



COMMUNITY & PUBLIC SECTOR UNION ♦ SPSF GROUP NSW BRANCH

160 Clarence Street, Sydney NSW
Email: cpsu.nsw@psa.asn.au
Federal Secretary: Karen Batt

GPO Box 3365, Sydney NSW 2001
Internet: <http://www.psa.asn.au>

Phone: 1300 772 679 Fax: (02) 9262 1623
ABN: 11 681 811 732

IN REPLY PLEASE QUOTE FILE NUMBER: **BS:rr:A16/0803**

30 June 2017

David Harris
Chief Executive Officer
Water NSW
PO Box 398
Parramatta NSW 2124

By email: david.harris@waternsw.com.au

Dear David,

RE: Fair Work Commission - Annual Wage Review 2016-2017

The Community and Public Sector Union (CPSU), the Australian Services Union (ASU) and Professionals Australia (PA), (the Unions) notes the letter addressed to Mr Blake Stephens on 28 June 2017 regarding the Annual Wage Review 2016-2017 (AWR 16-17) decision of the Fair Work Commission (FWC).

Firstly, the Unions note your comment that “[Water NSW] 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”. This is significantly disappointing and contrary to previous statements made by you in relation to negotiating an enterprise agreement. On 30 March 2017 you wrote to all employees claiming “the key principles that I believe should underpin and guide the development of our new Unified Enterprise Agreement:... It is seen as **fair and equitable** when looked at through the eyes of our employees and customers”. (Emphasis in original)

The Unions are committed to the principle of fairness and equity across all employees of Water NSW regardless if they were formerly Sydney Catchment Authority (SCA) employees, Department of Industry, Water (DPI Water) employees or State Water Corporation (SWC) employees. Consequently the Unions continue to demand that the full 3.3% pay rise provided by the Fair Work Commission be passed on to all Water NSW employees.

As for the legal requirements, the Unions disagree with Water NSW’s assessment of the AWR decisions. The Unions continue to assert that the reference by the Full Bench to state minimum wage decisions is in relation to the State Wage Cases for NSW instruments. In the event that the employer’s interpretation of “minimum wage increase” is correct the Unions still assert that the full 3.3% is payable.

In the 2013 Annual Wage Review (AWR 12-13) the ACTU noted, at [559] that “some copied State Awards may include rates of pay that have been increased as a result of state Industrial Relations Commission minimum wage determinations **in the previous 12 months**” [emphasis added].

As a result the decision for the AWR 12-13 was *“an increase of 2.6 per cent applies to wage rates in copied State awards that were not the subject of a state minimum wage decision that commenced after 1 July 2012 and before 1 July 2013”* (emphasis added, at [560]).

In the Annual Wage Review decision for 2013-2014, the FWC decided the increase *“should be consistent with the 2012-13 Review decision”* (at [572]). The 2014-15 Annual Wage Review decision also provided that *“we have decided that increase to these instruments should be consistent with the approach set down in the 2012-13 Review decision”* (at [536]). The 2015-16 Annual Wage Review decision also provided that *“increases to these instruments should be consistent with the approach set down in previous AWR decisions”* (at [539]) which is also directly replicated in the 2016-17 Annual Wage Review (at [699]).

The principles of the Annual Wage Reviews 2013-2017 is for *“those awarded in the second half of [the previous calendar year] to receive 50 per cent, and those awarded in the first half of [the current calendar year] to receive no increase”* (per [2013] FWCFB 4000 at [599]).

Water NSW employees did not receive a wage increase in the first half of 2017. Water NSW employees also did not received a pay increase in the second half of 2016 *“after 1 July 2016”*. This takes into account that for the AWR, the 50 per cent pay rise, being *“1.65% 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”* (per AWR 2016-17 at [699], emphasis added). Former DPI Water employees received a pay rise on 1 July 2016, not after 1 July 2016.

The Unions assert that for the following employees,

For SCA Employees:

On 1 January 2015 the SCA Award became a copied State award. The SCA Award included an increase of 2.5% effective 1 July 2015.

On 1 July 2016 the SCA copied State award was further increased by 2.5% by Water NSW on an administrative basis.

On 1 July 2016 the FWC Annual Wage Review applied a 2.4% wage increase to the SCA copied State award [2016] FWCFB 3500 at [593].

On 1 July 2017 the FWC Annual Wage Review applied a 3.3% wage increase to the SCA copied State award [2017] FWCFB at [699].

For DPI Water Employees:

On 1 July 2016 the Crown Employees' Awards and Instruments as it applied to the transferring employees become a copied State award or copied State Instrument.

On 1 July 2017 the FWC Annual Wage Review applied a 3.3% wage increase to the Crown Employees' copied State awards [2017] FWCFB at [699].

In 2016 the legally required pay rises were included in the former DPI Water employees through the *Crown Employees (Public Sector - Salaries 2016) Award* that became a copied State award on 1 July 2016. This was passed on to all Water NSW employees through an administrative decision.

Water NSW continues to have this power to pass on the 3.3% pay rise to all employees and the Unions continue to demand that this occurs.

From late 2016 the Unions have been asking to negotiate the enterprise agreement as we have known that it would be a long and difficult process to amalgamate all the various instruments. Water NSW has delayed until the last minute, and this delay has now caused the inequities. These inequities can be easily resolved while negotiations continue.

If Water NSW does not pass these pay rises on in full, the Unions will need to raise this with the Fair Work Commission to ensure the full entitlements are paid.

If you have any enquiries regarding this matter, and to respond, please contact CPSU Industrial Manager Blake Stephens on bstephens@psa.asn.au or 0409 993 976, Professional Australia Senior Industrial Officer Margaret Buchanan on mbuchanan@professionalsaustralia.org.au, Australian Services Union Senior Organiser Mal Tulloch mtulloch@asu.org.au.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'B. Stephens', with a long horizontal flourish extending to the right.

Blake Stephens
For Karen Batt
Federal Secretary

cc: Rod Smith, rod.smith@waternsw.com.au
Margaret Buchanan, mbuchanan@professionalsaustralia.org.au
Mal Tulloch, mtulloch@asu.org.au