

Form F1—Application (No Specific Form Provided)

Fair Work Commission Rules 2013, subrule 8(3) and Schedule 1

This is an application to the Fair Work Commission.

The Applicant



These are the details of the person who is making the application.

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)	-		
Surname	CPSU, The Community and Public Section Union		
Postal address	160 Clarence Street		
Suburb	Sydney		
State or territory	NSW	Postcode	2000
Phone number	1300 772 679	Fax number	02 9262 1263
Email address	BStephens@psa.asn.au		

If the Applicant is a company or organisation please also provide the following details

Legal name of business	The Community and Public Sector Union
Trading name of business	CPSU
ABN/ACN	11 681 811 732
Contact person	Blake Stephens

How would you prefer us to communicate with you?

Email (you will need to make sure you check your email account regularly)

Post

Does the Applicant have a representative?



A representative is a person or business who is representing the Applicant. This might be a lawyer, a union or a family member or friend who will speak on behalf of the Applicant. There is no requirement to have a representative.

Yes—Provide representative's details below

No

Applicant's representative



These are the details of the person or business who is representing the Applicant.

Name of person	Alison McRobert		
Firm, union or company	Haywards Solicitors		
Postal address	Level 11, 210 Clarence Street		
Suburb	Sydney		
State or territory	NSW	Postcode	2000
Phone number	02 9283 7222	Fax number	02 9283 7722
Email address	amcrobert@haywards.com.au		

The Respondent



These are the details of the person or business who will be responding to your application to the Commission.

Title	[] Mr [] Mrs [] Ms [] Other please specify:		
First name(s)	-		
Surname	State Water Corporation t/as WaterNSW		
Postal address	PO Box 398		
Suburb	Parramatta		
State or territory	NSW	Postcode	2124
Phone number	1300 662 077	Fax number	-
Email address	david.harris@waternsw.com.au		

If the respondent is a company or organisation please also provide the following details

Legal name of business	State Water Corporation
Trading name of business	WaterNSW
ABN/ACN	21 147 934 787
Contact person	David Harris, CEO

1. The Application

1.1 Please set out the provision(s) of the Fair Work Act 2009 (or any other relevant legislation) under which you are making this application.

This application is made pursuant to s 602(2)(b) of the *Fair Work Act 2009*.

2. Order or relief sought

2.1 Please set out the order or relief sought.



Using numbered paragraphs, set out what you are asking the Commission to do.

The Applicant makes this application for the Fair Work Commission to correct an obvious error in paragraph [699] of the *Annual Wage Review 2016-2017* [2017] FWCFB 3500 by

- (i) deleting the words that appear after the word “commenced” at the first dot point in paragraph [699], namely the words “on and before 1 July 2016”
- (ii) inserting new words after the word “commenced” at the first dot point in paragraph [699], namely the words “after 1 July 2016 and before 1 July 2017”.

2.2 Please set out grounds for the order or relief sought.



Using numbered paragraphs, set out the grounds, including particulars, on which you are seeking the relief set out in question 2.1.

1. Provisions dealing with State copied instruments were introduced into the *Fair Work Act 2009* (“the Act”) in 2012 and can be found in Part 6-3A.
2. The Fair Work Commission dealt with general increases to copied State instruments for the first time in the *Annual Wage Review 2012-2013* [2013] FWCFB 4000, at paragraphs [448]-[560].
3. The Fair Work Commission adopted a tiered approach in awarding pay increases to copied State instruments to avoid “double dipping” that might otherwise occur if copied State awards had been subject to an increase from the state industrial jurisdiction in the 12 months previous to any federal Annual Wage Review coming into effect.
4. The three tiers were described as follows at paragraph [560] of the 2013 Annual Wage Review:
 - 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.(emphasis added)
5. In the *Annual Wage Review 2016-2017* [2017] FWCFB 3500 the Commission stated (at [599]) that it had decided that “*increases to these instruments should be consistent with the approach set down in previous Review decision....*” and specifically cited paragraph [560] in the *Annual Wage Review 2012-2013* [2013] FWCFB 4000.
6. The Commission also cited the Annual Wage review decisions in 2014, 2015 and 2016.
7. The Commission neither identified nor discussed the fact that in the *Annual Wage Review 2013-2014* [2014] FWCFB 3500 at [572] the language of the first dot point changed from that adopted in 2013 to the language that was subsequently used in 2017 (and also in the 2015 and 2016 Annual Wage Reviews, at [536] and [593] respectively).

8. The 2017 decision provided at the first dot point that *“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”*. (emphasis added)
9. The language of the first dot point that was used in 2017 (having been adopted in 2014, and repeated in the 2015 and 2016 Annual Wage Review decisions) discloses an obvious error, because instead of applying the full salary increase to those copied State instruments that had not received an increase in the state jurisdiction in the 12 months prior to the effective date of the Federal Annual Wage Review increase from 2014 the language used has the effect that the maximum increase was only available if the copied State instrument had NOT had an increase on or before the date 12 months prior to the effective date for the Annual Wage review decision.
10. The wording in the first dot point at [560] in the *Annual Wage Review 2012-2013 [2013] FWCFB 4000* properly reflects the reasoning stated in that decision, and makes the full Federal Annual Wage Review increase (for copied State instruments) available to those employees whose copied State instrument had not received an increase from the state jurisdiction in the 12 months prior to the Federal increase coming into effect.
11. Clearly the wording adopted in 2014 and repeated in 2015, 2016 and 2017 does not give effect to the reasoning in 2013 and is an obvious error that has been repeated through to the most recent Annual Wage Review decision.
12. On 1 July 2016 some employees of the New South Wales Department of Primary Industry were transferred to a state owned corporation, WaterNSW.
13. As a result the:
 - *Crown Employees (Public Sector – Salaries 2016) Award (NSW) Serial C8543*, published 21 June 2017 which amended the following instruments:
 - *Crown Employees (Administrative and Clerical Officers- Salaries) Award 2007*;
 - *Crown Employees (Departmental Officers) Award*;
 - *Crown Employees (Department of Industry, Skills and Regional Development) Professional Officers Award*;
 - *Miscellaneous Professional Officers, Department of Water Resources Agreement No. 2535 of 1991*; and
 - *Laboratory Attendants, Trainees Technical Officers (Scientific), Technical Officers (Scientific), Various Departments Agreement No. 2369 of 1982*;became copied State awards for those transferring employees.
14. As a consequence of the wording in [599] of the 2017 Annual Wage Review decision, WaterNSW has taken the view that the first dot point does not apply, and instead has passed on an increase of 1.65%.
15. The correction of the obvious error at paragraph [699] of the decision:
 - (a) will assist in having WaterNSW properly pass on the full amount of the Annual Wage Review increase
 - (b) will avoid the repetition of the same obvious error in the future.

3. The employer

3.1 What is the industry of the employer?

Water Industry.

4. Industrial instrument(s)


4.1 Please set out any modern award, agreement or other industrial instrument relevant to the application and their ID/Code number(s) if known.

- *Crown Employees (Public Sector - Salaries 2016) Award, Serial C8543, published 21 June 2017 which amend the following instruments:*
- *Crown Employees (Administrative and Clerical Officers- Salaries) Award 2007;*
- *Crown Employees (Departmental Officers) Award;*
- *Crown Employees (Department of Industry, Skills and Regional Development) Professional Officers Award;*
- *Miscellaneous Professional Officers, Department of Water Resources Agreement No. 2535 of 1991;*
- *Laboratory Attendants, Trainees Technical Officers (Scientific), Technical Officers (Scientific), Various Departments Agreement No. 2369 of 1982.*

Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

Signature	
Name	Alison McRobert
Date	10 October 2017



Where this form is not being completed and signed by the Applicant, include the name of the person who is completing the form on their behalf in the **Capacity/Position** section.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS