

IN THE INDUSTRIAL RELATIONS COMMISSION
OF NEW SOUTH WALES
AT SYDNEY



No. 2024/00211169

STATE WAGE CASE 2024

INDUSTRIAL RELATIONS SECRETARY'S OUTLINE OF SUBMISSIONS AND SUBMISSIONS IN REPLY

INTRODUCTION

1. The Industrial Relations Secretary (**the Secretary**) appears before the Industrial Relations Commission (**the Commission**) in response to a Summons to Show Cause issued by the Industrial Registrar on 14 June 2024.
2. The Summons was issued of the Commission's own initiative following the decision of the Full Bench of the Fair Work Commission (**FWC**) in *Annual Wage Review 2023-2024 Decision* [2024] FWCFB 3500 (**the 2024 AWR**), being a National decision within the meaning of s 48 of the *Industrial Relations Act 1996* (NSW) (**the Act**).
3. The Secretary has an interest in five Awards which are affected by the National Decision and are listed at sub-principle 4.2 of the Wage Fixing Principles,¹ namely:
 - (1) the *Security Industry (State) Award*;
 - (2) the *Miscellaneous Workers – Kindergartens and Child Care Centres, &c. (State) Award*;
 - (3) the *Health, Fitness and Indoor Sports Centres (State) Award*;
 - (4) the *Transport Industry (State) Award*; and
 - (5) the *Clerical and Administrative Employees (State) Award*.(together, the **Category 1 State Awards**).

APPLICABLE PRINCIPLES

4. Part 3 of the Chapter 2 of the Act deals with "National and State Decisions", which relevantly provides:

"48 What is a National decision?"

A **National decision** is a decision of the Minimum Wage Panel or a Full Bench of Fair Work Australia that generally affects, or is likely to generally affect, the conditions of employment of employees in New South Wales who are subject to the jurisdiction of that panel or body.

50 Adoption of National decisions

- (1) As soon as practicable after the making of a National decision, a Full Bench of the Commission must give consideration to the decision and, unless satisfied that it is not consistent with the objects of this Act or that there are other good reasons for not doing so, must adopt the principles or provisions of the National decision for the purposes of awards and other matters under this Act.

¹ *State Wage Case 2020 (No 2)* [2021] NSWIRComm 1079 at Annexure A.

...

- (3) The principles or provisions of a National decision may be adopted—
- a. wholly or partly and with or without modification, and
 - b. generally for all awards or other matters under this Act or only for particular awards or other matters under this Act.

...

52 Variation of awards and other orders on adoption of National decisions or making of State decisions

- (1) A Full Bench of the Commission may, when adopting the principles or provisions of a National decision or making a State decision, make or vary awards, or make other orders, to the extent necessary to give effect to its decision.

..."

(Emphasis added.)

SECRETARY'S POSITION

5. The Secretary submits that the quantum of the wage increases in the 2024 AWR should be adopted by the Commission with respect to the Category 1 State Awards.
6. With respect to the timing of the increases, the Secretary submits that the wage increases should take effect from the usual commencement date of each Award, consistent with the Commission's previous practice.
7. With respect to quantum, the Secretary submits that the increase should be 3.75% as set out in the 2024 AWR at [174]. However, if the Secretary's submissions as to the timing of increases are not accepted, in the alternative, the quantum should be prorated to adjust for any earlier commencement.
8. In Unions NSW's written submissions (**UWS**), it is submitted that the 2024 AWR should be adopted in full, comprising an increase to award minimum wages of 3.75% and for such increases to take effect on 1 July 2024: UWS at [3].
9. Unions NSW characterises its position as the "default position" under the Act, where, absent inconsistency with the objects of the Act or another good reason to not do so, the principles or provisions of the 2024 AWR are to be adopted by the Commission: UWS at [6], referring to s 50(1) of the Act.
10. Accordingly, the primary issue in dispute is the commencement dates for the increase to the wages.

TIMING OF INCREASES

11. There is no "default position" under the Act with respect to the commencement of increases resulting from the adoption of National decisions.
12. With reference to a National decision itself, any prescribed commencement date for the relevant federal awards cannot be adopted by the Commission under s 50. This is so because a commencement date is not a principle, and "provisions" under s 50 have historically been interpreted as being the increases made to the National Minimum Wage and any minimum rate awards, rather than the timing of such increases.²

² See, eg, *State Wage Case 2020 (No 2)* [2021] NSWIRComm 1079 at [175]; *State Wage Case 2020* [2021] NSWIRComm 1015 at [25]; *State Wage Case 2004* [2004] NSWIRComm 148 at [6].

13. Further, where the Commission commences its consideration of a National decision on a date later than the federal commencement date, the retrospective effect of any variation is precluded: s 15(3)(b) of the Act.
14. As to the timing of when the Commission may vary awards to give effect to the adoption of a National decision, the Act provides that the Commission may do so at the time of adoption, including making any other orders (s 52(1)), or "at any time" following the decision (s 17(3)(b)).
15. In practice, the Commission has set the commencement dates for the adoption of National decisions for the Category 1 State Awards in a reasonably consistent manner over approximately the last 15 years:
- (1) For the *Security Industry (State) Award*, since 2021 the usual commencement date has been 16 April of the following year since 2021; From 2011 to 2020, it commenced on 16 December of the relevant year, and from 2005 to 2010 it commenced on 19 February of the following year;
 - (2) For the *Miscellaneous Workers – Kindergartens and Child Care Centres, &c. (State) Award*, the usual commencement date appears to have been 16 December of the relevant year since 2011;³
 - (3) For the *Health, Fitness and Indoor Sports Centres (State) Award*, the usual commencement date appears to have been 16 December of the relevant year since 2011;⁴
 - (4) For the *Transport Industry (State) Award*, the usual commencement date has been 1 April of the following year since 2020. From 2011 to 2016, the usual commencement date was 16 December of the relevant year; and
 - (5) For the *Clerical and Administrative Employees (State) Award*, the usual commencement date has been 16 December of the relevant year since 2010.
16. The Secretary submits that there is utility in maintaining the current commencement dates for consistency and administrative efficiency. The current commencement dates allow appropriate time for the Commission to make its determination with respect to National decisions, provide some certainty in the timing of increases, and avoid any potential issues with respect to retrospective effect.
17. Accordingly, the Secretary submits that the appropriate course is for the Commission to vary the Awards at a time it sees fit, with the increases commencing from the following dates:
- (1) *Security Industry (State) Award* – 16 April 2025;
 - (2) *Miscellaneous Workers – Kindergartens and Child Care Centres, &c. (State) Award* – 16 December 2024
 - (3) *Health, Fitness and Indoor Sports Centres (State) Award* – 16 December 2024;
 - (4) *Transport Industry (State) Award* – 1 April 2025; and
 - (5) *Clerical and Administrative Employees (State) Award* – 16 December 2024.

PRO RATA OF INCREASE

18. In the event the Secretary's submissions as to the timing of the increases are not accepted, and instead an increase is to take effect from 1 July 2024 or another date, the 3.75% increase should be prorated to avoid the overlap of this year's increase with the

³ The Industrial Gazette omits the variations in 2020, 2018, 2017, and 2014.

⁴ The Industrial Gazette omits the variations in 2019, 2018, and 2017.

increase that has already been applied to the Award based on last year's National Decision.

19. The pro rata of such increase for a period of 1 July 2024 to 30 June 2025 may be achieved by utilising the following formula:

$$\frac{(\text{Days between usual commencement and 30 June 2025})}{365} \times 3.75\% = \text{Pro rata \%}$$

20. If the Commission is minded to commence the increases from 1 July 2024 for the Category 1 State Awards, the prorated increases for each award would be:
- (1) *Security Industry (State) Award* – 0.77% for 1 July 2024 to 30 June 2025 (equivalent to 3.75% for 16 April 2025 to 30 June 2025);
 - (2) *Miscellaneous Workers – Kindergartens and Child Care Centres, &c. (State) Award* – 2.01% for 1 July 2024 to 30 June 2025 (equivalent to 3.75% for 16 December 2024 to 30 June 2025);
 - (3) *Health, Fitness and Indoor Sports Centres (State) Award* – 2.01% for 1 July 2024 to 30 June 2025 (equivalent to 3.75% for 16 December 2024 to 30 June 2024)
 - (4) *Transport Industry (State) Award* – 0.92% for 1 July 2024 to 30 June 2025 (equivalent to 3.75% for 1 April 2025 to 30 June 2025); and
 - (5) *Clerical and Administrative Employees (State) Award* – 2.01% for 1 July 2024 to 30 June 2025 (equivalent to 3.75% for 16 December 2024 to 30 June 2025).

ORDERS SOUGHT

21. The Secretary seeks the orders as set out in the accompanying Minute to this outline of submissions and submissions in reply.



Solicitor for the Industrial Relations Secretary

13 August 2024

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

No. IRC 211169 of 2024

Security Industry (State) Award

*Miscellaneous Workers –
Kindergartens and Child Care
Centres, &c. (State) Award*

*Health, Fitness and Indoor
Sports Centres (State) Award*

Transport Industry (State) Award

*Clerical and Administrative
Employees (State) Award*

**STATE WAGE CASE
2024**

**Secretary's Minute of
orders sought**

Filed by NSW Industrial
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The Secretary seeks that the Full Bench of the Commission make the following orders:

1. The Commission adopts the *Annual Wage Review 2023-2024* [2024] FWCFB 3500 as a National decision in relation to:
 - a. the *Security Industry (State) Award*;
 - b. the *Miscellaneous Workers – Kindergartens and Child Care Centres, &c. (State) Award*;
 - c. the *Health, Fitness and Indoor Sports Centres (State) Award*;
 - d. the *Transport Industry (State) Award*; and
 - e. the *Clerical and Administrative Employees (State) Award*.
(together, the **Category 1 State Awards**)
2. Pursuant to s 52 of the *Industrial Relations Act 1996* (NSW), the rates of pay and pay-related allowances prescribed in the Category 1 State Awards be increased by 3.75%, provided that any increases resulting from the Order may be offset against any or both of:
 - a. Any equivalent over award payments; and/or
 - b. Award wage increases other than State Wage Case adjustments.
3. Order 2 takes effect on and from the first full pay period commencing on or after:
 - a. for the *Security Industry (State) Award*, 16 April 2025;
 - b. for the *Miscellaneous Workers – Kindergartens and Child Care Centres, &c. (State) Award*, 16 December 2024;
 - c. for the *Health, Fitness and Indoor Sports Centres (State) Award*, 16 December 2024;
 - d. for the *Transport Industry (State) Award*, 1 April 2025; and
 - e. for the *Clerical and Administrative Employees (State) Award*, 16 December 2024
4. Within seven days of this Order, the Secretary is to file with the Commission a variation schedule for the Category 1 State Awards giving effect to these orders.

Dated: