IN THE INDUSTRIAL RELATIONS COMMISSION
OF NEW SOUTH WALES

Matter: 2026/231285

State Wage Case 2026
Commission's Own Motion

PSA Outline of Submissions

The Award Making Principles

1. The PSA's proposed alterations to the current Award Making Principles have been filed with these submissions. The changes are:

    a. at 9.1 to 9.5 (p.5-8), to rewrite the Arbitrated Case principles to reflect contemporary doctrine as articulated in recent major cases and remove outdated language and outmoded restrictions;

    b. at 9.6 (p.8) to introduce a procedural obligation on parties to confer to ensure arbitrated cases can proceed in a fair and efficient manner; and

    c. the deletion of existing principles 10, 11, 12 and 13 (their substance having been in varied form incorporated into 9.1 to 9.5).

2. The Award Making Principles are not 'principles' in any legal sense. They are instead better understood as an explanation of a particular point in time policy setting. A short history of the work value principle is illustrative. Because it is not particularly short, and largely mirrors a note filed by the HSU in the 2025 State Wage Case such that some if not all members of the Bench (composition not known to the PSA at time of drafting) may have already read it, it has been filed as a separate note with these submissions.

3. The short point is that, as summarised at [60]-[73] of *State Wage Case 2025 (No 2)* [2025] NSWIRComm 33, the principles reflect and are responsive to a

range of economic, social, political and institutional factors which are no longer relevant to anything this Tribunal is presently doing or is likely to do in the future.

4. To the extent they have been referred to in recent arbitrated cases, it has been via the Crown attempting to deploy them as a kind of decision rule. This is particularly undesirable in respect of the Gender Undervaluation principle, which as has been observed previously by the Commission[1] not been heavily utilised since introduced in its present terms in 2000.[2]

5. The language is correctly described as archaic. In large part it is also arcane: the Principles repeatedly, for example, caution against '*wage leapfrogging'*. '*Leapfrogging'* is an older term with a frankly mutable meaning, but when it came into the principles in 1983 it was directed at the need to avoid double-counting in what were described as 'catchup' cases – see, e.g., *Re Rubber Plastic and Cable Baking Award* (1976) 175 CAR 243 per Gaudron J. It is now in this jurisdiction used to describe a concern to maintain wage parity with classifications deemed to be comparators without any qualitative assessment of their work: *Crown Employees (NSW Police Force **Special Constables** (Security) Award 2023* [2024] NSWIRComm 1034 at [257], [259]. It is unclear how or when this linguistic shift occurred.

6. Relativities are of course an important feature of wage fixation; it is a mechanism by which consistency in work value assessments and outcomes can be achieved. The problem with using external relativities in the manner seen in *Special Constables* and which the current Award Making Principles appear to require is that it is inherently inconsistent with a true evaluation of the value of the work. It leads to systemic ossification. It is a genuine problem for the contemporary Commission, where the overwhelming majority of awards and classifications have not been the subject of a work value assessment in decades. The rigid language arose in a quite different context of rapid change: the Commonwealth Arbitration Reports for 1977, for example, span 16 large volumes.

[1] *Re Crown Librarians, Library Officers & Archivists Award Proceedings* [2002] NSWIRComm 55
[2] Re Equal Remuneration Principle (2000) 97 IR 177

7. Similarly, the Principles have for fifty years decried '*comparative wage justice'*. Nobody has *ever* really known what this meant; as Sir John Moore observed when introducing the text now found at Award Making Principle 9.5 in September of 1975 it is best understood as '*that universal test which means all things to all men'.*[3] What is the difference between a claim that wages should be increased so as to provide equal remuneration for work of comparable value and one based on 'comparative wage justice'? All its '*abolition'* as a doctrine truly reflects is a view that considerations other than pure social justice – i.e. economic, fiscal and local market matters – should influence wage outcomes. This is amply captured by the IR Act itself.

8. The PSA's proposal is modelled on, but does not replicate, the HSU's proposal from 2025. The point is essentially the same: it is a modernisation intended to reflect the contemporary approach to wage fixation (including allowances). In summary:

   a. proposed 9.2 sets out factors which are recognised as having the potential to warrant alteration to rates of pay, in a non-exhaustive manner;

   b. proposed 9.3 sets out how changes will be reflected in similar terms to 10.5;

   c. proposed 9.4 summarises the conclusions in the FBEU case in respect of value of money considerations; and

   d. proposed 9.5 deals with practical concerns about productivity and efficiency considerations.

9. In respect of the latter it should be observed that it does not replicate the examples of productivity which were introduced in 2024. These were drawn from a report prepared by anonymous persons within Treasury for the purposes of the 2024 review. No witness spoke to it.

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[3] *National Wage Case September 1975*

10. The current definition of productivity is on its face reductive, and at its core relies on an input/output relationship that is not apt to describe public sector productivity improvements. It is likely to distract attention from a more nuanced analysis, particularly given it does not deal in any way with productivity enhancements arising from award modernisation and reform. It is more likely to be productive of disputation than of any real assistance to the parties, and ought to be deleted.

11. Proposed 9.6 is again directed at a contemporary key concern: the need for these cases to be arbitrated in a timely way, recognizing its size. It is drawn from the 'procedural conciliation' process recently adopted in the PSA's Salaries Case for 2027. It contends that it is useful to set out this expectation in the principles in order to draw parties' attention to the expectation at the outset.

12. The PSA contends that these changes better reflect the contemporary circumstances confronting the Commission and its contemporary approach to wage fixation. The collection of historical warnings against change that constitute much of the current principles are untethered from their historical justification and currently at best serve as a timewasting distraction in complex arbitrations and at worse operate, improperly and unfairly, as an externalized fetter on the full exercise of the Commission's discretion.

13. In the 2025 State Wage Case, the Commission was concerned that the Secretary in particular had not given consideration to the HSU's proposal such as to be able to assist the Commission in considering it. Although not said to be unreasonable in the particular circumstances of that case, the Secretary ought not be permitted to obstruct change on an ongoing basis simply by ignoring proposals of similar thrust (if different expression) advanced now by three separate major public sector unions. A choice *this year* not to engage should not weigh against considered change being made.

Paid Rates Adjustment

14. The PSA adopts and supports the submissions of Unions NSW in respect of the appropriate Paid Rates Adjustment for 2025-2026, which it has been

provided in advance of filing these submissions. It notes that the overwhelming majority, if not all, of the Awards it is a respondent to:

a. had wages increase on 1 July 2026; and

b. are the subject of a major upcoming work value case in respect of appropriate rates on and from 1 July 2027, 2028 and 2029,

such that its direct interest in the question is minimal this year, although the Bench's determination is likely to have some relevance to that case.

15. That said it retains a major interest in the *manner* in which the determination is made.

16. The Paid Rates Adjustment is fundamentally concerned with changes in the cost of living, i.e. addressing changes in the value of money. This is conventionally done via a simple mathematical exercise using publically available data i.e. creating an index reconciling the relevant inflator (wage rises) with a deflator. The conventional deflator is Australian All Groups CPI. Many other options are available, although questionably appropriate. The explanation in the Secretary's evidence as to why a particular economist prefers HFCE is not yet clear (and is a relatively new position from Treasury); it is at present unclear if the Secretary will be seeking to have the Commission depart from its settled approach or instead is relying on these numbers simply as a comparison. Similarly the conventional approach does not take into account superannuation increases.

17. Fundamentally though it must be recalled that this mechanism is one which understates the actual impact of changes in the value of money over time on employees, in that it treats the two adjustment indexes as operating identically. In reality, wages rise once annually then are eroded over time. A cumulative approach can give an impression of steady growth in circumstances where the reality is that wages hover at or below 100% of their starting value. The more volatile the selected period, the more the smoothing obscures reality. The analysis assumes the entire first increase is protective i.e. directed at or balanced only against subsequent inflation. This is not necessarily safe in the

context of public sector wages in the current period, noting they all dramatically fell behind in 2020-2021 and in most cases are yet to catch up.

18. The Secretary has, for reasons which are presently unexplained, picked two classifications in the public sector that have achieved significantly above-average wage increases. A Senior Firefighter's wages have increased by 5.75% more on a pure additive basis (9% compounded) since 1 July 2012 relative to the Salaries Award. A Senior Education Officer similarly has had their wages rise by 3.34% more on an additive basis and 9% compounding. The disparity gets bigger if the 3.8% they received in 2011 (viz 2.5% for essentially everyone else) is factored in. It is not presently clear what the analysis groups – representing a minute proportion of the public sector – is meant to say about the general public sector. The Secretary's witness expresses no opinion, having simply performed a mathematical exercise on the basis of figures provided by the Secretary's lawyers.

19. The witness has taken a novel approach to calculating changes in the value of money, in that she (via her team) has averaged salaries across the financial year, and similarly rather than applying the year-on-year deflator as published by the ABS (or in the case of the HCFE, extracted from their data) has averaged their value across the quarters. As well as being completely unexplained by the witness (indeed even the base figures relied on have not been made available) this is distortive in the manner discussed above, particularly for firefighters. Firefighter's wages move in February in the usual course. However in 2014 and 2023 there were significant delays, with wages only increasing in November and October respectively. This led to a longer period of frozen wages than usual, with Firefighters experiencing the accretive effect of inflationary pressures (particularly significant in 2023). The averaging approach does not reflect this.

20. Although the Secretary's rationale behind asking the Commission to consider outliers is not expressly explained, the inference is obvious. If the Salaries Award increases are used instead (having derived the deflator figure used in each case manually from the report), the following ensues excluding superannuation using the Treasury's new preferred deflator:

a. a mere 0.21% increase in 2025-2026; and

b. a drop of 2.93% since 2020, even with recent higher than trend growth.

21. Matters become more stark when conventional figures are used. Using the Sydney CPI figures extracted from the report manually, wages declined in value by 0.66% in the 2025-2026 financial year, and 6.4% from 2020. Using the actual Australia CPI figures a drop of 0.8% in 2025 to 2026 and 9.6% since 2020 respectively.

22. There is nothing in the fiscal evidence that goes beyond a contention that an increase outside of government wages policy will change the assumptions baked into Treasury's current projections. This is always the case. The increase sought by UnionsNSW is an appropriate figure in the circumstances.

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