



Application ID

16192647

Application lodged

4/08/2022 11:06:04 AM

SAET case number (if blank, quote Application ID)

ET-22-03771

About this form

This is a copy of the details of an application lodged online to the South Australian Employment Tribunal (SAET) in relation to Fair Work Act 1994 (SA) - s100(1) State Wage Case (FW-17).

APPLICATION SUMMARY**Application type**

Fair Work Act 1994 (SA) - s100(1) State Wage Case (FW-17)

Applicant(s)**United Trades and Labor Council (Union)**

Nominated contact: Ms Kristen Rogers

Represented by

Not represented

Respondent(s)**Department of Treasury and Finance (Employer)**

Nominated contact: Mr Tom Kidman

Other party(ies)**Local Government Association (Other Party)**

Nominated contact: Mr Robert Wallace

Corporation of the City of Adelaide (Other Party)

Nominated contact: Mr Sathish Dasan

Other proceedings before SAET

Are there any other proceedings before SAET involving the same parties to this application??

No



APPLICATION DETAILS

Grounds

Specify the grounds and reasons in support of your application

1. The United Trades and Labor Council of South Australia (SA Unions) initiates these proceedings, known as the “State Wage Case”, under sections 69(3), 90 and 100 of the Fair Work Act 1994 (SA) (the Act). These proceedings include the following.

1.1 An application by SA Unions to increase rates of pay and allowances (including work-related allowances and the maximum amount of leave loading payable under the Public Sector (Recreational Leave Loading) Award)) in Awards of the South Australian Employment Tribunal (SAET) pursuant to s 90 of the Act;

1.2 An application by SA Unions to increase the Minimum Standard for Remuneration (MSR) pursuant to s 69(3) of the Act; and

1.3 An application by SA Unions that the determination of remuneration and working conditions as determined at the Commonwealth level by the Fair Work Commission (FWC) in its annual wage review decision be “flowed on” by the SAET.

2. In its decision in 2012 State Wage Case and Minimum Standard for Remuneration [2012] SAIRComm 9, the Full Commission of the Industrial Relations Commission of South Australia considered whether to adopt the decision of the Minimum Wage Panel of Fair Work Australia (as it then was) in Annual Wage Review 2011-12 [2012] FWAFB 5000.

3. The Full Commission decided, inter alia, that the State Minimum Award Wage and existing adult Award wages should be increased by the same percentage that was applied by Fair Work Australia (as it then was) should operate from the same date (the first pay period to commence on or after 1 July).

4. Each year thereafter, the Full Commission and its successor, the SAET, has decided to increase the State Minimum Award Wage and the Minimum Standard of Remuneration (MSR) by the same percentage as determined by the Fair Work Commission in the Annual Wage Review.

5. On 15 June 2022 the Expert Panel (the Panel) of the Fair Work Commission handed down its decision in Annual Wage Review 2021–22 [2022] FWCFB 3500.

6. Taking all relevant considerations into account, the Panel determined the following.

6.1 To increase the National Minimum Wage by \$40, which amounts to an increase of 5.2%. The National Minimum Wage would be \$812.60 per week or \$21.38 per hour. The Panel observed that this level of increase will protect the real value of the wages of the lowest-paid workers.

6.2 To increase modern award minimum wages by 4.6% subject to a minimum increase to adult award classifications of \$40 per week. In effect modern award minimum wage rates above \$869.60 per week would receive a 4.6% increase, and wage rates in adult award classifications that are below \$869.60 per week would be increased by \$40 per week.

6.3 That exceptional circumstances existed such that the operative date for increases to modern awards in the aviation, tourism, and hospitality sectors would occur from 1 October 2022.

6.4 That increases to all other modern awards would operate from 1 July 2022.

7. In making this application SA Unions has adopted as its claim the decision of the Panel in respect of the 5.2% increase to the National Minimum Wage and seeks to apply that percentage increase as a “flow on” to State Minimum Award Wages and the MSR. This approach maintains the relativities within state award classifications and is consistent with principles previously applied by the SAET.

8. SA Unions acknowledges that this application departs from the Fair Work Commission Decision in that it does not seek to flow on flat increases of \$40 per week or apply a two tier increase to award rates of 5.2% and 4.6%.

9. SA Unions respectfully submits that it is desirable for the SAET to give effect to a single percentage increase, particularly having regard to the maintenance of relativities within state award classifications, the South Australian circumstances and the State government and local government jurisdiction of the Tribunal.

10. We acknowledge that there may be alternative proposals as to how the increase should be flowed on, and SA Unions reserves its right to make submissions on any such proposals. In our respectful view, any alternatives should ensure that relativities in awards are preserved, the relevance of state awards as a safety net is maintained and specific South Australian award classifications should not be increased by a lesser amount than comparable classifications in federal system modern awards.

11. In making this application SA Unions has adopted as its claim the date of operation determined by the Panel for most modern awards; 1 July 2022. SA Unions considers that the exceptional circumstances, attributed by the Panel to the aviation, tourism and hospitality sectors, are not relevant to a SAET jurisdiction comprising local government and state public sector employees.

12. The current South Australian MSR and minimum award rate for an adult employee working 38 hours per week is \$786.70 per week. Applying an increase of 5.2% will result in a MSR and minimum award rate of \$827.60.

13. There is currently no other application before the South Australian Commission to adjust minimum award wages or to adjust the MSR.

14. Pursuant to s 90 of the Act, SA Unions seeks that the work-related allowances contained in the Awards set out in Schedule A also be increased by 5.2% from the first pay period on or after 1 July 2022.

15. Pursuant to s 90 of the Act, SA Unions seeks that the maximum recreation leave loading set out in clause 1.5.2 of the Public Service (Recreation Leave Loading) Award also be increased by 5.2 % from \$980.80 to \$1,031.80.

16. This application is consistent with, and furthers the objects of the Act, set out in sections 3(1)(a)(b)(c)(ca)(e)(f) and particularly s.3(1)(fa).

Outcome / Orders sought

Set out orders sought in successively numbered paragraphs. A request for a stay of operation, where appropriate, may be included in this application. Alternatively the application may be made separately by lodging an Application for Directions.

Declarations

1. The South Australian Employment Tribunal (SAET) declares pursuant to s 100 of the Fair Work Act 1994 (the Act) that it adopts with modifications the decision of the Minimum Wage Panel of the Fair Work Commission in Annual Wage Review 2021–22 [2022] FWCFB 3500, in the form set out hereunder.

2. SAET makes this Declaration pursuant to s 100(3)(c) of the Act on the basis that it applies to specified awards. The awards are set out in Schedule A, appended hereto.

3. This declaration will come into force on the first pay period to commence on or after 1 July 2022 and remain in force until further order of SAET.

4. In addition, pursuant to s 90 of the Act the SAET will vary work-related allowances in the awards set out in Schedule A, in the form set out hereunder, from the first pay period to commence on or after 1 July 2022.

5. In addition, pursuant to s 90 of the Act the SAET will vary the Public Service (Recreation Leave Loading) Award, in the form set out hereunder, from the first pay period to commence on or after 1 July 2022.

6. The Registrar will settle the variations to each of the awards in schedule A in accordance with s 98 of the Act

Orders

1. THAT existing adult Award wages are to be increased by 5.2% provided that where any such rate, once increased, is less than the State Minimum Award Wage, as varied in accordance with paragraph 4 below, such rate will be varied to reflect this rate (\$827.60 per week).

2. THAT proportionate adjustments are to apply to juniors, trainees and other employees as set out in the relevant Award, subject to the result being no less favourable than the relevant rates in the Declaration of the Minimum Standard for Remuneration.

3. THAT in the case of piecework or session rates, the increase shall be calculated in accordance with the provisions of the relevant Award, or where the Award is silent on the method of adjustment, such rates will be increased by 5.2%.

4. THAT the State Minimum Award Wage and the Minimum Standard of Remuneration (MSR) for an adult be increased by 5.2% to \$827.60 per week.

5. THAT the minimum amount payable under the supported wage provisions in those Awards that contain the supported wage provisions be increased by 5.2%.

6. THAT in relation to those Awards that have had work related allowances and service increments adjusted in accordance with State Wage Case and Minimum Standard for Remuneration decisions, work related allowances and service increments will be increased by 5.2%.

7. THAT the maximum loading to be applied to an employee during a period of recreation leave or pro rata recreation leave under clause 1.5.2 of the Public Service (Recreation Leave Loading) Award be increased by 5.2% to \$1,031.80.

8. THAT the Awards set out in Schedule A be varied from the first pay period commencing on or after 1 July 2022.

Supporting documents

Filename(s) of uploaded attachments:

SWC Application 2022 SCHEDULE A.docx

Provide a brief description of any attachments supporting this application

List of Awards.

LODGEMENT DECLARATION

By lodging this application, I declare that:

- I am the applicant or I am legally authorised to lodge this application
- To the best of my knowledge, all information provided in this application is true and correct
- I will attach all relevant supporting documents to this application form
- I understand that the information provided will be used to determine eligibility to initiate proceedings
- I understand that a copy of this application, and any supporting documents, may be sent to others who may have a direct interest in the proceedings. The South Australian Tribunal Act 2014 governs what information is available to be viewed publicly

checked

Name of person lodging the application

Kristen Rogers, Coordinator - Policy and Industrial Services, SA Unions

Your email address for a receipt and copy of the completed application