

Premier's Department

Ref: A5939202

15 January 2024

Mr Thomas Costa
Assistant Secretary
Unions NSW
Level 8, 377 Sussex St
SYDNEY NSW 2000

Re: M2023-04 NSW Government Fair Pay and Bargaining Policy 2023 ("the Fair Pay Policy")

Dear Mr Costa,

I write in response to your correspondence dated 19 December 2023 regarding the Premier's Memorandum *M2023-04 NSW Government Fair Pay and Bargaining Policy 2023* (the Fair Pay Policy) in which you sought clarification about the application of the policy and related matters. Thank you for providing additional time for us to provide our response to the issues raised.

Responses to the specific questions outlined at appendix 1 of your letter, and responses to additional questions sent directly to Industrial Relations by the AWU on 21 December 2023 are provided at Attachments A and B enclosed in this letter.

You will be aware that a Public Sector Union Consultative Forum has been scheduled for Thursday 18 January 2024 to address any outstanding matters.

I appreciate there are several concerns that unions have regarding the Fair Pay Policy, particularly in regard to the new approach to bargaining that is outlined. I hope that our responses address many of the matters raised and that we can move forward in a consultative and collaborative way as we approach upcoming rounds of bargaining.

Yours sincerely,

A handwritten signature in black ink, appearing to read "C Heuston".

Charlie Heuston
Executive Director, Industrial Relations

Attachment A - Responses to questions raised by Unions NSW and the AWU

Unions NSW Questions	Industrial Relations Response
<p>1. The Fair Pay Policy provides only for mutual gains bargaining.</p> <p>a. Given that no union will choose to participate in mutual gains bargaining at this stage, what is the contingency for agencies who are not engaged in mutual gains bargaining?</p> <p>b. For example, how will they seek approval for bargaining under Section 4.3 of the Fair Pay Policy?</p>	<p>The policy requires agencies to engage in mutual gains bargaining as their primary approach.</p> <p>Where unions choose not to participate in mutual gains bargaining for all or part of the bargaining process, it is anticipated that bargaining may progress with a more traditional, positional bargaining approach.</p> <p>The approval process for agency bargaining proposals will be the same for either bargaining approach.</p>
<p>2. Please provide a summary of all changes between the new Fair Pay Policy (M2023-04) and the two policies it replaced (M2022-05 NSW Public Sector Wages Policy 2022 and M2022-02 Management of Industrial Disputes and Bargaining Matters.)</p>	<p>Summary of changes is at Attachment B to this letter.</p>
<p>3. The renewal date for this policy is March 2027</p> <p>a. Why is the renewal date so far away?</p> <p>b. Is there any intention to revise the policy earlier than 2027? If so, when?</p>	<p>The renewal date is an internal date for administrative purposes only, to ensure that memoranda and circulars are reviewed at regular intervals to consider currency and ongoing requirement.</p> <p>The Policy may be reviewed or updated at any time prior to this date.</p>
<p>4. <u>Clause 3</u> refers to the wage offer for instruments which are due to expire prior to 30 June 2024, being 4.0% to salary and salary-related allowances for one year and 0.5 percentage point increase to superannuation.</p> <p>a. What will be the wage offer beyond 30 June 2024?</p> <p>b. How will the wage offer beyond 30 June 2024 be determined?</p>	<p>There is no fixed quantum wage offer beyond FY2023-24.</p> <p>Future wage offers will be resolved as part of the bargaining or negotiation process between the parties.</p>
<p>5. <u>Section 4</u>: Clauses 4.1 to 4.3 deal with the approval of only the agency's bargaining interests before bargaining commences. Clauses 4.4 and 4.5 deal with the approval of SOWAC, ERC and PSIR of final bargaining positions (and settling of industrial instruments) after bargaining concludes. Nothing in section 4 requires SOWAC, ERC or PSIR to consider the interests of workers and unions before bargaining concludes, but clauses 4.4 and 4.5 require that SOWAC and ERC approve the final bargaining positions before arrangements can be finalised. Our questions:</p> <p>a. As SOWAC, ERC and/or PSIR are the ultimate decision-makers in bargaining, will their representatives attend bargaining?</p>	<p>a. As noted in the 19 December 2023 meeting, PSIR is not the decision maker for agency bargaining. SOWAC, ERC and PSIR representatives do not typically attend bargaining, except for those instruments which apply across agencies and PSIR leads those negotiations (e.g. Crown Employees (Public Sector – Salaries) Award).</p> <p>b. Agencies will determine bargaining participants, as per clauses 4.2.2 - 4.2.4 of the Fair Pay Policy and are required to bargain in good faith.</p> <p>Should there be any instances that SOWAC or PSIR representatives are required to participate in bargaining they will ensure that they fulfill their good faith bargaining responsibilities.</p>

Unions NSW Questions	Industrial Relations Response
<p>b. If no to Q5(a), how do SOWAC, ERC and/or PSIR intend on fulfilling their good faith bargaining responsibilities in the Industrial Relations Act 1996?</p> <p>c. Is after the conclusion of bargaining (as suggested by clauses 4.4 and 4.5) the first time SOWAC, ERC and/or PSIR will consider the interests of workers and unions?</p> <p>d. If no to Q5(c), at what earlier time?</p> <p>e. What is your view on establishing a union consultation mechanism in the pre-bargaining process at clauses 4.1.3 and 4.3?</p> <p>f. If both the agency or department and union are agreed on the bargaining outcomes, can SOWAC, ERC and/or PSIR decline to approve the final bargaining positions?</p> <p>g. If yes to Q5(f), on what bases can SOWAC, ERC and/or PSIR decline?</p> <p>h. What is the average time frame for approval for the processes in clause 4.3?</p>	<p>c. SOWAC, ERC and/or PSIR will consider the interests of all interested parties (including employees, unions, and the general public) as bargaining proposals are provided for consideration/approval. This would also occur when agencies have preliminary discussions with PSIR prior to submission of proposals or once proposals are submitted.</p> <p>d. As per (c) above.</p> <p>e. Agencies have formal consultation arrangements with unions through their Joint Consultative Committees and are encouraged to use these to assist in identifying opportunities for reform, and other areas of interest.</p> <p>f. An agency may agree to bargaining outcomes that are consistent with the bargaining proposals approved by SOWAC/ERC. If new reform opportunities are identified during negotiations then approval should be sought of a variation to their bargaining proposal to then enable a formal offer to be made.</p> <p>g. As per (f) above.</p> <p>h. The time frame for approval of the processes in clause 4.3 is dependent on a number of variables, including the quality and detail of the proposals provided.</p>
<p>6. Mutual gains bargaining is a significant shift from previous NSW government approaches to bargaining.</p> <p>a. From a resourcing perspective, how will mutual gains bargaining be implemented by agencies and departments?</p> <p>b. Do you expect that there be an increase or decrease in resourcing? What is your basis for this expectation?</p> <p>c. With reference to clause 4.2.5, which agencies and departments have already received guidance and access to mutual gains bargaining training?</p>	<p>It is acknowledged that mutual gains bargaining is a shift from previous approaches to bargaining and Industrial Relations is providing assistance in terms of training to both agencies and unions to improve both parties understanding of the approach.</p> <p>a. Agencies will be required to ensure that adequate resourcing is provided to their bargaining team.</p> <p>b. The allocation of resourcing is an agency decision.</p> <p>c. All agencies and unions have been offered mutual gains bargaining training. To date a broad number of agencies have attended the seminars offered, and as at 10 January 2024 Rail agencies and unions have attended mutual gains bargaining training, with similar joint agency and union training being scheduled for late January-early February for FRNSW and Health.</p>
<p>7. <u>Clause 4.3.4</u> states “Industrial Relations may issue guidance, recommendations, or other requirements in relation to the terms to be included in instruments to promote whole of government reform, efficiency, and consistency.”</p>	<p>a. There is value in improving consistency of certain leave arrangements across the sector and has developed “model clauses” for parental leave and domestic and family violence.</p>

Unions NSW Questions	Industrial Relations Response
<p>a. In PSIR's view, what types of terms or award clauses will need to be consistent across the whole of government?</p> <p>b. What types of terms or award clauses will not need to be consistent?</p>	<p>b. Clauses that relate specifically to an agency operation and service delivery requirements e.g. rostering, work location, hours of work, should support the effective delivery and should reflect the nature of the work being undertaken.</p>
<p>8. <u>Clause 4.3.7</u> refers to "the Government's policy and wage settings". This suggests that even if there is no wages "cap" beyond 2023-24, there will be an internal or shadow NSW government wages "cap" or "setting".</p> <p>a. Who decides what these policy and wage settings will be?</p> <p>b. What will the policy and wage settings be for 2024-25? If this is not yet decided, when will this be decided?</p>	<p>a. The NSW Government's policy priorities and wage settings may vary in future years in response to changing priorities or emerging issues. These are determined in line with standard Government decision making processes.</p> <p>b. Future wage offers will be resolved as part of the bargaining or negotiation process between the parties and may include productivity enhancing reforms and/or cost savings.</p>
<p>9. There are various broad references to "strategic priorities" or "strategic objectives" (e.g. clauses 4.2, 8.2 and 8.4(b)).</p> <p>a. What is meant by these terms? And what are the documentary sources of "strategic priorities" or "strategic objectives" (i.e. how do we know what is and is not a strategic priority of the government?)</p> <p>b. Is bargaining using only the mutual gains approach a strategic priority of the government?</p>	<p>a. The Government sets out its broad strategic priorities through Premier and other ministerial announcements. Agencies have strategic objectives and related priorities, which are identified in agency-specific documentation such as business plans and annual reports.</p> <p>b. The Government has announced that a mutual gains bargaining approach is a priority and the more cooperative and collaborative approach is preferred in comparison to the traditional adversarial approach. Agencies have been requested to adopt mutual gains bargaining however if unions do not wish to engage in mutual gains bargaining, then traditional approaches still remain available, which may include conciliation and arbitration to resolve the matters in dispute.</p>
<p>10. <u>Clause 5.2</u>: Please provide a full list of productivity enhancements (or offsets or savings) that have resulted in wage increases in the past 10 years.</p>	<p>The previous Government policy did allow for additional pay increases on the basis of productivity enhancements. However, there were limited opportunities for wage increases as a result of productivity enhancements over the last 10 years.</p>
<p>11. Senior Officials Wages Advisory Committee (SOWAC) questions:</p> <p>a. Who sits on this Committee?</p> <p>b. What approval responsibilities does SOWAC hold?</p> <p>c. Please provide any documents that will assist us in understanding the responsibilities of SOWAC.</p>	<p>The composition and role of SOWAC is the same as set out in the previous wages policy.</p> <p>a. SOWAC is convened by the Premier's Department and consists of senior representatives from Premier's Department and NSW Treasury. Relevant cluster senior officials, including the Public Service Commission, may be invited to support alignment to Government priorities and other workforce priorities.</p>

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Unions NSW Questions	Industrial Relations Response
	<p>b. SOWAC may approve proposals that are consistent with the Government's policy and wage settings or refer them to ERC for consideration.</p> <p>c. The role of SOWAC is set out in the Fair Pay Policy.</p>
<p>12. Expenditure Review Committee (ERC) questions:</p> <p>a. Who sits on this Committee?</p> <p>b. What approval responsibilities does ERC hold?</p> <p>c. What is the delineation of responsibility between ERC and SOWAC?</p> <p>d. Please provide any documents that will assist us in understanding the responsibilities of ERC.</p>	<p>a. The composition of the Cabinet Committee on Expenditure Review (ERC) is determined by the Premier.</p> <p>b. ERC has responsibility for consideration of all issues that have an economic/fiscal impact.</p> <p>c. SOWAC can consider and approve proposals that are in line with Government policy settings, other matters, including those with a whole of sector impact, require consideration of ERC.</p> <p>d. ERC is a Cabinet Committee, and its decisions and deliberations are confidential.</p>

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Responses to Supplementary questions asked by the AWU:

AWU Questions	Industrial Relations Response
<p>1. The policy lacks reference to any balancing between productivity (which is heavily referenced) and the needs of employees (which is entirely absent)- see for example clause 1.5.</p>	<p>The policy is subject to and should be read in conjunction with the <i>Industrial Relations Act 1996</i> which requires Awards to set fair and reasonable conditions of employment for employees.</p> <p>Government's commitment to its employees is also outlined throughout Section 1 Introduction of the Fair Pay Policy.</p> <p>For example, clause 1.3 states the need to rebuild and improve access to government services while at the same time "...investing in our public sector workforce through enhancements to pay and improvements to working conditions...".</p> <p>Clause 1.5 encourages agencies to "...pursue reforms that promote greater employee mobility and flexibility, to attract and retain our workforce".</p>
<p>2. As detailed by the Unions NSW questions, there is no clear direction regarding what wages parameters will be post-June 2024. If any parameters are to be set-up, these should be well-known beforehand.</p>	<p>The NSW Government's policy setting may be revised from time to time to take into account emerging issues and/or priorities in future years.</p> <p>This matter will be considered further in the lead up to negotiations and may have regard to inclusion of any productivity enhancing reforms in negotiated outcomes.</p>
<p>3. Clause 4.1.3(b) refers to a final bargaining proposal being developed before the commencement of bargaining (albeit there are mechanisms for this to change under the policy). Any bargaining proposal should be developed in collaboration with relevant unions, as well as government stakeholders where applicable.</p>	<p>The intention of Clause 4.1.3(b) is that there is a two-stage process. The first stage (clause 4.1.3 (a)) approval of agency interests is to occur prior to bargaining commencing, while the second stage (clause 4.1.3 (b)) approval of final proposal, is to occur after bargaining has progressed as there may be changes to the initial proposal following mutual gains bargaining between the parties.</p>
<p>4. Clause 4.3.2- there is a focus, or at least a reference to "savings measures." This is reminiscent of the wages policy and, in our view, problematic.</p>	<p>In developing initial proposals and finalising proposals after bargaining, there may be a contribution from productivity reforms and/or identifiable savings measures.</p>
<p>5. Clause 5.2 expressly references "Enhancements to Productivity," there is no correlating clause referring to the "Attraction and Retention of the Workforce"- there should be.</p>	<p>Section 1 Introduction of the Fair Pay Policy emphasises the need to focus on reform measures and improvements that will lead to greater attraction and retention of the workforce.</p>

Attachment B - summary of all changes between the new Fair Pay Policy (M2023-04) and the two policies it replaced (M2022-05 NSW Public Sector Wages Policy 2022 and M2022-02 Management of Industrial Disputes and Bargaining Matters)

(As per Question 2 from Unions NSW)

NSW Government Bargaining and Fair Pay Policy	Changes from previous policies
Section 1: Introduction	<p>The introduction section differs from previous Wages Policies as the focus is not limited to fiscal management and fair conditions. In addition to those objectives, the Fair Pay Policy focuses on a cooperative approach to bargaining to invest in the public sector workforce. There is also a focus on improving the delivery of services for the people of New South Wales.</p> <p>It also places greater emphasis on agencies to have bargaining outcomes which deliver competitive wages, greater mobility and flexibility, and seek to address attraction and retention concerns and working conditions and remuneration.</p>
Section 2: Application	This section is consistent with the application of previous policies.
Section 3: Enhancements to remuneration and conditions during 2023-24	<p>This section is consistent with the NSW Government Fair Pay Policy announcement. It also outlines the opportunity for additional increases to be provided where parties identify substantial efficiency improvements or where costs are offset.</p> <p>The previous Wages Policy had a set quantum, above which employee related savings were required for any additional increases above this quantum.</p>
Section 4: Governance arrangements	The governance arrangements provide more detail on requirements than the previous Wages Policy, but the approval processes i.e., SOWAC/ERC are consistent.
Section 5: Bargaining and productivity reforms	<p>Section 5.1 focuses on a mutual gains approach to bargaining which differs from the positional based bargaining approach of the previous Wages Policy. It is the NSW Government's position that agencies should seek to engage in mutual gains bargaining as the primary approach. The cooperative approach to bargaining will be supported by consultative forums and training.</p> <p>Section 5.2 considers productivity enhancing reforms consistent with the expectation of productivity efficiencies to fund future increases. Clause 5.2.3 includes a definition of public sector productivity and includes broad examples of productivity improvements for agencies.</p>

NSW Government Bargaining and Fair Pay Policy	Changes from previous policies
Section 6: Negotiation principles	<p>The negotiation principles are similar to provisions contained in the previous Wages Policy including:</p> <ul style="list-style-type: none"> • the approach to negotiations • communication • commencement date and retrospectivity of increases • concurrency of remuneration and condition negotiations • no extra claims clause • requirement for instruments to resolve all matters, noting that this does not prevent variations by agreement. <p>The section clarifies clause 6.3 relating to reform to work practices and work systems and the reference to the improvement of the delivery of services to the public.</p>
Section 7: Guaranteed minimum conditions of employment	This section maintains the guarantee of minimum conditions of employment under prior policies.
Section 8: Management of wage bargaining and industrial matters	<p>The provisions in Section 8 are adopted from the <i>M2022-02 Management of Industrial Disputes and Bargaining Matters</i> with the addition of clause 8.2.</p> <p>Section 8.1 – Requests for information is based on information contained in Premier’s Memorandum <i>M2022-02 Management of Industrial Disputes and Bargaining Matters</i>.</p> <p>Section 8.2 - Legal representation is an addition to this policy. This was included based on feedback and concerns raised by unions on the use of legal representatives by agencies in industrial matters across the sector.</p>
Section 9: Reporting	This section is similar to the reporting requirements in prior policies.
Annexure A: Bargaining process	<p>This section is a flow chart to represent the key stages in the bargaining process as outlined in the policy.</p> <p>This was not provided in the previous Wages Policy.</p>