DECISION

Fair Work Act 2009
s.602 – Correcting obvious errors etc. in relation to the FWC's decision

Annual Wage Review 2016–17
(C2017/1)

JUSTICE ROSS, PRESIDENT
VICE PRESIDENT HATCHER
DEPUTY PRESIDENT ASBURY
COMMISSIONER HAMPTON
MR COLE
PROFESSOR RICHARDSON
MR GIBBS

MELBOURNE, 4 JANUARY 2018

Annual Wage Review 2016–17 – application to correct purported error – obvious error – order pursuant to s.602 of the Fair Work Act 2009 to correct the error

Introduction

[1] On 6 June 2017 the Expert Panel (the Panel) issued its decision in the *Annual Wage Review 2016–17* (the 2016–17 Review decision).[1] Paragraph [699] of that decision outlines the method for adjusting wages in copied State awards, as follows:

> '[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,[2] 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.' [emphasis added] [references omitted]

[2] On 10 October 2017, the Community and Public Sector Union (CPSU) made an application to correct an error in paragraph [699] of the 2016–17 Review decision.[3] The issue identified by the CPSU is the use of the words 'commenced on and before 1 July 2016' of paragraph [699]. In its application, the CPSU claim that these words have had the effect of precluding employees covered by a number of former New South Wales (NSW) awards from

receiving the full increase granted in the 2016–17 Review decision, despite not having received an increase in the NSW jurisdiction in the previous 12 months.

[3] The CPSU's application specifically concerns employees of the NSW Department of Primary Industries who were transferred to a state owned corporation on 1 July 2016—the State Water Corporation, trading as WaterNSW (Water NSW). As a result of that transfer the following NSW awards became copied State awards for the transferring employees:

- *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009*.
- *Crown Employees (Administrative and Clerical Officers – Salaries) Award 2007*.
- *Crown Employees (Department of Industry, Skills and Regional Development) Professional Officers Award*.
- *Crown Employees (Departmental Officers) Award*.
- *Crown Employees (Public Sector – Salaries 2016) Award*.[4]

[4] In its application, the CPSU has proposed amending paragraph [699] to read:

> '• 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~~ after 1 July 2016 and before 1 July ~~2016~~ 2017.'[5]

[5] Water NSW opposed the CPSU's application, on both jurisdictional and merit grounds.[6] Water NSW contends that under the formulation in paragraph [699] the transferred employees who received an increase on 1 July 2016 in their State award are only entitled to half of the full federal wage increase awarded in the 2016–17 Review decision, that is, 1.65 per cent.[7]

[6] A mention was held on 31 October 2017. The CPSU, Water NSW and the Australian Council of Trade Unions (ACTU) attended the mention, where it was decided that the matter would be dealt with through written submissions, without the need for an oral hearing.[8] The Panel issued a Statement[9] on 1 November 2017 with Directions seeking written submissions from interested parties, [10] noting that the CPSU's application may affect other entities and employees as it applies to all other copied State awards.[11] Submissions were subsequently received from the CSPU, Water NSW, the ACTU and the Australian Services Union (ASU). Both the ACTU and the ASU supported the CPSU's application.

[7] We propose to first explain what copied State awards are and the application of annual wage reviews to these awards, before turning to the application before us.

What are copied State awards?

[8] The *Fair Work Amendment (Transfer of Business) Act 2012*, which inserted Part 6–3A into the *Fair Work Act 2009* (the Act), commenced on 5 December 2012. The effect of Part 6–3A of the Act is that where there is a transfer of business from a state public sector employer (a non-national system employer) to a national system employer, transferring employees retain the existing terms and conditions of employment in their applicable state awards (and agreements).[12] The transfer of business provisions in the Act apply to NSW, Qld, WA, SA and Tasmanian employees who move from a State public sector employer to a national system employer in a transfer of business situation.[13]

[9] Terms and conditions are transferred by creating a new instrument — a 'copied State instrument'. Copied State instruments are federal instruments enforceable under the Act,[14] and include 'copied State awards'.[15] Copied State awards contain the same terms and conditions as the original State award as in force immediately before the termination time of a transferring employee[16] and come into operation when the employment of a state public sector employee is terminated as part of a transfer of business to a national system employer.[17]

[10] While it is unclear how many copied State awards exist, a review of Fair Work Commission (Commission) decisions suggests that at least a small number of copied State awards may be in operation.[18] A copied State award continues in operation under the national system for a period of five years, unless terminated or extended by regulation.[19]

How do Annual Wage Reviews apply to copied State awards?

[11] Section 768AW in Part 6-3A of the Act specifies the limited circumstances in which the Commission may vary copied State instruments. In particular, a copied State instrument may be varied under:

> 'item 20 of Schedule 9 to the Transitional Act (which deals with variation of instruments in annual wage reviews) as that item has effect because of section 768BY.'[20]

[12] Section 768BY provides that, from the time the transferring employee commences employment with the new (national system) employer, Part 5 of Schedule 9 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (the Transitional Act) (which includes item 20 and relates to base rates of pay) applies in relation to a copied State award in the same way as it applies to a Division 2B State award.

[13] Item 20 of Part 5 of Schedule 9 of the Transitional Act states:

> '20 Variation of Division 2B State awards in annual wage reviews under the FW Act
>
> (1) In an annual wage review, the FWC may make a determination varying terms of a Division 2B State award relating to wages.
>
> (2) For that purpose, Division 3 of Part 2-6 of the FW Act (other than section 292) applies to terms of a Division 2B State award relating to wages in the same way as it applies to a modern award.'

[14] Section 285 provides that the Commission must review modern award minimum wages in an annual wage review. As the provisions for annual wage reviews apply to copied State awards (except s. 292, relating to the publication of varied wage rates), the Panel must review copied State awards and may make determinations varying their terms.

[15] In annual wage reviews prior to the 2012–13 Review decision, the Panel's approach had been to adjust operational transitional instruments in line with the increase in modern award minimum wages.[21] However, following the commencement of the *Fair Work Amendment (Transfer of Business) Act 2012,* the Commission invited interested parties to comment on how instruments created under Part 6–3 of the Act following the commencement

of the *Fair Work Amendment (Transfer of Business) Act 2012* should be considered in the Review.[22]

[16] At that time the ACTU submitted that in order to prevent 'leapfrogging' issues, a tiered approach should be adopted for copied State awards:

> 'We concede that it would be counter intuitive to permit 'leapfrogging' of minimum rates merely by transferring from the State to the Federal system. Against that is the fact that copied State awards, once they come into operation, may be in operation for up to five years and there is very limited capacity to vary their otherwise static terms over that period.'[23]

[17] The ACTU proposed the following approach:

> '• Copied State awards which reflect minimum rates as increased by a State industrial tribunal in the 6 months before the determination – we submit that no determination should be made in respect of those Copied State instruments.
>
> • Copied State awards which reflect minimum rates as increased by a State industrial tribunal more than 6 months, but less than 12 months before the determination – we submit that there should be an increase of 50% of the increase (if any) provided to modern award minimum wages.
>
> • Copied State awards which reflect minimum rates as increased by a State industrial tribunal 12 months or more before the determination – we submit that there should be an increase that matches the increase (if any) provided to modern award minimum wages.'[24]

[18] In the 2012–13 Review decision, the Panel discussed the operation of copied State awards and noted that it was required to review and, if appropriate, make a determination varying minimum wages in copied State awards.[25] The Panel took into account the ACTU submission that the variation of rates should be differentiated based on when the copied State awards came into effect:

> '[559] In terms of the copied State awards, the Australian Government submitted that these instruments may be varied in the same way as Division 2B State awards. The ACTU noted that there is no information available as to the number of copied State awards (if any) in operation however it submitted that the Panel should still vary these rates. The ACTU however submitted that any increase to these rates should be differentiated on the basis of when they came into effect (as 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). The ACTU therefore submitted that a flow on of the increase awarded in this decision should only apply to those copied State awards that do not include a minimum wage increase awarded by a state Industrial Relations Commission in the past 12 months, with those that include a state increase awarded in the second half of 2012 to receive 50 per cent, and those awarded in the first half of 2013 to receive no increase. The AAA [Accommodation Association of Australia] submitted that it did not oppose the transitional copied State awards being adjusted in line with modern award minimum wages.'[26] [emphasis added] [references omitted]

[19] The Panel went on to determine a tiered methodology for adjusting wages in copied State awards, as follows:

> '[560] We have decided that for copied State awards currently in operation, in order to limit the impact of any "double-dipping" as a result of this decision and minimum wage increases

previously awarded by state Industrial Relations Commissions, a tiered increase will be applied to these instruments in the following terms:

- 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;
- an increase of 1.3 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 2012 and before 1 January 2013; 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 2013 and before 1 July 2013.'[27] [emphasis added]

[20] This tiered approach has been adopted by the Panel in subsequent annual wage reviews.[28] However, in the 2016–17 Review decision the first tier uses the words 'on and before 1 July 2016' rather than the formulation used in the 2012–13 Review decision (that is, after 1 July 2016 and before 1 July 2017).

Correcting obvious errors etc. in relation to the FWC's decisions

[21] The CPSU's application is made under s.602(2)(b) of the Act. Section 602 provides:

[602] Correcting obvious errors etc. in relation to the FWC's decisions

(1) The FWC may correct or amend any obvious error, defect or irregularity (whether in substance or form) in relation to a decision of the FWC (other than an error, defect or irregularity in a modern award or national minimum wage order).

Note 1: If the FWC makes a decision to make an instrument, the FWC may correct etc. the instrument under this section (see subsection 598(2)).

Note 2: The FWC corrects modern awards and national minimum wage orders under sections 160 and 296.

(2) The FWC may correct or amend the error, defect or irregularity:

(a) on its own initiative; or

(b) on application.

[22] Section 603(3)(d) provides that the Commission must not vary or revoke a decision under Part 2-6, which deals with minimum wages.[29]

[23] The CPSU submitted that an order varying a copied State award made pursuant to s.768AW of the Act is not a decision made under Part 2-6 of the Act as Item 20(2) of Schedule 9 to the Transitional Act only applies Division 3 Part 2-6 of the Act (dealing with annual wage reviews) to copied State awards, and the balance of Part 2-6 does not apply.[30] Accordingly, it submitted that 'there is nothing in s.603 of the Act that prevents s.602 … being utilised in these proceedings to correct an obvious error in the [2016–17 Review Decision].'[31]

[24] Similarly, the ACTU submitted that a decision to vary minimum wages in a copied State award is a decision made under Item 20(1) of Schedule 9 to the Transitional Act, and not a decision made under Part 2-6 of the Act.[32]

[25] The CPSU submitted that the tiered approach in the 2012–13 Review decision contemplated two distinct group of employees: those covered by copied State awards where there had not been a state minimum wage decision to increase wages in the 12 months prior to the date on which the national minimum wage increase was to take effect; and those covered by copied State awards where the wage rates had been increased by a state minimum wage decision in the 12 months prior to the date on which the national minimum wage increase was to take effect.[33] In this regard the CPSU notes that the wording used in the 2016–17 Review decision 'is silent (and thus makes no provision for an increase)' for employees covered by copied State awards who have not had a state wage decision increase commencing after 1 July 2016 and before 30 June 2017. It submits that 'this result is anomalous and…does not reflect what was intended having regard to the opening words of paragraph [699] of the 2017 Review decision.'[34]

[26] As to the practical consequences of paragraph [699] in its current form, the CPSU submits:

> '[T]he wording in the 2017 Review decision … applies so that an increase of 3.3% only applies if the wage rates in the copied State award has NOT been increased by a state wage decision that commenced prior to 1 July 2016. Part 6-2 of the Act dealing with copied State instruments, including copied State awards, was only introduced into the Act in December 2012. Unless ended earlier, copied State awards last for five years. It is highly unlikely that any copied State award that existed as at 7 June 2017 had not had an increase courtesy of a state minimum wage decision that came into effect prior to 1 July 2016. In its current wording, Tier One has no practical effect at all. This is also anomalous and contrary to the stated intention in paragraph [699] of the 2017 Review decision.'[35]

[27] The ACTU supported the CPSU's application, and submitted:

> 'Paragraphs [559]-[560] of the 2012-13 AWR decision clearly envisage that employees covered by copied state awards would have the full benefit of the increases awarded to other federal system employees when their last increase occurred on 1 July of the previous year or before. The first dot point in paragraph [560] of that decision gives effect to that approach.'[36]

[28] Water NSW submitted that the Panel does not have jurisdiction to correct the 2016–17 Review decision as this would contravene section 603(3)(d),[37] submitting that 'the nature of the alleged error means that the correction would amount to a variation of the AWR 2017 and consequent wages outcome for those covered by copied State awards'.[38]

[29] Even if the Panel had the requisite jurisdiction, Water NSW submitted that the application does not disclose an obvious error which is capable of correction under s.602 of the Act.[39] Water NSW submitted that although the Commission stated its approach in the 2012–13 Review decision, 'the precise language used by the Commission in the [2012–13 Review decision] meant that the effect on employees who received an increase on 1 July 2013 was precisely the opposite of the stated intention'[40]:

> 'This is because the AWR 2013 states the full national minimum wage increase is passed on to employees covered by 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*. Accordingly, if an increase is granted effective 1 July 2012, the employee receives both the full state minimum wage increase for the financial year 2012–13 and the full national minimum wage increase. An employee who received a state minimum wage increase one day later, on 2 July 2013, would

> only receive 50% of the increase. This is clearly contrary to the approach that was said to be adopted.'[41]

[30] Water NSW submitted that there has been no inadvertent error in this case, given that any employee who had received a state wage increase on 1 July of the preceding year would be in the same position as the relevant employees represented by the Applicant; and would also not have received the wage increase under the relevant annual wage review decision.[42] The CPSU submitted in its submission in reply that 'there is simply no evidence that any employee has been affected by the intervening decisions.'[43]

[31] The CPSU submitted in its submission in reply that:

> 'If the error is not corrected then the effect will be that employees to whom the 2017 decision applies will be treated differently to employees in exactly the same situation when the annual wage review first dealt with copied State awards in 2013. A markedly different outcome for employees in the same situation is both untenable, and readily amenable to correction, relying on s.602 for this purpose.'[44]

[32] In its submission in reply, the ACTU submitted that the Water NSW submission 'fail[ed] to appreciate that what the Commission actually did in its 2012-13 decision', which was to:

> 'establish a framework to transition and align the wage fixation cycle of newly created notional federal instruments that are "copied state awards" with that which applies to other federal instruments that are considered in an Annual Wage Review…
>
> The relevant "State minimum wage decision" for the relevant employees appears to be that reflected in the *Crown Employees (Public Sector – Salaries 2016) Award.* It was made on 21 June 2016 and commenced 'on and from 1 July 2016'. Since that time, the relevant employees have been covered by the relevant copied State Awards which are notional federal system instruments. No further minimum wages decisions of the NSW Industrial Relations Commission have benefited those employees. The relevant employees are in a like category of other minimum wage dependent workers in the federal system – they are dependent for any wage increase on decisions commencing on 1 July of each year. Granting the application would not result in 'double dipping'.'[45] [footnotes omitted]

Consideration

[33] The facts may be shortly stated. The relevant 'State minimum wage decision' for the transferred employees appears to be the *Crown Employees (Public Sector – Salaries 2016) Award.*[46] On 7 June 2016, the NSW Government passed the *Water NSW Amendment (Staff Transfers Act)* allowing employees to be transferred from the Department of Primary Industries to Water NSW, and over 100 employees were transferred on 1 July 2016.

[34] Upon this transfer, the *Crown Employees (Public Sector – Salaries 2016) Award* became a copied State award, and DP Booth made an Order on 29 August 2017 for this Award to cover the Applicant.[47]

[35] On 21 June 2016, the NSW Industrial Relations Commission approved an increase of 2.5 per cent to wage rates in this award 'from the commencement of the first full pay period on or after 1 July 2016.'[48] This was the same date the transferred employees began with Water NSW.

[36] Water NSW state that the relevant employees received the state minimum wage increase on 1 July 2016[49] and on this basis Water NSW submits that it has applied the increase in Tier 2 of paragraph 699 of the 2016–17 Review decision.

[37] Section 602 gives statutory effect to the 'slip rule' utilised by courts to correct errors arising from an accidental slip in a judgment. The scope of the power is limited; it does not empower the Commission to reopen or reconsider the correctness of an order made or to vary an order in light of subsequent circumstances. It is intended to avoid injustice by permitting the correction of inadvertent mistakes. The limited nature of the power in s.602 may be contrasted with the broader power to vary or revoke a decision pursuant to s.603. We note that decisions under Part 2-6 (which deals with minimum wages) are expressly excluded from the scope of s.603 and wish to make it clear that we are not purporting to make a variation or revocation of the kind proscribed by s.603(3)(d).

[38] As we have mentioned, the Panel adopted a tiered approach to the variation of copied State awards in the 2012–13 Review decision'[50] to avoid a situation where employees received *both* the benefit of the state wage increase as well as the national wage increase during the same period. It is apparent from the 2016–17 Review decision that we intended to amend copied State awards in a manner 'consistent with the approach set down in previous Review decisions.'[51] This intention was not accurately reflected in the decision.

[39] The use of the words 'on and before 1 July 2016' has had the unintended effect of precluding all employees covered by copied State awards who had received an increase *any time before* 1 July the previous year from receiving the Review increase of the current year. As the CPSU pointed out in its submission:

> 'It is highly unlikely that any [existing] copied State award … had not had an increase courtesy of a state minimum wage decision that came into effect prior to 1 July 2016. In its current wording, Tier One has no practical effect at all.'[52]

[40] As determined in the 2012–13 Review decision,[53] the intent of the tiered methodology for adjusting wages in copied State awards is to limit the impact of 'double-dipping' as a result of minimum wage increases awarded in annual wage reviews as well as increases previously awarded by a State Industrial Relations Commission. That is, to avoid a situation where employees received *both* the benefit of the state wage increase as well as the national wage increase, referable to the same period.

[41] In our view an obvious error has been made by the use of the words 'on and before 1 July', rather than the words 'after 1 July 2016 and before 1 July 2017.' A correction order would not result in 'double-dipping'[54] and we propose to make such an order, pursuant to s.602, to correct the error in the 2016–17 Review decision.

[42] The order will operate from the same date of effect as the 2016–17 Review decision, that is, 6 June 2017.

[43] There is one final matter we wish to raise. The determination of the CPSU's application has led us to consider the appropriateness of maintaining a tiered approach to the adjustment of copied State awards in *future* AWR decisions. It is our *provisional* view that AWR adjustments should generally apply to copied State awards, subject to a different

outcome being determined in respect of particular copied State awards. In other words, rather than seeking to apply a tiered approach as a decision rule to mitigate 'double dipping' we propose to address any 'double dipping' on a case by case basis. We invite submissions on our *provisional* view in the context of the 2017–18 Review proceedings.

PRESIDENT

Appearances:

P Lawson instructed by A McRobert from Haywards for Community and Public Sector Union (CPSU)

A DeBoos from K&L Gates for Water NSW

T Clarke for Australian Council of Trade Unions (ACTU)

Mention before Justice Ross
2017.
Melbourne and Sydney (video conference)
31 October.

Final written submissions:

ACTU, 17 November 2017
Australian Services Union (ASU), 16 November 2017
CPSU, 16 November 2017
Water NSW, 30 November 2017

Final written submissions in reply:

ACTU, 7 December 2017
CPSU, 7 December 2017

Printed by authority of the Commonwealth Government Printer

<PR599150>

---

[1] [2017] FWCFB 3500.

[2] Footnote 664 provides: 'See [2013] FWCFB 4000 at para. 560; [2014] FWCFB 3500 at para. 572; [2015] FWCFB 3500 at para. 536; and [2016] FWCFB 500 at para. 593.'

[3] [2017] FWCFB 3500.

[4] See the order of Deputy President Booth, PR595692.

[5] CPSU application, 10 October 2017, p. 3 at para. 2.1.

[6] Water NSW submission, 30 November 2017.

[7] Water NSW submission, 30 November 2017 at para. 3.14.

[8] Transcript of Proceedings, 31 October 2017 at PN10–22.

[9] [2017] FWCFB 5659.

[10] [2017] FWCFB 5659, Attachment A.

[11] [2017] FWCFB 5659 at para. 6.

[12] Fair Work Act, s.768AA.

[13] The circumstances in which a transfer of business occurs are set out in s.768AD of the *Fair Work Amendment (Transfer of Business) Bill 2012*; these largely reflect the definition of transfer of business provided at s.311 of the Fair Work Act.

[14] Fair Work Act, s.768AH.

[15] Fair Work Act, s.768AH(a).

[16] Fair Work Act, s.768AI(1).

[17] Fair Work Act, s.768AI(1).

[18] See [2014] FWC 4137; [2014] FWC 4132 and [2013] FWC 6894.

[19] Fair Work Act, s.768AO(2)(a).

[20] Fair Work Act, s.768AW(c).

[21] See for example, [2012] FWAFB 5000 at para. 294; [2011] FWAFB 3500 at para. 354 and [2010] FWAFB 4000 at para. 391.

[22] Fair Work Commission, *Annual Wage Review 2012–13: Questions for consultations*, 15 May 2013 at 7.1.

[23] ACTU, *Responses to consultation questions – Annual Wage Review 2012–13*, 17 May 2013 at para. 130.

[24] ACTU, *Responses to consultation questions – Annual Wage Review 2012–13*, 17 May 2013 at para. 130.

[25] [2013] FWCFB 4000 at para 556.

[26] [2013] FWCFB 4000 at para 559.

[27] [2013] FWCFB 4000 at para 560.

[28] [2014] FWCFB 3500 at paras 568–572; [2015] FWCFB 3500 at paras 531–536; [2016] FWCFB 3500 at para. 593, [2017] FWCFB 3500 at para. 699.

[29] Fair Work Act, s. 603(3)(d).

[30] CPSU submission, 16 November 2017 at p. 3, para. 8.

[31] CPSU submission, 16 November 2017 at p. 4, para. 9.

[32] ACTU submission, 17 November 2017, at para. 2.

[33] CPSU submission, 16 November 2017 at para. 16.

[34] CPSU submission, 16 November 2017 at para. 17.

[35] CPSU submission, 16 November 2017 at para. 18.

[36] ACTU submission, 17 November 2017, at para. 5.

[37] Water NSW submission, 30 November 2017 at para. 2.4.; Alison McRobert, Haywards Solicitors on behalf of Water NSW, Letter dated 30 October 2017.

[38] Water NSW submission, 30 November 2017 at para. 2.3.

[39] Water NSW submission, 30 November 2017 at para. 4.1.

[40] Water NSW submission, 30 November 2017 at para. 3.10.

[41] Water NSW submission, 30 November 2017 at para. 3.11.

[42] Water NSW submission, 30 November 2017 at para. 4.3.

[43] CPSU submission in reply, 7 December 2017 at para. 5.

[44] CPSU submission in reply, 7 December 2017 at para. 5.

[45] ACTU submission in reply, 7 December 2017 at pp. 2–3, paras. 6, 8.

[46] *Crown Employees (Public Sector – Salaries 2016) Award* (NSW), accessed at: http://arp.nsw.gov.au/sites/default/files/TC16-07_Industrial_Relations_Crown_Employees_Public_Sector_Salaries_2016_Award.pdf

[47] PR595692.

[48] NSW Government Treasury, *Treasury Circular*, TC 16-07, 24 June 2016.

[49] Water NSW submission, 30 November 2017 at p.2, para 3.1.

[50] [2013] FWCFB 4000 at para. 560.

[51] [2017] FWCFB 3500 at para. 669.

[52] CPSU submission, 16 November 2017 at p. 7, para. 18.

[53] [2013] FWCFB 4000 at para 560.

[54] ACTU submission in reply, 7 December 2017 at para. 8.