

## Summary of key changes to the Statement of Principles recommended by the Minister



### Principle 5 - Test Case Standards

#### Principle 5.1

Principle 5.1 deals with the incorporation of test case standards in awards as follows:

- 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.

The Minister contends that Principle 5.1 could be deleted without any adverse impact. This Principle pre-dates the introduction of statutory minimum conditions of employment, such as the *Minimum Conditions of Employment Act 1993* (WA) and the National Employment Standards. It was traditionally used to flow on various common entitlements established through test case proceedings (often originating in the federal jurisdiction), many of which have since been incorporated into legislation.

No applications to the Western Australian Industrial Relations Commission (WAIRC) have been made under this Principle for many years, and its deletion would not prevent a relevant party from applying to incorporate a standard or condition in a State award, whether or not it constituted a 'test case standard'. Furthermore, there is nothing preventing a party from applying to have a new standard or condition included in all awards, or indeed for all employees in the State jurisdiction, under the General Order provisions of the *Industrial Relations Act 1979* (IR Act).

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

#### Principle 3.1.3

Principle 3.1.3 outlines one of the circumstances where an award can be varied without a claim being regarded as being above or below Minimum Award Conditions:

- 3.1.3 To incorporate test case standards in accordance with Principle 5.

If Principle 5 were to be deleted (as recommended above), Principle 3.1.3 would also need to be deleted for consistency.

## **Principle 6 - Adjustment of Allowances and Service Increments**

### **Principle 6.2**

Principle 6.2 deals with the adjustment of allowances and service increments, as follows:

- 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.

The Minister contends that Principles 6.2 could be deleted, particularly if the Minister's suggested changes to Principle 6.3 and 6.4 are adopted.

### **Principle 6.3**

Principle 6.3 clarifies that allowances which relate to work or conditions which have not changed may be adjusted as a result of the State Wage order:

- 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.

The Minister contends that some additional words could be added to Principle 6.3, so that it reads:

- 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.

The additional words proposed by the Minister would clarify that if an award contains another method for adjusting allowances, the method in the award shall apply. This complements the Minister's suggested change to Principle 6.4 below.

### **Principle 6.4**

Principle 6.4 deals with the method of adjusting existing allowances relating to work or conditions which have not changed or service increments as follows:

- 6.4 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 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 immediately prior to the application of the safety net increase to the award rate and multiply by 100.

The Minister proposes some minor changes to the wording of Principle 6.4, as follows:

- 6.4 In the absence of any other prescribed method, where the Commission has determined that it is appropriate to adjust existing allowances relating to work or conditions which have not changed or service increments for a monetary safety net increase, the method of adjustment shall be as follows: divide the monetary safety net increase by the rate of pay for the key classification in the award which applied immediately prior to the safety net increase, and multiply the resulting figure by 100.

Including the words “in the absence of any other prescribed method” at the start of the paragraph would clarify that sub-Principle 6.4 is the default method for adjusting existing allowances or service increments to reflect a State Wage increase; however, another method could be established if it was deemed appropriate.

A benefit of the proposed change is that it would enable a formula to be included in an award that provides for the automatic indexation of allowances, without the need for award parties to apply to the WAIRC for an adjustment. The updating of allowances in awards is an issue that is currently being considered as part of the s 40B award updating process in Applications 4, 5, 6, 7 and 8 of 2020.

The proposed wording changes would also simplify the description of how the default method for adjusting allowances is intended to work.

## **Principle 9 - Minimum Adult Award Wage**

### **Principle 9.1**

Principle 9.1 requires a minimum adult award wage clause to be inserted into all new awards:

- 9.1 A minimum adult award wage clause will be required to be inserted in all new awards.

The Minister recommends a minor amendment be made to Principle 9.1, to include the words “including interim awards” at the end of the sentence. By clarifying that the minimum adult award wage clause is also to be included in interim awards (which already occurs in practice), Principle 11 could be deleted in its entirety (refer to Principle 11 below for further details).

## **Principle 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**

### **Principle 10.3**

Principle 10 enables an award party to make an application to vary the wages or conditions in their award above or below minimum award standards if the application is not made under any other Principle. Principle 10.3 states that:

- 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.

The Minister submits that Principle 10.3 could be deleted. The Chief Commissioner's powers in relation to referring matters to a Commission in Court Session are already outlined in the IR Act and it would appear unnecessary to repeat them in the Principles.

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

### **Principle 11.1**

Principle 11.1 outlines various doctrines the WAIRC must follow when setting wages in a new award (including an interim award) or an extension 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.

The Minister contends that Principle 11 could be deleted entirely, without this having any adverse impact on employers or employees. In particular:

- Principle 11.1.1 simply refers to the relevant section of the IR Act the WAIRC is already required to follow when determining wages in an interim award.
- Principle 11.1.2 would be unnecessary if a minor adjustment were made to Principle 9.1 to clarify that a minimum adult award wage clause is to be included in interim awards (as recommended above).
- Principle 11.1.3 simply re-states some of the Objects of the IR Act, which the WAIRC is already required to consider when making decisions.

## **Principle 13 – Duration**

### **Principle 13.1**

Principle 13.1 deals with the duration of the Principles as follows:

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

The Minister contends that Principle 13.1 could be moved to the front of the Principles and be included in Principle 1 (which deals with the application of the Principles). Principle 13 could then be deleted.

### **Other Miscellaneous Changes**

The Minister has suggested some minor wording changes to a range of other Principles to use more contemporary language or to clarify the provisions. None of these suggested changes alter the meaning of the Principles in question.