

28 June 2017

Contact: *David Harris*

Our ref: *D2017/*

By email: bstephens@psa.asn.au

Mr Blake Stephens
CPSU Industrial Manager

Dear Blake

FAIR WORK COMMISSION - ANNUAL WAGE REVIEW 2016-2017

Thank you for your letters of 14 June and 22 June 2017 regarding the effect of the Fair Work Commission's Annual Wage Review (**FWC Wage Review**) on employees of Water NSW.

In the interests of clarity, below I set out the position in relation to the three categories of employees at Water NSW, namely: former Sydney Catchment Authority employees (**SCA Employees**), former Department of Primary Industries employees (**DPI Employees**) and those covered by the State Water Enterprise Agreement (**State Water Employees**).

As a preliminary matter, the heart of the disagreement between us as to the quantum of any increase to wages as a consequence of the FWC Wage Review, appears to be the meaning of the term "state minimum wage decision" as articulated in the FWC Wage Review, namely:

[699] A different approach applies in relation to copied State awards currently in operation. Given the absence of any submissions on this matter, we have decided that increases to these instruments should be consistent with the approach set down in previous Review decisions, and the following increases will apply to copied State awards:

- *an increase of 3.3 per cent applies to wage rates in copied State awards that were not the subject of a **state minimum wage decision** that commenced on and before 1 July 2016;*
- *an increase of 1.65 per cent applies to wage rates in copied State awards that were the subject of a **state minimum wage decision** that commenced after 1 July 2016 and before 1 January 2017; and*
- *no increase applies to wage rates in copied State awards that were the subject of a **state minimum wage decision** that commenced on or after 1 January 2017 and before 1 July 2017.*

The term is not capitalised nor defined in the decision or indeed the preceding Wage Review. Despite this, it is clear from your letter that you have taken the term "state minimum wage decision" to be limited to the decisions arising from each annual State Wage Case. However, Water NSW considers that the correct position is that the term "state minimum wage decision" refers to a decision that the NSW Industrial Relations Commission may issue in relation

to the minimum wages contained in State Awards. As you are aware, this can occur as a consequence of a consent application to increase wages based on State Wages Policy or for all other Awards that are not the subject of bargaining, those included in the State Wage Case increases.

The only mechanism that exists to increase wages in the Awards that are relevant here is to have the Industrial Relations Commission issue a decision in relation to that specific Award. As set out above, in FWC Wage Review the Full Bench stipulated that increases to copied State awards should be consistent with the approach set down in previous review decisions. Previous review decisions have determined that in order to limit the impact of any double dipping as a result of the Federal Minimum Wages decisions and minimum wages increases previously awarded by state Industrial Relations Commissions, a tiered increase will be applied (see [2013] FWCFB 4000 at [560]).

This means that any increase under the FWC Wage Review will take into consideration increases awarded under State wages determinations, and the increase under the FWC Wage Review will be reduced by any amount paid as a consequence of an increase awarded by a state Industrial Relations Commission. Only those wage rates provided in industrial instruments can be increased by virtue of the relevant decision. The Fair Work Commission cannot order that an increase under a Federal Minimum Wages decision be applied to an 'administrative increase' or over award payment that has been paid.

SCA Employees

1. On 1 January 2015 the SCA Award became a copied State Instrument. On that same day, the SCA Award was increased by 2.5% effective 1 July 2015 in accordance with a state minimum wage decision [Serial 8629].
2. On 1 July 2016 the SCA Award was further increased by 2.5% on the initiative of Water NSW and not in accordance with a state or federal minimum wage decision.
3. On 1 July 2016 the FWC Wage Review applied a 1.2% wage increase to the SCA Award minimum wages [see [2016] FWCFB 3500 at [593].
4. On 1 July 2017 the FWC Wage Review will apply a 3.3% wage increase to the SCA Award minimum wages.

While Water NSW is obligated to pass on the 3.3% increase in accordance with the 2017 FWC Wage Review decision, this increase is made to the 2016 SCA Award rates and not on top of the administrative increase of 2.5% that was afforded to employees in that year.

The practical effect of this for employees is that Water NSW is only now obligated to pass on the difference in the increase between the 2016 and 2017 FWC Wage Review decision: i.e. 1.99% increase on the rates contained in the SCA Award rather than the higher rates being paid at the initiative of Water NSW.

DPI Employees

1. On 1 July 2016 the Crown Employees Award as it applied to the transferring employees became a copied State Instrument.
2. On 1 July 2016, the Crown Employees Award wage rates were increased by 2.5% in accordance with a state wage case decision [Serial C8543].
3. On 1 July 2017, the FWC Wage Review will apply a 1.65% wage increase to the Crown Employees Award as it is a copied State awards that was the subject of a state minimum wage decision that commenced after 1 July 2016 and before 1 January 2017.

As no administrative increase has been paid to the DPI Employees, an increase of 1.65% will be made to salaries after 1 July 2017.

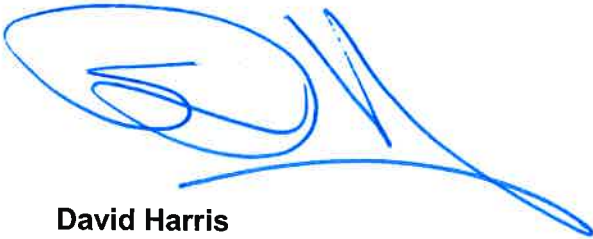
State Water Employees

Given Water NSW is currently in the process of bargaining for a unified enterprise agreement, it does not consider it appropriate or necessary to apply any consistent pay increase to all employees and will only apply increases so as to meet its legal obligations.

I look forward to concluding the negotiations with all of our employees and achieving wages outcomes which are fair and consistent through that process.

If you have any further questions please do not hesitate to contact me.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'David Harris', with a large, stylized flourish extending to the right.

David Harris
Chief Executive Officer