



ACT
Government

Chief Minister, Treasury and
Economic Development

WHAT'S DIFFERENT ABOUT THE ACT PUBLIC SECTOR NURSING AND MIDWIFERY ENTERPRISE AGREEMENT 2017-2019

PURPOSE:

The purpose of this document is to explain the proposed main amendments to the ACT Public Sector Nursing and Midwifery Enterprise Agreement 2017-2019 (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 Enterprise 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:

Duration

The nominal expiry date is proposed to be 31 December 2019.

Remuneration

PAY OFFER

The Government's pay offer includes percentage increases to be provided at regular intervals.

The first pay increase is to be back-paid to the first full pay period on or after 1 October 2017, with the second pay increase back-paid to the first full pay-period on or after 1 June 2018.

The full pay 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.

Allowances

All allowances in Schedule 10 will be increased by the same percentage amounts as the pay increases outlined above.

Superannuation

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

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

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 agreements 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 agreements for casuals to request a review of their employment status is being extended to temporary employees as well.

NON-STANDARD SHIFTS

Changes have been made to introduce a trial of a more collective approach to non-standard shifts. Under the proposal, non-standard shifts will be able to be introduced provided that more than 50% of affected staff agree. Any such arrangement will be reviewed after 12 months and if the arrangement then fails to gain 50% support, the affected staff will revert to standard shifts.

Salary Related matters

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

12 HOUR SHIFT PENALTY

The shift penalty for any part of a 12 hour shifts (that falls between the hours of midnight Sunday until midnight Friday) that is worked outside the hours of 0730 hrs to 1800 hrs will be increased from 22.5% to 25%.

Workplace Flexibility

The proposed Agreement simplifies and strengthens the ability of 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 2009*, while incorporating the concept of 'Reasonable Business Grounds' into the Agreement to allow any disputes to be raised through the Dispute Avoidance/Settlement Procedures, an avenue currently more restricted in the existing Agreement.

In summary – any employee may for any reason, 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 2009*.

These arrangements will be recorded in writing and can be for a period of up to three years, at which time they will be reviewed. If the employee so requests, a new agreement 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.

BONDING LEAVE

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

Currently, an employee may access 2 weeks (ten working days) of Bonding Leave, followed by 1 week of personal leave. The initial 2 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 proposed 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.

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

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, and which seeks to ensure 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 2016 under the *Public Sector Management Act 1994*. 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 a process is underway.
- New rights for employees to be offered the opportunity to respond to any proposed misconduct finding. This will occur 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 only.

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. The Government also remains committed to, 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 and entering a retention period rather than accepting a voluntary redundancy up front.
- The exclusion period which prevents an employee who has taken a voluntary redundancy from re-entering the ACTPS has been reduced from two years, to the time that is equivalent to the redundancy payment they received.