

**4:55 pm**  
  
S.Bastian  
1. Registrar

## STATEMENT OF PRINCIPLES – July 2019

### Application of the Statement of Principles

- 1.1 This Statement of Principles is to be applied and followed when the Commission is making or varying an award or making an order in relation to the exercise of the jurisdiction under the Act to set the wages, salaries, allowances or other remuneration of employees or the prices to be paid in respect of their employment.
- 1.2 In these Principles, wages, salaries, allowances or other remuneration of employees or the prices to be paid in respect of employment will be referred to as “wages”.
- 1.3 In making a decision in respect of any application brought under these Principles the primary consideration in all cases will be the merits of the application in accordance with equity, good conscience and the substantial merits of the case pursuant to section 26(1)(a) of the Act.
- 1.4 These Principles do not have application to Enterprise Orders made under section 42I of the Act or to applications made under section 40A of the Act to incorporate industrial agreement provisions into an award by consent.
- 1.5 This Statement of Principles will operate until reviewed under s 50A(1)(d) of the Act.

### **2. (deleted)**

### **3. When an Award may be varied or another Award made without the claim being regarded as above or below Minimum Award Conditions**

- 3.1 In the following circumstances wages in an award, may on application, be varied or another award made without the application being regarded as a claim for wages above or below the minimum award conditions:
  - 3.1.1 To include previous State Wage Case increases in accordance with Principle 4.1.
  - 3.1.2 To adjust wages for total minimum rates pursuant to Principle 4.2.
  - ~~3.1.3 To incorporate test case standards in accordance with Principle 5.~~
  - 3.1.4 To adjust allowances and service increments in accordance with Principle 6.
  - 3.1.5 To adjust wages pursuant to work value changes in accordance with Principle 7.
  - 3.1.6 To make or vary an award or to make an order to provide for equal remuneration for men and women for work of equal or comparable value in accordance with Principle 8.
  - 3.1.7 To vary an award to include the minimum wage in accordance with Principle 9.

### **4. Previous State Wage Case Increases**

- 4.1 Wage increases available under previous State Wage Case Decisions such as structural efficiency adjustments, and previous arbitrated safety net adjustments will, on application, still be accessible.
- 4.2 Minimum rates adjustments may also be progressed under this Principle.

## **5. Test Case Standards**

~~5.1 Test Case Standards in respect of wages established and/or revised by the Commission may be incorporated in an award. Where disagreement exists as to whether a claim involves a test case standard, those asserting that it does, must make an application and justify its referral. The Chief Commissioner will decide whether the claim should be dealt with by a Commission in Court Session.~~

## **6. Adjustment of Allowances and Service Increments**

- 6.1 Existing allowances which constitute a reimbursement of expenses incurred may be adjusted from time to time where appropriate to reflect the relevant change in the level of ~~those such~~ expenses.
- 6.2 ~~Adjustment of existing allowances which relate to work or conditions which have not changed and of service increments will be determined in each case in accordance with State Wage Case Decisions.~~
- 6.3 Allowances which relate to work or conditions which have not changed and service increments may be adjusted as a result of the State Wage order, or, if an award contains another method for adjusting such allowances, in accordance with that other method.
- 6.4 In the absence of any other prescribed method, In circumstances where the Commission has determined that it is appropriate to adjust existing allowances relating to work or conditions which have not changed and/or service increments for a monetary safety net increase, the method of adjustment shall be ~~that such allowances and service increments should be increased by a percentage derived~~ as follows: divide the monetary safety net increase by the rate of pay for the key classification in the relevant award which applied immediately prior to the ~~application of the~~ safety net increase ~~to the award rate,~~ and multiply the resulting figure by 100.
- 6.5 Existing allowances for which an increase is claimed because of changes in the work or conditions will be determined in accordance with the relevant provisions of Principle 7.
- 6.6 New allowances to compensate for the reimbursement of expenses incurred may be awarded where appropriate having regard to ~~those such~~ expenses.
- 6.7 Where changes in the work have occurred or new work and conditions have arisen, ~~the introduction of a new allowance, the question of a new allowance, if any, is to be determined shall be determined~~ in accordance with the most appropriate relevant Principles of this Statement of Principles. The relevant Principles in this context may be Principle 7 and Principle 11.
- 6.8 New service increments may only be awarded to compensate for changes in the work and/or conditions and will be determined in accordance with the relevant parts of Principle ~~7 of this Statement of Principles~~.

## 7. Work Value Changes

- 7.1 Applications may be made for a wage increase under this Principle based on changes in work value.
- 7.2 Changes in work value may arise from changes in the nature of the work, skill and responsibility required or the conditions under which work is performed. Changes in work by themselves may not lead to a change in wage rates. The strict test for an alteration in wage rates is that the change in the nature of the work should constitute such a significant net addition to work requirements as to warrant the creation of a new classification or upgrading to a higher classification.
- 7.3 In addition to meeting this test a party making a work value application will need to justify any change to wage relativities that might result not only within the relevant internal award classifications structure but also against external classifications to which that structure is related. There must be no likelihood of wage “leapfrogging” arising out of changes in relative position.
- 7.4 These are the only circumstances in which rates may be altered on the ground of work value and the altered rates may be applied only to employees whose work has changed ~~in accordance with this provision~~.
- 7.5 In applying the Work Value Changes Principle, the Commission will have regard to the need for any alterations to wage relativities between awards to be based on skill, responsibility and the conditions under which work is performed.
- 7.6 Where new or changed work justifying a higher rate is performed only from time to time by persons covered by a particular classification or where it is performed only by some of the persons covered by the classification, ~~such the~~ new or changed work should be compensated by a special allowance which is payable only when the new or changed work is performed by ~~an particular~~ employee and not by increasing the rate for all employees working at that the classification as a whole.
- 7.7 The time from which work value changes in an award should be measured is any date that on the evidence before the Commission is relevant and appropriate in the circumstances.
- 7.8 Care should be exercised to ensure that changes which were or should have been taken into account in any previous work value adjustments or in a structural efficiency exercise are not included in any work evaluation under this provision.
- 7.9 Where the tests specified in 7.2 and 7.3 are met, an assessment will have to be made as to how that alteration should be measured in money terms. ~~The Such~~ assessment should normally be based on the previous work and the nature and extent of the change in work.
- 7.10 The expression “the conditions under which the work is performed” relates to the environment in which the work is done.
- 7.11 The Commission should guard against contrived classifications and over-classification of jobs.
- 7.12 Any changes in the nature of the work, skill and responsibility required or the conditions under which the work is performed, taken into account in assessing an increase under any other provision of these Principles, shall not be taken into account in any claim under this provision.

## 8. Equal Remuneration for Men and Women for Work of Equal or Comparable Value

- 8.1 Applications may be made under this Principle to implement equal remuneration for work of equal or comparable value.
- 8.2 The Commission must apply this principle when it:
  - 8.2.1 hears applications to vary an award in order to implement equal remuneration for work of equal or comparable value;
  - 8.2.2 arbitrates industrial disputes about equal remuneration; or
  - 8.2.3 values or assesses the work of employees in ‘female dominated’ industries, occupations or callings.
- 8.3 In assessing the value of work, the Commission is required to examine the nature of work, skill and responsibility required and the conditions under which work is performed (which has the same meaning as it does for Principle 7 Work Value Changes) as well as other relevant work features.
- 8.4 The assessment is to be transparent, objective, non-discriminatory and free of assumptions based on gender.
- 8.5 The purpose of the assessment is to ascertain the current value of work. Changes in work value do not have to be demonstrated.
- 8.6 Prior work value assessments and/or the prior setting of pay rates for the work cannot be assumed to have been free of assumptions based on gender.
- 8.7 In assessing the value of the work, the Commission is to have regard to the history of the award including whether there have been any assessments of the work in the past and whether remuneration has been affected by the gender of the workers. Relevant matters to consider may include:
  - 8.7.1 whether there has been some characterisation or labelling of the work as “female”;
  - 8.7.2 whether there has been some underrating or undervaluation of the skills of female employees;
  - 8.7.3 whether remuneration in an industry or occupation has been undervalued as a result of occupational segregation or segmentation;
  - 8.7.4 whether there are features of the industry or occupation that may have influenced the value of the work such as the degree of occupational segregation, the disproportionate representation of women in part time or casual work, low rates of unionisation, limited representation by unions in workplaces covered by formal or informal work agreements, the incidence of consent awards or agreements and other considerations of that type; or
  - 8.7.5 whether sufficient and adequate weight has been placed on the typical work performed and the skills and responsibilities exercised by women as well as the conditions under which the work is performed and other relevant work features.
- 8.8 Gender discrimination is not required to be shown to establish undervaluation of work, therefore there is no requirement for a male comparator.
- 8.9 Comparisons within and between occupations and industries are not required in order to establish undervaluation of work on a gender basis.

- 8.10 Such comparisons may be used for guidance in ascertaining appropriate remuneration. The proper basis for comparison is not restricted to similar work.
- 8.11 Where the Commission determines that there is not equal remuneration for work of equal or comparable value, the Commission is to make an assessment as to how equal remuneration is to be achieved. Outcomes may include but are not limited to the reclassification of work, the establishment of new career paths, changes to incremental scales, wage increases, the establishment of new allowances and the reassessment of definitions and descriptions of work to properly reflect the value of the work.
- 8.12 There will be no wage leapfrogging as a result of any changes in wage relativities arising from any adjustments under this principle.
- 8.13 The Commission will guard against contrived classifications and over classification of jobs.
- 8.14 The Commission may determine in each case whether any increases in wages will be absorbed into overaward payments.
- 8.15 Equal remuneration will not be achieved by reducing current wage rates or other conditions of employment.
- 8.16 The Commission may decide to phase in any decision arising from this principle. Any affected employer may apply to have any decision phased in. The merit of such application will be determined in the light of the particular circumstances of each case and any related material ~~relating thereto~~ will be rigorously tested.
- 8.17 Claims brought under this principle will be considered on a case by case basis.

## **9. Minimum Adult Award Wage**

- 9.1 A minimum adult award wage clause will be required to be inserted in all new awards including interim awards.
- 9.2 The minimum adult award wage clause will be as follows –

### **MINIMUM ADULT AWARD WAGE**

No employee aged 21 or more shall be paid less than the minimum adult award wage unless otherwise provided by this clause.

The minimum adult award wage for full-time employees aged 21 or more working under an award that provides for a 38 hour week is \$746.90 per week.

The minimum adult award wage for full-time employees aged 21 or more working under awards that provide for other than a 38 hour week is calculated as follows: divide \$746.90 by 38 and multiply by the number of ordinary hours prescribed for a full time employee under the award.

The minimum adult award wage is payable on and from the commencement of the first pay period on or after 1 July 2019.

The minimum adult award wage is deemed to include all State Wage order adjustments from State Wage Case Decisions.

Unless otherwise provided in this clause adults aged 21 or more employed as casuals, part-time employees or piece workers or employees who are remunerated wholly on the basis of payment by result, shall not be paid less than pro rata the minimum adult award wage according to the hours worked.

Employees under the age of 21 shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision in this award (if applicable) to the minimum adult award wage, provided that no employee shall be paid less than any applicable minimum rate of pay prescribed by the *Minimum Conditions of Employment Act 1993*.

The minimum adult award wage shall not apply to apprentices, employees engaged on traineeships or government approved work placement programs or employed under the Commonwealth Government Supported Wage System or to other categories of employees who by prescription are paid less than the minimum award rate, provided that no employee shall be paid less than any applicable minimum rate of pay prescribed by the *Minimum Conditions of Employment Act 1993*.

Liberty to apply is reserved in relation to any special category of employees not included here or otherwise in relation to the application of the minimum adult award wage.

Subject to this clause the minimum adult award wage shall –

Apply to all work in ordinary hours.

Apply to the calculation of overtime and all other penalty rates, superannuation, payments during any period of paid leave and for all purposes of this award.

#### **Minimum Adult Award Wage**

The rates of pay in this award include the minimum weekly wage for employees aged 21 or more payable under the 2019 State Wage order decision. Any increase arising from the insertion of the minimum wage will be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset the minimum wage.

#### **Adult Apprentices**

Notwithstanding the provisions of this clause, the minimum adult apprentice wage for a full-time apprentice aged 21 years or more working under an award that provides for a 38 hour week is \$638.20 per week.

The minimum adult apprentice wage for a full-time apprentice aged 21 years or more working under an award that provides for other than a 38 hour week is calculated as follows: divide \$638.20 by 38 and multiply by the number of ordinary hours prescribed for a full time apprentice under the award.

The minimum adult apprentice wage is payable on and from the commencement of the first pay period on or after 1 July 2019.

Adult apprentices aged 21 years or more employed on a part-time basis shall not be paid less than pro rata the minimum adult apprentice wage according to the hours worked.

The rates paid in the paragraphs above to an apprentice 21 years of age or more are payable on superannuation and during any period of paid leave prescribed by this award.

Where in this award an additional rate is expressed as a percentage, fraction or multiple of the ordinary rate of pay, it shall be calculated upon the rate prescribed in this award for the actual year of apprenticeship.

#### **10. Making or Varying an Award or issuing an Order which has the effect of varying wages or conditions above or below the award minimum conditions**

- 10.1 An application or reference for a variation in wages which is not made by an applicant under any other Principle and which is a matter or concerns a matter to vary wages above or below the award minimum conditions may be made under this Principle.
- 10.2 Claims may be brought under this Principle irrespective of whether a claim could have been brought under any other Principle.
- 10.3 ~~All claims made under this Principle will be referred to the Chief Commissioner for her to determine whether the matter should be dealt with by a Commission in Court Session or by a single Commissioner.~~

#### **11. New Awards (including interim Awards) and Extensions to an Existing Award**

- 11.1 ~~The following shall apply to the making of wages in a new award (including an interim award) and an extension to an existing award:~~
  - 11.1.1 ~~In the making of wages in an interim award the Commission shall apply the matters set out in section 36A of the Act.~~
  - 11.1.2 ~~A new award (including an interim award) shall have a clause providing for the minimum award wage [see Principle 9] included in its terms.~~
  - 11.1.3 ~~In the extension of wages in an existing award to new work or to award free work the wages applicable to such work shall ensure that any award or order made:~~
    - (1) ~~meets the need to facilitate the efficient organisation and performance of work according to the needs of an industry and or enterprises within it, balanced with fairness to the employees in the industry or enterprises; and~~
    - (2) ~~sets fair wages.~~

#### **12. Economic Incapacity**

- 12.1 Any respondent or group of respondents to an award may apply to reduce and/or postpone the variation which results in an increase in labour costs under this Statement of Principles on the ground of very serious or extreme economic adversity. The merit of such application shall be determined in the light of the particular circumstances of each case and any related material relating thereto shall be rigorously tested. The impact on employment at the enterprise level of the increase in labour costs is a significant factor to be taken into account in assessing the merit of an application. ~~It will then be a matter for the Chief Commissioner to decide whether it should be dealt with by a Commission in Court Session.~~

**13. Duration**

~~13.1 This Statement of Principles will operate until reviewed under s 50A(1)(d) of the Act.~~

---