IN THE INDUSTRIAL RELATIONS COMMISSION
OF NEW SOUTH WALES

Matter: 2025/00220842

State Wage Case 2025
Commission's own motion

HSU outline of submissions in reply

1. The only matter the HSU intends to reply to is the Industrial Relations **Secretary's** position that there should be no paid rates adjustment mechanism.

2. The position, coupled with the Secretary's view that the current restrictions on wage movement otherwise found in the Award Making Principles should be retained, fundamentally lacks industrial integrity. These principles were introduced in the context of a (more generous) provision equivalent to the paid rates adjustment mechanism – they are a trade-off. Their retention without such a principle fundamentally unbalances the entire system, which is what the paid rates principle in part sought to rectify.

3. There is a further difficulty with the Secretary's position, which inherently assumes a return to the pre-2024 status quo – that is, that the Annual Wage Review would only be considered and flowed-on to a minute collection of largely irrelevant awards. This was in effect a decision rule that arguably involved the Commission simply failing to exercise its obligations under s.50 in full, in that no consideration as to whether there were good reasons under the IR Act not to adopt the National decision in respect of other awards. The paid rates adjustment mechanism provides a structured mechanism by which such consideration can be undertaken by the Commission each year, noting that the differences between the nature of awards in both systems make simple flow-on unlikely to be universally appropriate.

4. As to the specific matters raised by the Secretary:

5. **First**, it is correct that the principle will have an impact on bargaining – that is in part, as the HSU understands matters, why it was advanced by the FBEU in 2024. This is no bad thing. To the extent it provides a strategic 'floor' for bargaining – which will depend on a range of factors including how high it is – all this does is provide Unions with leverage other than resort to industrial action, which assists in rebalancing a currently unbalanced bargaining regime. It additionally incentivises the Government to efficiently bargain.

6. To that end, it ought be recalled that the Commission's purpose is to facilitate bargaining to the extent possible and where it fails, fix wages at fair and reasonable rates. It is not directed at facilitating the 'efficient and efficacious operation of the NSW Government 'Fair Pay and Bargaining Policy 2024-2025'', which is a document whereby the Government has declared what the wage increases it offers will be – which is not itself particularly consistent with proper bargaining.

7. **Second**, the hypothetical given, to the extent that it can be followed, would in reality look like:

    a. an award reaching the end of its nominal term around July 2024, with (based on how awards are structured) the last increase having been in July 2023;

    b. the parties commencing bargaining around this time;

    c. the State Wage Case handing down a decision in August;

    d. bargaining continuing fruitlessly, as the real value of employee wages declines, until say August 2026,

    e. the unions essentially giving up and applying for access to the paid rates adjustment in September 2026.

8. In those circumstances it is not the paid rates adjustment that is causing the wasting of resources in bargaining, it is ineffective bargaining. The paid rates adjustment disincentives this.

9. **Third**, the example as to the NSWNMA is, with respect, unreal. The paid rates adjustment is not mandatory. The 'problem' depends on the NSWNMA making an application on top of its existing application which directly prejudices its own case. Why would it do so? This is a different proposition to the idea that the Commission might be asked to have *regard* to any paid rates adjustment rate set in said arbitration, as well as general value of money questions and principles set out in the national decision.

10. **Fourth**, the paid rates adjustment principle does not reduce the scope for multi-year agreements. The Secretary will remain able to pursue his preferred course of 3 year deals. They may just cost more. This will stimulate, rather than forestall, bargaining.

11. **Fifth**, this concern about double-up (which is the same as the sixth contention) is ameliorated by the fact that the principles are either/or – in any given year a union can opt for one.

12. More significantly, the value of money principle really only needs to be there because of the framing of the Award Making Principles as a set of tight restrictions rather than actual guidelines. If it is not present, inevitably the Secretary says in any contested application that:

    a. changes in the value of money within ordinary inflation parameters involve the completely usual operation of the economy and accordingly do not constitute a special case;

    b. this kind of claim does not fall within any of the other Award Making Principles;

    c. accordingly, the Commission cannot even have regard to it, and the Treasury position must be adopted without further question.

13. As a position it contributes to the imbalance in bargaining power (by restricting what is available to be arbitrated if bargaining fails) that can drive inefficient processes and unfair outcomes. It is an obviously silly position, which is nevertheless totally available if the value of money principle is not there. It

reflects the underlying assumption contained in the various restrictions that CPI-based annual increases will annually occur. The Secretary's concerns emphasise the desirability of the streamlined approach proposed by the HSU.

14. In respect of the amendments proposed by the Secretary:

    a. the proposed amendment is not necessary but does reflect the HSU's understanding of how the undertaking is intended to work – i.e. no more claims for higher wages;

    b. the value of money principle ought to be retained for the reasons set out above, and in part because access to the paid rates adjustment is not mandatory – there needs to be a facility for a union who is pursuing a work value claim to in addition seek a component reflecting changes in the value of money – but there is some attraction to the idea of simplifying it (and indeed all the principles); and

    c. the additional considerations are not necessary in that the first is otiose in that the making of a new 12 month award to resolve a bargaining dispute will end at least that bargaining round, and the second is implicit.

15. As to the actual amount of this year's paid rates adjustment, the HSU notes that the predictions it made at [34] of its initial submissions were correct about the position that the Secretary would take – i.e. that the adjustment should be as set by the policy because this is what Treasury has decided will happen – but incorrect in that it was posited that this would be supported by even weak evidence as to the impact on the economy.

16. The fiscal evidence of Ms Livingstone goes no further than saying that a departure from Treasury predictions will lead to a different outcome than Treasury predicted. It is not a sound basis for accepting the Secretary's position that this ought not occur.

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