

PRACTICE NOTE NO. 6

First Issue Date:

14 July 2000

Re-Issue Date:

15 December 2023

Re-issued pursuant to Section 185A of the *Industrial Relations Act 1996* and Section 15 of the *Civil Procedure Act 2005*.

APPLICATIONS FOR NEW AWARDS OR VARIATIONS TO AWARDS ON A CONSENT BASIS HAVING REGARD TO SECTIONS 23 AND 146(2) OF THE INDUSTRIAL RELATIONS ACT 1996

1. The purpose of this Practice Note is to provide an appropriate procedure for the making of consent awards and variations by consent to existing awards (collectively "Consent Applications") having regard to:
 - (a) the requirements of s 23 of the *Industrial Relations Act 1996* ("Act") and cl 6.8 of the Industrial Relations Commission Rules 2022,
 - (b) the decision of the Full Bench of the Industrial Relations Commission of 30 June 2000 in *Re Equal Remuneration Principle* [2000] NSWIRComm 113, and
 - (c) the requirements of s 146(2) of the Act.
2. This Practice Note has effect from the date of re-issue.
3. In *Re Equal Remuneration Principle*, the Full Bench said at [155]:

"Operation of s23 of the Act

Finally, and having in mind the cases advanced by the parties as to the proper construction of the Act which we have dealt with, we announce that a Practice Note will, in due course, issue to require parties seeking a consent award to file with the application an affidavit stating the basis upon which it is contended that the proposed award provides for equal remuneration and other conditions of employment for men and women doing work of equal or comparable value. This material will form the evidentiary basis upon which the Commission will in future base its consideration of the requirements of s23 of the Act."

4. When a Consent Application is made, the parties must file an affidavit setting out the basis upon which it is contended that:
 - (a) the proposed new or varied award provides for equal remuneration and other conditions of employment for men and women doing work of equal or comparable value; and
 - (b) the making of the new award or variation of the existing award is in the public interest having regard to the matters set out at s 146(2) of the Act.
5. The affidavit referred to in paragraph 4 of this Practice Note will usually form the evidentiary basis upon which the Commission will consider the requirements of ss 23 and 146(2) of the Act; however the parties may tender other evidence if they consider this to be necessary.

6. In the absence of agreement between the parties, the obligation to file the affidavit referred to in paragraph 4 of this Practice Note will be the responsibility of the applicant.
7. The affidavit is to be filed either with the Consent Application or within seven (7) days of the date on which the Consent Application is filed.

**Nichola Constant
Chief Commissioner**

15 December 2023