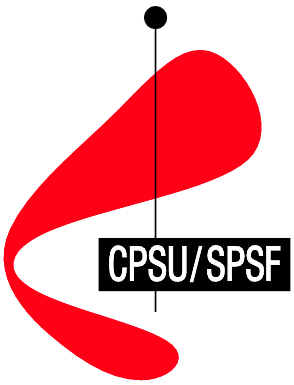

CPSU, PSANSW and ACTU Complaint to the Committee on Freedom of Association of the International Labour Organisation concerning the actions of the State Government of New South Wales

Filed with the Committee on Wednesday 4 March 2015 by Karen Batt, Joint National Secretary, CPSU, the Community and Public Sector Union on behalf of the CPSU, the PSANSW, and the ACTU

Contact Details:

Karen Batt, Joint National Secretary, CPSU
e- mail: kbatt@cpsuvic.org
Postal Address: Post Office Box 4355, Richmond East VICTORIA, AUSTRALIA 3121
Phone: +613 9639 1822

Table of Contents

Chapter 1. **INTRODUCTION – THE COMPLAINT AND THE COMPLAINANTS**

1.1. Summary of the Complaint

1. Australia is a federation composed of six sovereign States and two federal territories. Each of the sovereign States has their own legislatures with a capacity to make laws with respect to labour relations.

2. The vast majority of the public sector employees of the States of New South Wales are employed under laws passed by their respective sovereign parliaments.

3. NSW government have enacted legislation which limits free collective bargaining on wages and other matters for State public sector workers.

4. In 2011 the State of New South Wales passed the *Industrial Relations Amendment (Public Sector Conditions of Employment) Act 2011* which through subordinated legislation places an effective cap on a series of nominated terms and conditions including wages.

5. The Complainant alleges this legislation does not comply with the principles of freedom of association and collective bargaining laid down in the conventions.

1.2. The Complainants - CPSU the PSANSW, and the ACTU

1.2.1. CPSU

6. CPSU, the Community and Public Sector Union ("CPSU") is registered under the Federal Fair Work Act 2009 and is the largest Union representing State and Federal system public sector employees in Australia.

7. CPSU is composed of two groups; the SPSF Group which represents State public sector workers ("the SPSF") and the PSU Group which represents Federal and Territory public sector workers ("PSU"). This Complaint is made on behalf of the entire membership of the CPSU including our members in each of the States and the Territories.

8. The SPSF Group of the CPSU represents the industrial interests of approximately 90,000 employees of State Governments in departments, agencies, statutory authorities, instrumentalities and State owned corporations, as well as general staff employees of universities.

9. The SPSF Group within the CPSU is a federation of relatively autonomous State Branches. Those Branches mirror organisations which are registered under relevant State industrial legislation.

10. The NSW Branch has a state counterpart, the Public Service Association and Professional Officers Association Amalgamated (PSANSW).

1.2.2. The PSANSW

11. The Public Service Association of NSW (PSANSW) is a registered union under the *Industrial Relations Act 1996*(NSW) and the *Fair Work Act 2009*(Federal).

12. The PSANSW represents members employed in the New South Wales public sector, including government departments, schools, prisons, statutory authorities, state owned corporations, TAFE NSW and universities. The union represents approximately 40,000 members spread over 4,000 worksites.

1.2.3. The Australian Council of Trade Unions

13. The ACTU is the peak body for Australian Unions, made up of 46 affiliated unions. We represent almost 2 million working Australians and their families.

14. Unions are active every day campaigning in workplaces and communities around Australia for better job security, pay and conditions, rights at work, healthier and safer workplaces, and a fairer and more equal society.

15. Since it was formed in 1927, the ACTU has spearheaded some of the most significant social, economic and industrial achievements in Australia's history, including decades of wage increases, safer workplaces, greater equality for women, improvements in working hours, entitlements to paid holidays and better employment conditions, the establishment of a universal superannuation system, the social security system, Medicare and universal access to education.

Chapter 2. THE MANDATE OF THE COMMITTEE AND THE APPLICATION OF THE FREEDOM OF ASSOCIATION CONVENTIONS TO STATE PUBLIC SERVANTS IN AUSTRALIA

2.1. The mandate of the Committee

16. The Committee on Freedom of Association and its mandate is established by the *Special procedures for the examination in the International Labour Organization of complaints alleging violations of freedom of association - Annex 1*[1] (the "Special Procedure").

17. The mandate of the Committee consists of determining whether any given legislation or practice complies with the principles of freedom of association and collective bargaining laid down in the conventions. [2]

18. Complaints lodged with the Committee can be submitted whether or not the country concerned has ratified the freedom of association conventions...[3]

2.2. Application of freedom of association conventions to public service employees in Australia

2.2.1. Convention 87

19. On 28 February 1973 Australia ratified the *Freedom of Association and Right to Organise Convention* which states at:

"Article 3: Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes, and;

The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof."

---

[1] See " Special procedure" at the ILO website http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:62:2196348540235241::NO:62:P62_LIST_ENTRIE_ID:2565060:NO

[22] Ibid Article 14

[3] *Freedom of Association – Digest of Decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO* (Fifth Revised Edition, ILO Geneva, 2006) at p 8 paragraph 5 (from hereon referred to as the "FOA Digest")

2.2.2. **Convention 98**

20. On that same date Australia ratified the *Right to Organise and Collective Bargaining Convention 98.* Article 4 and Article 6 of that instrument provide:

> "**Article 4:** Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements"; and
>
> "**Article 6:** This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way".

2.2.3. **Convention 154**

21. *Collective Bargaining Convention 154* provides at:

> **"Article 5**: Measures adapted to national conditions shall be taken to promote collective bargaining"
>
> **Article 7** "Measures taken by public authorities to encourage and promote the development of collective bargaining shall be the subject of prior consultation and, whenever possible, agreement between public authorities and employers' and workers' organisations."
>
> **Article 8** "The measures taken with a view to promoting collective bargaining shall not be so conceived or applied as to hamper the freedom of collective bargaining."
>
> Australia has not ratified Convention 154.

2.2.4. **Convention 151**

22. *Labour Relations (Public Service) Convention 151* provides at:

> **Article 7 "**Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for negotiation of terms and conditions of employment between the public authorities concerned and public employees' organisations, or of such other methods as will allow representatives of public employees to participate in the determination of these matters."

Australia has not ratified convention 151.

This Complaint and the mandate of the Committee

2.2.5. The status of the Conventions in Australia

23. Australia has ratified the *Freedom of Association Convention 87* which applies public servants in Australia.

24. Australia has ratified the *Right to Organise and Collective Bargaining Convention 98.* This Convention does not "deal with the position of public servants engaged in the administration of the State".

25. Australia has not ratified either the Collective Bargaining Convention 154 or the Labour Relations (Public Service) Convention 151.

The exclusion from the Convention 98

26. Previous considerations by the Committee in relation to Article 6 of convention 98 have exercised a cautious approach when adjudicating the scope of its application.

27. The State of the NSW Public Sector Report 2014 indicates that of the 328,113 full-time equivalent (FTE) employees employed in the NSW Public Sector, 38,263 are employed within 'Departments'.

28. Without conceding the exclusion of this group in its entirety, it is consistent with the expressed operation of the article 6 by the Committee that this figure would contain a portion considered to be civil servants involved in the 'administration of the state.'[4]

29. Large groups of employees represented by the PSANSW who fall outside of this definition, include 25,506 FTE employees in autonomous public service executive and separate agencies, 30,205 employees classified as engaged in 'other services of the crown' which include Public School Support Staff, TAFE NSW employees and the Office of Transport Safety Investigations and 19,267 FTE employees of State Owned Corporations.[5]

30. The Committee has previously found State employed prison officers, customs officials and teachers cannot be denied a right to organise under Convention 98.[6]

[4] FOA Digest (1996) pg217 Para 74
[5] The State of the NSW Public Sector Report 2014 pg11,
The Public Service Commission, Workforce Profile Report 2014
[6] FOA Digest p49 at pares 232, 233 and 235

2.2.6. Position of the CPSU and PSANSW in regards to the relevant conventions and the mandate of the Committee

31. The NSW government has constructed legislation in a manner that both restricts Freedom of Association and impedes free collective bargaining. Specific, breaches are viewed in relation to:

31.1. Convention 87, Article 3 with respect to legislative barriers erected to prevent employees from freely formulating and pursuing a programme of collective bargaining;

31.2. Convention 98, Article 4 with respect to legislative barriers erected to circumvent voluntary negotiations pertaining to the employment conditions of workers not-excluded by the terms of Article 6;

31.3. Convention 98, Article 4 with respect to the intervention of the Government in the collective bargaining of state owned corporations.

31.4. Convention 154, Article 7 with respect to legislation pertaining to collective bargaining, and restriction placed upon it, enacted without prior consultation or agreement with workers organisations.

31.5. Convention 154, Article 8 with respect to legislation enacted to hamper collective bargaining;

31.6. Convention 151, Article 7 with respect to legislation enacted to limit to scope and outcomes of negotiations for conditions of employment for public employees.

32. It is within the mandate of the Committee to make these findings against the NSW State Government in relation to these conventions including those that Australia has not ratified.

Chapter 3. NEW SOUTH WALES – THE *INDUSTRIAL RELATIONS AMENDMENT (PUBLIC SECTOR CONDITIONS OF EMPLOYMENT) ACT 2011* AND ITS IMPLEMENTATION

3.1. Size and composition of the NSW public sector

33. The New South Wales (NSW) public sector is the largest employer in Australia, employing approximately 11% of the total NSW workforce.[7]

34. As of the completion of the 2012-13 financial year, the NSW public sector employed 399,243 employees by head count.[8]

35. The NSW public sector made up 12.8% of the NSW economy in 2011-2012[9]. Total NSW general government transaction expenses were $64.5 billion in 2013/14 of which employee related costs accounted for 48%.[10]

36. Over 60% of public sector workers are engaged in the health (31.75%) and education sectors (30.49%). Other major services include transport, police and justice and community and social services.[11]

37. 62.5% of the public sector work force is located in the Sydney Metropolitan region with the remaining share distributed across regional areas.[12]

3.2. The current state of the NSW economy and the fiscal position of the State of NSW

38. The finances of the State of New South Wales are extremely sound. Figures from the 2014/15 NSW budget show the trajectory of State's operating result for the General Government Sector to be a small surplus ($988 Million) in 2013/14, a minor deficit in 2014/15 (-$283 Million), before a return to surplus in 2015/16 ($660 Million) through to 2017/18 ($1.66 Billion). At the time of writing, the result for the 2013/14 financial year has been revised upwards by the NSW Treasury to show a surplus of $1.2 billion as a result of higher than expected tax collections and changes to the size and timing of federal government grants.[13]

---

[7] New South Wales Public Service Commission (2013), Getting into Shape: State of the NSW Public Sector Report 2013, pg. 7
[8] Ibid
[9] Ibid
[10] NSW Budget 2014-15, Budget Paper No. 2, Section 4-7
[11] New South Wales Public Service Commission (2013), Getting into Shape: State of the NSW Public Sector Report 2013, pg. 8
[12] Ibid, pg. 9
[13] Report on Stat http://www.treasury.nsw.gov.au/__data/assets/pdf_file/0020/125183/2013-14_NSW_Report_on_State_Finances_dnd.pdf

39. In the decade since 2003/04, NSW has achieved a surplus operating result in seven out of ten years, with the most substantial deficit of $1.27 billion occurring amidst the global financial crises in 2008/09. [14]

40. The ratio of net total state sector debt to gross state product is low and stable, currently sitting at 8.26% and is estimated to oscillate around this figure by small margins before falling to 8.24% in 2017-18.[15]

41. In recognition of the State's long term financial stability, major credit ratings agencies Moody's[16] and Standard and Poor's[17] both assign NSW a triple-A credit rating - a rating it has held continuous since 1987.[18]

42. As of July 2014 the NSW unemployment rate was 5.9% (seasonally adjusted) comparing favourably to a National rate of 6.4%. In July 2011 the NSW unemployment rate was 5.2% compared to a National rate of 5.1%.[19]

43. NSW currently has the strongest growth figures in Australia with state final demand growth for 2013/14 of 3.6% (seasonally adjusted) far outpacing the aggregate domestic demand growth of 1.4%.[20]

44. These economic results occur within a stable inflationary environment, with prices rising in Sydney by 2.8% in 2013/14 compared to a weighted capital city average of 3.0%. Since 2010/11 these two price levels moved within ranges of 2.5 – 3.0% and 2.3 – 3.1% respectively.[21]

---

[14] NSW Budget 2014-15, Budget Paper No. 2, Section 4-7
[15] NSW Budget 2014-15, Budget Paper No. 2, Section 1-19
[16] http://www.treasury.nsw.gov.au/__data/assets/pdf_file/0006/124395/Moodys_-_NSW_2014-15_Budget_projections_of_medium_term_improvement_is_credit_positive.pdf

[17] http://www.treasury.nsw.gov.au/__data/assets/pdf_file/0007/124396/S_and_P_-_Bulletin_Ratings_On_Australian_State_Of_New_South_Wales_Not_Immediately_Affected_By_Fiscal_2015_Budget.pdf

[18] http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0009/84645/2008.09.26_Treasury_-_NSW_committed_to_maintaining_AAA_credit_rating_-_Standard_and_Poors.pdf

[19] http://www.ausstats.abs.gov.au/ausstats/meisubs.nsf/0/E90D34FDE03092E5CA257D2C001244E7/$File/62020_jul%202014.pdf

[20] http://www.ausstats.abs.gov.au/ausstats/meisubs.nsf/0/4D57FAE7569ECB7FCA257D4700123D88/$File/52060_jun%202014.pdf

[21] http://www.ausstats.abs.gov.au/ausstats/meisubs.nsf/0/3099F3DDB5C5486ECA257D1D0014281A/$File/64010_jun%202014.pdf

3.3. The Collective Bargaining Framework in NSW

45. The State of New South Wales has the legislative capacity to make and amend employment law pertaining to employers and employees within the state, including the framework for collective bargaining.

46. The trend over the last decade has been for States to relinquish their powers in relation to employment law (by either compulsion or consent), and for laws set by the Federal Government to prevail.

47. In 2005 all employers (and their employees) trading as constitutional corporations where compulsorily transferred to the federal system of employment law under the *Workplace Relations Act 1996* (Federal).

48. In 2010 the New South Wales Government transferred non-constitutional employers (and their employees) to the federal system to be covered by the *Fair Work Act 2007* (which replaced the *Workplace Relations Act 1996*).

49. The outcome of this federalisation of employment law is a bifurcated system in New South Wales. State law in the main only applies to employees of the State Government. Federal law applies to private sector employers (including corporations owned by the state) and their employees.

50. The two systems have different collective bargaining frameworks.

51. The federal system is intended to facilitate collective bargaining at the enterprise level. The role of the federal arbitral body, the Fair Work Commission, is to provide a conciliation and arbitration function only when negotiations at the enterprise level have demonstrably failed, regulate any conduct pertaining to industrial action, and to ratify contracts (known as agreements) once they have been completed and approved (by ballot of employees) at the enterprise level.

52. The collective bargaining system in the New South Wales jurisdiction places greater emphasis on the role of the arbitral body, the New South Wales Industrial Relations Commission, in the striking of contracts (known as Awards).

53. Formally, the making of all Awards in New South Wales is initiated by either an employer or union party making an application to the Commission to make or vary an Award.

54. In practice, extensive negotiations often occur between the parties prior to any application to the Commission being made. Where these negotiations result in a consent position being reached, the function of the Commission is largely to ratify an agreed Award.

55. Where dissent between the parties exists upon a formal Award application to the Commission being made, the Commission takes an active role in conciliation and, where this fails, undertakes compulsory arbitration.

56. Compared to federal laws, the New South Wales system presents a lower barrier to the use of compulsory arbitration to resolve collective bargaining disputes and subsequently, the State Commission more frequently performs a role as a third party to negotiations.

3.4. The NSW Government and Fiscal Policy in NSW

57. On 26 March 2011 a conservative coalition government, comprised of the Liberal and National Parties, was elected in New South Wales with a large majority in the lower house.

58. Upon election of the coalition, the Hon. Barry O'Farrell, leader of the dominate Liberal Party within the coalition, became Premier.

59. In April 2014, following revelations he had mislead a corruption inquiry, Mr O'Farrell resigned as premier and was succeeded by the Hon. Mike Baird, also of the Liberal Party.

60. A fiscal policy has been applied throughout the Coalition Government's term targeted at funding infrastructure spending through asset sales and the reduction of borrowing risk created by reduced growth in recurrent expenditure.[22]

61. The public sector has borne the brunt of this fiscal policy with over $21.5 billion estimated to be cut from employee and program spending from 2011/12 to the end of the current forward estimates period in 2017/18.[23]

3.5. Constraints on Collective Bargaining under the Coalition Government in NSW

62. Industrial relations policy has been a principal tool in giving effect to the government's fiscal policy.

63. The policy explicitly seeks to impose restrictions on the ability of unions to collectively bargain and the outcomes which they can achieve, through a series of interrelated of legislation and subordinate regulation and policy.

64. The principle items pertinent to this complaint are:

64.1. *Industrial Relations Act 1996*

64.2. *Industrial Relations Amendment (Public Sector Conditions of Employment) Act 2011*

64.3. *Industrial Relations Amendment (Public Sector Conditions of Employment) Regulation 2011*

64.4. *The Public Sector Employment and Management Amendment Bill 2012*

---

[22] NSW Budget 2014-15, Budget Paper No. 2, Section 1-7
[23] NSW Budget 2014-15, Budget Paper No. 2, Section 5-10

64.5. *State Revenue and Other Legislation Amendment (Budget Measures) Act 2014*

64.6. *The Government Sector Employment Act 2013*

64.7. NSW Public Sector Wages Policy 2011

64.8. Managing Excess Employees Policy

65. The combined effect of these items is to legislatively prohibit unions from achieving pay increases above those set by Government policy, to prescribe the manner in which all Awards are to be determined, and to the limit the matters upon which Awards can bestow enforceable entitlements upon employees.

3.5.1. Industrial Relations Amendment (Public Sector Conditions of Employment) Act 2011

66. The Amendment Act became law on 17 June 2011. On the day of its assent subordinate legislation was passed under that Act by the making of the Industrial *Relations (Public Sector Conditions of Employment) Regulation 2011*.

67. The PSANSW challenged the constitutional validity of the legislative provisions. The central provision of the proceedings[24] was s 146C (1) of the Act. The High Court found the legislation to be constitutionally valid.

68. The key provision of the legislative change is Section 146C:

> **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. (emphasis added)**
>
> (4) This section extends to appeals or references to the Full Bench of the Commission.
>
> (5) This section does not apply to the Commission in Court Session.

[24] *The Public Service Association and Professional Officers' Association Amalgamated of NSW v Director of Public Employment & Ors* [2012] HCA 58

(6) This section extends to proceedings that are pending in the Commission on the commencement of this section. A regulation made under this section extends to proceedings that are pending in the Commission on the commencement of the regulation, unless the regulation otherwise provides.

(7) This section has effect despite section 10 or 146 or any other provision of this or any other Act.

(8) In this section:

award or order includes:

(a) an award (as defined in the Dictionary) or an exemption from an award, and

(b) a decision to approve an enterprise agreement under Part 2 of Chapter 2, and

(c) the adoption under section 50 of the principles or provisions of a National decision or the making of a State decision under section 51, and

(d) anything done in arbitration proceedings or proceedings for a dispute order under Chapter 3.

conditions of employment—see Dictionary.

public sector employee means a person who is employed in any capacity in:

(a) the Government Service, the Teaching Service, the NSW Police Force, the NSW Health Service, the service of Parliament or any other service of the Crown, or

(b) the service of any body (other than a council or other local authority) that is constituted by an Act and that is prescribed by the regulations for the purposes of this section.

3.5.1.1. What 146C means

69. Section 146C(1) removes all discretion held by the NSW Industrial Commission to consider any subject matter which is dealt with in a Government Policy that has been declared by the regulations. It mandates that "the Commission must… give effect to any policy on conditions of employment of public sector employees".

70. The broad scope of the power to set policy on any aspect of the conditions of employment means that there is no capacity for the PSANSW to enter into any type of binding agreement or Award with the Government in relation to matters determined by declared government policies.

71. The Government has conferred on itself the capacity to unilaterally determine which conditions can be dealt with through either bargaining or arbitration.

72. Section 146C(2) provides the minister with wide ranging authority to expand the scope of the current arrangements by two mechanisms:

72.1. allowing the constraints on the Commission to be set out in a regulation; and

72.2. by enabling a limitation to a term and condition by reference to this regulation in a government policy

73. Section 146C(3) gives any regulation setting out a policy the power to over ride and render inoperative provisions of an Award or Order that is inconsistent with the terms of that regulation or policy.

74. In Section 146C (7) provides that "this section has effect despite section 10 or 146 or any other provision of this or any other Act. Section 10 provides that "the Commission may make an award in accordance with this Act setting fair and reasonable conditions of employment for employees." Section 146 sets out the general functions of the Commission:

> **146 General functions of Commission**
>
> (1) The Commission has the following functions:
>
> (a) setting remuneration and other conditions of employment,
>
> (b) resolving industrial disputes,
>
> (c) hearing and determining other industrial matters,
>
> (d) inquiring into, and reporting on, any industrial or other matter referred to it by the Minister,
>
> (e) functions conferred on it by this or any other Act or law.
>
> (2) The Commission must take into account the public interest in the exercise of its functions and, for that purpose, must have regard to:
>
> This subsection does not apply to proceedings before the Commission in Court Session that are criminal proceedings or that it determines are not appropriate.
>
> (a) the objects of this Act, and
>
> (b) the state of the economy of New South Wales and the likely effect of its decisions on that economy.

75. Section 146(2) requires the Commission to take into account the "public interest" and the objects of the Act.

76. The Objects of the Act are set out in Section 3:

> **3 Objects**
>
> The objects of this Act are as follows:
>
> (a) to provide a framework for the conduct of industrial relations that is fair and just,
>
> (b) to promote efficiency and productivity in the economy of the State,
>
> (c) to promote participation in industrial relations by employees and employers at an enterprise or workplace level,
>
> (d) to encourage participation in industrial relations by representative bodies of employees and employers and to encourage the responsible management and democratic control of those bodies,

(e) to facilitate appropriate regulation of employment through awards, enterprise agreements and other industrial instruments,

(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) to provide for the resolution of industrial disputes by conciliation and, if necessary, by arbitration in a prompt and fair manner and with a minimum of legal technicality,

(h) to encourage and facilitate co-operative workplace reform and equitable, innovative and productive workplace relations.

77. The objectives that require the Commission to take into account the need to provide "a framework for the conduct of industrial relations that is fair and just" or to promote "efficiency and productivity in the economy of the State" or to "encourage and facilitate co-operative workplace reform and equitable, innovative and productive workplace relations" are all subordinate to the requirement to give effect to Government policy.

78. The clear intention of the legislative amendments is for Government policy to prevail even when it is not fair or just or even when it is contrary to the public interest.

3.5.2. Industrial Relations (Public Sector Conditions of Employment) Regulation 2011

79. The Government used the regulatory power conferred by the Industrial Relations Amendment (Public Sector Conditions of Employment) Act 2011 to issue the Industrial *Relation (Public Sector Conditions of Employment) Regulation 2011* (the 2011 Regulation) on the same day the legislation became law.

80. The key elements of the regulation are as follows:

4 Declarations under section 146C

The matters set out in this Regulation are declared, for the purposes of section 146C of the Act, to be aspects of government policy that are to be given effect to by the Industrial Relations Commission when making or varying awards or orders.

5 Paramount policies

The following paramount policies are declared:

(a) Public sector employees are entitled to the guaranteed minimum conditions of employment (being the conditions set out in clause 7).
(b) Equal remuneration for men and women doing work of equal or comparable value.

Note. Clause 6 (1) (c) provides that existing conditions of employment in excess of the guaranteed minimum conditions may only be reduced for the purposes of achieving employee-related cost savings with the agreement of the relevant parties.

Clause 9 (1) (e) provides that conditions of employment cannot be reduced below the guaranteed minimum conditions of employment for the purposes of achieving employee-related cost savings.

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 that do not increase employee-related costs by more than 2.5% per annum.

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

(3) The ***relevant parties*** in relation to a matter requiring agreement under this clause are the employer and any other party to the proceedings that is an industrial organisation of employees with one or more members whose interests are directly affected by the matter.

7 The guaranteed minimum conditions of employment

(1) For the purposes of this Regulation, the ***guaranteed minimum conditions of employment*** are as follows:

(a) Unpaid parental leave that is the same as that provided by the National Employment Standards.

(b) Paid parental leave that applies to the relevant group of public sector employees on the commencement of this clause.

(c) Employer payments to employee superannuation schemes or funds (being the minimum amount prescribed under the relevant law of the Commonwealth).

(2) The ***guaranteed minimum conditions of employment*** also include the following:

(a) Long service or extended leave (being the minimum leave prescribed under Schedules 3 and 3A of the *Public Sector Employment and Management Act 2002* or the *Long Service Leave Act 1955*, whichever Act is applicable to the employment concerned).

(b) Annual leave (being the minimum leave prescribed under the *Annual Holidays Act 1944*).

(c) Sick leave entitlements under section 26 of the Act.

(d) Public holiday entitlements under the *Public Holidays Act 2010*.

(e) Part-time work entitlements under Part 5 of Chapter 2 of the Act.

8 Meaning of employee-related costs

For the purposes of this Regulation, ***employee-related costs*** are the costs to the employer of the employment of public sector employees, being costs related to the salary, wages, allowances and other remuneration payable to the employees and the superannuation and other personal employment benefits payable to or in respect of the employees.

9 Meaning of employee-related cost savings

(1) For the purposes of this Regulation, ***employee-related cost savings*** are savings:

(a) that are identified in the award or order of the Commission that relies on those savings, and

(b) that involve a significant contribution from public sector employees and generally involve direct changes to a relevant industrial instrument, work practices or other conditions of employment, and

(c) that are not existing savings (as defined in subclause (2)), and

(d) that are additional to whole of Government savings measures (such as efficiency dividends), and

(e) that are not achieved by a reduction in guaranteed minimum conditions of employment below the minimum level.

(2) Savings are ***existing savings*** if they are identified in a relevant industrial instrument made before the commencement of this Regulation (or in an agreement contemplated by such an industrial instrument) and are relied on by that industrial instrument, whether or not the savings have been achieved and whether or not they were or are achieved during the term of that industrial instrument.

3.5.3. Legislative Constraint on Wage Outcomes of Collective Bargaining

81. The key feature of the regulation is the limiting of increases in remuneration or other conditions of employment to 2.5% per annum.

82. Under these laws the New South Wales Government can dictate the remuneration and conditions of employment without its employees having any means to either fairly bargain or to seek the intervention of an independent arbitrator.

83. The current rate of 2.5% is struck on the basis that it reflects the mid-point of the Reserve Bank of Australia's inflation target. Implicitly the Government assumes that the RBA will use its monetary policy lever to retain prices within the target band, such that in the long-run public sector pay levels will retain their real value.

84. There is nothing to prevent the regulation from being amended to a rate below 2.5%. Similarly there is no compensation envisaged in the event the price level exceeds 2.5%. There is the evident risk the cap will operate to reduce the real wages of public sector employees over time.

85. The legislation allows increases above the 2.5% cap but in very limited circumstances. Any such increase is contingent on the identification of employee related cost savings that fully offset the increase in employee costs. This effectively means wage rises above the cap can only be achieved by the cashing out of existing conditions.

86. Clause 6(1) (b) constrains the timing of the awarding and payment of increases in excess of the 2.5% cap. It also enables employees to be short changed where the full value of savings achieved need not be passed on to employees as a remuneration increase.

87. Clause 6(1) (d) requires all matters the subject of proceedings to be resolved and prevents further claims to be made during the term of the Award.

88. Clause 6(1) (e) constrains the capacity of the NSW Commission to order back dating of payment.

89. The strictures imposed by the Act and Regulations led to the PSA accepting salary increases of 2.5% on behalf of public sector workers in 2011[25] and 2012.[26]

3.5.4. Further Regulatory Amendments

90. In March 2012 the Federal Government passed legislation to increase the mandatory employer contribution rate to an employees' superannuation fund (pension account). The Act set out a

---

[25] http://www.lawlink.nsw.gov.au/irc/ircgazette.nsf/(PublicationsByTitle)/8CE1A79BA20872E8CA25796D0024CD52?OpenDocument

[26] http://www.lawlink.nsw.gov.au/irc/ircgazette.nsf/webviewdate/C8058?OpenDocument

series of incremental increases from the then rate of 9% through to 12% commencing 1 July 2013, completing 1 July 2019.[27]

91. This Act applies all employers in Australia including State Governments.

92. On 1 May 2013, the NSW Government announced its intention to absorb the first incremental increase of 0.25%, and all increases thereafter, into the 2.5% wages cap.

93. The PSA opposed the enforceability of this position within the terms of the regulation as it was then constructed.

94. On 17 June 2013 in *Re Crown Employees Wages Staff (Rates of Pay) Award 2011 & Ors (No 1)* [2013] NSWIRComm 53, the Full Bench of the Commission ruled in favour of the PSA, deciding that increases of up to 2.5% were available to employees as the remuneration cap pertained only to costs awarded by the Commission itself, and not to employee related costs compelled by Commonwealth Government legislation.

95. An interim increase of 2.27% was awarded whilst the Government sought further legal mechanisms to circumvent the decision.

96. The Government twice amended *the Regulations* to specify the inclusion of increases to the superannuation guarantee within the wages cap. On both occasions these amendments were disallowed by a vote in the upper house of New South Wales Parliament, with such votes occurring on 21 August 2013[28] and 5 March 2014.[29]

97. On 6 May 2014 in *Secretary of The Treasury v Public Service Association & Professional Officers' Association Amalgamated Union of NSW* [2014] NSWCA 138, the Court of Appeal in the Supreme Court of New South Wales upheld the Governments appeal of the Commission's June decision and ordered the subsequent direction issued by the Commission on 17 December 2013, that the full 2.5% be paid, to be quashed.

98. On 17 June 2014, the State Revenue and Other Legislation Amendment (Budget Measures) Act 2014 was passed by both houses our parliament under the pretext of a Budget supply bill.

99. Schedule 5, Part 5.2 Clause 6 of this Act contains the regulatory amendments previously disallowed by the upper house pertaining to superannuation;

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

[27] http://www.comlaw.gov.au/Details/C2012A00022
[28] http://www.parliament.nsw.gov.au/prod/parlment/hansart.nsf/V3Key/LC20130821015
[29] http://www.parliament.nsw.gov.au/prod/parlment/hansart.nsf/V3Key/LC20140305013

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.

(3) The ***relevant parties*** in relation to a matter requiring agreement under this clause are the employer and any other party to the proceedings that is an industrial organisation of employees with one or more members whose interests are directly affected by the matter.

(4) In subclause (1) (a), ***new or increased superannuation employment benefits*** means any new or increased payments by an employer to a superannuation scheme or fund of an employee as a consequence of amendments to the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth or the *State Authorities Non-contributory Superannuation Act 1987*.

3.6. Diminution of Entitlements Pertaining to Employees Made Redundant

100. On 22 June 2011 the Coalition Government announced a new policy in relation to management of excess employees (Memorandum M2011-11).[30]

101. The 2011 policy contains a number of features that constitute a significant departure from the earlier policies regarding the management of displaced employees. The features of the 2011 policy include:

> (1) The policy removes reference to redeployment being the principal means of managing excess employees.
>
> (2) An employee is to be declared excess by their agency immediately they no longer have a substantive position and must, upon being declared excess, be given two weeks to choose between accepting an offer of voluntary redundancy or pursuing redeployment (clause 4.1).
>
> (3) An excess employee must be made one (and one only) offer of voluntary redundancy with the voluntary redundancy package comprising 4 weeks' (or 5 weeks') notice, severance payment of 3 weeks per year of service up to a maximum of 39 weeks and an additional payment of up to 8 weeks' pay (clause 5). No provision is made for job assist payments or job search leave.
>
> (4) Excess employees who decline the voluntary redundancy offer are entitled to a three months' retention period during which they may be placed in any suitable position without advertising and are to be provided with priority access to redeployment opportunities. Redeployment means permanent placement in a funded position (clause 6).
>
> (5) An excess employee who accepts a temporary secondment or assignment during the retention period will continue to be employed for the remaining period of the secondment or assignment (clause 6.2.1). Access to priority assessment or direct placement without advertising will only apply during the retention period.
>
> (6) If an excess employee is placed in a position at a lower grade, they are to be entitled to salary maintenance at their former grade for a period of three calendar months (clause 6.4).
>
> (7) If an excess employee is not redeployed at the end of the three months' retention period, they will be forcibly retrenched. The severance payment upon forcible retrenchment is the statutory minimum payment under the Employment Protection Regulation 2001 plus 4 weeks' (or 5 weeks') salary in lieu of notice (clause 7).

102. The PSA challenged this policy in the Industrial Court.[31]

---

[30] Excess Employee policy

[31] *Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales v Director of Public Employment* [2011] NSWIRComm 152

103. The PSA case sought declaratory relief in relation to contracts of employment of public sector employees who had been declared excess, to determine:

- Whether government policies relating to the management of excess employees formed part of the contracts of public sector employees who had been declared excess; and
- Whether the services of any of the employees may only be lawfully dispensed with in accordance with s 56 of the *PSEM* Act.

104. The PSA sought orders declaring that the contract of employment, employment and collateral arrangements and/or related conditions between employers and employees in the public sector who had been declared excess are harsh, unfair, unconscionable and contrary to the public interest.

105. The Industrial Court found in favour of the Association's application, finding the arrangement to be 'unfair' under s 105 of the Industrial Relations Act 1996.

106. The Government responded to this judgment by introducing The *Public Sector Employment and Management Amendment Bill 2012*. This bill effectively nullified the outcome of the judgment as it may have applied to similar cases in the future.

107. Significantly, it amended s 56 to remove the requirement that excess officers could not be retrenched while there was 'useful work' available in a department. This removed the common obligation on employers in a redundancy situation to any take steps to mitigate the impact of the abolition of a position by genuinely exploring alternative employment.

108. The key amendment is set out below:

56 Excess officers of Departments

(1) If the appropriate Department Head is satisfied that the number of officers employed in the Department or in any part of the Department exceeds the number that appears to be necessary for the effective, efficient and economical management of the functions and activities of the Department or part of the Department.

(a) the Department Head is to take all practicable steps to secure the transfer of the excess officers to on-going public sector positions, and

(b) the Department Head may, with the approval of the Commissioner, dispense with the services of any such excess officer who is not transferred to an on-going public sector position.

(2) An officer does not cease to be an excess officer merely because the officer is engaged (on a temporary basis) to carry out other work in a public sector agency.

(3) In this section: on-going public sector position means a position in a Department, or in any other public sector service, that is not temporary.

109. To compound the injustice the government also inserted in the *PSEM* Act a new section 103A which states:

Division 2 of Part 9 of Chapter 2 of the *Industrial Relations Act 1996* (Unfair contracts) does not apply to contracts of employment of members of staff of any public sector agency that are alleged to be unfair for any reason relating to excess employees, including the following:

(a) when and how members of staff become excess employees,

(b) the entitlements of excess employees (including with respect to redeployment, employment retention, salary maintenance and voluntary or other redundancy payments),

(c) the termination of the employment of excess employees.

110. The effects of these changes were worsened upon the commencement of the *Government Sector Employment Act 2013* which replaced the PSEM Act as the underpinning legal structure for public sector employment in the state on 24 February 2014.

111. The jurisdictional exclusion of excess employees from the unfair contract provisions of the Industrial Relations act was maintained under section 74 of the Act:

74 Excess employees-jurisdiction of Industrial Relations Commission

(1) In this section:

"excess employee" means an employee of a government sector agency who is determined by the head of the agency to be excess to the requirements of the relevant part of the agency in which the employee is employed, and includes an employee of a government sector agency who has been notified by the head of the agency:

(a) that his or her role, position or work in the agency has been abolished or terminated, and

(b) that he or she is an excess or displaced employee.

Any such person does not cease to be an excess employee merely because the person is engaged (on a temporary basis) to carry out other work in the same or any other government sector agency.

"termination" of the employment of a person includes dispensing with the services of the person.

(2) Division 2 of Part 9 of Chapter 2 of the Industrial Relations Act 1996 does not apply to contracts of employment of employees of any government sector agency that are alleged to be unfair for any reason relating to excess employees, including the following:

(a) when and how employees become excess employees,

(b) the entitlements of excess employees (including with respect to redeployment, employment retention, salary maintenance and voluntary or other redundancy payments),

(c) the termination of the employment of excess employees.

112. The requirement upon the head of a Public Service agency to take any measures prior to declaring an employee excess was entirely excluded from the Act. The authority to make such a decision is now described in Section 13 of the Rules to the Act (which can be amendment by an appointed Public Service Commissioner):

13 Excess non-executive employees

(1) The head of a Public Service agency may determine a person who is employed in ongoing employment in the agency other than as a Public Service senior executive to be excess to the requirements of the relevant part of the agency in which the person is employed.

(2) In making any such determination and in dealing with any such excess employee, the agency head is to have regard to any relevant government policies that were in force immediately before 24 February 2014 and are notified by the Commissioner for the purposes of this rule. Any such policies are to be made publicly available on a website provided and maintained by the Commissioner.

113. The cumulative effect of these legislative and policy changes has been facilitating the undertaking of mass job cuts across the NSW Public Sector. Since the introduction of the policy in 2011 6789 employees have been made redundant under it.

3.7. Legislative Prohibition of Collective Bargaining Regarding the Rights of Excess Employees

114. Clause 6(1) (f) of the *Regulations* prevents policies "regarding the management of excess public sector employees" from being "incorporated into industrial instruments".

115. The Act defines an industrial instrument to mean: an award, an enterprise agreement, a public sector industrial agreement, a former industrial agreement, a contract determination or a contract agreement. The significance of this provision is that it prevents public sector employees from obtaining any legally enforceable rights in relation to redundancy.

116. The legal standing of this clause was firstly upheld by the Commission in *SASS Redundancy Case*[32], rejected and declared invalid upon appeal by the PSA in the Court of Appeal in the Supreme Court of NSW[33], only to be reinstated as a valid law by specific reference in the explanatory notes to Schedule 5 of the *State Revenue and Other Legislation Amendment (Budget Measures) Act* 2014:

Explanatory note

Schedule 5.1 amends the *Industrial Relations Act 1996* to give effect to the *Industrial Relations (Public Sector Conditions of Employment) Regulation 2014* as a regulation validly made under that Act.

Schedule 5.2 sets out the *Industrial Relations (Public Sector Conditions of Employment) Regulation 2014*. The Regulation remakes, with some changes for clarification, the *Industrial Relations (Public Sector Conditions of Employment) Regulation 2011*.The remaking of the Regulation confirms the validity of the Government policies that are required to be given effect to by the Industrial Relations Commission. In particular, it confirms the Government's policies regarding the management of excess public sector employees and the 2.5% cap on increases in remuneration or other conditions of employment (including superannuation).

[32] *Re Crown Employees (School Administrative and Support Staff) Award* [2012] NSWIRComm 127

[33] http://www.caselaw.nsw.gov.au/action/PJUDG?jgmtid=170776

Schedule 5.3 repeals the *Industrial Relations (Public Sector Conditions of Employment) Regulation 2011*.

Chapter 4. **PREVIOUS DELIBERATIONS OF THE COMMITTEE ON PUBLIC SECTOR COLLECTIVE BARGAINING RESTRICTIONS**

117. The Committee has considered complaints regarding state imposed restrictions on the collective bargaining rights of public sector workers on a number of occasions.

118. The Committee jurisprudence on matters of this nature, as contained in the FOA Digest, is summarised below.

4.1. General Principles on the intervention of authorities in collective bargaining

119. Measures should be taken to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers and workers organisations with a view to the regulation of terms and conditions of employment by means of collective agreements[34]

120. The right to bargain freely with an employer with respect to conditions of work constitutes an essential element of freedom of association. Unions should have the right, through collective bargaining or other lawful means, to seek to improve the living and working conditions of those whom the union represents. [35]

121. Public Authorities should refrain from any interference which would restrict this right or impede its lawful exercise. Any such interference would appear to impede the principle that workers organisations should have the right to organise their activities and to formulate their programmes.[36]

4.2. General Principles on the intervention of authorities in collective bargaining

122. In cases of government intervention to restrict collective bargaining, the Committee has considered that it is not its role to express of view of the soundness of the economic arguments used by the Government to justify its position or on the measures it has adopted. However, it is for the Committee to express its views on whether, in taking such action, the Government has gone beyond what it might consider to be acceptable restrictions that might be temporarily placed on free collective bargaining.[37]

[34] FOA Digest p 177 paragraph 880
[35] FOA Digest at p 177 at para 881
[36] Ibid
[37] FOA Digest at p199 at para. 998

123. Any limitation on collective bargaining on the part of the authorities should be preceded by consultations with the workers' and employers' organisations in an effort to obtain their agreement. [38]

124. In a case in which the government had, on many occasions over the past decade, resorted to statutory limitations on collective bargaining, the Committee pointed out that repeated recourse to statutory restrictions on collective bargaining could, in the long term, only prove harmful and destabilise labour relations as it deprived workers of a fundamental right to means of furthering and defending their economic and social interests [39]

125. The 2013 General Survey presented by the Committee of Experts at the International Labour Conference of the International Labour Organisation was entitled *Collective Bargaining in the public service – a way forward*[40] At page 124 at paragraph 342 it notes:

> "Over the years, the Committee has had to examine the impact of collective bargaining rights of successive economic crises affecting groups of countries on different continents. For more than 30 years, it has based its approach on addressing such problems on the principle that collective agreements must be respected and that limitations on future collective agreements, particularly in relation to wages, imposed by the authorities by virtue of economic stabilisation or structural adjustment policies that have become necessary, are admissible on condition that they have been subject to prior consultations with workers and meet the following conditions: (i) they are applied as an exceptional measure; (ii) they are limited to the extent necessary;(iii) they do not exceed a reasonable period; and (iv) they are accompanied by safeguards to protect effectively the standard of living of the workers concerned particularly those who are likely to be the most affected...."

4.3. Budgetary powers and collective bargaining

126. A fair and reasonable compromise should be sought between the need to preserve as far as possible the autonomy of the bargaining parties, on the one hand, and the measures taken by governments to overcome their budgetary difficulties on the other.[41]

127. In so far as income of public enterprises and bodies depends on state budgets, it would not be objectionable - after wide discussion and consultation between the concerned employee's organisations in a system having the confidence of the parties- for wages ceilings to be fixed in state budgetary laws, and neither would it be a matter of criticism that the Ministry of Finance prepare a report prior to the commencement of collective bargaining with a view to ensuring respect for such ceilings[42]

---

[38] Ibid at para 999
[39] Ibid at para 1000
[40] International Labour Conference 102nd Session 2013 "General Survey concerning labour relations and collective bargaining in the public service" (ILO, Geneva, Report III(Part 1B)
[41] FOA Digest, pg 206 at para 1035
[42] Ibid at para 1037

128. The Committee has previously endorsed a view that austerity measures can be acceptable "provided they leave a significant role to collective bargaining." The Committee has also endorsed the following from the 1994 General Survey from the Committee of Experts:

> "This is not the case of legislative provisions, which, on the grounds of the economic situation of a country impose unilaterally, for example, a specific percentage increase or rule any possibility of bargaining, in particular, by prohibiting the exercise of means of pressure subject to the application of severe sanctions. The Committee is aware that collective bargaining in the public sector "calls for verification of the available resources in the various public bodies or undertakings, that such resources are dependent on state budgets and that the period of duration of collective agreements in the public sector does not always coincide with the duration of budgetary laws – a situation which gives rise to difficulties". The Committee therefore takes full account of the serious financial and budgetary difficulties facing governments, particularly during periods of prolonged and widespread economic stagnation. However, it considers that the authorities should give preference as far as possible to collective bargaining determining the conditions of employment of public servants; where the circumstances rule this out, measures of this kind should be limited in time and protect the standards of living of the workers who are most affected. In other words, a fair and reasonable compromise should be sought between the need to preserve as far as possible the autonomy of the parties to bargaining on the one hand, and the measures which must be taken by governments to overcome their budgetary difficulties on the other"[43]

[43] FOA Digest at p. 207 at para 1038

Chapter 5. **APPLYING THE COMMITTEE JURISPRUDENCE TO THE LEGISLATION THE SUBJECT OF THIS COMPLAINT**

1. The clear intention of the conventions pertinent to this complaint is to embed collective bargaining as the preferred and default mechanism for determining the wages and conditions of public sector workers.

2. Actions that cause a departure from this norm should occur only as 'exceptional measures'.[44]

3. It is the view of the complainant that the overall economy of NSW is stable and the fiscal circumstances confronted by the New South Wales government are benign. Departure from a system of free collective bargaining in these circumstances represents a fundamental repudiation of the intention of the relevant conventions.

4. If the Committee considers the fiscal circumstances faced by the NSW Government satisfied the need for an economic stabilization policy (the Complainants submit the Committee should **not find** an economic stabilization policy is justified), we draw the Committee's attention to the manner in which these measures have been implemented. Specifically, the measures:

4.1. were not preceded by any consultation with public sector workers or their representatives;

4.2. are not temporary or time limited in any way; and

4.3. Are not accompanied by safeguards to effectively protect the standard of living of the workers they affect.

5. Collectively, the measures outlined in this complaint remove altogether any significant role for collective bargaining in determining wages and conditions of public sector workers in NSW. As such it falls within the jurisdiction of the Committee to deem the actions of the NSW Government to be in breach of the cited conventions including those to which Australia is not a signatory.

[44] FOA Digest 2006 at pg 205, para1030

Chapter 6. **CONCLUSION**

6. The Committee should find:

6.1. the suite of legislative restrictions referred to in this Complaint ("the restrictions") offend Article 3 of Convention 87 as a prohibited restriction on the rights of New South Wales public sector workers to organize their activities formulate their programmes without interference from Government;

6.2. The restrictions offend Article 4 of Convention 98 as a measure contrary to the encouragement and promotion of the full development and utilisation of the machinery for voluntary negotiations between the relevant parties in order to regulate the terms and conditions of employment by means of collective agreements;

6.3. The restrictions relate to a group of employees not excluded from the operation of convention 98, as provided for in article 6 of that convention;

6.4. The restrictions offend Articles 5, 7 and 8 of Convention 154 as measures contrary to the promotion of collective bargaining, measures taken without prior consultation or agreement between public authorities and workers organisations, and measures that restrain the freedom of collective bargaining.

6.5. The restrictions offend Article 7 of Convention 151 as measures contrary to the encouragement and promotion of the full development and utilization of machinery for the negotiation of terms and conditions of employment between public authorities and public employees' organisations.