



## THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

### APPL 1/2020 State Wage Case

#### Commission in Court Session's questions on notice

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### **1. THE COMMISSION'S POWERS**

All the submissions and evidence received by the Commission strongly suggest a high level of uncertainty as to the medium- and longer-term economic effects of the COVID-19 pandemic. In this context, the Commission may need to consider the constraints and all the options available to it in meeting the requirements of the statutory regime which provides for the State Wage order.

The Commission notes that:

- The *Industrial Relations Act 1979 (WA)* requires the Commission to make a General Order before 1 July each year (s 50A(1)).
- That General Order is to:
  - a) set the minimum weekly rates of pay pursuant to sections 12 and 14 of the MCE Act (s 50A(1)(a)(i) and (ii); and
  - b) adjust rates of wages paid under awards (s 50A(1)(b)).
- The Commission *may*, in relation to awards generally or specified awards, *adjust* wages (s 50A(2)(a) –(d)).
- The State Wage order takes effect on 1 July in the year it is made and is applicable in respect of an employee or apprentice on and from the commencement of the first pay period on or after that date (s 50A(5)).
- The State Wage order shall not be added to or varied (s 50A(7)).

#### **In this context:**

- a) Is the Commission able to set the Minimum Wage and weekly rates of pay at their existing levels, that is, to not increase those rates?
- b) What does it mean to *adjust* in s 50A(1)(b) and (2)(a) to (d), and does that require an *increase* in rates of wages?
- c) Is there capacity to defer:
  - i. the hearing of the State Wage case; or
  - ii. the commencement date of any increase?
- d) Is s 50A amenable to the Commission's power under s 27(1)(n), such as to enable a delay in either the hearing or any increase? (In dealing with this question, the Commission draws attention to the *Robe River Iron Associate v Federated Engine Drivers' and Firemens' Union of Western Australia* (1986) 67 WAIG 315 (IAC) per Brinsden J at 317 and Kennedy J at 319; *United Voice v Director General, Department of Education* [2014] WAIRC 01361; (2014) 95 WAIG 13 at [154] - [158] and Kenner C).

## **2. IMPACT OF COVID-19 ON EMPLOYMENT**

Under s 50A(3)(b) of the Act, the Commission is required to take into consideration the state of the economy of Western Australia and the likely effect of its decision on that economy and, in particular, on the level of employment, inflation and productivity. In relation to the employment effect of increases in minimum wages, in the *2017 State Wage Case Decision* [2017] WAIRC 00330; (2017) 97 WAIG 693, 255 – 257, the Commission in Court Session said:

255 Therefore, international research, insofar as it is relevant, confirms the conclusions reached by us in previous years. The effect of modest and regular increases in the minimum wage do not result in adverse employment effects. The Fair Work Commission says, in that context, that the research suggests its previous approach to what constitutes ‘modest’ may have been overly cautious. We note that in more prosperous times, the minimum wage and award wages in WA have been increased by more than the increases applied to the national minimum wage. This has recognised the relative strength of the Western Australian economy in comparison to the national economy, but also in the capacity of the economy to bear additional costs to assist in improving living standards.

256 Therefore, to provide the benefits to employees, the increase in the State minimum wage and award wages must be affordable by businesses, particularly the smaller businesses covered by the State system and should act as a stimulant rather than a further burden on businesses.

257 This is particularly important given the current and predicted relatively high level of unemployment. Award reliance in WA is the lowest of all jurisdictions.

(See too the observations of the Commission in Court Session in the *2015 State Wage Case Decision* [2015] WAIRC 00435; (2015) 95 WAIG 679, 95-100, concerning the research of the late Professor D Plowman, to the effect that aggregate demand in the WA economy, to a significant degree, moderates any minimum wage effect on employment).

### **In this context:**

- a) Given the severe economic impact of the COVID-19 pandemic, especially on small businesses in the industry sectors of accommodation and food services, retail trade and a range of other industry services sectors, what is the likelihood of any increase in the State minimum wage, at least in the near term, having a negative effect on employment and underemployment, especially in the case of younger employees, on this occasion?
- b) What may be the consequences for employment and underemployment in the labour market once present stimulus measures such as the JobKeeper scheme are withdrawn or reduced in scope?

## **3. INCAPACITY TO PAY**

Under s 50A(3)(d) of the Act, the Commission is required to consider to the extent that is relevant, the capacity of employers as a *whole* to bear the costs of increased wages, salaries, allowances and other remuneration.

**In this context:**

- a) Does this mean that the Commission must award the same increase, if any, to all sectors of industry regardless of the capacity of any particular industry to bear the increase in costs?

The *Statement of Principles - July 2019*, at 1.1, provides that the Statement of Principles is to be applied and followed when the Commission is making or varying an award or making an order in relation to the exercise of jurisdiction under the Act to set the wages, salaries, allowances or other remuneration of employees or the prices to be paid in respect of their employment.

Principle 12 – Economic Incapacity of the *Statement of Principles – July 2019* provides that any respondent or group of respondents to an award may apply to reduce and/or postpone the variation which results in an increase in labour costs under this Statement of Principles on the ground of very serious or extreme economic adversity.

**In this context:**

- b) Does Principle 12 – Economic incapacity apply to the State Wage order and the amendments it makes to awards, or only to the other types of matters dealt with by the Principles, for example, Work Value?
- c) Given the nature of the businesses which are in the State industrial relations system and subject of the State Wage order, is it likely or reasonable that they will actually apply to the Commission under Principle 12, provide the detailed financial information required and be subject to scrutiny, or are they more likely to simply breach and take their chances?
- d) In relation to the submission of the Chamber and Commerce and Industry that:
- i. The 'lack of capacity for employers to bear the cost of any minimum wage increase, (par 84); and
  - ii. Whether any business likely to be affected by a wage increase might be said to have weathered the storm and whether a modest wage increase would be a 'breaking point'.

what is the evidence to support these contentions?

#### **4. MEASURES OF PROFITABILITY**

In previous State Wage Cases, the Commission has expressed interest in the measures of profitability, how profitability varies across industries and how the measures ought to be considered in determining an overall industry position. The Commission notes that recent media coverage has referred to the revenue flows into the mining industry, in particular, the iron ore and nickel businesses. It has noted that some of this flows to the businesses and contractors associated with those mining companies. The industry also provides significant benefits to the State's resources by the payment of royalties and other taxes and charges. (See *Resilient iron ore sector a shining light in troubled times*, Editorial, *The West Australian*, 22 April 2020, p3, and *BHP shows resilience in the Pilbara*, *The West Australian*, 22 April 2020, p53).

This is to be compared with a large amount of media attention on the losses of patronage and income to businesses the subject of the restrictions brought about by the COVID-19 pandemic, such as

tourism, accommodation, catering and some retail. These latter businesses contain a large element of the businesses that are within the State jurisdiction and subject to the State Wage order.

**In this context:**

- a) How should the Commission weigh the significant differences between those industries and their capacity to bear additional labour costs?
- b) Is there evidence of pent up demand in the economy or particular industries and sectors? If so, what is its likely effect?

## **5. COST OF LIVING**

We note WACOSS's submission and, in particular, the information and data provided about the cost of living and how it varies from household type to household type. Notably though, it sets out that costs such as housing and food vary geographically, across the State.

Most private sector awards and agreements of the Commission contain Location Allowances. These allowances are made up of 3 components, one of which is a prices component. The Commission, of its own motion, reviews these allowances each year to take account of changes in the prices.

- a) Should the Commission take account of Location Allowances in it determining the State Wage order?
- b) The Location Allowances General Order does not apply to award free employees, yet the cost of living is a consideration in the State Wage Case, applies to award covered employees and those award free employees covered by the State Minimum Wage.
  - i. Should future Location Allowances General Orders be applied to award free employees?
  - ii. If so, should it form part of the State Wage Case each year, or be subject to a separate review?

## **6. GENERAL**

The submission by UnionsWA, at 3.7, refers to a 'wage freeze'.

- a) What evidence is relied on for reference to a wage freeze, and if there has been one, whether it had the effect submitted?
- b) How does reference to a 'wage freeze' marry up with the quote at 3.2, which refers to a wage cut?

The Minister's submission

- c) Does the State Government intend to maintain its Wages Policy limitation of \$1,000 for government employees?