

## STATE WAGE CASE 2024



2024/00211169

# LOCAL GOVERNMENT NSW SUBMISSIONS IN REPLY

30 September 2024

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## STATE WAGE CASE 2024

IRC 2024/00211169

### LOCAL GOVERNMENT NSW

#### SUBMISSIONS IN REPLY

##### Overview

1. Notwithstanding repeated attempts to meet with the other parties and resolve a joint position where possible to the matters raised, LGNSW's attempts were met with no response. It is, therefore, disappointing that other parties in considering the issues raised by the Full Bench have not considered the local government sector and the 61,000 employees who work in this sector when shaping their submissions and proposed wage fixing principles for the future. This is particularly evident when the Full Bench considers the principles proposed by the union parties (collective reference to the submissions and proposals of Unions NSW, the Australian Paramedics' Association (NSW) and the Fire Brigade Employees' Union).
2. By and large the other parties to these proceedings have focused upon those persons employed in the state system by the Government and the historical issues that have arisen in respect to setting wages in this sector. Those historical issues did not impact on the local government sector.
3. The local government sector has had a history of consent awards which has simultaneously ensured both fair and reasonable and sustainable wage growth for the employees employed in the sector.
4. The Commission in crafting wage fixing principles should ensure such principles can apply in the local government sector and are relevant to the sector (this may require excluding the local government sector from some of the proposed principles).
5. Local Government employers seek to continue to make consent wage arrangements with the unions that represent their employees as they have done for 30 years and would be concerned should the principles be crafted in a manner that imperiled the sector's historical approach to setting wages.

6. LGNSW has sought to compare the position of all parties. A copy of the comparison document is attached to these submissions in reply as Annexure A.

### **Reply – Matter 1: Role and Purpose of Principles**

7. Several union parties make submissions as to the status of wage fixing principles and in particular whether they act as a barrier to claims for wage increases or trammel, control or otherwise detract from the statutory task conferred on the Commission to make or vary awards to set fair and reasonable conditions of employment<sup>1</sup> or they artificially fetter the Commission's jurisdiction.<sup>2</sup>
8. The principles properly understood do no such thing. The legislation envisages the Full Bench developing principles and the legislature clearly considered that such principles are to have some work to do. The promulgation of principles clearly has some purpose.
9. A "State decision" is defined to be a decision of a Full Bench of the Commission that generally affects, or is likely to generally affect, the conditions of employment of employees in New South Wales who are subject to its jurisdiction.<sup>3</sup>
10. In such a decision the Full Bench of the Commission may<sup>4</sup>:
  - (a) if satisfied that it is consistent with the objects of the *Industrial Relations Act 1996* (NSW) (the 'Act'); and
  - (b) that there are good reasons for doing so, make a State decision setting principles or provisions for the purposes of awards and other matters under this Act.
11. A Full Bench of the Commission may, when making a State decision, make or vary awards, or make other orders, to the extent necessary to give effect to its decision.<sup>5</sup>
12. There can be no doubt that the Full Bench in a State Decision may make principles or provisions for the purposes of awards and other matters under this Act. Such principles need to be consistent with the objects of the Act and there must be a good reason for them

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<sup>1</sup> UnionsNSW at [2] and [27]-[37]

<sup>2</sup> FBEU at [33].

<sup>3</sup> S 49 of the IRA.

<sup>4</sup> S 51 of the IRA.

<sup>5</sup> S 52 of the IRA.

to be made. That is, the principles gain force or recognition by reason of s 51 of the Act. Further, such principles amount to orders of the Commission pursuant to s 51 of the Act.<sup>6</sup>

13. The force of the principles and State Decisions is also recognised in s 17 of the Act where an award can be varied at any time to give effect to a decision of the Full Bench of the Commission which would include being consistent with or sanctioned by the principles.
14. It is not suggested that wage fixing principles provide an impenetrable wall to wage claims outside the scope of the principles, rather a claim consistent with such principles provides parties with an easier pathway through the requirements of s 17. That is, claims that comply with the principles readily meet the tests in s 17 of the Act. Those that do not then need to satisfy the other requirements of the section before an Award can be varied.

#### **Reply – Matter 2: Applicant’s Onus**

15. Several of the union parties make submissions as to the onus on applicants that are seeking to vary an award to provide for pay increases or other changes in conditions.<sup>7</sup> It also needs to be remembered the onus applies to employer as well as employee applicants.
16. LGNSW repeats its earlier submissions at [45] - [55] and adopts the Industrial Relations Secretary’s (the ‘IR Secretary’s’) submissions at [6] - [9].
17. The Commission has long recognised the evidentiary onus on applicant’s seeking different conditions or rates of pay to rebut a presumption that existing awards set fair and reasonable terms and conditions of employment when seeking to have awards made or varied. Such an evidentiary onus is not restricted to the applications to vary an award arising under wage fixing principles.

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<sup>6</sup> *Public Service Association and Professional Officers’ Association Amalgamated Union of New South Wales v Industrial Relations Secretary of New South Wales* [2021] NSWCA 64 at [38].

<sup>7</sup> Unions NSW at [39]-[53]; APA at [11]-[13] and FBEU at [40]-[42].

18. The onus rests with the party moving to alter the status quo in an award to make out a case for doing so.<sup>8</sup> Several of the arguments advanced by the union parties in these proceedings have been rejected by the Court of Appeal.<sup>9</sup>
19. The presumption arises equally under s 17 of the Act where a party is seeking to vary an award or make a new award pursuant to s 10 of the Act.<sup>10</sup> The party seeking the variation (absent consent) needs to demonstrate that s 17(3)(b), (c) and/or (d) are satisfied as well as in an application to make an award pursuant to s 10.<sup>11</sup>
20. The onus borne by a party was described by *Kite* AJ (as he then was) in *Transport Industry – General Carriers Contract Determination* [2016] NSWIRComm 3 at [34]-[35] in these terms:<sup>12</sup>

*“It has long been recognized that Industrial Tribunals are in a different position to the general courts. The duty of the Commission is to make an award or determination which prescribes fair and reasonable rates and conditions. In doing so the Commission is not bound by the rules of evidence or to act in a formal manner but ‘is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.’ See s 163 (1)(c) of the Act.*

*The various authorities referring to the ‘onus’ born[e] by a party are to be understood in that context. There must be information before the Commission which allows it to be satisfied that the determination or award, if made, will provide just and reasonable rates and conditions. The assessment of the adequacy of that material will vary according to*

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<sup>8</sup> *Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales v Industrial Relations Secretary of New South Wales* [2021] NSWCA 64 at [57] and *Secretary of the Ministry of Health v The New South Wales Nurses and Midwives' Association* [2022] NSWSC 1178 at [466]-[467].

<sup>9</sup> *Ibid* at [53]-[59].

<sup>10</sup> *Club Employees (State) Award and other Awards, Re* [2002] NSWIRComm 362 at [102] and cases cited therein.

<sup>11</sup> *Re Pastoral Industry (State) Award* [2001] NSWIRComm 27 at [77]; *Applications for Variations to Crown Employees (Police Officers-2017) Award and Paramedics and Control Centre Officers (State) Award* [2021] NSWIRComm 1040 at [32]; *Application for Crown Employees (Public Sector -Salaries 2020) Award and Other Matters (No 2)* [2020] NSWIRComm 1066 at [31]; *Health Employees' Conditions of Employment (State) Award 2018 (Infectious Cleaning Allowance)* [2021] NSWIRComm 1049 at [100].

<sup>12</sup> See also *Applications for Variations to Crown Employees (Police Officers-2017) Award and Paramedics and Control Centre Officers (State) Award* [2021] NSWIRComm 1040 at [32]; *Application for Crown Employees (Public Sector -Salaries 2020) Award and Other Matters (No 2)* [2020] NSWIRComm 1066 at [31]; *Australian Salaried Medical Officers' Federation (NSW) v The Secretary, NSW Health (No 1)* [2021] NSWIRComm 1047 at [20] and *Secretary of the Ministry of Health v The New South Wales Nurses and Midwives' Association* [2022] NSWSC 1178 at [466].

*the nature of the case, including the degree of consent, before the Commission: see In re Butchers, Wholesale (Cumberland) Award 1971 AR 425 especially at 437- 440."*

21. The jurisprudence of the Commission as highlighted above, demonstrates that there is an onus on an applicant seeking to vary an award and/or rescind and replace an award to rebut the presumption that the existing award of the Commission sets fair and reasonable terms and conditions of employment; that is, to make out the case for change to, or replacement of, the relevant award. This includes establishing that the existing terms are not fair and reasonable; that the changes sought will render them so; and, that the new or varied award will remain fair and reasonable for its duration.<sup>13</sup>
22. LGNSW agrees that the presumption that existing awards set fair and reasonable terms and conditions of employment when seeking to have awards made or varied, is an evidentiary onus. The matters in the Unions NSW submission at [43] - [46] may, in particular proceedings, provide a significant argument to rebut the assertion that existing awards set fair and reasonable terms and conditions of employment.

**Reply - Matter 3: Principle addressing increases to maintain the real value of award rates of pay**

23. LGNSW continues to rely on [56] - [66] of its earlier submissions and endorses the submissions of the IR Secretary at [10] - [13].
24. Even if the Commission were minded to include a particular principle, the Unions NSW proposal at principle 8.3 Maintenance of Real Value Wages is unworkable.
25. The proposed principle provides no time frame over which wages are to be maintained, it fails to take into account such matters as PAYG tax reductions, the payment of Government supplements to employees, and whether those periods where salary increases that have been in advance of inflation can be offset against those that were not.
26. The proposed principle also applies to the maintenance of conditions. It is difficult to envisage how conditions are directly impacted by changes in living costs.
27. The annual wage increases principle proposed by the Fire Brigade Employees' Union ('FBEU') at Principle 8 and 10 would greatly diminish any incentive for the industrial

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<sup>13</sup> *Application for Crown Employees (Public Sector-Salaries 2020) Award and Other Matters (No 2)* [2020] NSWIRComm 1066 at [31], [44] and [106].

parties in the local government sector to negotiate salary increases as they have done for more than 40 years. This proposal also fails to take into account such matters as mentioned above at [25] that can and should be offset against wage increases.

**Reply - Matter 4: Principle addressing the minimum wage for Award/Agreement Free employees**

28. LGNSW continues to rely on [67] – [68] of its earlier submissions and maintains that Principle 7 has no work to do. None of the other submissions identified the existence of low paid non-award employees who would benefit from such a principle.
29. In the local government sector, aside from the 128 general managers, there are no award free or agreement free employees. While submitting that there ought not to be any amendments to Principle 7, the IR Secretary does acknowledge that “...*the application of principle 7 may be very limited...*”.<sup>14</sup> Similarly, the FBEU concedes that it “...*does not directly represent award/agreement free employees*”.<sup>15</sup>

**Reply – Matter 5: Continued separation of work value claims from gender-based undervaluation claims**

30. As noted in Annexure A to these reply submissions, consensus appears to exist amongst the parties to these proceedings that there ought to continue to be a separation of general work value considerations from increases to wages based on gender-based undervaluation.
31. LGNSW continues to rely on [69] – [75] of its earlier submissions and maintains, in a similar manner to the other parties to these proceedings, that gender-based undervaluation has a wider scope than a consideration of general work value and assesses broader criteria than general work value considerations.

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<sup>14</sup> IR Secretary at [14].

<sup>15</sup> FBEU at [48].

## Reply – Matter 6: Special Case Principle

32. In response to the questions of whether the Special Case principle ought to be retained, and if so whether the circumstances that establish a Special Case ought to be better defined, the position of the parties is as follows:

- LGNSW – the principle should be retained and the threshold establishing a Special Case relaxed;<sup>16</sup>
- IR Secretary – the principle should be retained and amended to incorporate the rationale and reasoning articulated in *Re Operational Ambulance Officers (State) Award* [2001] NSWIRComm 331;<sup>17</sup>
- Unions NSW – the principle should be amended in such a manner as to ensure that the applicant in a special case is no longer required to demonstrate a threshold matter or condition;<sup>18</sup>
- Australian Paramedics’ Association (NSW) (‘APA (NSW)’) – the principle should be retained;<sup>19</sup>
- FBEU – the principle should not be retained; rather general guidance should be developed for non-routine variations.<sup>20</sup>

33. The position advocated by LGNSW is a moderate position, that recognises the important role of the special case principle yet acknowledges that the existing threshold may need to be refined.

34. Currently, the applicant in a special case must demonstrate **all** of the following:

- That the proposed variation is necessary to establish fair and reasonable conditions of employment; **and**
- That there are ‘special attributes’ or the matter is ‘out of the ordinary’; **and**
- There is a public interest consideration.

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<sup>16</sup> LGNSW at [76] – [80].

<sup>17</sup> IR Secretary at [23] – [33].

<sup>18</sup> UnionsNSW a: [84] – [86].

<sup>19</sup> APA (NSW) at [47] and [48].

<sup>20</sup> FBEU a: [54] – [59].



35. LGNSW concedes this constitutes a high threshold and believes that the principle can be better defined by requiring that the Commission be satisfied that the proposed claim is:

- Necessary to either:
  - a) Address issues that are out of the ordinary, **or**
  - b) Ensure fair and reasonable terms and conditions of employment.

**and**

- In the public interest.

36. LGNSW maintains that the proposed principle at 7.3. of Annexure A, of the submissions filed on 3 September 2024, encompasses the ‘middle ground’ sought by the parties, particularly Unions NSW.

**Reply – Matter 7: Consideration of claims based on the attraction and retention of skilled staff**

37. LGNSW adopts the IR Secretary’s views at [37] – [46] of its submissions and similarly submits that the attraction and retention of skilled staff are adequately and amply addressed by subsection 146(2) of the Act and principle 8.5 of the existing wage fixing principles.

38. LGNSW notes that subsection 146(2) of the Act applies generally to when the Commission is exercising its functions and is not confined only to claims for the making or variation of rates of pay in awards. Relevantly, the Commission must have regard to ‘attraction and retention of skilled staff’ (when considering the public interest) in matters such as industrial disputes, when approving enterprise agreements, and when interpreting industrial instruments.

39. The Wage Fixing Principles do not refer to each of the objects of the Act and there is no need for the Principles to specifically refer to the object in section 3(i) of the Act.

40. As highlighted by the IR Secretary at [41], strategies required to attract and retain skilled staff are not limited to wage increases, and wage increases for an entire sector may not be warranted by skill shortages that may exist in small cohorts. This is particularly relevant in the local government sector, which has minimum rates awards (unlike the

public sector which has paid rates awards) and where award wages and conditions comprise only one part of the total reward to the employee for their labour.

41. LGNSW opposes the position of the FBEU at [60], which would unduly interfere with an employer's prerogative in determining which attraction and retention strategies to adopt, when, and in what circumstances. Allowing awards to be varied based only on a consideration of 'attraction and retention of skilled staff' without considering other components of the employee's total reward, would mean that councils which have already responded to attraction and retention concerns, such as through higher salary system rates of pay and/or above-award benefits (financial and non-financial), would be exposed to the risk of double jeopardy costs, which may place the financial viability of some council-run services at risk.
42. LGNSW opposes the position of the APA (NSW) at [53]. Whilst the APA (NSW) identifies (correctly in our opinion) that different considerations arise for paid rates awards and minimum rates awards, removing "attraction and retention" from existing sub-principle 8.5.1. is not the solution. This would mean that industries such as local government, which have minimum rates awards, are exposed to the risks identified above at [41].

### **Reply - Matter 8: Amendment of one or more principles to have regard to the fiscal position and outlook of the Government**

43. In relation to this matter the position of the parties is as follows:

- LGNSW – submits that this consideration is a matter for the Preamble and should be canvassed alongside the requirement to consider the state of the economy;<sup>21</sup>
- IR Secretary – proposes that the Preamble be amended to reflect the Commission's obligation at section 146(2)(c) of the Act;<sup>22</sup>
- Unions NSW – this consideration is incorporated into the Preamble proposed by Unions NSW;<sup>23</sup>

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<sup>21</sup> LGNSW at [83] and [84].

<sup>22</sup> IR Secretary at [47] – [49].

<sup>23</sup> Unions NSW at [89] and see clause 1.3.1(c) of the Principles proposed by Unions NSW.

- APA (NSW) – the Commission is bound to have regard to the fiscal position of the Government and so any further reference in the principles would be superfluous;<sup>24</sup>
- FBEU – it is appropriate that this consideration be reflected in the Preamble.<sup>25</sup>

44. LGNSW and three other parties have adopted the approach that the obligation to have regard to the fiscal position and outlook of the Government, an obligation that is now enshrined in s 142(2)(c) of the Act, would more appropriately be reflected in the Preamble and not in a stand-alone principle.

### **Reply – Matter 9: Productivity and Efficiency Considerations**

45. LGNSW continues to rely on [85] – [86] of the submissions filed on 3 September 2024.
46. In LGNSW’s opinion, existing subprinciple 8.3. is a relic that existed because of the former s 146C and NSW Government Wages Policy. Now that s 146C has been repealed, the appropriate way in which to deal with claims based on productivity and efficiency considerations is via the special case principle at subprinciple 8.3. Accordingly, as proposed in Annexure A to LGNSW’s earlier submission, the reference to “productivity and efficiency” should be deleted from subprinciple 8.3. to remove the current restriction on pursuing claims for increases in wages and salaries based on productivity and efficiency as a special case.
47. LGNSW submits that the proposed amendments to subprinciple 8.3. of the APA’s proposed Wage Fixing Principles is too narrow in scope and limited to assessing productivity and efficiency considerations as they pertain to a particular industry, namely, that of paramedics, and are, therefore, lacking in universal applicability. Furthermore, the proposed amendments to subprinciple 8.3. of the FBEU’s proposed new Wage Fixing Principles, which appears at [17] of that document, is too broad in scope to be quantified and measured, particularly as regards to the measurement and quantification of the rather obtuse concepts of “*service delivery improvements*” [17(b)] and the “*general public*” [17(d)].

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<sup>24</sup> APA (NSW) at [54].

<sup>25</sup> FBEU at [63].

**Reply – Matter 10: Negotiating Principles in light of mutual gains bargaining provisions of the Act and the appropriateness of a model ‘no extra claims’ clause**

48. In response to the questions of whether the Negotiating Principles ought to be retained, and the appropriateness of a model ‘no extra claims’ clause, the position of the parties is as follow:

- LGNSW – The Negotiating Principles have been superseded by Chapter 2A of the Act. A new principle relating to Mutual Gains Bargaining maybe more appropriate but will have little or no application to the local government industry;<sup>26</sup>
- IR Secretary – The Negotiating Principles should be amended to refer to the Mutual Gains Bargaining process and a model no extra claims clause is proposed;<sup>27</sup>
- Unions NSW – the Mutual Gains Bargaining process is not relevant to the negotiating principles which should be retained with amendment, and a model ‘no extra claims’ clause is not supported;<sup>28</sup>
- APA (NSW) – the negotiating principles should be retained with an amendment to allow for the provision of government information. APA (NSW) supports the construction of a model ‘no extra claims’ clause;<sup>29</sup>
- FBEU – the negotiating principles are highly prescriptive and a new mutual gains bargaining process is proposed which does not rely on ‘no extra claims’ clauses.<sup>30</sup>

49. LGNSW is the only party to these proceedings that can rightfully claim 30 years of experience in negotiating and implementing consent awards.<sup>31</sup> The provisions outlined in the existing principles 9.2. – 9.4. are too prescriptive and have not been relied upon by the local government industry parties in negotiating the 12 local government awards since 1992.

50. LGNSW notes the description by the FBEU at [68] and [69] that the existing industrial landscape is such that:

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<sup>26</sup> LGNSW at [87] and [88].

<sup>27</sup> IR Secretary at [70] – [74], and then at [75] – [81] in relation to a model ‘no extra claims’ clause.

<sup>28</sup> Unions NSW at [62] – [68] and then at [69] – [74] in relation to ‘no extra claims’ clauses.

<sup>29</sup> APA (NSW) at [71] – [77] and [65] – [70] in relation to a model ‘no extra claims’ clause.

<sup>30</sup> FBEU at [67] – [72].

<sup>31</sup> Refer to the evidence of Adam Dansie sworn on 3 September 2024 at [8], [20], [25], [27] and [28].

- the public sector award system has not been reviewed for in excess of a decade;
- public sector bargaining stakeholders are ‘out of practice’; and
- a new mutual gains bargaining process has been introduced to assist the public sector

51. It is in the context of the landscape described by the FBEU, that LGNSW submits the appropriate way forward is to remove the Negotiating Principles and replace them with principles that address the experience gap found in the existing public sector industrial landscape.

**Reply – Matter 11: Retention or removal of Principle 10 (Superannuation) and Principle 12 (Economic Incapacity)**

52. Briefly stated the parties adopted the following positions:

- LGNSW – the Superannuation principle should be removed with a minor amendment to the definition of what constitutes a Special Case. In relation to the Economic Incapacity principle, LGNSW submits that it be retained;<sup>32</sup>
- IR Secretary – advocates for the retention of both the Superannuation and Economic Incapacity principles;<sup>33</sup>
- Unions NSW – advocates for the removal of both the Superannuation and Economic Incapacity principles;<sup>34</sup>
- APA (NSW) – the Superannuation principle should be dealt with as a special case and the Economic Incapacity principle is obsolete and should be deleted;<sup>35</sup>
- FBEU – supports the removal of both the Superannuation and Economic Incapacity principles.<sup>36</sup>

53. Contrary to the submissions of the IR Secretary, which has advocated the retention of both principles, LGNSW continues to maintain, in line with the submissions of the APA at [79] of its submissions, that a stand-alone principle for Superannuation is superfluous

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<sup>32</sup> LGNSW at [89] – [92].

<sup>33</sup> IR Secretary at [82] – 89].

<sup>34</sup> Unions NSW at [98] – [100].

<sup>35</sup> APA (NSW) at [78] – [81].

<sup>36</sup> FBEU at [73] and [74].

given that any proposed increases in employer contributions can and should be dealt with as a Special Case consideration.

54. Additionally, Unions NSW and the FBEU advocate for the removal of principle 10 and submit that this principle no longer has utility.
55. Contrary to the submissions of all union parties, all of whom have advocated the complete removal of principle 12, LGNSW continues to maintain in line with the IR Secretary's submissions at [87] – [89], that there is value in retaining this principle, particularly so for local government entities.
56. In response to the collective submissions of the union parties, some of whom have described principle 12 as "*obsolete*" (FBEU at [81]) and "*nonsensical*" (Unions NSW at [100]), LGNSW maintains that there are situations, such as in the recent COVID-19 pandemic, which may trigger the provisions of this principle. Hence, the need for its continued retention.<sup>37</sup>

Anthony Britt  
Sir Owen Dixon Chambers  
Sydney  
30 September 2024

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<sup>37</sup> See the third dot point at [38] in the evidence of Adam Dansie sworn on 3 September 2024.

Annexure A to LGNSW Submissions in reply

State Wage Case 2024

Review of the Wage Fixing Principles (WFP) - Local Government New South Wales (LGNSW) - Comparison Table

Parties	Response to Q1	Response to Q2	Response to Q3	Response to Q4	Response to Q5	Response to Q6
LGNSW	The WFPs ought to be retained in part (with some amendments as set out in the proposed Principles found in Annexure A of LGNSW’s substantive submissions).	The Commission should retain the onus on applicants seeking different conditions or rates of pay to rebut a presumption that existing awards set fair and reasonable terms and conditions of employment.	There is no need for a specific principle to address this matter, as the rate of inflation and changes in the cost of living are already accounted for in the annual determination in any State Wage Case pursuant to s50 of the <i>Industrial Relations Act (1996)</i> (NSW).	Principle 7 no longer has any work to do. In the local government sector, there are no award/agreement free employees (but for General Managers).	LGNSW believes that there ought to continue to be a separation of general work value considerations from increases to wages based on gender-based undervaluation. Gender-based undervaluation is broader and assesses different criteria than a consideration of general work value.	LGNSW believes that the Special Case principle should be retained but the circumstances that establish a Special Case ought to be better defined. LGNSW has redrafted the Special Case principle (please see proposed new subprinciple 7.3. at Annexure A of earlier submissions).

Annexure A to LGNSW Submissions in reply

Parties	Response to Q1	Response to Q2	Response to Q3	Response to Q4	Response to Q5	Response to Q6
IR Secretary	The WFPs ought to be retained in whole, subject to discrete alterations. WFPs provide a coherent set of principles that ensure consistency of approach by the Commission.	The onus ought to be retained, as it is consistent with the IR Act, and if this onus was removed it would undermine the Commission's authority.	A distinct principle to this effect which mandates regard to the rate of inflation and changes in the cost of living for employees is not necessary. The current approach is preferable without locking in a process which could unduly result in the ratcheting up of labour costs over time which would be against the public interest.	The current iteration of the principle which sets minimum rates of pay for Award/Agreement free employees ought to be retained. The IR Secretary, however, acknowledges that the application of the principle may be very limited.	These matters are distinct and address different interests. Work value considers whether the net addition to work requirements would warrant the creation of a new classification. Whereas gender undervaluation requires that the applicant show that the work, skill and responsibility required, or the conditions under which the work is performed, have been undervalued on a gender basis.	The current Special Case subprinciple at 8.4 should be maintained to provide guidance to the parties about applications that are not otherwise prescribed in the WFPs. Furthermore, the Secretary supports amendment of subprinciple 8.4 to include in the principle itself the principles articulated <i>Re Operational Ambulance Officers (State) Award</i> [2001] NSWIRComm 331.



Annexure A to LGNSW Submissions in reply

Parties	Response to Q1	Response to Q2	Response to Q3	Response to Q4	Response to Q5	Response to Q6
<b>Unions NSW</b>	There is some utility in retaining the WFPs and for the Commission to promulgate WFPs as long as those principles are expressed and applied only as guidelines for the exercise of the Commission's powers under Part 1 of Chapter 2 of the IR Act	There should be no such presumption and no such onus should be imposed on an applicant.	A principle should be articulated that provides for the Commission to consider and take into account the imperative to ensure the maintenance of the real value of award rates of pay, having regard to the rate of inflation and changes to the cost of living.	Unions NSW does not view that there is any need to amend or vary Principle 7.	Unions NSW considers it appropriate that a separate gender undervaluation principle is retained but is simplified and amended. Ultimately, the question is one of appropriate and fair value for work, stripped of archaic perceptions of gender.	Unions NSW opposes the retention of a special case principle if the applicant is required to demonstrate a threshold matter or condition.
<b>Australian Paramedics Association (NSW) (APA)</b>	The WFPs should be retained. They should, however, be amended to take account of the changes to the Act and contemporary circumstances.	The APA submits that the onus should not be retained.	The APA submits that there should be a principle ("Real Wages Principle") making explicit the principle that real wages should be maintained.	The APA does not make any submissions on this point.	The APA proposes that they should be separated. The notion of work value is very different to gender-based undervaluation.	The Special Case principle should be maintained.
<b>Fire Brigade Employees' Union (FBEU)</b>	The WFPs cannot be retained in their current form and should not be retained in part.	The WFPs do not expressly provide for an assumption that all wages and conditions prescribed by current awards are fair and reasonable unless proven otherwise. If it means that an applicant must do no more than prove its case, then it is a statement of the obvious.	A principle should be directed at ensuring that, as a general proposition, the Commission will ensure that wages maintain their real value over time.	The FBEU does not directly represent award/agreement free employees. It supports the position of Unions NSW.	There is likely merit in preserving the separation between work and gender-based undervaluation claims.	The Special Case principle ought not to be retained. Nor should a new definition be introduced. Instead, general guidance as to the matters which could justify a non-routine variation should be included.

Annexure A to LGNSW Submissions in reply

Parties	Response to Q7	Response to Q8	Response to Q9	Response to Q10	Response to Q11
LGNSW	<p>The consideration of labour market circumstances and the basis on which particular employers seek to attract and retain employees in tight labour market circumstances are outside the scope of the WFPs.</p>	<p>The obligation on the Commission to have regard to the fiscal position and outlook of the Government should not form part of any stand-alone Principle. Rather, it should be canvassed in the Preamble alongside the requirement to account for the state of the economy and the likely effect of any decision on the economy.</p>	<p>LGNSW believes that paragraph 5.2.3 of the <i>NSW Government Fair Pay and Bargaining Policy 2023</i>, as prepared by the Industrial Relations, Premier’s Department, provides as much guidance as is possible as to the relevance of and relationship between improvements in the quality of public sector services and employee-related costs. A mechanism beyond the general intent as contained in the NSW Government Policy cannot be reasonably defined.</p>	<p>LGNSW submits that the Negotiation Principle has been superseded by Chapter 2A [Mutual Gains Bargaining] and a separate principle is not required. However, if the Commission is minded to retain the Negotiation Principle or something similar, LGNSW submits that a new Mutual Gains Principle should be drafted.</p>	<p>There is no further utility in a stand-alone principle for Superannuation, as any proposed increases in employer contributions can be dealt with as a Special Case consideration under the proposed Principles drafted by LGNSW at Annexure A of its earlier submissions. Principle 12 (Economic Incapacity) ought to be retained, as there may be situations, such as the COVID-19 pandemic, which trigger its provisions.</p>

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<b>IR Secretary</b>	<p>The Secretary submits that the current principle 8 which allows retention and attraction issues to be ventilated where they have an impact on work value or are of considerable public interest, coupled with new object (i) for the Commission to encourage strategies (which include but are not limited to wages and conditions) to attract and retain skilled staff where there are skill shortages so as to ensure effective and efficient delivery of services, which is also reflected in the preamble to the WFPs, provides sufficient guidance to the parties and the Commission.</p>	<p>The Secretary submits that the preamble to the WFPs should be amended to reflect the new words in s 146(2)(c) of the Act.</p>	<p>The Secretary does not consider the principle ought to be amended to expand, clarify and/or refine the concept of public sector productivity and efficiency but rather it be an issue to be resolved on a case-by-case basis by the Commission depending on all the circumstances. The relationship between improvements in quality of public sector services and employee costs is complex. Establishing the relationship requires an analysis of the circumstances as the relationship will differ from setting to setting.</p>	<p>The Secretary considers principle 9 should be amended to refer to the Mutual Gains Bargaining process under Chapter 2A of the Act as an option that should be considered and explored by the parties prior to notifying a dispute to the Commission.</p> <p>A model “no extra claims” would be beneficial in providing certainty to the parties with the ability for an alternative clause to be used in exceptional circumstances, with adequate justification, or where the parties otherwise agree.</p>	<p>The Superannuation Principle has utility as it clarifies that applications for superannuation allowances over and above what is statutorily required will be dealt with under the Special Case sub-principle; it provides for the inclusion of ‘pro forma’ or other provisions in awards that assist employees and employers to understand their entitlements and obligations; and sets out the circumstances by which the ‘pro forma’ provisions will be departed from in favour of other provisions.</p> <p>There remains value in retaining the Economic Incapacity principle. Public sector entities, including local councils can experience ‘very serious or extreme economic adversity’ so as to justify a reduction, postponement and/or phasing in of any increase in labour costs determined under the WFP, on a temporary basis or otherwise.</p>

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<b>Unions NSW</b>	No submission was made on this point.	No substantive submission was made on this point however, Unions NSW have incorporated the consideration of the fiscal position and outlook of the Government in its version of the proposed Preamble.	<p>Union NSW propose that Principle 8.3 (renumbered as 8.4) is substantially retained to recognise instances where employees have contributed to productivity or efficiency improvements.</p> <p>Unions NSW advocate for a new Principle 8.3 Maintenance of the Real Value (of) Wages, requiring the Commission to include changes in living costs as the basis for increases in wages or salaries and that the maintenance of the real value of award rates of pay and conditions should be considered by the Commission as an imperative.</p>	There is utility in retaining a Principle that seeks to regulate and guide the processes for resolution of applications for new awards or variations to awards. Subject to relatively minor amendments, current WFP 9 should be retained.	Principle 10 and 12 ought to be removed from the WFPs.
<b>Australian Paramedics Association (NSW) (APA)</b>	The Commission should amend principle 8 to remove the reference to “attraction and retention” at sub-principle 8.5.1.	The Commission is bound by this obligation in any event. A further reference would be superfluous.	There needs to be a broader definition of productivity for paramedics. Amendments to the Principle are proposed.	Principle 9 (Negotiating Principles) should be retained.	WFP 10 is too cumbersome, and WFP 12 is obsolete (and should be removed).

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<b>Fire Brigade Employees' Union (FBEU)</b>	Principle 8 should be entirely re-written, with the rest of the principles, to simplify and modernise it, and to reflect the changed focuses of the IR Act.	Given that the need to have regard to the fiscal position and outlook of the Government, and the effect of the exercise of award making powers, it is appropriate that this be expressed in the principles.	Current principle 8.3 does not adequately capture the complexity of public sector productivity, draft proposed.	Principle 9 is too prescriptive, amendments proposed.	Principle 10 and 12 ought to be removed from the WFPs.