

# UNIONSWA

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## UnionsWA response to Questions on notice from the Commission

Appl No. 1 of 2020  
ON THE COMMISSION'S OWN  
MOTION

Western Australian Industrial Relations  
Commission



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**1. THE COMMISSION'S POWERS**

- 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?***

Under the *Industrial Relations Act 1979* section 50A(3)(a)(iv), the considerations for the Commission from the State Wage Order include:

*contribute to improved living standards for employees*

The Commission has in previous decisions accepted that increases in Minimum Wage and weekly rates of pay do assist employees, for example, at para 285 of its 2019 decision:

*We recognise that a moderate increase to the SMW and award wages will enhance gender equity, given that women make a very significant proportion of those on the lowest pay levels.*

Section 26(1)(c) of the IR Act also states that, when the Commission exercises its jurisdiction, it

*shall have regard for the interests of the persons immediately concerned whether directly affected or not and, where appropriate, for the interests of the community as a whole*

While there are many ways to improving living standards of employees, improving those standards through the State Wage Order must involve an increase in their rates of pay. Increasing pay is in the immediate interests of employees who are directly affected. It is also in the interests of the community as a whole, as demonstrated by the positive impact of a minimum wage increase on gender equity. The importance of gender equity is reflected in the consideration for section 50A(3)(a)(vii)

*provide equal remuneration for men and women for work of equal or comparable value*

The Commission has also stated in previous State Wage Case decisions, that it is required to take an evaluative and balancing approach between competing considerations (see para 209 of 2019 decision).

Having *no* increase in the Minimum Wage and weekly rates of pay in 2020 would involve disregarding both considerations (iv) and (vii) of section 50A(3)(a).

No increase to rates of pay also downgrade the consideration of section 50A(3)(a)(i)

*ensure that Western Australians have a system of fair wages and conditions of employment*

UnionsWA contends that the Commission's powers do not extend to keeping 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?***

In light of UnionsWA's answer to the Commission's question (a), we argue that to 'adjust' the rates of wages in light of the considerations under section 50A(3)(a) must require an increase. We would also refer to the principle objects of the IR Act under section 6, such as (ac)

*to promote equal remuneration for men and women for work of equal value;*

This is an object can only be met under the Act by increasing 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?***

Section 50A(1) of the IR Act states that:

*The Commission shall before 1 July in each year, of its own motion make a General Order (the State Wage order) —*

UnionsWA argues that the IR Act clearly intends for the State Wage Order to be issued before 1 July, therefore considerations about the timetable of hearing must allow for a decision within that timeframe.

Section 50A(5) also states that

*A 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 of the employee or apprentice on or after that date.*

In the ‘Statement of Principles’ for making or varying an award, Principle 9 (Minimum Adult Award Wage) envisages that a ‘minimum adult award wage clause’, will be inserted into new awards.

Principle 9.2, after stating the weekly rate of the minimum wage (\$746.90 in 2019) that will apply, goes onto say that

*The minimum adult award wage is payable on and from the commencement of the first pay period on or after 1 July 2019.*

UnionsWA therefore argues that compliance with both the IR Act, and the Principles, does *not* provide a capacity to either

- i. defer the hearing of the State Wage Case in such a way as to not allow a decision before 1 July; or
- ii. defer the commencement date of an increase in such a way as to not allow it to be payable for the from the commencement of the first pay period on or after 1 July

If an increase arising from the State Wage Order is not applied from the commencement of the first pay period on or after 1 July, an impacted employee will, in UnionsWA’s view, be entitled to claim back-pay for the unpaid period.

***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?***

UnionsWA notes that section 27(1)(n) states that

*Except as otherwise provided in this Act, the Commission may, in relation to any matter before it —*

*(n) extend any prescribed time or any time fixed by an order of the Commission;*

In *Robe River Iron Associate v Federated Engine Drivers' and Firemens' Union of Western Australia* (1986) 67 WAIG 315, both Brinsden J and Kennedy J are sceptical of section 27 being given (in Brinsden J's words) a 'very wide interpretation beyond being merely a dragnet clause'. Kennedy J goes onto say that

*Section 27(1) is concerned with the method by which the Commission exercises jurisdiction already conferred on it*

*United Voice v Director General, Department of Education* [2014] WAIRC 01361; (2014) 95 WAIG 13 has Kenner C refer to

*... the important phrase "Except as otherwise provided in this Act" as appears in the preliminary part of s 27(1).*

UnionsWA argues that the situations of both these cases (appeals against decisions of the Commission) are not in the same category of decision as those of General Orders required by the IR Act. The phrase 'Except as otherwise provided in this Act' is relevant to section 50A(1) because it self-evidently is a section of the IR Act. Therefore it is not amenable to the Commission's power under section 27(1).

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

***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?***

Many employees and employers are in difficult economic conditions as a result of the COVID-19 pandemic. It is important to remember that this disproportionately includes workers in precarious work, and vulnerable groups, women, youth, part time and casual who are excluded from government support packages.

It is important to remember that wages play two roles in the economy:

- 1) Costs for employers,
- 2) Income for consumers.

If the real incomes of a significant proportion of consumers are reduced, aggregate demand for goods and services will decline. This will actively damage the recovery of industry sectors such as accommodation and food services, retail trade and other services industries.

UnionsWA asked the WA Treasury witness the following question: '*Where does business investment in industries such as accommodation and food services come from if there is no increase in consumer spending?*' The witness responded that:

*Business investment in industries that rely on consumer spending is likely to be heavily impacted by COVID-19. Any investment in the near-term is likely to be centred around*

*maintenance of existing infrastructure and/or operations and investment required to restart operations.*

*A recovery in consumer confidence and spending will be important in sustaining and supporting new investment in these industries.*

In various decisions the Commission has called attention to the conclusions of the late Professor David Plowman, whose conclusions about the operation of the WA minimum wage for the period 1990 to 2005 found little to no negative minimum wage impacts on the economy, or on low paid employees. While the long term impacts of the COVID-19 crisis may still be unfolding in WA, we can say that there is no path to recovery through a state wage decision that fails to lift the spending power of consumers.

***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?***

The JobKeeper and JobSeeker schemes are premised on a recognition that improving income to the low paid supports the economy, because the low paid spend all income received. A withdrawal or reduction of those schemes therefore presents a danger to the economy through a withdrawal of consumer spending.

In its Witness Statement, the WA Treasury said that

*... given that households tend to spend less and save more in an environment of elevated uncertainty (particularly surrounding job and income security), weaker household spending (especially for discretionary items) is likely to persist to some degree over the longer term.*

Given this forecast, it is likely that a withdrawal of JobKeeper, combined with low to no increase in wages, will make WA households even more reluctant to spending at a time when the economy needs it.

### **3. INCAPACITY TO PAY**

***a) 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?***

In reference to section 50A(3)(d) of the IR Act

*... to 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*

In response to the COVID-19 crisis, employers across Australia have been able to choose from a range of both Federal and State Government assistance schemes, some of which are described in UnionsWA's initial submission. Employer have also been able to gain powers of stand down, and the ability to place employees on leave, that are unprecedented in order to deal with this crisis.

Given this situation, there is no reason why employees should not have access to a minimum wage increase to assist to maintain their spending power.

- 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?***

Section 12.1 states 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*

UnionsWA contends that this section can only deal with matters arising from the principles themselves. An increase in the minimum wage is the most predictable aspect of the WA industrial relations system, whereas changes to matters such as ‘work value’ lend themselves to being dealt with by the Commission on a case by case basis.

- c) 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?***

UnionsWA respectfully submits that the possible responses of businesses to engage in wage theft should not be indulged by the Commission. The State Wage Order will be the legal rates for Minimum and Award Wages. Businesses with state award employees should obey the law.

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

- 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?***

UnionsWA submits that the data on profitability between difference industries is extremely difficult to determine at this point in time. What we can say, however, is that without restored domestic consumer demand, there is no economic recovery on the horizon for WA. Accordingly the ‘pent up demand’ is on the part of consumers who will be looking for spending opportunities once the COVID-19 restrictions are lifted.

#### **5. COST OF LIVING**

- a) *Should the Commission take account of Location Allowances in it determining the State Wage order?*

No. Location Allowances do not apply to all workers.

- 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?*

UnionsWA is supportive of Location Allowances applied to award free employees, and to them forming part of the state wage case.

## 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?*

UnionsWA is making reference to the numerous calls by employer groups for a freeze in minimum wages at the national level, and by inference at the state level. E.g. From the head of the Australian Chamber of Commerce.<sup>1</sup> It is the case that the Premiers Plan during the Great Depression was premised on wage cuts, however a freeze would achieve the same (bad) conclusion.

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<sup>1</sup> ‘Business wants minimum wage frozen amid virus fallout’  
<https://thenewdaily.com.au/finance/work/2020/05/15/minimum-wage-freeze-business/>

## 1. Conclusion

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1.1. UnionsWA is advocating that the Commission increase Award wages an increase by 4%.

Below is summary of our positions under the statutory considerations in section 50A of Industrial Relations Act.

*(3) In making an order under this section, the Commission shall take into consideration —*

*(a) the need to —*

*(i) ensure that Western Australians have a system of fair wages and conditions of employment;*

UnionsWA is asking the WA Commission to address the still widening gap between low paid workers and the rest of the workforce in WA.

*(ii) meet the needs of the low paid;*

UnionsWA maintains that the needs of the low paid, and particularly the need to improve the standards of the low pay – require an increase to the WA minimum wage not just at CPI, but beyond it. As a measure of the cost of living, the measure of CPI inflation does not capture the living costs of low wage workers, particularly under the impact of COVID-19.

*(iii) provide fair wage standards in the context of living standards generally prevailing in the community*

UnionsWA submits that minimum wage workers should not be slipping behind average wages in the community, otherwise they will find it harder to maintain living standards – particularly during an economic crisis.

*(iv) contribute to improved living standards for employees;*

UnionsWA submits that the present system of wage subsidies will be no substitute for regular, ongoing wage increases, particularly if the Federal government moves to take them away.

*(v) protect employees who may be unable to reach an industrial agreement;*

UnionsWA contends that an increase in the state minimum wage in WA is more likely to assist workers who are less likely to negotiate decent increases for themselves, and are bearing the full brunt of the COVID-19 crisis.

*(vi) encourage ongoing skills development; and*

UnionsWA argues that a substantial wage increase that seeks to address the disparity between minimum rates and median weekly earnings will play its part in making apprenticeships more attractive thereby encouraging greater skills development. It also notes that assistance has been provided by government to ensure that apprentices and trainees can continue with employers.

*(vii) provide equal remuneration for men and women for work of equal or comparable value;*

UnionsWA asks the WA Commission to reject all submissions which contend that the gender pay gap is simply due to men ‘earning more in higher wage jobs’, and thus can be redressed during a downturn



by men losing their previous income. The minimum wage needs regular and substantial increases in order to satisfy this consideration.

- (a) *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 Western Australia;*
- (b) *to the extent that it is relevant, the state of the national economy;*

UnionsWA contends that a substantial increase to the WA minimum wage will be ‘pro-cyclical’ in present economic circumstances both in WA and Australia. It will substantially contribute to State Final Demand, in a situation where WA will have to rely on domestic spending rather than that provided by outside arrivals.

*(d) to 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;*

UnionsWA contends that an across the board institutional decision to lift wages is needed. The resulting household and consumer spending will be vital to lift the economy out from COVID-19.

*(e) for the purposes of subsection (1)(b) and (c), the need to ensure that the Western Australian award framework represents a system of fair wages and conditions of employment;*

An increase of 4%, balances the range of factors that the Commission must take into account. It delivers the largest proportionate increase to the lowest paid, while preserving the existing skill-based relativities for award classifications.

*(f) relevant decisions of other industrial courts and tribunals; and*

*(g) any other matters the Commission considers relevant.*

UnionsWA contends that, while the COVID-19 crisis has been an unprecedented event, the economy is still forecast to recover. This means that the need for consumer spending will be as strong as ever. Historical examples such as the Great Depression demonstrate that freezing or cutting wages will be the worst possible response to the present situation: prolonging the pain rather than lifting us out of it.