

IN THE FAIR WORK COMMISSION

Matter No. ADM2017/6 - Application to correct obvious error in relation to FWC decision

Community and Public Sector Union (CPSU)

Applicant

Water NSW

Respondent

APPLICANT'S WRITTEN SUBMISSIONS IN REPLY

1. These Submissions are in reply to the Submissions filed by Water NSW on 30 November 2017 ("the Submissions"), and utilises the same paragraph numbers as appear in those Submissions.
2. Other than the response to specific paragraphs below, the CPSU relies on its primary submissions for joining issue with Water NSW.
3. The Submissions at paragraph 2.1 to 2.7 wrongly presuppose that this is an application to vary a copied State award. Plainly that is not the case, and misunderstands the nature of the application.
4. The submission at 3.10 and 3.11 ignores the practical reality that there will always be a cut-off date that applies to increases. What the Submissions fail to grapple with is the inconsistency that would arise if the wording of paragraph [699] of *Annual Wage Review 2016-2017* is not corrected.
5. The Submission at paragraph 4.7 is spurious. Firstly, there is simply no evidence that any employee has been affected by the intervening decisions. Secondly, 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 situating 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.

6. The fact that Water NSW has filed submissions opposing the use of s.602 to address the error does not axiomatically mean there are genuinely “competing submissions”. A dogged opposition that is otherwise without merit – such as that presented by Water NSW – does not amount to “competing submissions” of the kind that might discourage a tribunal from exercising its discretion to utilise s.602 to correct an obvious error.
7. The submission at 4.9 ignores the fact that the Fair Work Commission in 2017 has explicitly adopted the “approach” that was used in 2013 (as set out at paragraph 11(i) of the CPSU’s primary submissions).
8. The CPSU respectfully presses its application for the Fair Work Commission to correct the error at paragraph [699] of the *Annual Wage Review 2016-2017* [2017] FWCFB 3500.

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