

2024 STATE WAGE ORDER PURSUANT TO SECTION 50A OF THE ACT

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

COMMISSION IN COURT SESSION

CITATION : 2024 WAIRC 00293

CORAM : CHIEF COMMISSIONER S J KENNER
SENIOR COMMISSIONER R COSENTINO
COMMISSIONER T EMMANUEL
COMMISSIONER T B WALKINGTON
COMMISSIONER T KUCERA

HEARD : WEDNESDAY, 22 MAY 2024, THURSDAY, 6 JUNE
2024

DELIVERED : WEDNESDAY, 12 JUNE 2024

FILE NO. : CICS 1 OF 2024

BETWEEN : COMMISSION'S OWN MOTION
Applicant

AND

(NOT APPLICABLE)
Respondent

Catchwords : State Wage order – Commission’s own motion – Minimum
wage for employees under the Minimum Conditions of
Employment Act 1993 – Award rates of wage – Award
minimum wage – State Wage principles

Legislation : *Fair Work Act 2009* (Cth) s 157; s 284; s 285
Industrial Relations Act 1979 (WA) s 6; s 26; s 50A
Industrial Relations Legislation Amendment Act 2021
(WA)
Minimum Conditions of Employment Act 1993 (WA) s 12
Labour Relations Reform Act 2002 (WA) s 168;
Schedule 1

Result : 2024 State Wage Order Issued

Representation:

Mr B Entekin on behalf of the Hon. Minister for Industrial Relations

Mr C Harding and with him Dr A Wesley and Mr S Collins on behalf of the Chamber of Commerce and Industry of Western Australia

Mr K Sneddon of counsel and with him Mr G Hansen, Mr R James, Mr R Sumner and Mr J Brinkman on behalf of UnionsWA

Ms E Hull on behalf of the Western Australian Council of Social Service Inc

No appearance on behalf of the Western Australian Local Government Association

Case(s) referred to in reasons:

2003 State Wage Case [2003] WAIRC 08520; (2003) 83 WAIG 1914

2014 State Wage Case [2014] WAIRC 00471; (2014) 94 WAIG 641

2020 State Wage Case [2020] WAIRC 00361; (2020) 100 WAIG 409

2021 State Wage Case [2021] WAIRC 00173; (2021) 101 WAIG 459

2022 State Wage Case [2022] WAIRC 00273; (2022) 102 WAIG 431

2023 State Wage Case [2023] WAIRC 00330; (2022) 103 WAIG 733

Aged Care Work Value Case [2022] FWCFB 200

Annual Wage Review 2023-24 [2024] FWCFB 3500

Reasons for Decision

COMMISSION IN COURT SESSION:

Background

- 1 By a Notice dated 13 April 2024, published in the ‘West Australian’ newspaper, on the Commission’s website and in the Western Australian Industrial Gazette [2024] WAIRC 00142; (2024) 104 WAIG 342, the Commission in Court Session notified its intention to make a general order under s 51A of the *Industrial Relations Act 1979* (WA). Section 51A of the *Act* requires the Commission to make a general order, known as the State Wage Order, each year, effective from 1 July. The SWO is to set the minimum wage under s 12 of the *Minimum Conditions of Employment Act 1993* (WA) for employees 21 years of age and over, and for apprentices and trainees. Award wages are also to be adjusted. A minimum rate of pay is also to be set for employees with a disability and who have been assessed as having a reduced capacity to work, under the Supported Wage System.
- 2 Section 50A of the *Act* requires the Commission to have regard to a range of factors when setting the SMW and adjusting award rates of pay. Each of them must be considered and none are accorded any precedence. Section 50A provides:

50A. Rates of pay etc. for MCE Act and awards, annual State Wage order as to

(1AA) In this section —

instrument-governed employee with a disability means an employee —

- (a) whose contract of employment is governed by an industrial instrument that includes a SWIIP that incorporates the SWS; and
- (b) whose productive capacity has been assessed under the SWS as being reduced because of a disability; and
- (c) who is not employed by a supported employment service as defined in the *Disability Services Act 1986* (Commonwealth) section 7; and
- (d) who is being paid a weekly rate of pay determined by the SWS under the SWIIP.

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

- (a) setting the following —
 - (i) the minimum weekly rate of pay applicable under section 12 of the MCE Act to employees who have reached 21 years of age and who are not apprentices;

- (ii) the minimum weekly rate or rates of pay applicable under section 14 of the MCE Act to apprentices;
 - (iii) the minimum amount payable under the MCE Act section 17(2);
- and
- (b) adjusting rates of wages paid under awards; and
 - (c) having regard to the statement of principles issued under paragraph (d) —
 - (i) varying each award affected by the exercise of jurisdiction under paragraph (b) to ensure that the award is consistent with the order; and
 - (ii) if the Commission considers it appropriate to do so, making other consequential changes to specified awards;
- and
- (d) setting out a statement of principles to be applied and followed in relation to the exercise of jurisdiction under this Act to —
 - (i) set the wages, salaries, allowances or other remuneration of employees or the prices to be paid in respect of their employment; and
 - (ii) ensure employees receive equal remuneration.
- (1A) The amount set by the Commission under subsection (1)(a)(iii) must be the same as that set by the FW Commission in the national minimum wage order under the FW Act section 285(2)(c) for an eligible employee whose productive capacity is, under the SWS, assessed as reduced because of a disability.
- (1B) For the purposes of subsection (1)(b), the Commission must, in relation to an instrument-governed employee with a disability, order the highest of the following —
- (a) that the minimum amount payable is to be the same as in the previous State Wage order;
 - (b) that the minimum amount payable is to be the same as that set by the FW Commission in the national minimum wage order under the FW Act section 285(2)(c) for an eligible employee whose productive capacity is, under the SWS, assessed as reduced because of a disability.
- (2) The Commission may, in relation to awards generally or specified awards, do any or all of the following for the purposes of subsection (1)(b) —
- (a) adjust all rates of wages;
 - (b) adjust individual rates of wages;
 - (c) adjust a series of rates of wages;
 - (d) adjust specialised rates of wages.

- (3) In making an order under this section, the Commission must take into consideration —
 - (a) the need to —
 - (i) ensure that Western Australians have a system of fair wages and conditions of employment; and
 - (ii) meet the needs of the low paid; and
 - (iii) provide fair wage standards in the context of living standards generally prevailing in the community; and
 - (iv) contribute to improved living standards for employees; and
 - (v) protect employees who may be unable to reach an industrial agreement; and
 - (vi) encourage ongoing skills development; and
 - (vii) provide equal remuneration;and
 - (b) 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; and
 - (c) to the extent that it is relevant, the state of the national economy; and
 - (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; and
 - (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; and
 - (f) relevant decisions of other industrial courts and tribunals; and
 - (g) any other matters the Commission considers relevant.
- (4) Without limiting the generality of this section and section 26(1), in the exercise of its jurisdiction under subsection (1)(b) and (c) the Commission must ensure, to the extent possible, that there is consistency and equity in relation to the variation of awards.
- (5) 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.
- (6) A State Wage order in effect under this section when a subsequent order is made under subsection (1) ceases to apply in respect of an employee or apprentice on the day on which the subsequent order commences to apply in respect of the employee or apprentice.
- (7) A State Wage order must not be added to or varied.
- (8) Nothing in subsection (7) affects the Commission's powers under section 27(1)(m).

- 3 The Commission in Court Session has received written submissions from the s 50 parties including the Minister, the Chamber of Commerce and Industry of Western Australia, and UnionsWA. Submissions have also been received from the Western Australian Council of Social Service, and the Western Australian Local Government Association, on behalf of the Local Government sector. The Commission listed the SWO case for a hearing on 22 May 2024. As in prior years, a presentation was given by the Director of Economic and Revenue Forecasting Division of the WA Treasury, Mr Christmas. This provided the Commission and the parties appearing, an overview of the State and national economies, along with relevant international developments. Additionally, evidence was led by UnionsWA from Ms Whitaker, the Lead Organiser Public Sector Disability Portfolio, at the United Workers Union. Ms Whitaker gave evidence in relation to the community sector. The Commission is grateful for the assistance provided.
- 4 As part of the proceedings for this year's SWO, the Commission in Court Session requested the parties to address two issues arising from last year's case. The first issue relates to the Fair Work Commission's decision in the *Annual Wage Review 2022-23* to realign the underpinning of the National Minimum Wage from the C14 modern award classification rate to the C13 modern award classification rate, and the implications of this in the setting of the SMW in this jurisdiction. The second issue is the proposal raised by UnionsWA that Principle 7 – Work Value Changes of the Commission's Statement of Principles – July 2023 be varied to align it more closely with s 157(2A) of the *Fair Work Act 2009* (Cth). This issue was not progressed in last year's case but was in these proceedings.

Overview of submissions

The Minister

- 5 In summary, the Minister noted that last year's SWO, lifting the SMW by 5.3% or \$43.50 per week, led to a real increase in the SMW and assisted the low paid in meeting increasing living costs. However, when considering the growth in wages overall as measured by the Wages Price Index, many Western Australian employees have experienced a decline in their real wages over 2020 to 2023, with the WPI only having recently exceeded the growth rate in inflation.
- 6 The Minister referred to the gap between the SMW and the NMW of \$19.40 per week or 2.2%, resulting from the Fair Work Commission's decision in 2023 to realign the NMW from the C14 rate to the C13 rate. Given the Fair Work Commission also increased the NMW and minimum wage rates in modern

awards by 5.75%, the Minister submitted that in the present high cost of living environment, the Commission in Court Session should also realign the SMW from the C14 classification rate to the C13 classification rate in the *Metal Trades (General) Award*. As to the quantum of any general increase in the SMW, the Minister submitted that the Commission should increase it in line with the decision of the Fair Work Commission in its *Annual Wage Review 2023-24*.

- 7 The Minister referred to the economic performance of the State to date, as being strong. Business investment has been particularly robust, along with Government investment in infrastructure. Some moderation is anticipated in the domestic economy in the year ahead, in line with a fall in migration. Government spending is projected to make an increased contribution to the domestic economy, due to projections of a larger population.
- 8 The Minister submitted that the labour market remains resilient. Unemployment is low, projected to be 3.75% for 2023-24, although some rise is expected in the year ahead. Employment growth is also strong. The presentation by Mr Christmas, which will be discussed further below, noted the overall strength of the Western Australian economy, relative to other States. Wages growth has returned, along with a sharp fall in inflation in recent times.

The Chamber of Commerce and Industry of Western Australia

- 9 As in the *2023 State Wage Case* [2023] WAIRC 00330; (2022) 103 WAIG 733, the CCIWA urged the Commission in Court Session to adopt a cautious approach to this year's setting of the SMW and did not nominate an amount by which the SMW should increase. Whilst acknowledging the solid performance of the Western Australian economy overall, the CCIWA referred to the continued elevated rate of inflation, along with high input costs for businesses, which on its submissions, continue to pose challenges.
- 10 Evidence of this on the CCIWA submission, is the relatively high level of business insolvencies, including those in industry sectors most represented in the State industrial relations system, such as accommodation and food services, health care and retail trade. There remains considerable uncertainty in the period ahead on the CCIWA submissions, due to continued low productivity, overseas instability and the prospect of ongoing elevated inflation. These have been acknowledged as risks to the outlook by the Reserve Bank of Australia, in its *Monetary Policy Decision May 2024*.
- 11 Other factors to be considered by the Commission according to the CCIWA, include the dominance of the resources sector in the State economy, superannuation contribution increases from 11% to 11.5% effective from 1 July 2024, income tax cuts, tailored to low income earners, to come into effect soon, and federal and State government cost of living assistance measures, announced

in their recent respective Budgets. In light of all these factors, the CCIWA contended that any increase in the SMW on this occasion should be a flat dollar increase, targeted towards the low paid; should not match the rate of inflation; and should not be at a level that contributes to ongoing inflationary pressure.

UnionsWA

- 12 UnionsWA contended that there should be a substantial increase in the SMW and award rates of pay of 7.359% or \$63.54 per week. This is necessary according to UnionsWA, to address the widening gap between the State workforce generally, and those employees who are low paid. It is also necessary on the UnionsWA submission, to address the sustained increase in the cost of living, particularly in non-discretionary spending areas including food, housing and transport.
- 13 According to UnionsWA, the continuing strength of the State and federal economies means a substantial increase in the SMW and award wages can be sustained. This will assist low paid employees in coping with ongoing increases in their cost of living and contribute to an improvement in their standard of living. As a part of its case, UnionsWA, as with the Minister, seeks a realignment of the State C14 award classification rate to the C13 award classification rate, as a basis for setting the SMW, as occurred in the ***Annual Wage Review 2022-23***. The basis for UnionsWA's claims of a 7.359% increase is twofold. First, is an increase in the SMW of 2.3%, reflecting the re-alignment of the C14 rate to the C13 rate. The second is a general increase in the SMW and minimum award wages of 5%.
- 14 In terms of the Commission's *Statement of Principles – July 2023*, UnionsWA pressed its proposal to align Principle 7 – Work Value Changes, with s 157(2A) of the *FW Act*, as initially advanced in last year's SWO case, with some minor modifications.

Western Australian Council for Social Services

- 15 WACOSS emphasised the importance of a substantial increase in the SMW of 7.359% (or \$63.54 per week), as with UnionsWA, to meet the needs of the low paid and to contribute to an improvement in their living standards.
- 16 It was submitted by WACOSS that the State economy is strong, business investment is robust, a substantial State budget surplus is forecast and there is little evidence that a substantial increase in the SMW would be inflationary. As a part of its case, WACOSS contended that inequality caused by a high cost of living and low wages growth, has put great pressure on low income households. The continued increase in costs for these households, who spend a disproportionate amount on essentials, also has a negative impact on the health and wellbeing of low wage employees.

- 17 According to WACOSS's submission, there is increasing evidence of employees on lower incomes turning to emergency support, and taking other measures to save costs. It was submitted by WACOSS that a substantial increase in the SMW is therefore necessary and it can be sustained, given the overall strength of the Western Australian economy.

Western Australian Local Government Association

- 18 The WALGA represents 139 Local Governments in the State, who employ some 24,600 employees, as at June 2023. Whilst not nominating a figure by which the SMW should be adjusted, the WALGA submitted that any increase should be fair but also have regard to the need for Local Governments to balance their budgets, having regard to the communities they service.
- 19 Whilst acknowledging the strength of the State economy, the WALGA submitted that due to the nature of Local Government revenue, mostly derived from rates income and also from State and federal grants, the sectors' capacity to raise revenue is limited. Accordingly, cost increases lead to a consideration of either rates increases or a reduction in community services.
- 20 As with other employers, Local Governments also have to contend with increasing costs, as measured by the Local Government Cost Index. These costs have increased over the course of 2022 and 2023. Along with the CPI, the LGCI has moderated in recent times, and is projected to return to annual growth of 3% over the next three years, generally in line with CPI growth projections.
- 21 In relation to industrial instrument coverage, it is accepted by the WALGA that the majority of Local Government employees are covered by industrial agreements under the *Act*. Thus, the extent to which Local Governments may be directly affected by the SWO may be limited. In respect of this, as to award coverage in the Local Government sector, the submission was made that these proceedings concern those Local Governments that apply the relevant State award, to some or most of their employees. As to the C14 to C13 realignment issue, the WALGA referred the Commission to the recent decision of the Fair Work Commission in April 2024, in its review of these classifications in modern awards.

Matters the Commission is to consider

State of the Western Australian economy

- 22 The Commission is required by s 50A(3)(b) of the *Act*, to have regard to the state of the Western Australian economy, and the effect on it of its decision, in particular the level of employment, inflation, and productivity. As with prior SWO proceedings, the *2024 State Wage Case – Economic Conditions and*

Outlook accompanying the Minister's submissions, contains *Table 1 – Major Economic Aggregates, Annual Growth (%)*, which is as follows:

Table 1 – Major Economic Aggregates, Annual Growth (%) 2022-23

	2022- 23	2023-24	2024- 25	2025- 26	2026- 27	2027- 28
	Actual	Estimated Actual	Budget Year	Outyear	Outyear	Outyear
State Final Demand	3.9	5.25	3.25	3.0	3.0	2.75
Gross State Product	3.5	1.75	2.0	2.0	2.25	2.25
Employment	3.1	3.75	1.75	1.5	1.5	1.5
Unemployment rate (a)	3.6	3.75	4.0	4.25	4.5	4.75
Consumer Price Index (b)(c)	5.0	4.0	3.0	2.5	2.5	2.5
Wage Price Index (c)	4.2	4.25	3.75	3.5	3.0	3.0
Population (c)	3.2	2.8	1.8	1.7	1.7	1.7

Data expressed as annual average during the financial year.

CPI growth rates are based on the total index excluding the electricity sub-sector.

Growth is expressed in year-ended terms.

Source: Western Australia 2024-25 Budget and Australian Bureau of Statistics.

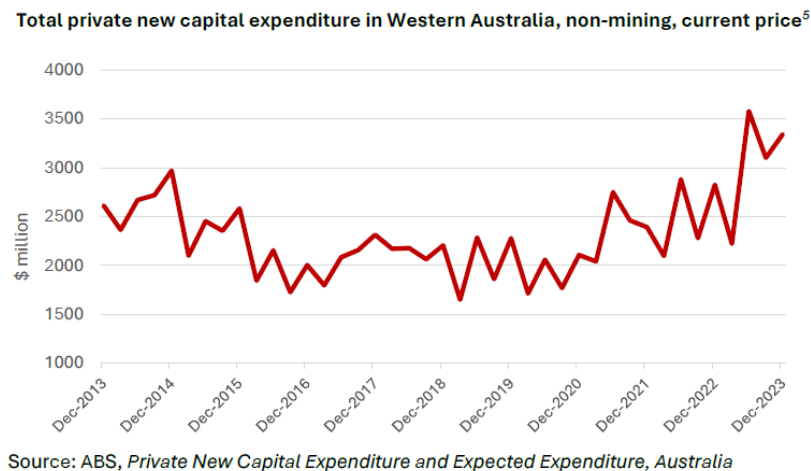
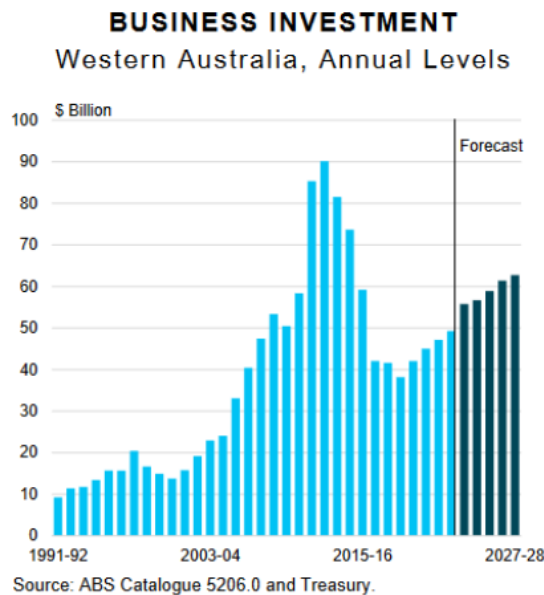
- 23 All parties agreed that overall, the State economy remains robust. The Minister noted that, as measured by Gross State Product, economic growth is expected to moderate to 1.75% for 2023-24. This follows a nine-year record high rate of growth of 3.5% for 2022-23. In 2024-25, GSP is forecast to lift marginally to 2.0%. Whilst below the long run average of 4.0% per annum, Mr Christmas referred to resource producers running at near full capacity, with investment directed to sustaining existing operations, rather than undertaking expansion. Migration has run at record levels to September 2023, with Western Australia having the highest rate of population growth of all States and Territories at 3.3%. International students have been a major contributor to this growth. However, this is expected to moderate over the near term. As a result, services exports have shown robust growth, at 36.5% for 2023-24. On the other hand, goods exports, contributed to by a poor grain harvest this year and weaker LNG exports, are expected to show a decline of 0.5% over the same period.
- 24 The domestic economy has been very strong and is expected to reach a growth rate, as measured by State Final Demand, of 5.25% for 2023-24, Mr Christmas noted the State's domestic economic growth rate is approximately double that of the national growth rate. Whilst some moderation is expected over 2024-25, as record migration levels ease and levels of business investment, which has also achieved record levels recently, consolidate, SFD remains well above trend, with

an historical average rate of growth of 3.6% per annum. It is noted that there has been some fall off in SFD, declining by 1.0%, over the last quarter to March 2024, as reflected in the ABS *National Accounts* to March 2024, released on 5 June 2024. Despite this, SFD remains strong in historical average terms.

- 25 UnionsWA in its submissions, referred to the most recent Commsec *State of the States* report of 21 April 2024, ranking Western Australia as the second-best performing economy in Australia, across all major indices. Employment growth, levels of construction activity, population (as already noted above) and housing finance were standout features of the State's economic performance.
- 26 Whilst acknowledging its overall strength, the CCIWA, as in the **2023 State Wage Case** emphasised the major contribution of the resources sector to the State economy, which comprises almost 50 per cent of the total economy in notional gross value-added terms, over 2022-23. Risks for the resources sector, in terms of its volatility, as noted in the Minister's *Economic Conditions and Outlook*, was emphasised in the CCIWA submissions in reply, along with the further submission that economic growth and prosperity are not shared equally across the business sector in the State. The major contribution of the resources sector to the State's economic success is acknowledged in the Minister's submissions and is to be accepted. However, as has been noted by the Commission previously, there is a substantial positive flow on effect and uplift, from this success to other sectors of the State economy, through supply chains and spending: **2022 State Wage Case** [2022] WAIRC 00273; (2022) 102 WAIG 431 at [31].
- 27 The strength of the domestic economy has been supported by solid household consumption. The Minister, the CCIWA and Unions WA all referred to the underlying strength of household consumption. While there has been some easing over calendar year 2023, as Mr Christmas noted in his evidence, household consumption remains above pre-pandemic levels in some discretionary items of expenditure. However, with rising interest rates and general cost of living pressures, Mr Christmas referred to some falls in demand for non-essentials. Whilst growth in overall household consumption is expected to moderate to 2% in 2023-24, Mr Christmas also noted that household consumption is stronger in Western Australia, than nationally. This is also underpinned by a solid household savings rate, which, although it has softened from its peak level in 2020-21, remains above the level nationally. Whilst these figures remain positive, Mr Christmas also referred to some fluctuation and weakness in consumer sentiment, both in Western Australia and nationally.
- 28 Business investment has been a standout feature of the State's economic strength over 2023-24. Over this period, business investment is projected to grow by 13.25%, the highest in a decade, underpinned by large resource projects. This builds on growth of 10.7% over the calendar year 2023. This robust growth is

expected to consolidate at an elevated level over the State Budget outyears, through to 2027-28. In addition to resources projects, UnionsWA also pointed to above trend non-mining capital expenditure in Western Australia, with it having risen by over 18% as at the December quarter 2023, with year-end growth of 7.8%.

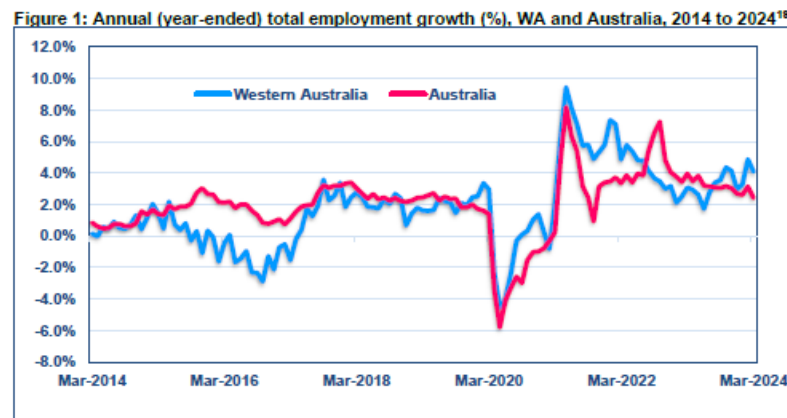
- 29 This strength in business investment is reflected in the following bar chart and graph:



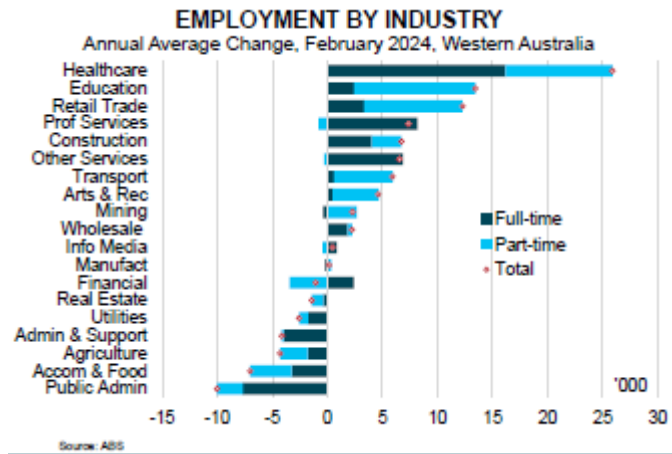
- 30 Mr Christmas also noted the strong housing market, with growth in new dwelling investment of 4.5% over 2023, following a decline of 2.7% over 2022-23. The pipeline of dwellings under construction remains substantial, with a large volume of outstanding work (over 23,000 homes under construction) continuing to completion. Dwelling investment growth for 2023-24 is expected to be 6.75%, strengthening further to 7.5% over 2024-25. Lead indicators of future activity,

such as loan approvals and land sales, also suggest an increase in dwelling commencements in the near term.

- 31 All parties referred to the strong labour market. The State's total labour force reached an all-time high of more than 1.6 million people, as of February 2024. The Minister noted the tightness in the labour market, although some easing has been evident recently, with a softening in domestic conditions. Total employment has risen by 4.1% over the twelve months to March 2024, which is up from 3.1% over the corresponding period in 2023. Some moderation is expected in the years ahead, in line with a softening in growth in the domestic economy generally. The growth in employment in Western Australia is higher than employment growth at the national level, as reflected in the following graph at [73] of the Minister's submissions:

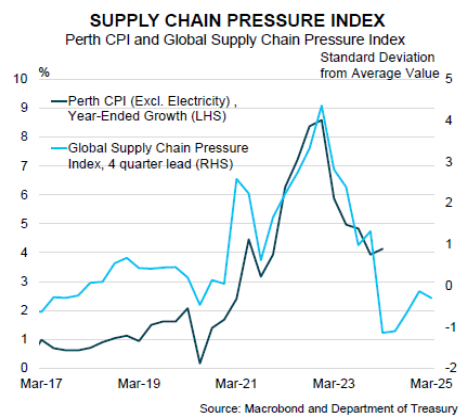
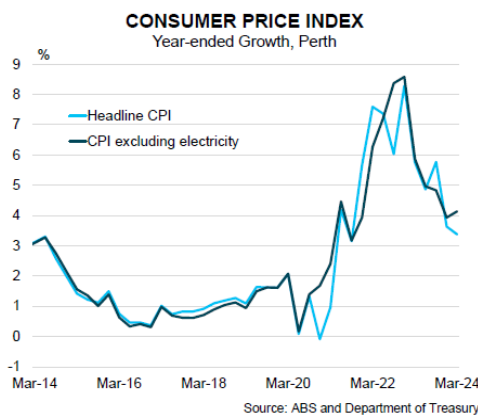


- 32 The State's unemployment rate remains at an historically low level, sitting at 3.7% in annual average terms, as of April 2024. This is only marginally higher than the rate of 3.6% over the corresponding period in 2023 and remains below the national rate of unemployment. Mr Christmas noted a compositional shift has occurred in the labour market this year, with part-time employment growth of 10.7% outstripping full time employment growth of 1.3% over the year to March 2024. This compares to the situation noted in the *2023 State Wage Case* at [62], where there was a compositional shift in the labour market in the opposite direction. As noted by Mr Christmas, employment growth by industry shows that growth has been strongest in healthcare, education, retail trade, professional services and in construction. Some contraction has occurred in accommodation and food services. This is shown in the following chart in the presentation by Mr Christmas:



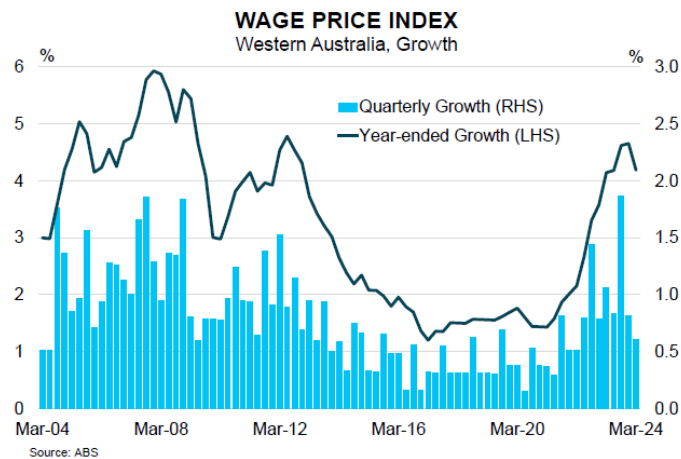
33 As with recent *State Wage Cases*, inflation and the cost of living assumed considerable importance in the current proceedings. Matters specifically relevant to living costs under s 50A(3)(a), will be considered further below. Whilst over the past two years inflation measured by the Consumer Price Index has been very high, and well beyond the RBA target band of 2%-3%, the CPI rate for Perth has significantly eased from its peak at 8.6% in the December quarter 2022, to 4.1% in year end terms for the March quarter 2024. The forecast for 2023-24 is a CPI of about 4%.

34 Both the March quarter 2024 and the 2023-24-year end forecast CPI figures exclude the electricity subcomponent, to account for the volatility caused by successive State Government electricity bill credits. This has been the preferred measure and was discussed by the Commission in Court Session in the *2022 State Wage Case* at [41]-[42]. The headline CPI rate for Perth for the year to the March quarter 2024 is 3.4%. It is anticipated that inflation will fall back to the RBA target range in 2024-25. Mr Christmas said that while goods inflation has eased, being assisted by a reduction in supply chain pressures, services inflation remains elevated, due to housing and other costs, such as insurance, remaining higher. These trends are reflected in the following charts from the presentation by Mr Christmas as follows:

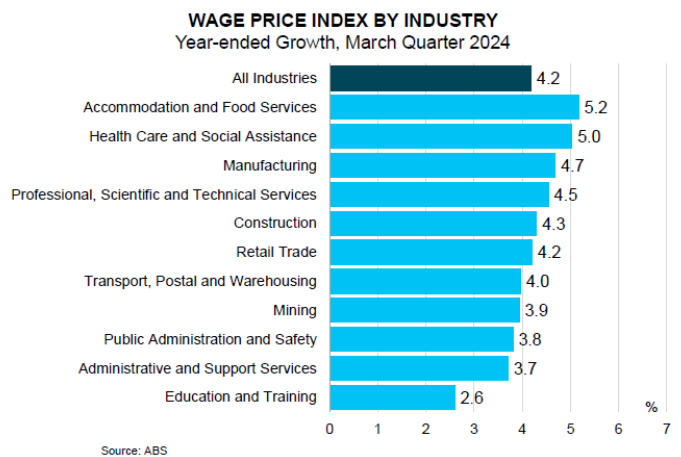


35 A measure of the strength of the Western Australian labour market, according to UnionsWA, is the Australian Bureau of Statistics measures of aggregate wages and salaries obtained from Single Touch Payroll data. This is set out in the ABS *Monthly Employee Earnings Indicator* 21 November 2023 and the ABS *Weekly Payroll Jobs* 9 May 2024. The former showed that Western Australia had the second largest percentage increase in wages and salaries paid by employers of the States, and the fourth largest overall. The latter showed Western Australia as having the largest annual percentage increase in payroll jobs of any State, and the second largest overall.

36 This strength in the labour market has also been reflected in wages growth as measured by the Wages Price Index. The WPI as discussed by Mr Christmas, grew to 4.7% in December 2023, but has eased a little to 4.2% in year end terms in March 2024. Forecast growth in the WPI for 2023-24 is 4.25%. This growth in the WPI is reflected in the following graph in Mr Christmas’s presentation:



37 Furthermore, Mr Christmas noted that the growth in the WPI in the State had been broad based, with a range of industry sectors showing growth, with the strongest being in hospitality, healthcare, and social services. This is reflected in the following chart:



- 38 As contended by the Minister, in aggregate terms, real wages growth has only recently returned in Western Australia, given the lift in the WPI and an easing in inflation, as measured by the CPI (see Minister's submission at [94] and Table 2: Annual growth in CPI and WPI – Western Australia). The CCIWA contended that the WPI underestimates the impact of payments made to employees, such as sign on and performance bonuses and other similar payments. Whilst this may occur in the case of employees in occupations in high demand in a competitive labour market, as was noted by the Commission in the *2022 State Wage Case* decision at [37], there may be some doubt whether such payments would be a regular feature of payments made to unskilled or semi-skilled employees paid at lower wage levels.
- 39 As a general observation, as with the CPI measure of inflation, the Commission has used the WPI as a broad indicator of wages growth in past years in *State Wage Cases*. Whilst as the Minister noted in her reply submissions, it is not a perfect measure, it does provide the Commission with a sound guide regarding community wage movements.
- 40 Whilst relevant to both the State and national economies, considered below, in reliance on ABS National Accounts data to December 2023, the CCIWA referred to rising unit labour costs on the back of low productivity growth. It was contended that real unit labour costs rose 6.9% over the year to December 2023, because of higher nominal wages growth and lower rates of productivity growth. Measured by GDP per hours worked, whilst some improvement occurred over the last six months, the CCIWA submitted that to December 2023, based on the National Accounts data, productivity slipped by 0.4% back to 2019 levels (see exhibit CCIWA 1). The question of productivity growth has also been commented on by the RBA in its most recent *Statement on Monetary Policy*, May 2024, referring to real unit labour costs having peaked, 'reflecting robust wages growth and weak productivity outcomes'. If such a situation persists, the RBA identifies it as a risk to the inflation outlook (at p 29).
- 41 In light of these considerations, the CCIWA urged the Commission to pay significant regard to the inflationary effect of any substantial increase in minimum wages, without improvements in productivity.
- 42 This issue was also addressed by UnionsWA in its reply submissions. It was contended that, in reliance on the Productivity Commission's *Quarterly productivity bulletins* for December 2023 and March 2024, to focus on the most recent productivity figure, does not account for historical performance and that the most recent levels reflect productivity returning to trend, at pre-pandemic levels.

- 43 Whilst the pandemic clearly had a distorting effect on productivity levels, the current rate on a yearly average basis, is still substantially lower than over the period to 2019. The effect of recent increases in nominal wages growth, along with a decline in productivity, has led to substantial increases in real unit labour costs. Of note, the ABS *National Accounts* to March 2024, indicates that in terms of GDP per hour worked, productivity remained flat to the March quarter 2024, rather than showing negative growth.
- 44 Linked to this issue, were further contentions advanced by the CCIWA, UnionsWA and WACOSS, as to the inflationary impact of wage increases. Both WACOSS and UnionsWA relied on recent research conducted by the Australia Institute, to the effect that even large minimum and award wage rises have had a negligible effect on economy-wide prices. Rather, it is corporate profits that have driven the post-pandemic surge in inflation, not wages growth.
- 45 This was countered by the CCIWA, citing a Commonwealth Treasury Ministerial Submission, released under Freedom of Information, that contested the Australia Institute research. Notably also however, the Commonwealth Treasury submission stated (at p 2) that as supply shocks from the pandemic subside, given they are the largest cost for business, wages growth will again become the major driver of inflation. This is more consistent with the RBA view. However, when considering these competing contentions, it needs to be borne in mind that those paid the SMW are very small in number. The prospect of any inflationary impact of an increase in the SMW is minimal.
- 46 Additionally, the Commission has repeatedly expressed the view, based on research undertaken by the late Professor David Plowman as part of previous *State Wage Cases*, that the strength of the State economy has a moderating effect on increases in minimum wages. It is also noted, that even despite the RBA and Commonwealth Treasury views, in the case of the recent real increases in the SMW and award wages flowing from the *2022 State Wage Case* and the *2023 State Wage Case* of 5.25% and 5.3% respectively, inflation in Western Australia has sharply fallen over the course of the last year.
- 47 Overall, the State economy remains robust, and has performed strongly over the 2023-24 year. The labour market is forecast to remain strong in historical terms, although some easing is expected, as continued elevated, although easing, inflation dampens demand and household spending continues to pull back from higher levels over the last two years. There is no evidence that recent increases in the SMW and minimum award wages have had an adverse impact on the level of employment, inflation, and productivity in the State economy. However, a risk to the outlook remains, with the possibility of further reductions in household spending if interest rates remain elevated for longer periods, and if the RBA

moves to again increase the cash rate, in the face of ongoing continued inflationary pressure in the economy.

State of the National economy

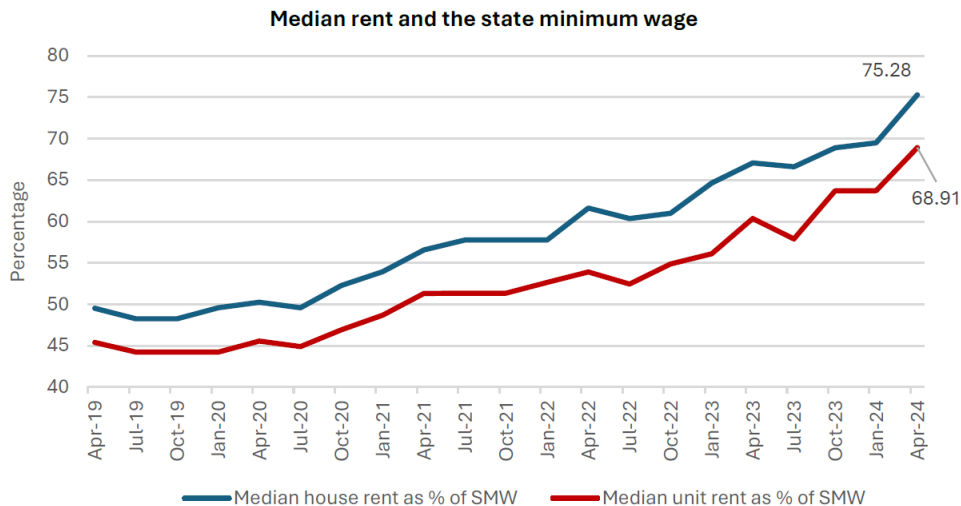
- 48 Whilst the focus of these proceedings is on the State criteria in s 50A(3) of the *Act*, consideration is to be given to the state of the national economy, to the extent that it is relevant. The national economy grew, as measured by GDP, by 2.1% over the calendar year 2023 and it is forecast to achieve 1.75% growth in 2023-24, based on the Commonwealth Budget 2024-25 projections. As noted by Mr Christmas, growth was expected to ease over this year, considering more restraint in household consumption and dwelling investment nationally. In this respect, there has been a sharp fall in household spending, falling to 1.1% over 2023, compared to 6.6% growth over the previous year. Gradual growth in GDP is anticipated in the outyears. Further, the ABS *National Accounts* to March 2024 show a decline in performance of the national economy as measured by GDP, with growth of only 0.1% for the March quarter 2024, and 1.1% growth through the year March 2023 to March 2024.
- 49 The labour market, whilst it has been resilient to date, is noted in the Commonwealth Budget to be softening, with employment growth expected to moderate from 3.5% for 2022-23, to 2.25% in 2023-24 and 0.75% in 2024-25. Correspondingly, an uptick in unemployment is forecast, from 4.0% for 2023-24 to 4.5% for each of 2024-2025 and 2025-26. Whilst as with Western Australia, wages growth has been strong, with WPI nationally being the highest for many years, at 4.0% for 2023-24, growth is expected to moderate over the next two years to 3.5%, in line with a softening in labour market conditions more generally.
- 50 Inflation, whilst it has fallen from a high of a CPI of 6% in 2022-23, remains elevated at 3.5% for 2023-24. Inflation is not forecast to return to the RBA target range of 2%-3% until 2024-25. Given this, the RBA in its recent *Statement by the Reserve Bank Board: Monetary Policy Decision 7 May 2024*, noted that it is not 'ruling anything in or out' in terms of the pathway of interest rates to return inflation sustainably, to the target range.

Fairness, living standards and meeting the needs of the low paid

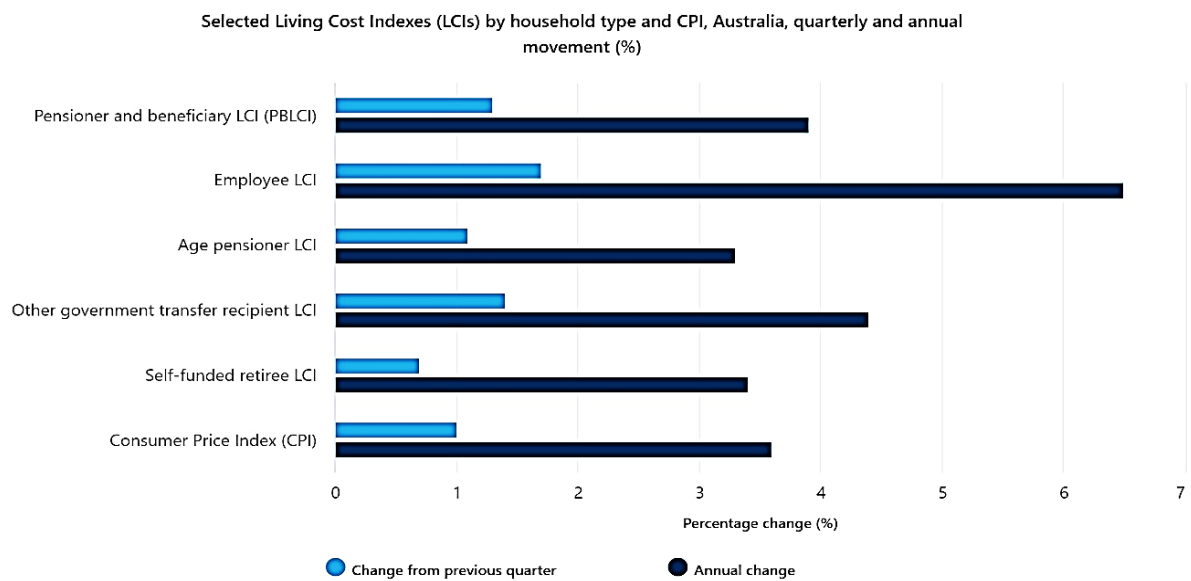
- 51 In the *2023 State Wage Case* the Commission in Court Session said at [40]:
- 40 It is to be accepted, as the Minister contended, that for those employees who are reliant on the SMW, the only meaningful way of improving their living standards, relative to those in the community generally, is by increases in the SMW to assist in meeting increasing costs of living in the current, challenging circumstances.

- 52 The above observations are particularly relevant to those employees in the State system who are award free. It also relates to the consideration necessary to be given by the Commission to the requirements of ss 50A(3)(a)(ii) and (iv) of the *Act*, in relation to the needs of the low paid, and to contribute to an improvement in living standards for employees. Consistent with the views expressed by the Commission in both the *2022 State Wage Case* and the *2023 State Wage Case*, the requirement to consider meeting the needs of the low paid for the purposes of s 50A(3)(a)(ii), means enabling the low paid to obtain the essentials needed for them to achieve a decent standard of living and to take part in community life. The challenging circumstances in 2023, being substantial increases in the cost of living, have continued in the present environment, although there has been some easing in the CPI to the March quarter 2024.
- 53 As noted by the Minister, in considering these criteria, the Commission is required to take a ‘holistic approach to its statutory functions, so that economic, social and industrial criteria are all given appropriate consideration’ (Minister’s submissions at [119]). In this context, ‘fairness’, for the purposes of ss 50A(3)(a)(i) and (iii), also involves a balance of the interests of both employees and employers: *2022 State Wage Case* at [50]. Both in this and the last two *State Wage Cases* in particular, considering the criteria of fair wage standards in the context of living standards generally, and contributing to an improvement in living standards, has focussed attention on increases in the cost of living and what contribution an increase in the SMW and award wages may have in ameliorating these pressures.
- 54 It is accepted that as demonstrated in the ABS (2024) *Employee Earnings and Hours, Australia*, May 2023 data that of all the pay setting methods, those who are award reliant in Western Australia are the lowest paid, compared to collective agreements and individual arrangements. Additionally, those employees who are award reliant, are most dependent on increases in the SMW and minimum award wages to assist in meeting their needs. Relative to median earnings in Western Australia, the ratio of the level of the minimum wage to median earnings, known as the ‘minimum wage bite’, whilst having been largely the same for a number of years, improved to 50.8%, following last year’s SMW increase of 5.3%.
- 55 Both UnionsWA and WACOSS, in their initial and reply submissions, emphasised the impact on low paid employees, of the continued higher cost of living and the fact that low paid employees are required to spend a disproportionate amount of their income on essentials, which are themselves rising in cost. Rental costs have dramatically increased in both Perth and the regions of the State over the last year, as reflected in the CPI subcomponent for rents, which has increased by 9.9% for the year to March 2024.

- 56 Similarly, in terms of rental property data published in *Domain's March Quarter Rental Report*, Perth median house rents have increased by 18.2% in the last year, with an even larger increase of 22.2% for unit properties. In the context of the level of the SMW, UnionsWA contended that 75.28% of the SMW is now needed to pay the median house rent and 68.91% to pay the median unit rent, as set out in the following graph:



- 57 Given these very substantial increases in median rents, WACOSS contended that less than 1% of properties are affordable for a single person on the minimum wage. This is in the context of predictions of further substantial increases in rents in the year ahead.
- 58 Increases in food prices, especially for essentials, was also emphasised by UnionsWA and WACOSS in their respective submissions. As revealed by price increases in both tradable and non-tradable items over the last year in excess of the headline inflation rate of 3.4%, along with the prices of certain food staples surging over recent years, this undoubtedly places increased pressure on low income household budgets (see UnionsWA submissions at [4.3]-[4.4] and WACOSS submissions at pp 13-14). Evidence of these increases in cost-of-living pressures, is employed families increasingly seeking emergency assistance over the past three years, through various community service providers (see WACOSS submissions at pp 19-20).
- 59 As a further insight into living costs, both the Minister and UnionsWA referred to the ABS *Selected Living Costs Indexes* series, released for the March quarter 2024. The LCIs measure changes over time in the after-tax income of various categories of households, in purchasing a fixed basket of goods and services. This contrasts with the CPI, which measures the change in prices of a basket of goods over time. To the March quarter 2024, for employee households, the LCI increased by 6.5% (inclusive of mortgage payments) as reflected below.



- 60 None of the other parties to these proceedings questioned that low paid employees have faced particularly challenging times in making ends meet. The above information is valuable to the Commission in gaining further insights as to the needs of the low paid, current living standards and how they may be improved. Whilst this additional material is advanced on this footing, the Commission remains of the view, as has been stated on previous occasions, and as noted by the CCIWA in its reply submissions, that the CPI is still the best overall measure of changes in the cost of living.
- 61 From the perspective of small businesses, the CCIWA emphasised that rising interest rates also impact on their costs of operation, in terms of debt serving, and along with other rising input costs, these may not be able to be passed on to customers. These are relevant matters for the Commission to consider. The CCIWA, in both its initial and reply submissions, also drew the Commission's attention to the range of recent State and Commonwealth Budget measures designed to provide cost of living relief, especially for low income households, including the Commonwealth Government Stage 3 income tax changes, due to take effect on 1 July 2024. With the lowest tax bracket being lowered from 19 percent to 16 percent, this was submitted to be of benefit to low income earners, along with increases to social security payments. These latter points were strongly contested by UnionsWA, which submitted that these measures, intended to benefit lower income earners, should not moderate any increase in minimum wages. It should be noted too, as pointed out by UnionsWA in its reply submissions, that businesses are also eligible for electricity bill relief, as an assistance measure to the business sector.

- 62 The CCIWA also referred to observations made by the Commission in prior *State Wage Cases*, that the SMW cannot address all the needs of the low paid. The tax and transfer payment system, along with targeted cost of living measures of the kind recently announced, have a significant role to play in providing relief for low income households. Despite this, in the Commission's view, the SMW and minimum award rates of pay form an important part of the safety net of terms and conditions of employment. Regular increases in the SMW and minimum award wages, applying the statutory criteria in s 50A(3)(a) of the *Act*, contribute to employees obtaining a decent standard of living.
- 63 The Commission reiterates what it said in the *2023 State Wage Case* at [44], that while acknowledging the role of Government cost of living measures, such as electricity bill credits and other payments, these one off assistance initiatives cannot replace the ongoing beneficial effect of regular increases in minimum wages.
- 64 The CCIWA contended that in its view of the present circumstances in Western Australia, the need to consider a system of fair wages and conditions of employment, involves not disadvantaging small and family run businesses by increasing minimum wages by the rate of inflation. This is in conjunction with targeting any increase towards the low paid, by determining a flat dollar amount. Both the Minister and UnionsWA took issue with this approach, as in effect, advocating for a real wage reduction, in circumstances where the cost of living has placed increasing pressure on low income households. The CCIWA also referred to last year's SMW increase of 5.3% as being a real wage increase of 1.9%, due to inflation for 2023 coming in at 3.4% for this State. Whilst the increase last year was a real increase in the SMW and minimum award wages, as the Minister noted, the measure of inflation used to smooth out the impact of electricity credits, to the March quarter 2024, is 4.1%, with the full year figure yet to be ascertained.

Protecting employees who may be unable to reach an industrial agreement

- 65 The requirement to have regard to the need to protect employees unable to reach an industrial agreement, is specified by s 50A(3)(a)(v) of the *Act*. From the Commission's records, the registration of industrial agreements in the private sector within the State industrial relations system is negligible. As noted in the Minister's submissions at [137]-[138], those industry sectors where industrial agreement making is most evident, do not include sectors such as accommodation and food services and the retail trade. It is these areas that are most likely to be award reliant and therefore, increases in the SMW and award rates of pay, will be of assistance to these groups of employees.

- 66 The above was emphasised by UnionsWA in its submissions. Reference was made to the ABS *Employee Earnings and Hours* data, in relation to non-managerial employees in Western Australia. As the Minister noted, this shows that those employees paid under awards only, earn substantially less than those paid under collective and individual agreements. This is also reflected in the concentration of award reliance in Western Australia as at February 2024, in the industries of accommodation and food services, healthcare and social assistance and retail trades (see UnionsWA submissions [5.2]-[5.3]; Minister's submissions at [113] and [120]-[121]).
- 67 Regular increases in minimum wages will contribute to protecting employees unable to reach industrial agreements.

Encouraging ongoing skills development

- 68 The Commission is required to have regard to the need to encourage ongoing skills development as a relevant consideration under s 50A(3)(a)(vi) of the *Act*. There was a substantial rise in apprenticeship and traineeship commencements over the period 2021-22, as Commonwealth Government support in the form of subsidies following the pandemic, took effect. As noted by the Minister, with the winding back of some of these incentives from mid-2023, the level of commencements of apprenticeships and traineeships has eased.
- 69 The fall in apprenticeship commencements from 2022-2023 has been relatively small, from 12,526 to 11,054. However, the fall in traineeship commencements has been more pronounced, from 19,285 in 2022 to 12,669 in 2023. UnionsWA contended that the combined falls in both apprenticeships and traineeships are likely the result of increases in the cost of living and the barrier that this presents, given the lower rates of pay for apprentices and trainees. Accordingly, in its submissions, an increase in the SMW and minimum award rates of pay, flowing on to apprentices and trainees, is essential.
- 70 It is difficult to say with any certainty what has been the cause of the fall off in numbers of those in training, but the removal of employer incentives would likely have a significant effect. While there has been some decline in the total numbers, as at 2023, the overall figure is still substantially higher than that immediately prior to the onset of the pandemic in 2019 (see Table 2 Minister's submissions p 33). As has been observed in past *State Wage Cases*, there was no suggestion on this occasion that prior increases in the SMW and minimum award rates of pay flowing to apprentices and trainees, has had a dampening effect on levels of commencements. In a high cost of living environment, it is important that these employees also receive the benefit of any increase.

Provide equal remuneration

- 71 There has been a small decline in the gender pay gap in this State and nationally over the year to November 2023 (see Table 3 Minister’s submissions at p 19). Despite this, Western Australia still has the highest gender pay gap of any State or Territory, being 21.7% as at November 2023 (see Table 4 Minister’s submissions at p 19). The Commission has previously noted the concentration of women employed in the healthcare, social assistance, accommodation and food services and retail sectors, which also tend to be more award reliant, as being a significant factor. This is in contrast to the prevalence of the employment of men in industries such as mining and resources and construction. This was emphasised in WACOSS and UnionsWA submissions, and also touched on by the Minister. The CCIWA also noted in its reply submissions, that the gender pay gap remains a matter of concern for the business community in this State.
- 72 The complexity in addressing the full range of reasons for the gender pay gap is acknowledged. They cannot be resolved in proceedings under s 50A of the *Act*. However, the Commission has also stated in previous *State Wage Cases* that increases in the SMW and minimum award rates of pay can contribute to a reduction in the gender pay gap, and the Commission remains of that view on this occasion.

Capacity of employers as a whole to bear the cost of increased wages, salaries, etc

- 73 Section 50A(3)(d) of the *Act* requires the Commission to take into account the capacity of employers as a whole to bear the cost of any increases in the SMW and minimum award rates of pay. As has been previously stated by the Commission, this criterion is macro in nature and does not focus on individual firms’ capacity to pay. In this respect, the Commission refers to published data by the ABS in its *Gross Operating Surplus (GOS) and Gross Mixed Income (GMI) by Industry, WA, Current prices, 2022 and 2023*. Whilst aggregate data, for the 2022-23 financial year, as submitted by the Minister, this material provides some insight into local business conditions. Table 5 to the Minister’s submissions at p 21 is as follows:

Table 5: Gross Operating Surplus (GOS) and Gross Mixed Income (GMI) by industry, WA, current prices, 2022 and 2023

Industry	GOS + GMI June 2022 (\$m)	GOS + GMI June 2023 (\$m)	Annual Increase (\$m)	Annual Increase (%)
Agriculture, forestry and fishing	8,531	9,395	864	10.1%
Mining	163,941	177,216	13,275	8.1%
Manufacturing	8,120	8,537	417	5.1%
Electricity, gas, water and waste services	2,603	2,978	375	14.4%
Construction	6,498	6,147	-351	-5.4%

Wholesale trade	4,209	6,666	2,457	58.4%
Retail trade	4,179	4,898	719	17.2%
Accommodation and food services	1,846	2,305	459	24.9%
Transport, postal and warehousing	5,159	7,008	1,849	35.8%
Information media and telecommunications	1,896	2,005	109	5.7%
Financial and insurance services	7,909	9,668	1,759	22.2%
Rental, hiring and real estate services	3,783	4,268	485	12.8%
Professional, scientific and technical services	3,578	4,422	844	23.6%
Administrative and support services	1,260	1,499	239	19.0%
Public administration and safety	2,031	2,284	253	12.5%
Education and training	1,554	1,720	166	10.7%
Health care and social assistance	2,683	2,769	86	3.2%
Arts and recreation services	616	606	-10	-1.6%
Other services	1,912	2,283	371	19.4%
Total all industries	249,923	276,410	26,487	10.6%

- 74 Both the Minister and the CCIWA noted the dominance of the mining sector in the State's economy and its large impact on the above aggregate industry performance. Whilst acknowledging this to be the case, it is of note that a majority of the other industry sectors recorded positive growth to June 2023, with the retail trade and accommodation and food services sectors showing significant increases.
- 75 To supplement this material, as in the *2023 State Wage Case*, the Minister provided to the Commission and the parties, unpublished ABS sales and wages data for the retail and accommodation and food sectors in Western Australia for each quarter over the period December 2018 to December 2023. This data does not discriminate between national and State system businesses. In the retail sector, over the period from the December quarter 2022 to the December quarter 2023, gross sales increased by 7.6%. Over the same period, gross wages paid increased by 3.6%. This compares to the year December 2021 to December 2022, where there were increases of 8.6% and 3.5% respectively. Both the 2022 and 2023 years show positive growth. For the accommodation and food services sector, for December 2022 to December 2023, gross sales increased by 24.5% and wages paid increased by 46.8%.
- 76 Updated figures to the March quarter 2024, show some decline in both gross sales and wages paid for both retail and accommodation and food services. It was noted that some of the data for the accommodation and food services sector has a relatively high standard of error and should be treated with some caution. There also appears, at least for the retail sector and less so for the accommodation and food sector, to have been a trend, as one would expect, of the highest sales and wages paid over the Christmas period of each year, with a corresponding fall off in the March quarters. Accordingly, without a full year's data, it is difficult to draw any conclusions from the March quarter for 2024.

- 77 However this unpublished data is broadly consistent with the GOS + GMI data above, and suggests, that at least for 2023, two main industries with a presence in the State industrial relations system, were overall, profitable. In conjunction with this macro data, the evidence from Mr Christmas in relation to wages growth both generally, and by industry, referred to at [36]-[37] above, tends to be supportive of this overall conclusion.
- 78 By contrast however, in the *CCIWA Business Confidence Survey: March quarter 2024*, about 74% of respondents to the survey expect business conditions over the period ahead, to either deteriorate further, or to remain challenging, as currently. Rising cost pressures, caused by inflation, increases in interest rates and increases in wages, are identified as the drivers. These are reflected in an increase in the *ABS Producer Price Index*, measuring business input costs such as rent, fuel, wages, materials, freight and energy of 4.3% for the year to March 2024 (*ABS 2024, Producer Price Indexes Australia, March 2024*). Similar contentions were put by the WALGA, in terms of Local Governments' capacity to meet increased costs, and the constraints on them, given their limited revenue raising ability. This is especially so in the case of smaller Councils, with a declining population base.
- 79 In particular, the CCIWA noted increases in interest rates as a significant factor in the capacity of small businesses, to remain profitable, as referred to by the RBA in its *Financial Stability Review, March 2024*. In the absence of a breakdown of the CCIWA survey data as between national and State system employers, it is difficult to draw definitive conclusions from this data, other than to say those employers who responded to the CCIWA survey seem less optimistic as to their future circumstances, than the data suggests was the overall performance of business in 2023. Additionally, as noted by UnionsWA in its reply submissions, the record level of business investment in Western Australia, including non-mining related, which is forecast to consolidate but at a high level in the year ahead, is somewhat at odds with the more pessimistic assessments expressed in the CCIWA survey responses.
- 80 As a measure of the impact of current trading conditions on small businesses in particular, the CCIWA, both in its main submissions and also in its submissions in reply, pointed to an increase in business insolvencies in Western Australia, as reported by the Australian Securities and Investments Commission, in its *Australian Insolvency Statistics, April 2024*. Apart from the elevated level of insolvencies generally, the CCIWA noted those in award reliant industries such as the arts and hospitality sectors and retail trade, have seen increases in insolvencies of 30% and 32% respectively, over the last 12 months.
- 81 As to insolvencies, the RBA in its *Financial Stability Review, March 2024* noted at p 18:

Company insolvencies have risen to more normal levels. This reflects a few factors: the removal of significant support measures that were put in place during the pandemic; more challenging trading conditions as the economy has slowed in the face of high inflation and tighter monetary policy... However, insolvencies remain below the pre-pandemic trend on a cumulative basis... Sectors more exposed to consumer discretionary spending, such as hospitality, have accounted for an increased share of insolvencies to date.

- 82 In its submissions, UnionsWA recognised that those businesses exposed to declines in discretionary spending, have experienced some challenges. WACOSS also referred to the RBA analysis in its *Financial Stability Review, March 2024*, which concluded that most Australian business profitability had been restored in the post pandemic period. This included the accommodation and food sector, which, whilst it experienced one of the worst impacts of the pandemic between 2019-21, was now returning to profitability. WACOSS noted the RBA commentary in relation to insolvencies returning to pre-pandemic levels. However, whilst this is so, regard should be had to the RBA's caveat, set out at [81] above, to the effect that businesses exposed to consumer discretionary spending are more at risk.
- 83 A further matter raised by the CCIWA is the impact of variations to State awards and award reviews, being undertaken by the Commission. It was submitted that increases in allowances, such a location allowances for example, represent a cost to business and should be taken into account. However, in the Commission's view, these matters are not able to be taken into account to ameliorate any increase in the SMW and award rates of pay. Location allowances, as the Minister in her reply submissions observed, are compensation for the higher cost of living in remote locations and have been adjusted annually, by a general order under s 50 of the *Act* for many years. As also noted by UnionsWA in its reply submissions, whilst some award reviews have led to the updating of some allowances, they have only been adjusted to bring them up to date to reflect current value, as provided by the Commission's *Statement of Principles – July 2023*, and are not matters the Commission has had regard to in the past in *State Wage Cases*.
- 84 In summary, over 2023, overall business profitability remained very solid in this State. With some softening in household consumption and a projected pull back in discretionary spending, forecast in the year ahead, along with elevated input costs, including an increase in the compulsory superannuation contribution rate from 11% to 11.5% on 1 July 2024, small businesses in Western Australia may experience, as concluded by the RBA, increasingly challenging conditions. The Commission needs to take this into account in determining any increase in the SMW and minimum award wages.

Decisions of other industrial courts and tribunals

- 85 Under s 50A(3)(f) of the *Act*, the Commission must take into consideration relevant decisions of other industrial courts and tribunals. On 3 June 2024, the Fair Work Commission handed down its decision in the ***Annual Wage Review 2023-24*** [2024] FWCFB 3500. It determined that the NMW and all modern award minimum wages will be increased by 3.75%. The Fair Work Commission noted at [8] and [9] of its reasons that in reaching its decision, particular account was paid to cost of living pressures for low paid employees; that an increase significantly above inflation was not warranted given the decline in productivity; that whilst business profitability and the labour market generally remain strong, industry sectors with high concentrations of award reliant employees are less buoyant; cost of living initiatives from the recent Budget along with Stage 3 tax cuts are relevant to take into account; and the rise in the superannuation contribution rate from 1 July 2024, is a moderating factor.
- 86 The hearing resumed on 6 June 2024, to provide an opportunity to the parties to make submissions concerning the ***Annual Wage Review 2023-24*** decision. The Minister maintained that there should be a realignment of the C14 classification rate with the C13 classification rate and that the Commission should increase award wages in line with the federal decision, by 3.75%. It was submitted that the characteristics of employees affected by the SWO are very similar to those covered by the award reliant employees in the national system. They being employees who are part-time or casual, predominantly women, and concentrated in industries such as food services, healthcare and social services, retail trade and administrative and support services. The Minister also noted that as was the conclusion nationally, the aggregate impact of award wage increases is limited, and much more so in the State system, given its coverage. As to the effect on inflation of any increase, the Minister contended that given the Fair Work Commission's conclusion that a 3.75% increase is consistent with a return to the RBA's target range, this conclusion is also open for the Commission to reach in these proceedings.
- 87 In terms of the productivity data provided by the CCIWA in exhibit CCIWA 1, the Minister submitted that the wage increases suggested based on that data, of between 1.48% and 2.48%, would amount to a substantial real wage reduction for the lowest paid employees. The Minister also noted that the latest data in the National Accounts, which were not available at the time of the submission of the CCIWA material, shows that productivity was flat over the March quarter 2024, which is an improvement on the level for the year to December 2023.
- 88 In its submissions, the CCIWA maintained its contentions that a flat dollar increase would benefit low paid employees in the current environment. The CCIWA emphasised the conclusions reached by the Fair Work Commission in

relation to uncertainty regarding the performance of the economy in the year ahead, along with low productivity, ongoing inflationary pressures, and concerns about wages moving substantially above inflation. The CCIWA in effect, urged the Commission to take a cautious approach. Emphasised was the recent 1.0% contraction in the State's domestic economy, from the most recent National Accounts data. The CCIWA also reiterated the impact of wage increases on small businesses, and the need to take into account the tax and transfer system, including recent cost of living Budget measures, as referred to in the Fair Work Commission's decision.

- 89 On behalf of UnionsWA, it was submitted that there remains the need for a meaningful increase in the SMW and minimum award wages, given ongoing cost of living pressures, as recognised in the federal decision. In particular, as in UnionsWA's initial submissions, reference was made to the impact of non-discretionary expenditure for essentials, which has a disproportionate effect on the low paid. This will be exacerbated, on the UnionsWA submissions, if the differential between the SMW and the NMW is maintained, by not realigning the C14 rate with the C13 rate. Consistent with the Minister's submissions, in terms of any impact of increases in wages on inflation and aggregate wages growth, UnionsWA contended this would be negligible in the State system, given the Fair Work Commission's conclusions as to this issue. Further, UnionsWA referred to the cost of living Budget measures recently announced, and the Stage 3 tax cuts. It was submitted these measures, whilst noted by the Fair Work Commission as providing low paid employees with some relief, should not lead to a discount in the amount of any wage increase.

Consistency and equity in relation to variation of awards

- 90 As with previous *State Wage Case* proceedings, no submission was made by the parties that any increase in the SMW should not be applied to awards as a matter of equity.

Employees with a disability

- 91 For employees with a disability who have been assessed as having a reduced productive capacity under the SWS, ss 50A(1)(a)(iii), (1A) and (1B) of the *Act*, require a rate to be set the same as that in s 285(2)(a) of the *FW Act*. In its *Annual Wage Review 2023-24* the National Minimum Wage Order has set the rate at \$106. The minute of proposed order arising from these proceedings will specify this rate, as will awards that prescribe a rate for an employee that contains a rate of pay specified for the purposes of the SWS.

Conclusions

C14 and C13 classification rates

- 92 As a result of the Fair Work Commission's decision in its *Annual Wage Review 2022-23* [2023] FWCFB 3500 and the Commission's initial response in the *2023 State Wage Case* at [87]-[91], the Commission in Court Session requested the parties to address this issue as a part of their respective cases on this occasion. This was a matter taken up by the Minister and UnionsWA. As noted at the outset of these reasons, WACOSS supported UnionsWA's claim for a 7.359% increase in the SMW and award rates of pay, which included a realignment of the C14 rate to the C13 rate. The CCIWA did not make submissions on this issue in its initial written submissions, but did comment in its written submissions in reply.
- 93 The Minister was supportive of the Commission adopting the same approach as the Fair Work Commission, in realigning the C14 award rate in State awards with the C13 rate. Benchmarking the SMW with the C13 rate, would involve a one off increase in the SMW of \$19.90 per week or a 2.3% increase, from \$863.40 per week to \$883.30 per week. Adopting this approach would see the SMW set at a rate virtually the same as the NMW, with a difference of 50 cents per week in favour of the SMW.
- 94 Given the different minimum wage setting framework in this State to that applying under the *FW Act*, the Minister acknowledged the unique history as to how the SMW has been set in Western Australia, as outlined by the Commission in its *2023 State Wage Case* decision at [87]-[89]. The Minister also acknowledged that as opposed to the C14 rate in modern awards in the national system, many C14 classifications in State awards are not transitional in nature and are ongoing. A consequence of the effect of s 12 of the *MCE Act* is that the SMW, implied into all awards, industrial agreements and contracts of employment in the State system, becomes the minimum award rate. Accordingly, if the SMW is benchmarked against the C13 rate, this will become the minimum award rate of pay and all other award rates below the C13 rate, will be of no effect. The Minister acknowledged that the effect of increasing the SMW in accordance with this proposal, would leave the lower award rates in place, unless and until the Commission takes other steps, such as the making of a further general order under s 50 of the *Act*, to address this outcome.
- 95 As a part of the submissions on this issue, the Minister helpfully prepared a document mapping State awards, to identify those awards with classification rates of pay less than the C13 rate (see exhibit Minister 3). Of the 217 awards set out, some 83 have classification rates below the C13 rate. However, the Minister also observed that whilst this may be the case, those employees actually affected by

such a change would likely be far fewer. This is because there are only a small number of State awards containing rates of pay less than the C13 rate, that are widely used and which represent rates actually paid in practice. Thus, on the Minister's submissions, the impact of such a realignment is likely to be relatively small.

- 96 Also, during the course of the hearing, the Commission raised the issue of award relativities. The effect of the Minister's proposal if implemented, would undermine established relativities in some awards, which presently have as the lower award rate, the C14 classification rate. This was acknowledged by the Minister. However, ultimately, the basis for the support for this approach in the Minister's submissions, was one of equity and fairness as between State system employees and those in the national system.
- 97 UnionsWA also supported the approach to realign the C14 classification to the C13 classification rate. UnionsWA referred to the decision by the Fair Work Commission in the *Review of C14 and C13 rates in modern awards* [2024] FWCFB 213. That case was expanded following the *Annual Wage Review 2022-23*, to consider more generally whether all modern awards should specify the C13 rate as the lowest rate and any lower rate (whether the C14 rate or otherwise) should be determined to be an entry level transitional rate and be time limited. The Fair Work Commission reached provisional views that these issues be determined in the affirmative, subject to further submissions from affected parties. It is of significance to note that this decision of the Fair Work Commission turned on the application of relevant provisions of the *FW Act*, including the modern awards objective in s 134; the minimum wages objective in s 284 and also, work value for the purposes of s 157(2). It may be said that aspects of the first two provisions are relevant to this Commission's proceedings under s 50A of the *Act*, but the latter is not.
- 98 UnionsWA's claim is that of an overall increase of 7.359% to the SMW and award wages. This would achieve the same result as proposed by the Minister. This is because the UnionsWA claim, as noted above, includes a 2.3% increase to the SMW based on the realignment from the C14 to the C13 rate, and in addition, a 5% general increase in award rates of pay.
- 99 It was acknowledged in the UnionsWA submissions that it has long been the case that the SMW has been higher in the State system than the NMW in the national system. However, UnionsWA contended that given the coverage of both systems in Western Australia, a result of last year's *State Wage Case* decision is that State system employees risk falling further behind their national system counterparts, and thus, 'falling behind the living standards generally prevailing in the community' (UnionsWA submissions at [4.24]). On the basis that the SMW and minimum award wages form part of the safety net in the State system,

UnionsWA contended that to have this safety net falling below those at the minimum rate nationally, places State system employees at a distinct disadvantage.

- 100 In support of its position, as noted at the outset of these reasons, witness statements were tendered from Ms Whitaker. She referred to members of the United Workers Union employed in the disability sector. Ms Whitaker's first witness statement (exhibit UnionsWA 1), related to the gap in rates of pay under two State awards, the *Social and Community Services (Western Australia) Interim Award 2011* and the *Aged and Disabled Persons Hostels Award 1987* compared to rates paid to employers under the funding model for the NDIS, based on the relevant national modern award, the *Social, Community, Home Care and Disability Services Award 2010*. The thrust of her witness statement being that given this gap, employers were structuring themselves to operate in the State system, to gain a financial advantage. Ms Whitaker also commented on those who chose to adopt the direct employment model under the NDIS, who are in the State system.
- 101 In a further witness statement (exhibit UnionsWA 2), following the Minister's submissions in reply, which cast doubt on whether the two awards referred to in the first witness statement of Ms Whitaker apply to disability support workers, Ms Whitaker referred to the possibility of State system disability support workers being award free, and covered by the *MCE Act*, as also constituting disadvantage.
- 102 Whilst these matters were raised by UnionsWA in support of this aspect of its case, the issue raised in Ms Whitaker's witness statements relate to the terms and conditions of the relevant industrial instruments and possible lack of award coverage in the disability sector. These are not matters that can be dealt with in the context of these proceedings. If these matters are to be addressed, they will need to be pursued by appropriate applications to the Commission.
- 103 In their respective submissions, both the Minister and UnionsWA referred to the differential existing now between State and national system employees who are employed as casuals. This is because the casual loading under the *MCE Act*, is 20% as opposed to 25% under modern awards in the national system. Both the Minister and UnionsWA referred to this as a comparative disadvantage. However, it must be said that the Commission in Court Session cannot reconsider casual loadings in *State Wage Case* proceedings. The casual loading set under s 11 of the *MCE Act* of 20% cannot be altered unilaterally by the Commission.
- 104 An application for a general order to increase the 20% loading can only be made by a s 50 party under s 51I of the *Act*, but such an application has not been progressed. Similarly, it is open to unions parties to State awards, to apply to vary them in relation to casual loadings, but such applications have not been

made. It is noted that the casual loading in a major State award, the *Shop and Warehouse (Wholesale and Retail Establishments) Award*, has been increased to 25%, as a result of a recent review under s 40B of the *Act*, which came into effect on 5 June 2024. Generally, however, these comparisons, with accompanying assertions of disadvantage, are for the parties themselves to seek to remedy by the commencement of appropriate proceedings before the Commission.

105 As to the CCIWA point of view, in reply, it was submitted that both the Minister's and UnionsWA's positions on the C14 rate realignment, along with any additional increase in the SMW, fail to have regard to the circumstances of small businesses and would be inflationary. Additionally, in referring to the Minister's main submissions, the CCIWA contended that as acknowledged by the Minister, the C14 classification rates under State awards are not transitional, and any re-alignment is not necessary. The notion that such a change should be made simply on fairness grounds, is rejected by the CCIWA, as failing to have regard to the need to equally weigh all of the factors to be considered under s 50A of the *Act*.

106 More generally, the CCIWA submitted that the Minister's proposal that the Commission align the outcome of these proceedings with the outcome of the Fair Work Commission's *Annual Wage Review 2023-24*, would limit the requirements of s 50A of the *Act*, requiring the Commission to have regard to circumstances applying in Western Australia, as has been recognised by the Commission in the past: *2018 State Wage Case* [2018] WAIRC 00363; (2018) 98 WAIG 263. As a point of difference, the CCIWA referred to the lower rate of inflation in Western Australia to that nationally, as an example.

107 As to the merits of this claim unlike in the national system under the *FW Act*, the SMW is a statutory entitlement under s12 of the *MCE Act*. Whilst the effect of s 50A(1)(a)(i) of the *Act* is that the rate of the SMW is set by the Commission in these SWO proceedings, by s12 it becomes a statutory entitlement. By s 5 of the *MCE Act*, along with other minimum conditions of employment as defined, it is implied into all awards, industrial agreements, and contracts of employment for those employees in the State industrial relations system.

108 The brief history of the SMW and award minimum rates of pay was referred to by the Commission in the *2023 State Wage Case* at [88]-[90] as follows:

[88] The SMW in this jurisdiction is a statutory entitlement under s 12 of the MCE Act. The link between the SMW and the award minimum rate of pay has a lengthy history. It was first established, as a transitional arrangement by s 168 and Schedule 1 of the Labour Relations Reform Act 2002 (WA). Prior to that time, under the MCE Act, the SMW was set by the responsible Minister, following a recommendation made to the Minister by the Commission. There was thus at that time, a parallel system of minimum wage setting. One that applied universally to

all employees throughout the State under the MCE Act, and the other that applied to employees under industrial instruments made under the Act.

[89] As opposed to the setting of the NMW, which the Fair Work Commission in its Annual Wage Review 2022-23 decision at [107] noted was established without any reference to needs of the low paid, that is not the case in this jurisdiction. In the case of the rate set under the MCE Act prior to 2002, whilst in the absence of specific statutory criteria at the time, various approaches were adopted by the Commission in its recommendations to the Minister, they broadly included an assessment of the needs of an unskilled 21 year old fulltime employee, based on surveys of household expenditure; rates of pay established in both State and National Wage Cases; and an assessment of community wage movements generally (See for example the 39th Annual Report of the Chief Commissioner of the Western Australian Industrial Relations Commission 1 July 2001 to 30 June 2002 at pp 11-13).

[90] In the 2003 State Wage Case ([2003] WAIRC 08520; (2003) 83 WAIG 1914), the SMW set under the MCE Act at the rate of the minimum award rate, as a transitional arrangement, was affirmed by the Commission. The nexus between the two has continued ever since. As noted above, the SMW established as a result of these events, forms an important part of the safety net of minimum wages and conditions of employment for State system employees. The SMW is a minimum condition of employment under the MCE Act and is implied into all State awards, industrial agreements and contracts of employment of State system employees.

109 Until 2006, the Commission was required under the *Act*, to ‘give effect to’ National Wage Case decisions, unless the Commission was persuaded there were good reasons not to do so. In practical terms, this meant that the SMW was aligned with the NMW. As a result of amendments to the *Act*, from 2006, the Commission has been required to undertake its own assessment of the level of the SMW and minimum award rates of pay.

110 The decision of the Fair Work Commission in the *Annual Wage Review 2022-23* reconsidered the alignment of the NMW with the C14 classification rate, formerly in the *Metal Industry Award* and subsequently incorporated into the *Manufacturing Award*. It was determined that based on its history, the C14 classification rate was only intended to be transitional in nature, in effect as a stepping stone to higher classification levels. It was further held that alignment of the NMW with the C14 rate was not based on any consideration of the needs of the low paid, but was an historical alignment only.

111 As noted in the Minister’s submissions at [43]-[44], the Fair Work Commission observed at [107]-[108] as follows:

[107] In short, the FMW was not established by reference to the needs of the low paid. It was simply aligned with the lowest classification rate established for what was then the *Metal Industry Award 1984 – Part I* (Metal Industry Award). The C14 classification which then appeared in the Metal Industry Award, and remains in the Manufacturing Award today, has only ever applied to an employee undertaking

‘[u]p to 38 hours induction training’ and was never intended to apply on an ongoing basis to a person’s employment. Consistent with the approach taken in the *Safety Net Review –Wages –April 1997* decision, the quantum of the FMW remained aligned with the C14 classification rate while *the Workplace Relations Act 1996* (Cth) remained in effect and, by virtue of the 2009-10 Review decision, it was carried through when the FW Act came into operation. This approach has remained unchanged in every Review decision since.

[108] We do not consider that the position whereby the NMW is simply set by reference to the C14 rate should continue. This is particularly the case when almost all modern awards which contain a classification with a C14 rate prescribe a limit on the period employees can be classified and paid at that level, after which employees move automatically to a higher classification and pay rate. Further, an employee classified at the C14 rate under a modern award may be entitled to a range of additional earnings-enhancing benefits such as weekend penalty rates, overtime penalty rates, shift loadings and allowances to which an employee on the NMW will not be entitled. A comprehensive review of the NMW should be undertaken by reference to the budget standards research and other relevant material to arrive at a NMW amount which is set having proper regard to the needs of the low paid and the other considerations in s 284. That is beyond the scope of the current Review, but we discuss later the interim measure we intend to take in this Review having regard to all the mandatory considerations in the minimum wages objective.

- 112 In the case of State awards in this jurisdiction, many of the C14 classification rates or their equivalent, are not transitional in nature. Some are. For example, in the *Metal Trades (General) Award*, the C14 rate is an introductory classification rate, requiring only 38 hours of induction training, and clearly contemplates an employee undertaking training to enable them to progress to the C13 level.
- 113 Given the different history of the setting of the SMW in this jurisdiction, the same rationale for the realignment of the C14 to the C13 classification rate, as adopted federally, does not apply. Thus, the cases for the Minister, UnionsWA and WACOSS, is based on fairness and equity, in order to maintain the broad alignment between the SMW and the NMW, that has existed now for several decades. This brings into consideration the criteria in s 50A(3)(a) of the *Act*.
- 114 As set out in exhibit Minister 3, the mapping of State awards by adult pay rates at or below the C13 *Metal Trades* rate, there are a large number of State awards seemingly impacted by such a change. However, on a closer examination, many of those awards containing the rates at or below the C13 classification, will cover few, if any, employees. In the case of public sector awards, rates of pay are covered by industrial agreements, well in excess of the relevant award rates. The same mostly applies to Local Governments.
- 115 Of those awards most prevalent in the State system, for example those private sector awards most accessed by way of award summaries, provided by the Department of Energy, Mines, Industry Regulation and Safety (see Minister’s

submissions at [116]) only three, they being the *Cleaners and Caretakers Award*, the *Farm Employees Award* and the *Metal Trades (General) Award*, contain rates of pay below the C13 classification rate. Other industry sectors, most likely prevalent in the State system, covering the accommodation and food services and retail sectors, which apply the *Restaurant, Tearoom and Catering Workers Award* and the *Shop and Warehouse (Wholesale and Retail Establishments) Award* respectively, are not materially affected.

- 116 With respect to other State awards likely covering employees in the State system, such as the *Social and Community Services (Western Australia) Award*, the *Hairdressers Award*, the *Building Trades (Construction) Award*, the various *Clerical Awards* and the *Transport Workers (General) Award*, none have rates of pay at or below the C13 classification rate. Therefore, the likely impact, in practical terms, of a realignment of the C14 rate to the C13 rate, of the SMW for award covered employees in the State system, will be minimal. It is accepted however, for those employees presently award free in the State system, and employed under *MCE Act* conditions of employment, the realignment may potentially have a more substantial effect.
- 117 There are other consequences of the proposal to realign the C14 rate to the C13 rate, for State awards. The first, is that an increase in the SMW to the C13 rate as implied by the *MCE Act*, will not alter the rates of pay presently specified in those affected awards. Second, existing relativities in awards, where there are one or more classifications below the C13 classification rate, will be impacted. All rates of pay specified in awards less than the C13 rate, will be overridden by the higher SMW wage rate, as an implied term under the *MCE Act*, and will be reflected in the Minimum Adult Award Wage clause, as inserted into every award, by the SWO.
- 118 As noted above, the Commission is required to assess the current claim for realignment against the criteria set out in s 50A(3) of the *Act*. Given the lengthy history of the relationship between the SMW and the NMW, to not realign the basis for setting the SMW in this jurisdiction, will disadvantage low paid employees in this State relative to those in the national system, and would not contribute to improving the living standards for employees. Nor would it meet the need to provide fair wage standards, in the context of living conditions prevailing generally in the community, in circumstances where a majority of employees in the private sector in this State would not be paid below the NMW, based on the C13 classification rate. Such a realignment would also assist in meeting the needs of the low paid.
- 119 Given the strength of the Western Australian economy, and the likely minimal practical impact of such a change, it is very unlikely that it would have a negative effect on the State economy under s 50A(3)(b) of the *Act*, on the basis of the

material before the Commission. For the same reasons, it is unlikely to negatively impact on the capacity of employers as a whole to pay, for the purposes of s 50A(3)(d). Furthermore, such a realignment would be consistent with ensuring that the Western Australian award framework represents a system of fair wages and conditions of employment, under s 50A(3)(e) of the *Act*. It would also be consistent with equity, good conscience and the substantial merits of the case, under s 26(1)(a) of the *Act*.

- 120 As to the consequences of such a realignment, as noted above, the Commission will consider appropriate steps to be taken under the *Act*, to deal with the issue of relativities and classification rates of pay in awards less than the SMW, as adjusted, in due course. Accordingly, there will be an increase in the SMW of 2.3% to reflect this realignment.

State minimum wage and award wages

- 121 The Commission in Court Session has considered all of the submissions put by the parties to the proceedings, in the context of its obligation to consider the statutory criteria in s 50A(3) of the *Act* in the making of a SWO.
- 122 In the ***2023 State Wage Case*** and the ***2022 State Wage Case***, the Commission awarded real increases in the SMW and minimum award wage rates of 5.3% and 5.25% respectively. This was in recognition of the very substantial cost of living pressures faced by low paid employees, in a higher inflationary environment. On both of those occasions, the State economy was strong. The same is the case on this occasion. Wages growth, as measured by the WPI, was also robust over 2022-23 and is forecast to be similar for 2023-24, at 4.25%, and to ease over 2024-25.
- 123 Inflation, as measured by the CPI, has fallen sharply and is forecast to moderate further over the course of the year ahead. We are conscious however, that the level of inflation remains higher than was anticipated at this point, which is causing the RBA ongoing concern in relation to the economy generally. The impact of elevated interest rates is starting to cool household consumption. Whilst acknowledging this, given the very small number of employees directly affected by the SMW, we consider the likelihood of any increase contributing to overall wages growth, and being inflationary, is minimal.
- 124 Whilst the Minister urged the Commission to adopt the outcome of the Fair Work Commission's determination in its ***2023 - 24 Annual Wage Review***, there is no presumption that this will be the case, given that the Commission is required to balance all of the criteria in s 50A(3) of the *Act*, in coming to a decision, which are State focussed. The Fair Work Commission decision is a relevant consideration under s 50A(3)(f), amongst a number of others. If the Parliament intended s 50A of the *Act* to require the Commission to adopt the national

decision, unless there is good reason not to do so for example, it would have made this express in the legislation. There will be occasions, as in the past, where the circumstances prevailing in Western Australia warrant a larger increase than that awarded nationally, and vice versa.

- 125 Despite the most recent contractions in both, the State economy is stronger than the national economy. This is supported by the evidence from Mr Christmas in his Treasury presentation. The Western Australian CPI is higher (adopting the adjusted rate excluding the electricity sub-component), wages growth is higher for 2023-24 and is forecast to be stronger for 2024-25. Unemployment is lower and is forecast to be lower in the year ahead. Employment growth has been higher over 2023-24 and is forecast to be higher for 2024-25. These factors warrant a larger increase than that nationally, on this occasion. Having said this however, it is to be accepted that there is likely to be some fall off in household consumption, which may impact on those sectors in the State system, reliant on discretionary spending, such as retail and accommodation and food services. The Commission is acutely aware of the need to balance the considerations under s 50A(3) of the *Act*, including the capacity of employers as a whole to pay, along with meeting the needs of the low paid, to provide fair wage standards and to contribute to the needs of the low paid.
- 126 The proposal by the CCIWA to grant an increase of less than inflation, will see low wage earners effectively suffer a wage reduction. The Commission does not consider that this would be consistent with its obligations under s 50A(3) of the *Act*, in particular to consider the needs of the low paid, and to contribute to an improvement in living standards for employees. Similarly, the proposal by UnionsWA and WACOSS, to increase the SMW and award minimum rates of pay by 7.359%, which is well above the current and projected inflation rates, is not warranted, when balancing the factors we must consider. This is especially so in an environment where productivity levels are low. Such an increase would place an unfair burden on small businesses, given that those affected are in industry sectors that may experience a softening in demand for their goods and services, if household consumption further eases in the year ahead. Small business generally have less capacity to absorb increase in costs, which based on material before the Commission in previous *State Wage Cases*, often leads to a substitution of business owners working increased hours, at the expense of employees, or passing on costs to customers.
- 127 It is also the case, that as in prior *State Wage Cases*, the upcoming increase in superannuation contributions represents a cost to employers, which we regard as a moderating factor on this occasion also. Cost of living Budget assistance measures recently announced, along with the Stage 3 tax cuts, whilst not a

moderating factor as is the increase in superannuation contributions, will provide further relief to low paid employees.

- 128 Balancing all of the factors that the Commission is required to consider, there will be an increase in award minimum wages of 4.0%, with proportionate increases for juniors, apprentices and trainees. Such an increase is generally in line with wages growth over 2023-24 and as forecast for the year ahead. It will also maintain the value of minimum award wages, relative to inflation. The effect of our decision is there will be a one off increase in the SMW of 6.3%, taking into account both the 2.3% increase resulting from the realignment of the C14 to the C13 classification rate, and the 4.0% general increase. This will increase the SMW to \$917.80 per week.

Statement of Principles

- 129 In the *2023 State Wage Case*, UnionsWA initially sought a change to Principle 7 – Work Value Changes, of the *Statement of Principles – July 2023*, to reflect an alignment with s 157(2A) of *the FW Act*. The basis for this proposal was the decision of the Fair Work Commission in the *Aged Care Work Value Case* [2022] FWCFB 200. In this decision the Fair Work Commission concluded that s 157(2A) of *the FW Act* did not require the threshold test equivalent to that in this Commission’s Principle 7.2, that any change in the nature of work should ‘constitute such a significant net addition to work requirements as to warrant the creation of a new classification or upgrading to a higher classification’, to be met.
- 130 The rationale for the proposed change to Principle 7, is one of consistency in approach between jurisdictions in relation to claims for work value based wage increases. Principle 7 as proposed in the UnionsWA claim is as follows:

7. Work Value Changes

- 7.1 Applications may be made for a wage increase under this Principle based on changes in work value.
- 7.2 Changes in work value may arise from significant changes in the nature of the work, skill and responsibility required or the conditions under which work is done. Changes in work by themselves may not lead to a change in wage rates.
- 7.3 The Commission may make a determination varying wage rates under this Principle if it is satisfied that the variation is necessary and justified by significant changes in work value related to any of the following:
- (a) the nature of the work;
 - (b) the level of skill or responsibility involved in doing the work;
 - (c) the conditions under which the work is done.

- 7.4 If the Commission varies the wage rates in an award on work value grounds, it must ensure that any new or changed rates of pay are confined to those employees whose work value has changed. Work value increases should not be flowed on to other awards to maintain relativities between awards or particular classifications in awards.
- 7.5 Where new or changed work justifying a higher rate is performed only from time to time by persons covered by a particular classification or where it is performed only by some of the persons covered by the classification, the new or changed work should be compensated by a special allowance which is payable only when the new or changed work is performed by an employee and not by increasing the rate for all employees working at that classification.
- 7.6 The time from which work value changes in an award should be measured is any date that on the evidence before the Commission is relevant and appropriate in the circumstances.
- 7.7 Care should be exercised to ensure that changes which were or should have been taken into account in any previous work value adjustments or in a structural efficiency exercise are not included in any work evaluation under this provision.
- 7.8 A past work value assessment which was not free of gender-based undervaluation would not constitute a proper assessment of work value.
- 7.9 Where the conditions specified in 7.2 and 7.3 are met, an assessment will have to be made as to how that alteration should be measured in money terms. The assessment should normally be based on the previous work and the nature and extent of the change in work.
- 7.10 The expression “the conditions under which the work is done” relates to the environment in which the work is done.
- 7.11 The Commission should guard against contrived classifications and overclassification of jobs.
- 7.12 Any changes in the nature of the work, skill and responsibility required or the conditions under which the work is done, taken into account in assessing an increase under any other provision of these Principles, shall not be taken into account in any claim under this provision.

¹³¹ For completeness, relevant provisions of s 157 of the *FW Act* in relation to work value are as follows:

157 FWA may vary etc. modern awards if necessary to achieve modern awards objective

...

(2) FWA may make a determination varying modern award minimum wages if FWA is satisfied that:

(a) the variation of modern award minimum wages is justified by work value reasons; and

...

- (2A) Work value reasons are reasons justifying the amount that employees should be paid for doing a particular kind of work, being reasons related to any of the following:
 - (a) the nature of the work;
 - (b) the level of skill or responsibility involved in doing the work;
 - (c) the conditions under which the work is done.
- (2B) The FWC's consideration of work value reasons must:
 - (a) be free of assumptions based on gender; and
 - (b) include consideration of whether historically the work has been undervalued because of assumptions based on gender.

...

- 132 Since the *2023 State Wage Case*, UnionsWA has conferred with the Minister as to its proposed change to Principle 7. The Minister has also conferred with CCIWA. The Minister supports the proposed changes to Principle 7 and the CCIWA is not opposed to it. However, the CCIWA submissions on the issue suggest some confusion between the terms of Principle 7 – Work Value Changes, and Principle 8, dealing with equal remuneration. The CCIWA also proposed an additional provision be added to UnionsWA’s proposal, to include an obligation on the Commission to have regard to the impact on employers of any work value adjustment, in industry sectors where there is full or partial Government funding. The CCIWA submitted that this would guard against unsustainable wage increases, that may lead to a decline in the provision of community services, or increased costs for those seeking to access such services. As to this point, both the Minister and UnionsWA in their respective reply submissions, contended that such an addition to Principle 7 could lead to inequitable outcomes, and in effect apply a different standard for work value assessments for this sector.
- 133 The proposed altered Principle 7 retains Principles 7.1 and 7.2, but as to 7.2, the last sentence specifying the strict test for an alteration of wage rates, being the need for the change in work value to justify the creation of a new classification, is removed. Proposed Principle 7.3 reflects s 157(2A) of the *FW Act*. The new Principle 7.4 is a modification of the existing Principle 7.3, precluding ‘leapfrogging’ arising from existing award relativities. Existing Principles 7.4 and 7.5 have been removed. Proposed Principles 7.5- 7.7 reflect existing Principles 7.6-7.8. Proposed Principle 7.8 reflects s 157(2B) of the *FW Act*, regarding gender-based undervaluation of work. Proposed Principles 7.9-7.12 reflect the existing provisions.
- 134 Given the altered approach to the assessment of work value federally, and the broad historical alignment between the State and federal Wage Fixing Principles over several decades, it would be appropriate to maintain general consistency in

approach between jurisdictions. Accordingly, Principle 7 – Work Value Changes will be altered in the terms as agreed between UnionsWA, the Minister, and the CCIWA. However the Commission is not persuaded to add the further provision sought by the CCIWA.

General Order

¹³⁵ A minute of proposed general order now issues giving effect to these reasons for decision. Any party wishing to speak to the minutes is requested to notify the Commission in writing by 4 pm Friday, 14 June 2024, setting out the issues they wish to raise.