



## INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

2024/00211169

### STATE WAGE CASE 2024

#### NOTE IN REPLY OF THE AUSTRALIAN PARAMEDICS ASSOCIATION (NSW)

1. The Australian Paramedics Association (NSW) (“the APA”) provides this note in reply pursuant to the orders of the Full Bench in State Wage Case 2024 [2024] NSWIRComm 11 on 9 October 2024.

#### INTRODUCTION

2. This note in reply responds to the note of the Industrial Relations Secretary (“the Secretary”), filed 21 October 2024. These notes address specific questions of the IRC in relation to a model No Extra Claims (“NEC”) Clause.

#### WHAT ARE THE INTENDED CIRCUMSTANCES WHEN A NEC CLAUSE WOULD BE INSERTED INTO AN AWARD?

3. The Secretary submits, at [1] of its note, that a model NEC Clause could be inserted by consent or after an arbitration, and that a model NEC Clause could be inserted in all Awards unless there are reasons to depart from its use or the parties agree otherwise. The APA makes several submissions in reply to these points below.
4. The APA submits that there is value in having a model NEC Clause in consent applications, as it would allow for consistent application across the public sector and clarity about its scope and application when matters are brought to the Industrial Relations Commission (“IRC”).
5. The Secretary’s submissions however mistake the purpose and history of no extra claims clauses. They are based upon the consent of the parties. The Secretary seeks to have them used as a bar upon claims in circumstances where the parties have not consented. That is particularly onerous in circumstances where civil penalties may be ordered for the contravention of an Award clause.
6. In the *1983 National Wage Case*<sup>1</sup>, the Full Bench of the AIRC determined to return to a centralised system of wage fixation. The Full Bench noted at 10b that:  
*Both parties recognize that if the essential conditions of the centralized system are met that there shall be no extra claims except where special and extraordinary circumstances exist. The no extra claims provision will apply to both award and over-award payments.*

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<sup>1</sup> <https://classic.austlii.edu.au/au/cases/cth/CthArbRp/1983/400.html>

7. The way that the provision would work was described at page 49 that:  
*We have therefore provided under Principle 3 that before any award is varied to give effect to this decision every union party to that award will be required to give a public and unequivocal commitment to the Principles. If such an undertaking is not forthcoming from any of the unions covered by the award, the application to vary the award will be stood over, and the Commission will inform the appropriate peak council, namely the ACTU or the CPA, to that effect.*
8. In the *National Wage Case November 1985* [1985] CthArbRp 561; (1985) 299 CAR 163 at 168c, k – 169a<sup>2</sup>, the Full Bench of the AIRC described how that:  
*It is critical to the operation of the present system that all claims for increases in pay and improvements in conditions be processed in line with the Principles. This condition has so far been sustained by the 'no extra claims' undertaking given and honoured by the vast majority of unions. ...*  
*The Commonwealth expressed a confident belief that in view of the responsible behaviour of the ACTU and the unions generally and their strong support for the centralized system, it is reasonable to assume that unions would not act in a way which would prejudice the continuance of such a system.*  
*We endorse the view expressed by ACPA that an extension of the 'no extra claims' undertaking to the interim period 'would be a reasonable expectation' to ensure that the review is not prejudiced by actions which violate the requirements of a centralized system.*
9. Such clauses were in effect the cost of consensual wage fixation; that is to say the parties made a no extra claims undertaking in order to participate in the centralised wage fixation process. That is contrary to a process whereby no extra claims clauses can be inserted in awards by arbitration.

**WOULD THE MODEL NEC CLAUSE ALLOW FOR ARBITRATION WITH RESULTS TO TAKE EFFECT DURING THE LIFE OF THE AWARD WHERE THE PARTIES AGREE TO ARBITRATE AN ISSUE?**

10. The Secretary submits at [2] of its note, and in its updated wording to the model NEC Clause at [3] of its note, that unless parties agree otherwise and subject to the operation of the *Industrial Relations Act 1996* (“IR Act”), the operative outcome of any arbitration would take effect after the expiry of the nominal term of the Award. It also submits that the model NEC Clause allows matters to be arbitrated by consent during the nominal term of the Award, with changes to Award terms or conditions to

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<sup>2</sup> <http://classic.austlii.edu.au/cgi-bin/download.cgi/cgi-bin/download.cgi/download/au/cases/cth/CthArbRp/1985/561.pdf>

take effect on a date agreed by the parties or determined by the IRC in accordance with the IR Act.

11. The APA submits that the parties should not be limited in what they can consent to. It is in the public interest that awards can be varied by consent during their operative term in order to take account of new circumstances. The insertion of test case clauses is an example. The parties should have the right to agree on the reserved matters which can be arbitrated during the term of the Award.

WHAT DOES CLAIMS/DEMANDS MEAN? WOULD THIS REFER TO CLAIMS AND DEMANDS NOT MADE IN THE IRC?

12. The APA submits that, considering it has a matter outstanding for judgement regarding the interpretation of a NEC Clause which includes the wording in question, it does not wish to comment until after that matter is decided. The matter referred to is matter 2024/00078915, which concerns the interpretation of Clause 51 of the NSW Ambulance Paramedics (State) Award 2023.

ARE THERE ANY AMENDMENTS THE APA WISHES TO MAKE TO THE PROPOSED NEC CLAUSE?

13. The APA submits that the wording below should be added to the proposed NEC Clause:

*This clause does not prevent:*

*Changes to conditions or salaries being jointly progressed and, if agreed, an application to vary the Award/Enterprise Agreement may be made.*

*The parties reaching agreement on leave reserved items which may be arbitrated prior to the nominal expiry date of end of the nominal term of the Award.*

**Ian Latham**  
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**25 October 2024**