

**IN THE INDUSTRIAL RELATIONS COMMISSION
OF NEW SOUTH WALES**

FILED
03 Sep 2024

**OFFICE OF THE
INDUSTRIAL
REGISTRAR**



2024 State Wage Case

FBEU proposed new wage fixation principles

Table of Contents

Preamble 2

Wages and conditions 3

Preliminary 3

Mutual gains bargaining 3

Annual wage increases..... 4

Other changes to wage rates 6

 Work value considerations 6

 Productivity and efficiency improvements 7

 Gender based undervaluation 8

Changes to conditions..... 8

Minimum wage 9

Awards..... 9

Award/agreement-free employees 10

Preamble

1. These Principles have been established by the Industrial Relations **Commission** of New South Wales under the *Industrial Relations Act 1996* (NSW). They reflect a statement of principle by the Commission in Court session as to the approach it will take to ensuring wages and conditions for employees within its jurisdiction are fair and reasonable, and its expectations of parties to applications..

2. The Commission, in setting award rates of pay and conditions which are fair and reasonable, will have regard to matters including:
 - a. the desirability of employees sharing in the economic prosperity of the state of New South Wales and Australia generally;
 - b. the economic and social good occasioned by wage maintenance and wage growth;
 - c. ensuring that the rates set in awards reflect the true value of the work, assessed objectively;
 - d. ensuring that the award rates are not affected by gender-based undervaluation;
 - e. the importance of the New South Wales economy to the Australian economy at large, and the need to ensure its ongoing viability is protected;
 - f. the ability of the employer to sustain the rates of pay, and any flow-on effect to the economy;
 - g. the need to attract and retain staff in award-covered public sector entities;
 - h. the need to maintain stable, albeit flexible, internal and external relativities between classifications within a particular award, and the particular industry and sub-industry award ecosystem that award

operates in, and in comparison to related awards or awards dealing with comparable classifications; and

- i. the need to ensure changes to rates of pay are properly justified, in line with the principles set out below.

Wages and conditions

Preliminary

3. It is not generally presumed that awards as currently made set fair and reasonable terms and conditions of employment.
4. A rate of pay will be presumed to be fair and reasonable, and thus a **properly fixed rate**, only where it can be established that:
 - a. it has been set by the Commission in a manner which had correct regard to work value considerations; and
 - b. the rate has been increased in a manner since that point which reflects the need to:
 - i. maintain the real value of the rate of pay; and
 - ii. provide, over time, for growth in the real value of wages recognising a fair share in national productivity and the general public interest in increasing standards of living (“real wage growth”).

Mutual gains bargaining

5. The Commission recognises the importance of co-operative workplace bargaining in:
 - a. facilitating participation in the setting of wages and conditions by employees, employers, unions and peak bodies;
 - b. resolving workplace disputes in a prompt and fair manner with a minimum of legal technicality;
 - c. encouraging and facilitating workplace reform; and

- d. avoiding protracted industrial disputes,
6. and will take all steps within its power to facilitate the setting of wages and conditions by mutual agreement rather than arbitration, including in accordance with Chapter 2A of the Act. The Commission recognises the need, in the context of bargaining, to strike a balance between:
- a. the right of employees to engage in legitimate industrial action to further their bargaining position;
 - b. the needs of the public, particularly in respect of safety-critical issues; and
 - c. the need to maintain a stable and fair system of industrial relations.
7. The Commission further recognises that:
- a. public sector bargaining can be time consuming due to the complexity of the issues, size of the workforce and nature of the participants; and
 - b. this structural feature should not be an impediment to employees receiving ordinary annual wage increases, as set out below,

and to that end, will remain open to making awards within bargaining by consent that do not necessarily contain no extra claims clauses, or that contain no extra claims clauses which reserve leave on certain matters.

Annual wage increases

8. As a general proposition, absent compelling reasons to the contrary established on the evidence before the Commission, rates of pay in existing awards should be increased annually at a level that:
- a. ensures their real value, if it can be demonstrated to have been eroded since the last annual increase, is restored;
 - b. contains a component which is directed at maintaining their real value over the life of the award; and

- c. contains a component which, as appropriate in the circumstances and with regard to economic factors and growth over time, provides for real wage growth.
9. Similarly, allowances and service increments should as a general proposition, and absent compelling reasons to the contrary established on the evidence before the Commission, be increased:
 - a. in the case of expense-related allowances, in line with 8(a) and (b) above; and
 - b. in respect of work-related allowances (including shift allowances) and service increments, in line with 8 above.
10. The annual State Wage Case will consider whether the Annual Wage Increase awarded by the Fair Work Commission satisfies the criteria at 8 above and:
 - a. if it does, will flow it on to relevant New South Wales Awards as set out in Index 1; or
 - b. if it does not, determine the appropriate increase to be flowed on.
11. A party to an award which:
 - a. is not an Index 1 award; and
 - b. contains wage rates which have not been increased for at least 12 months prior to making the application,

may apply to have the Award varied to reflect the increase determined by the most recent State Wage Case under 10 above per s.17(3) of the Act. In determining any such application, the Commission will have regard to matters including:

 - c. the status of bargaining between the parties to the Award;
 - d. the conduct of parties in any such bargaining process;
 - e. the likelihood of that bargaining concluding in a timely fashion; and

- f. the need to ensure that award rates of pay remain properly fixed rates, and will deal with any such application expeditiously, with particular regard to principles 8 and 9 above.

Other changes to wage rates

- 12. Where a party to an award contends that an existing rate of pay, including an allowance, should be varied other than in line with 8-11 above, the Commission ordinarily would only do so on the basis that either:
 - a. the rates are not properly fixed rates;
 - b. the rates are affected by gender-based undervaluation;
 - c. there has been a material change in the work value of the classification associated with the wage rate, or the task or disability compensated for by the allowance, since the point at which it became a properly fixed rate;
 - d. there has been an increase in productivity or efficiency in the workplace;
 - e. cost savings have otherwise been achieved by the employer relevant to the application as a result of the work of the relevant employees; or
 - f. the real value of a properly fixed rate has significantly eroded since an identified point in time, and it is appropriate to restore it.
- 13. Any application for a variation in rates of pay under 12 will in the event that conciliation fails to resolve the dispute be referred to the President for consideration as to whether the matter ought at first instance be dealt with by a Full Bench.

Work value considerations

- 14. Increases in work value may arise from changes in the nature of the work, the skill and responsibility required, or the conditions under which work is performed.

15. Increases in work value may, depending on their relative significance and recognising that some change in work value is contemplated in any classification over time, justify:
 - a. an increase to a rate of pay associated with a classification or classifications; or
 - b. where the work is performed only from time to time, or only by some of the employees in a particular classification, a special allowance.

16. A party to an award who wishes to assert that, notwithstanding that a change to the work value of a particular classification has been established that would otherwise justify an increase in the associated rate of pay, the rate of pay should nevertheless not be altered because it would disturb existing wage relativities to classifications within or external to the award must demonstrate that:
 - a. the classification is a true comparator, in that the work value is the same or greater than the classification the subject of the application;
 - b. the rate associated with that comparator classification has been properly fixed; and
 - c. the work value of that classification has remained stable since the rate was properly fixed.

Productivity and efficiency improvements

17. In assessing whether productivity or efficiency improvements have occurred, the Commission will have regard to matters including but not limited to:
 - a. cost savings that have been achieved;
 - b. service delivery improvements that have been or will be achieved;
 - c. measures introduced which have contributed to the attainment of the objectives of the relevant government agency, department or other body; and

- d. improvements in outcomes for the general public that have been attained.

Gender based undervaluation

18. The Commission recognises the possibility that historical assessment of the work value of particular classifications in awards may have been affected by gender-based undervaluation, particularly in female-dominated industries. Where this is established by a party it will be corrected.
19. When assessing whether work has been undervalued on a gender basis, the Commission will have regard to matters including but not limited to:
 - a. the rates of pay in external awards for classifications with equivalent or lower qualifications, skills or experience required;
 - b. the rates of pay set for male comparator classifications, where relevant;
 - c. the nature of the work, including any 'invisible skills' utilised;
 - d. the nature of the industry and the workforce demographics; and
 - e. any compression of relativities or lack of career progression contained within the award.

Changes to conditions

20. A party bringing an application involving a change to conditions other than wage-related conditions, including a new condition, should identify:
 - a. whether it involves an improvement or a reduction in conditions;
 - b. the basis for the change, including any non-industry specific matters;
 - c. why the introduction of or change to the condition is fair and reasonable; and
 - d. other interested parties other than the award respondents, if any.
21. Any application for a changed condition will, in the event that conciliation fails to resolve the dispute, be referred to the President for consideration as to

whether the matter is likely to involve significant considerations of non-industry specific matters or otherwise be of general application:

- a. the matter will be heard by a Full Bench as a **test case**; and
 - b. other interested parties and peak bodies will be notified and provided the opportunity to intervene.
22. Test case standards in relation to a particular condition will, unless good cause is shown to the contrary, be included in all subsequent awards made by the Commission which deal or in the Commission's view should deal with that condition.

Minimum wage

Awards

23. As a general proposition, no Award should contain a rate of pay for a classification for an adult worker that is lower than the **National Minimum Wage** as varied from time to time by the Fair Work Commission.
24. It may be acceptable for an award to have a rate of pay lower than the National Minimum Wage for:
- a. workers under the age of 18;
 - b. school-based apprentices; or
 - c. employees to whom a traineeship agreement applies.
25. Where it is identified that an operative award contains a rate of pay for an adult worker that is less than the National Minimum Wage, the Commission (either on its own motion, or by application) will act on the presumption that the rate of pay ought to be varied unless it can be demonstrated that exceptional circumstances apply such that the rate of pay ought to be preserved.
26. A party applying for an award which proposes a rate of pay for an adult worker which is less than the National Minimum Wage bears the onus to justify a departure from this principle.

Award/agreement-free employees

27. The National Minimum Wage will apply to all employees within the jurisdiction of the Act whose employment is not subject to the terms of an industrial instrument, in the terms prescribed by the National Minimum Wage order as made by the Fair Work Commission from time to time.

Transitional provisions

28. These Principles will apply to:

- a. any application to make or vary an award that is made on or after the date of commencement of these Principles; and
- b. any such application filed prior to that time where the hearing of the matter has not commenced as at the date of the commencement of these Principles (directions hearings will not count for this purpose).

Duration

29. These Principles will operate on and from [date] until further order of the Commission.