



**GOVERNMENT OF
WESTERN AUSTRALIA**

Industrial Relations Act 1979

**IN THE WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION
No. 1 of 2024
OF THE COMMISSION'S OWN MOTION**

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

Re: 2024 STATE WAGE ORDER

Filed by:
Brendon Entrekin
Private Sector Labour Relations Division
Department of Energy, Mines, Industry Regulation and Safety
on behalf of the Minister for Industrial Relations

Level 3, 1 Adelaide Tce
East Perth WA 6004

Brendon.Entrekin@demirs.wa.gov.au

Ph: 6552 9434

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Contents

Introduction	3
Position of other parties	4
Consideration of other submissions	5
CCIWA.....	5
UnionsWA.....	8
WACOSS.....	12
WALGA.....	13
Principle 7 - Work Value Principle	14

Introduction

1. In February 2024 the Western Australian Industrial Relations Commission (**WAIRC**) initiated CICS 1 of 2024 of its own motion. The application seeks to make a State Wage Order pursuant to section 50A of the *Industrial Relations Act 1979 (IR Act)* to determine rates of pay for the purposes of the *Minimum Conditions of Employment Act 1993* and State awards.
2. On 15 May 2024, the Minister for Industrial Relations (**the Minister**) filed a submission on behalf of the Western Australian Government.
3. The Minister's initial submission canvassed a variety of economic and labour market data relevant to this year's proceedings, and addressed some of the key social criteria the WAIRC is required to consider under section 50A of the IR Act.
4. The Minister's initial submission also addressed several other specific issues the WAIRC requested the parties to consider as part of this year's State Wage Case, in particular, the decision of the Fair Work Commission (**FWC**) in last year's Annual Wage Review to re-align the basis of the setting of the National Minimum Wage (**NMW**) from the C14 modern award rate to the C13 modern award rate, and the implications of this for the setting of the State Minimum Wage (**SMW**).
5. The initial submission noted that while labour market conditions remain robust, many employees are nevertheless experiencing economic insecurity in the face of ongoing cost of living pressures and elevated housing costs.
6. The Minister's position contains several elements, with the Minister supporting the WAIRC re-aligning the SMW from the C14 rate in the *State Metal Trades (General) Award* (the **State C14 rate**) to the C13 rate (the **State C13 rate**), in order to address the growing disparity between the level of the SMW and the NMW, and to safeguard the interests of the lowest paid workers in the State system.
7. The Minister also supports the WAIRC awarding a general increase in State award wages in line with the decision of the FWC in this year's Annual Wage Review.
8. This Submission in Reply responds to the submissions of the other parties participating in the 2024 State Wage Case proceedings.

Position of other parties

9. The Minister notes the following positions have been advocated by parties participating in this year's State Wage Case:
 - (a) the **Chamber of Commerce and Industry of WA (CCIWA)** encourages the WAIRC to take a cautious approach in reviewing the SMW and award rates of pay, submitting that this year's increase should be targeted towards meeting the needs of the low paid through a flat dollar increase; promote a fair system of wages and conditions of employment by not disadvantaging small and family-run business operators with an unsustainable and substantial rise in the minimum wage that is aligned with the rate of inflation; and ensure that any increase does not contribute to increasing inflationary pressures in the Western Australian economy.
 - (b) **UnionsWA** is advocating for a 7.359 per cent increase in the SMW and State award wages, to address the ever-widening gap between low paid workers and the rest of the workforce in Western Australia, the recent increases in the cost of living, and the continuing postponement of real wage growth for Western Australian workers as well as to address the State minimum and award wages falling behind those in the national system.
 - (c) the **Western Australian Council of Social Service (WACOSS)** is seeking a 7.359 per cent increase to the SMW, which it considers essential to meet the needs of the low paid and to contribute to improved living standards for employees. It does not advocate a specific position regarding State award wages.
 - (d) the **Western Australian Local Government Association (WALGA)** provided a submission supporting wage increases that balance the need for fair wages with the requirement for local governments to carefully manage their budgets in the interest of their communities as well as 'increases in line with wage fixing principles'.
10. The following section responds to the submissions of the above parties in further detail.

Consideration of other submissions

CCIWA

Appropriate quantum

11. At paragraph 18.2 of its submission, the CCIWA states that the WAIRC should:

... promote a fair system of wages and conditions of employment by not disadvantaging small and family-run business operators with an unsustainable and substantial rise in the minimum wage that is aligned with the rate of inflation.

12. The Minister notes that in asking for a flat dollar increase that is below the current rate of inflation, the CCIWA is effectively advocating for a real wage decrease for many of Western Australia's lowest paid employees. Given the significant reduction in inflation over the past year, it is difficult to see how an increase that at least maintains the real value of wages could be considered "substantial" or "unsustainable" in the current environment.
13. Given the cost of living pressures many workers have experienced, a real wage reduction would significantly disadvantage many households. A real wage reduction would also not take account of the requirement under section 50A(3)(a) of the IR Act for the WAIRC to consider the needs of the low paid and contribute to improved living standards.

Measures of real wages growth

14. At paragraph 77 of its submission the CCIWA submits that SMW and award wage earners received a real wage increase of 1.9 per cent over 2023-24, with the wage increase of 5.3 per cent being greater than the rate of inflation of 3.4 per cent. However, there are several issues with this observation.
15. As the 2023-24 financial year has yet to conclude, it is not yet known what the rate of inflation will ultimately be for this period. The figure of 3.4 per cent is also for headline inflation, which as noted in the CCIWA's own submission, has been extremely volatile due to the effect of the State Government's electricity credits. The Minister notes the rate of inflation in the year to March 2024 excluding the electricity subcomponent was 4.1 per cent, which represents a more realistic measure of underlying inflation.
16. The Minister also notes the Living Cost Index for employee households increased by a total of 6.5 per cent in the year to March 2024, and although this figure is only available at the national level, it provides some broad insights into changes in the purchasing power of the disposable incomes of households. The Living Cost Index figures reveal the very real financial challenges that many workers and their families are facing in meeting their daily living costs.

Wage Price Index

17. At paragraph 78 of its submission the CCIWA submits that the Wage Price Index (**WPI**) underestimates the real growth in wages, as it does not account for the use of allowances and bonuses to increase overall remuneration. The CCIWA observes that the use of performance bonuses, site allowances, and sign on bonuses are some of the measures increasingly being used to attract and retain workers in a tight labour market without significantly increasing the base rate of pay, all of which are additional costs for businesses.
18. While it is true that WPI figures for “total hourly rates of pay excluding bonuses” will exclude things such as sign on bonuses, site allowances and performance bonuses, it is also unlikely that many low paid workers engaged on the SMW or minimum award wages will be receiving such benefits. A barista or waitperson working in a local café is highly unlikely to receive a sign on bonus as part of their employment, while a cleaner is similarly unlikely to receive performance bonuses as part of their remuneration.
19. While it is not a perfect measure of wages growth, the WPI is still a useful indicator of price movements for a fixed basket of jobs. Given that bonuses and performance incentives are unlikely to be widely used in the case of minimum and award wage earners, measures of wage movements that exclude bonuses are likely to be a more appropriate proxy for this cohort of workers.

Impact of allowances on wage increases

20. At paragraphs 84 to 86 of its submission, the CCIWA notes that the WAIRC is in the process of reviewing awards, such as the *Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977*, and updating the location allowances for all awards. It states that it is also important to take into consideration award changes that have resulted in increases in allowances and/or award rates when deciding to set the SMW.
21. The CCIWA goes on to state that “*any increase to the State Minimum Wage should be moderated because of these award variations to allowances make part of the total employment cost.*”
22. In relation to location allowances, the Minister notes that the annual Location Allowance General Order, which applies to a significant number of (but not all) private sector State awards, is designed to compensate employees for the additional cost of living, climatic discomfort, and isolation associated with living and working in nominated regional Western Australian towns. These allowances have been adjusted on an annual basis for many years in accordance with a standard formula and have never been a moderating factor in determining the appropriate quantum for minimum and award wage increases generally.
23. In regard to allowances in other State awards, a small handful of allowances, out of thousands operating across the State system, have recently been updated as part of award review processes. The Minister notes most of these allowances have been frozen for many years (to the benefit of affected employers), and the award updating processes are simply bringing such allowances up to an amount that represents their contemporary value.

24. The Minister contends that the updating of a meal allowance in the *Shop and Warehouse (Wholesale and Retail Establishments) Award*, or a tool allowance in the *Hairdressers Award*, to reflect present day values should have no bearing on the level of any general increase in wages for employees across Western Australia earning the SMW or award rates of pay. This is not a relevant consideration for the State Wage Case proceedings and would indeed defeat the purpose of such allowances being maintained.

Living standards and needs of the low paid

25. In section 4 of its submission the CCIWA notes that the WAIRC has previously recognised that “*the SMW alone cannot address all the needs of the low paid*” and as such tax and transfer payments have a significant role in providing targeted relief to the low paid.
26. The CCIWA contends that it is appropriate for the WAIRC to consider relevant provisions of the State and Federal Government budgets aimed at alleviating pressures experienced by the low paid, particularly those relating to the cost of living. The CCIWA highlights a number of these initiatives in greater detail, including energy bill relief, increases to social security payments, the freezing of pharmaceutical benefits scheme charges, free public transport for students, cuts to household fees and charges, and tax cuts that are due to come into effect from 1 July this year.
27. The Minister acknowledges these initiatives are a vitally important part of the recent State and Federal budgets, and are designed to alleviate cost of living pressures and assist the low paid. However, though very important government initiatives, they cannot be seen as a substitute for regular and fair increases to minimum and award wages, which still remain a critical element of the wage setting framework.
28. The full effects of State and Federal budget initiatives aimed at alleviating cost of living pressures for Australian households would not be realised if the level of general wage adjustments were to be discounted because of these initiatives.

Inflation and interest rates

29. The CCIWA’s submission notes that elevated interest rates also continue to weigh heavily on businesses, and observes that “just as higher interest rates increase mortgage repayments for households, they too impact the borrowing costs for businesses.”
30. The Minister acknowledges that elevated interest rates have impacted on businesses and households alike. Higher interest rates have presented challenges for some small and medium enterprises servicing their debts, just as they have impacted significantly on the housing costs of many workers.

UnionsWA

Position

31. The Minister notes that UnionsWA is seeking an increase in minimum and award wages of 7.359 per cent. While this is a very precise figure to be advocating, the Minister understands this figure has been arrived at by adjusting the current SMW so that it is equal to the current NMW (\$882.80), with this figure then being increased by 5 per cent. The new SMW of \$926.94 therefore represents a total increase of 7.359 per cent on the current SMW, which is also the figure by which UnionsWA recommends all award rates of pay be adjusted by the WAIRC.

State v National Minimum Wage

32. In its submission, UnionsWA expresses concern about the State industrial relations system operating as a low-wage zone within Australia's employment landscape, and submits it would be undesirable if the gap in minimum rates of pay between the State and national system were to incentivise businesses operating in Western Australia to set up their operations such that they would be able to financially benefit from paying lower minimum and award wages to a particular cohort of workers in the State system.
33. The Minister agrees that it would not be desirable from an equity or fairness perspective for minimum wages in the State industrial relations system to fall significantly behind those in the national system, particularly when many low paid workers in the State system have, similar to their national system counterparts, been experiencing financial pressures arising from price inflation and elevated housing costs.
34. From a competition perspective it would also not be desirable to incentivise businesses setting up in the State system in order that they can pay lower wages than their national system counterparts.
35. The Minister notes that restoring a degree of parity between jurisdictions involves not only the level of the SMW and minimum award wages, but also the expansion of award scope to cover more of the award free employees in the State system, as well as the ongoing maintenance of State awards.
36. The Minister notes that the number of award free employees in the State system is gradually reducing due to efforts by the WAIRC to broaden the scope of State private sector awards pursuant to section 37D of the IR Act. However, there are still many award free employees in the State system performing work that has traditionally been regulated by awards in the national system.
37. The Minister also notes that significant work has been done in recent years to update some of the most commonly used State awards under section 40B of the IR Act, which will benefit affected employers and employees. However, with over 200 State awards currently in place, much work remains to be done.

Wage relativities

38. On page 30 of its submission, UnionsWA states that:

An increase of **7.359 per cent** as a percentage increase, balances the range of factors that the Commission must consider. It delivers the largest proportionate increase to the lowest paid, while preserving the existing skill-based relativities for award classifications.

39. On a technical point, the Minister notes that an across-the-board percentage increase does not actually deliver the largest proportionate increase to the lowest paid. Rather, it delivers the same proportionate increase to all classifications and all wage levels. However, it does preserve existing skill-based relativities for award classifications.

Review of C14 classifications

40. In its submission, at paragraph 4.37, UnionsWA submits that the WAIRC should:

... review state agreements [sic] to ensure all classifications that reflect the State C14 rate are transitional and do not allow for permanent employment at the C14 level.¹

41. A specific review of every C14 or equivalent classification across awards would also be an extremely time and resource intensive process for the WAIRC and the relevant parties, given there are over 200 State awards currently in place. The Minister suggests it would be more appropriate for available resources to be allocated to updating the key private sector awards that are most likely to be used by State system employers and employees.
42. It is noted that UnionsWA's proposed increase would, in effect, lift every State award rate of pay, whether transitional or permanent, above the C13 level in the national system, which would then call into question the need for such a review.

Equal remuneration

43. UnionsWA's submission notes the high gender pay gap in Western Australia, and includes some of the same data regarding gender pay disparity as referenced in the Minister's submission.
44. UnionsWA also references some of the information contained in the statistical report relating to the 2023-24 Annual Wage Review and observations of the FWC in last year's decision regarding characteristics of female workers and the fact that women are more likely to be low paid and/or earning the minimum wage.
45. The Minister agrees that female employees are more likely to be reliant on minimum and award wages, and re-iterates the importance of increases in the SMW and award wages for promoting equal remuneration and supporting working women and their families.

¹ The Minister assumes the reference to a review of State agreements is intended to be a reference to State awards.

Pay rates for award reliant workers

46. Paragraph 5.2 of UnionsWA's submission contains information regarding the gap in average hourly total cash earnings of non-managerial employees working under awards compared to other pay setting methods. A very similar set of information was provided in the Minister's submission, highlighting the significantly lower average earnings award reliant workers earn.
47. The Minister notes that award reliant workers in Western Australia earned the second lowest average hourly total cash earnings of all States and Territories in 2023, despite Western Australia having the highest average weekly ordinary time earnings (for all pay setting methods) in the country. This correlates with the figures reproduced in paragraph 4.27 of UnionsWA's submission regarding the Gini coefficient, which indicates Western Australia had the most unequal distribution of equivalised disposable household income of any State or Territory.
48. The above data lends weight to the Minister's argument for a re-alignment of the SMW (and also the C14 rate in State awards), which would help to boost the earnings of low paid State system employees and make a material improvement to their financial wellbeing.

Witness Statement of Ms Sarah Whitaker

49. The Minister notes the witness statement of Ms Sarah Whitaker, who is the Lead Organiser for the Public Sector – Disability portfolio at the United Workers Union. Ms Whitaker's statement focuses on employment / industrial relations issues in the disability sector.
50. While acknowledging Ms Whitaker's comments regarding the negative impact of low wages on disability sector workers and their families, the Minister wishes to respond to several technical issues in relation to the content of Ms Whitaker's statement.

State award coverage in the disability sector

51. At paragraph 6 of the witness statement, Ms Whitaker asserts that in the State system disability sector employees are 'generally covered' either by the *Social and Community Services (Western Australia) Interim Award 2011 (SACS Award)* or the *Aged and Disabled Persons Hostels Award 1987 (ADPH Award)*.
52. With regard to the SACS award, it is the Minister's view that the scope of this award does not cover direct / home care disability support workers. As such these types of employees, when employed by a State system disability services organisation or by an individual household employer, are currently award free.
53. Clause 4 – Area and Scope of the SACS award states at 4.1:

This award will apply throughout the State of Western Australia to all employers in the social and community services industry and those of their employees who are eligible to join the Western Australian Municipal, Administrative, Clerical and Services Union of Employees.

54. The United Workers Union has coverage of direct care workers in the disability sector, and as such these employees are excluded from the scope of the SACS Award as they are not eligible for membership of the Western Australian Municipal, Administrative, Clerical and Services Union of Employees.
55. Subsequently, there are no classifications for disability support workers within the SACS award. The SACS award contains a single 'stream' of classifications, with a nine-level classification structure for Community Service Workers. As outlined in clause 14.3 – Classification definitions of the SACS award, these classifications cover administrative and professional roles in the sector rather than direct care roles.
56. At paragraph 13 of the witness statement, Ms Whitaker states in relation to the similarity of the SACS award and the national Social, Community, Home Care and Disability Services Industry Award 2010 (**SCHADS Award**) that her understanding "of the SCS Award is that its classifications broadly align, and were intended to align, with the SCHADS."
57. The classification structure in the SACS award is similar to the classification stream for employees in Schedule B – Classification Definitions - Social and Community Services Employees in the SCHADS Award. However, the SCHADS Award contains three other classifications streams, including one specifically for disability and aged care direct care workers, outlined in Schedule E – Classification Definitions – Home Care Employees.
58. With regard to the coverage of the ADPH Award, on the footnote to paragraph 6 of Ms Whitakers' witness statement, the statement about coverage of this award is qualified with the comment that "the hostels award only applies to the list of Schedule B respondents and is of limited application."
59. The Minister notes that determining coverage of the ADPH Award is complex, due to the significant changes in legislative and funding arrangements and models of service provision in the aged care and disability sectors since the award was issued.²
60. There may be State system employers, who continue to provide hostel style accommodation for people with a disability, or residential aged care services, which may be in receipt of funding arrangements that would enable them to fall within the scope of the ADPH Award.
61. However, the Minister is not aware of any provisions in this award or case law that indicate it is a named respondent only award that does not operate on a common rule basis.

² In particular, the scope of the ADPH Award is linked to employer respondents "*in hostels providing residential accommodation, catering facilities, hostel and personal care services for aged or disabled persons, where such employer respondents receive financial assistance under the Aged or Disabled Persons Homes Act, 1954, for those purposes.*" The provisions of the *Aged and Disabled Persons Homes Act 1954* (which later became the *Aged and Disabled Care Act 1954*) were substantially altered by the *Aged Care Act 1997*, and the *Aged and Disabled Care Act 1954* was repealed entirely in 2011.

Employment by State system employers / individual NDIS participants

62. At paragraph 11, Ms Whitaker's witness statement indicates:

I have also seen entities form state-based registered associations that claim not to be engaged in trade or commerce, or entities that claims to organise direct employment by a NDIS participant or multiple participants, wholly disavowing an employment relationship. These employers then charged employees out as if they were domestics or live-in au pairs, or the employee was employed by the individual participant as if they were a sole trader in the state-system.

63. The Minister wishes to make several observations with regard to these statements.

64. Many NDIS participants and their families actively choose to engage in a direct employment model, in which the participant is the direct employer of the support worker/s and has all associated employment responsibilities. This is a valid approach, supported within the NDIS framework, and does not, in itself, indicate exploitation of the workers concerned.

65. While a disability sector organisation could potentially be involved in assisting NDIS participants with sourcing staff and providing payroll / administrative services, in a direct employment model, the employer is the NDIS participant (or a family member) and this is a valid and legal employment situation.

66. In Western Australia, NDIS participants / families who are using the direct employment model are in the State industrial relations system, as they are individuals who are 'household' employers (and not a constitutional corporation). As mentioned above, disability support workers employed by a household employer are award free in the State system.

67. The Department of Energy, Mines, Industry Regulation and Safety website provides extensive information for household employers on employment obligations, including a specific publication on employment entitlements for support workers in both a Standard English and Easy read version.

68. There are a variety of avenues available to parties to provide greater award coverage to home care workers in the disability (and aged care) sector. While these State Wage Case proceedings cannot address award coverage, the relevant parties in this industry may wish to progress this issue further through other State award proceedings in the WAIRC.

WACOSS

Social equity considerations

69. The Minister notes WACOSS is seeking a 7.359 per cent increase to the SMW, which is the same quantum advocated for by UnionsWA.

70. The Minister acknowledges the detailed information provided by WACOSS regarding living costs, inequality and poverty, including issues concerning access to affordable housing, food, utilities, transport and childcare amongst marginalised and vulnerable members of the community. This information provides valuable background for the WAIRC's consideration of the section 50A criteria for the State Wage Case.
71. The Minister concurs with WACOSS that women are more likely to be employed on the SMW, and face many financial barriers that disadvantage them across their working lives and into retirement.
72. The Minister submits that these social and gender equity considerations raised by WACOSS provide support for a re-alignment to the SMW, as recommended by the Minister in this year's State Wage Case proceedings.

WALGA

Award coverage of the local government sector

73. The Minister notes that in its submission WALGA has provided information regarding award coverage in the local government sector, and commentary that most local government employers would prefer to have a comprehensive award which covers the local government industry.
74. While award scope and award updating matters are a current and key issue for the State system, such matters cannot be directly addressed through the State Wage Case proceedings and should be progressed by award parties and section 50 parties within the framework of the IR Act.
75. The Minister notes that many local government employees are covered by industrial agreements, and also that any increases in award wages granted by the WAIRC as part of this year's proceedings will benefit all award covered employees, regardless of specific award coverage.

Capacity of local government to meet increased wage costs

76. The Minister notes the information provided by WALGA regarding local government finances and the capacity of local government authorities to pay higher wages. This information is a relevant consideration for the State Wage Case, as is the need for local government workers reliant on minimum and award wages to receive a fair wage increase as part of this year's proceedings.

Principle 7 - Work Value Principle

77. In its initial submission, UnionsWA submitted a proposal to amend Principle 7 – Work Value Changes in the Statement of Principles as part of this year’s State Wage Order, and has provided a form of proposed wording for an updated Principle 7.
78. The proposed amendments to Principle 7 seek to modernise some of the language in the Principle, including making it more consistent with the provisions relating to assessment of work value in the *Fair Work Act 2009 (FW Act)*.
79. The Minister supports UnionsWA’s proposed changes to the Principle 7, which incorporates some additional wording recommended by the Minister.
80. It is noted that the Statement of Principles exists within a substantially different legislative and industrial context to the statutory parameters for work value assessments established by the FW Act for the national system. However, as the Minister noted in the 2023 State Wage Case, modernisation of the Statement of Principles to better reflect contemporary standards is desirable.
81. In relation to the submissions of CCIWA regarding potential changes to Principle 7, it is also noted that Principle 7 is focused on work value changes rather than equal remuneration. Any applications for equal remuneration orders to establish equal remuneration for women and men based on work of equal or comparable value would be conducted by the WAIRC in accordance with the equal remuneration provisions in Part II Division 3B of the IR Act and Principle 8 – Equal Remuneration.
82. The Minister notes that CCIWA’s proposed additional wording for Principle 7 (should it wish to pursue the same amendments to work value as for equal remuneration) would result in the Principle not applying equally across all industries and occupations and would create a different standard for work value assessments for employees working in the community sector and associate roles that are Government funded. As such, the inclusion of this additional wording is not supported.