



ACT
Government

Chief Minister, Treasury and
Economic Development

WHAT'S DIFFERENT ABOUT THE ACT PUBLIC SECTOR TECHNICAL AND OTHER PROFESSIONAL ENTERPRISE AGREEMENT 2018-2021

PURPOSE

The purpose of this document is to explain the proposed main amendments to the ACT Public Sector Technical and Other Professional Enterprise Agreement 2018-2021 ("the Agreement"), to ensure that employees have a good understanding of the outcomes negotiated with unions and other representatives.

GENERAL

A number of changes to the proposed Agreement have sought to clarify minor technical and operational requirements relating to existing entitlements and processes. Among these are important changes that ensure consistency with legislation, and changes which are aimed at consistency within the Agreement itself.

MAJOR AMENDMENTS: COMMON TERMS AND CONDITIONS

Duration

The nominal expiry date is proposed to be 31 October 2021.

Remuneration

PAY OFFER

The Government's pay offer covers a period of four years duration with percentage increases being provided at regular intervals. The first pay increase is to be back-paid to the commencement of the first full pay period on or after 1 October 2017, with the second and third pay increases back-paid to the commencement of the first full pay-period on or after 1 June 2018 and 1 December 2018 respectively.

The full offer is:

- 2.25% from the first full pay period on or after 1 October 2017;
- 0.5% from the first full pay period on or after 1 June 2018;
- 1.35% from the first full pay period on or after 1 December 2018;
- 1.35% from the first full pay period on or after 1 June 2019;
- 1.35% from the first full pay period on or after 1 December 2019;
- 1.35% from the first full pay period on or after 1 June 2020;
- 1.35% from the first full pay period on or after 1 December 2020; and
- 1.35% from the first full pay period on or after 1 June 2021.

Allowances

All allowances in Annex C will be increased by the same percentage amounts as the pay increases outlined above unless otherwise stated.

Superannuation

For the first time, superannuation entitlements will be included in the Agreement in full.

Members of preserved schemes like the CSS and PSS will continue to receive the contributions they do currently.

Members of Superannuation Guarantee Funds are currently receiving 10.5% (9.5% Super guarantee + the current additional employer contribution of 1%). This will increase to:

- 10.75% on 1 July 2018;
- 11% on 1 July 2019; and
- 11.5 % on 1 July 2020.

The Government will continue to offer 1% additional employer contribution for members of Superannuation Guarantee Funds who choose to contribute at least 3% of their salary to their superannuation.

SUPERANNUATION ON PARENTAL LEAVE

The Government offer will extend superannuation contributions to the unpaid portion of the first 12 months of parental leave. This includes birth leave (aka maternity leave) and unpaid parental and grandparental leave.

Employment

The Government remains committed to providing job security for employees as far as possible. Several amendments in the proposed Agreement are aimed at strengthening this commitment.

TASKFORCE

A joint Government-Union Taskforce is being established to review existing casual and temporary employment with the view to converting such employment to permanency where appropriate.

The amendments to the Agreement will ensure that such conversion can be achieved without further merit processes.

REVIEW OF EMPLOYMENT STATUS

The right in the current Agreement for casuals to request a review of their employment status is being extended to temporary employees as well.

SEASONAL WORKERS

Clauses are proposed which will enable seasonal workers to be given contracts of up to five years, to ensure that they have job security that extends beyond each individual season.

Salary Related matters

CLASSIFICATION/WORK VALUE REVIEW

The clause dealing with an employee's or group of employees' right to request a review of their classification and the work value of their position(s), is being strengthened to ensure that genuine reviews will be undertaken where warranted.

The ACT Government is committed to employees being classified appropriately, and is also intending to undertake a larger scale classification review, outside of the Agreement process, to identify categories of classifications that may need to be adjusted based on work value changes.

Workplace Flexibility

The proposed Agreement significantly simplifies and strengthens the ability for employees to access a range of entitlements in the Agreement to ensure they can balance their work and personal commitments. The proposed clauses provide flexibility well above the minimum requirements of the Fair Work Act, while incorporating the concept of 'Reasonable Business Grounds' into the Agreement to allow any disputes to be raised through the Dispute Avoidance/ Settlement Procedures of the Agreement, an avenue currently more restricted in the existing Agreement.

In summary – any employee, may for any reasons request a Flexible Working Arrangement. This may be a part-time or job-sharing arrangement, or varied start and finish times, flexible access to leave and any number of other arrangements.

Any such request can only be refused on reasonable business grounds, and those business grounds are listed in the Agreement, and are more restrictive than those under the Fair Work Act.

These arrangements will be recorded in writing and can be for a period of up to three years, at which they will be reviewed. If the employee so requests, a new arrangement can then be entered into unless there are reasonable business grounds for refusing the request.

Leave

NAIDOC LEAVE

Leave for the purpose of attending NAIDOC week activities is currently only available to employees of Aboriginal and Torres Strait Islander descent. The leave entitlement is being extended to everyone, other than casual employees.

That means that any employee who wishes to attend NAIDOC week activities will be able to access up to one day's paid leave, subject to operational requirements.

PUBLIC HOLIDAYS

The proposed Agreement has been updated to align with the *Holidays Act 1958*, including the new Reconciliation Day public holiday in replacement for Family and Community Day.

BONDING LEAVE

The new Agreement provides more flexibility for the taking of Bonding Leave.

Currently, an employee may access two weeks (10 working days) of Bonding leave, followed by one week of Personal Leave for bonding purposes.

The initial two weeks, need to be accessed as a single block and the additional Personal Leave must be taken within the first 14 weeks from the birth of the child.

The new Agreement will allow the employee to access the leave at any stage within the 14 weeks, as one block or broken in to smaller blocks. There is also an added provision which allows for the 14 week limit to be extended in exceptional circumstances.

CONCURRENCY CARE

The proposed Agreement introduces a new concept of Concurrency Care, to ensure that Adoption and Permanent Care Leave, as well as Foster and Short Term Care Leave, can be accessed in cases where an employee is providing concurrency care through a registered Community Organisation.

PUBLIC HOLIDAY PAY IN LIEU FOR SHIFTWORKERS ROSTERED OFF ON A PUBLIC HOLIDAY

Currently, if a shift worker is rostered off on a Public Holiday, they are entitled to an additional day off. If they cannot access the additional day off, they can instead receive a day's pay. That day is currently calculated based on a standard day, rather than the length of the shift. The Government has agreed to extend this to the length of the shift for non-standard shifts in circumstances where the difference between the shift length and the standard day is not otherwise compensated by, for example, additional Annual Leave, Composite Pay Rate or Accrued Days Off.

FAMILY VIOLENCE LEAVE

The Family Violence Leave provisions have been clarified to ensure better access for employees. This includes expanding the list of examples of the purpose for which leave can be taken and including clarification that leave may also be needed for travel and recovery after appointments etc.

Communication, Consultation and Union Representation

Both within and outside of the Agreement the Government is putting effort into improving consultation processes to ensure that employees and their representatives have a genuine opportunity to influence decisions prior to them being made. The proposed Agreement includes improved processes around Consultation and Consultative Committees and includes better articulated rights for union delegates.

Workplace Values and Behaviours

The sections of the Agreement that deal with Misconduct and Underperformance have been significantly rewritten. The purpose is to ensure that Procedural Fairness and Natural Justice Principles are enshrined throughout these sections.

Transparency and fairness are integral to any misconduct and underperformance process.

Key changes include:

- A re-focussed preliminary assessment process, which seeks to move away from an automatic assumption that there is an adversarial relationship between a victim and offender, ensuring assessments are conducted swiftly and at a local level as far as possible.
- The introduction into the Agreement of the Public Sector Standards Commissioner (PSSC), an independent office established in the Public Sector Management Act changes in 2016. The PSSC now oversees investigations through the Professional Standards Unit and is responsible for making findings of misconduct.
- Greater clarity around what happens to misconduct processes if an employee leaves the ACTPS while the process is on foot.
- New rights for employees to have input into a decision of finding of misconduct, prior to a final finding and prior to a decision about sanction, to which an employee has a separate right to reply.
- The right for an employee to appeal a finding as well as a sanction. Currently the appeal right is restricted to the sanction itself.

Internal Reviews and Appeals

Amendments to these processes are largely aimed at clarifying current processes and to improve transparency, including providing greater independence for appeals.

Key changes include:

- A new section dealing with Reviews and Appeals of certain recruitment processes. These are currently co-located with other Reviews and Appeals, which was considered confusing as the processes are not consistent with those that apply to misconduct, underperformance and other decisions.
- Appeals have been made determinative. Currently, the Appeal Panel makes a recommendation to the Head of Service (or delegate), who then decides whether or not to accept the recommendations. In the new Agreement, the decision of the Appeal Panel stands, but may still be disputed in the Fair Work Commission using the Dispute Avoidance/Settlement Procedures.

Redeployment and Redundancy

The Government remains committed to maintaining the size of the ACTPS and stands by its policy that there will be no involuntary redundancies.

However, there are still circumstances where positions become redundant as a result of restructures, changes to technology and the like. In such situations it is important that affected employees have the support necessary to ensure that they can be redeployed, or that there are other solutions where that is not possible, including voluntary redundancy.

Several changes have been made to the current provisions to ensure that redeployment is the genuine aim in all circumstances, where redundancies are unavoidable and where employees want to remain in the ACTPS.

Key changes include:

- Clearer processes that require consultation and that require that an employee has been declared potentially excess before being able to be declared excess.
- The ability to transfer an employee to a lower classification without their agreement has been removed.
- All potentially excess employees, who haven't been offered a voluntary redundancy, or who have refused a voluntary redundancy, will be placed on a redeployment register and will be considered in isolation for positions.
- Employees may only be declared excess if they have been offered, but have refused voluntary redundancy.
- If an excess employee reaches the end of the retention period, and cannot be transferred to another position at level, the employee can choose to leave the ACTPS with a payment, which equals what they would have received as a voluntary redundancy, less the amount paid in salary during the retention period. This means no-one will be worse off by choosing to seek redeployment by entering a retention period rather than accepting a voluntary redundancy up front.
- The exclusion period, during which an employee who has taken a voluntary redundancy is prevented from re-entering the ACTPS has been reduced from two years, to the time that is equivalent to the redundancy payment they received.

MAJOR AMENDMENTS: SCHEDULES

Community Services Directorate Specific Matters

CHILD AND YOUTH PROTECTION PROFESSIONAL (CYPP) CLASSIFICATION STRUCTURE

Section O of the Agreement creates a Child and Youth Protection Professional (CYPP) classification structure, to apply to positions and employees undertaking frontline child protection work in designated sections/teams in the Community Services Directorate's Child and Youth Protection Services (CYPS) branches (refer Clause O2).

This CYPP classification structure is being created to enhance the Community Services Directorate's ability to recruit and retain professional staff with appropriate qualifications, experience, and competencies, to work in frontline child protection roles.

The Agreement reclassifies Health Professional (HP) positions and employees in the designated CYPS sections/teams into the CYPP classification structure (refer Clause O2).

The Agreement initially aligns the CYPP classification structure with the HP structure until those structures begin to diverge in July 2019, with CYPP classifications to receive three additional pay increases and with some pay increment points to be deleted from CYPP pay ranges to allow quicker progression through those ranges (refer Clause O4).

The Agreement requires that the parties to the Agreement develop CYPP specific work level standards, provisions for competency-based advancement between the CYPP Level 2 and 3 classifications, conditions under which a high performing CYPP Level 3 can be paid at the lowest CYPP Level 4 rate, and a para-professional classification stream.

The pay rates for the CYPP classification structure and the transition arrangements for movement from HP to the higher CYPP pay rates are set out in detail in Section O of the Agreement.

Education Directorate Specific Matters

WORKPLACE HEALTH AND SAFETY

The new clause outlines Education Directorate's commitment to ensuring that the risk of occupational violence (OV) to staff is eliminated so far as is reasonably practicable. The clause includes actions to be taken when the Education Directorate is made aware of instances of OV.

ACT Health Directorate, Canberra Health Services and Calvary Health Care ACT Ltd Specific Matters

STERILISING SERVICES

Employees classified as 'Health Service Officers employed at Sterilising Services' under the ACTPS Support Services Enterprise Agreement (SSEA) were also classified as 'Sterilising Services Health Service Officers' under the ACTPS Technical and Other Professional Enterprise Agreement (TOPEA), with mirrored terms and conditions. To address this situation, coverage of these staff has been consolidated under the TOPEA. This means that TOPEA will be the only enterprise agreement covering Health Service Officers at Sterilising Services.

The Sterilising Services Health Service Officer Levels 3-4 broadband in Annex A of the Agreement has been extended to include levels 3-4-5 broadband, with Certificate III and Certificate IV qualification requirements at each level.

SERVICE DELIVERY

The proposed Agreement includes new provisions for how new shift work, rosters and shifts may be introduced in circumstances where there is a ministerial decision to extend service delivery hours.

The provisions place the emphasis on reaching majority support from affected staff, but allows the introduction of new arrangements in the absences of majority support, in very limited circumstances. If majority agreement cannot be achieved, new arrangements can only be introduced if a range of matters, such as business need, employee preferences, health and safety and workloads, have been adequately considered and addressed and employees have been given a minimum of six months' notice.

The provisions do not apply to the introduction of shift work and rosters unless there is an extension of service delivery hours. In such circumstances majority support will continue to be required as per current arrangements.

CALVARY HEALTH CARE LTD

The Public Sector Standards Commissioner is a new function, introduced through changes to the *Public Sector Management Act* in 2016. In the new core parts of the Enterprise Agreements, investigations and findings of misconduct will come under the auspices of the Public Sector Standards Commissioner. For some statutory authorities and other Government entities, this potentially creates tensions with other underlying legislation.

New provisions are being proposed for Calvary for how Misconduct and Appeal matters are addressed. The amendments will give Calvary the option of using the independent function of the Public Sector Standards Commissioner when investigating matters of alleged misconduct, on a case by case basis. The amendments also clarify that the determinative appeals function in the core will not apply to Calvary staff. Rather, any appeals should be raised as disputes through the Fair Work Commission.