banks' lending practices are perhaps less relevant here except to say that the Reserve Bank has also identified that business credit conditions are actually pretty good at the moment in terms of borrowing to start a new business. So moving along for the State Commission's need to ensure that the WA - that the Western Australian award framework has a - represents a system of fair wages and conditions of employment.

Of course the Fair Work Panel has chosen to increase by a percentage amount, 3.5 per cent. And while it didn't address its reasons so much in the current decision, in the previous decision it did acknowledge the point that has been made by unions, and certainly at UnionsWA in these contexts, that past flat-dollar increases to award wages are - have compressed award relativities and a uniform percentage increase would particularly benefit women workers because of the higher award classifications, levels, women are substantially more likely than men to be paid a minimum award rate rather than a bargained rate.

So just to reiterate our point, our proposed increase by \$50 a week or 6.2, whichever greater, best balances the range of factors that the Commission should take into account. Once again, largest proportionate increase to the lowest paid while preserving the existing skills-based relativities for award classifications.

And with that in mind, UnionsWA concludes by reiterating its point that the WA Commission and indeed various commissions have been warned year after year about the potential impacts on employment of raising the minimum wage by too much. These have not come to pass and, in our view, or we make the case that the new economics of the minimum wage that we attempted to outline in our initial submissions show why that this is the case, thus UnionsWA continues to request an increase by \$50 a week or 6.2 per cent, whichever is greater.

So I'll move along to the Statement of Principles.

As has been said by the other parties there have been discussions on the proposed changes to the Statements of Principles. On the changes therefore proposed by the Minister's document, going through them one by one, for Principle 3 UnionsWA is supportive of the changes as outlined by the Minister, same goes, of course, for Principle 6, 6.3 to be exact. The deletion of Principles 8 or Principles 8.1, 8.2 and 8.3 are also supported.

The changes to Principle 9 are supported namely those specifically about including information on what minimum rates of pay are for an adult employee and adult apprentices working under awards that provide for other than a 38-hour week. To that end the changes that are similar - sorry, the changes that are made for apprentices and juniors, I should say, are also supported.

In terms of the process, of course UnionsWA would be concerned about a situation where workers are being left underpaid. We are, of course, supporting the changes to the Principles, but we are concerned about a situation where workers are being left underpaid under this sort of situation, and bearing in mind the difficulties of identifying exactly who is under which award, and mindful of the situations with employers, we would nevertheless not want the situation of underpayment to be prolonged when people can seek - certainly the opportunity for people to seek redress on that should be addressed in whatever process we undertake.

Regarding equal remuneration, UnionsWA understands there is, of course, the proposal for a separate process outside of the State Wage Case to be undertaken to address this Principle. On the issue of award updating, as the Minister has said, UnionsWA is of the view that any ambitious process, if I could put it like that, should probably await the outcome of the current review into the State industrial relations system, given that a process of award updating is already included in the terms of reference on that note.

And that concludes our submissions on this matter. UnionsWA is happy to take any questions if needed.

SCOTT CC: Thank you, Dr Dymond.

Mr Twomey?

TWOMEY, MR: If it pleases the Commission in Court Session.

WACOSS stands by its initial submission. We have very little to add to it. We are reassured to see the resonance of a number of the issues that we've raised in our submission that were picked up in the discussion by the Federal Panel, particularly some of the issues around the lack of real improvement in living conditions and some of the concerns that we've expressed about the growth of the working poor, underemployment, insecure work and some of the impacts that they have had on people's ability to maintain a decent living wage.

We also note in particular that when it comes to the Western Australian situation we've seen much greater rises in household fees and charges here with 7.7 per cent last year, 4.8 per cent this year.

And during this period we've seen a dramatic rise in the number of electricity and gas disconnections in WA, so we certainly think that those pressures around the cost of living particularly for those essential household fees and charges are an important factor. We note the importance of getting balance between employer and employee considerations and also the balance and relative alignment over time between State decisions and the Federal decision particularly around what the relativities are and what that means for the workforce within our State.

We also note that there's a balance there between the comparative State economic weakness and at the same time the need to both address rise in cost of living for low income households, but also then the discussion around the flatness in wage growth and the need for some sort of stimulatory impact to drive additional consumption and the benefits that they may deliver by increasing the incomes of those on the lowest incomes who are more likely to spend it directly into essential goods and services.

In addition to that, I did note there was the comments yesterday that my colleague referred to from the RBA, talking about how wage growth there had seemed to trough. I also noted there was the question and the discussions around VET fees. And certainly that's been seen as a factor within our sector where we seem to have a strange contradiction between knowing that there's growing demand for particular types of services and not actually seeing the numbers in training for delivering those services, particularly in aged care and disability services.

And so we're concerned that there's a real gap there between the cost of those fees and the capacity of the people who are most likely to be attracted to those positions to feel that they can afford to get into debt or to be able to pay them. We also support the comments around the importance of maintaining or increasing the minimum wage bite, and that idea of trying to get back to the kind of relativity we'd had over time between the median wage and the minimum wage, particularly then around the reliance of women and young people in particular on the minimum wage.

We also note in relation to that some of the recent data noting that there had both been an increasing reliance on minimum award coverage and awards in general that had come out. For instance, there was the report from the Australia Institute last week that also highlighted the quite dramatic decrease in private sector coverage over the last five years around EBAs. That was this "Dimensions of Insecure Work Report". And one of the things that stood out from that was it highlighted that more than half of the working population now were effectively in some form of insecure work and were no longer covered by a lot of the kinds of awards and conditions that we'd assume are a part of decent work and a lot of have taken for granted in the past. So in addition to that, I'm not too sure I've got much else to say about that.

I will go to the comments around the Principles. We've looked at the changes proposed by the Minister. There's general support for those. And certainly we're also happy with the proposal around getting some consent around Equal Remuneration Order Principles.

So I think that's pretty much all I've got to say. I'm happy to answer any questions. Thank you.

SCOTT CC: Thank you, Mr Twomey.

Thank you all for your submissions. We will reserve the decision and have it to you as soon as we're able.

Other than that, we'll adjourn. Thank you.

AT 2.31 PM THE MATTER WAS ADJOURNED ACCORDINGLY