**BEFORE THE FAIR WORK COMMISSION**

**MATTER NO. C2023/1**

**ANNUAL WAGE REVIEW 2022-23**

# ACTU SUBMISSIONS – COPIED STATE AWARDS

## Introduction

1. The ACTU adopts the historical characterisation and summary of the statutory framework contained at Appendix 5 of the 2021-22 Annual Wage Review decision.[1]

2. Further, we concur with the observation of the Panel in the body of that decision that:

> "…Part 6-3A is directed to preserving the employment terms and conditions of the transferring employees as they would have been in the absence of the transfer of business to a national system employer, subject, of course, to the Commission's obligation to maintain a safety net of fair minimum wages."[2]

3. In apparently giving effect to this established legislative intent of Part 6-3A of the *Fair Work Act 2009* (FW Act), the Panel said:

> "Had the transferring work and the transferring employees remained with the old State employer, the transferring employees would have received – as they have – a 2.04 per cent wage increase in January or April of this year. They would not have received any further increases under the State Awards and we do not consider any further adjustments to their wages fair or appropriate in all the circumstances"[3]

4. The Panel thus concluded that it was legitimate to have regard to the "base case", as it were, of what would happen (or would be likely to happen) to wages in the source instruments which copied state awards are point in time replicas of. This "base case" is thereafter "subject to…the Commission's obligation to maintain safety net of fair minimum wages".

[1] [2022] FWCFB 3500
[2] At [392], [428]
[3] At [392]


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5. It is our position that, in applying this approach, the net result must not be that workers who are covered by copied state awards are left worse off than would be the case if they had remained in their respective State systems. In most circumstances this result will be achieved by applying any general increase to modern awards to copied state awards, as has been the practice in recent years. There is however logic in applying a "top up" approach to copied state awards which already provide for wage increases in the year of a review. We have set out in Annexure 1 an account of how minimum wage fixation operates in each of the relevant jurisdictions from which copied state awards may be derived, in order to estimate the "base case" in each such jurisdiction. In Annexure 2 we set out each adjustment to minimum and award adjustments in those jurisdictions and the federal jurisdiction since the safety net provisions of the FW Act took effect in 1 January 2010.

**Rationalising the "base case" with a "fair and relevant safety net"**

6. In relation to the copied state awards which were at issue in the 2021-22 decision, the Panel had particular regard to the following matters in deciding whether to award an increase:

- Whether an increase had already been provided for in the calendar year by the terms of the instrument;
- Whether those increases had been agreed;
- Whether the relevant copied state instruments contained rates of pay below the low-paid benchmark;
- The potential to discourage bargaining where the rates in the copied state award exceed those in the modern award;
- Whether the rates of pay in the copied state instrument are significantly higher than corresponding modern award rates; and
- The different nature and statutory objectives which operate in state systems.

7. We make no criticism of the Panel treating each of the above matters as relevant considerations. Nonetheless, we seek to make some observations to contextualise those matters and assist the Commission in its relevant deliberations in this Review and beyond.

*Whether an increase has been provided for in the calendar year and whether it has been agreed.*

8. It is important to appreciate that copied state awards do not have a unified review cycle, whereas, absent exceptional circumstances, adjustments to copied state awards are to take effect from the first pay period on or after 1 July in each year. The desire to unify such review cycles is a matter which commends a "top up" approach of the type which the union parties contended for in last year's review[4] and which we contend for here.

9. In the absence of a partial adjustment to align the review cycles, there is a prospect that workers dependent on copied state awards will be disadvantaged in a relative sense, and also in a real sense in periods of rising living costs such as has been experienced over the last 18 months or so. This is so irrespective of whether the wage increase already received was agreed with the former employer. A top-up approach thus needs to be understood not only as a means of avoiding "double dipping", but also as a method to address potential disadvantage to employees.

*The potential to discourage bargaining*

10. Decisions in Annual Wage Reviews have not identified any clear relationship between the extent of collective bargaining and past decisions, and it has been recognised that a multitude of factors may be involved.[5] We do not consider there is any sound basis to favour a "general proposition" that upward adjustment to wage rates in copied state awards "may act as disincentive to bargaining in circumstances where the employers are already paying above modern award rates of pay".[6] It is to be recalled that copied state awards have a limited period of operation, a factor which is likely to motivate employees covered by them to participate in bargaining. Successive wage increases, together with public sector derived conditions of employment, may well motivate an employer to bargain for alternatives.

[4] [2022] FWCFB 3500 at [360]-[361]
[5] [2019] FWCFB 3500 at [378]-[387]
[6] [2022] FWCFB 3500 at [390].

*The different nature of the statutory objectives, higher wages than in modern awards*

11. We would urge the Panel to adopt a broader consideration of the interaction between the statutory objectives which apply in Federal and State Minimum Wage frameworks than it did in last year's Annual Wage Review.

12. In our view, the Panel's obligation to maintain a fair and relevant safety net, inclusive of all the relevant considerations that entails - not only in the minimum wage objective and modern awards objective but also the contextual matters in sections 577, 578 and the objects of the FW Act generally - do *not* compel it to frown upon or seek to harmonise or suppress the superior wages in copied state awards. Rather, the legislative framework recognises that those instruments *are part of* the safety net, notwithstanding their differences.

13. Those differences are respected - copied state awards are not required to contain the mandatory terms that modern awards are required to contain, and the "instrument content rules" from the relevant State jurisdictions are applied "as if the rules were provisions of a law of the Commonwealth" [7]. Such instrument content rules include, for instance, the direction in section 143 of the *Industrial Relations Act 2016* (QLD) that "The commission must ensure a modern award…provides fair standards for employees in the context of living standards prevailing in the community", or the condition in section 10 of *Industrial Relations Act 1996* (NSW) that "..the Commission may make an award in accordance with this Act setting fair and reasonable conditions of employment for employees". If the instruments from which copied state awards derive have been validly made and maintained in the source jurisdiction, it follows that they ought not be treated as outliers – they cannot be regarded as not being part of a "fair and relevant safety net" merely because they express their inherent differences. Differential treatment in the maintenance of the rates of pay in copied state awards compared to modern awards would in any event be a curious outcome of the requirement to take into account relative living standards if the contents of copied state awards are taken to be legitimate (as we submit they must be).

[7] *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* Schedule 3A, Item 10 as modified by FW Act s. 768BY(2).

14. In seeking to demonstrate that a *fair and relevant safety* net can encompass instruments of a different character, parallels can be drawn between the deemed laws of the Commonwealth referred to above and the laws of the Commonwealth in Items 4(5) and 6 of Schedule 6 and Item 7 of Schedule 6A of the Transitional Act, which relate to the making of modern enterprise awards and state reference public sector modern awards and regulate their content of those instruments. Those provisions, *inter alia*:

- require the FWC to recognise that those instruments "..may provide terms and conditions tailored to reflect employment arrangements that have been developed.." in relation to the relevant employers and employees;
- require, in the case of state reference public sector awards, that the FWC must recognise that those awards "..need to facilitate arrangements for State reference public sector employers and State reference public sector employees that are appropriately adapted to the effective administration of a State"; and
- require, in the case of modern enterprise awards, the FWC to take into account the "terms and conditions of employment applying in the industry in which the persons covered by the enterprise operate, and the extent to which those terms and conditions are reflected in the instrument".

In interpreting the last mentioned requirement in the context of wage rates, a Full Bench of the Commission adopted the following comments of the Australian Industrial Relations Commission:

> "…..we have decided to adopt an approach which gives primacy to the maintenance of internal relativities. The approach involves identifying the key classification in the award under review, striking the appropriate work value relativity between that classification and the fitter in the Metal, Engineering and Associated Industries Award, 1998 - Part 1 [Print Q2527], adjusting the rate for the key classification accordingly (if necessary) and then adjusting all of the rates in the award under review to maintain the pre-existing relativities with the key classification. We understand that this may lead to differences in minimum rates at particular skill levels across the award system. Nevertheless we think this approach is preferable to any other because it maintains the established relativities at the enterprise level. For the most part the awards requiring adjustment have previously been paid rates awards and have a history of adjustment on an enterprise or similar basis. In the public sector, for example, the establishment and maintenance of internal relativities has been regarded as more important than adjusting for variation in market rates for particular skill groups or particular locations. We emphasize that this approach is directed to enterprise based awards including those in the public service."[8] (emphasis added)

[8] See *Application by Commonwealth of Australia acting through the Minister Assisting the Prime Minister for the Public Service* [2015] FWCFB 616 at [21]-[23].

15. Items 4(5) and 6 of Schedule 6 and Item 7 of Schedule 6A of the Transitional Act clearly permit the making of instruments of a different character or content than modern awards generally. However, those instruments, being modern enterprise awards and state reference public sector modern awards, are nonetheless "taken to be a modern award" by Item 17 of Schedule 6 and Item 20 of Schedule 6A of the Transitional Act. Accordingly, the wages within them are subject to the requirement to review and the to discretion vary in annual wage review.[9] However, this is not and should not be taken as an invitation or instruction to subject those instruments to differential treatment merely because their contents reflect what was permissible or required at the time they were made. It rather signifies that they should be accepted as safety net instruments, without distinction. The same applies to copied state awards having regard to their own applicable "instrument content rules" and the effect of Item 20 of Schedule 9 of the Transitional Act, as modified by section 768BY of the FW Act, which requires that copied state awards be reviewed in an annual wage review.

16. Outside of an Annual Wage Review, there is no capacity to adjust wages in copied state awards. Part 6-3A of the FW Act, at section 786AW and 768AX provides no capacity to vary wage rates in copied state awards, nor do the provisions of Part 2-8 as applied through the modifications to the Transitional Act set out in section 768BY permit this. Unlike the case with modern awards, the FWC is provided with no power to adjust the wage rates in copied state awards on work value grounds on application. The availability in section 768BR of take home-pay orders beyond the 5 year period of operation of a copied state award and in particular the eligibility restriction for such orders being tied to a modern award *applying* to the applicant suggests an intention to maintain rather than deprecate the wages safety net contained in copied state awards.

17. The Panel should find that the enactment of Part 6-3A and the consequential amendments to the operation of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* are designed to provide *continuation* and *maintenance* of the wages safety net provided in copied state awards at an individual level, for a limited period of time and absent a normative re-evaluation against modern awards.

[9] FW Act s. 285(2)

**The procedure for reviewing copied state awards**

18. Any contention that copied state awards should be ignored in an annual wage review absent a moving party contending for a particular adjustment, or that wages in copied state awards should be static unless or until an affected person seeks a particular outcome, is wholly inconsistent with the statutory requirement to "review" them. Inconvenient as it may be for some, those instruments are properly before the Panel in Annual Wage Review.

19. Having regard to what we have said above regarding the legitimacy of the differences inherent to copied state awards, and to the fact that the Annual Wage Review does not require work value considerations as a basis for variation, it is difficult to justify a granular examination of wage rates and classifications in copied state awards against those in modern awards. Further, such a granular examination would sit uncomfortably with the Panel's finding in Annual Wage Reviews to date that it is not practicable to examine gender-based disparities between wages and classifications contained within the system of modern awards.[10]

20. To bolster the case that a granular examination is unnecessary, the Commission can take some comfort in the fact that the "base case" under the various state wage frameworks in recent years in particular is far from irreconcilable with the approach adopted in Annual Wage Reviews by the Panel with respect to modern awards. Indeed, each wage fixation framework tends, either as a practical matter or by force of legislation or both, to place weight on the decisions of the Panel in adjusting minimum wages in the state awards from which copied state instruments are derived.

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[10] [2018] FWCFB 3500 at [417]

## Annexure 1 – The "base case" in State jurisdictions

### New South Wales

1. In New South Wales, the statutory framework is set out in the *Industrial Relations Act 1996* (NSW) ('IRANSW'), which relevantly provides as follows at Part 3:

> **"48 What is a National decision?**
> A **"National decision"** is a decision of the Minimum Wage Panel or a Full Bench of Fair Work Australia that generally affects, or is likely to generally affect, the conditions of employment of employees in New South Wales who are subject to the jurisdiction of that panel or body.
>
> **49 What is a State decision?**
> A **"State decision"** is a decision of a Full Bench of the Commission that generally affects, or is likely to generally affect, the conditions of employment of employees in New South Wales who are subject to its jurisdiction.
>
> **50 Adoption of National decisions**
> (1) As soon as practicable after the making of a National decision, a Full Bench of the Commission must give consideration to the decision and, unless satisfied that it is not consistent with the objects of this Act or that there are other good reasons for not doing so, must adopt the principles or provisions of the National decision for the purposes of awards and other matters under this Act.
>
> (2) A Full Bench of the Commission is to give consideration to the National decision either on application or on its own initiative.
>
> (3) The principles or provisions of a National decision may be adopted—
> (a) wholly or partly and with or without modification, and
> (b) generally for all awards or other matters under this Act or only for particular awards or other matters under this Act.
>
> (4) The principles or provisions of a National decision so adopted may be varied by a Full Bench of the Commission, whether or not another National decision is made.
>
> **51 Making of State decisions**
> (1) A Full Bench of the Commission may, if satisfied that it is consistent with the objects of this Act and that there are good reasons for doing so, make a State decision setting principles or provisions for the purposes of awards and other matters under this Act.
>
> (2) A Full Bench of the Commission may make a State decision only on the application of a State peak council or on its own initiative.
>
> (3) A State decision may apply generally to all awards or other matters under this Act or only to particular awards or other matters under this Act.
>
> (4) The principles or provisions of a State decision may be varied by a Full Bench of the Commission.

**52 Variation of awards and other orders on adoption of National decisions or making of State decisions**

(1) A Full Bench of the Commission may, when adopting the principles or provisions of a National decision or making a State decision, make or vary awards , or make other orders, to the extent necessary to give effect to its decision.

(2) (Repealed)

Note: The adoption of a National decision or the making of a State decision enables the variation of an award to give effect to the decision without the concurrence of the parties to the award (see section 17).]

2. The NSW Industrial Relations Commission ('NSWIRC') has found that there is a "..policy underlying ss 48 and 50 of the IR Act for the National and State Minimum wages to be aligned"[11]. Section 50 of the IRANSW clearly gives some statutory precedence to the decisions of Panel in wage fixing decisions. In practice, the decisions of the Panel have been adopted by the NSWIRC pursuant to section 50 and 52 in every State Wage Case decision it has made since the relevant provisions of the FW Act took effect.[12] In the first such decision, the NSW IRC set out the provisions of sections 48 and 50 of the NSWIRA and said:

> "Since 2006 there has been such a disconnect between the federal system of fixing wages and that applicable in New South Wales that the Commission has declined to follow the National decision. Nevertheless, the differences remain significant and as it will be seen, whilst there is scope to adopt some provisions of the National decision, there is no scope to adopt federal wage fixing principles because, on the material presented in these proceedings, there are no such principles.
>
> Again, as it will be seen, we do not consider it to be an option to abandon the concept of wage fixing principles in order to follow the federal example. Whilst federally such principles may have no utility because of the federal approach to wage fixing and the absence of access to arbitration in the ordinary course, that is not the case under New South Wales law.
>
> The result is that we will adopt those provisions of the National decision where we are satisfied that it is consistent with s 50, but we intend to retain the concept of wage fixing principles, albeit amended principles that conform to the changed circumstances we have identified in this decision.[13]

3. The wage fixation principles that the NSWIRC did adopt in light of those changed circumstances, as foreshadowed in the above extract, relevantly provided:

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[11] *State Wage Case 2010* [2010] NSWIRComm 183 at [31]

[12] *State Wage Case 2010* [2010] NSWIRComm 183 at [29]; *State Wage Case 2014* [2015] NSWIRComm 4 at [8], *State Wage Case 2015* [2015] NSWIRComm 31 at [10(4)] and [10(5)], *State Wage Case 2016* [2016] NSWIRComm 12 at Annexure 1 Orders 5 and 6, *State Wage Case 2017* [2017] NSWIRComm 1068 at Appendix 1 Orders 5 and 6, *State Wage Case 2018* [2018] NSWIRComm 1063 at [4] and Annexure 1 Orders 5 and 6, *State Wage Case 2019* [2019] NSWIRComm 1065 at [4] and Annexure 1 orders 4 and 5; *State Wage Case 2020* [2021] NSWIRComm 1015 at 29, *State Wage Case 2021* [2022] NSWIRComm 1014 at [30]; State *Wage Case 2022* [2022] NSWIRComm 1081 at [11], [14], [17], [19]-[24]. A distinct State Wage Case decision does not appear to have been made in 2011, 2012 or 2013, but awards were adjusted nonetheless consistent with the adjustments made in the Federal system: see [2013] NSWIRComm 68.

[13] *State Wage Case 2010* [2010] NSWIRComm 183 at [27]-[29].

- That they had been "developed to accommodate the changing nature of the jurisdiction of the Industrial Relations Commission of New South Wales"…"in light of the creation of a national system of private sector employment regulation"[14] and;
- That they aimed to "provide a framework under which wages and employment conditions in the government and local government sectors of New South Wales remain fair and reasonable in accordance with the requirements of the Act"[15] and "ensures consistency of approach and certainty and predictability"[16]

4. What the wage fixing principles substantively did was to predispose the NSWIRC to adopt future decisions of its Federal counterpart:

> "4. State Wage Case Adjustments:
>
> 4.1 Following the completion of an Annual Wage Review by Fair Work Australia, the Commission shall issue a notice to show cause why that decision should not be flowed on to relevant New South Wales awards (as per 4.3(c) of this Principle) in the New South Wales industrial jurisdiction.
>
> 4.2 Subject to s 50(1) of the Act, if there are no written objections from any of the parties to the flow on of the Fair Work Australia decision then the Commission may issue a general order "on the papers" for that decision to apply to all relevant New South Wales awards.
>
> 4.3 Unless the Commission determines otherwise, all relevant New South Wales awards (excluding those that are caught by Principles 4.3(c) and 14) will be varied to include a State Wage Case adjustment by the making of a general order of the Commission pursuant to s 52 of the Act, subject to the following.."

5. The exceptions foreshadowed in principle 4.3 extracted above deal with the insertion of a standard offsetting clause, the expression of hourly and weekly rates, the exclusion of awards which had received wage increases other than by State Wage Case adjustments and a cross reference so the discretion to award State Wage Case increases where wage increases had been adjusted pursuant to an arbitrated case or the NSWRC's Equal Remuneration Principles.

6. The NSWIRC's wage fixation principles from 2010 provided that the *only* pathways to achieving an adjustment of wages in awards (outside of enterprise agreements) were:

[14] *State Wage Case 2010 (No 2)* [2011] NSWIRComm 29, Appendix A at para 1.
[15] *State Wage Case 2010 (No 2)* [2011] NSWIRComm 29, Appendix A at para 1.2.1.
[16] *State Wage Case 2010 (No 2)* [2011] NSWIRComm 29, Appendix A at para 1.2.2.

- To incorporate current or previous State Wage increases[17];
- To adjust for gender based undervaluation;[18]
- By arbitration of a claim based on work value considerations, productivity or efficiency gains or where the claim is advanced as a special case[19]; or
- Where the parties consented.[20]

7. These remain the sole pathways for adjustment of wages in NSW awards under the wage fixation principles adopted by the NSWIRC in its 2022 State Wage Case.[21] The capacity to vary awards consistent with State Wage Cases is similarly reflected in section 17(3) of the IRANSW:

> "An award may be varied or rescinded in any of the following circumstances only –
>
> (a) at any time with mutual consent of all the parties to the making of the original award;
>
> (b) at any time to give effect to a decision of the Full Bench of the Commission under section 50 or 51 (National and State decisions);
>
> (c) during its nominal term if the Commission considered that it is not contrary to the public interest to do so and there is a substantial reason to do so;
>
> (d) after its nominal term if the Commission considers that it is not contrary to the public interest to do so."

8. Consent is the source of the majority of change to rates of pay in NSW Awards. However, the breadth of what could be consented to, as provided for in the principles has since 2007 been restricted by the New South Wales Government's public sector wages policy. At that time, the policy limited public sector wage increases to 2.5% in the absence of offsets[22]. The policy was formalised by way of legislation amending s. 146C of the NSWIRA[23] and associated

[17] *State Wage Case 2010 (No 2)* [2011] NSWIRComm 29, Appendix A at para 2.1(a), 2.1.(c).
[18] *State Wage Case 2010 (No 2)* [2011] NSWIRComm 29, Appendix A at para 2.1(g) and 12.
[19] *State Wage Case 2010 (No 2)* [2011] NSWIRComm 29, Appendix A at para 8. A "Special case" requires the application to demonstrate that the variation it seeks is necessary to establish fair and reasonable conditions of employment and that the matter has special attributes – see [2001] NSWIRComm 331 at [186].
[20] *State Wage Case 2010 (No 2)* [2011] NSWIRComm 29, Appendix A at para 2.1(e).
[21] *State Wage Case 2022* [2022] NSWIRComm 1081 at Annexure A, para [2]
[22] See further *State Wage Case 2010* [2010] NSWIRComm 183 at [73] – 82].
[23] *Industrial Relations Amendment (Public Sector Conditions of Employment) Act 2011* (NSW)

regulations[24] in 2011, so as require the NSWIRC to give effect to the policy position.[25] In *State Wage Case 2020 (No 2)*, the NSWIRComm observed that:

> "..The declared policy for the purpose of s146C of the IR Act permits employee-related cost increases up to 2.5% pa. NSW Government policy and practice between 2012 and 2020 was to offer 2.5% increases each year. In 2020, NSW Government policy was a wage freeze. This led to claims by unions for increases of 2.5%. These claims were arbitrated by the Commission. The PSWP 2021 purports to cap increases at 1.5%. However, PSWP 2021 is not a policy declared by the Regulations and consent awards covering NSW Government employees made or varied in 2021, in the main, contained increases of 2.5% inclusive of superannuation increases."[26]

9. The regulations, as subsequently amended, stipulate that for the 2022-23 financial year, the relevant "cap" is a 3% increase in employment costs inclusive of superannuation, but that the employer may agree to a higher amount.[27]

10. In its first State Wage Case post the FW Act in 2010, the NSWIRC was cognizant of the fact that the majority of awards which remained in its jurisdiction were paid rates award in the public sector and subject to public sector wages policy.[28] It said:

> "It is true that for employees in the NSW Public Sector, State Wage Cases have been of little relevance for many years. This is because State Wage Case increases have been inapplicable to awards that have been the subject of pay increase other than safety net increases, State Wage Case adjustments or Minimum Rates Adjustments since 1991"[29]

11. The position of our affected affiliates in relation to the NSW public sector wages policy is one of strong opposition, including a High Court challenge.[30] Consistent with that opposition, efforts were made in the 2020 State Wage Case to review the wage fixing principles with a view to allowing for automatic flow on of Stage Wage Case increases to paid rates awards. These efforts were not successful. That opposition continues, particularly in light of the worsening failure of that policy to live up to its promise when legislated to "…maintain the

[24] *Industrial Relations (Public Sector Conditions of Employment) Regulation 2011* (NSW).
[25] See *Industrial Relations Act 1996* (NSW) s. 146C.
[26] *State Wage Case 2020 (No 2)* [2021] NSWIRComm 1079 at note 29
[27] *Industrial Relations (Public Sector Conditions of Employment) Regulation 2014* (NSW) at r. 6A.
[28] *State Wage Case 2010* [2010] NSWIRComm 183 at [90]-[92].
[29] *State Wage Case 2010* [2010] NSWIRComm 183 at [74]
[30] *The Public Service Association and Professional Officers' Association Amalgamated of NSW v Director of Public Employment* [2012] HCA 58

real value of public sector wages over the medium term in line with the mid-point of the Reserve Bank of Australia's target range for inflation over the cycle".[31]

12. In recent NSW State Wage Cases, the NSWIRC has identified the awards, not being paid rates awards, to which its decision applies. These are:

- the Security Industry (State) Award ("Security Industry Award");
- the Miscellaneous Workers – Kindergartens and Child Care Centres, &c. (State) Award;
- the Health, Fitness and Indoor Sports Centres (State) Award;
- the Transport Industry (State) Award;
- the Clerical and Administrative Employees (State) Award;
- the Local Government (Electricians) (State) Award;
- the Entertainment and Broadcasting Industry – Live Theatre and Concert (State) Award;
- the Local Government Aged Disability and Home Care (State) Award; and
- the Nurses' (Local Government) Residential Aged Care Consolidated (State) Award 2021

13. Ultimately, the characterisation of NSW Public Sector Awards as paid rates awards reveals nothing about their actual contemporary character save that their method of adjustment in recent decades has been largely been both consensual and artificially constrained. The NSWIRA provides at section 406 that the conditions of employment set by an industrial instrument (including awards) are "the minimum entitlements of employees", without drawing any distinction.

14. In our view, having regard to both the State Wage Cases and consent matters, the "base case" for a copied state award derived from an NSW award is:

[31] See *Re Crown Employees Wages Stas 9Rates of Pay) Award 201 & Ors (No 3)* [2013] NSWIRComm 109 at [73]-[76]

- An increase in line with the Panel's decision in this review, if the award is neither a paid rates award or subject to public sector wages policy;
- An increase in line with NSW public sector wages policy if an award is subject to that policy, irrespective of whether it is a paid rates award or not.

**South Australia**

15. The statutory framework in South Australia permits the South Australian Employment Tribunal ('SAET") to make and vary awards.[32] The SAET is permitted to adopt the decisions of the Commission in varying awards by the terms of section 100 of the *Fair Work Act* 1994 (SA):

> 100—Adoption of principles affecting determination of remuneration and working conditions
>
> (1) SAET may, on its own initiative, or on the application of—
>
> (a) the Minister; or
>
> (b) the United Trades and Labor Council; or
>
> (c) the South Australian Employers' Chamber of Commerce and Industry Incorporated,
>
> make a declaration adopting in whole or in part, and with or without modification, principles, guidelines, conditions, practices or procedures enunciated or laid down in, or attached to, a decision or determination of Fair Work Australia.
>
> (2) However, a declaration may only be made if the terms of the declaration are consistent with the objects of this Act.
>
> (3) A declaration under this section may be made on the basis that it is to apply in relation to (and prevail to the extent of any inconsistency with)—
>
> (a) awards generally; or
>
> (b) awards generally, other than a specified award or awards; or
>
> (c) a specified award or awards (and no other awards).
>
> (4) In addition, a party to an award that is affected by a declaration under this section may, within 28 days after the declaration is made, apply to SAET to have the award excluded from the declaration (or a part of the declaration), despite the operation of subsection (3).
>
> (5) SAET may grant an application under subsection (4) on such conditions as SAET thinks fit.

16. In practice, the SAET since 2017 has partially or wholly adopted the decisions of the Panel in its State Wage Case decisions, with the result that its award wage adjustments have usually replicated those ordered by the Panel, as seen in Annexure 2.

[32] *Fair Work Act 1994* (SA), s. 90

17. Prior to 2017, the State Wage Case was heard and determined by the South Australian Industrial Relations Commission ('SAIRC'). It too adopted the Federal decision either in wholly or with modifications, again set out in Annexure 2.

18. In its first State Wage Case following the first federal annual wage review, the SAIRC departed from Fair Work Australia (as it then was) as the form of the increase to be awarded and foreshadowed a reconsideration of its own wage fixing principles (which had not been revised since before the commencement of the *WorkChoices* reforms):

> "It is uncontroversial that both the legislative framework and the relevant factual circumstances, including the nature and extent of the impact of any decision we may make and the economic environment, have changed significantly since the last State Wage Case in 2005 and as noted earlier, from the circumstances existing at the time of the 2009 decision.
>
> In relation to the form of the increase we are required to balance the relative benefit to low paid workers of a flat dollar increase against the benefit of a percentage increase to halt the compression of award wage relativities.
>
> We consider that the circumstances relevant to the consideration of the form of the increase can be distinguished from those considered in the Annual Wage Review that led to a determination of a flat dollar increase. Award-reliant employees constitute a very small percentage of the total employees within the jurisdiction of the Commission. On the data presented by the LGA and the Chief Executive, it appears that approximately 1.0% to 1.5% of all employees would be directly impacted by a wage increase. As such, the cost and employment impact of a percentage increase will be negligible.
>
> The Commission has expressed concern about the compression of award relativities in the past, and in the 2009 decision noted that, all things being equal, the maintenance of relativities was a desirable objective.
>
> We are of the view that the current circumstances enable a departure from a flat dollar adjustment. We are also satisfied that the increasing gap between award wages and enterprise agreement rates of pay at classifications above the minimum is a matter that should be taken into account on this occasion.
>
> A percentage increase at this time will maintain existing award relativities and we are of the view that this is appropriate in the context of the revision of the wage principles that will shortly be undertaken. We stress however that the fact of a percentage increase on this occasion should not be viewed as suggesting our approach in future proceedings."[33]

19. In the event, all increases to award rates by the SAIRC and SAET in state wage case decisions have taken the form of a percentage increase. Furthermore, the re-consideration of wage

[33] *2010 State Wage Case and Minimum Standard for Remuneration* [2010] SAIRComm 8 at [75]-[80]

principles ultimately did not bear fruit, as was recounted in the 2011 State Wage Case decision as follows:

> "Submissions were invited from the parties during the hearing of the 2010 proceedings as to whether the 2010 decision should encompass a review of the Principles in conjunction with the exercise of the Commission's powers under the amended s 100. It was determined that a review was not necessary in that context and the parties were informed that they would be invited to make submissions on a review of the Principles separately.
>
> After delivery of the 2010 decision, the Commission amended the Principles to the extent necessary to accommodate the implementation of that decision. In addition, a discussion paper was published by the Commission raising issues relevant to a general review of the Principles. Submissions were received on the paper from various parties, and on 10 May 2011 the Full Commission issued a "Review of Statement of Principles – Preliminary Position".
>
> The Full Commission formed the preliminary view that neither s 100 nor any other provisions of the State Act empowered it to review or substantially modify existing principles for determination of remuneration and working conditions. The reason was that s 100 only permitted the adoption by the Commission of principles, guidelines and the like enunciated in decisions or determinations of FWA, and that the Commission had no power to establish independent guidelines and principles tailored to the substantially changed industrial regime in this State. The position statement concluded:
>
> > '13. The Commission has recognised that the current principles are outdated in some respects and the discussion paper was generated to explore whether jurisdiction existed to enable some amendment of the principles, and to gauge the views of the parties as to the extent of any modifications sought.
> >
> > 14. Future decisions of Fair Work Australia may provide scope for modification of the current Principles under s.100 of the Act in a manner that is relevant to aspects of the State jurisdiction. However, differences in the level of award-reliant employees between the jurisdictions mean that a review of the current Principles in the context of the industrial coverage of employees in the State jurisdiction is not likely to be able to be explored in this context. 'Redundant' principles and outdated references are likely to remain a feature of current and future principles on the same basis. Absent any legislative change that grants a level of autonomy to the State Commission to review its wage principles and/or absent the development of wage principles at the Commonwealth level, Fair Work Australia will indirectly determine the matters that this Commission can deal with in State Wage Cases."[34] (emphasis added).

20. With the exception of the 2011 State Wage Case, a distinction has not been made in State Wage Cases as to the awards that would or would not benefit from the wage increases generally determined. In the 2011 State Wage Case the SAIRC accepted the increases should

[34] *2011 State Wage Case and Minimum Standard for Remuneration* [2011] SAIRComm 6 at [7]-[9]

not flow to awards that were made following failed negotiations for an enterprise agreement.[35]

21. In light of the above, we are of the view that the base case for copied state award derived from a South Australian State Award is that it rates will be increased in line with the general increase award to modern awards, expressed in percentage terms.

**Tasmania**

22. In the 2009 State Wage Case, the State wage case prior to the Fair Work Act safety net provisions taking effect, the Tasmanian Industrial Commission (TIC) decided to set aside its wage fixing principles save for principle relating to "equal remuneration for and women doing work of equal value".[36]

23. The *Industrial Relations Act 1984* (Tas) ('IRAT') relevantly provides the following at section 35:

> Certain matters to be dealt with by Full Bench of Commission
>
> …….
>
> (7) Subject to this section, where a Full Bench is satisfied that, having regard to a decision of the Australian Commission that is applicable to the wages payable generally to employees who are subject to awards of the Australian Commission in Tasmania, a variation should be made to the wages payable generally to employees under awards of the Commission, the Full Bench may order that any such variation be made.
>
> (8) An order under subsection (7) by a Full Bench may be subject to such conditions as the Full Bench considers appropriate and as are specified in the order.
>
> (9) Subject to subsection (10) , a Full Bench may make an order under subsection (7) only –
>
> (a) on the application of the Tasmanian Chamber of Commerce and Industry Ltd., the Tasmanian Trades and Labor Council, an organization that has an interest in 5 or more awards, or the Minister; and

[35] *2011 State Wage Case and Minimum Standard for Remuneration* [2011] SAIRComm 6 at [64]
[36] *Tasmanian State Wage Case 2009*, T13471 of 2009.

(b) after it has given the Minister, the organizations referred to in paragraph (a) , and any other organization that, in the opinion of the Full Bench, has a sufficient interest in the matter, an opportunity to be heard in relation to the matter.

(10) An application under paragraph (a) of subsection (9) made by an organization lastly referred to in that paragraph shall not be heard unless the President, having regard to the subject-matter of the application, considers that the hearing of that application would not prejudice the orderly conduct of industrial relations in Tasmania.

(10A) A Full Bench of the Commission must convene and conduct a hearing annually to determine the Tasmanian minimum wage specified in section 47AB .

24. Section 47AB of the IRAT provides:

Minimum weekly wage

The minimum weekly wage for an adult full-time employee is the Tasmanian minimum wage as determined annually by the Commission under section 35(10A) .

25. Pursuant to these provisions, the TIC has since the commencement of the safety net provisions of the FW Act adjusted the Tasmanian minimum wage. In its first such decision, it referred the first Annual Wage Review decision of the Fair Work Australia and the parties' positions and decided to align the Tasmanian minimum wage with the National Minimum Wage.[37] It has not departed from that position since.

26. From the 2011 State minimum wage case onwards, the TIC has also varied work related allowances in particular awards (all awards between 2013 and 2016) and the supported age[38] in all public sector awards.[39] From 2013 onwards, adjustments have also been made to trainee wages in the *Tasmanian State Service National Training Wage Award.* These adjustments were initially based on the rates expressed in the Federal *Manufacturing and Associated Industries and Occupations Award*[40], however thereafter adjustments reflected the percentage adjustments in the minimum wage.

[37] *Tasmanian State Minimum Wage Case 2010*, T1360 of 2010.
[38] No adjustment to the supported wage was made in 2015: *Tasmanian State Minimum Wage Case 2015*, T1430 of 2015.
[39] *Tasmanian State Minimum Wage Case 2011*, T13782 T13783 T13784 of 2011.
[40] *State Minimum Wage Case 2013,* T14066 T14068 of 2013

27. Award wages outside of the minimum wage have generally not been adjusted in State minimum wage cases[41]. Rather, the established practice is for public sector unions to make industrial agreements under section 55 of the IRAT, which prevail over awards to the extent of their inconsistency[42]. An industrial agreement once registered is "enforceable in all respects as if it were an award"[43]. However, the terms of an enterprise agreement registered under the IRAT prevail over the terms of an industrial agreement.[44] Seven industrial agreements in respect of the public sector were registered by the TIC in December 2022, and all but one were registered on the same day.[45] Each provided for wage increases of 3.5% on 1 December of 2022, and 3% in each of 1 December 2023 and 1 December 2024, together with additional flat dollar "cost of living" and "lower income" payments, depending on classification.

28. Awards have, in the past, been varied to reflect the wages set out in industrial agreements, however it does not appear that this has occurred as yet in respect of the industrial agreements registered in December of 2022. We nonetheless submit that the base case in respect of copied state awards derived from Tasmanian award is relevantly 3.5% in 2023.

**Western Australia**

29. Section 50A of the *Industrial Relations Act 1979* (WA) ('IRAWA') relevantly provides as follows:

> 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 —

[41] Exceptions include the *Nurses [Public Sector] Award,* which was varied in 2013 by "…2.6%, together with any necessary prior adjustments as agreed arising from earlier State wage decisions" (*State Minimum Wage Case 2013,* T14066 T14068 of 2013); In 2014 the *Custodial Officers Award, Medical Practitioners (Public Sector) Award* and *Nurses and Midwives (Tasmanian State Services) Award* were increased by 3% (*State Minimum Wage Case* T14223 of 2014)
[42] IRAT s. 60
[43] IRAT at s.55(2)
[44] IRAT s. 61M(2)
[45] Allied Health Professionals Public Sector Unions Wages Agreement No. 1 of 2022 (Registered in T14997), AWU Public Sector Union Wages Agreement 2022 (Registered in T14993), Dental Officers Agreement 2022 (Registered in T14996), Education Facility Attendants Salaries and Conditions of Employment Agreement 2022 (Registered in T145986), Ministerial Drivers Industrial Agreement 2022 (Registered in T14994), Port Arthur Historic Site Management Authority Staff Agreement 2022 (Registered in T14995), Public Sector Unions Wages Agreement 2022 (Registered in T14992).

(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).

30. Pursuant to these provisions, the Industrial Relations Commission of Western Australia ('WAIRC') has issued a general order which *inter alia* sets a minimum weekly rate of pay and adjusts the rates of pay in its awards. In its first decision pursuant to section 50A of IRAWA following the commencement of the safety net provisions in the FW Act, the WAIRC commented on the similarities between the objectives which applied under the FW Act and the provisions that applied to the exercise of power under section 50A:

> 9. The Minister submits that the wage disparity between the minimum wages in each jurisdiction is a consequence of the different legislative criteria considered by each tribunal when adjusting their respective minimum wages, the timing of determinations and the different economic circumstances experienced in each jurisdiction. In relation to the legislative criteria to be observed by Fair Work Australia in its current review of the national minimum wage, the Minister submits that although similarities now exist between the national minimum wages objective and the State minimum wages criteria, important differences remain. Primarily the national minimum wages objective does not require consideration of:
> a. The state of the WA economy;
> b. The WA award framework; or
>
> c. Relevant decisions of other industrial courts or tribunals.

10 The Minister submits therefore that little weight should be attributed to this current disparity between the WA and national minimum wages.

……

35. The FWA delivered its decision in the Annual Wage Review 2009-10 on 3 June 2010 ([2010] FWAFB 4000). Section 50A(3)(f) of the Act obliges the Commission to take into consideration relevant decisions of other industrial courts and tribunals, and we consider that FWA is within that description. We acknowledge, as the Minister has submitted, that the statutory criteria in the FW Act does not require consideration of the state of the WA economy, the WA award framework or relevant decisions of other industrial courts or tribunals. Nevertheless, we note also that CCIWA considers that minimum wage movements in other jurisdictions should be given more, not less, weight as a guide. We also note that CCIWA and AMMA submit that any further widening of the difference between the State minimum wage and all other States and the federal minimum wage would not appear to be justified on current economic data.

36 Further, notwithstanding that s 284(1) of the FW Act does not include those matters to which the Minister has drawn to our attention, we consider it significant that s 284(1) obliges FWA to establish and maintain a safety net of fair minimum wages. Sections 50A(3)(a)(i) and (iii) require us to take fairness into consideration as follows:

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

(a) the need to —

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

(ii) ...

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

37 The safety net of fair minimum wages determined by FWA applies throughout Australia to the unincorporated private sector to which the General Order to issue from these proceedings will have particular application. We accept the CCIWA description of the employing businesses in the private sector in WA which fall within the State's jurisdiction as a "small minority" (submission [268]) and note that correspondingly, the safety net of fair minimum wages determined by FWA is applicable to the majority of employees in the private sector in WA.

38 Importantly too, the minimum wage set by FWA operates from 1 July 2010 (s 286(1) of the FW Act) which is the same date as the operation of the General Order to issue from these proceedings. The timing of the FWA Annual Wage Review and the date of operation of the minimum wage to be set by FWA is contemporaneous with the obligations on this Commission under s 50A of the Act. For all of these reasons, we consider the decision of the FWA in its Annual Wage Review to be a relevant consideration under s 50A(3)(f) of the Act.

31. There are awards covering public sector employees in the WA industrial relations system, however as a matter of practice public sector wages are regulated through industrial agreements registered under section 41 of the IRAWA. In its 2011 State Wage Order decision,

the WAIRC observed that its decision "..has no relevance to, or application in, the public sector"[46].

32. Having regard to the above matters and the recent variations noted in Annexure 2, we submit the "base case" in Western Australia is an adjustment of similar magnitude to that which the Panel may apply to modern awards.

**Queensland**

33. The Queensland Industrial Relations Commission ('QIRC') adjusts the Queensland minimum wage and wages in modern awards by way of a general ruling issued under Subdivision 1 of Division 4 of Part 2 of Chapter 11 of the *Industrial Relations Act 2016* ('QIRA'). Prior to that legislation taking effect, and since 2011 to the present day, the adjustments to state award minimum wages have mirrored those made by the Federal tribunal. In the 2022 State Wage Case, the QIRC commented on the relationship between its functions and the decisions of the Federal Tribunal as follows:

> "[10] All three applicants seek an increase to the State Minimum Wage (SMW) of 5.2 per cent.4 That percentage accords with the Fair Work Commission's Annual Wage Review (AWR) Decision of 15 June 2022.5 Each union buttresses their respective submissions with an extract from this Commission's 2014 wage decision. It relevantly reads:
>
> > "[12]This Commission has historically attached considerable weight to the National Wage/Annual Wage Review decisions of its federal counterpart, whilst always having regard to the particular economic conditions of the state of Queensland at the time. A significant reason for having regard to the decisions of the federal tribunal (now called the Fair Work Commission) is because the federal commission has the benefit of considerable material about the economic position of Australia. In the federal Annual Wage Review parties present detailed statistical data in relation to the Australian economy and to the economies of the various states and territories. The decision of the Fair Work Commission affects the majority of award reliant employees throughout Australia, including those in Queensland.
> >
> > [13] Given that this year the unions' claims essentially mirror the increase awarded by the Fair Work Commission and that none of the parties, other than the LGAQ, sought an outcome greatly at variance with that of the Fair Work Commission, the scope of our inquiry has been significantly narrowed. Indeed, the LGAQ submitted that, unless there are convincing reasons to depart from the Fair Work Commission's ruling, that ruling should be adopted. The other parties' submissions also made significant mention of the decision of the Fair Work Commission. Having regard to the submissions of the parties in these proceedings, we broadly

[46] *Re 2011 State Wage Order* [2011] WAIRComm 399 at [49]

agree that, unless there are cogent reasons for not doing so, we should follow the ruling of the federal tribunal, with any necessary or desirable modifications, having regard to the particular circumstances of Queensland."6 (emphasis added).

…….

[53] The Commission in Declaration of General Ruling (State Wage Case) 2014,33 held that the scope of the Commission's work has narrowed and that unless there are cogent reasons for not doing so, the Full Bench should follow the ruling of the Federal Tribunal, with any necessary or desirable modifications, having regard to the particular circumstances of Queensland.

[54] The relevant passage from the 2014 State Wage Case is set out at paragraph [10] of these reasons. Those statements must be properly understood and their limitations recognised.

[55] There is no principle of law that the FWC's ruling must be accepted unless there are cogent reasons for departure. There is no principle of law that the correctness of the FWC's ruling must be accepted at all in a Queensland State Wage Case.

[56] Australia's constitutional arrangements are such that the Commonwealth controls significant economic power. Income tax is controlled nationally. By the use of the corporation's power commercial activity is largely centrally controlled. The Work Choices case34 is an example. The result is that many economic factors have nationwide influence.

[57] Therefore, evidence of the economic impact of factors upon the national industrial environment will generally be relevant to determination of the Queensland State Wage Case. The FWC considers these matters and consequently its determination will be relevant to the State Wage Case.

[58] It is a mistake to assume that the FWC's determination can be a substitute for a proper forensic inquiry into the impact of economic factors upon the wages of workers in Queensland who are not national system employees.35

[59] If the forensic exercise is to commence with receipt into evidence of the FWC ruling, then it is necessary to receive evidence identifying relevant differences between the national workforce and Queensland workers who are not national scheme employees. It is also necessary to identify economic and perhaps social conditions which may be peculiar to Queensland and relevant to the Full Bench's determination of the State Wage Case. Once those things are identified, proper evidence (expert if necessary) should be led as to their impact upon the issues in the State Wage Case."[47]

34. Submissions made to the QIRC by the Queensland Government in the 2022 State Wage Case included that employees in the State jurisdiction are almost exclusively employed in state and local government sectors and that 98.2% of the employees subject to that jurisdiction are covered by certified agreements.[48] The QIRA provides at section 145 a capacity to "flow -on" provisions from a certified agreement into a modern award, including by consent. A recent

[47] *Declaration of General Ruling (State Wage Case 2022)* [2022] QIRC 340
[48] *Declaration of General Ruling (State Wage Case 2022)* [2022] QIRC 340 at [19]

amendment to the QIRA provides the QIRC may provide that a general ruling, such as one of the type made in state wage cases, does not apply to wages payable to employees covered by a particular modern award (or a class of such employees) if the application of the general ruling would cause those wages to equal or exceed those in a certified agreement.[49]

35. Based on the above matters and recent adjustments as noted in Annexure 2, we submit the "base case" is Queensland is an adjustment of similar magnitude to that which the Panel may apply to modern awards.

[49] s. 459A

## Annexure 2 – Adjustments per jurisdiction

| | 2010 | 2011 | 2012 |
|---|---|---|---|
| FWC - Minimum | +$26 (=+4.78%) + $569.90 | +3.4% to $589.30 | +2.9% to $604.60 |
| FWC Awards | +$26 | +3.4% | +2.9% |
| NSW Minimum (Award Review Classification Rate) | +4% to $592.30 | No adjustment sought | No adjustment sought |
| NSW Awards | +4.25% | +2.5% | +2.5% |
| SA Minimum | +3.5% to $580.30 | +3.4% to $600 | +2.9% to $617.40 |
| SA Awards | +3.5% | +3.4% | +2.9% |
| WA Minimum | +$17.50 to $587.20 | +$19.90 to $607.10 | + 3.4% to $627.70 |
| WA Awards | +$17.50 | +$19.90 | +3.4% |
| Tas Minimum | +$11.80 to 569.90 | +3.4% to $589.30 | +2.9% $606.00 |
| Tas Awards | N/A | N/A | N/A |
| QLD Minimum | +$20 to $588.20 | +$22 to $610.20 | + $20.50 to $630.70 |
| QLD Awards | +$20 | + the greater of 3.4% or $22 | + the greater of 2.9% or $20.50 |

| | **2013** | **2014** | **2015** |
|---|---|---|---|
| FWC – Minimum | +2.6% to $622.20 | +3% to $640.90 | +2.5% to $656.90 |
| FWC Awards | +2.6% | +3% | +2.5% |
| NSW Minimum (Award Review Classification Rate) | No adjustment sought | +8.21% to $640.90 | + 2.5% $656.90 |
| NSW Awards | +2.5% | +3%, or +2.38% for those covered by public sector wages policy. | +2.5% |
| SA Minimum | +2.6% to $633.50 | +3% to $652.50 | +2.5% to 668.80 |
| SA Awards | +2.6% | +3% | +2.5% |
| WA Minimum | +$18.20 to $645.90 | +$20 to $665.90 | +2.1% to $679.90 |
| WA Awards | +$18.20 | +$20 | +2.1% |
| Tas Minimum | +2.6% to $622.20 | +3% to $640.90 | +2.5% to $656.90 |
| Tas Awards | N/A | N/A | N/A |
| QLD Minimum | +$15.80 to $646.50 | +$22.30 to 668.80 | +$19.20 to $688 |
| QLD Awards | +$15.80 to rates below C10, +2.6% to rates C10 and above. | +$22.30 to rates below C10, +3% to rates C10 and above. | +$19.20 to rates below C10, +2.5% to rates C10 and above. |

| | 2016 | 2017 | 2018 |
|---|---|---|---|
| FWC - Minimum | +2.4% to $672.70 | +3.3% to $694.90 | +3.5% to $719.20 |
| FWC Awards | +2.4% | +3.3% | +3.5% |
| NSW Minimum (Award Review Classification Rate) | +2.4% to $672.70 | +3.3% to $694.90 | +3.5% to $719.20 |
| NSW Awards | +2.4%, or + 2.5% for those covered by public sector wages policy. | +3.3%, or +2.5% for those covered by public sector wages policy. | +3.5%, or +2.5% for those covered by public sector wages policy. |
| SA Minimum | +2.4% to 684.90 | +3.3% to $707.50 | +3.5% to $732.30 |
| SA Awards | +2.4% | +3.3% | +3.5% |
| WA Minimum | + $13 to $692.90 | +$16 to $708.90 | +$18 to $726.90 |
| WA Awards | +$13 | +$16 to rates below C10, +2.3% to rates C10 and above. | +$18 |
| Tas Minimum | +2.4% to $672.70 | +3.3% to $694.90 | +3.5% to $719.22 |
| Tas Awards | N/A | N/A | N/A |
| QLD Minimum | +2.4% to $704.50 | + 3.3% to $727.50 | +3.5% to $753.00 |
| QLD Awards | +2.4% | +3.3% | +3.5% |

| | 2019 | 2020 | 2021 |
|---|---|---|---|
| FWC - Minimum | +3% to $740.80 | +1.75% to $753.80 | +2.5% to $772.60 |
| FWC Awards | +3% | +1.75% | +2.5% |
| NSW Minimum (Award Review Classification Rate) | +3% to $740.80 | +1.75% to $753.80 | +2.5% to $772.60 |
| NSW Awards | +3%, or +2.5% for those covered by public sector wages policy. | +1.75%, save for two awards where consent increases of 0.3% and 2.5% were awarded. | +2.5%, or +2.04% for those covered by public sector wages policy. |
| SA Minimum | +3% to $754.30 | +1.75% to 767.50 | +2.5% to $786.70 |
| SA Awards | +3% | +1.75% | +2.5% |
| WA Minimum | +2.75% to $746.90 | +1.75% to $760 | +2.5% to $779.00 |
| WA Awards | +2.75% | +1.75% | +2.5% |
| Tas Minimum | +3% to $740.80 | +1.75% to $753.80 [The application was decided in 2021 but orders made effective to August 2020] | +2.5% to $772.60 |
| Tas Awards | N/A | N/A | N/A |
| QLD Minimum | +3% to $775.50 | +1.75% to $789.00 | + 2.5% to $808.50 |
| QLD Awards | +3% | +1.75% | +2.5% |
| | | | |

| | **2022** |
|---|---|
| FWC - Minimum | +5.2% to $812.60 |
| FWC Awards | + the greater of $40 or 4.6% |
| NSW Minimum (Award Review Classification Rate) | +5.2% to $812.60 |
| NSW Awards | +4.6%, or + 2.53% for those covered by Public Sector Wages Policy |
| SA Minimum | +5.2% to $827.61 |
| SA Awards | +5.2% |
| WA Minimum | + $40.90 to $819.90 |
| WA Awards | +$40.90 to rates below C10, +4.65% to rates C10 and above. |
| Tas Minimum | +5.2% to $812.60 |
| Tas Awards | N/A |
| QLD Minimum | +$40 to $850.80 |
| QLD Awards | + the greater of $40 or 4.6% |
| | |