



**GOVERNMENT OF
WESTERN AUSTRALIA**

Industrial Relations Act 1979

**IN THE WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION
No. 1 of 2018
ON THE COMMISSION'S OWN MOTION**

**SUBMISSION IN REPLY OF THE MINISTER FOR
COMMERCE AND INDUSTRIAL RELATIONS**

Re: 2018 STATE WAGE ORDER

Filed by:
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on behalf of the Minister for Commerce and Industrial Relations

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Introduction

1. In February 2018 the Western Australian Industrial Relations Commission (WAIRC) issued Application 1 of 2018 on its own motion. The application seeks to make a State Wage Order pursuant to section 50A of the *Industrial Relations Act 1979* (IR Act) to determine rates of pay for the purposes of the *Minimum Conditions of Employment Act 1993* (the MCE Act) and State awards.
2. On 15 May 2018 the Minister for Commerce and Industrial Relations (the Minister) filed a submission on behalf of the Western Australian Government advocating that the State adult minimum wage and adult award rates of pay be increased by \$19.20 per week.
3. The Minister recognises the importance of providing a fair system of wages that meet the needs of the low paid. If adopted, the Minister's position would provide a real wage increase to minimum and award wage earners, helping to maintain a strong framework of wages and conditions of employment that will underpin the future prosperity of the State's workforce.

Positions of other parties

4. The Minister notes the following positions have been adopted by other parties participating in this year's State Wage Case:
 - (a) **UnionsWA** is advocating for an increase of \$50 per week or 6.2 per cent (whichever is greater) to the State Minimum Wage (SMW) and State award wages. In practice this would mean the SMW and award wages up to and including the C10 (tradespersons) rate of pay in the *Metal Trades (General) Award* would increase by \$50 per week, and award wages above the C10 classification would increase by 6.2 per cent.
 - (b) the **Chamber of Commerce and Industry of Western Australia (CCIWA)** proposes the SMW and award rates of pay be increased by no more than 1.2 per cent.
 - (c) the **Western Australian Council of Social Service (WACOSS)** is seeking a \$50 per week increase in the SMW and all award wages, including those applying to junior employees, apprentices and trainees.
 - (d) The **Australian Hotels Association (AHA)** advocates that the SMW be increased by 1.0 per cent (it is assumed this is also intended to apply to award wages).
 - (e) Ms Patricia Carmichael advocates that minimum wage rises must be kept in line with that of politicians.
 - (f) A member of the public (name not published) submitted that the SMW should be set at \$25.00 per hour or \$950 per week.
 - (g) A member of the public (name not published) submitted that adult award wages should apply from the age of 18.
5. This submission outlines the Minister's response to the key issues raised by the peak organisations in their submissions.

Consideration of other submissions

UnionsWA

Proposed quantum

6. The Minister recognises the importance of maintaining a strong and meaningful safety net for those employees who remain in the State industrial relations jurisdiction, and shares the concern of UnionsWA that the living standards of the low paid be protected. The annual State Wage Case process plays a vital role in ensuring the maintenance of a fair system of wages and employment conditions for Western Australian workers.
7. The Minister notes that UnionsWA recommends the WAIRC increase minimum and award wages up to the C10 level by \$50 per week, and rates of pay above this quantum by 6.2 per cent.
8. While the Minister supports a real wage increase that will positively benefit low paid workers, it is also important that any outcome fosters an environment that will support increased jobs growth and enhance labour market opportunities.
9. The Minister encourages the WAIRC to award a fair and sustainable outcome in this year's State Wage Case, and contends that an increase of \$19.20 per week would appropriately achieve this aim.

Minimum wage 'bite'

10. The Minister notes the information provided by UnionsWA regarding the minimum wage 'bite' in Western Australia, and the relativity of the SMW to Average Weekly Ordinary Time Earnings (AWOTE).
11. The State's minimum wage bite fell significantly during the mining resources boom, which was largely the product of strong wages growth during this period.
12. The Minister shares the concern of UnionsWA that minimum wage earners should not be left behind. In this regard, the Minister's proposed increase would improve the minimum wage bite in Western Australia.
13. The latest available data indicates that seasonally adjusted AWOTE in Western Australia was \$1,742.80 in November 2017. As the SMW is \$708.90 per week, the minimum wage bite is currently 40.7 per cent. The Minister's proposed increase would lift the SMW to \$728.10 per week, which would immediately raise the bite to 41.8 per cent.

Proposed quantum

14. In its submission, the CCIWA advocates the SMW and State award wages be increased by not more than 1.2 per cent.
15. While the Minister appreciates the CCIWA is advocating for an increase to minimum and award wages in this year's State Wage Case, the Minister contends that a quantum not exceeding 1.2 per cent would not provide low paid employees with a meaningful wage adjustment in the current environment.
16. Although wages growth is currently modest, rates of pay are nonetheless rising, with the Department of Treasury projecting the Western Australian Wage Price Index (WPI) will increase by an annual average rate of 1.5 per cent in 2017-18 and 1.75 per cent in 2018-19.¹
17. It is also noteworthy that AWOTE increased by 2.3 per cent in the year to November 2017,² which is a further sign that wages growth is strengthening in Western Australia, in line with a recovery in the domestic economy.
18. An increase of 1.2 per cent (or less) would effectively see the wages of minimum and award wage earners rise by less than the workforce as a whole, contributing to an increase in wage inequality and leading to a deterioration in the minimum wage 'bite'.
19. By granting regular real wage increases over the last few years, the WAIRC has played a crucial role in countering wage inequality in Western Australia, an issue that is crucial to the continued prosperity of the State and its social cohesion.
20. The Minister notes the significant improvements in business confidence within Western Australia in more recent months, as evidenced by the CCIWA's *Survey of Business Confidence*, which shows that business confidence in Western Australia is at the highest level in seven years.³
21. The Minister submits that an increase of \$19.20 per week would provide a fair and sustainable increase in pay for minimum and award wage earners.

Minimum rates of pay in the State and national jurisdiction

22. The CCIWA alludes to the higher SMW compared to the national minimum wage as being potentially detrimental to the creation of entry level jobs, on the grounds that entry level jobs in the State system are currently more 'expensive' than in the national jurisdiction.

¹ Department of Treasury (2018), *2018-19 State Budget*, Budget Paper No. 3 - Economic and Fiscal Outlook, p.13.

² ABS (2018), *Average Weekly Earnings, Australia, November 2017*, Catalogue 6302.0, Time Series, Table 12E (seasonally adjusted data).

³ CCIWA (2018), 'WA Business Confidence hits 7-year high', media release, 17 May 2018; and Shane Wright (2018), 'Clear signs State economy is strengthening: WACCI report', *The West Australian*, 17 May 2018.

23. While it is true that the minimum rate of pay for a full time or part time adult employee is marginally higher in the State jurisdiction at present, the Minister points out that the SMW for an adult casual employee in Western Australia (\$22.39 per hour) is currently lower than it is in the national system (\$22.86 per hour).⁴ As many minimum wage employees are employed on a casual basis, the rate of pay for many of these workers is actually lower in the State jurisdiction.
24. It is also worth noting that a much higher proportion of employees are award free in the State jurisdiction, and the statutory minimum wage for many award-free trainees and apprentices, and some juniors, is currently lower in the State system than in the national system.

Tax and transfer system

25. The CCIWA's submission refers to the proposed changes to taxation arrangements recently announced by the Commonwealth Government as part of the 2018-19 Federal Budget, and outlines some of the projected benefits that changes to low and middle income tax offsets would provide to affected workers.
26. The Minister notes that the Commonwealth's proposed taxation changes are yet to be passed by the Federal Parliament, and submits that they should not be given significant weight in the State Wage Case proceedings. Even if passed, the proposed changes only amount to an additional \$3.85 per week for an employee earning the SMW, and this would only be received by employees after they have lodged their tax return at the end of the financial year.

Equal remuneration

27. The CCIWA has indicated it does not believe a separate equal remuneration principle should be developed at this point in time, and expresses a view that equal pay cases are difficult, complex and resource intensive. In particular, the CCIWA asserts that an essential ingredient is the need to identify the extent to which gender is the determinant factor, and that it is intrinsically difficult to identify an appropriate comparator.
28. The Minister acknowledges the equal remuneration provisions currently contained in the *Fair Work Act 2009* have created difficulties for parties conducting pay equity cases in the national jurisdiction. However, the Minister contends that any principle developed in the State jurisdiction can be crafted in such a way as to avoid many of the identified issues associated with the equal remuneration provisions of the *Fair Work Act*.
29. It is relevant to note that in the national jurisdiction there is no equal remuneration principle providing guidance to the Fair Work Commission and other parties as to how pay equity cases should be conducted, or what is expected from them. Provisions dealing with pay equity stem from *Fair Work Act* itself.

⁴ Under the *Fair Work Act 2009* the statutory minimum wage for casual employees in the national system includes a 25 per cent loading, whereas under the *Minimum Conditions of Employment 1993* the statutory minimum wage for casual employees in the State jurisdiction is currently set at 20 per cent.

30. The Minister notes that one of the biggest obstacles to conducting pay equity cases in the national jurisdiction is the need to identify a male comparator group to establish undervaluation.
31. The Minister contends that the benefit of developing a separate equal remuneration principle in Western Australia is that it can reflect best practice, while avoiding many of the obstacles that have been identified in other jurisdictions - such as the need to adopt a male comparator group. In particular, a number of provisions from the equal remuneration principle developed by consent in the Queensland Industrial Relations Commission could be adapted for use in a Western Australian principle.
32. As an alternative to an equal remuneration principle, the CCIWA has focused on the importance of gender equity strategies at the workplace level, and the recent improvements in the reporting data received by the Workplace Gender Equality Agency (WGEA) from reporting organisations.
33. While the Minister welcomes the positive improvements in gender equity initiatives identified by the CCIWA, the Minister notes that the majority of employers in the State industrial relations system are not required to report to WGEA, with the reporting obligations under the *Workplace Gender Equality Act 2012* not applying to the public sector or employers with less than 100 employees. Some non-government schools in Western Australia which operate in the State system do report annually to WGEA; however, the number of affected organisations in the State jurisdiction is very limited.
34. The Minister contends that gender equity strategies alone are not enough, and that the adoption of a separate pay equity principle is necessary to provide a full suite of options to address equal remuneration matters in Western Australia.

WACOSS

Proposed quantum

35. As the peak organisation representing the community services sector in Western Australia, WACOSS deals with a diverse range of low income and vulnerable groups, and the Minister acknowledges the significant role that WACOSS plays in advocating for organisations and individuals in this sector.
36. As with UnionsWA, WACOSS proposes a \$50 per week increase in minimum and award wages, albeit it has not specifically proposed a 6.2 per cent increase for award rates of pay above the C10 classification.
37. As the quantum proposed by WACOSS is similar to that of UnionsWA, the Minister's earlier comments regarding UnionsWA's submission under the headings "proposed quantum", and "minimum wage bite" are also relevant in the case of the WACOSS submission.

Wage outcomes for juniors, apprentices and trainees

38. WACOSS proposes that its recommended \$50 per week increase in adult rates of pay be flowed on to junior employees, apprentices and trainees.
39. WACOSS acknowledges that statutory rates of pay for junior employees are automatically determined as relevant percentages of the adult minimum wage, pursuant to section 13 of the MCE Act. However, it considers the concept of junior rates to be an 'anachronism', and continues to advocate for a \$50 per week increase for all employee groups.
40. Putting aside the statutory considerations concerning minimum wage rates for junior employees, raising all junior, apprentice and trainee rates of pay by \$50 per week would represent a significant increase in pay (in some cases exceeding 20 per cent). Such a large cost impost could have unintended consequences, potentially jeopardising the employment and training prospects of vulnerable workers.
41. Many State awards also contain specific formulas for determining junior, apprentice and trainee rates of pay, often based on a percentage of an adult wage classification. The WAIRC would therefore be required to vary or override existing wage formulas in a substantial number of awards to apply a flat \$50 per week increase to all wages.
42. The Minister contends that any increase to adult rates of pay determined in the State Wage Case should be flowed on to juniors, apprentices and trainees in accordance with existing mechanisms. Should there be a need to review the rates of pay for such employees in a particular industry or occupation, this can be dealt with on an award by award basis through application to the WAIRC.

AHA

Proposed quantum

43. The AHA advocates the SMW and State award wages be increased by 1.0 per cent.
44. As the quantum proposed by the AHA is similar to that recommended by the CCIWA, the Minister's earlier comments regarding CCIWA's proposed quantum are also relevant to the AHA's submission.

Competitive disadvantages in the WA industrial relations system

45. The AHA submits that in accordance with section 50A(3)(f) of the IR Act the WAIRC should consider the ongoing effects of the Penalty Rates Decision made by the Fair Work Commission. It states that the vast majority of employers in the hospitality industry in Western Australia are not covered by the State system, and continue to enjoy not only lower minimum hourly rates for most classifications but the ongoing benefit of reduced penalty rates on public holidays.

46. The Minister contends that the level of penalty rates determined in national awards should have no bearing on the State Wage Case, particularly given the different statutory provisions underpinning the State and national labour relations frameworks.
47. The Western Australian Government reiterates its opposition to the decision of the FWC to reduce penalty rates in national awards covering retail and hospitality workers. Many employees in the retail and hospitality industries rely on penalty rates to make ends meet, and the Western Australian Government believes employees who work unsociable or non-standard hours should be fairly compensated for their efforts.
48. The AHA also provides examples of award rates of pay in the hospitality industry that are higher in the State system than in the national system. In particular, the rates of pay for a bartender (Food and Beverage Attendant Grade 2) working on a Saturday and a public holiday are compared between jurisdictions, using rates of pay in the national *Hospitality Industry General Award 2010* (the “national award”) and the State *Hotel and Tavern Workers Award* (the “State award”).
49. The Minister contends that not all wage rates in the State industrial relations system are higher than those in the national system, including in the hospitality industry. For instance, a comparison of the rates of pay in the national award and State award reveals that:
 - Minimum rates of pay for working on a Sunday are currently lower under the State award than under the national award – for full time, part time and casual employees;
 - Minimum rates of pay for casual employees working on a public holiday are lower under the State award than the national award;
 - Minimum rates of pay for work performed on weekday evenings (after 7pm) are marginally lower under the State award than under the national award – for full time, part time and casual employees.
50. In addition to the above, casual employees are not entitled to overtime rates under the State award, whereas they are entitled to overtime rates under the national award.
51. It cannot therefore be assumed that State system employers in the hospitality industry are always at a comparative disadvantage with their counterparts in the national system. While some rates of pay in State awards are marginally higher than in comparable national awards, other rates of pay are lower.

Conclusion

52. The Minister recognises the important role that minimum and award wages play in Western Australian workplaces, particularly in providing a robust safety net for vulnerable employee groups.
53. The Minister wishes to see a real wage increase that will positively benefit Western Australian workers, while at the same time supporting ongoing job creation and economic growth.
54. The Minister contends that an increase that fails to keep pace with broader wage movements generally would not be sufficient, as it would lead to a widening of gender pay inequality, and would not adequately protect the needs of low paid and vulnerable workers.
55. The Minister contends the Fair Work Commission's penalty rates decision is not a relevant consideration in the State Wage Case proceedings, particularly as it concerns awards in the national industrial relations jurisdiction that do not apply to employers and employees in the State system.
56. The Minister also cautions against making assumptions that employers in the State jurisdiction are at financial disadvantage compared with their federal counterparts, as this is often not the case, and wage cost differentials will vary depending on industry, occupation, age, skill levels, working hours and employment status.
57. The Minister submits that the WAIRC should award a \$19.20 per week adjustment to the State minimum wage and award rates of pay for adult workers, and a proportionate increase to junior, apprentice and trainee rates of pay. This represents a fair and sustainable increase in the current environment. A flat dollar increase gives appropriate emphasis to the needs of the low paid, while moderating the overall economic impact on employers.