

**PUBLIC SECTOR  
INDUSTRIAL  
RELATIONS  
POLICIES**  
2015



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# 1 INDUSTRIAL RELATIONS LANDSCAPE

Victoria's public sector provides services that are essential to the community. As the State's largest employer, the Government will set the example for all Victorians by recognising, valuing and regarding the work of the Victorian public sector agencies.

The Government is committed to public sector industrial relations based on consultation, cooperation and good faith bargaining, underpinned by a safety net of fair employment conditions. The Government, as model employer, is committed to ensuring that enterprise agreements are negotiated respectfully, in good faith, and conducted in a timely manner.

The Government also considers it important that an equitable and consistent approach to public sector industrial relations is adopted by departments and agencies.

This document outlines the Government's policy on a number of important public sector industrial relations matters. This includes various standards, requirements and guidelines to foster a productive industrial relations culture and achieve high performance with effective and constructive workplace partnerships.

## 1.1 KEY PRINCIPLES

The key principles underpinning the Government's approach to industrial relations are as follows:

- promoting industrial relations based on consultation and cooperation between employers, employees and their unions;
- promoting the public service and public sector agencies as model employers;
- respecting employee's choice to join a union and be properly represented in the workplace;
- supporting the provisions of modern awards as the effective safety net for all public sector employees;
- promoting collective bargaining with employees and their bargaining representatives rather than individual bargaining;
- setting of wages and conditions through comprehensive agreements that are fiscally sustainable and promote the highest quality services to Victorians and deliver improvements that are measurable;
- promoting secure employment especially by limiting casual and labour hire employment;
- supporting fair, cooperative and safe workplaces throughout the public sector that are free from discrimination;

- honouring all terms collectively bargained for within formal agreements and not using technical constitutional arguments to avoid these agreed obligations;
- providing fair and comprehensive employment conditions in awards and agreements;
- supporting policies and working conditions which enable employees to balance work and life;
- protecting employees from all forms of workplace bullying;
- supporting policies that promote gender equity in the workplace and employment opportunities for women; and
- supporting employment opportunities for underrepresented groups across the public sector and in particular Aboriginal and Torres Strait Islander people.

While individual departments and agencies have flexibility in deciding the specific content of enterprise agreements, it is their responsibility to ensure these key principles underpin their industrial relations strategies and actions.

## 1.2 APPLICATION OF THE POLICIES

These policies apply to all departments and public sector bodies of the State of Victoria and their non-executive level employees, as defined under the *Public Administration Act 2004* (Vic) (PA Act) and other Victorian legislation. For the avoidance of doubt, the Policies apply to all public health services, schools and standalone TAFE institutes. For the purposes of the Policies, the term "agency" is used to refer to all those public sector bodies of the State of Victoria other than a department.

The Policies do not apply to:

- the employment of executive employees employed under contracts administered by the Government Sector Executive Remuneration Panel or under the Victorian Public Service executive contracts; and
- universities, including the four dual sector universities (RMIT, Swinburne University, Victoria University and Federation University Australia).

## 2 GOVERNANCE – ROLE OF DEPARTMENTS, AGENCIES AND CENTRAL AGENCIES

### 2.1 ROLE OF DEPARTMENTS AND AGENCIES

The roles and responsibilities of departments and agencies in the negotiation of enterprise agreements and other industrial relations matters are summarised as follows:

#### Departments and agencies

- Departmental Secretaries are responsible for the overall management of industrial relations issues within their department and portfolio agencies (and associated projects), including application of the industrial relations policies. While Ministers will maintain constructive relationships with unions and employees to facilitate successful industrial relations outcomes, they remain outside formal negotiations.
- Departments are responsible for ensuring consistent application of policies and practices across agencies in their portfolio.
- Departments are the first point of contact for portfolio agencies seeking information and advice specific to their portfolio.
- Portfolio agencies are responsible for operational matters.
- Departments and agencies are responsible for the timely development of management logs, including funding strategies consistent with the Government policies and the conduct of negotiations with bargaining representatives including unions.
- Departments and agencies are expected to report to the Government on any industrial matter which may impact on Government policy, or have budgetary considerations, in order to obtain authority to conclude negotiations. Departments and agencies are to liaise with the Central Bargaining Unit located within Industrial Relations Victoria in the Department of Economic Development, Jobs, Transport and Resources; and the Department of Treasury and Finance.

#### Central agencies

##### Central Bargaining Unit

The Central Bargaining Unit (CBU) is responsible for assisting departments and agencies with industrial relations matters and enterprise bargaining and to ensure the consistency of advice to employers and stakeholders and compliance with the Policies. Although the CBU will not be directly involved in all public sector negotiations, it will be a resource that departments, agencies and unions can draw upon to assist in the bargaining process. In particular, the role of the CBU is to:

- (a) implement the Government's industrial relations policies and provide advice to agencies and unions in relation to those policy parameters;
- (b) oversee bargaining across the public sector;
- (c) become involved in bargaining negotiations to assist the parties to find workable solutions before they turn into intractable disputes;
- (d) assist in the resolution of disputes in accordance with the Government's policy parameters between departments and agencies and unions; and
- (e) provide high level and strategic advice to government on industrial relations matters.

##### Department of Treasury and Finance

Department of Treasury and Finance (DTF) is responsible for assisting departments and agencies to understand and apply wages policy and cost service delivery improvements and other enterprise agreements costs and benefits. DTF is also responsible for providing advice to the Government on departmental and agency compliance with wages policy.

##### Department of Premier and Cabinet

Department of Premier and Cabinet considers whole-of-government implications arising from industrial settlements.

# 3 GOVERNMENT'S INDUSTRIAL RELATIONS PRINCIPLES

## 3.1 UNION PARTICIPATION IN THE WORKPLACE

The Government acknowledges the important role that unions play in the workplace and in representing employees. A key principle underpinning these policies is consultation and cooperation between employers, employees and unions. A constructive relationship between employers and unions is central to ensuring that this principle is met. Workplaces that have constructive relationships between employers and unions are more productive and harmonious. To that end, employees have the right to belong to a union and have access to effective union representation. Employees have the right to engage in protected industrial action and unions have rights to lawfully enter workplaces and organise employees.

Enterprise agreements and/or workplace practices should reflect these general commitments and also ensure that employee representatives have access to facilities to undertake their roles.

At the point of engagement or during induction, union representatives will have the opportunity to provide a document to encourage new employees to join a union or employee association that has the right to represent them and their industrial interests.

## 3.2 SECURE EMPLOYMENT

The Government recognises the importance of secure employment for strengthening Victoria's economy as well as enabling public sector employees and their families to fully participate in the community.

Enterprise agreements should limit the use of fixed term and casual labour. Resort to agency or labour hire employees should not be used to undermine the job security of direct employees and should only be relied on in limited circumstances.

Parties should consider the inclusion in agreements of a commitment to secure employment. An example of such a provision is provided below:

The Employer acknowledges the positive impact that secure employment has on employees and the provision of quality services to the Victorian community.

The Employer will give preference to ongoing forms of employment over casual and fixed term arrangements wherever possible.

Whether as part of bargaining or otherwise, employers and unions should work together to identify methods to reduce the use of casual or fixed term engagements where concerns are raised. Employers, in consultation with unions should consider processes to convert casual and fixed term employees to more secure forms of employment where there are ongoing vacancies and taking into consideration merit selection requirements.

In 2016, the Government is conducting a general review of *Labour Hire and Insecure Work*. Further initiatives may arise out of the review to promote secure employment, and the Government commits to discussing these with employers, employees and unions at the appropriate time.

## 3.3 MAINTENANCE OF PUBLIC SECTOR EMPLOYMENT

The Government's preference is that the public sector work continues to be performed by the public sector. Situations where the private sector takes over functions currently performed by public sector employees are unlikely to be a common occurrence. However, from time to time the Victorian Government, through its departments and agencies, may determine to transfer responsibility for the delivery of existing ancillary services to a private provider. Details of the requirements for when this occurs are contained at Chapter 6, Employee entitlements on transfer.

## 3.4 FAMILY VIOLENCE

Workplace environments that are safe, inclusive of women, and receptive to the burden and hardship of family violence are critical to reinforcing the social norms of respect, non-violence and equity.

The Victorian Government is committed to creating a culture that supports respectful relationships, practices positive attitudes and behaviours, and promotes a culture of non-violence in all workplaces, including the Victorian public sector. The Government is also committed to support all public sector employers to develop and maintain workplaces that support victims of family violence.

The Government supports all recommendations of the Royal Commission into Family Violence including Recommendations 190 and 192. As part of the Government's broader policy response, the Government has developed a family violence standard for use by departments and agencies. The introduction of these provisions in public sector enterprise agreements will give further recognition to family violence as a critical issue with a significant impact on the economy.

It will also recognise that both Government and workplaces have a role in, and responsibility for, responding to family violence.

The standard provides for confidential and meaningful support at work and encourages affected employees to stay in employment by providing 20 days paid leave for affected employees to assist them to deal with the consequences of family violence.

The family violence standard can be found at Attachment 3 and must be incorporated into all enterprise agreements.

Departments and agencies are also required to provide access to suitable support services and referrals, as well as adequate planning, training and resources to equip managers and human resources staff to communicate and implement the family violence leave entitlement.

Departments and agencies are also required to implement the best practice workplace programs developed and set out in "Our Watch's Workplace Equality and Respect Project" final report, soon to be released. These programs will contribute to building respectful and gender equitable cultures, suitable policies for family violence victims, and training resources for use in the workplace.

For further information please contact the CBU.

### 3.5 BARGAINING PRINCIPLES

Departments and agencies and their bargaining representatives must continue to negotiate in a manner that accords with the public sector good faith bargaining principles outlined below.

Departments and agencies and their bargaining representatives must negotiate collaboratively with relevant unions and/or employees in an open and accountable way.

Negotiations should be:

- approached in a cooperative and problem solving manner;
- focused as far as possible on common interests, objectives and long term gain for all parties as well as improved service delivery for the Victorian community; and
- based on integrity, honesty, courtesy and information sharing.

Departments and agencies and their bargaining representatives should endeavour to resolve issues locally. However, whilst parties may request assistance from the Fair Work Commission (FWC) as appropriate to resolve deadlocks, the Government will not seek to have a dispute arbitrated except by consent between the parties.

To facilitate productive negotiations unions are to be given access to department and agency employees and allow union officials to communicate with their members using employees' work email addresses. Union delegates and officials should be provided access to facilities such as telephones, notice boards and meeting rooms in a manner that does not adversely affect service delivery and work requirements and does not breach confidentiality.

When enterprise agreements are being considered and voted on by employees, departments and agencies must ensure that the integrity of the voting process is maintained at all times.

Although the Government seeks to avoid industrial disputation wherever possible the Government respects the right of unions and employees to engage in, and to take, protected industrial action.

### 3.6 CONSULTATION & DISPUTE RESOLUTION

Consultation is required where departments and agencies are proposing to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees, including changes to ordinary hours of work and changes to regular rosters. Employers are required to notify the employees and their unions of the proposed changes. The likely effects on the employees' responsibilities and working conditions are to be advised.

Employers are required to regularly consult with affected employees and their unions within timelines set in enterprise agreements. Employers are also required to give prompt consideration to matters raised by unions and employees and respond to those matters in a timely manner.

The above requirements must be reflected in the consultation clause that has to be included in enterprise agreements. Where there is a formal dispute in relation to the introduction of change it is common practice that the proposed change not to be introduced whilst the matter is being dealt with in accordance with the dispute resolution procedure. However, this provision does not prevent the Victorian Government implementing changes as part of the machinery of government (MoG) process.

The Government supports the role of the FWC as an independent industrial tribunal which includes effective processes for resolving workplace disputes.

*The Fair Work Act 2009 (FW Act)* requires the inclusion of a dispute resolution procedure in an agreement. The dispute resolution procedure should allow for the FWC to arbitrate matters at the request of either party when the matter is unable to be otherwise resolved. A union who is covered by an enterprise agreement is a party to an industrial dispute when a dispute is formally notified with the employer. Although the FW Act provides a model dispute resolution procedure, the Government does not require the procedure to be adopted in enterprise agreements but it may provide some guidance to departments and agencies. For further information in relation to this requirement see Chapter 7, Dispute resolution.

The dispute resolution procedure should not be a mechanism to deal with termination of employment. If an employee seeks to contest their termination of employment then unfair dismissal or other relevant avenues of redress would need to be considered.

### 3.7 WORK AND FAMILY

The Government is committed to promoting and implementing family friendly work practices to achieve the benefits of assisting employees balance the responsibilities and demands of work and family. Getting the right balance between work and family commitments, and accommodating the needs of business and the wider Victorian economy, can be achieved through cooperation between the Government, employers, unions and employees.

Departments and agencies are encouraged to adopt family friendly work practices and to recognise their benefits. These include:

- increased productivity and stronger economic growth;
- availability of a wider pool of skilled labour, particularly among women and older workers;
- greater capacity to address labour and skill shortages and attract and retain skilled workers;
- achieving substantive equality between women and men;
- greater scope to develop and realise the full potential of the workforce, new technologies and innovative work practices;
- less stress and better health; and
- more cohesive and caring communities which support families.

### 3.8 PAID PARENTAL LEAVE

The Government supports departments and agencies to negotiate and include in enterprise agreements paid parental leave provisions. For this reason the model parental leave clause includes a minimum of eight weeks of paid parental leave that must be provided in all enterprise agreements. Public sector employers must not reduce or trade off existing paid parental leave entitlements of employees upon the expiration of a current agreement.

Public sector employers must not also absorb the Commonwealth Paid Parental Leave Scheme to offset the cost of the existing enterprise agreement entitlements.

The Government supports the introduction of gender neutral parental leave provisions noting that there are many different types of family situations. The model clause is written in way that does not differentiate between different types of family environments.

There are a number of additional elements to parental leave and departments and agencies will need to ensure that their parental leave provision complies with the NES.

In addition to the entitlements under the parental leave NES, employees may be eligible for parental leave payments under the Commonwealth Paid Parental Leave Scheme. Further information on the Commonwealth Paid Parental Leave Scheme can be found on the Commonwealth's Department of Human Services website at:

[www.humanservices.gov.au/customer/services/centrelink/parental-leave-pay](http://www.humanservices.gov.au/customer/services/centrelink/parental-leave-pay).

### 3.9 ENTERPRISE AGREEMENT LEAVE ENTITLEMENTS AND THE NATIONAL EMPLOYMENT STANDARDS

The Government recognises that most enterprise agreements contain leave entitlements that are superior to the entitlements provided under the NES.

The Government's expectation is that these entitlements are maintained and not reduced during bargaining for new enterprise agreements.

### 3.10 RIGHT OF ENTRY

The Government promotes a cooperative approach to workplace relations, valuing collective bargaining and the rights of employees to have their interests supported through effective union representation. Unions have rights to lawfully enter workplaces. The FW Act and the *Occupational Health and Safety Act 2004* (OH&S Act) provide the legal rights under federal and state legislation (see Chapter 10, Right of entry). The Government in promoting cooperative workplace relations considers that unions' legitimate interests in the workplace can be promoted by arrangements whereby they have access to the workplace by providing requisite notice and without hindering normal operations.

### 3.11 INDIVIDUAL FLEXIBILITY TERM

Division 5 of Part 2 – 4 of the FW Act requires all enterprise agreements to include an individual flexibility term. Flexibility terms are intended to facilitate more flexible working arrangements that meet the genuine needs of the employer and an employee. The Government's position is that matters contained within an individual flexibility arrangement (IFA) should not be used to undermine the integrity of enterprise agreements. The government does not have a preference for the model flexibility term as provided in the FW Regulations as the subject matter contained within an individual flexibility term is a matter for the bargaining parties. For further information in relation to the FW Act requirements please see Chapter 7, Fair Work Requirements: Content of enterprise agreements.

## 4 CONSTITUTIONAL LIMITATIONS

The High Court in *Re: AEU; ex parte Victoria* (1995) and *Victoria v The Commonwealth* (1996) identified an implied "States' rights" constitutional limitation, finding that the Commonwealth could not make laws that would impair the States' capacity to function as governments (implied limitations).

The matters which have been found by the High Court to have infringed the States' Rights are under the following subject matters:

- number and identity of persons to be employed;
- qualifications and eligibility for employment;
- term of appointment of such persons; and
- number and identity of persons to be made redundant.

Based upon the findings of the High Court it was thought that these matters could not be included in enterprise agreements approved by the FWC.

These limitations have also been reflected in exclusions from the Victorian Government's referral of matters to the Commonwealth under the *Victorian Government's Fair Work (Commonwealth Powers) Act 2009* (Referral Act). That is, the FW Act operates in relation to the public sector other than for excluded matters as found by the High Court.

However, in January 2015, the Full Court of the Federal Court in *United Firefighters Union v Country Fire Authority* (UFU decision) decided that the above limitations do not apply to enterprise agreements that cover State employers that are **constitutional corporations** where all the parties voluntarily agreed to the terms of an enterprise agreement.

Consequently, there is no legal impediment for public sector employers that are constitutional corporations to bargain over the previously excluded matters. Equally, this does not preclude an agency from arguing on merit why certain provisions should not be included in an enterprise agreement. Discussions regarding these matters are subject to good faith bargaining principles.

It is important to note that the Federal Court's UFU decision does not apply to public sector employers that are **not constitutional corporations**. Presently different rules apply to constitutional and non-constitutional employers regarding permissible content in bargaining and enterprise agreements.

### GOVERNMENT'S CURRENT APPROACH TO EXCLUDED MATTERS

The Government is committed to honouring all terms collectively bargained for within existing formal agreements. Departments and agencies should not seek to use legal constructs to avoid these obligations. If there are matters in existing enterprise agreements which are arguably excluded matters departments and agencies should not rely upon the Referral Act or the *Re: AEU* principles to avoid obligations under any such provisions. Departments and agencies should seek advice from the CBU in relation to this matter if they are in any doubt.

Legislative amendments are being considered to meet the Government's commitment to allow bargaining over currently excluded matters. If passed, these amendments will give the FWC jurisdiction to approve agreements covering employees of non-constitutional corporations that contain previously excluded matter.

In the meantime, departments and agencies should not rely upon the Referral Act or *Re: AEU* principles as a reason not to bargain over the excluded matters for public sector employees who have been traditionally covered by enterprise agreements. This does not preclude departments and agencies from arguing on merit why certain provisions should not be included in an agreement, or from negotiating alternative claims.

Prior to reaching agreement over excluded matters for employees of non-constitutional corporations, departments and agencies are required to obtain Government approval for inclusion of these matters in enterprise agreement.

Separately, the Government is considering options to formalise and ensure the enforceability of public sector redundancy provisions. Currently, redundancy pay and processes are dealt with in the Government's Redundancy, redeployment and retrenchment policy (see Chapter 7). The policy will continue to apply until the Government has introduced the proposed new measures. Unless there is government approval redundancy entitlements provided in the policies cannot be exceeded and should not form part of enterprise agreements. The government's expectation is that existing consultation obligations should apply to any contemplated redundancies.

For further information, including discussion about specific issues, please contact the CBU.

## 5 AGREEMENT MAKING AND WAGES POLICY

### 5.1 AGREEMENT MAKING – MAJOR AND NON-MAJOR AGREEMENTS

Major enterprise agreements are those with a large public sector workforce such as the public service, nurses, doctors, health professionals and administrators, teachers, police and certain emergency services, and with a salary base of over \$1 billion. All other agreements are classified as non-major enterprise agreements.

When negotiating enterprise agreements, departments and agencies must adhere to the wages policy and agreement approval processes outlined below.

### 5.2 WAGES POLICY

The Government's wages policy is a part of the Government's collaborative approach to enterprise agreement negotiations involving the development of partnerships with employees and public sector unions to improve the delivery of services to Victorians.

The Government's wages policy establishes the Fair Pay Guide, assuring increases of 2.5 per cent per annum (including wages and conditions) over the life of the agreement. Through adopting this partnership approach, the Government seeks to provide entities and employees with the opportunity to achieve outcomes of 3 per cent per annum (including wages and conditions) over the life of their agreement where financially sustainable service delivery improvements can be found.

Full text of the wages policy is attached to the *Guide to wages policy and service delivery partnership plans 2015* (the Guide), developed by the Government to assist departments and agencies with the implementation of the wages policy. The Guide can be found at Attachment 6.

### 5.3 THE ENTERPRISE BARGAINING FRAMEWORK

Under the new enterprise bargaining framework, agencies are only required to seek Government approval for enterprise agreements at two stages:

- 1 **a management log**, including a Service Delivery Partnership Plan where an outcome higher than the Fair Pay Guide is proposed, for which approval is to be sought in time to commence negotiations six months before the nominal expiry date of the current agreement; and
- 2 **the proposed agreement**, including costings, for which approval is to be sought before the parties have reached agreement so that any changes required for compliance with government policy can still be made.

Please contact your portfolio department or the CBU for a current template.

The following framework applies to major and non-major enterprise agreements.

#### (a) Development of a management log

- Prior to the commencement of formal enterprise agreement negotiations departments and agencies are required to obtain Government approval of a management log.

#### (b) The negotiation process

- Negotiations between bargaining representatives should commence six months prior to the nominal expiry date of the current agreement. To ensure this can be achieved, the management log and a Service Delivery Partnership Plan should be submitted with sufficient time for their consideration and approval.
- The Government encourages parties to have initial discussions about bargaining parameters prior to the employer's management log being approved.
- Negotiations are to be conducted by the department or agency in accordance with good faith bargaining process and in consultation with the portfolio department and the CBU.
- Entities should seek to achieve four year agreements, subject to operational considerations.

### (c) Proposed agreement

- Following negotiation and prior to proceeding to an employee ballot departments and agencies are required to obtain the Government's approval of the proposed agreement.
- Enterprise agreements must not contain any retrospective payments (i.e. the first pay increase in any agreement must operate prospectively and must not be before the date the agreement has been submitted to the Government for approval).
- Actual pay increases cannot be made until the agreement is approved by the Government and the Fair Work Commission (FWC), and the agreement commences operation.

## 5.4 TYPES OF ENTERPRISE AGREEMENTS

Types of enterprise agreements are regulated in Division 2, Part 2-4 of the FW Act. There are three types of enterprise agreements that can be made – single-enterprise agreements, multi-enterprise agreements and greenfield agreements.

- 1 Single-enterprise agreements are made between either:
  - (a) one employer and all the employees or classes of the employees (e.g. administrative employees only) employed at the time the agreement is made and who will be covered by the agreement; or
  - (b) two or more employers that are single interest employers and the employees who will be covered by the agreement (single-interest enterprise agreements).
- 2 Multi-enterprise agreements are made between two or more employers that are not single interest employers and all the employees or classes of the employees employed at the time the agreement is made and who will be covered by the agreement. The making of such an agreement must be approved by the Government.
- 3 Greenfields agreements relate to a genuine new enterprise that one or more employers are establishing or propose to establish, who, at the time of making the agreement, do not employ any of the persons who will be covered by the agreement. They are made with one or more relevant employee organisations.

## Single-interest enterprise agreements

Single-interest enterprise agreements can be made only if, on application:

- (a) the Federal Minister responsible for employment and workplace relations has made a declaration under section 247 of the FW Act that the employers may bargain together; or
- (b) obtain from the FWC a single interest employer authorisation.

When departments and agencies receive union/s request for the making of a single-interest enterprise agreement, they are required to consider such requests and prior to responding forward these requests and their proposed response to the Government (through the CBU) for consideration. In any submission seeking the relevant approval, departments and agencies would be expected as a minimum to specify the following:

- the employers who will be covered by the agreement;
- the employees who will be covered by the agreement; and
- the person (if any) nominated by the employers to make applications under the FW Act, if the request for a single enterprise agreement is approved.

# 6 REDUNDANCY AND OTHER MATTERS

## 6.1 REDUNDANCY, REDEPLOYMENT AND RETRENCHMENT

The Government understands that in some instances departments and agencies will be required to restructure workplaces, introduce new technology or change existing work practices and that these changes could affect employees, potentially resulting in redundancies. In order to minimise the effects of these changes, departments and agencies are required to explore and pursue all possible means to secure continuation of employment of affected employees, including but not limited to, redeployment and retraining. Involuntary redundancies are to be used only as the last resort.

Departments and agencies may have existing workplace arrangements relating to redundancy and associated matters that are to be consistent with Victorian Government Policy.

### Overview

Departments and agencies should be aware that the Government is currently considering legislative amendments to give effect to its commitment to formalise and ensure the enforceability of agreed and approved public sector redundancy provisions. In the meantime, the following policy continues to apply.

The redundancy, redeployment and retrenchment policy seeks to assist in a fair and equitable manner those employees in the public sector who have been declared surplus as their roles are no longer required. This policy provides advice on two areas:

- (a) a policy statement of rights and principles relating to redundancy, redeployment and retrenchment; and
- (b) implementation guidelines for the policy including separation package details.

### Application – employers

The provisions in this policy apply to the redundancy/termination process in Victorian public sector agencies.

The term 'Victorian public sector agency' means:

- all departments and public sector bodies under the PA Act;
- public sector bodies under other Victorian legislation; and
- public health services, schools and standalone TAFE Institutes.

Universities, including the four dual sector universities (RMIT, Swinburne University, Victoria University and Federation University Australia), are not subject to the Government's industrial relations policies or wages policy.

### Application – employees

This policy applies to employees in the above applicable public sector bodies, other than:

- executives; and
- casual and temporary employees and fixed term contract employees.

Casual and temporary employees are not generally entitled to redeployment and retrenchment benefits if their employment is terminated. Similarly, fixed term contract employees who have completed their term of employment are generally not entitled to redeployment or retrenchment benefits. However, specific consideration may need to be given to individual cases involving long term casual employees or employees who have been employed on successive fixed term contracts. Further advice should be sought if the casual or fixed term nature of an employee's employment is unclear.

### Consultation obligations

Consultation is required where departments and agencies are proposing to restructure the workplace, introduce new technology or change existing work practices which affect employees. Departments and agencies will need to consider their consultation obligations contained in their enterprise agreements as to what may trigger an obligation to consult may differ.

Employers are required to notify the employees and their unions of the proposed changes including the various management-initiated outcomes that may ensue. The likely effects on the employees' responsibilities and working conditions are to be advised. If the changes are likely to result in surplus roles, the employer must ensure that employees are aware that they could be redeployed, and should redeployment be unsuccessful, that their employment will end in retrenchment.

More generally, employers are to regularly consult with affected employees and their unions and give prompt consideration to matters raised in order to ensure that change initiatives are implemented with the involvement of all relevant parties in a spirit of consultation.

Consistent with obligations associated with implementation of change provisions contained within enterprise agreements, employers have a responsibility to consult with employees and to treat them fairly and reasonably and to apply objective and non-discriminatory criteria consistently. Employers must ensure policies and employment processes are in place to protect these rights, and all managers and employees are aware of these processes and rights.

## Priority on redeployment

Once an employee's role is no longer required and the employee has been declared surplus to requirements a redeployment process will commence which may result in the employee being redeployed to a new position. Employees who are not redeployed may be eligible for a separation package.

Redeployment is a preferred outcome having regard to an employee's training, knowledge and background. The employee must be advised in writing of the actual date their employment role is declared surplus to needs, details of the redeployment process, and their rights and obligations. During the redeployment process the employee will continue to remain employed and will be entitled to receive salary maintenance.

For departments and agencies covered by the *Victorian Public Service Enterprise Agreement 2016* (the VPS Agreement), the Victorian Public Service redeployment principles are set out in Schedule A. The Government's Victorian Public Service redeployment policy is in *Attachment 4*.

For agencies not covered by the VPS Agreement the entitlement to redeployment is limited to employment opportunities within the particular agency concerned. In addition, these agencies must have regard to their obligations under relevant enterprise agreements and awards.

No preference is to be given to any category of employee over another, such as non-union members over union members, in relation to retention, termination or consultation. The criteria for determining which roles are to be declared surplus is to be disclosed during consultation with employees and their union and/or other representatives.

## Support to affected employees

Employers are to ensure that employees affected by organisational change are provided with support and assistance to consider and pursue the options available to them. The assistance may include, but is not limited to:

- counselling and support services;
- retraining;
- career planning;
- preparation of job applications;
- interview coaching;
- time off to attend job interviews; and
- provision of independent financial advice for employees eligible to receive a separation package.

## The separation packages

Two separation packages have been endorsed by Government:

- Voluntary Departure Package (VDP); and
- Targeted Separation Package (TSP).

VDPs may be offered in circumstances where larger scale structural change or employee reductions are required. In accepting a VDP, employees retire or resign from their employment and accept conditions relating to future re-employment with the Victorian public sector.

The TSP is a compulsory retrenchment package and action of last resort.

Both separation packages are Government benchmark standards and are not to be exceeded. Departments and agencies should also familiarise themselves with the genuine redundancy considerations in the Termination of Employment policy statement.

Departments and agencies must comply with Australian Taxation Office (ATO) requirements in regard to the application of separation packages and with the genuine redundancy considerations in the Termination of Employment policy statement, as well as relevant Commonwealth industrial and taxation legislation.

Departments and agencies must provide notice of termination or payment in lieu of notice in addition to the relevant package. Departments and agencies must provide the notice in accordance with their relevant industrial instrument and also comply with section 117 of the FW Act that deals with notice of termination requirements (whichever is the most beneficial to the employee).

Continuous service for both the VDP and TSP refers to Victorian public sector agency employment only. Employment with the Commonwealth, other States or local government is not included.

Continuous service includes all periods of service in any approved public sector agency, provided there are no breaks between or within each period other than breaks caused by approved leave and provided that no special separation payments have been made with respect to any of these periods.

The calculation of each week's pay is affected by part-time or former part-time work.

## Voluntary Departure Package – key features

The VDP comprises the following three elements:

- (a) 4 weeks' pay, irrespective of the employee's length of service; plus
- (b) a lump sum voluntary departure incentive of up to \$10 000 (for a full time employee); plus
- (c) 2 weeks' pay per each completed year of continuous service up to a maximum of 15 years.

A 3 year restriction on re employment in the Victorian public sector applies. Recipients of a VDP are required to agree not to seek or accept re employment with, or fee for service from, a public sector employer, including public sector employment through a labour hire agency, for a minimum of three calendar years from the date of their separation. However, in extraordinary circumstances, an agency head may approve earlier re employment, but there must be no undertakings made to this effect prior to an employee's departure as a VDP recipient.

The VDP is an early retirement scheme for taxation purposes attracting significant taxation concessions. Employers must obtain prior approval from the Australian Taxation Office (ATO) before conducting a VDP program. In considering requests from an employer, the ATO will examine a number of criteria relating to the design and operation of the program including:

- the reason for the program;
- the identifiable employee groups (i.e. groups must be identified on the basis of objective criteria such as location, division or branch of the organisation, classification or job category or classification) from which employees will be invited to participate in the program;
- any groups within this broader group specifically excluded from participating in the program;
- the criteria on which offers of packages will be made, including criteria on which requests can be rejected (e.g. key personnel, minimum operating staffing requirements); and
- the number of packages the employer will make available.

Employees are not compelled to accept offers and may withdraw an expression of interest at any time prior to accepting an offer.

Employers are not bound to accept any employee's expression of interest in a VDP or to offer any particular employee a VDP.

Departments and agencies should consider the employee groups that will be invited to participate in the program and the design of criteria on which offers will be made having regard to their operational requirements and availability of funding.

'Redundant employees' are not an acceptable group to which a VDP program may be restricted. However, VDPs may be offered to an identifiable group, which includes employees whose roles are declared surplus to needs.

Departments and agencies considering operating a VDP program are advised to contact the ATO first to ascertain specific ATO requirements and approval criteria.

Government policy is that:

- in general, employees must be being paid and in ongoing employment (roles) to be eligible for a VDP;
- in general, employees on unpaid leave and WorkCover recipients are ineligible. However, if it is consistent with the goals and timeframe of the VDP program to do so and appropriate to their circumstances, such employees may be offered the option to return early to the active workforce in time to apply for a VDP. The CBU can advise further in relation to a particular VDP program; and
- employees on probation or trial, in fixed term (including executives) or casual roles, as well as essential services staff are ineligible for a VDP.

## Targeted Separation Package – key features

The TSP is a bona fide redundancy scheme for taxation purposes. No prior approval is required from the ATO as long as it can be established that the separation was a bona fide redundancy.

TSPs should only be used in circumstances of bona fide redundancy. Bona fide redundancies will arise where facilities or functional areas are closing, the organisation is being wound up, or where employees' skills are no longer required in the public sector.

TSPs are not voluntary. They are compulsory retrenchment packages applied by an employer in circumstances where the work is not required to be performed by the employer and where there is no opportunity for continued employment of the employee.

Decisions on which particular roles are declared excess or surplus must be made on objective non-discriminatory criteria that are consistently applied. This is a key test in unfair dismissal claims. Employers should familiarise themselves with the requirements of the respective enterprise agreement and applicable legislation.

Departments and agencies must exhaust redeployment opportunities before applying a TSP. The TSP comprises:

- (a) 4 weeks' of pay, irrespective of the employee's length of service; plus
- (b) 1 additional week pay if the employee is over 45 years of age and has completed at least 2 years of continuous service; plus
- (c) 2 weeks' pay per each completed year of continuous service up to a maximum of 10 years.

## 6.2 TERMINATION OF EMPLOYMENT

Public sector employees are entitled to due process and procedural fairness prior to termination.

Departments and agencies must ensure they do not terminate an employee's employment unless there is valid reason connected with the employee's capacity or conduct or the termination is based on the operational requirements of the department or agency; for example structural change leading to redundancy.

Departments and agencies must ensure that due process and procedural fairness are applied to ensure that any termination is not unlawful or harsh, unjust or unreasonable. These principles must also be applied to any actions that could lead to termination.

As a result of the Victorian referral of industrial relations matters to the Commonwealth, the termination of employment provisions of the FW Act apply to Victorian public sector employees.

The provisions of the FW Act, relevant employment agreements and federal awards must be followed.

### Requirements of the FW Act

The FW Act and its accompanying regulations provide that an employee may apply to the FWC for relief in relation to a termination of employment on the ground that the termination was harsh, unjust or unreasonable – unless the employee:

- was a non-award or non-agreement employee who was paid an annual salary that exceeds a prescribed amount in accordance with the regulations;
- had not served the minimum employment period of 6 months employment in respect of large employers and 12 months employment in respect of small employers;
- was a trainee to whom a training arrangement applied;
- was a casual employee not employed on a regular and systematic basis;
- was engaged under a contract of employment for a specified period of time, specified task or season (where this was not entered into specifically to avoid the provisions of the FW Act); or

- is exempted by any other additional exclusion as provided in the regulations.

An employee's employment must not be terminated unless he or she has been given the period of notice or pay in lieu as set out below or he or she is guilty of serious misconduct such that it would be unreasonable to continue employment during the notice period.

The required minimum period of notice as provided in the NES is:

Employee's period of continuous service with the employer	Period of notice
Not more than 1 year	At least 1 week
More than 1 year but not more than 3 years	At least 2 weeks
More than 3 years but not more than 5 years	At least 3 weeks
More than 5 years	At least 4 weeks

The minimum period of notice is increased by one week if the employee is over 45 years of age and has completed at least 2 years' continuous service with the employer. Enterprise agreements may provide periods of notice in excess of the NES.

In determining whether a termination was harsh, unjust or unreasonable, the FWC will have regard to whether there was a valid reason for the termination connected with the employee's capacity or conduct or based on the operational requirements of the enterprise.

Departments and agencies which are subject to federal awards or agreements must also comply with any specific additional provisions in those awards or agreements.

### Genuine redundancy

Exclusion of matters pertaining to redundancy in enterprise agreements is not intended to prevent a federal tribunal or court considering in a particular case whether a purported retrenchment was genuine. Departments and agencies should seek advice from the CBU in relation to this matter if they are in doubt.

An employee is not unfairly dismissed if the FWC is satisfied that the dismissal was a case of genuine redundancy.

Section 389 of the FW Act provides that an employee's dismissal is a genuine redundancy if the employer no longer required the employee's job to be performed by anyone because of changes in the operational requirements of the enterprise and the employer has complied with any obligation in an applicable modern award or enterprise agreement to consult about the redundancy.

An employee's dismissal is not a case of genuine redundancy if it would have been reasonable in all the circumstances for the employee to be redeployed within the employer's enterprise or an associated entity.

If the FWC is satisfied that the termination is a genuine redundancy it is precluded from continuing to hear the matter further.

Departments and agencies should also familiarise themselves with the constitutional limitations that also apply to the public sector.

These limitations do not prevent departments and agencies engaging in a consultation process with employees and their unions when a decision has been made to restructure the workplace or introduce new technologies or change existing work practices which affect employees.

## 6.3 EMPLOYEE ENTITLEMENTS ON TRANSFER

The PA Act provides for transfers between the public service and public sector entities on conditions that are no less favourable overall.

The PA Act also stipulates public sector values and employment principles that Victorian public sector departments and agencies that are bound by the PA Act are required to apply. Those agencies not bound by the PA Act are expected to benchmark against the principles under the PA Act.

In such instances the principles outlined below will apply. The principles require that employment processes ensure that employees are treated fairly and reasonably, that equal employment opportunity is provided and that employees have an avenue of redress against unfair or unreasonable treatment.

### Interaction with the FW Act

This policy is subject to the application of the transfer of business provisions of the FW Act.

### Key principles – transfer of functions to a private provider

Any departures from this operating framework and principles will require the prior endorsement of Government. Contact the portfolio department to discuss any proposals in the first instance.

Employees affected by a transfer of function to the private sector are expected to actively participate in the agreed change processes with the new provider to attain employment. This may include, for example, attending meetings and providing a resume.

### Principle (1) – consultation on change

Public sector employers must consult with their employees about a proposed change that involves a transfer from public to private sector employment, or the implementation of process mechanisms relating to the transfer.

In accordance with this policy, departments and agencies are required to notify employees and their representatives of the proposed change. Departments and agencies must consider their consultation obligations in enterprise agreement as the trigger for consultation to commence may differ. Public sector employers, generally, are also required to consult regularly with affected employees and their representatives, including unions, and give prompt consideration to matters raised in order to ensure that change initiatives are implemented with the involvement of all relevant parties.

Departments and agencies also must adhere to their consultative obligations concerning the implementation of change as contained in enterprise agreements, awards or as formalised in departmental or agency internal policy.

### Principle (2) – employment offers

Where a project involves the private sector taking over certain services or functions currently performed by employees in the public sector, the Government requires that the new provider will make offers of employment to all or most of the pre-existing employees involved wherever practicable. Prior to selecting a new provider, departments and agencies must ensure that any potential provider is aware of their obligations specified in this policy. It is expected that in the overwhelming majority of cases offers of employment would be made by the new provider.

The objectives of these requirements are:

- to ensure that a new employer will do everything practicable to attract and employ existing public sector employees; and
- to minimise the number of public sector employees who could potentially become redundant as a consequence of the particular project.

Such offers of employment will precede normal recruitment processes and will allow for reasonable adjustment, including re-training, where employees selected may not meet all the new job requirements.

### **Principle (3) – employees who accept an offer of employment**

Where an employee accepts a final employment offer with the new provider, the employee will be employed on terms and conditions which, in overall terms, will result in no net disadvantage and are no less favourable than those applying before accepting the employment offer. Departments and agencies are encouraged to consult with the new provider on the terms of their employment offer.

This is also subject to the application of the transfer of business provisions in the FW Act or any agreement reached between the employees and the new provider.

Employees who are members of accumulation superannuation schemes are able to either elect to remain as members of their existing schemes or roll-over their accumulated benefit to a complying fund made available by the new provider.

For members of defined benefit funds, the issue of superannuation portability is more complex. This would be decided on a case by case basis with guidance from DTF having regard to the principle of no net disadvantage to employees or any increased exposure of the State due to continued membership of the fund. In addition, employees should seek independent professional advice and carefully consider their personal circumstances.

### **Principle (4) – continuity of service for leave purposes**

If the new provider makes an employment offer to employees and it is accepted, the public sector service of the employees will be regarded as being continuous for leave purposes and employees will retain all service benefits associated with continuous service.

Furthermore, subject to the specific partnership arrangements agreed with the new provider and applicable legislation, employees may have the option of either:

- being paid out for any unused accrued annual leave and long service leave; or
- maintaining those leave balances with the new provider.

Consistent with Principle (3) above, it is expected that the maintenance of existing terms and conditions will be accompanied by a commitment by the new provider (again in accordance with contractual terms) to recognise previous public sector service for the purposes of transferring accumulated entitlements, such as sick leave, annual leave and long service leave.

In circumstances where continuity of employment applies and unused leave is transferred, it would be expected that the new provider agrees to recognise public sector service in the determination of any subsequent retrenchment payments.

### **Principle (5) – employees not offered jobs or rejecting job offer**

Where final job offer to an employee by the new provider is not made prior to the date the employee has been declared surplus, or the employee has rejected a job offer from the new provider, the employing department or agency can commence redundancy, redeployment or retrenchment action in accordance with the Redundancy, Redeployment and Retrenchment Policy contained in this publication and any applicable award or enterprise agreement. Redeployment process will commence from the date an employee is declared surplus.

An employee will only be entitled to receive a targeted separation package if the circumstances in Principle 6 are met.

### **Principle (6) – employees electing to remain in the public sector**

Employees affected by a transfer of function to the private sector are encouraged to genuinely and actively participate in any employment process initiated by the existing or prospective employer. Employees are also encouraged to consider any offer they receive.

Where employees either choose not to apply for a suitable position or they reject or fail to accept a suitable offer of employment with the new provider, a redeployment process within the public sector will begin. This is in accordance with the Government's separation policy principles and would be delivered under public sector redeployment processes. Note that outside of the VPS redeployment process is limited to employment opportunities within a particular agency.

However, if an employee fails to actively participate in employment processes or fails to accept a suitable offer of employment with the new provider, the employee may be ineligible for a redundancy package.

# 7 FAIR WORK ACT REQUIREMENTS: CONTENT OF AGREEMENTS

## 7.1 CONSULTATION

Section 205 of the *Fair Work Act 2009* (FW Act) provides that enterprise agreements must contain a consultation term. There is a new requirement to include a consultation term which deals with changes to regular rosters or ordinary hours of work (see section 205(1)(a)(ii) of the FW Act). A model consultation term is included in Schedule 2.3 of the *Fair Work Regulations 2009* (FW Regulations).

The Government has also developed its own consultation model term that is recommended to be used by departments and agencies. The purpose of the model clause is to provide clarity and guidance to departments and agencies about what is required in a public sector enterprise agreement to satisfy both Government policy and the requirements of the FW Act. The model clause can be found at *Attachment 1: Consultation model clause*.

Further guidance on consultation can be found in Chapter 6: *Redundancy and other matters*.

## 7.2 FLEXIBLE WORKING ARRANGEMENTS

Under section 65 of the FW Act certain employees have the right to request from their employers flexible working arrangements, such as changes to start and finish times and working from home. This right forms a part of the National Employment Standards (NES). Employers can refuse these requests only on reasonable business grounds.

The FW Act does not provide an exhaustive list of circumstances when an employee can request flexible working arrangements and how they are facilitated. Therefore, departments and agencies may wish to consider other circumstances when flexible working arrangements can be requested and forms of their implementation. Some examples of such arrangements are job sharing, compressed work weeks, make up for time taken for parental and carer reasons and provisions of purchased leave.

## 7.3 INDIVIDUAL FLEXIBILITY TERM

Under Division 5 of Part 2 – 4 of the FW Act all enterprise agreements are required to include an individual flexibility term.

If the parties do not reach agreement about the content of the term then the flexibility term as provided in Schedule 2.2 of the FW Regulations will apply. The individual flexibility term allows an employer and employee to come to an individual flexibility arrangement (IFA) to vary the effect of terms of an agreement dealing with arrangements about when work is performed, overtime rates, penalty rates, allowances or leave loading.

The whole enterprise agreement cannot be subject to variations through individual flexibility arrangements.

IFAs can be initiated by the employee or the employer. They must be genuinely agreed to in writing and signed by both the employee and employer. Section 202 of the FW Act provides that if an enterprise agreement does not include a flexibility term, the model flexibility term in Schedule 2.2 of the FW Regulations is taken to be a term of the agreement.

IFAs must not undermine minimum employee entitlements, and as such, employers must ensure every employee covered by an IFA is better off overall under the IFA as compared to the modern award or enterprise agreement the IFA varies.

### Victorian public sector family provisions standard

As a minimum, departments and agencies must abide by the parental leave, carer's leave and compassionate leave provisions provided for as part of the NES under the FW Act and also take into account leave provisions included in the relevant modern awards. However, departments and agencies are encouraged to consider inclusion in enterprise agreements leave provisions superior to the NES and the relevant award(s). If included, these provisions would apply.

The CBU has developed draft parental leave, personal/carer's leave and compassionate leave model clauses for use by departments and agencies in new agreements. Model clauses provide guidance as to what is required to be included in a public sector enterprise agreement under the FW Act and the Government's policies. See *Attachment 3: Work and Family model clauses*.

Departments and agencies may also wish to develop their own leave provisions, but must ensure that all legal and policy requirements are appropriately reflected and met.

## 7.4 PUBLIC HOLIDAYS

The *Public Holidays Act 1993* (PH Act) sets out the public holiday entitlements of Victorian employees.

In addition, the FW Act provides for minimum standards relating to public holidays as part of the NES. Public sector employers are required to comply with both Acts as well as any applicable public holiday provisions in modern awards or enterprise agreements that cover their employees.

## 7.5 DISPUTE RESOLUTION

While the Government promotes the resolution of workplace disputes at the workplace level it acknowledges that not all disputes can be resolved without some external assistance. Accordingly, departments and agencies must provide for dispute resolution procedures in each enterprise agreement which enable the FWC to resolve disputes, including by arbitration where the matter cannot be resolved through conciliation.

### Overview of dispute resolution requirements under the FW Act

While the FW Act requires all enterprise agreements to include procedures for settling disputes about matters arising under an agreement and in relation to the NES, these procedures (as distinct from the policy position set out below) do not mandate the involvement of the FWC.

In order to access conciliation and arbitration by the FWC, the parties to an agreement must confer these powers by making specific provision for this in the dispute resolution clause of their enterprise agreements.

### Action required by departments and agencies

Departments and agencies must include in their enterprise agreements dispute resolution processes that are fair and transparent and which confer powers of conciliation and arbitration on the FWC in the event that a dispute (including a dispute relating to the NES) cannot be resolved at the workplace level. Departments and agencies are free to tailor their dispute resolution clause to suit their own requirements; however, the clause must clearly specify the internal and external processes including the role of the FWC. The following principles must be reflected in dispute resolution processes in enterprise agreements:

- the process must be clear and concise;
- the parties must genuinely attempt to resolve the dispute at the workplace level;
- if a dispute cannot be resolved at the workplace level the parties must genuinely attempt to resolve it at each further stage of the dispute resolution process;

- the parties must cooperate to ensure that dispute resolution processes are carried out expeditiously; and
- work should continue in accordance with usual practice while the dispute resolution processes are being followed. If an employee has a reasonable concern about an imminent risk to his or her health or safety, the employee must advise the employer and not unreasonably fail to comply with a direction by his or her employer to perform other available work that is safe and appropriate.

In order to be effective the clause must clearly specify the role of the FWC during conciliation and arbitration and provide that:

- during the conciliation stage the FWC has discretion on how the conciliation will be conducted and has authority to make recommendations to the parties;
- if the dispute cannot be resolved through conciliation, the matter can be arbitrated at the request of either party; and
- during arbitration the FWC has discretion as to how it conducts the arbitration, as well as authority to make determinations that the parties are committed to accepting.

A model dispute resolution clause incorporating the key aspects of the Government's policy can be found in *Attachment 2: Dispute Resolution model clause*.

If a particular dispute could have a broader implication, departments and agencies must at earliest opportunity contact the CBU to discuss it further before seeking resolution by the FWC.

# 8 STEPS FOR MAKING ENTERPRISE AGREEMENTS

## 8.1 NOTICE OF EMPLOYEE REPRESENTATIONAL RIGHTS

Section 173 of the FW Act requires departments and agencies to provide to the employees that will be covered by the agreement a notice of representational rights (the Notice) before commencement of negotiations. This is a compulsory step that must be followed.

The Notice is to be given as soon as practicable but not later than 14 days after:

- an employer initiates bargaining or accept to bargain for an enterprise agreement; or
- an employer is being compelled to bargain for an enterprise agreement because of a majority support determination, a scope order or a low-paid authorisation.

Section 174(1A) of the FW Act further provides that the Notice must:

- (a) contain the content prescribed by the regulations; and
- (b) not contain any other content; and
- (c) be in the form prescribed by the regulations.

The prescribed form and content of the Notice are then set out at Schedule 2.1 of the Fair Work Regulations 2009.

The Notice must be a separate, standalone document with no agency logos, contact details or additional text added to it. The only information that can be inserted (in the identified place) is the name of the employer, the proposed name of the new agreement and the proposed coverage, which in most cases will be by reference to an existing agreement. The Notice must be attached to an email or as a separate document if, for example, sent in the mail. Agencies must ensure that there is no basis for concluding that any additional information that may have been sent with their original notice forms part of the Notice.

The Notice includes information about the employee's right to appoint a bargaining representative. Where a union is entitled to represent the industrial interests of an employee in relation to their employment, then the union is the default bargaining representative. Where a union is involved in bargaining it must have coverage of the employees in relation to that area of employment. An employee can also appoint themselves or someone (who agrees) to act as their bargaining representative.

Under Regulation 2.04 of the *Fair Work Regulations 2009*, the Notice may be given to the employees in various ways such as given personally to the employee, sent by pre-paid post, be emailed or faxed or be displayed in a conspicuous location at the workplace.

The FWC has also published a *Notice of employee representational rights* guide that can be downloaded from the following web page:

<https://www.fwc.gov.au/awards-and-agreements/agreements/about-agreements/enterprise-bargaining>

An example of completed Notice of employee representational rights can be found at *Attachment 5*.

## 8.2 GOOD FAITH BARGAINING

The Government's industrial relations policies promote workplace relations based on consultation, cooperation and collective bargaining. It recognises the legitimate role of unions in the workplace and the right of employees to have their interests represented and considered.

The Government requires that all enterprise agreement negotiations are conducted in a manner that is constructive and avoids unnecessary disputation.

Departments and agencies and their bargaining representatives must comply with good faith bargaining requirements set out in section 228 of the FW Act.

These requirements include:

- (a) attending, and participating in, meetings at reasonable times;
- (b) disclosing relevant information (other than confidential or commercially sensitive information) in a timely manner;
- (c) responding to proposals made by other bargaining representatives for the agreement in a timely manner;
- (d) giving genuine consideration to the proposals of other bargaining representatives for the agreement, and giving reasons for the bargaining representative's responses to those proposals;
- (e) refraining from capricious or unfair conduct that undermines freedom of association or collective bargaining; and
- (f) recognising and bargaining with the other bargaining representatives for the agreement.

The good faith bargaining requirements do not require that:

- (a) a bargaining representative to make concessions during bargaining for the agreement; or
- (b) a bargaining representative to reach agreement on the terms that are to be included in the agreement.

Departments and agencies are required to recognise all bargaining representatives as defined in section 176 of the FW Act to include employers, employer associations, unions entitled to represent the industrial interests of an employee in the workplace to be covered by the agreement, as well as any other person appointed as a bargaining representative of an employee who will be covered by the agreement.

Departments and agencies and their bargaining representatives should familiarise themselves with the full requirements relating to good faith bargaining in Part 2 – 4 of the FW Act.

### 8.3 VOTING PROCESS

The voting process is an important part of enterprise bargaining. Through this process all employees covered by the proposed agreement have an opportunity to agree or disagree with the negotiated terms and conditions of employment.

The vote can be organised only after the agreement is approved by the Government. Under no circumstances can an agreement be offered to the employees for approval after in-principle agreement is reached and before it receives Government endorsement.

At least seven full days before the voting date employers are required to take all reasonable steps to ensure that:

- all employees employed at the time who will be covered by the agreement are given access to the written text of the proposed agreement and any other material incorporated into the agreement by reference (e.g. a copy of an award or a particular internal policy); and
- the employees are notified about the time and location at which the vote will occur and the voting method that will be used (e.g. ballot, electronically or by other means).

In addition, the employer is obliged to explain to the relevant employees the terms of the agreement and the effect of these terms. The explanation is to be provided in a manner that is appropriate to the particular needs of the employees (e.g. employees from culturally and linguistically diverse background, young employees and those who did not have a bargaining representative).

An agreement is made when a majority of the employees of the employer who cast a valid vote approve the agreement.

### 8.4 APPROVAL OF ENTERPRISE AGREEMENT BY THE FWC

Within 14 days from the date the agreement is made, a bargaining representative for the agreement must lodge the agreement to the FWC for approval. In order to be approved the agreement must pass the Better Off Overall Test (BOOT). An enterprise agreement will pass the BOOT if the FWC is satisfied that each of the employees covered by the agreement is better off overall than under the relevant award.

For public sector employers who are constitutional corporations the relevant award will be one or more modern awards made in 2010. For non-constitutional corporations, with minor exceptions at the time of release of these policies, it will be a modern award made in 2015 as a result of modernisation of public sector transitional awards that previously covered public sector employers that are not constitutional corporations. For further information about the award that covers your organisation, please contact the portfolio department or the CBU.

In addition, the FWC must be satisfied that the agreement:

- does not contain any unlawful terms;
- specifies its nominal expiry date that cannot be more than four years from the date the agreement is approved by the FWC;
- includes a dispute settlement procedure; and
- includes a flexibility clause and a consultation clause.

The agreement approved by the FWC will commence operation seven days after it is approved by the FWC or at a later date specified in the agreement.

# 9 INDUSTRIAL ACTION

Departments and agencies are responsible for implementing strategies for dealing with industrial action and advising the CBU of any proposed industrial action or response. Departments and agencies must ensure that the impact of industrial action is minimised and that any response is appropriate.

## Overview of industrial action provisions in the FW Act

The Fair Work Act provides that industrial action must not be organised or engaged in before the nominal expiry date of an enterprise agreement. After the nominal expiry date has passed, employees are entitled to take protected industrial action. It is protected if it is endorsed in a secret ballot of employees held in accordance with a protected action ballot order of the FWC.

It is unlawful to make payments to employees in relation to a period during which they engage in a total stoppage of work. Industrial action may include any stoppage of work and unauthorised absences from the workplace. Different restrictions on payment apply for partial work bans and unprotected action.

An employer cannot dismiss an employee, injure an employee in his/her employment or alter the position of an employee to the employee's prejudice because the employee is proposing to engage in, is engaging in, or has engaged in protected industrial action.

Industrial action under the FW Act does not include action sanctioned by the employer or action by an employee based on a reasonable concern about an imminent risk to his/her health and safety, provided that the employee does not refuse to perform other safe and appropriate work. Employees in this category are entitled to continue to receive payments.

## Suspension and termination of industrial action

### (a) Protected industrial action

Protected industrial action can be suspended or terminated by an order of the FWC. Application for suspension or termination of protected industrial action can be made, among others, by the parties to the agreement, a third party affected by action, and a state minister with responsibility for industrial relations. The FWC can also order suspension or termination of protected industrial action on its own initiative.

The circumstances when protected industrial action may be terminated include industrial action that is causing significant harm to the employer or employees who will be covered by the agreement.

The FWC may also suspend or terminate protected industrial action if it threatens to endanger the life, personal safety, health or welfare of the population or part of it, or causing significant damage to the economy or an important part of it.

Protected industrial action may also be suspended if the FWC considers that a cooling-off period is appropriate.

### (b) Unprotected industrial action

Under the FW Act unprotected action includes any industrial action before the nominal expiry date of an applicable enterprise agreement. Other forms of industrial action that are not protected action for the purposes of the FW Act include any action taken in the absence of a successful ballot, or action in support of unlawful terms, pattern bargaining or demarcation disputes.

The FWC on an application or its own initiative must stop or prevent industrial action if it is satisfied that that industrial action is unprotected industrial action. Applications for such orders must be determined by the FWC within two working days.

For full details relating to suspension and termination of protected industrial action see Part 3-3 of the FW Act.

## ACTION REQUIRED BY DEPARTMENTS AND AGENCIES

### (a) Protected industrial action:

#### (i) Protected action ballot orders

Departments and agencies are requested to promptly send to the CBU copies of any application to the FWC by a union or employees for an order for a protected action ballot to take industrial action and the result of the application.

Where departments and agencies consider challenging the application to the Fair Work Commission, they are required to consult with the CBU and the portfolio department. If the outcome of consultation is that there are compelling reasons for challenging the application, the application to challenge will require Government approval.

#### (ii) Total stoppage of work

Where there is a total stoppage of work during a period of protected action, section 470 of the FW Act requires departments and agencies not to pay those employees who have participated in the stoppage but only in relation to the actual period not worked. Departments and agencies must advise the relevant portfolio Minister and the CBU where such deduction occurs.

Departments and agencies need to have sufficient evidence to be able to determine which employees have actually stopped work and for what period/s (e.g. days, time, during ordinary hours of work or overtime work), and then determine whether the evidence is sufficient enough to warrant deductions from pay to be made.

### **(iii) Partial work bans**

Where protected industrial action does not involve a complete withdrawal of labour but involves action such as bans and limitations, departments and agencies may determine it is of such a nature as to warrant deductions of pay under section 471 of the FW Act.

If the department or agency believes the action does warrant application of section 471, the prior approval of the relevant portfolio Minister and the Minister for Industrial Relations (through the CBU) is required before implementing procedures under that section, including the issuing of written notices to employees of intended reduction of payments. In any submission seeking approval, departments and agencies are expected to outline:

- why the action taken by employees warrants the application of section 471;
- what proportion of the employee's pay is intended to be deducted; and
- the method by which the proportion was determined.

Collecting evidence relating to the employees partial work stoppages is important. Departments and agencies need to have sufficient evidence to be able to determine which employees have actually stopped work and for what period/s (e.g. days, time, during ordinary hours of work or overtime work), and then determine whether the evidence is sufficient enough to warrant deductions from pay to be made.

The assessment must include a comparison between an employee's normal duties and how they are performed with the performance of the same duties during a work ban and then assess whether it warrants deductions of pay. It is important to note that some stoppages may be caused by other reasons. For example, in some instances an employee's stoppage may be caused by illness or injury or by a reasonable concern about an imminent risk to their health and safety, when they do not refuse to perform other suitable and available work.

Before deductions are made in relation to partial work bans the employee must be provided with a written notice which says that because of the ban the employees payments will be reduced by the proportion specified in the notice (FW Act s 471) as well as the basis for the calculation. It should be noted that the Fair Work Commission has the power to make an order varying the employer notice in relation to the deduction taking into account what is reasonable and fair in the circumstances of the case (FW Act s 473).

### **(iv) Employer response action**

Where a department or agency intends to engage in 'employer response action' as defined in section 411 of the FW Act, the prior approval of the Government (through the CBU) is required.

### **(v) FWC orders suspending or terminating protected industrial action**

Where a department or agency intends to apply to the FWC for orders to suspend or terminate protected industrial action, the prior approval of the Government through the CBU is also required.

### **(b) Unprotected industrial action:**

Section 474 of the FW Act requires departments and agencies not to pay employees who have participated in unprotected industrial action. The minimum deduction is four hours pay even if the industrial action is for less than four hours. Separate provisions apply to overtime bans. Departments and agencies must advise the Government and the CBU prior to making such deductions.

### **(c) FWC orders stopping or preventing unprotected industrial action**

Where a department or agency intends to apply to the FWC for orders to stop or prevent unprotected industrial action, the relevant portfolio Minister and the CBU must be advised.

### **(d) Court action for injunction / enforcement orders / industrial torts**

Where a department or agency intends to apply to the courts to seek or enforce any order in relation to unprotected industrial action, the prior approval of the relevant portfolio Minister and the Minister for Industrial Relations is required. A copy of the intended application must be sent to the CBU accompanying the approval request.

### **(e) Civil remedies in response to claims for payment**

The prior approval of the relevant portfolio Minister and the Minister for Industrial Relations is also needed if a department or agency wishes to apply for a civil remedy in respect of any claim for payment during any period of industrial action.

## 10 RIGHT OF ENTRY

Under Part 3 – 4 of the FW Act the FWC may issue a union official, on application, a permit allowing the official to enter a workplace. Such permits are of a general nature and do not differentiate between employers, work sites or awards. Once granted and unless revoked, permits have a life of up to three years or until the permit holder ceases his or her employment with the union concerned, whichever is sooner. Departments and agencies must allow permit holders access to the workplace for the purposes of investigating suspected breaches of the workplace relations laws or to hold discussions with workers who industrial interests the permit holder's organisation is entitled to represent provided that the permit holder has provided an entry notice at least 24 hours but not more than 14 days before the entry.

In respect to suspected breaches of the agreement or FW Act it should be noted that under s482 of the FW Act a permit holder has a range of rights including inspecting any relevant work, process or object, interview any person who agrees to be interviewed and inspect and copy any document (other than a non-member record) that is directly relevant to the contravention.

It is noted that s492 provides that the permit holder must conduct interviews or hold discussions in the rooms or areas agreed with the employer/occupier of the premises. However, where there is no agreement the default position is that interviews and discussions can be held in the usual place provided for meals or other breaks or where those being interviewed or taking part in discussions ordinarily take their meals or other breaks. Departments and agencies are therefore urged to take a cooperative approach to the location of union meetings. Unless there is some pressing operational or safety reason this should usually be in the lunch room or other location most easily accessible to staff involved and usually frequented by them.

In addition, Part 8 of the Victorian *Occupational Health and Safety Act 2004* (Vic) (OHS Act) gives authorised representatives of unions a right to enter Victorian workplaces to enquire into suspected breaches of the OHS Act, or the regulations made under that Act. For the purpose of enquiring into suspected breaches authorised representatives of unions also have right to consult with any employee at the workplace who is the member or is eligible to be their member, with their consent. Departments and agencies must allow access to the workplace for this purpose.

# 11 ATTACHMENTS

## ATTACHMENT 1: CONSULTATION MODEL CLAUSE

- 1 This term applies if the employer:
  - (a) proposes to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or
  - (b) proposes to introduce a change to the regular roster or ordinary hours of work of employees.

### Major change

- 2 For a major change referred to in paragraph (1)(a):
  - (a) the employer must notify the relevant employees and their union of the decision to introduce the major change; and
  - (b) subclauses (3) to (9) apply.
- 3 The relevant employees may appoint a representative for the purposes of the procedures in this term.
- 4 If:
  - (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
  - (b) the employee or employees advise the employer of the identity of the representative;  
the employer must recognise the representative.
5. As soon as practicable after the employer has developed a change proposal the employer must:
  - (a) discuss with the relevant employees:
    - (i) the introduction of the change; and
    - (ii) the effect the change is likely to have on the employees; and
    - (iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and
  - (b) for the purposes of the discussion—provide, in writing, to the relevant employees:
    - (i) all relevant information about the change including the nature of the change proposed; and
    - (ii) information about the expected effects of the change on the employees; and
    - (iii) any other matters likely to affect the employees.

- 6 However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 7 The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- 8 If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in paragraph (2)(a) and subclauses (3) and (5) are taken not to apply.
- 9 In this term, a major change ***is likely to have a significant effect on employees*** if it results in:
  - (a) the termination of the employment of employees; or
  - (b) major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
  - (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
  - (d) the alteration of hours of work; or
  - (e) the need to retrain employees; or
  - (f) the need to relocate employees to another workplace; or
  - (g) the restructuring of jobs.

### Change to regular roster or ordinary hours of work

- 10 For a change referred to in paragraph (1)(b):
  - (a) the employer must notify the relevant employees of the proposed change; and
  - (b) subclauses (11) to (15) apply.
- 11 The relevant employees may appoint a representative for the purposes of the procedures in this term.
- 12 If:
  - (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
  - (b) the employee or employees advise the employer of the identity of the representative;  
the employer must recognise the representative.

- 13 As soon as practicable after proposing to introduce the change, the employer must:
  - (a) discuss with the relevant employees the introduction of the change; and
  - (b) for the purposes of the discussion—provide to the relevant employees:
    - (i) all relevant information about the change, including the nature of the change; and
    - (ii) information about what the employer reasonably believes will be the effects of the change on the employees; and
    - (iii) information about any other matters that the employer reasonably believes are likely to affect the employees; and
  - (c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- 14 However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 15 The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- 16 In this term:

**relevant employees means** the employees who may be affected by a change referred to in subclause (1).

## ATTACHMENT 2: DISPUTE RESOLUTION MODEL CLAUSE

The purpose of this model clause is to provide clarity and guidance to departments and agencies about what is required in a public sector enterprise agreement to satisfy both Government policy and the requirements of the FW Act.

### 1 Disputes

- (a) Unless otherwise provided for in this agreement, a dispute about a matter arising under this agreement or the National Employment Standards, other than termination of employment, must be dealt with in accordance with this clause. This includes a dispute about whether an employer had reasonable grounds to refuse a request for flexible working conditions under [refer to relevant enterprise agreement clause] or an application to extend unpaid parental leave under [refer to relevant enterprise agreement clause].
- (b) For the avoidance of doubt, this clause does not apply to any dispute on a matter or matters arising in the course of bargaining in relation to a proposed enterprise agreement.
- (c) The employer or an employee covered by this agreement may choose to be represented at any stage by a representative, including an employer or employee organisation.

### 2 Obligations

- (a) The parties to the dispute, and their representatives, must genuinely attempt to resolve the dispute through the processes set out in this clause and must cooperate to ensure that these processes are carried out expeditiously.
- (b) Whilst a dispute is being dealt with in accordance with this clause, work must continue in accordance with usual practice, provided that this does not apply to an employee who has a reasonable concern about an imminent risk to his or her health or safety, has advised the employer of this concern and has not unreasonably failed to comply with a direction by the employer to perform other available work that is safe and appropriate for the employee to perform.
- (c) No person covered by the agreement will be prejudiced as to the final settlement of the dispute by the continuance of work in accordance with this clause.

### 3 Agreement and dispute settlement facilitation

- (a) For the purposes of compliance with this agreement (including compliance with this dispute procedure) where the chosen employee representative is another employee of the employer, he/she must be given reasonable opportunity to enable her/him to represent employees concerning matters pertaining to the employment relationship including but not limited to:
  - (i) investigating the circumstances of a dispute or an alleged breach of this agreement or the National Employment Standards;
  - (ii) endeavouring to resolve a dispute arising out of the operation of the agreement or the National Employment Standards; or,
  - (iii) participating in conciliation, arbitration or agreed alternative dispute resolution process.
- (b) Any release from normal duties is subject to the proviso that it does not unduly affect the operations of the employer.

### 4 Discussion of dispute

- (a) The dispute must first be discussed by the aggrieved employee(s) with the immediate supervisor of the employee(s).
- (b) If the matter is not settled, the employee(s) can require that the matter be discussed with another representative of the employer appointed for the purposes of this procedure.

### 5 Internal process

- (a) If any party to the dispute who is covered by the agreement refers the dispute to an established internal dispute resolution process, the matter must first be dealt with in accordance with that process, provided that the process is conducted in a timely manner and it is consistent with the following principles:
  - (i) the rules of natural justice;
  - (ii) appropriate mediation or conciliation of the dispute is provided;
  - (iii) any views on who should conduct the review shall be considered by the employer; and
  - (iv) the process is conducted as quickly, and with as little formality, as a proper consideration of the matter allows.
- (b) If the dispute is not settled through an internal dispute resolution process, a party to the dispute may refer the dispute to FWC for conciliation and if the matter remains unresolved, arbitration.

## 6 Disputes of a collective character

- (a) The parties covered by the agreement acknowledge that disputes of a collective character concerning more than one employee may be dealt with more expeditiously by an early reference to FWC.
- (b) No dispute of a collective character may be referred to FWC directly unless there has been a genuine attempt to resolve the dispute at the workplace level prior to it being referred to FWC for conciliation.

## 7 Conciliation

- (a) Where a dispute is referred for conciliation, a member of FWC may arrange for whatever process the member considers may assist in resolving the dispute to occur.
- (b) Conciliation before FWC shall be regarded as completed when:
  - (i) the parties to the dispute have informed the FWC member they have reached agreement on the settlement of the dispute; or
  - (ii) the member of FWC conducting the conciliation has, either of their own motion or after an application by either party, satisfied themselves that there is no likelihood that within a reasonable period, further conciliation will result in a settlement; or
  - (iii) the parties to the dispute have informed the FWC member that there is no likelihood of agreement on the settlement of the dispute.

## 8 Arbitration

- (a) If the dispute has not been settled when conciliation has been completed, either party to the dispute may request that FWC proceeds to determine the dispute by arbitration.
- (b) Where a member of FWC has exercised conciliation powers in relation to the dispute, the member shall not exercise, or take part in the exercise of, arbitration powers in relation to the dispute if a party to the dispute objects to the member doing so.
- (c) Subject to sub clause 8(d) below, the determination of FWC is binding upon the persons covered by this agreement.
- (d) An appeal lies to a Full Bench of FWC, with the leave of the Full Bench, against a determination of a single member of FWC made pursuant to this clause.

## 9 Conduct of matters before FWC

- (a) Subject to any agreement between the parties to the dispute in relation to a particular dispute and the provisions of this clause, in dealing with a dispute through conciliation or arbitration, FWC may conduct the matter in accordance with Subdivision B of Division 3 of Part 51 of the FW Act.

## ATTACHMENT 3: WORK AND FAMILY MODEL CLAUSES

Outlined below are a parental leave, a personal/carer's leave and a compassionate leave model clause for use by departments and agencies.

The model clauses provide guidance as to what is required in a public sector collective enterprise agreement, based on the FW Act National Employment Standards.

### 1 Parental leave

#### 1.1 Application

Full time, part time and Eligible Casual Employees are entitled to parental leave under this clause if:

- (a) the leave is associated with:
  - (i) the birth of a child of the Employee or the Employee's Spouse; or
  - (ii) the placement of a child with the Employee for adoption; and
- (b) the Employee has or will have a responsibility for the care of the child.

#### 1.2 Definitions

For the purposes of this clause:

- (a) **Eligible Casual Employee** means a casual Employee:
  - (i) employed by the Employer on a regular and systematic basis for a continuing period or sequence of periods of employment during a period of at least twelve months; and
  - (ii) who has, but for accessing parental leave under this clause, a reasonable expectation of continuing employment by the employer on a regular and systematic basis.
- (b) **Continuous Service** is work for the Employer on a regular and systematic basis (including any period of authorised leave). **[Insert any existing or agreed portability arrangements]**
- (c) **Child** means:
  - (i) in relation to birth-related leave, a child (or children from a multiple birth) of the Employee or the Employee's Spouse;
  - (ii) in relation to adoption-related leave, a child (or children) who will be placed with an Employee, and:
    - who is, or will be, under 16 as at the day of placement, or the expected day of placement;
    - has not, or will not have, lived continuously with the Employee for a period of 6 months or more as at the day of placement, or the expected day of placement; and
    - is not (otherwise than because of the adoption) a child of the Employee or the Employee's spouse.
- (d) **Primary Caregiver** means the person who is the primary carer of a newborn or newly adopted Child. The primary carer is the person who meets the Child's physical needs more than anyone else. Only one person can be a Child's primary carer on a particular day. In most cases the Primary Caregiver will be the birth mother of a newborn or the initial primary carer of a newly adopted child.
- (e) **Secondary Caregiver** means a person who has parental responsibility for the Child but is not the Primary Caregiver.
- (f) **Spouse** includes a de facto spouse, former spouse or former de facto spouse. The Employee's de facto spouse means a person who lives with the Employee as husband, wife or same sex partner on a bona fide domestic basis, whether or not legally married to the Employee.

### 1.3 Summary of Parental Leave Entitlements

Parental leave entitlements in this clause are summarised in the following table.

	Paid leave	Unpaid leave	Total
<b>Primary Caregiver</b>			
More than 12 months service	8 weeks	Up to 44 weeks	52 weeks
Less than 12 months service	0	Up to 52 weeks	52 weeks
Eligible casual employee	0	Up to 52 weeks	52 weeks
<b>Secondary Caregiver</b>			
More than 12 months service	__ weeks	Up to __ weeks	52 weeks
Less than 12 months service	0	Up to 52 weeks	52 weeks
Eligible casual employee	0	Up to 52 weeks	52 weeks
<b>Pre-natal leave</b>			
Pregnant employee	__ hours		
Spouse	__ hours		
<b>Permanent Care Leave</b>			
More than 12 months service	__ weeks	Up to __ weeks	52 weeks
Less than 12 months service	0	Up to 52 weeks	52 weeks
Grandparent Leave	0	Up to 52 weeks	52 weeks

### 1.4 Parental Leave – Primary Caregiver

- (a) An Employee who has, or will have, completed at least twelve months paid Continuous Service and who will be the Primary Caregiver at the time of the birth or adoption of their Child, is entitled to up to 52 weeks parental leave, comprising:
- (i) 8 weeks paid parental leave; and
  - (ii) up to 44 weeks unpaid parental leave.
- (b) An Employee who will be the Primary Caregiver but has not completed at least twelve months paid Continuous Service at the time of the birth or adoption of their Child, is entitled to up to 52 weeks unpaid parental leave.
- (c) An Eligible Casual Employee who will be the Primary Caregiver at the time of the birth or adoption of their Child is entitled to up to 52 weeks unpaid parental leave.
- (d) Only one parent can receive Primary Caregiver parental leave entitlements in respect to the birth or adoption of their Child. An Employee cannot receive Primary Caregiver parental leave entitlements:
- (i) if their Spouse is, or will be, the Primary Caregiver at the time of the birth or adoption of their Child;

- (ii) if their Spouse has received, or will receive, paid maternity leave, primary caregiver entitlements, or a similar entitlement, from their employer; or
  - (iii) if the Employee has received, or will receive, Secondary Caregiver parental leave entitlements in relation to their Child.
- (e) A period of parental leave taken in accordance with this clause must be for a single continuous period.

### 1.5 Parental Leave – Secondary Caregiver

- (a) An Employee who has, or will have, completed at least twelve months paid Continuous Service and who will be the Secondary Caregiver at the time of the birth or adoption of their Child, is entitled to up to 52 weeks parental leave, comprising:
- (i) \_\_ weeks paid parental leave; and
  - (ii) up to \_\_ weeks unpaid parental leave.
- (b) An Employee who will be the Secondary Caregiver but has not completed at least twelve months paid Continuous Service at the time of the birth or adoption, is entitled to up to 52 weeks unpaid parental leave.

- (c) An Eligible Casual Employee who will be the Secondary Caregiver at the time of the birth or adoption of their Child is entitled to up to 52 weeks unpaid parental leave.
- (d) Only one parent can receive Secondary Caregiver parental leave entitlements in respect to the birth or adoption of their Child.
- (e) An Employee cannot receive Secondary Caregiver parental leave entitlements where the Employee has received Primary Caregiver parental leave entitlements in relation to their Child.

### 1.6 Pre Natal Leave

- (a) A pregnant Employee will have access to paid leave totalling up to **[insert the number]** hours per pregnancy to enable the Employee to attend routine medical appointments associated with the pregnancy. The Employer should be flexible enough to allow the Employee the ability to leave work and return on the same day.
- (b) An Employee who has a Spouse who is pregnant will have access to paid leave totalling up to **[insert the number]** hours per pregnancy to enable the Employee to attend routine medical appointments associated with the pregnancy.
- (c) The Employee is required to provide a medical certificate from a registered medical practitioner confirming that the Employee or their Spouse is pregnant. Each absence on pre-natal leave must also be covered by a medical certificate.
- (d) Paid pre-natal leave is not available to casual Employees.

### 1.7 Pre-adoption leave

- (a) An Employee seeking to adopt a Child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure.
- (b) The Employee and the Employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the Employee is entitled to take up to two days unpaid leave.
- (c) Where paid leave is available to the Employee, the Employer may require the Employee to take such leave instead.
- (d) The Employer may require the Employee to provide satisfactory evidence supporting the leave.

### 1.8 Permanent Care Leave

If, pursuant to the *Children, Youth and Families Act 2005* (Vic) or any successor to that legislation, an Employee (other than a casual Employee), is granted a permanent care order in relation to the custody or guardianship of a child and the Employee is the Primary Caregiver for that child, the Employee will

be entitled to **[insert the number]** weeks' paid leave at a time to be agreed with the Employer.

### 1.9 Grandparent Leave

An Employee, who is or will be the Primary Caregiver of a grandchild, is entitled to a period of up to 52 weeks' continuous unpaid grandparent leave in respect of the birth or adoption of the grandchild of the Employee.

### 1.10 Continuing to work while pregnant

- (a) The Employer may require a pregnant Employee to provide a medical certificate stating that the Employee is fit to work their normal duties where the Employee:
  - (i) continues to work within a six week period immediately prior to the expected date of birth of the child; or
  - (ii) is on paid leave under **clause 1.12(b)**.
- (b) The Employer may require the Employee to start parental leave if the Employee:
  - (i) does not give the Employer the requested certificate within seven days of the request; or
  - (ii) gives the Employer a medical certificate stating that the Employee is unfit to work.

### 1.11 Personal/Carer's Leave

A pregnant Employee, not then on parental leave, who is suffering from an illness whether related or not to the pregnancy, may take any paid and/or unpaid personal/carer's leave in accordance with **[insert the clause number]**.

### 1.12 Transfer to a Safe Job

- (a) Where an Employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the Employee make it inadvisable for the Employee to continue at their present work, the Employee will be transferred to a safe job with no other change to the Employee's terms and conditions of employment until the commencement of parental leave.
- (b) If there is no safe job available, the employee is entitled to take paid no safe job leave, or the Employer may require the Employee to take no safe job paid leave immediately for a period which ends at the earliest of either:
  - (i) when the Employee is certified unfit to work during the six week period before the expected date of birth by a registered medical practitioner; or
  - (ii) when the Employee's pregnancy results in the birth of a living child or when the Employee's pregnancy ends otherwise than with the birth of a living child.

- (c) The entitlement to no safe job leave is in addition to any other leave entitlement the Employee has.

### **1.13 Special Parental Leave**

Where the pregnancy of an Employee not then on parental leave terminates other than by the birth of a living child, the Employee may take leave for such periods as a registered medical practitioner certifies as necessary, as follows:

- (a) where the pregnancy terminates during the first 20 weeks, during the certified period/s the Employee is entitled to access any paid and/or unpaid personal/carer's leave entitlements in accordance with **clause [insert the clause number]**;
- (b) where the pregnancy terminates after the completion of 20 weeks, during the certified period/s the Employee is entitled to paid special maternity leave not exceeding the amount of paid parental leave available under **clause 1.3** and thereafter, to unpaid special maternity leave.

### **1.14 Notice and evidence requirements**

- (a) An Employee must give at least 10 weeks written notice of the intention to take parental leave, including the proposed start and end dates. At this time, the Employee must also provide a statutory declaration stating:
  - (i) that the Employee will become either the Primary Caregiver or Secondary Caregiver of the Child, as appropriate;
  - (ii) the particulars of any parental leave taken or proposed to be taken or applied for by the Employee's Spouse; and
  - (iii) that for the period of parental leave the Employee will not engage in any conduct inconsistent with their contract of employment.
- (b) At least four weeks before the intended commencement of parental leave, the Employee must confirm in writing the intended start and end dates of the parental leave, or advise the Employer of any changes to the notice provided in **clause 1.14(a)**, unless it is not practicable to do so.
- (c) The Employer may require the Employee to provide evidence which would satisfy a reasonable person of:
  - (i) in the case of birth-related leave, the date of birth of the Child (including without limitation, a medical certificate stating the date of birth or expected date of birth); or
  - (ii) in the case of adoption-related leave, the commencement of the placement (or expected day of placement) of the Child and that the Child will be under 16 years of age as at the day of placement or expected day of placement.

- (d) An Employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement or placement occurring earlier than the expected date or in other compelling circumstances. In these circumstances the notice and evidence requirements of this clause should be provided as soon as reasonably practicable.

### **1.15 Commencement of parental leave**

- (a) An Employee who is pregnant may commence Primary Caregiver parental leave at any time within 14 weeks prior to the expected date of birth of the Child. The period of parental leave must commence no later than the date of birth of the Child.
- (b) In all other cases, Primary Caregiver parental leave commences on the day of birth or placement of the Child.
- (c) Secondary caregiver parental leave may commence on the day of birth or placement of the Child.
- (d) The Employer and Employee may agree to alternative arrangements regarding the commencement of parental leave.
- (e) Unless otherwise agreed, any entitlement to paid parental leave will be paid from the date of commencement of parental leave.

### **1.16 Single period of parental leave**

Parental leave is to be available to only one parent at a time, in a single unbroken period, except in the case of concurrent leave.

### **1.17 Employee Couple – Concurrent Leave**

- (a) Two Employees covered by this Agreement may take up to eight weeks concurrent leave in connection with the birth or adoption of their Child.
- (b) Concurrent leave may commence one week prior to the expected date of birth of the Child or the time of placement in the case of adoption.
- (c) Concurrent leave can be taken in separate periods, but each block of concurrent leave must not be less than 2 weeks, unless the Employer otherwise agrees.

### **1.18 Parental Leave and Other Entitlements**

- (a) An Employee may in lieu of or in conjunction with parental leave, access any annual leave or long service leave entitlements which they have accrued subject to the total amount of leave not exceeding 52 weeks or a longer period as agreed under **clause 1.20(b)**.

- (b) Where a Public Holiday occurs during a period of paid parental leave, the Public Holiday is not to be regarded as part of the paid parental leave and the Employer will grant the Employee a day off in lieu, to be taken by the Employee immediately following the period of paid parental leave.
- (c) Unpaid parental leave under **clauses 1.4, 1.5, 1.20 and 1.22** shall not break an Employee's continuity of employment but it will not count as service for leave accrual or other purposes.

#### 1.19 Keeping in touch days

- (a) During a period of parental leave an Employer and Employee may agree to perform work for the purpose of keeping in touch in order to facilitate a return to employment at the end of the period of leave.
- (b) Keeping in touch days must be agreed and be in accordance with section 79A of the *Fair Work Act 2009*.

#### 1.20 Extending parental leave

##### (a) Extending the initial period of parental leave

- (i) An Employee who is on an initial period of parental leave of less than 52 weeks under **clause 1.4 or 1.5**, may extend the period of their parental leave on one occasion up to the full 52 week entitlement.
- (ii) The Employee must notify the Employer in writing at least four weeks prior to the end date of their initial parental leave period. The notice must specify the new end date of the parental leave.

##### (b) Right to request an extension to parental leave

- (i) An Employee who is on parental leave under **clause 1.4 or 1.5** may request an extension of unpaid parental leave for a further period of up to 12 months immediately following the end of the current parental leave period.
- (ii) In the case of an Employee who is a member of an employee couple, the period of the extension cannot exceed 12 months, less any period of parental leave that the other member of the Employee couple will have taken in relation to the Child.
- (iii) The Employee's request must be in writing and given to the Employer at least 4 weeks before the end of the current parental leave period. The request must specify any parental leave that the Employee's spouse will have taken.
- (iv) The Employer shall consider the request having regard to the Employee's circumstances and, provided the request is based on the Employee's parental responsibilities, may only refuse the request on reasonable business grounds.

- (v) The Employer must not refuse the request unless the Employer has given the Employee a reasonable opportunity to discuss the request.
- (vi) The Employer must give a written response to the request as soon as practicable, and no later than 21 days after the request is made. The response must include the details of the reasons for any refusal.

##### (c) Total period of parental leave

- (i) The total period of parental leave, including any extensions, must not extend beyond 24 months.
- (ii) In the case of an employee Couple, the total period of parental leave for both parents combined, including any extensions, must not extend beyond 24 months. The Employee's entitlement to parental leave under **clause 1.4 or 1.5** will reduce by the period of any extension taken by a member of the couple under **clause 1.20**.

#### 1.21 Calculation of pay for the purposes of parental leave

- (a) The calculation of weekly pay for paid parental leave purposes will be based on the average number of ordinary hours worked by the Employee over the past three years. The calculation will exclude periods of unpaid parental leave.
- (b) The average number of weekly hours worked by the Employee, determined in accordance with **clause 1.21(a)** above, will be then applied to the annual salary applicable to the Employee's classification and salary point at the time of taking parental leave to determine the actual rate of pay whilst on parental leave.
- (c) Despite **1.21(a)**, an Employee who reduces the time fraction they work to better cope during pregnancy will not have their subsequent paid parental leave reduced accordingly.

##### (d) Half Pay

The Employee may elect to take any paid parental leave entitlement at half pay for a period equal to twice the period to which the Employee would otherwise be entitled.

#### 1.22 Commonwealth Paid Parental Leave

Paid parental leave entitlements outlined in this clause are in addition to any payments which may be available under the Commonwealth Paid Parental Leave Scheme.

### 1.23 Returning to Work

#### (a) Returning to work early

- (i) During the period of parental leave an Employee may return to work at any time as agreed between the Employer and the Employee, provided that time does not exceed four weeks from the recommencement date desired by the Employee.
- (ii) In the case of adoption, where the placement of an eligible child with an Employee does not proceed or continue, the Employee will notify the Employer immediately and the Employer will nominate a time not exceeding four weeks from receipt of notification for the Employee's return to work.

#### (b) Returning to work at conclusion of leave

- (i) At least four weeks prior to the expiration of parental leave, the Employee will notify the Employer of their return to work after a period of parental leave.
- (ii) Subject to **1.23(b)(iii)**, an Employee will be entitled to the position which they held immediately before proceeding on parental leave. In the case of an Employee transferred to a safe job pursuant to **clause 1.12** above, the Employee will be entitled to return to the position they held immediately before such transfer.
- (iii) Where such position no longer exists but there are other positions available which the Employee is qualified for and is capable of performing, the Employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

#### (c) Returning to work at a reduced time fraction

- (i) To assist an Employee in reconciling work and parental responsibilities, an Employee may request to return to work at a reduced time-fraction until their Child reaches school age, after which the Employee will resume their substantive time-fraction.
- (ii) Where an Employee wishes to make a request under **1.23(c)(i)**, such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the Employee is due to return to work from parental leave.

### 1.24 Consultation and Communication during Parental Leave

- (a) Where an Employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the Employer shall take reasonable steps to:
  - (i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the Employee held before commencing parental leave; and
  - (ii) provide an opportunity for the Employee to discuss any significant effect the change will have on the status or responsibility level of the position the Employee held before commencing parental leave.
- (b) The Employee shall take reasonable steps to inform the Employer about any significant matter that will affect the Employee's decision regarding the duration of parental leave to be taken, whether the Employee intends to return to work and whether the Employee intends to request to return to work on a part time basis.
- (c) The Employee shall also notify the Employer of changes of address or other contact details which might affect the Employer's capacity to comply with **clause 1.24(a)**.

### 1.25 Extended Family Leave

- (a) An Employee who is the Primary Caregiver and has exhausted all parental leave entitlements may apply for unpaid Extended Family Leave as a continuous extension to their parental leave taken in accordance with this clause. The total amount of leave, inclusive of parental leave taken in accordance with this clause cannot exceed seven years.
- (b) The Employee must make an application for Extended Family Leave each year.
- (c) An Employee will not be entitled to paid parental leave whilst on Extended Family leave.
- (d) Upon return to work the Employer may reallocate the Employee to other duties.

### 1.26 Replacement Employees

- (a) A replacement Employee is an Employee specifically engaged or temporarily acting on higher duties or transferred, as a result of an Employee proceeding on parental leave.
- (b) Before an Employer engages a replacement Employee the Employer must inform that person of the temporary nature of the employment and of the rights of the Employee who is being replaced.
- (c) It is agreed that the limitation in **clause [insert the clause number]** on the use of fixed term employment to replace the Employee does not apply in this case.

### 1.27 Casual Employees

The Employer must not fail to re engage a casual Employee because the Employee has accessed parental leave in accordance with this clause. The rights of the Employer in relation to engagement and re engagement of casual Employees are not affected, other than in accordance with this clause.

## 2 Personal/carer's leave

The provisions of this clause apply to full time and regular part time employees. See 2.1 (h) for casual employees' entitlements.

### 2.1 Amount of paid personal/carer's leave

(a) Paid personal/carer's leave will be available to an employee when they are absent because of:

- (i) personal illness or injury; or
- (ii) personal illness or injury of an immediate family or household member who requires the employee's care or support; or
- (iii) an unexpected emergency affecting an immediate family or household member; or
- (iv) the requirement to provide ongoing care and attention to another person who is wholly or substantially dependent on the employee, provided that the care and attention is not wholly or substantially on a commercial basis.

(b) Personal leave of:

- i. (insert agreed or relevant sick leave or personal leave award entitlement) days/ hours will be available in the first year of service;*
- ii. (insert agreed or relevant sick leave or personal leave award entitlement) days/ hours will be available per annum in the second and subsequent years of service.*

(c) An employee's entitlement accrues progressively during a year of service according to the employee's ordinary hours of work and unused personal/carer's leave accumulates from year to year.

#### (d) Immediate family or household

The term immediate family includes:

- (i) spouse (including a former spouse, a de facto partner and a former de facto partner) of the employee. A de facto partner means a person who, although not legally married to the employee, lives with the employee in a relationship as a couple on a genuine domestic basis (whether the employee and the person are of the same sex or different sexes); and

- (ii) (child or an adult child (including an adopted child, a step child or an exnuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee **(or insert agency's definition)**).

#### (e) Use of accumulated personal/carer's leave

An employee is entitled to use accumulated personal/carer's leave for the purposes of this clause where the current year's personal/carer's leave entitlement has been exhausted.

**(insert any notice, certification etc. provisions)**

#### (f) Absence on public holidays

If the period during which an employee takes paid personal/carer's leave includes a day or part-day that is a public holiday in the place where the employee is based for work purposes, the employee is taken not to be on paid personal/carer's leave on that public holiday.

#### (g) Unpaid personal leave

Where an employee has exhausted all paid personal/carer's leave entitlements, he/she is entitled to take unpaid carer's leave to provide care or support in the circumstances outlined in 2.1 (a)(iii), or (iv). The organisation and the employee will agree on the period. In the absence of agreement the employee is entitled to take up to two (2) days' unpaid carer's leave per occasion.

#### (h) Casual employees – caring responsibilities

- (i) Casual employees are entitled to be unavailable to attend work or to leave work:
  - (A) if they need to care for members of their immediate family or household who are sick and require care or support, or who require care due to an unexpected emergency, or the birth of a child; or
  - (B) upon the death in Australia of an immediate family or household member.
- (ii) The Employer and the employee will agree on the period for which the employee will be entitled to be unavailable to attend work. In the absence of agreement, the employee is entitled to not be unavailable to attend work for up to two (2) days per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (iii) The Employer will require the casual employee to provide satisfactory evidence to support the taking of this leave.

### 3. Compassionate leave

#### 3.1 Amount of compassionate leave

- (a) Employees are entitled to **(insert agreed entitlement)** days compassionate leave on each occasion when a member of the employee's immediate family or a member of the employee's household:
  - (i) contracts or develops a personal illness that poses a serious threat to his or her life;
  - (ii) sustains a personal injury that poses a serious threat to his/her life; or
  - (iii) dies.
- (b) Any unused portion of compassionate leave will not accrue from year to year and will not be paid out on termination.
- (c) Such leave does not have to be taken consecutively.
- (d) An employee may take unpaid compassionate leave by agreement with the employer.
- (e) The Employer will require the employee to provide satisfactory evidence to support the taking of compassionate leave.

### 4. Family violence leave

#### 4.1 General Principle

- (a) The Employer recognises that Employees sometimes face situations of violence or abuse in their personal life that may affect their attendance or performance at work. Therefore, the Employer is committed to providing support to staff that experience family violence.
- (b) Leave for family violence purposes is available to employees who are experiencing family violence to allow them to be absent from the workplace to attend counselling appointments, legal proceedings and other activities related to, and as a consequence of, family violence.

#### 4.2 Definition of Family Violence

Family violence includes physical, sexual, financial, verbal or emotional abuse by a family member as defined by the *Family Violence Protection Act 2008* (Vic).

#### 4.3 Eligibility

- (a) Leave for family violence purposes is available to all employees with the exception of casual employees.
- (b) Casual employees are entitled to access leave without pay for family violence purposes.

#### 4.4 General Measures

- (a) Evidence of family violence may be required and can be in the form an agreed document issued by the Police Service, a Court, a registered health practitioner, a Family Violence Support Service, district nurse, maternal and health care nurse or Lawyer. A signed statutory declaration can also be offered as evidence.
- (b) All personal information concerning family violence will be kept confidential in line with the Employer's policies and relevant legislation. No information will be kept on an Employee's personnel file without their express written permission.
- (c) No adverse action will be taken against an Employee if their attendance or performance at work suffers as a result of experiencing family violence.
- (d) The Employer will identify contact/s within the workplace who will be trained in family violence and associated privacy issues. The Employer will advertise the name of any Family Violence contacts within the workplace.
- (e) An Employee experiencing family violence may raise the issue with their immediate supervisor, Family Violence contacts, union delegate or nominated Human Resources contact. The immediate supervisor may seek advice from Human Resources if the Employee chooses not to see the Human Resources or Family Violence contact.
- (f) Where requested by an employee, the Human Resources contact will liaise with the Employee's manager on the Employee's behalf, and will make a recommendation on the most appropriate form of support to provide in accordance with clause 4.5 and clause 4.6.
- (g) The Employer will develop guidelines to supplement this clause and which details the appropriate action to be taken in the event that an employee reports family violence.

#### 4.5 Leave

- (a) An employee experiencing family violence will have access to 20 days per year of paid special leave for medical appointments, legal proceedings and other activities related to family violence (this leave is not cumulative but if the leave is exhausted consideration will be given to providing additional leave). This leave will be in addition to existing leave entitlements and may be taken as consecutive or single days or as a fraction of a day and can be taken without prior approval.

- (b) An Employee who supports a person experiencing family violence may utilise their personal/carer's leave entitlement to accompany them to court, to hospital, or to care for children. The Employer may require evidence consistent with clause 4.4 (a) from an Employee seeking to utilise their personal/carer's leave entitlement.

#### **4.6 Individual Support**

- (a) In order to provide support to an Employee experiencing family violence and to provide a safe work environment to all Employees, the Employer will approve any reasonable request from an Employee experiencing family violence for:
  - (i) temporary or ongoing changes to their span of hours or pattern or hours and/or shift patterns;
  - (ii) temporary or ongoing job redesign or changes to duties;
  - (iii) temporary or ongoing relocation to suitable employment;
  - (iv) a change to their telephone number or email address to avoid harassing contact;
  - (v) any other appropriate measure including those available under existing provisions for family friendly and flexible work arrangements.
- (b) Any changes to an employee's role should be reviewed at agreed periods. When an employee is no longer experiencing family violence, the terms and conditions of employment may revert back to the terms and conditions applicable to the Employee's substantive position.
- (c) An employee experiencing family violence will be offered access to the Employee Assistance Program (EAP) and/or other available local employee support resources. The EAP shall include professionals trained specifically in family violence.
- (d) An Employee that discloses that they are experiencing family violence will be given information regarding current support services.

## ATTACHMENT 4: VICTORIAN PUBLIC SERVICE REDEPLOYMENT POLICY

### Purpose

The aim of this policy is to specify the redeployment approach to be adopted across the Victorian Public Service (VPS) for employees covered by the *Victorian Public Service (VPS) Enterprise Agreement 2016*.

The development of this policy is informed by current legislative provisions and the VPS Enterprise Agreement 2016.

### Redeployment policy

In managing employees who have declared surplus public service body heads recognise their obligations and commit to placing surplus employees into vacancies for which they are suitable. Surplus employees are to commit to participate in the redeployment process in good faith including actively considering reasonable alternative employment.

### Legislation

Part 3 of the *Public Administration Act 2004* establishes that public service body heads, on behalf of the Crown, have all the rights, powers, authorities and duties of an employer in respect of the public sector body and employees in it. Section 31A provides that the employer may assign work to an employee and section 28(1) provides that the employer may transfer an employee to duties in other public service bodies or in public entities.

### VPS Enterprise Agreement 2016 redemption principles

The VPS Enterprise Agreement 2016 sets out the following policy principles:

- The redeployment of surplus employees wherever practical and consistent with the application of merit.
- Surplus employees have priority to be placed in vacancies that occur within the public service unless the person is determined to be unsuitable for appointment to that vacancy by the prospective employing agency.
- The placement of surplus employees shall be managed at agency level. The redeploying agency is to provide individualised case management and support, including counselling, provision of job search skills, liaison and retraining to assist in achieving placements.
- Processes to be consistent with the application of the principles of fair and reasonable treatment and merit selection.
- Unplaced surplus employees to have access to departure packages only after a reasonable period.

- Retrenchment and payment of a separation package to be used as an action of last resort where redeployment within a reasonable period does not appear likely.
- Where a vacancy exists for which a redeployee is suitable and is the only candidate or the best candidate among redeployees, a valid offer will be made. Such an offer involves an offer of duties to a suitably qualified employee (which may be at the same or different level or status or the same or different general location as the employee's previous employment).
- Redeployees will have priority access to vacancies both at the employee's classification level and below their classification level and, where appropriate, will be provided with salary maintenance.
- Relinquishing agencies will provide support to redeployees being placed in alternative positions utilising high quality and professional expertise.
- Redeployees will actively engage in the redeployment process.

### Redeployment process

The redeployment process commences after an employee has been declared surplus. The approach to managing a surplus employee in the VPS is set out below:

#### (a) Preparing for Redeployment

Preparation for redeployment is to occur within two weeks after an employee is declared surplus:

- The employer is to appoint a case manager for each surplus employee.
- The case manager and the surplus employee will:
  - (i) undertake a skills audit of the surplus employee;
  - (ii) organise/participate in CV preparation and interview skills training; and
  - (iii) agree on job search criteria (duties, location and classification).

#### (b) Commencing Redeployment

On commencing the formal three month redeployment process:

- the case manager and the surplus employee are to identify all possible public service vacancies for matching and to discuss options to facilitate the matching process and any retraining required;
- the case manager will facilitate the consideration of the surplus employee by the relevant employer;
- the case manager will provide feedback to the surplus employee after a referral or interview;
- agencies will ensure that all relevant vacancies are reviewed to maximise the opportunities for valid offers for redeployment to be made. The aim will be to offer duties as close to the employees current level as is possible;

- where a vacancy exists for which a redeployee is suitable and is the only candidate or the best candidate amongst redeployees, a valid offer will be made;
  - a valid offer involves an offer of duties to a suitably qualified employee (which may be at the same or lower level or status or the same or different general location as the employees previous employment); and
  - in using best endeavours to identify potential duties to offer surplus staff, priority should be accorded to duties in the following order:
    - (i) duties for which the employee is already qualified or who would become qualified for the position as a result of incidental or top up training within a reasonable distance from the location of existing duties and not less than at the same level or status;
    - (ii) duties at a lower level or status (where this change of level or status is acceptable to the employee) within a reasonable distance from existing duties; and
    - (iii) duties at a lower level or status and at a different location (where this change of level, status and location is acceptable to the employee).
- (c) Assignment or transfer to a suitable vacancy**
- An assignment to an internal ongoing vacancy or transfer to an ongoing role in another agency completes the redeployment process.
  - An assignment/secondment to a specific term vacancy requires that the case manager and surplus employee will continue to pursue ongoing vacancies during the placement.
- (d) Termination**
- If redeployment is not achieved at the end of three months, employment will be terminated and the surplus employee will be provided with the current VPS retrenchment package.
- (e) Employee safeguards**
- There will be a minimum period for redeployment of 3 months unless agreed otherwise.
  - Placement in a specific term vacancy of up to 3 months temporarily stops the redeployment process.
  - There will be salary maintenance for up to 6 months where the surplus employee is placed by agreement in a lower classified vacancy.
  - Agencies undertaking redeployment processes will consult with the staff in affected workplaces and the relevant union covered by the VPS Enterprise Agreement 2016 to ensure that all parties can be confident that appropriate efforts are being made to place affected employees in properly assessed duties.
- Departmental grievance processes are available and are to be managed expeditiously in relation to issues raised by surplus employees. Where departmental grievance processes are utilised:
    - (i) all time frames continue unless FWC recommends that specific time frames be suspended in which case agencies will observe FWC recommendations; and
    - (ii) where a union covered by the VPS Enterprise Agreement 2016 is representing the interests of aggrieved employees, the union is to be provided with necessary information so it can satisfy itself that the provisions of this policy have been complied with.
  - Nothing in this policy disturbs any existing avenues of redress available to aggrieved employees. Where the process involves the operation of Clause 12 of the VPS Enterprise Agreement 2016 (Resolution of Disputes), the full provisions of this clause shall apply including arbitration in accordance with Clause 12.11. Where these matters involve FWC, agencies will not challenge FWCs jurisdiction to address matters properly associated with redeployment unless the matters relate to termination on the ground of redundancy (which is outside the jurisdiction of FWC as set out in Re: AEU). While agencies recognise that FWC could decide to deal with all matters within its jurisdiction, this does not preclude agencies from seeking to argue that FWC should, as a matter of discretion, refuse to hear a matter on the basis that it has been appropriately dealt with by other processes.

## ATTACHMENT 5: EXAMPLE – NOTICE OF EMPLOYEE REPRESENTATIONAL RIGHTS

As outlined in Chapter 8 of these policies, the Notice must be a separate, standalone document with no agency logos, contact details or additional text added to it. The only information that can be inserted (in the identified place) is the name of the employer, the proposed name of the new agreement and the proposed coverage, which in most cases will be by reference to an existing agreement.

Below is an example of a completed Notice that was provided to all employees in relation to bargaining for the VPS Enterprise Agreement 2016. Please note that highlighted text included in the first paragraph of the Notice below must be changed to include information relevant to a particular bargaining.

### Schedule 2.1 Notice of employee representational rights (regulation 2.05)

#### ***Fair Work Act 2009, subsection 174 (6)***

*The State of Victoria* gives notice that it is bargaining in relation to an enterprise agreement, *the Victorian Public Service Enterprise Agreement 2016* which is proposed to cover those employees who are covered by *the Victorian Public Service Workplace Determination 2012*.

#### **What is an enterprise agreement?**

An enterprise agreement is an agreement between an employer and its employees that will be covered by the agreement that sets the wages and conditions of those employees for a period of up to 4 years. To come into operation, the agreement must be supported by a majority of the employees who cast a vote to approve the agreement and it must be approved by an independent authority, Fair Work Commission.

#### **If you are an employee who would be covered by the proposed agreement:**

You have the right to appoint a bargaining representative to represent you in bargaining for the agreement or in a matter before Fair Work Commission about bargaining for the agreement.

You can do this by notifying the person in writing that you appoint that person as your bargaining representative. You can also appoint yourself as a bargaining representative. In either case you must give a copy of the appointment to your employer.

If you are a member of a union that is entitled to represent your industrial interests in relation to the work to be performed under the agreement, your union will be your bargaining representative for the agreement unless you appoint another person as your representative or you revoke the union's status as your representative.

#### **Questions?**

If you have any questions about this notice or about enterprise bargaining, please speak to either your employer, bargaining representative, go to [www.fairwork.gov.au](http://www.fairwork.gov.au), or contact the Fair Work Commission Infoline on **1300 799 675**

## ATTACHMENT 6: GUIDE TO WAGES POLICY AND SERVICE DELIVERY PARTNERSHIP PLANS 2015

### Message from the Treasurer and Minister for Industrial Relations

The Government recently endorsed a new wages policy and enterprise bargaining framework. The policy and framework are part of the Government's collaborative approach to enterprise negotiations involving the development of partnerships with employees and public sector unions to improve the delivery of services to Victorians. Victoria's public sector provides services that are essential to the community and play a fundamental role in promoting fair and co-operative workplace practices.

The Government believes that working collaboratively with public sector employers, employees and public sector unions to resolve workplace problems will deliver improvements across the public sector.

The Government's wages policy establishes the Fair Pay Guide, assuring increases of 2.5 per cent per annum (including wages and conditions) over the life of the agreement. Through adopting this partnership approach, the Government seeks to provide entities and employees with the opportunity to achieve outcomes of 3 per cent per annum (including wages and conditions) over the life of their agreement where financially sustainable service delivery improvements can be found.

## 1 INTRODUCTION

This guide seeks to provide departments and agencies with an overview of the enterprise bargaining framework, the Government's wages policy and Service Delivery Partnership Plans.

The Government considers that the following principles should guide public sector enterprise bargaining outcomes:

- recognise and reward the services that public sector employees provide;
- a partnership approach that rewards collaboration between employers and staff and innovative thinking;
- support excellence in service delivery;
- negotiate respectfully, in good faith and in a timely manner, upholding the Victorian public sector as a model employer; and
- be financially sustainable for the entity.

This collaborative approach to bargaining aims achieve outcomes that will improve the delivery of services to Victorians.

## 2 ENTERPRISE BARGAINING FRAMEWORK

### Development of a management log

Prior to the commencement of negotiations, departments and agencies ('entities') are required to prepare a management log. The management log must include a Service Delivery Partnership Plan (SDPP) where entities are seeking to offer wage outcomes higher than 2.5 per cent per annum. As part of this process, entities should set out in the SDPP how service delivery outcomes can be improved through employee engagement.

Wages policy encourages service delivery improvements that require the support of employees. These improvements do not necessarily need to involve a change to the enterprise agreement and may be achieved through a change in policy or practice that is measurable, financially sustainable and ongoing.

The development of a clear and detailed management log and SDPP will assist with the timely consideration of these proposals by the Government.

### Commencement of negotiations

Negotiations between bargaining representatives should commence six months prior to the nominal expiry date of the current agreement. To ensure this timeframe can be achieved, the management log and SDPP should be submitted allowing time for their consideration and approval by the Government.

### Role of Industrial Relations Victoria

Industrial Relations Victoria (IRV) can assist departments and entities with the application of wages policy to their proposal and development of SDPPs. IRV can provide entities with submission templates and provide feedback on proposed service delivery improvements and cost offsets prior to submissions being lodged for consideration by the Government.

Entities should communicate with their portfolio department and IRV when developing submissions for management logs and proposed agreements, and if required, during the negotiation process. Proposals for service delivery improvements that are developed during negotiations should be discussed with IRV. Early and ongoing discussions will contribute to timely review and Government approval of proposed agreements.

Entities may contact their portfolio department contact or IRV should they have questions about wages policy. Unions may also direct queries about wages policy to IRV.

### 3 WAGES POLICY

The information below provides a summary of the key components of wages policy. Further information regarding wages policy is included in Attachment 1.

#### Fair Pay Guide

Wages policy consists of a Fair Pay Guide whereby increases of 2.5 per cent per annum including wages and conditions are assured as a base increase over the life of the agreement. Increases of 2.5 per cent must be financially sustainable but do not require demonstrated service delivery improvements.

#### Agreement outcomes above the Fair Pay Guide

To achieve outcomes above the Fair Pay Guide, the management log must be accompanied by a SDPP. The SDPP should identify service delivery improvements that the entity is seeking to implement over the life of the agreement and the benefits, and cost offsets attributed to those service improvements.

Service delivery improvements must be financially sustainable, forward looking, and commence during the life of the new agreement and be ongoing.

#### No cap on agreement outcomes

There is no cap on agreement outcomes. Outcomes above 3 per cent per annum will be assessed with significant rigour and the entity will be required to demonstrate that the costs of the agreement can be funded from fiscally sustainable ongoing cost offsets.

For revenue generating entities, entities can use revenue up to the Fair Pay Guide of 2.5 per cent to fund agreement outcomes. Any increases above 2.5 per cent will need to identify ongoing service delivery improvements and be financially sustainable.

#### No retrospective payments

Enterprise agreements should not contain retrospective payments. This means that the first pay increase in any agreement should be forward looking and cannot be prior to the date the agreement has been submitted to the Government for approval.

### Service delivery improvements

In accordance with the enterprise bargaining framework, entities will seek Government approval for enterprise agreements at two stages. Both submissions should include costings and, where entities are seeking outcomes above 2.5 per cent, an SDPP:

- 1 a **management log**, for which approval is to be sought in time to commence negotiations six months before the nominal expiry date of the current agreement; and
- 2 the **proposed agreement**, for which approval is to be sought before the parties have reached agreement so that any changes required for compliance with government policy can still be made.

### 4 SERVICE DELIVERY PARTNERSHIP PLANS

#### Overview

Service delivery improvements must be financially sustainable for the entity on an ongoing basis. This will minimise the potential budget risk.

The SDPP should identify the service delivery improvements that the entity is seeking to implement over the life of the agreement, and the benefits and savings attributed to those service improvements.

Ideally there should be engagement with unions and the staff in relation to the SDPP prior to the commencement of formal negotiations.

#### What must a SDPP set out?

The SDPP should set out:

- the employee practice it specifically relates to;
- how the SDPP will aid the entity in improvements in service delivery or other benefits for the entity in performing its functions;
- how the enterprise agreement negotiations will be used to aid the achievement of the SDPP;
- an engagement strategy with staff and unions;
- how the agreement is fiscally sustainable and funded from cost offsets, service improvements and/or financially viable;
- an implementation plan demonstrating how the SDPP will be embedded into the entity's practices over the life of the enterprise agreement;

- where an entity is budget funded, the proposed service delivery improvements must result in either more, higher quality services or new services being delivered for the same budget or to meet greater priority demand; and
- if an entity is commercial (e.g. water corporation) then the entity needs to be able to articulate that there is market demand for the extra or improved services and that the Government values the resulting return on its investment.

## Examples of service delivery improvements

### Change in business operations resulting in an improvement in the quality of services

Example: An entity is currently funded to provide one hour of financial counselling to 700 clients. The entity undertakes research and determines that desired client outcomes would benefit from having an additional telephone service to deal with ad hoc, follow-up queries from clients. The entity determines that it can provide this within the existing workforce.

### Change in business resulting in an improvement in the timeliness of service delivery

Example: An entity processes applications (current measure is 90 per cent of application processed within seven days). The employer and employees participate in a change improvement process that results in process efficiencies that means 90 per cent of applications are processed within two days, without a change to the existing workforce. The employer and employees agree that the entity's performance targets can be changed to reflect this commitment.

### Change of business resulting in capacity to deliver new services

Example: An arts agency is currently funded to provide a certain number of events each year. The entity determines that it can develop and deliver a new school education program within its existing workforce and budget, and agrees to establish performance targets to reflect this commitment.

### Change of business resulting in an increase in the volume of services

Example: An entity traditionally has required employees to return to the office to input data/complete reports. The entity proposes a change to the business model by providing laptops to employees and requiring employees to input the information while in the field. This improved business practice does not generate cash savings (as the existing workforce remains) but through the commitment of employees to the initiative, the entity is able to increase its number of callouts or response times. This would have a positive budget impact where an entity has traditionally received increased funding for service demand growth, but there will be a lesser call for additional funds through these performance improvements.

### Costing service delivery improvements

Service delivery improvements contributing to outcomes up to 3 per cent per annum may not create cost savings but need to be capable of being measured (in terms of quantity, quality, timeliness and cost) to determine the contribution to the outcome above the 'Fair Pay Guide'. Consider how these changes may improve performance targets published in Budget Paper No. 3 or assist in the achievement of corporate plan objectives. It is a requirement of wages policy that service delivery improvements must be measurable.

Where service delivery improvements do not create cash savings it will be particularly important for the entity to demonstrate financial viability and fiscal sustainability.

## ATTACHMENT 1: WAGES POLICY

- Increases of 2.5 per cent per annum (wages and conditions) will be assured as a base increase over the life of the agreement and will be known as the 'Fair Pay Guide'. Increases of 2.5 per cent must be financially sustainable but do not require service delivery improvements to be demonstrated.
- To achieve outcomes of 3 per cent per annum, genuine service delivery improvement must be demonstrated. The service delivery improvement must be financially sustainable for the entity on an ongoing basis. This will minimise the potential budget risk.
- To enable outcomes above the Fair Pay Guide the management log must be accompanied by a Service Delivery Partnership Plan (SDPP). The SDPP should identify the service delivery improvements that the entity is seeking to implement over the life of the agreement and the benefits and savings attributed to those service improvements.
- There is no cap on agreement outcomes however there will be significant rigor applied by Government to proposals for outcomes above 3 per cent, including demonstration that the costs of the agreement can be funded internally from fiscally sustainable ongoing cost offsets.
- Ideally there should be engagement with unions and the staff prior to formal negotiations commencing in relation to the SDPP and a partnership approach be adopted.
- Service delivery improvements include:
  - (a) **performance improvements** that will generally result from proactive business improvement and not be a passive consequence of a business change. Employee contribution or involvement in the changed operation would also need to be identified. Performance improvements need to be capable of being measured (in terms of quantity, quality, timeliness and cost) and assessed on a timely basis. These outcomes should ideally be reflected in service delivery targets in *Budget Paper No. 3*;
  - (b) **workforce-related organisational changes**; and
  - (c) **employee-related improvements**.
- Agreements must be fiscally sustainable and funded from cost offsets and financially viable sources as detailed:
  - (a) **performance improvements** may not create cost savings but need to be capable of being measured (in terms of quantity, quality, timeliness and cost) to determine the contribution to the outcome above the 'Fair Pay Guide'. Where performance improvements do not create cash savings it will be particularly important for the entity to demonstrate financial viability and fiscal sustainability (where this cannot be attained, the performance improvement contribution cannot be utilised);
  - (b) **workforce-related organisational changes** should be measurable and generate ongoing cost offsets that can be used to fund agreement outcomes; and
  - (c) **employee related improvements** should be measurable and generate ongoing cost offsets that can be used to fund agreement outcomes.
- Service delivery improvements will be financially sustainable, forward looking and will include those improvements that commence during the life of the new agreement (and ongoing). For revenue generating entities, entities can only use revenue up to the Fair Pay Guide of 2.5 per cent to fund agreement outcomes.
- Entities should seek to achieve four year agreements, as allowed for under the *Fair Work Act 2009*, subject to operational considerations.
- Any variation from this policy would need to be considered by the Expenditure Review Sub Committee (ERSC)

## GLOSSARY

<b>ATO</b>	Australian Taxation Office
<b>CBU</b>	Central Bargaining Unit
<b>DPC</b>	Department of Premier and Cabinet
<b>DTF</b>	Department of Treasury and Finance
<b>FW Act</b>	Fair Work Act
<b>FW Regulations</b>	Fair Work Regulations
<b>FWC</b>	Fair Work Commission
<b>IFA</b>	Individual Flexibility Arrangements
<b>IRV</b>	Industrial Relations Victoria
<b>NES</b>	National Employment Standards
<b>PA Act</b>	Public Administration Act
<b>PSC</b>	Public Sector Committee
<b>SDPP</b>	Service Delivery Partnership Plan
<b>TSP</b>	Targeted Separation Package
<b>VDP</b>	Voluntary Departure Package

