



## Industrial Relations Commission New South Wales

Case Name: Crown Employees (School Administrative and Support Staff) Award

Medium Neutral Citation: [2019] NSWIRComm 1082

Hearing Date(s): 13 September 2019

Date of Orders: 13 September 2019

Date of Decision: 1 November 2019

Before: Chief Commissioner Kite SC; Commissioner Murphy; Commissioner Webster

- Decision:
- (1) The Full Bench:
    - (a) By consent, makes the Crown Employees (School Administrative and Support Staff) Award 2019 in terms of exhibit 1.
    - (b) Directs the applicant to file within seven days a revised form of the minutes of the Award addressing the issue of tracked changes remaining in the form of the Award proposed.
    - (c) Delegates to Commissioner Murphy the powers of the Full Bench to resolve any issues arising on settlement of the minutes.
    - (d) Directs the applicant to file within 28 days an application to vary the Crown Employees (Public Sector Salaries) Award to remove references to School Administrative and Support Staff.
    - (e) Grant liberty to apply in the event the time in order 1(d) proves inadequate.
  - (2) The Full Bench notes that the proposed Award rescinds the Crown Employees

(School Administrative and Support Staff) Award.

Catchwords: APPLICATION FOR AWARD VARIATION – Equal Remuneration Principle – New Award made – Rescission of Award – Variation to Award

Legislation Cited: Education (School Administrative and Support Staff) Act 1987 (NSW)  
Education (School Administrative and Support) Regulation 2013 (NSW)  
Industrial Relations Act 1996 (NSW)  
Industrial Relations (Public Sector Conditions of Employment) Regulation 2014 (NSW)

Cases Cited: Application by United Voice & Australian Education Union [2015] FWCFB 8200  
Crown Librarians, Library Officers and Archivists Award Proceedings – Applications under the Equal Remuneration Principle (2002) 111 IR 48  
Pay Equity Inquiry (1997)  
Re Equal Remuneration Principle (2000) 97 IR 177  
Re Miscellaneous Worker’s Kindergartens and Child Care Centres etc (State) Award (2006) 150 IR 290  
State Wage Case 2019 [2019] NSWIRComm 1065

Category: Principal judgment

Parties: Public Service Association and Professional Officers’ Association Amalgamated Union of NSW (Applicant)  
Secretary, Department of Education (First Respondent)  
Industrial Relations Secretary (Second Respondent)

Representation: Counsel:  
D Chin (Applicant)  
K Eastman SC with J McDonald (Respondents)

Solicitors:  
McNally Jones Staff (Applicant)  
Crown Solicitor (Respondent)

File Number(s): 2017/92883

## JUDGMENT

- 1 Across New South Wales, the Department of Education (“the Department”) employs approximately 18,000 full time equivalent School Administrative and Support Staff (“SAS Staff”). Approximately 93% of these roles are occupied by women. SAS Staff deliver significant social and economic benefits to the New South Wales and Australian economy, society, families and individuals. As the parties have agreed and we find, the work performed by SAS Staff has been undervalued on a gender basis and the consent orders in combination with other agreed measures are designed to resolve this inequity.
- 2 On 14 December 2016, the Public Service Association and Professional Officers’ Association Amalgamated Union of NSW (“Applicant”) informed the Commission of a major industrial case to be brought pursuant to s 17 of the *Industrial Relations Act 1996* (NSW) (“Act”) and in conformity with the Equal Remuneration Principle.
- 3 By its application filed 27 March 2017, the Applicant sought an increase in rates of pay of 35% for all SAS Staff subject to the *Education (School Administrative and Support Staff) Act 1987* (NSW), Education (School Administrative and Support) Regulation 2013 (NSW) and the Crown Employees (School Administrative and Support Staff) Award (“the SAS Staff Award”). The Applicant also sought the insertion of classification descriptors for each of the classifications in the SAS Staff Award. An amended application was filed on 21 May 2018 which still sought an increase to rates of pay of 35%, but no longer sought the reclassifications (“Amended Application”).
- 4 Following an extensive conciliation process, see [42], on 13 September 2019, the Applicant, the Secretary, Department of Education (“First Respondent”) and the Industrial Relations Secretary (“Second Respondent”) came before the Commission seeking, by consent, a new Crown Employees (School Administrative and Support Staff) Award 2019 (“the 2019 SAS Staff Award”) to take effect from 1 July 2019. The parties submitted that the 2019 SAS Staff

Award represents an appropriate remedy to the claimed gender undervaluation of SAS Staff pursuant to the Equal Remuneration Principle.

- 5 By consent, the Full Bench made the 2019 SAS Staff Award on 13 September 2019 to take effect from 1 July 2019. The 2019 SAS Staff Award rescinded and replaced the SAS Staff Award.
- 6 The 2019 SAS Staff Award provides for a suite of changes to the terms and conditions of employment of SAS Staff, designed not only to address the gender inequity, but also to modernise the Award, including:
  - (a) a new three year award which provides for the base hourly rates for all equivalent existing classifications in the SAS Staff Award effective from the first full pay period on or after 1 July 2019 to be increased by an additional 11% (and 15% to 27% increases for School Learning Support Officers (Pre-School) to align their rates with all other School Learning Support Officers) to give effect to the Equal Remuneration Principle;
  - (b) subsequent increases to rates of pay during the term of the award of 2.5% from the first pay period commencing on or after 1 July 2020 and 2.04% from the first pay period commencing on or after 1 July 2021 consistent with the NSW Public Sector Wages Policy 2011 and the Industrial Relations (Public Sector Conditions of Employment) Regulation 2014 (NSW) (“Regulation”);
  - (c) incorporation of the School Learning Support Officer (Student Health Support) classification, the Business Manager classification and recognition of the qualifications of the School Learning Support Officer (Pre-School) staff;
  - (d) removal of junior rates of pay;

- (e) new classification descriptors, updated and appropriate statements of duties for work to be performed by all classifications;
- (f) flexibility in the mix of staff;
- (g) clarification of the expanded bandwidth of hours of work;
- (h) clarification of and increases in some existing allowances and the incorporation of other allowances into wage rates;
- (i) clarification of leave entitlements;
- (j) incorporation of agreed changes arising from the implementing of the Department's new payroll system; and
- (k) mandating the requirement to perform the functions of first aid, administration of medications and health support.

7 Despite the parties having reached a consent position with respect to the orders sought, the Full Bench must still be persuaded that the Commission can and should make the consent orders.

8 In this regard, the Commission was assisted by the collaborative approach of the parties to the hearing of the matter and, in particular, the efforts in consolidating the salient evidence and submissions jointly relied upon in the "Agreed Statement of Facts and Matters of Law" filed 12 September 2019 (Exhibit 2).

9 The Applicant also read the affidavit of Kris Cruden, Industrial Manager of the Applicant, sworn 9 September 2019 which annexed:

- (1) the proposed consent award;

- (2) amended and updated statements of duties for each of the classifications covered by the proposed consent award; and
- (3) an 'extended terms' document setting out a more detailed explanation of the terms of the agreement reached by the parties.

## **Equal Remuneration Principle**

- 10 The history and development of pay equity principles in New South Wales were addressed in Justice Glynn's *Pay Equity Inquiry* (1997) and more recently in the decision of the Full Bench of the Fair Work Commission in *Application by United Voice & Australian Education Union* [2015] FWCFB 8200 at [50]-[144].
- 11 The key decision in New South Wales remains that of the Full Bench in *Re Equal Remuneration Principle* (2000) 97 IR 177 which has been incorporated into the Commission's Wage Fixing Principles and stated most recently in the *State Wage Case 2019* [2019] NSWIRComm 1065 as follows:

### 12. Equal Remuneration and Other Conditions

12.1 Claims may be made in accordance with the requirements of this Principle for an alteration in wage rates or other conditions of employment on the basis that the work, skill and responsibility required, or the conditions under which the work is performed, have been undervalued on a gender basis.

12.2 The assessment of the work, skill and responsibility required under this Principle is to be approached on a gender neutral basis and in the absence of assumptions based on gender.

12.3 Where the under-valuation is sought to be demonstrated by reference to any comparator awards or classifications, the assessment is not to have regard to factors incorporated in the rates of such other awards which do not reflect the value of work, such as labour market attraction or retention rates or productivity factors.

12.4 The application of any formula, which is inconsistent with proper consideration of the value of the work performed, is inappropriate to the implementation of this Principle.

12.5 The assessment of wage rates and other conditions of employment under this Principle is to have regard to the history of the award concerned.

12.6 Any change in wage relativities which may result from any adjustments under this Principle, not only within the award in question but also against external classifications to which the award structure is related, must occur in such a way as to ensure there is no likelihood of wage leapfrogging arising out of changes in relative positions.

12.7 In applying this Principle, the Commission will ensure that any alternative to wage relativities is based upon the work, skill and responsibility required, including the conditions under which the work is performed.

12.8 Where the requirements of this principle have been satisfied, an assessment shall be made as to how the undervaluation should be addressed in money terms or by other changes in conditions of employment, such as reclassification of the work, establishment of new career paths or changes in incremental scales. Such assessments will reflect the wages and conditions of employment previously fixed for the work and the nature and extent of the undervaluation established.

12.9 Any changes made to the award as a result of this assessment may be phased in and any increase in wages may be absorbed in individual employees' overaward payments.

12.10 Care should be taken to ensure that work, skill and responsibility which have been taken into account in any previous work value adjustments or structural efficiency exercises are not again considered under this Principle, except to the extent of any undervaluation established.

12.11 Where undervaluation is established only in respect of some persons covered by a particular classification, the undervaluation may be addressed by the creation of a new classification and not by increasing the rates for the classification as a whole.

12.12 The expression '*the conditions under which the work is performed*' has the same meaning as in Principle 8.2, Work Value Considerations.

12.13 The Commission will guard against contrived classification and over classification of jobs. It will also consider:

- (a) the state of the economy of New South Wales and the likely effect of its decision on the economy;
- (b) the likely effect of its decision on the industry and/or the employers affected by the decision; and
- (c) the likely effect of its decision on employment.

12.14 Claims under this Principle will be processed before a Full Bench of the Commission, unless otherwise allocated by the Chief Commissioner.

12.15 Equal remuneration shall not be achieved by reducing any current wage rates or other conditions of employment.

12.16 In arbitrating an application made under this Principle, the Commission is required to determine whether or not future State Wage Case general increases will apply to the award.

- 12 The Equal Remuneration Principle has been applied in *Crown Librarians, Library Officers and Archivists Award Proceedings – Applications under the Equal Remuneration Principle* (2002) 111 IR 48 and in *Re Miscellaneous Worker’s Kindergartens and Child Care Centres etc (State) Award* (2006) 150 IR 290.

## Relevant Legislation

- 13 The legislative provisions contained in the Act so far as relevant to this matter are:

### **3 Objects**

The objects of this Act are as follows:

- (a) ...
- (f) to prevent and eliminate discrimination in the workplace and in particular to ensure equal remuneration for men and women doing work of equal or comparable value,
- (g) ...

### **10 Commission may make awards**

The Commission may make an award in accordance with this Act setting fair and reasonable conditions of employment for employees.”

### **17 Variation or rescission of award**

(1) ...

(3) An award may be varied or rescinded in any of the following circumstances only:

- (a) at any time with the mutual consent of all the parties to the making of the original award,
- (b) at any time to give effect to a decision of the Full Bench of the Commission under section 50 or 51 (National and State decisions),
- (c) during its nominal term if the Commission considers that it is not contrary to the public interest to do so and that there is a substantial reason to do so,
- (d) after its nominal term if the Commission considers that it is not contrary to the public interest to do so.

### **21 Conditions to be provided in awards on application**

(1) The Commission must, on application, make an award setting any of the following conditions of employment:



- (a) ...
- (b) equal remuneration and other conditions for men and women doing work of equal or comparable value,
- (c) ...
- (2) Those conditions are to be set:
  - (a) in accordance with any relevant requirement of this Division and any other provision of this Act, and
  - (b) with due regard to any established principles of the Commission or other matters considered relevant.
- (3) Those conditions may be set in a new award or by the variation of an existing award.
- (4) This section applies even though there is an existing award dealing with the matter.

### **23 Equal remuneration and other conditions**

Whenever the Commission makes an award, it must ensure that the award provides equal remuneration and other conditions of employment for men and women doing work of equal or comparable value.

#### **146C Commission to give effect to certain aspects of government policy on public sector employment**

- (1) The Commission must, when making or varying any award or order, give effect to any policy on conditions of employment of public sector employees:
  - (a) that is declared by the regulations to be an aspect of government policy that is required to be given effect to by the Commission, and
  - (b) that applies to the matter to which the award or order relates.
- (2) Any such regulation may declare a policy by setting out the policy in the regulation or by adopting a policy set out in a relevant document referred to in the regulation.
- (3) An award or order of the Commission does not have effect to the extent that it is inconsistent with the obligation of the Commission under this section.
- (4) This section extends to appeals or references to the Full Bench of the Commission.
- ...
- (7) This section has effect despite section 10 or 146 or any other provision of this or any other Act.
- (8) ...

- 14 Clauses 5 and 6 of the Regulation also require consideration. So far as relevant they provide,

### **5 Paramount policies**

The following paramount policies are declared:

- (a) ...
- (b) Equal remuneration for men and women doing work of equal or comparable value.

### **6 Other policies**

(1) The following policies are also declared, *but are subject to compliance with the declared paramount policies*:

(a) Public sector employees may be awarded increases in remuneration or other conditions of employment, but only if employee-related costs in respect of those employees are not increased by more than 2.5% per annum as a result of the increases awarded together with any new or increased superannuation employment benefits provided (or to be provided) to or in respect of the employees since their remuneration or other conditions of employment were last determined.

(b) Increases in remuneration or other conditions of employment can be awarded even if employee-related costs are increased by more than 2.5% per annum, but only if sufficient employee-related cost savings have been achieved to fully offset the increased employee-related costs beyond 2.5% per annum. For this purpose:

(i) whether relevant savings have been achieved is to be determined by agreement of the relevant parties or, in the absence of agreement, by the Commission, and

(ii) increases may be awarded before the relevant savings have been achieved, but are not payable until they are achieved, and

(iii) the full savings are not required to be awarded as increases in remuneration or other conditions of employment.

(c) For the purposes of achieving employee-related cost savings, existing conditions of employment of the kind but in excess of the guaranteed minimum conditions of employment may only be reduced with the agreement of the relevant parties in the proceedings.

(d) Awards and orders are to resolve all issues the subject of the proceedings (and not reserve leave for a matter to be dealt with at a later time or allow extra claims to be made during the term of the award or order). However, this does not prevent variations made with the agreement of the relevant parties.

(e) Changes to remuneration or other conditions of employment may only operate on or after the date the relevant parties finally agreed to the change

(if the award or order is made or varied by consent) or the date of the Commission's decision (if the award or order is made or varied in arbitration proceedings).

(f) Policies regarding the management of excess public sector employees are not to be incorporated into industrial instruments.

(2) Subclause (1) (e) does not apply if the relevant parties otherwise agree or there are exceptional circumstances.

(Emphasis added)

- 15 The Equal Remuneration Principle is a declared "paramount policy" under cl 5 of the Regulation. Accordingly, it prevails over the policies declared at cl 6(1) and in particular the NSW Public Sector Wages Policy restricting increase in public sector wages to 2.5% per annum unless other equivalent cost savings can be demonstrated. Therefore, section 146C of the Act does not operate to prevent the Commission making the orders which give effect to the Equal Remuneration Principle.

#### **Application of the Equal Remuneration Principle to the SAS Staff**

- 16 The "Agreed Statement of Facts and Matters of Law" helpfully addresses the circumstances of the SAS Staff in the context of each of the criteria contained in the Equal Remuneration Principle. Principles 12.10, 12.11, 12.14, 12.15 and 12.16 do not require separate consideration in this matter.

*Clause 12.2 The assessment of the work, skill and responsibility required under this Principle is to be approached on a gender neutral basis and in the absence of assumptions based on gender.*

- 17 The Full Bench notes the evidence presented by the parties and accepts the proposed Statements of Duties adequately set out present work, skill and responsibilities with respect to each of the classifications in answer to clause 12.2 of the Equal Remuneration Principle.

- 18 The only work value assessment conducted by the Commission in respect of SAS Staff was undertaken in 1993, but not pursuant to the Equal Remuneration Principle or any equivalent. The evidence supports the conclusion that an assessment of the work, skill and responsibility of SAS

Staff is overdue. This is particularly so, given the historical context of the award referred to below.

- 19 A report of PricewaterhouseCoopers, jointly commissioned by the Applicant and First Respondent, delivered in 2001 (“the PwC Report”), reviewed School Assistants and Senior School Assistants. The reporters observed that “*the Statement of Duties for school assistants and senior school assistants has not been reviewed for some time, whilst over the same period the job of school assistants and senior school assistants has changed tremendously*” (p 35). We note that the PwC Report found that there had been changes to those roles including (but not limited to) increased expectations in terms of proficiency in the use of technology and performing financial management functions.
- 20 Further, a NSW Parliamentary Report in 2010 recognised the positive impact School Learning Support Officers (“SLSOs”) have on a student’s welfare and education, and the valued contribution they make to teachers in mainstream classes, recommending the need for a clear statement on the role and appropriate use of SLSOs. This recommendation was supported in a 2017 Parliamentary Report relating to the education of students with a disability or special needs in New South Wales.

*Clause 12.3 Where the under-valuation is sought to be demonstrated by reference to any comparator awards or classifications, the assessment is not to have regard to factors incorporated in the rates of such other awards which do not reflect the value of work, such as labour market attraction or retention rates or productivity factors.*

*Clause 12.4 The application of any formula, which is inconsistent with proper consideration of the value of the work performed, is inappropriate to the implementation of this Principle*

*Clause 12.7 In applying this Principle, the Commission will ensure that any alternative to wage relativities is based upon the work, skill and responsibility required, including the conditions under which the work is performed.*

- 21 The Applicant’s claims are not based on a comparator or wage relativities with respect to work, skill and responsibilities performed by other New South Wales employees under comparable conditions.

- 22 The parties have not sought to rely on any formula inconsistent with consideration of the value of the work performed.

*Clause 12.5 The assessment of wage rates and other conditions of employment under this Principle is to have regard to the history of the award concerned.*

- 23 The historical context of SAS Staff is important in understanding the present application and it is necessary to describe some aspects of it.
- 24 Until 1973, the precursor SAS Staff roles were expressly described as being limited to ‘adult female’ employees: See clause 2 of Agreement No. 958 of 1961, Agreement No. 1233 of 1964, and Agreement No. 1902 of 1972 between the Public Service Board of New South Wales (“PSB of NSW”) and the predecessor of the Applicant, the Public Service Association of New South Wales (“PSA of NSW”); and clause 1 of the Public Service Board Determination No. 242 of 1973 relating to Clerical Assistants in Schools. See also Agreement No. 1736 of 1971 and Agreement No. 1880 of 1972 between the PSB of NSW and PSA of NSW in respect of “science attendants in schools”.
- 25 The gender profile of the SAS Staff workforce has been taken into account in the regulation of their rates of pay. In making an award providing for stand-down pay during school vacations for ‘ancillary staff’ in schools in 1977 (including clerical assistants, teachers’ aides, teachers’ aides (special), science assistants, library clerical assistants, clerical aides in schools), Dey J observed in *Re Crown Employees (Ancillary Staff in Schools)* [1978] AR 158 at 160 and 166 respectively:

“Generally, the ancillary staff are women and in selecting persons from the register, preference was given to suitable persons who, by reason of their domestic situation, were regarded as having a special consideration on the basis of need.”

.....

“The employment of ancillary staff has a number of unusual features. By reason of past policy, the vast majority of the staff are women with family ties for many of whom it is convenient to be free during school vacations.”

- 26 Dey J's decision was upheld on appeal where the Industrial Commission in Court Session confirmed that:

"In the award hearing it was important for Dey J to know the history of the employment of ancillary staff in schools and the type and status of persons who, in the majority of cases, were employed in such positions and to give weight to those considerations": *Re Crown Employees (Ancillary Staff in Schools)* [1978] AR 158 at 174.

- 27 Furthermore the PwC Report in 2001 observed (p.49):

"...the majority of current school assistants and senior school assistants initially began working at their own children's school as volunteers, teachers' aides or school assistants. Generally, they have remained within the role when their children have left the school and have become full-time school assistants or senior school assistants. This accidental "career" progression does not allow the Department or schools to target or manage complementary experience."

- 28 The PwC Report made a number of recommendations broadly aimed at professionalising the roles, developing better professional development, career pathways for employees as well as improving the status of the relevant roles. These recommendations resulted in the renamed School Administrative Manager classification aligned to Public Sector clerical rates being incorporated into the SAS Staff Award made on 25 January 2005. From 1995 to date, increases to pay rates have been consistent with the whole public sector in New South Wales.

*Clause 12.6 Any change in wage relativities which may result from any adjustments under this Principle, not only within the award in question but also against external classifications to which the award structure is related, must occur in such a way as to ensure there is no likelihood of wage leapfrogging arising out of changes in relative positions.*

- 29 With the exception of the introduction of the Business Manager classifications and the alignment of the rates of pay of the SLSO (Pre-School) classification with the rates for all other SLSOs, the proposed new SAS Staff Award does not seek to alter internal relativities. The parties jointly submitted, and we agree, that the alignment of these rates reflects the proper value of the work, skill and responsibility of SLSOs in pre-schools, as recognised in the updated

Statement of Duties for the SLSO classification and the requirement for SLSO (Pre-School) employees to hold a Certificate III qualification.

- 30 The parties have also submitted, and we accept, that the effect of making the new award is unlikely to have any leapfrogging impact when compared to other relevant operational groups in the public service.

*12.8 Where the requirements of this principle have been satisfied, an assessment shall be made as to how the undervaluation should be addressed in money terms or by other changes in conditions of employment, such as reclassification of the work, establishment of new career paths or changes in incremental scales. Such assessments will reflect the wages and conditions of employment previously fixed for the work and the nature and extent of the undervaluation established.*

- 31 The solutions the parties have agreed upon to remedy the gender undervaluation go beyond simply increasing rates of pay and are articulated in the 'Expanded Terms for the Crown Employees (School Administrative and Support Staff) Award' ("the Expanded Terms") including a contemporary SAS Staff classification structure and new classification descriptors. Additionally, the 2019 SAS Staff Award provides for new classifications of Business Manager 1 and Business Manager 2 to commence in the final year of the award.

*12.9 Any changes made to the award as a result of this assessment may be phased in and any increase in wages may be absorbed in individual employees' overaward payments.*

- 32 The parties have agreed upon a method of implementing the changes which is both necessary and appropriate given the scale of these changes, including the implementation of the 11 % increase in the first year of the award with further increases over the term of the Award. The new Business Manager and SLSO (Student Health Support) roles will also be phased in.

12.13 *The Commission will guard against contrived classification and over classification of jobs. It will also consider:*

*(a) the state of the economy of New South Wales and the likely effect of its decision on the economy;*

*(b) the likely effect of its decision on the industry and/or the employers affected by the decision; and*

*(c) the likely effect of its decision on employment.*

33 The evidence in this matter demonstrates that the proposed classifications are appropriate and overdue for re-evaluation give the recent rapid change in the nature of the school environment within which the relevant staff work. The classifications are not contrived and there is no over classification of the roles.

34 There is evidence before the Commission in the affidavit of Sanjiv Midha, Deputy Secretary of the Policy and Budget Group, affirmed 19 July 2019 with respect to the state of the economy of New South Wales and some, albeit limited evidence with respect to the likely impact of the Amended Application upon the economy, the education sector and employment. We note that the affidavit was affirmed in anticipation of a contested arbitration in respect of the Amended Application.

35 The evidence of Mr Midha with respect to the Fiscal impact of the claim is that:

“[33] Any additional funding to meet an order made by the Commission will likely need to be found within the Department of Education’s (“the Department”) existing budget allocation, with potential consequences for education provision. There is presently no funding in the Department’s budget for this increase for SAS staff at 35% to take effect from March 2017. If the Department is unable to meet these costs within its existing budget, Government would need to consider further expense reductions or revenue increases. It is not possible to speculate as to precisely what or how the Government would respond, given the present state of the proceedings. Subject to the choices taken by Government, there could be impacts on service delivery and/or the economy.”

36 The evidence of Mr Midha’s affidavit leads to a conclusion that the overall fiscal position of the State of the New South Wales is strong, with the major



credit rating agencies affirming the State's triple A credit rating in September 2018 and the Government projecting a budget surplus of \$802 million in financial year 2018/19 and average surpluses of \$1.7 billion per year projected across the four years to financial year 2022/2023: see paragraph 22 of the affidavit of Mr Midha affirmed 19 July 2019.

- 37 Although Mr Midha's affidavit notes that pay outcomes are pivotal to achieving the State's fiscal strategy as employee-related expenses account for around half of all expenses, and while the considerable costs to the State associated with the proposed amendments should not be dismissed, there is no evidence to suggest that the changes consented to by the parties are significant enough to materially impact upon the State's financial objectives.
- 38 Further, we observe that the Department has made no submission to the effect that the increases provided for by 2019 SAS Staff Award will result in a reduction in educational services provided to the children of New South Wales or to employment within the sector. Rather, the evidence of Mr Midha suggests that the relative budget allocation to the Department to fund the increases is a matter for Government.
- 39 In the circumstances, we can see no reason to deny the parties the amendments sought on account of Principle 12.13.

## **Conclusion**

- 40 In summary, having taken into account the totality of the requirements of the Act, the Equal Remuneration Principle and the evidence and submissions of the parties, we find that it is appropriate to make the 2019 SAS Staff Award. We note that the industrial parties are sophisticated and experienced industrial players and we have given weight to the agreement that has been reached by them in the proceedings in making our decision.

## **Other observations**

- 41 Since the inception of the Equal Remuneration Principle, all major cases have been brought by way of application by Unions. Cases such as this are extremely resource and time intensive and this raises the question of whether it is appropriate that Unions, funded by a declining member base, are able to bring all such cases at the rate they need to be to effect the reforms the Principles were intended to deliver. A question arises as to whether there might be a need for legislative and/or bureaucratic solutions to ensure that all Pay Equity Cases that should be, are brought before the Commission.
- 42 It is worth noting the extensive efforts of all parties to the proceedings in preparing for a four week hearing before the Full Bench of the Commission. Between 28 June 2019 and 30 August 2019, the parties engaged in efforts to resolve the matter by conciliation facilitated by the Commission. Their approach is best described as responsible, diligent, cooperative and constructive.
- 43 By reaching an agreement, the parties avoided the need to call over 40 witnesses to give evidence and the Commission was able to receive the evidence in the proceeding and hear submissions in less than a day, vacating the remaining 19 days for which the matter was listed. The efficiencies gained through the successful conciliation of the matter are significant.

## **Orders**

- 44 For the reasons summarised at [40] on 13 September 2019 we made the following orders:
- (1) The Full Bench:
- (a) By consent, makes the Crown Employees (School Administrative and Support Staff) Award 2019 in terms of exhibit 1.

- (b) Directs the applicant to file within seven days a revised form of the minutes of the Award addressing the issue of tracked changes remaining in the form of the Award proposed.
  - (c) Delegates to Commissioner Murphy the powers of the Full Bench to resolve any issues arising on settlement of the minutes.
  - (d) Directs the applicant to file within 28 days an application to vary the Crown Employees (Public Sector Salaries) Award to remove references to School Administrative and Support Staff.
  - (e) Grant liberty to apply in the event three times in order 1(d) proves inadequate.
- (2) The Full Bench notes that the proposed Award rescinds the Crown Employees (School Administrative and Support Staff) Award.

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