Public Sector Industrial Relations Policies

2025

VICTORIA State Government | Treasury and Finance

Contents

This document outlines the Victorian Government's policy on a number of important public sector industrial relations matters. If you print and store this document, you may be looking at an obsolete version. Always check the latest version of this document at https://www.vic.gov.au/public-sector-industrial-relations-policies-2025

Public Sector Industrial Relations Principles

Public Sector Industrial Relations Policies

Contents

1. Application

This Policy applies 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.

2. Overview

Victoria's public sector provides services that are essential to the functioning of the Victorian community. As one of the State's largest employers, the Victorian Government (the Government) expects public sector employers to set the example for all Victorian workplaces in their approach to industrial issues.

The Government expects that public sector employers are, at all times, model employers. 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 a model employer, is committed to ensuring that public sector enterprise agreements are negotiated respectfully, in good faith, and conducted in a timely manner.

This policy details the key principles that guide all public sector employers in their approach to managing enterprise bargaining and other industrial issues in the workplace.

3. Victorian Public Sector Industrial Relations Principles

As a model employer, the key principles underpinning the Victorian Government's approach to industrial relations are:

- promoting industrial relations based on consultation and cooperation between employers, employees and their unions
- promoting Victorian Public Service and public sector agencies as model employers
- supporting employee's choice to join a union and be represented in the workplace
- working constructively with bargaining representatives to avoid unnecessary disputation
- promoting collective bargaining in good faith with employees and their bargaining representatives
- setting wages and conditions that are fiscally sustainable and deliver improvements that are measurable and promote the highest quality services
- honouring all terms of collectively bargained enterprise agreements and not using overly technical constitutional arguments to avoid agreed obligations
- providing fair and comprehensive employment conditions in enterprise agreements
- supporting policies and working conditions that promote ongoing, secure employment, by giving preference to ongoing forms of employment over casual and fixed term arrangements wherever possible, including limiting casual and labour hire employment
- support flexible working arrangements that allow employees to balance work and life
- supporting fair, cooperative and safe workplaces that are free from discrimination, harassment and sexual harassment, and bullying
- ensuring public sector employees and employers can resolve disputes in a cooperative and prompt manner, with the assistance of the Fair Work Commission where agreed
- ensuring that public sector employees are paid correctly and promptly in accordance with the industrial instruments
- supporting policies that promote gender equity in the workplace and employment opportunities for women; and
- supporting employment opportunities for underrepresented groups.

While individual departments and agencies have flexibility to decide the specific content of enterprise agreements, it is their responsibility to ensure these key principles underpin their industrial relations strategies and actions. Individual departments and agencies must ensure they are familiar with these principles and the Public Sector Industrial Relations Policies as a whole.

4. Further Information

For further information and advice employees and public sector union representatives should contact the local Human Resources or People and Culture Unit (or equivalent) of the relevant entity for further assistance in the first instance.

Human Resource or People and Culture Representatives of Public Sector Entities (or equivalent) should contact their Portfolio Department for further assistance in the first instance.

Human Resource or People and Culture Representatives of Portfolio Departments should contact their usual Industrial Relations Victoria portfolio contact for further assistance in the first instance.

5. Related Policies or Documents

- Role of Departments, Portfolio Entities and Central Agencies
- Role of Public Sector Unions
- Enterprise Bargaining and Agreement Making
- Consultation and Cooperation in the Workplace

Authorised by Industrial Relations Victoria

Version	1.1 Final as approved
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Role of Departments, Portfolio Entities and Central Agencies

Public Sector Industrial Relations Policies

Contents

1. Application

This Policy applies 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.

2. Overview

The roles and responsibilities of portfolio departments, portfolio entities and central agencies in the management of enterprise bargaining and other public sector industrial relations matters are outlined below.

3. Role of Departments, Portfolio Entities and Central Agencies

Agencies

- Portfolio agencies are responsible for the timely development of management logs, including identifying and developing funding strategies consistent with the Government policies, compliance with the Public Sector Industrial Relations Policies and the conduct of negotiations with bargaining representatives, including unions.
- Agencies are responsible for ensuring consistent application of policies and practices, both during bargaining and through the application of their enterprise agreement(s) and raising any queries regarding application with their portfolio department in the first instance. This includes ensuring compliance with Government Wages Policy,

Enterprise Bargaining Framework and Public Sector Industrial Relations Policies and that the conduct of negotiations with bargaining representatives, including unions, are consistent with these policies.

- Before agencies obtain authority to table settlement offers and/or conclude negotiations, they must report any industrial matters that may impact Government policy or have budgetary considerations to their Portfolio Department and Industrial Relations Victoria (IRV).
- Portfolio agencies are responsible for operational matters, including the ensuring the correct application of their relevant enterprise agreement(s).

Departments

- Departmental Secretaries are responsible for the overall management of industrial relations issues (and associated projects) within their department and portfolio entities, including supporting public sector entities with enterprise bargaining processes. While Ministers will maintain constructive relationships with unions and employees to facilitate successful industrial relations outcomes, they remain outside formal negotiations. Portfolio entities are public entities within a department's portfolio where the Minister who has responsibility for the public entity is supported by the portfolio department.
- Departments are responsible for ensuring consistent application of policies and practices across agencies in their portfolio and are the first point of contact for portfolio agencies seeking information and advice. This includes compliance with the Public Sector Industrial Relations Policies and that the conduct of negotiations with bargaining representatives, including unions, are consistent with these policies.
- Departments are responsible for engaging with their portfolio agencies early to ensure the timely development of management logs. Departments are required to engage with portfolio departments to identify and develop funding strategies consistent with the Government policies including Wages Policy and the Enterprise Bargaining Framework.
- Departments are responsible for ensuring that their portfolio entities commence bargaining in good faith in a timely manner consistent with the Government's Enterprise Bargaining Framework and not to unduly delay bargaining in order to avoid renegotiating their enterprise agreement or other legal obligations.
- Before departments obtain Government's approval for their portfolio entities to table settlement offers and/or obtain authority to conclude negotiations, they must report any industrial matters that may impact Government policy or have budgetary considerations to IRV.
- Departments are responsible for seeking timely approval of final agreements by central agencies, consistent with Wages Policy and the Enterprise Bargaining Framework.

- Departments are responsible for notifying IRV of any dispute or industrial relations issue which is likely to have sector or service wide implications.

Industrial Relations Victoria

IRV is responsible for providing timely advice to departments and agencies about industrial relations matters and enterprise bargaining, including application of, and compliance with, the Public Sector Industrial Relations Policies.

IRV will not ordinarily be directly involved in all public sector negotiations, nor will it be involved in individual disputes between a department or agency and its employees.

The role of IRV is to:

- implement the Public Sector Industrial Relations Policies and provide advice to agencies and unions on industrial matters affecting the public sector
- oversee enterprise bargaining across the public sector
- lead and manage the negotiation of the enterprise agreement covering Victorian public service employees and provide advice to portfolio departments on its operation
- become involved in enterprise bargaining negotiations to assist the parties to find workable solutions before they turn into intractable disputes
- assist in the resolution of disputes between departments and agencies, and public sector unions, and
- provide high-level and strategic advice to Government on industrial relations matters.

Department of Treasury and Finance

The Budget and Finance Division in the Department of Treasury and Finance (DTF) is responsible for:

- assisting departments and agencies to understand and apply the Government's Wages Policy
- reviewing enterprise agreement costings; and
- providing advice to Government on departmental and agency compliance with wages policy.

4. Further Information

For further information and advice employees and public sector union representatives should contact the local Human Resources or People and Culture Unit (or equivalent) of the relevant entity for further assistance in the first instance.

People and Culture Representatives of Public Sector Entities should contact their Portfolio Department for further assistance in the first instance.

People and Culture Representatives of Portfolio Departments should contact their usual IRV portfolio contact for further assistance in the first instance.

5. Related Policies or Documents

- Public Sector Industrial Relations Principles
- Role of Public Sector Unions
- Enterprise Bargaining and Agreement Making

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Application of the *Fair Work Act 2009* (Cth) to public sector employers

Public Sector Industrial Relations Policies

Contents

1. Application

This Policy applies 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.

2. Overview

This Policy addresses and clarifies the application of the *Fair Work Act 2009* (Cth), particularly in the context of broader constitutional and legislative limitations applying to Victorian Public Sector enterprise agreements and enterprise bargaining, as well as the legal and legislative context of these limitations. This Policy sets out Government's expectations for Victorian Public Service Departments and public sector bodies in responding to and managing industrial matters where constitutional limitations apply, such that the FW Act may not automatically apply.

3. 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 that 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.

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* (Vic) (Referral Act).

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 the parties voluntarily agreed to the terms to be included in an enterprise agreement.

Consequently, following the UFU decision, there was 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.

While the UFU decision clarified the interaction between the implied limitations and enterprise agreements for constitution corporations, the UFU decision did not apply to public sector employers that are not constitutional corporations.

On 7 May 2019, the Victorian Government passed the *Fair Work (Commonwealth Powers) Amendment Act 2019* (*Vic)* (Amending Act). The Amending Act sought to align the effect of the Referral Act to non-constitutional corporations with the practical effect of the UFU decision for constitutional corporations, by making it permissible for certain public sector employees (not including law enforcement officers) of non-constitutional corporations to enter into enterprise bargaining agreements about matters pertaining to the number, identity or appointment (other than terms and conditions of appointment) of those employees. The Amending Act did not change existing restrictions on bargaining over other excluded matters pertaining to redundancy, executive and senior appointments and the appointment of ministerial officers.

Importantly, the Amending Act does not permit terms pertaining to number, identity or appointment of employees to be imposed on Government by way of a modern award, workplace determination (as ordered by the Fair Work Commission) or through transfer of business obligation.

Government's current approach to excluded matters

The Government is committed to honouring all terms collectively bargained for within existing enterprise agreements. Departments and agencies must not seek to use legal constructs to avoid these obligations.

Prior to reaching agreement to include new terms in enterprise agreements covering excluded matters, departments and agencies are required to obtain Government approval for inclusion of these matters in enterprise agreement. During bargaining departments and agencies, like all other claims

made by bargaining parties, must engage with any claims relating to excluded matters on their merits and within the confines of Wages Policy and the Enterprise Bargaining Framework.

4. Specific FW Act provisions

Sexual harassment in connection with work

The Victorian Government is committed to providing safe, flexible and respectful workplaces across the public sector that are free from all forms of sexual harassment. Sexual harassment is unlawful under both State and Commonwealth legislation, and departments and agencies are required to take proactive steps to eliminate sexual harassment in the workplace.

The Fair Work Commission (FWC) can deal with disputes about sexual harassment in connection with work under the FW Act. These provisions apply to all public sector employers and employees, meaning that if a public sector employee believes they have been sexually harassed in connection with work, they can apply to the FWC to:

- make a stop sexual harassment order to prevent future sexual harassment, and/or
- deal with a sexual harassment dispute to remedy past harm.

Where an employee makes an allegation of sexual harassment under the FW Act jurisdiction, employers must participate in that process in good faith.

Bullying at work

The Victorian Government has a duty to provide and maintain, so far as reasonably practicable, working environments across the public sector that are safe and without risk to health, safety and wellbeing. Bullying is a workplace behaviour that can cause significant harm, and public sector employers are expected to take steps to prevent, address and reduce the incidence of bullying and other negative workplace behaviours.

Due to constitutional limitations, the FW Act anti-bullying regime does not apply to all Victorian public sector employees and will only apply to public sector employers that are constitutional corporations and employees of constitutional corporations. As such, the FWC does not have the jurisdiction to deal with stop bullying applications from public sector employees that are not employed by public sector employers that are constitutional corporations.

Public sector employers that are not constitutional corporations must not use this as an excuse to avoid their obligations to respond to concerns or complaints regarding negative or bullying behaviours in the workplace. All public sector employers must have appropriate policies and procedures in place to ensure reasonable steps are taken to prevent and respond to negative workplace behaviours, including bullying.

5. Further Information

For further information and advice employees and public sector union representatives should contact the local Human Resources or People and Culture Unit (or equivalent) of the relevant entity for further assistance in the first instance.

People and Culture Representatives of Public Sector Entities should contact their Portfolio Department for further assistance in the first instance.

People and Culture Representatives of Portfolio Departments should contact their usual IRV portfolio contact for further assistance in the first instance.

6. Related Policies or Documents

- Enterprise Bargaining and Agreement Making

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Role of Public Sector Unions

Public Sector Industrial Relations Policies

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1. Application

This Policy applies 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.

2. Overview

Structured and cooperative industrial relations are a hallmark of the Victorian public sector, and the Government recognises the important role of unions in representing the interests of employees. The purpose of this policy is to ensure that employers and their representatives across the Victorian public sector both comply with their legislative obligations and practically implement the Government's commitment to harmonious industrial relations, facilitated by constructive, cooperative, and consultative relations between employers, eligible workers, and unions. Victorian public sector employers must ensure they acknowledge the right of unions to lawfully represent their members and encourage union membership among workers consistent with the obligations outlined in this policy.

3. Union participation in the workplace

The Government promotes a cooperative approach to workplace relations valuing collective bargaining and the rights of persons eligible to be members of an employee organisation (eligible workers) to have their interests supported through effective union representation.

Departments and agencies must ensure that their workplace practices are consistent with the following principles:

- organisations and employees and/or eligible workers are free to join an association or organisation
- employees are entitled to negotiate collectively
- organisations should not unreasonably hinder the lawful activities of unions
- unions have lawful access to the workplace when they provide requisite and reasonable notice and do not hinder normal operations
- unions have an opportunity to provide documentation to address or provide information to employees/eligible workers at induction about their right to choose whether they wish to join the union
- employees are entitled to take protected industrial action in accordance with the requirements of the FW Act
- workplace delegates have access to reasonable communication with members, and any other persons eligible to be such members, in relation to their industrial interests
- workplace delegates have reasonable access to information about the workplace/organisation/department
- workplace delegates have access to reasonable paid time during normal working hours to conduct union business
- workplace delegates have access to reasonable paid leave during normal work hours to attend union education; and
- workplace delegates have reasonable access to the workplace and facilities for conducting union business (e.g. facilities including but not limited to phone, facsimile, post, photocopying, internet e-mail, and online and offline meeting room facilities).

4. Union encouragement

The Victorian Government encourages union membership among employees in the Victorian public sector. Unions play an important role in representing employees in the workplace, and Victorian public sector enterprise agreements contain many provisions aimed at facilitating the role of unions and their representatives. To support this commitment all public sector employers must ensure that their work practices are consistent with the following principles. Employers will:

- acknowledge the legitimate role unions and their delegates play in representing eligible workers
- enable, where practicable, the reasonable and responsible performance of accredited workplace delegate activities

- ensure executives, managers and supervisors adopt a positive and supportive role, rather than merely tolerate membership recruitment and representative activity by unions
- ensure the personal views of executives, managers and supervisors are not used to discourage eligible workers from union membership
- ensure that employees are not unnecessarily hindered in the reasonable and responsible performance of the union activities in the workplace
- inform new employees of their right to join or not join a union. New employees are not obliged to join a union; however, the Government encourages employees to join and maintain financial membership of a union. Information (supplied by the relevant union) on relevant unions must be provided to new employees on engagement
- give union officials and/or workplace delegates the opportunity to discuss union membership with new employees during working hours (e.g., during orientation)
- facilitate reasonable access to eligible workers to discuss employment related matters, subject to relevant legislation and not unduly interfering with the operational requirements of the employer
- provide workplace delegates with access to reasonable facilities for the purpose of representing members in the workplace (provided the reasonable operational requirements of the employer are not unduly affected)
- provide for workplace delegates that are nominated on behalf of the union, to access up to five days' paid leave, where reasonable (subject to operational requirements), to attend accredited union training courses which seek to promote more harmonious industrial relations or safe work practices, and
- establish joint union and employer consultative committees to discuss workplace matters.

Awareness of these principles along with the active cooperation of all managers and supervisors is necessary to ensure these principles are honoured. Passive acceptance by agencies of membership recruitment activity by unions is not sufficient. Encouragement requires all public sector entities to take a positive, supportive role, although ultimately it remains the responsibility of the unions themselves to conduct membership recruitment.

To support the implementation of these principles, all public sector agencies are required to include union encouragement and delegate rights clauses in their enterprise agreements. **Attachment A** provides a model union encouragement provision and **Attachment B** a model union delegates rights provision, both of which may be adopted wholesale or tailored to suit individual workplace contexts through the enterprise bargaining process.

5. Workplace Delegates

Amendments to the *Fair Work Act 2009* (Cth) (FW Act) that took effect in December 2023 introduced new entitlements and protections for workplace delegates. A workplace delegate is a person,

appointed or elected under the rules of an employee organisation, who represents members of that organisation in the workplace.

Following the FW Act amendments, from 1 July 2024, public sector employers must include a delegates' rights term in their enterprise agreements that provides for the exercise of the following rights of workplace delegates:

- to represent the industrial interests of members and potential members of the employee organisation (including in disputes with their employer)
- to reasonable communication with members and potential members about their industrial interests
- reasonable access to the workplace and its facilities to represent those industrial interests, and
- reasonable access to paid time during normal working hours for the purposes of workplace delegate training.

Further, employers must not:

- unreasonably fail or refuse to deal with the workplace delegate, or
- knowingly or recklessly make a false or misleading representation to the workplace delegate, or
- unreasonably hinder, obstruct or prevent the exercise of the rights of the workplace delegate.

Attachment C provides a model workplace delegates clause for public sector agencies to include in their enterprise agreements to ensure compliance with the above requirements.

6. Further Information

For further information and advice employees and public sector union representatives should contact the local Human Resources or People and Culture Unit (or equivalent) of the relevant entity for further assistance in the first instance.

People and Culture Representatives of Public Sector Entities should contact their Portfolio Department for further assistance in the first instance.

People and Culture Representatives of Portfolio Departments should contact their usual IRV portfolio contact for further assistance in the first instance.

7. Related Policies or Documents

- Consultation and Cooperation in the workplace

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8. Attachment A

Union Encouragement – Model Provision

1. Union encouragement

1.1. The Parties covered by this Agreement recognise the right to join a union and will encourage eligible persons to join and maintain financial membership of a union. The Parties further recognise that union membership remains at the discretion of individual workers.

1.2. An application for union membership and information on the relevant Union/s will be provided to all eligible workers as soon as practicable after the commencement of employment.

1.3. Information on the relevant Union/s will be included in induction materials, including current membership material, details of fees, and general information about the Union. This information will be supplied by the Union(s).

1.4. The employer will ensure that Union representatives are provided with the opportunity to discuss union membership with new eligible workers. These discussions will be held during working hours, provided that the employer's operations are not unreasonably disrupted. Where inductions are held in person or online, the Union will be invited to address new eligible workers as part of those inductions.

9. Attachment B

Union Delegate Rights – Model Provision

2. Workplace delegates' rights

2.1. This clause provides for the exercise of the rights of workplace delegates set out in section 350C of the *Fair Work Act 2009* (Cth).

NOTE: Under section 350C(4) of the Act, the employer is taken to have afforded a workplace delegate the rights mentioned in section 350C(3) if the employer has complied with clause 3.

2.2. In this clause:

(a) employer means the employer of the workplace delegate;

(b) delegate's organisation means the employee organisation in accordance with the rules of which the workplace delegate was appointed or elected; and

(c) eligible workers means members and persons eligible to be members of the workplace delegate's organisation who work in a particular enterprise.

(d) workplace delegate means a person appointed or elected, in accordance with the rules of an employee organisation, to be a delegate or representative (however described) for members of the organisation who work in a particular enterprise

2.3. Before exercising entitlements under this clause, a workplace delegate must give the employer written notice of their appointment or election as a workplace delegate. If requested, the workplace delegate must provide the employer with evidence that would satisfy a reasonable person of their appointment or election.

2.4. An employee who ceases to be a workplace delegate must give written notice to the employer within 14 days.

2.5. Right of representation

A workplace delegate may represent the industrial interests of eligible workers who wish to be represented by the workplace delegate in matters including:

(a) consultation about major workplace change;

(b) consultation about changes to rosters or hours of work;

(c) resolution of disputes;

(d) disciplinary processes;

(e) enterprise bargaining where the workplace delegate has been appointed as a bargaining representative under section 176 of the *Fair Work Act 2009* (Cth) or is assisting the delegate's organisation with enterprise bargaining; and

(f) any process or procedure within an award, enterprise agreement or policy of the employer under which eligible workers are entitled to be represented and which concerns their industrial interests.

2.6. Entitlement to reasonable communication

(a) A workplace delegate may communicate with eligible workers in relation to their industrial interests under clause 3.5. This includes discussing membership of the delegate's organisation and representation with eligible workers.

(b) A workplace delegate may communicate with eligible workers during working hours or work breaks, or before or after work.

2.7. Entitlement to reasonable access to the workplace and workplace facilities

(a) The employer must provide a workplace delegate with access to or use of the following workplace facilities:

(i) a room or area to hold discussions that is fit for purpose, private and accessible by the workplace delegate and eligible workers;

(ii) a physical or electronic noticeboard;

(iii) electronic means of communication ordinarily used in the workplace by the employer to communicate with eligible workers and by eligible workers to communicate with each other, including access to Wi-Fi;

(iv) a lockable filing cabinet or other secure document storage area; and

(v) office facilities and equipment including printers, scanners and photocopiers.

(b) The employer is not required to provide access to or use of a workplace facility under clause 2.7(a) if:

(i) the workplace does not have the facility;

(ii) due to operational requirements, it is impractical to provide access to or use of the facility at the time or in the manner it is sought; or

(iii) the employer does not have access to the facility at the enterprise and is unable to obtain access after taking reasonable steps.

2.8. Entitlement to reasonable access to training

The employer must provide a workplace delegate with access to up to 5 days of paid time during normal working hours for initial training and at least one day each subsequent year, to attend training related to representation of the industrial interests of eligible workers, subject to the following conditions:

(a) In each year commencing 1 July, the employer is not required to provide access to paid time for training to more than one workplace delegate per 50 eligible workers.

(b) The number of eligible workers will be determined on the day a delegate requests paid time to attend training, as the number of eligible workers who are:

(i) full-time or part-time employees; or

(ii) regular casual employees.

(c) Payment for a day of paid time during normal working hours is payment of the amount the workplace delegate would have been paid for the hours the workplace delegate would have been rostered or required to work on that day if the delegate had not been absent from work to attend the training.

(d) The workplace delegate must give the employer not less than 5 weeks' notice (unless the employer and delegate agree to a shorter period of notice) of the dates, subject matter, the daily start and finish times of the training, and the name of the training provider.

(e) If requested by the employer, the workplace delegate must provide the employer with an outline of the training content.

(f) The employer must advise the workplace delegate not less than 2 weeks from the day on which the training is scheduled to commence, whether the workplace delegate's access to paid time during normal working hours to attend the training has been approved. Such approval must not be unreasonably withheld.

(g) The workplace delegate must, within 7 days after the day on which the training ends, provide the employer with evidence that would satisfy a reasonable person of their attendance at the training.

2.9. Exercise of entitlements

(a) A workplace delegate's entitlements under this clause are subject to the conditions that the workplace delegate must, when exercising those entitlements:

(i) comply with the reasonable policies and procedures of the employer, including reasonable codes of conduct and requirements in relation to occupational health and safety and acceptable use of ICT resources;

(ii) not hinder, obstruct or prevent eligible workers exercising their rights to freedom of association.

(b) A workplace delegate must, other than in the reasonable exercise of the entitlements under this clause:

(i) comply with their duties and obligations as an employee; and

(ii) not hinder, obstruct or prevent the normal performance of work.

(c) This clause does not require the employer to provide a workplace delegate with access to electronic means of communication in a way that provides individual contact details for eligible workers.

(d)This clause does not require an eligible worker to be represented by a workplace delegate without the employee's agreement.

NOTE: Under section 350A of the *Fair Work Act 2009* (Cth), the employer must not:

(a) unreasonably fail or refuse to deal with a workplace delegate; or

(b) knowingly or recklessly make a false or misleading representation to a workplace delegate; or

(c) unreasonably hinder, obstruct or prevent the exercise of the rights of a workplace delegate under the Act or this clause.

Consultation, Cooperation and Dispute Resolution

Public Sector Industrial Relations Policies

Contents

1. Application

This Policy applies 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.

2. Overview

The Government is committed to public sector industrial relations based on consultation and cooperation. Public sector employers must:

- ensure consultation and dispute resolution processes with employees and public sector unions are meaningful, timely and cooperative
- take a constructive problem-solving approach to consultation and engagement with employees and unions including establishing consultative committees where appropriate

- recognise the rights of unions to represent their members in disputes and consultation, and the rights of members to representation under enterprise agreements
- recognise that unions have a role to play in decisions that affect their members
- comply with all relevant consultation and dispute resolution obligations outlined in their enterprise agreement, the *Fair Work Act 2009* (Cth) (FW Act) or the *Occupational Health and Safety Act 2004* (Vic) (OHS Act)
- respect the right of public sector unions to represent their members during consultation and dispute resolution processes
- ensure enterprise agreements include consultation and dispute resolution provisions that are consistent with the requirements outlined in these Public Sector IR Policies
- have processes in place which seek to resolve disputes at the workplace level, wherever possible
- give prompt consideration and responses to matters raised by unions and employees during consultation and dispute resolution processes
- ensure dispute resolution procedures in enterprise agreement enable the Fair Work Commission (FWC) to resolve disputes, including by arbitration where the matter cannot be resolved through conciliation.

Consistent with efforts to promote consultative cooperative workplaces, public sector employers are also encouraged to enter into early engagement with employees and unions with respect of matters that may not enliven formal consultation obligations but where stakeholder engagement will otherwise be generally beneficial.

3. Formal requirements to consult

Under the FW Act the obligation to consult with employees or their representatives arises in the following situations (but is not limited to):

- when considering a major workplace change that will have a significant effect on employees
- in connection with termination of employment
- when bargaining in good faith in the negotiation of the terms of an enterprise agreement
- where an employee is entitled to request a flexible working arrangement and makes such a request
- when negotiating an individual flexibility arrangement with an employee under an award or enterprise agreement

- when an employee is on parental leave, and the employer makes a decision that will have a significant effect on the employee's pre parental leave position and
- when an employee requests extending their parental leave after the initial 12 months.

Formal consultation requirements also arise under the OHS Act. For further information contact WorkSafe Victoria.

All public sector employers must ensure as a minimum they have appropriate consultation arrangements in place with respect to all these scenarios.

4. Requirements for public sector enterprise agreements to include a consultation term

Consistent with section 205 of the FW Act, all public sector enterprise agreements must include a consultation clause requiring the employer to consult with employees about:

- major workplace changes that are likely to have a significant impact on employees; and
- changes to employees' regular roster or ordinary hours of work.

The provision must:

- provide information to the employees and the union/s about the change;
- invite the employees and the union/s to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities); and
- consider any views given by the employees and the union/s about the impact of the change.

The consultation clause must also allow the employees to be represented during consultation about a major workplace change or a change to the employees' regular roster or ordinary hours of work. A failure to consult can result in substantial civil penalties being imposed.

At a minimum, to ensure compliance with these obligations public sector employers may wish to use the model consultation term set out in the *Fair Work Act Regulations 2009*.

Where a formal dispute arises with respect to the consultation obligations outlined in an enterprise agreement, the implementation of the proposed change will be put on hold and work will continue in accordance with usual practice, until the dispute has been resolved in accordance with the formal dispute resolution procedure outlined in the applicable enterprise agreement.

5. Requirement for public sector enterprise agreements to include a dispute resolution term

Consistent with section 186 of the FW Act, all public sector enterprise agreements must contain a term that provides a procedure for settling disputes about matters arising under the enterprise agreement and in relation to the National Employment Standards (NES). This provision must:

- require the parties to genuinely attempt to resolve the dispute at the workplace level and throughout the dispute resolution process
- ensure dispute resolution processes are carried out expeditiously and without unnecessary delay
- allow for internal dispute resolution mechanisms at the workplace level prior to referral to the FWC
- allow for the FWC to conciliate and make recommendations to the parties
- allow for the FWC to arbitrate matters at the request of either party when the matter is unable to be resolved at the workplace level or by conciliation
- provide for the continuation of work in accordance with usual practice, while dispute resolution processes are being followed (unless an employee has a reasonable concern about an imminent risk to their health and safety, in which case the employee must not fail to comply with reasonable directions of their employer to perform other available work that is safe and appropriate), and
- not be a mechanism to deal with a dispute over the termination of employment.

To ensure compliance with these obligations, public sector employers may wish to use the model dispute resolution term provided in this policy.

6. Disputes with wide-ranging implications

If a particular dispute could have broader implications across the public service or sector (for example, a dispute about the interpretation of the Victorian Public Service Enterprise Agreement 2024 or its successor) portfolio entities must contact their portfolio department as soon as possible and prior to the matter proceeding to FWC for resolution.

Where a portfolio department agrees a dispute may have broader implications across the public service or sector, they must advise Industrial Relations Victoria (IRV) as soon as possible and prior to the matter proceeding to the FWC for resolution.

7. Further Information

For further information and advice employees and public sector union representatives should contact the local Human Resources or People and Culture Unit (or equivalent) of the relevant entity for further assistance in the first instance.

People and Culture Representatives of Public Sector Entities should contact their Portfolio Department for further assistance in the first instance.

People and Culture Representatives of Portfolio Departments should contact their usual IRV portfolio contact for further assistance in the first instance.

8. Related Policies or Documents

- Role of Public Sector Unions
- Public Sector IR Principles

Authorised by Industrial Relations Victoria

Version	1.1 Final as approved
Date	February 2026

9. Attachment A

Model Provision – Resolution of Disputes

1. Resolution of Disputes

1.1. Disputes

1.1.1. 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].

1.1.2. 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.

1.1.3. 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.

2. Obligations

2.1. 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.

2.2. 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 their 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.

2.3. 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

3.1. 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, they must be given reasonable opportunity to enable them to represent employees concerning matters pertaining to the employment relationship including but not limited to:

3.1.1. investigating the circumstances of a dispute or an alleged breach of this agreement or the National Employment Standards;

3.1.2. endeavouring to resolve a dispute arising out of the operation of the agreement or the National Employment Standards; or,

3.1.3. participating in conciliation, arbitration or agreed alternative dispute resolution process.

3.2. 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

4.1. The dispute must first be discussed by the aggrieved employee(s) with the immediate supervisor or manager of the employee(s).

4.2. 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

5.1. 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:

5.1.1. the rules of natural justice;

5.1.2. appropriate mediation or conciliation of the dispute is provided;

5.1.3. any views on who should conduct the review shall be considered by the employer; and

5.1.4. the process is conducted as quickly, and with as little formality, as a proper consideration of the matter allows.

5.2. 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

6.1. 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.

6.2. 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

7.1. 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.

7.2. Conciliation before FWC shall be regarded as completed when:

7.2.1. the parties to the dispute have informed the FWC member they have reached agreement on the settlement of the dispute; or

7.2.2. 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

7.2.3. 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

8.1. 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.

8.2. 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.

8.3. Subject to sub clause 8.4 below, the determination of FWC is binding upon the persons covered by this agreement.

8.4. 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

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

Enterprise Bargaining and Agreement Making

Public Sector Industrial Relations Policies

Contents

1. Application

This Policy applies 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.

2. Overview

This policy provides the framework for enterprise bargaining in the Victorian public sector and outlines the expectations of Government of all public sector entities in seeking to reach agreement on terms and conditions of employment for public sector employees.

VICTORIA State Government | Treasury and Finance

3. Bargaining Principles

All Victorian Public Sector Departments and Agencies must conduct themselves in accordance with the below principles during enterprise bargaining.

All Victorian Public Sector Departments and Agencies are expected to negotiate in good faith and seek to resolve enterprise bargaining in a collaborative, open and accountable manner with affected employees and the relevant public sector union/s. The Victorian Government expects all public sector entities to accord with the following principles for bargaining:

1. Negotiations should be:
    - approached in a collaborative and problem-solving manner
    - focused as far as practicable on common interests, objectives and long-term gain for all parties as well as improved service delivery for the Victorian community
    - conducted in a manner that is timely, constructive and avoids unnecessary disputation
    - be consistent with the good faith bargaining requirements set out in the *Fair Work Act 2009* (Cth) (FW Act) and
    - based on integrity, honesty, courtesy and information sharing.
2. Where enterprise agreements include leave provisions above the minimum requirements outlined in the National Employment Standards (NES) in the FW Act, the Government expects that these leave entitlements are maintained and not reduced during bargaining for new enterprise agreements without equivalent compensation being provided to employees through enterprise bargaining.
3. Enterprise bargaining must be conducted with the appropriate authority and in a manner consistent with the Victorian Government Wages Policy and the Enterprise Bargaining Framework.
4. Enterprise agreements must contain a renegotiation period to commence at least six months prior to the nominal expirer date of the current agreement.
5. Where issues arise during enterprise bargaining the parties must seek to resolve these locally in the first instance. Bargaining parties may also wish to contact Industrial Relations Victoria, via the portfolio department, to discuss or seek guidance on resolution of these issues.
6. Where parties are unable to resolve enterprise bargaining at the local level, they may seek the assistance of the Fair Work Commission (FWC) or other agreed independent third party to resolve negotiation deadlocks.
7. Enterprise agreements must not contain any retrospective payments. This means that the first pay increase in any agreement must be forward looking and cannot be prior to the date when bargaining parties reach in-principle agreement.

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

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

10. Actual pay increases cannot be made until the agreement is approved by Government and the FWC and the agreement has commenced operation.

11. Enterprise agreements must not include performance-based bonuses or incentive payments.

4. Wages Policy and the Enterprise Bargaining Framework

The Government's Wages Policy and Enterprise Bargaining Framework sets out Government's collaborative approach to enterprise agreement negotiations and establishes the parameters within which public sector employers may bargain and reach enterprise agreements. The Wages Policy and Enterprise Bargaining Framework also sets out the approval requirements that public sector agencies must meet before commencing bargaining, during bargaining and before seeking employee approval of final enterprise agreements. The framework sets out different requirements for major and non-major agreements.

All public sector entities must conduct enterprise bargaining with the appropriate authority and in a manner consistent with these obligations.

The full text of the Wages Policy and the Enterprise Bargaining Framework can be found at: https://www.vic.gov.au/wages-policy-and-enterprise-bargaining-framework

5. Types of Enterprise Agreements and required Approvals

Division 2, Part 2-4 of the FW Act sets out the types of enterprise agreements that can be made. Broadly, there are three main types of enterprise agreements that can be made and are within the scope of this policy:

1. Single employer enterprise agreements – made between a single employer and some or all of the employer's employees.

2. Multi-enterprise agreements, which include:

    a. Single-interest employer agreements – made between two or more employers that have common interests, or between certain franchisees. The FWC may compel employers to bargain under this stream in certain circumstances.

    b. Cooperative workplace agreements – made between two or more employers that are not single-interest employers and some or all of their employees. Bargaining under this stream is voluntary.

    c. Supported bargaining agreements – made between two or more 'reasonably comparable' groups of employers and employees, and generally operating in relation to workers in lower paid industries.

3. Greenfields agreements – is an enterprise agreement relating to a genuinely new enterprise (including a new business, activity, project or undertaking) which is made at a time when the employer or employers have not yet employed any of the employees.

More information on the types of enterprise agreements can be found on the Fair Work Commission website at https://www.fwc.gov.au/benchbook/enterprise-agreements-benchbook.

All public sector employers must ensure that they have the necessary approvals and authorisations from Government for any proposed enterprise agreement in accordance with this Policy and the Enterprise Bargaining Framework. While for most public sector employers, a single employer enterprise agreement will be the most appropriate approach, the Victorian Government supports the use of multi-enterprise agreements where they are suitable for the effective setting of terms and conditions of employment for a class or group of related public sector entities. Employers considering the use of multi-enterprise agreements, including single interest employer agreements or cooperative workplace agreements, must take note of the specific approval requirements outlined below.

Single-interest enterprise agreements covering multiple public sector bodies, cooperative workplace or Greenfields agreements

Victorian Public Service Departments and Agencies may consider or receive union/s requests for the making of a single-interest enterprise agreement covering multiple public sector bodies or a cooperative workplace enterprise agreement. Likewise, public sector employers may consider whether a single-interest enterprise agreement, cooperative workplace or Greenfields agreement would be an appropriate approach to bargaining for a class or group of public sector employees, not yet employed by the employer, who will be covered by the agreement. Public Sector Departments and Agencies must comply with the following requirements when seeking authorisation to make one of the abovementioned agreements.

Employer initiated proposals

Victorian Public Sector Departments or Agencies who are considering making a single-interest enterprise agreement covering multiple public sector bodies, a cooperative workplace agreement, or a Greenfields agreement, must seek Government's approval prior to the commencement of bargaining under one of these streams. In any submission seeking the relevant approval for an employer proposal to make such an agreement, Victorian Public Sector Departments and Agencies are expected, at a minimum, to specify:

- the employers who will be covered by the proposed agreement,
- the employees who will be covered by the proposed agreement, and
- the reasoning which supports their preferred bargaining stream.

The submission must be provided to Industrial Relations Victoria (IRV) via the relevant portfolio department. In considering an employer initiated proposal IRV, will in conjunction with the relevant employers, consider whether the proposal would be in the interests of efficient and effective bargaining and whether the request is or would likely be, supported by affected unions.

Union initiated proposals

Where public sector employers receive a union request for the making of a single-interest enterprise agreement covering multiple public sector bodies or a cooperative workplace agreement, they must first discuss the request with their portfolio department and IRV prior to formally responding to the request. In considering the request, IRV will, in conjunction with the relevant employers, consider the Employers' preferred response to the request as well as whether the proposal would be in the interests of efficient and effective bargaining and an appropriate approach to bargaining for the relevant class or group of related public sector employees.

Direct applications to the Fair Work Commission

Single-interest enterprise agreements can only be made on application to the FWC, by a union or a public sector employer, for a single interest employer authorisation. When public sector employers wish to apply for a single interest employer authorisation, they are required to seek Government approval (through to IRV via their portfolio department) in accordance with the above process ('employer-initiated proposals'), prior to making an application to the FWC.

Where a union or other employee bargaining representative applies directly to the FWC for a single interest employer authorisation, the responsible portfolio department and agency are required to provide details of the application, proposed response, and any subsequent single interest employer authorisation made by the FWC to Government (through IRV) as soon as they become aware of the application and prior to formalising or submitting a response to the application.

Variation or termination of an existing enterprise agreement

The FW Act provides for the variation and termination of enterprise agreements on application to the Fair Work Commission. Public Sector Employers must seek Government approval through their portfolio department before applying to the Fair Work Commission for the variation of the terms of an enterprise agreement or the termination of an existing enterprise agreement.

In seeking Government approval, Public sector employers, at a minimum, are expected to provide:

- a summary of the change being sought
- the need for, and the purpose of, the variation or the termination, and
- the current industrial context of the workplace/workplaces where the variation or termination is relevant, including the view of the public sector union(s) on the proposed variation or termination.

Information on variation of enterprise agreements can be found at the FWC's website at: https://www.fwc.gov.au/varying-enterprise-agreements.

Information on termination of enterprise agreements can be found at the FWC's website at: https://www.fwc.gov.au/terminating-enterprise-agreements

6. Government expectations for the content of public sector enterprise agreements

The Government requires that Victorian Public Sector Departments and Agencies include a range of terms in public sector enterprise agreements. Approval of proposed enterprise agreements submitted to Government will be conditional on the inclusion of the terms outlined in **Attachment A** of this Policy.

To support public sector employers to meet these expectations, model clauses have been provided in the relevant policies. While mandatory to include a clause on each of the topics listed, it is not mandatory that the model clauses be used and the model provisions may be tailored to the operational context of the entity during enterprise bargaining, although employers are encouraged to use the model clauses where appropriate. In the absence of using the model clause, public sector employers are responsible for ensuring agreed clauses reflect the minimum expectations outlined in the IR Policies and where relevant the FW Act.

The required terms are in addition to other compulsory terms imposed by the FW Act on enterprise agreements. It is the responsibility of each public sector entity to ensure their enterprise agreement complies with the minimum requirements of the FW Act.

Alternatives to performance-bonuses and incentive payments

Public sector enterprise agreements should not include performance-based bonuses or incentive payments. For the avoidance of doubt, performance-bonuses and incentive payments do not include progression payments linked to a classification structure and professional development plan, which may be legitimately included in an enterprise agreement.

When negotiating an enterprise agreement, and in accordance with Government's Wages Policy and Enterprise Bargaining Framework, parties may consider alternatives to bonus or incentive payments, including:

- attraction and/or retention payments
- progression payments (linked to a professional development plan and framework)
- other allowances which have an objective criteria that provides all employees with equitable access to the payment.

Where existing public sector enterprise agreements contain performance-based bonuses or incentive payments, public sector employers are strongly encouraged to address these clauses through enterprise bargaining and seek agreement with bargaining representatives to remove them in a replacement agreement.

Agencies may wish to contact IRV, via their portfolio department, to discuss or seek guidance on resolution of these issues.

7. Employer bargaining representatives and consultants

Public sector employers may choose to engage an external consultant to assist resolving bargaining negotiations and/or formally appoint an external consultant as a bargaining representative in accordance with the *Fair Work Act 2009* (Cth).

Prior to engaging an external consultant, departments and agencies are required to consider:

- whether the agency/department already has internal skills and knowledge to competently bargain without engaging a consultant, with consideration to the size of the organisation and the level of risk that the negotiations may present
- whether engaging an external consultant or bargaining representative is an appropriate and reasonable use of the employer's budget
- whether appointing a bargaining representative or consultant would be an efficient and effective way to ensure bargaining is completed expeditiously and in a manner which is consistent with these policies
- the terms of engagement, including whether the external consultant will act in an advisory capacity or whether they will be appointed as a bargaining representative.

Agencies must notify IRV (through their portfolio department) as soon as practicable after engaging an external consultant to assist in the context of enterprise bargaining discussions.

Where a public sector employer chooses to engage an external consultant or bargaining representative, they must ensure that the external consultant or bargaining representative is made aware of the obligations under this policy. A public sector employer must ensure their representatives or external consultant conducts bargaining in a manner which is consistent with the obligations outlined in these Policies.

8. Steps for Making Enterprise Agreements

Notice of Employee Representational Rights

Single Enterprise Agreements

Section 173 of the FW Act requires departments and agencies to provide to employees (other than a Greenfields agreement) a notice of representational rights (NERR) before negotiations commence. This is a compulsory step which must be followed.

Public sector employers must not issue their NERR until they have received authority to commence bargaining from Government.

Further information and guidance on the NERR, its correct form and timeframes around its distribution can be found on the FWC's Website at: https://www.fwc.gov.au/agreements-awards/enterprise-agreements/make-enterprise-agreement/start-bargaining/nerr-notice-0

The FWC also publishes a simple tool to assist employers to comply with their obligations pursuant to the NERR – all public sector employers are encouraged to use the tool at this link –

https://www.fwc.gov.au/agreements-awards/enterprise-agreements/make-enterprise-agreement/start-bargaining/nerr-notice-1

Multi Enterprise Agreements (including single-interest employers)

Where Public sector employers enter into a Multi Enterprise Agreement, a NERR is not required to be issued in accordance with section 173. However, employers must still notify employees that they may nominate a bargaining representative in accordance with section 176 of the FW Act. Public sector employers may utilise the notification template at **Attachment B**.

Good faith bargaining

In addition to the bargaining principles set out in this policy, public sector employers and their bargaining representatives must comply with good faith bargaining requirements set out in the FW Act. The good faith bargaining requirements establish a set of principles designed to facilitate agreement making and assist bargaining representatives to bargain effectively, which all bargaining parties must follow.

For further information on the good faith bargaining principles see - https://www.fwc.gov.au/good-faith-bargaining

Communications with Employees

At a minimum, the Fair Work Act requires that an *access period* of seven days be provided prior to a voting process taking place. By the start of the access period, employees must be provided with access to the agreement, information on how, where and when they can vote and access to any incorporated material such as policies or awards that are being referred to. For further information on the access period see FWC Website. It is important that Departments and Agencies understand the requirements of the access period.

Separately and in addition to the access period, employers must also consult with relevant Unions on the sufficient time required for them to communicate and discuss with employees on any proposed enterprise agreement or variation to an existing agreement.

Voting Process

The voting process is an important part of the enterprise bargaining and agreement making process. The voting process is an opportunity for all employees covered by the proposed enterprise agreement to indicate whether they agree or disagree with the negotiated changes to the terms and conditions of employment.

Victorian Public Sector Departments and Agencies can only commence a vote for a new enterprise agreement or to vary an existing enterprise agreement after the proposed enterprise agreement has been approved by government. Under no circumstances can an enterprise agreement or a variation to an existing enterprise agreement be offered to employees for approval after in-principle agreement is reached but before it receives government endorsement.

Information on the voting process and employer obligations can be found on the Fair Work Commission website at: https://www.fwc.gov.au/voting-process. It is important that Departments and

Agencies understand the requirements of the voting process and comply with their obligations in undertaking a vote for any proposed agreements.

Approval of Enterprise Agreements by the Fair Work Commission

After an enterprise agreement is made via a successful vote by covered employees, the proposed Enterprise Agreement must be lodged with the Fair Work Commission for approval before it can commence operation. Information on the Fair Work Commission's approval process can be found on the Fair Work Commission website at: <https://www.fwc.gov.au/commission-approval-process>.

In reviewing the agreement, the Fair Work Commission will, amongst other things, ensure the agreement passes the Better Off Overall Test (BOOT) and does not contain unlawful terms. Further information on the BOOT can be found at - https://www.fwc.gov.au/better-off-overall-test.

Departments and Agencies have responsibility for ensuring that enterprise agreements submitted meet the approval requirements of the Fair Work Commission, including passing the BOOT. It is recommended agencies undertake an assessment of their current enterprise agreement for potential BOOT issues as part of their preparations for bargaining. Where BOOT issues are identified these should be rectified through the bargaining processes, in consultation with the relevant portfolio department and IRV, and prior to lodging the enterprise agreement for approval (portfolio departments, on behalf of bargaining parties, may also discuss or seek guidance on BOOT issues from IRV, after local resolution has been attempted).

As part of the approval process, the Fair Work Commission may make further enquiries of the bargaining parties to seek clarification about the operation of the enterprise agreement or its compliance with the legislative requirements, Departments and Agencies must respond transparently and promptly to both the Fair Work Commission, unions and any other bargaining representatives.

9. Intractable Bargaining

The FW Act empowers the Fair Work Commission to resolve intractable bargaining disputes through an intractable bargaining declaration. To make an intractable bargaining declaration, the FWC must first satisfy itself that:

- it has dealt with a bargaining dispute (where the parties are unable to resolve a dispute about the agreement)
- that there is no reasonable prospect that agreement will be reached by the parties, and
- at least nine months has passed since the nominal expiry date of the current enterprise agreement or bargaining commenced.

After making an intractable bargaining declaration, the FWC will consider whether to provide the parties with a further period to negotiate (a post- declaration negotiation period). Following a post-declaration negotiation period, the Fair Work Commission may make an intractable bargaining workplace determination to resolve any matters not agreed by the parties.

Victorian Public Sector departments and agencies must inform their portfolio department and IRV if they have been served with an application or wish to lodge an application for an intractable bargaining declaration. Departments and agencies must seek guidance from IRV before lodging an application.

Information on intractable bargaining powers of the Fair Work Commission can be found at its website: https://www.fwc.gov.au/about-us/new-laws/secure-jobs-better-pay-act-whats-changing/bargaining-support-6-june-2023/changes

10. Further Information

For further information and advice employees and public sector union representatives should contact the local Human Resources or People and Culture Unit (or equivalent) of the relevant entity for further assistance in the first instance.

People and Culture Representatives of Public Sector Entities should contact their Portfolio Department for further assistance in the first instance.

People and Culture Representatives of Portfolio Departments should contact their usual IRV portfolio contact for further assistance in the first instance.

11. Related Policies or Documents

- Public Sector Industrial Relations Principles
- Consultation and Cooperation in the Workplace
- Gender Equality
- Personal, Carers and Compassionate Leave
- Leave and other supports for expectant and new parents
- Family Violence Leave
- Leave and Other Supports for First Nations Employees
- Gender Affirmation Leave
- Secure Employment
- Flexible Work
- Industrial Action

Authorised by Industrial Relations Victoria

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12. Attachment A

Agreement Content Checklist

The checklist below summarises the Victorian Government's expectations on the content of public sector enterprise agreements as established by the *Public Sector Industrial Relations Policies 2025*.

The required terms are in addition to other compulsory terms imposed by the *Fair Work Act 2009* on enterprise agreements. This checklist should not be regarded as a comprehensive summary of the requirements for enterprise agreements under the *Fair Work Act 2009*. It is the responsibility of each public sector entity to ensure their enterprise agreement complies with the minimum requirements of the *Fair Work Act 2009*.

Required term	Reference
Secure Employment Commitment	
Family and Domestic Violence Standard Leave	
Consultation	
Paid Parental Leave	
Flexible Working Arrangements	
Individual Flexibility Term	
Compassionate Leave	
Personal/Carers Leave	
Dispute Resolution Clause	
Delegates Rights and Union Encouragement Clause	
Gender Affirmation Leave	
Leave to attend First Peoples' Assembly of Victoria	
Reproductive Health and Wellbeing	
Right to Disconnect	

13. Attachment B

Public sector employers negotiating a multi-employer agreement may use this notification template.

(Insert organisation logo)

ELECTION OF BARGAINING REPRESENTATIVE

SINGLE INTEREST EMPLOYER AGREEMENT

[TITLE TO BE CONFIRMED]

I, _____ (insert name), hereby appoint:

□ myself

□ an employee representative: _____ (insert name)

as my bargaining representative as permitted under section 176 of the *Fair Work Act 2009* (Cth) for the purposes of bargaining in relation to the proposed enterprise agreement.

Signed: _____

Dated: _____

After completing the above form, please return to (Insert contact name) by email at (Insert email address).

Please note, if you are a union member you only need to complete this form if you want someone other than your union to represent you during bargaining.

If you are a union member and do not sign and return this form, your union will be appointed as your default bargaining representative for the proposed enterprise agreement.

If you have any questions about this notice or about enterprise bargaining, please contact your employer or bargaining representative, or contact the Fair Work Commission by calling 1300 799 675 or visiting www.fwc.gov.au.

Industrial Action

Public Sector Industrial Relations Policies

Contents

1. Application

This Policy applies 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.

2. Overview

Departments and agencies are responsible for implementing strategies for dealing with industrial action and advising the Public Sector Industrial Relations Branch, Industrial Relations Victoria (IRV), 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 proportionate and appropriate.

3. Overview of industrial action provisions in the Fair Work Act

The *Fair Work Act 2009* (Cth) (FW 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. Industrial action is protected if it is endorsed in a secret ballot of employees held in accordance with a protected action ballot order of the Fair Work Commission (FWC).

An employer cannot dismiss an employee, injure an employee in their 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 their 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.

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.

4. Suspension and termination of industrial action

Protected industrial action

Protected industrial action can be suspended or terminated by an order of the FWC. Parties that can apply for suspension or termination of protected industrial action include the parties to the enterprise 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 enterprise 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 cause 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.

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.

5. Action required by departments and agencies

Protected industrial action:

Protected action ballot orders

Departments and agencies are requested to promptly send IRV 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 FWC, they are required to consult with IRV and the portfolio department prior to doing so. If the outcome of consultation is that there are compelling reasons for challenging the application, the application to challenge will require Government approval.

Protected action ballot orders – Mandatory Conferences

The FW Act requires that all parties attend a mandatory FWC conciliation concurrent with the Protected Action Ballot process when an application for a Protection Action Ballot order is filed.

Departments and Agencies are expected to attend and participate in these conciliations in good faith and to attempt to resolve the issues in dispute to the best of their ability.

Departments and Agencies are expected to inform IRV if they are required to attend a FWC conciliation. A brief summary of the issues in dispute should also be provided.

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 IRV where such deduction occurs.

Departments and agencies must 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 reasonably sufficient enough to warrant deductions from pay.

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 if it is of such a nature as to warrant deductions of pay under section 471 of the FW Act.

If the department or agency reasonably believes the action does warrant application of section 471, the prior approval of the relevant portfolio Minister and the Minister for Industrial Relations (through IRV) is required before implementing procedures under that section, including the collection of evidence and 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.

Where the portfolio Minister and Minister for Industrial Relations have approved this, the portfolio department and/or Agency will collect evidence relating to the employee's partial work stoppages. As approved, departments and agencies must have reasonable 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.

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 the difference warrants deductions from pay. It is important to note that some stoppages may be for other reasons. For example, in some instances an employee's stoppage may be due to illness or injury or a reasonable concern about an imminent risk to health and safety, meaning the employee has not refused to perform other suitable and available work and no deduction should occur.

Before deductions are made in relation to partial work bans the employee must be provided with a written notice explaining that because of the ban the employees' payments will be reduced by the proportion specified in the notice (section 471 of the FW Act) as well as the basis for the calculation. It should be noted that the FWC 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 (section 473 of the FW Act).

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 IRV) is required.

Fair Work Commission 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 IRV) is also required.

Unprotected industrial action:

Section 474 of the FW Act requires that departments and agencies not pay employees for the duration of their participation 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 IRV prior to making such deductions.

Fair Work Commission 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 IRV must be advised.

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 IRV accompanying the approval request.

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.

6. Further Information

For further information and advice employees and public sector union representatives should contact the local Human Resources or People and Culture Unit (or equivalent) of the relevant entity for further assistance in the first instance.

People and Culture Representatives of Public Sector Entities should contact their Portfolio Department for further assistance in the first instance.

People and Culture Representatives of Portfolio Departments should contact their usual IRV portfolio contact for further assistance in the first instance.

7. Related Policies or Documents

- Public Sector Industrial Relations Principles
- Role of Departments, Portfolio Entities and Central Agencies

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Redundancy and Redeployment

Public Sector Industrial Relations Policies

Contents

1. Application

This Policy applies 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.

2. Overview

In some instances, public sector entities will be required to restructure their workplaces to meet changing Government priorities, support the introduction of new technology or to otherwise change existing work practices or structures. These changes may ultimately lead to some roles or functions being made redundant.

In these circumstances, public sector employers must adhere to the following principles:

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- ensure that the impact of restructures on public sector employees is limited as far as reasonably practicable
- responsively deploy employees to support changing government priorities where there are reasonable opportunities to do so prior to restructuring of the workplace,
- ensure all existing legal and policy obligations are followed, including the obligations set out in the relevant enterprise agreement and this policy,
- consult with employees and unions in accordance with consultation obligations set out in relevant industrial instruments and give genuine consideration to any alternate proposals made by employees and unions,
- explore and pursue all reasonably possible means to secure continuation of employment of affected employees, including but not limited to, redeployment and retraining,
- provide support to affected employees to consider and pursue other employment opportunities,
- only use targeted separation packages as an option of last resort.

3. Application to Employees

The redundancy and redeployment obligations outlined in this Policy apply to all employees in one of the abovementioned employers, other than:

- executives,
- casual employees, and
- fixed term and maximum term contract employees (except in limited circumstances considered below).

4. Consultation obligations

Public sector employers are expected to promote industrial relations based on consultation and cooperation between employers, employees, and unions, and make efforts to reduce the impact of major changes on public sector employees as far as reasonably practicable. This will involve compliance with consultation obligations in enterprise agreements, as well as engaging in genuine information sharing and discussion with employees and unions as appropriate in the circumstances.

All public sector employers are expected to comply with existing consultation obligations in the event of major change that it is likely to have a significant effect on employees. This will include changes to technology and changes to existing workplace practices or structures, where these changes may, if implemented, lead to redundancies.

5. Redeployment

If an employee's role is no longer required and the employee is declared surplus to the organisation's requirements as a result, a redeployment process must commence. As part of this process, an

employee may be deployed or transferred to a new position in accordance with the relevant Victorian legislation.

At the time of declaring a role surplus to requirements, the employer must confirm in writing to the employee:

- the date their role was declared surplus
- the redeployment process that will be followed to identify other suitable roles that the employee could be redeployed to
- the supports available to affected employees during the redeployment process
- their rights and obligations throughout the redeployment process

Employers covered by the *Victorian Public Service Enterprise Agreement 2024* (VPS Agreement), or its successor, must also follow the redeployment principles set out in that enterprise agreement as well as the VPS Redeployment Common Policy. An employee covered by the VPS Agreement, who has been declared surplus, will have priority access to any vacancy across the VPS, both at the employee's classification level or below their classification level, for which they are qualified and capable of performing. Other public sector employers may also consider the provisions set out in the VPS Redeployment Common Policy as a practical guide for managing redeployment within their own entity.

For employees of all other public sector employer's, redeployment opportunities are limited to vacancies within their employing entity, both at the employee's classification level or below their classification level, for which the redeployee is qualified for and capable of performing.

Where a surplus employee is placed into a fixed term role for a period longer than three months, due to an internal assignment or secondment, the redeployment period and associated supports may be carried out either concurrently with, or at the end of, that fixed term role. The duration and nature of the fixed term role may be relevant to which approach is appropriate in the circumstances. The public sector employer must continue to engage with the redeployee during the period of their fixed term role, and the redeployee will continue to have priority access to vacancies during the term of their fixed term placement.

Termination of employment is an option of last resort. Redeployment is the preferred outcome, having regard to the employee's classification, skills and capability. All public sector entities are expected to make every reasonable endeavour to redeploy surplus employees within a reasonable timeframe. The length of a reasonable redeployment period may depend on the circumstances and vary from agency to agency based on a variety of factors, including the size of the organisation and the nature of change being accommodated and enterprise agreement or policy terms.

The Victorian Governments expects all public sector employers to participate in the redeployment process in good faith and make all reasonable attempts to redeploy the surplus employee to a suitable role.

6. Support for affected employees

Public sector employers must ensure that all employees affected by organisational change, particularly where such change may result in their role being declared surplus, are provided with the appropriate support and assistance to consider and pursue all options that are available to them. Depending on the circumstances, this support may include, but is not limited to:

- counselling and support services
- retraining
- career planning
- assistance with the preparation of job applications
- interview coaching
- time release to participate in career support activities/workshops and/or to attend job interviews
- reasonable provision of independent financial advice for employees who are eligible to receive a separation package.

7. Separation packages

There are two types of separation packages:

- Voluntary Departure Packages (VDP), or
- Targeted Separation Packages (TSP).

Both separation packages are Government benchmarks that must not be exceeded.

Voluntary Departure Package

A VDP is a scheme that an employer may implement to offer financial incentives to certain groups or classes of employees to retire or resign, for example when the employer is rationalising or undertaking significant reorganisations of their business operations in response to changing Government priorities.

Public sector employers must engage with their portfolio department and IRV prior to submitting their VDP scheme for ATO approval. Further, affected unions must be consulted on the scope and application of the VDP scheme prior to submitting a proposed scheme to the ATO for approval. Public sector employers considering undertaking a VDP program should also make contact the ATO to ascertain specific ATO requirements and approval criteria.

VDPs must be approved by Australian Taxation Office (ATO) before being implemented, as there are taxation concession implications related to these payments. In examining an employer's request, the ATO will, amongst other things, examine the number of packages on offer, the criteria for allocating packages (including criteria that will apply in the event of over-subscription), the classes or groups of employees who are eligible to express interest, and the reasons for offering VDPs.

In designing a VDP scheme, workforce planning should be the principal consideration. Access to VDPs should be limited to classes or groups of employees that can be objectively determined, who are affected by the reorganisation of the employer's business operations or by changing Government priorities. It would not generally be expected that schemes will be described in such broad terms as to apply at large to all employees in a public sector employer unless the reorganisation of the employer's business operations or changing Government priorities was such that it will have similar impact on all employees across the organisation.

Further, to be eligible for a VDP an employee must:

- be an ongoing employee
- not be on unpaid leave at the time of separation of employment
- not be a probationary or graduate employee.

Once approved by the ATO, VDPs paid to employees as part of an approved scheme attract concessional taxation treatment. This means that VPDs attract more beneficial taxation treatment than the payment of ordinary salary and wages. A VDP comprises of the following elements:

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

All payments are pro-rata for periods of part-time employment (see payment calculations and weekly pay below for further information).

An employee who accepts an offer of a VDP:

- is not eligible for re-employment or re-engagement (including via a fee for service contract or through a labour hire agency) in the Victorian Public Sector for 3 years from the date of their departure (Exclusion Period), and
- must agree not to seek or accept re-employment with any Victorian Public Sector entity either directly, on a fee for service basis or through a labour hire organisation for the duration of their Exclusion Period as a condition of accepting a VDP.

In exceptional or unforeseen circumstances an agency head may approve earlier re-employment. However, it is expected that such circumstances would be rare and only apply in limited circumstances. No undertakings or representations should be made to employees regarding their earlier re-employment prior to the employee's departure.

Public sector entities who anticipate the need for significant change or reorganisation of their business, which may warrant the need to offer VDPs, must engage with their portfolio department as early as possible to discuss the requirements for implementing a VDP scheme. In addition to

engaging with their portfolio department, public sector employers are expected to contact Industrial Relations Victoria (IRV) directly if they are seeking to implement a VDP scheme.

Targeted Separation Package

Employees whose roles are declared surplus to requirements and have not been successfully redeployed after a reasonable timeframe, may be entitled to a TSP.

TSPs are paid in the event of termination of employment as a result of the employer no longer requiring the employee's role to be performed and where there is no opportunity for continued employment within the employer. TSPs may arise from changing Government priorities, closure or discontinuation of facilities, particular functions, or entire entities, or where the employee's duties are no longer required by the employer.

TSPs are a redundancy package and an option of last resort. Employers must comply with the consultation obligations outlined in relevant industrial instruments and take all reasonable steps to exhaust redeployment opportunities before issuing a TSP. Employees who do not actively participate in the redeployment process and take all reasonable steps to exhaust redeployment opportunities, or who fails to accept a suitable offer of employment, will be ineligible for a redundancy package. This does not prevent the employer and employee from also agreeing for some or all of the redeployment period to be paid in lieu, in addition to the payment of the TSP, in circumstances where redeployment within a reasonable period would not be likely.

A TSP comprises the following elements:

- four (4) weeks' pay, irrespective of the employee's length of service,
- one (1) additional week of pay if the employee is over 45 years of age and has completed at least two (2) years of continuous service, and
- two (2) weeks' pay for each completed year of continuous service up to a maximum of 10 years

TSPs are not voluntary, so unlike VDPs, no re-employment restrictions apply to employees who are paid a TSP.

8. Notice or payment in lieu of notice

In addition to the relevant packages outlined in this Policy, public sector employers must provide notice of termination or payment in lieu of notice (as per the relevant enterprise agreement or otherwise in accordance with the National Employment Standards under Part 2-2 of the *Fair Work Act 2009* (Cth) (FW Act)). An employer should either provide notice of termination under the applicable industrial instrument prior to the end of the redeployment period or provide payment in lieu of notice at the conclusion of the redeployment period.

9. Relevant considerations for calculating packages

Calculation of Continuous Service for the purpose of a separation package

Continuous service for both VDPs and TSPs refers to Victorian public sector agency employment only. Employment with the Commonwealth, other States or Territories, or local government is not included, even where such service may be included for the purpose of calculating other employee entitlements, for example, long service leave.

Continuous service for the purposes of redundancy includes all periods of service in any Victorian public sector agency. This is provided there are no breaks in service between or within each period of service (other than due to breaks caused by approved leave) and provided that no special separation/redundancy payments have previously been made with respect to any of those periods.

Periods of leave without pay do not break continuity but do not count as service for the purposes of calculating an employee's entitlement. When calculating separation packages, employers should have regard to inequitable outcomes that may result from the averaging approach to calculating separation packages. Employers should exercise discretion to ameliorate individual calculation outcomes on a case-by-case basis having regard to factors including gender equity, intersectionality, and caring responsibilities.

Effect of part-time or casual continuous service on the calculation of weekly pay for the purposes of a separation package

The calculation of each week's pay will be affected by an employee's current or past part-time or casual continuous service.

Calculation of packages based on ordinary pay

Redundancy packages must be calculated based on the definition of ordinary pay in the relevant enterprise agreement. If there is no definition of ordinary pay, redundancy packages must be paid on the basis of an employee's base salary, not including allowances and penalties.

Calculation basis for each package

VDPs must be calculated in accordance with the below table:

Element	Basis for calculation
4 weeks' pay, irrespective of the employee's length of service; plus	Actual salary/FTE at the time of separation (Base salary of the employees position that is surplus to requirements)
a lump sum voluntary departure incentive of up to $15,000 (for a full-time employee); plus	Actual salary/FTE at the time of separation (i.e. pro-rata based on current FTE for an employee other than a full-time employee)

2 weeks' pay per each completed year of continuous service up to a maximum of 15 years.	See Continuous service Average FTE across the last 15 years of continuous service

TSPs must be calculated in accordance with the below table:

Element	Basis for calculation
4 weeks' pay, irrespective of the employee's length of service; plus	Actual salary/FTE at the time of separation
1 additional week pay if the employee is over 45 years old and has completed at least 2 years of continuous service; plus	Actual salary/FTE at the time of separation
2 weeks' pay per each completed year of continuous service up to a maximum of 10 years	See Continuous service Average FTE across the last 10 years of continuous service

Other entitlements

Participants who accept a VDP or receive a TSP must also be paid all other applicable accrued statutory entitlements (e.g., annual leave and long serve leave) based on their substantive base salary.

Accrued Annual Leave will be paid as per section 90 FW Act (unless a more beneficial provision applies under the applicable enterprise agreement).

Notice of termination will be paid as per section 117 of FW Act (unless a more beneficial provision applies under the applicable enterprise agreement).

Accrued Long Service Leave will be paid according to the provisions of the applicable enterprise agreement or other applicable employment instrument.

10. Fixed and Maximum Term Contracts

The Victorian Government acknowledges that employees on fixed term or maximum term contracts may also be impacted by changing circumstances which may mean that their positions become surplus to requirements. That is, where a role is no longer required but the employee's contract has not yet reached its fixed or maximum term date, the situation may be akin to a position being made redundant. This would include situations where revisions to budget funding arrangements mean projects or functions cease to receive the funding previously allocated.

Additionally, while employees engaged on a fixed term or maximum term contract are generally not entitled to redeployment or redundancy benefits, consideration should be given to individual cases.

This includes circumstances involving employees who have been employed on successive fixed or maximum term contracts and/or where fixed or maximum term employment has been utilised in a manner that is not compliant with the FW Act and/or the relevant enterprise agreement arrangements.

Fixed term contracts

Where a role performed by an employee on a fixed term contract is no longer required before the employee's specified end date, the employer should make all reasonable attempts to find alternative meaningful work for the employee to perform for the remainder of their fixed term contract. Mobilisation in these circumstances should be limited to:

- consideration for fixed or maximum term roles only, and
- the period of engagement must be limited to the remaining period of the term under the contract.

Care should be taken to ensure that any attempt to mobilise the affected fixed term employee does not result in preference being given to them over an ongoing employee subject to redeployment.

Where, after a reasonable period it is clear that no alternative duties are available, and the employer wishes to end the contract early, consideration may be given to whether a Targeted Separation Package should be provided to affected employees. This should only be considered in exceptional circumstances, such as where a fixed term model of employment is not being appropriately utilised in accordance with the relevant enterprise agreement or policy, or where there is a significant duration of the contract remaining (e.g. (twelve (12) months or more)) and there are no suitable alternative duties available.

Maximum term contracts

A maximum term contract is a contractual arrangement expressed to nominally expire at a specified date, but which also allows the employer the right to terminate the contract early with an agreed notice period.

Where a role performed by an employee on a maximum term contract is no longer required, the employer should make all reasonable attempts to find alternative meaningful work within the employing entity for the employee to perform for the remaining duration of their maximum term contract.

Mobilisation in these circumstances should be limited to:

- consideration for fixed or maximum term roles only, and
- the period of engagement must be limited to the remaining period of the term under the contract.

Care must be taken, however, to ensure that application of the mobilisation does not provide a maximum term employee with an advantage to obtain an ongoing role by way of the preferential treatment afforded to an ongoing employee subject to redeployment.

Where termination of employment would be fully consistent with the terms of the contract, redundancy pay (targeted separation package (TSP)) will not be payable. However, and subject to any mobilisation efforts, employers should consider paying a TSP to an employee where there is a substantial period of their maximum term contract remaining (twelve (12) months or more). In order to prevent any future claims by the employee, where a TSP is provided it should be made clear to the employee that this payment is being made in lieu of receiving payment for the balance of the contract.

In some cases, the cost of applying the TSP formula could result in a higher cost than paying out the remainder of the term of the contract. For any employee who does not have more than 12 months remaining on their contract term, access to a TSP should be considered on a case-by-case basis and having regard to their length of service and the duration of the remainder of the contract term.

11. Further Information

For further information and advice employees and public sector union representatives should contact the local Human Resources or People and Culture Unit (or equivalent) of the relevant entity in the first instance.

People and Culture Representatives of Public Sector Entities should contact their Portfolio Department for further assistance in the first instance.

People and Culture Representatives of Portfolio Departments should contact their usual IRV portfolio contact for further assistance in the first instance.

12. Related Policies or Documents

- Consultation and cooperation in the workplace
- Secure Employment
- Long Service Leave
- Employment Categories and Secure Employment
- Application of the *Fair Work Act 2009* (Cth) to public sector employers

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Alternative ways of working or arranging ordinary hours of work

Public Sector Industrial Relations Policies

Contents

1. Application

This Policy applies 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.

2. Overview

The Victorian Government recognises that flexible, hybrid and alternative ways of working may contribute to positive organisational and individual outcomes, including improved employee wellbeing and work/life balance without sacrificing quality or organisational productivity. The Government recognises that alternative ways of working or arranging ordinary hours of work are a flexible working arrangement that parties may wish to consider introducing or trialling in their workplaces. This may include public sector employers exploring whether new or alternative ways of working or arranging ordinary working hours could be implemented across their workforces. However, where they wish to do so they must do so in a robust and objective manner with appropriate governance and oversight arrangements in place, in consultation with relevant unions and consistent with this policy.

Note the arrangements and obligations in this policy apply where agencies are considering exploring alternative ways of working or arranging ordinary hours of work on a group, team, division or whole of employer basis and do not alter any existing rights for individuals to request alternative or flexible working arrangements under existing enterprise agreements, legislation or policy.

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3. Exploring alternative ways of working

Exploring alternative ways of working or arranging ordinary hours of work is a matter that is to be dealt with primarily through enterprise bargaining and in accordance with the Victorian Government Wages Policy and Enterprise Bargaining Framework. Under the Enterprise Bargaining Framework, public sector employers are permitted to explore alternative ways of working or arranging ordinary hours of work as part of a Best Practice Employment Commitment (BPEC). Employers should not agree to codify new or alternative ways of working or arranging ordinary hours in an enterprise agreement without first undertaking an approved trial which conforms to the requirements set out in this Policy.

Agencies considering exploring and/or trialling alternative ways of working or arranging ordinary hours outside of the enterprise bargaining process must consult with their portfolio department in the first instance and/or Industrial Relations Victoria (IRV) to discuss any potential industrial implications before agreeing to conduct a trial or implement any outcomes. Agencies must also consult with relevant unions prior to agreeing to conduct a trial.

Developing recommendations for Government consideration

Where agencies are considering exploring alternative ways of working or arranging ordinary hours of work on a group, team, division or whole of employer basis, public sector agencies must first undertake a desktop review or feasibility study for Government consideration. The feasibility study should seek to develop recommendations for Government consideration (via IRV) that:

- identify new ways of working or alternative models of arranging, compressing or reducing ordinary hours that could be feasibly trialled in the specific workplace context,
- outline trial parameters that might be used to trial alternative ways of working or arrangement of hours, including the timing, scope of participants, and the duration (which must not be less than 12 months unless otherwise agreed) and evaluation of any trial,
- identify what, if any, impacts a trial would have on the entitlements of participating employees, including considering inclusivity and equality considerations, and
- identify objective criteria to be used to measure success.

In considering trialling alternative ways of working or arranging ordinary hours of work, public sector employers should consider how the reduction in weekly working hours or varied arrangement of ordinary hours of work could be appropriately operationalised in its workplace and specific operating environment, while positively impacting employees and continuing to meet organisational requirements and without reducing service delivery to the Victorian community or creating additional cost. This may include considerations of different models of reduced working hours as well as considerations as to how productivity will be assessed and maintained when standard working hours are altered or re-arranged under an alternative way of working or arranging ordinary hours of work, including appropriate workplace innovations and efficiencies. Bargaining parties should also agree on

trial parameters (including scope and duration, which should be no less than 12 months unless otherwise agreed) and how the success of the trial is to be measured and evaluated.

Agencies must report back to IRV on the outcomes of any study, and whether it is proposed that they will undertake a trial or not. This must occur prior to any implementation of any recommended trial(s).

Implementing alternative work week trials

Public sector agencies must seek approval from IRV prior to implementing an alternative work week trial after first undertaking a desktop review or feasibility study referred above. Employers must not commence a trial without first seeking approval of Government (via IRV).

Employers must not trial alternative ways of working or arranging ordinary hours of work that may inadvertently erode employee entitlements and conditions of employment. Consistent with the Government's Enterprise Bargaining Framework, any administrative costs associated with developing a feasibility study or establishing or evaluating any approved trial will be met by the public sector employer. Employees not in the scope of any approved trial (or who opt out of the trial) will continue to work in accordance with their existing work arrangements.

Where Government approves the commencement of a trial of alternative ways of working or arrangement of hours, the public sector employer will be responsible for:

- ongoing consultation with employees and unions regarding any issues that arise during the trial period,
- ongoing monitoring and assessment of any trials, including periodic reporting and assessment to ensure the trial supports both employers and participating employees, and
- participating in an assessment of the outcome of any trial to determine whether the alternative working arrangements trialled may be recommended as suitable for broader or longer-term implementation in the relevant workplace.

The agency and relevant portfolio department are responsible for advising IRV of any industrial or fiscal implications arising during the course of the trial.

Public sector employers considering whether to trial an alternative way of working or arranging ordinary hours must consider the guidance material set out in **Attachment A** below before agreeing to undertake a trial. While not mandatory, public sector employers are encouraged to use the model BPEC term outlined below as an attachment. In the absence of using the model BPEC term, public sector employers that seek to explore alternative ways of working are responsible for ensuring that their BPEC term reflects the expectations and considerations outlined in this policy.

Implementing any trial outcomes on a permanent basis

At the conclusion of the trial the employer must report back to Government (via IRV) on the findings of the approved trial and whether the employer seeks to adopt the trialled arrangements on a permanent basis or to extend the trial.

The Government must retain the right at the conclusion of any trial (and following review and evaluation) to determine next steps, which may include:

- extending the trial, or
- implementing alternative work arrangements on a permanent basis to some or all of its workforces, or
- deciding against a broader roll out of any or all of the trialled alternative work arrangements and return to the previous (pre-trial) working arrangements.

Approval to implement trialled arrangements on a permanent or extended basis must be sought and provided by Government before they are implemented by the entity.

4. Further Information

For further information and advice employees and public sector union representatives should contact the local Human Resources or People and Culture Unit (or equivalent) of the relevant entity for further assistance in the first instance.

People and Culture Representatives of Public Sector Entities should contact their Portfolio Department for further assistance in the first instance.

People and Culture Representatives of Portfolio Departments should contact their usual IRV portfolio contact for further assistance in the first instance.

5. Related Policies or Documents

- Enterprise Bargaining and Agreement Making
- Flexible Work
- Right to Disconnect

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6. Attachment A

Alternative ways of working or arranging ordinary hours trial – Guidance material

Public sector employers may agree to enter into a trial of alternative ways of working or arranging ordinary hours of work as part of a Best Practice Employment Commitment (BPEC). When considering whether to include a trial of alternative ways of working or arranging ordinary hours of work in a BPEC, the public sector employer and employees should consider this guidance material and the requirements of the Enterprise Bargaining Framework and Wages Policy.

While not mandatory, public sector employers are encouraged to use the model BPEC term outlined below in this attachment. In the absence of using the model BPEC term, public sector employers that seek to enter into a trial of alternative ways of working or arranging ordinary hours of work are responsible for ensuring that their BPEC term reflects the expectations and considerations outlined in this policy.

While there have been several trials of alternative ways of working or arranging ordinary hours of work run in the private sector across the world, the outcomes of these trials are not directly relevant to public sector employers. Where public sector employers are considering trialling alternative ways of working or arranging ordinary hours of work, they most note that there are a range of models that may be appropriate to test in a public sector workplace and consideration should be given to whether a model is fit for purpose or whether a bespoke arrangement is needed – in particular having regard to the operational needs of the employer and wellbeing of employees .

Examples of alternative ways of working or arranging ordinary hours of work

Alternative ways of working or arranging ordinary hours of work may include a reduction in the number of hours worked without a corresponding reduction in the amount of productivity or remuneration. For example, a nine-day fortnight where an employee works 90 per cent of their full-time hours but they are required to maintain 100 per cent of their productivity and would receive 100 per cent of their existing remuneration. Alternatively, the same number of hours may be arranged in a different or more flexible manner, for example, a 19-day month (in a month with 20 work days) with corresponding maintenance of productivity and remuneration but allowing an employee more non-work days over the period.

Objectives of a trial of alternative ways of working or arranging ordinary hours of work

A trial of alternative ways of working or arranging ordinary hours of work, if agreed, should seek to test anticipated benefits, including improving work/life balance, increasing workforce diversity, promoting inclusivity, and enabling greater workforce participation as well as broader economic benefits, such as increased spending on goods and services in metropolitan and regional areas during non-work time. While also ensuring there is no loss of productivity or additional costs to Government.

The development of a trial of alternative ways of working or arranging ordinary hours of work should be guided by the following primary objectives:

- a strong focus on measuring productivity, service delivery impacts, cost implications and associated organisational impacts to see if these can be maintained commensurably with the reduced or rearranged working hours
- measuring wellbeing and job satisfaction not only qualitatively (e.g. self-reported and employee opinion-based data) but also quantitatively (e.g. reduced absenteeism, reduced unplanned absences, improved attraction and retention, measurable productivity outcomes that demonstrate maintained or enhanced productivity) and collecting relevant data to demonstrate these measures
- an organisation should not be disadvantaged as a result of hosting a trial with any costs incurred to be fully offset through measurable cash savings (e.g. reduction in accrual of employment entitlements for trial participants)
- enabling meaningful time off to encourage discretionary spending (e.g. accessing services and hospitality)

Identifying and managing the risks of a trial of alternative ways of working or arranging ordinary hours of work

Employers will be responsible for managing any risks associated with trialling alternative ways of working or arranging ordinary hours of work. To manage these risks, it will be important that:

- the employer consults with the relevant union
- the employer retains the option to cancel any trial and the ability to decide against a broader roll out at the conclusion of the trial following evaluation and review (either during the trial or after it concludes)
- options for costs to be offset (for example, reducing the rate at which personal leave and annual leave accrue on a pro-rata basis, cost savings associated with improved wellbeing outcomes, reduced accommodation footprint and reduced staff turnover and hiring costs) are properly explored and measured according to an established benchmark (noting that no central funding is available for public sector employers to conduct trials)
- employees have meaningful control over their participation, including the ability to opt out due to preference or in the event of unintended negative consequences (such as unmanageable work/life balance pressures)
- a range of models are considered for testing, noting different workforce cohorts and operating environments within the public sector employer
- employers consider how a reduction or rearrangement of weekly working hours could be appropriately operationalised in their workplace and specific operating environment, while continuing to meet organisational requirements and ensure that there is no reduction in service delivery to the Victorian community and other key stakeholders
- strong governance arrangements are in place to oversee any trials, including providing for central Government oversight
- trial parameters are robust, operate over a reasonable duration (at least 12 months) and include proper evaluation strategies (including real-time monitoring, periodic reporting, and an evaluation report at the conclusion)

- employers consider engaging relevant expert advice to help develop, run and evaluate any alternative working arrangements

Model BPEC

Alternative ways of working or arranging ordinary hours of work Trial[1]

During the life of the enterprise agreement the parties jointly explore whether new or alternative ways of working or arranging ordinary working hours could be implemented for some or all of the workforces covered by the Agreement according to the following parameters:

1. Consistent with its commitment to Flexible Work, the employer recognises that productivity comes in different forms, and that work-life balance is very important for mental and physical wellbeing. The employer and employees understand that exploring new and modern ways of working can be beneficial to the employee and employer alike, without sacrificing work quality and productivity.

2. During the life of this enterprise agreement, the employer the parties agree to jointly explore whether new or alternative ways of working or arranging ordinary working hours could be implemented for some or all of the workforces covered by the Agreement.

3. The joint intent of this commitment is for the parties to work together to identify alternative ways of working which:

3.1. enhance employee health and wellbeing (emotional, mental, and physical),

3.2. support the rights for employees to disconnect from work,

3.3. improve work life balance,

3.4. reduce sickness absence, stress and burnout,

3.5. improve job satisfaction, attraction and retention of staff,

3.6. address gender equality concerns, support working parents and those with caring responsibilities,

3.7. work towards a more sustainable work environment, and

[1] Public sector employers are encouraged to adopt this model BPEC where, through enterprise bargaining, the parties agree to trial alternative ways of working. The model clause may be varied or amended to suit the needs of the workforce.

3.8. have a positive impact on culture and employee engagement.

4. The parties agree to establish an Alternative Ways of Working Committee (Committee) to undertake a joint feasibility study to explore alternative ways of working across the workforce. The Committee will be established within three months of the commencement of the Agreement (or within a timeframe agreed between the parties). The Committee may appoint an independent chair to oversee the trial development and implementation.

5. The Committee will not be a determinative decision-making body but will be responsible for undertaking a feasibility study and providing a report to the Government on the merits of alternative ways of working and how they might be trialled in identified workforce/s.

6. The purpose of the Committee is to undertake a feasibility study to develop recommendations for Government consideration that:

6.1. identify new ways of working or alternative models of arranging, compressing, or reducing ordinary working hours that could be trialled in the workforce,

6.2. outline trial parameters that might be used to trial alternative ways of working or arrangement of hours, including the timing, scope of eligible participants and the duration and evaluation of any Trial. In designing the recommended Trial parameters, the Committee will have regard to the fundamental principles outlined in clause 11 below,

6.3. identify appropriate or potential workforces and worksites where a Trial may be implemented,

6.4. identify what if any impacts a Trial would have on the entitlements of participating employees, including considering inclusivity and equality considerations, and

6.5. identify objective criteria to be used for the measurement of success.

7. The parties will jointly develop terms of reference to support and guide the work of the Committee.

8. The Committee must deliver its feasibility study (including recommendations) to Government within 24 months of the Committee being established.

9. The Alternative Ways of Working Committee will include representatives from the employer and the relevant public sector union.

10. The Committee may establish sub-committee(s) to oversee the implementation of any approved trials. Any sub-committees established to oversee the implementation of approved trials will include representation from participating employers and relevant union delegates. The Committee and any sub-committees will have an equal number of employer and union representatives.

11. In designing Trial parameters for Government consideration, the Committee will have regard to the following matters so that the recommended Trial parameters:

11.1. are designed in a manner so that they do not result in any additional costs for Government or require any additional resources,

11.2. identify any potential benefits,

11.3. include full-time and part-time, and cover a range of role types, and

11.4. allow for eligible employees from areas participating in a trial to have meaningful control over their participation in the trial, including the ability to opt out in the event of unintended negative consequences,

11.5. Trial parameters recommended by the Committee may include any other matters as agreed by the Committee.

12. The alternative ways of working or arranging ordinary working hours models which might be trialled and trial parameters to be submitted for Government consideration must be agreed by the Committee. In the event the Committee cannot agree on the models and/or trial parameters to be recommended to Government for consideration, the Committee may agree to seek the assistance of a mutually agreed facilitator to assist in furthering the discussions.

13. The employer who wishes to participate in a trial to be recommended by the Committee must opt-in in order to participate in any trial and must:

13.1. give consideration to how the alternative working week arrangements can be appropriately operationalised in its workplace and specific operating environment, while continuing to meet operational requirements and not lead to reduced service delivery to the Victorian community before agreeing to participate in the Trial (including identifying cohorts suitable to participate in the trial), and

13.2. meet any administrative costs associated with participation in the Trial.

14. Where following the delivery of the feasibility study, the Government authorises the public sector agency to implement the Trial, it will commence within 3 months of the Trial being authorised (or within a period agreed by the parties).

15. In the event Government approves the commencement of a Trial of alternative ways of working or arrangement of hours, the Alternative Ways of Working Committee will also be responsible for:

15.1. ongoing consultation regarding any issues that arise during the Trial period,

15.2. ongoing monitoring and assessment of any Trials, including periodic reporting and assessment to ensure the Trial supports both employers and participating employees, and

15.3. participating in an assessment of the outcome of any Trial to determine whether the alternative working arrangements trialled may be recommended as suitable for broader or long-term implementation in the applicable workforce.

16. Any Trial approved by Government to commence during the life of the Agreement will run for a duration agreed by the Committee (which can be for no less than 12 months unless otherwise agreed).

17. Evaluation of any approved trial must consider both robust qualitative and quantitative analysis of productivity, wellbeing, costs, absenteeism, recruitment to hard to fill roles or locations and gender and disability impacts of the alternative working week arrangements trialled as compared to existing working arrangements.

18. Employees and employers not in scope of any approved Trial (or who opt out of the Trial either before or after its commencement) will continue to work in accordance with existing work arrangements.

19. The Government must retain the right at the conclusion of any Trial (and following review and evaluation) to determine next steps, which may include:

19.1. extending the trial, or

19.2. implementing alternative work arrangements on a permanent basis to some or all of its workforces, or

19.3. deciding against a broader roll out of any or all of the trialled alternative work arrangements and return to existing working arrangements.

20. Where a Trial of alternative working week models is implemented during the life of the Agreement, the Government retains the option to cancel any alternative work week trial at any time if unintended consequences arise. The Government will not seek to end any approved Trial early, without first consulting the employer, the Unions, or the Committee and providing the rationale and basis of why the trial is proposed to be concluded prior to the scheduled end date.

Attraction and Retention

Contents

1. Application

This Policy applies 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.

2. Overview

The Government is committed to ensuring that the public sector attracts and retains a diverse and high performing workforce to continue to deliver high-quality services to the Victorian community. To support this commitment, all public sector employers must have a strategy in place that seeks to address key attraction and retention issues as they arise in their specific operational contexts. This policy outlines the Government's expectations of public sector employers.

3. Expectation of Government that public sector employers have an attraction and retention strategy

Continuing to build diversity and capability within the broader public sector workforce underpins the public sector's ability to make a positive contribution to the lives and communities of Victorians.

All public sector employers must have an attraction and retention strategy in place, which seeks to address key issues relevant to their workplaces, and which must be developed in consultation with the relevant union/s. While specific strategies will necessarily differ from agency to agency, the goal must be to attract and retain the necessary talent to meet existing and emerging workforce needs.

In accordance with Government's Wages Policy and Enterprise Bargaining Framework, an attraction and retention strategy may be implemented as a Best Practice Employment Commitment (BPEC) as an enterprise bargaining outcome. If the enterprise agreement has a nominal expiry date significantly into the future, the Public Sector Agencies may choose to implement an attraction and retention

strategy earlier but should consult with the portfolio department and departments should consult with Industrial Relations Victoria (IRV) to identify any potential industrial issues prior to doing so.

Principles

A public sector employer attraction and retention strategy must consider the following:

- Public sector employers must ensure that through strategic workforce planning they identify workforce needs and strategies to attract and retain an appropriately skilled workforce that is capable of meeting the public sector employer's current and future needs.
- Employee expectations of their employers and employment conditions are changing. Increasingly, employees are interested in flexible ways of working, meaningful work with prospects for career progression and an ability to maintain a work/life balance.
- Public sector employers should give due consideration to the drivers of employee attraction and retention that are specific to the relevant public sector employer and/or industry. This may vary across employee demographics, roles, and the nature of the work of the public sector agency and may be influenced by the stages of their employees' personal and professional lives.
- Any costs arising from implementing an attraction and retention strategy are to be met from within the entity's existing funding allocations.
- To meet changing employee expectations and ensure appropriate workforce capabilities are maintained, Victorian public sector employers should establish a strong employee value proposition. A value proposition comprises of the considerations that employees perceive as the value that they will gain through employment with a particular organisation.
- An attractive employee value proposition may include, but is not limited to, work-life balance, meaningful work, positive workplace culture, workplace diversity and inclusion, and employment benefits such as flexible ways of working. As part of their attraction and retention policies, public sector employers should communicate a positive value proposition to attract and retain capable workforces.

Strategies

Public sector employers may operationalise the above principles through a range of workplace practices and initiatives, which may be captured in by a broader attraction and retention strategy.

Attraction strategies may include, but are not limited to:

- Developing and communicating a strong employee value proposition to attract skilled and diverse prospective employees to the public sector.
- Designing and implementing best-practice approaches to recruitment and selection, including streamlining hiring practices, and reducing timeframes where possible.

- Designing and implementing strategies to attract and recruit from diverse and under-represented communities, including First Nations peoples.
- Designing and establishing incentives to support the attraction (as well as retention) of employees in rural and regional areas, for example reimbursement of reasonable relocation expenses.
- Designing and implementing appropriate remunerative incentives and rules for deploying such incentives, for instance, the appointment of a preferred candidate to a salary above that of the classification base salary.
    - Public sector agencies must be able to demonstrate clear link between such an incentive and key service delivery goals (e.g., where the role is a critical role and there will be a significant and immediate impact on service delivery if it remains vacant). Such incentives must be approved by senior management with appropriate delegation within the public sector entity.
    - Any attraction incentives, other than appointment above the base of a classification, should only be offered on a temporary basis, for a defined period.
    - Agencies must keep adequate records of the payment of any such incentives, and incentives should be reviewed regularly, in particular to ensure they do not have negative consequences for gender pay equity. Any agreement between the parties must be appropriately documented prior to formalising the individual's recruitment.
    - Agencies must ensure that remunerative incentives do not include performance-based bonuses or incentive payments.

Retention strategies may include, but are not limited to:

- Promoting and implementing flexible ways of working for all staff, including by developing a flexible work policy that supports employees to balance their work and their commitments outside of work.
- Fostering and promoting inclusive and diverse workplaces.
- Demonstrating a commitment to provide secure employment.
- Developing meaningful career pathways through the establishment of capable leadership pipelines, a commitment to succession planning, formal tools to support career progression and implementing and promoting relevant learning and development resources.
- Facilitating greater mobility across the workforce, including by linking skill development and career aspirations, reducing operational barriers to mobility, and implementing appropriate frameworks to match employee skills to emerging and current organisational needs.

4. Further Information

For further information and advice employees and public sector union representatives should contact the local Human Resources or People and Culture Unit (or equivalent) of the relevant entity for further assistance in the first instance.

People and Culture Representatives of Public Sector Entities should contact their Portfolio Department for further assistance in the first instance.

People and Culture Representatives of Portfolio Departments should contact their usual IRV portfolio contact for further assistance in the first instance.

5. Related Policies or Documents

- Flexible Work
- Secure employment
- Right to Disconnect

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Employee entitlements on transfer between public sector entities or to the private sector Public Sector

Public Sector Industrial Relations Policies

Contents

1. Application

This Policy applies 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.

2. Overview

The transfer of certain functions across the public sector, or to the private sector, may be necessary from time to time in order to achieve new or shifting Government priorities.

The Government is committed to ensuring that where employees are transferred both between public entities, or to the private sector, that they are transferred on terms and conditions that are no less beneficial overall.

3. Transfers within the Victorian Public Sector

The PA Act provides for the ability to mobilise employees across the public sector, including to facilitate Machinery of Government (MoG) changes. MoG changes refer to the reallocation of functions and responsibilities between departments and entities across the public sector. In Victoria, the Premier has the sole discretion to recommend such a reallocation. While MoG changes may occur at any time, significant MoG changes usually occur immediately following an election to give effect to any changes to the Ministry and any new administrative arrangements.

A MoG decision to transfer a function between public service bodies or between a public service and a public sector entity (or vice versa), will generally also necessitate the transfer of the staff performing affected functions to the receiving entity. In these circumstances, the PA Act provides that employees will be transferred to the new entity on terms and conditions that are no less favourable overall. In addition to MoG changes, section 28 of the PA Act also gives a public service body head the power to transfer an employee to duties in another public service body or in a public entity. Such transfers must be on terms and conditions of employment that are no less favourable overall and may involve either a permanent or fixed term transfer.

Consultation obligations under enterprise agreements in most cases will not be enlivened by a decision of Government to transfer a function between public service bodies or between a public service and a public sector entity (or vice versa). However, consultation obligations under relevant enterprise agreements may be enlivened in affected departments or agencies where implementing those Government decisions necessitates changes to existing work practices or structures which are likely to have significant effect on employees.

4. Transfers from the Victorian Public Sector to the private sector

The Government is committed to ensuring, where possible, public-sector work is performed by the public sector. All attempts must be made to continue the performance of this work by the public sector. In circumstances where the Government decides to transfer responsibility for the delivery of services to a private provider, the contractual obligations must specify that the affected employees' employment terms and conditions must be no less favourable overall and must adhere to the requirements outlined in this policy.

Interaction with the *Fair Work Act 2009*

Transfers from the public sector to the private sector described under this policy are subject to the application of the transfer of business provisions under the *Fair Work Act 2009* (Cth) (FW Act).

A transfer of business is when:

- an employee begins working for the new employer within three months of ending their employment with the previous employer; and,
- the employee's duties are the same or nearly the same as they were for the previous employer; and,
- there is a connection between the previous and new employers.

There is a connection between the employers where:

- **The employers are associated entities** as defined by the *Corporations Act 2001* (Cth) (for instance, they are related bodies corporate, or one has some controlling interest in the other).
- **If the employers are non-associated entities, where**:

- there is a transfer of assets from the previous employer to the new employer;
- the previous employer outsources the work the employee does to the new employer; or,
- the new employer ceases outsourcing work to the previous employer.

Service with one employer will count as service with another employer if the new employer is an associated entity of the previous employer. Where a transfer of business occurs between non-associated entities, service with the old employer will count as service with the new employer, except where the new employer provides written confirmation to the employee (prior to commencing work) that a period of service with the previous employer would not be recognised.

Where transfer of business provisions under the FW Act apply to the transfer of public sector functions to the private sector, new providers will be required to recognise prior public sector service.

Where there is a transfer of business, transferring employees that were covered by an enterprise agreement prior to transfer will continue to be covered by that agreement. This enterprise agreement will apply until it is terminated or replaced. Employers should ensure transferring employees are not disadvantaged in the terms and conditions of their employment. Alternatively, if the transferring employees were previously covered by an award, they will be covered by the relevant award that covers their new employer (if that award covers their job and industry).

Whether a particular transfer may enliven the transfer of business provisions under the FW Act may involve complex considerations. Legal advice may be required to ensure that a public sector entity is complying with its legal obligations.

Interaction with the PA Act

The PA Act stipulates public sector values and employment principles that Victorian public sector employers are required to apply. Agencies not bound by the PA Act are expected to benchmark against the principles under the PA Act in their contractual obligations. These 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.

Transfer of functions to a private provider – key principles

Any departures from this operating framework and principles will require the prior endorsement of Government. Agencies are required to contact their 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.

Public sector employers must comply with their consultation obligations

Public sector employers must consult with their employees and employee representatives about a proposed change that involves a transfer from public to private sector employment 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 contained in enterprise agreements, awards or as formalised in departmental or agency internal policy.

Employment offers must be made to pre-existing employees where possible

The Government requires that a private provider 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 majority of cases the new provider would make offers of employment to public sector employees currently performing the work.

This requirement is to support the expectation that private providers engage existing public sector employees, as far as practicable, and subsequently minimise the number of public sector employees who may become redundant as a result of functions being transferred to the private sector. Such offers of employment will precede normal recruitment processes and will allow for reasonable adjustments, including re-training, where employees selected may not meet all the new job requirements.

Employees who accept an offer of employment will be employed on terms and conditions that are no less favourable overall

Where an employee accepts an 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 to ensure it meets these requirements. This is also subject to 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 can 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 and would be decided on a case-by-case basis with guidance from the Department of Treasury and Finance, 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. Employees should also seek independent professional advice and carefully consider their personal circumstances prior to accepting an offer of employment. The Employer may reimburse employees for expenses incurred in obtaining financial advice.

Continuity of service for leave purposes will be maintained

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.

Maintenance of existing terms and conditions will be accompanied by a commitment from 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.

Agreement will be sought from the new provider agrees that no probation period will apply and to recognise public sector service in the calculation of any subsequent retrenchment payments.

Redundancy and redeployment for employees that are not offered jobs or reject job offers

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 a final job offer is not made to an employee by the new provider prior to the date the employee has been declared surplus, or the employee chooses 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 principles in the Redundancy and Redeployment Policy and delivered under public sector redeployment processes. The redeployment process will commence from the date an employee is declared surplus.

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.

5. Further Information

For further information and advice employees and public sector union representatives should contact the local Human Resources or People and Culture Unit (or equivalent) of the relevant entity in the first instance.

People and Culture Representatives of Public Sector Entities should contact their Portfolio Department for further assistance in the first instance.

People and Culture Representatives of Portfolio Departments should contact their usual IRV portfolio contact for further assistance in the first instance.

6. Related Policies or Documents

- Redundancy and Redeployment Policy
- Consultation and Cooperation in the workplace

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Family and Domestic Violence Leave

Public Sector Industrial Relations Policies

Contents

1. Application

This Policy applies 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.

2. Overview

Workplace environments that are safe, inclusive, and receptive to the burden and hardship of family and domestic violence are critical to reinforcing the social norms of respect, non-violence, and equity. The Victorian Government is committed to creating a broader culture that supports respectful relationships, practices positive attitudes and behaviours, and promotes workplaces that are free from all forms of violence, including in workplaces across the Victorian public sector.

Employees across the public sector may experience situations of violence and abuse that constitute family and domestic violence, and which may affect their attendance and performance at work. The Victorian Government is committed to providing any employee who is experiencing family and domestic violence with the necessary support and flexibility while maintaining their employment. The Government acknowledges that paid work plays a crucial role in providing the financial stability to enable people experiencing family and domestic violence to remove themselves from dangerous, abusive, or violent situations.

3. Family and Domestic Violence Supports

Public sector employers must ensure they have appropriate arrangements in place to support employees who are experiencing family violence and must include in their enterprise agreements the

model family and domestic violence leave provision below (**Attachment A**) or a more beneficial clause. The model clause provides that:

- All employees are entitled to paid family and domestic violence leave, including casual employees. This leave is available to assist the employee to attend medical appointments, legal proceedings and/or other activities to assist the employee to deal with the consequences of family and domestic violence and/or to remove themselves from dangerous or violent situations. This includes time required for recovery from incidents of family and domestic violence.
- Up to 20 days paid family and domestic violence leave per 12-month period (non-cumulative) is available for employees other than casual employees who are experiencing family and domestic violence. This leave is in addition to personal leave entitlements.
    - Pro-rata entitlements for part-time employees will continue to apply in relation to an employee's paid family and domestic violence leave entitlement provided that the pro-rata arrangements result in at least 10 days paid family and domestic violence leave per annum for each employee (non-cumulative). In addition to the paid family and domestic violence leave entitlement, part-time employees are entitled to unpaid family and domestic violence leave (up to a combined total of 20 days inclusive of the employee's paid family and domestic violence leave entitlement).
    - Casual employees who are experiencing family and domestic violence are entitled to up to 10 days paid family and domestic violence leave per year and up to 10 days unpaid family and domestic violence leave per year (non-cumulative).
- Paid family and domestic violence leave is available in full at the start of each 12-month period of the employee's employment, in line with an employee's anniversary date and the full balance is renewed on the employee's anniversary date each year. While paid family and domestic violence leave is not cumulative, if the leave is exhausted in a 12-month period, consideration will be given to providing additional paid or unpaid leave and will not be unreasonably refused.
- Meaningful workplace supports are available to employees experiencing family and domestic violence (such as flexible working arrangements, changes to the employee's ordinary hours of work, altered working locations or duties and/or other reasonable support measures) to minimise any negative impacts on the employment of affected employees. Employers must consult with the employee experiencing family and domestic violence when implementing meaningful workplace supports to ensure employee safety.

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 and domestic violence leave entitlement. Public sector employers must also ensure they have appropriate privacy and confidentiality

arrangements in place and employers must consider an employee's response and concerns to ensure employee safety.

Family and domestic violence supports, including paid or unpaid family and domestic violence leave, must not extend to perpetrators (or alleged perpetrators) of family and domestic violence.

Information that must not be included on pay slips

Employers must comply with regulations 3.47 and 3.48 of the *Fair Work Regulations 2009* (Cth) with regards to reporting paid family and domestic violence leave on payslips. In accordance with those regulations, employers must not include information in relation to paid family and domestic violence leave on an employee's payslips, including:

- that an amount paid to an employee is a payment made with respect to family and domestic violence leave
- that a period of leave taken by an employee is a period of paid family and domestic violence leave
- the balance of an employee's entitlement to family and domestic violence leave.

Employers must not report that an amount has been paid to an employee for taking a period of leave. This must instead be reported as an amount paid to an employee for the performance of ordinary hours of work or as another kind of payment made in relation to the performance of work (including, but not limited to, an allowance, bonus, or payment of overtime).

However, if the employee has requested that the employer report the amount on the payslip as an amount paid for the taking of a particular kind of leave (other than a period of family and domestic violence leave), the amount must be reported on the pay slip as due to the employee taking that other leave type.

Notwithstanding these requirements, public sector employers are expected to ensure that where family and domestic violence leave is utilised by employees it remains deidentified. All personal information concerning family and domestic violence must be kept confidential in line with the public sector employer's policies and relevant legislation.

4. Further Information

For further information and advice, employees and public sector union representatives should contact the local Human Resources or People and Culture Unit (or equivalent) of the relevant entity in the first instance.

People and Culture Representatives of Public Sector Entities should contact their Portfolio Department for further assistance in the first instance.

People and Culture Representatives of Portfolio Departments should contact their usual Industrial Relations Victoria portfolio contact for further assistance in the first instance.

5. Related Policies or Documents

- Flexible Work Policy

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6. Attachment A

Model Provision – Family and Domestic Violence Leave

1.1 General Principles

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 employees that experience family and domestic violence.

b) Leave for family and domestic violence purposes is available to employees who are experiencing family and domestic violence and they are required to be absent from the workplace to deal with the impact of family and domestic violence. This may include leave to attend counselling appointments and legal proceedings, provide childcare, arrange for the safety of themselves or a close relative, and other activities related to, and as a consequence of, family and domestic violence.

c) The supports and paid or unpaid leave provided under this clause do not extend to perpetrators (or alleged perpetrators) of family and domestic violence.

1.2 Definition of Family and Domestic Violence

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

1.3 Eligibility

Leave for family and domestic violence purposes is available to all employees as outlined in this clause.

1.4 General Measures

a) Evidence of family and domestic violence may be required and if so, should demonstrate that:

   (i) the employee needs or needed to do something to deal with the impact of family and domestic violence, and

   (ii) was required to absent themselves from the workplace, or it would have been impractical for them to do the thing outside work hours.

b) Evidence can be given in the form of a statutory declaration, an agreed document issued by the police service, a court, a registered health practitioner, a family and domestic violence support service, district nurse, maternal and health care nurse, or lawyer would all be sufficient to meet clause 1.4(a). Types of appropriate evidence are not limited to the listed examples above, and they do not have to provide extensive detail as to the circumstances which give rise to the need for leave.

c) A request for evidence made by the employer will not be unreasonable or overly onerous on the employee. All requests must be handled sensitively and with consideration of the employee's safety and the circumstances of each case.

d) All personal information concerning family violence will be kept confidential in line with the employer's policies and relevant information. No information will be kept on an employee's personnel file without their express written permission.

e) No adverse action will be taken against an employee if their attendance or performance at work suffers as a result of experiencing family and domestic violence.

f) The employer will identify contact/s within the workplace who will be trained in family and domestic violence and associated privacy issues. The employer will advertise the name of any family and domestic violence contacts within the workplace.

g) An employee experiencing family and domestic violence may raise the issue with their immediate supervisor, family and domestic violence contacts, accredited representative of the union, workplace delegate or nominated Human Resources contact, or have the matter raised on their behalf by their appointed representative. The immediate supervisor may seek advice from Human Resources if the employee chooses not to see the Human Resources or Family Violence contact.

h) 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 1.4(a), 1.5(a) and clause 1.9.

i) The employer will develop guidelines to supplement this clause, and which detail the appropriate action to be taken in the event that an employee reports family and domestic violence.

1.5 Leave for Employees other than Casual Employees

a) An employee (other than casual employees) experiencing family and domestic violence will have access to up to 20 days of paid family and domestic violence leave, per year of employment, to address the impact of family and domestic violence. This leave is available in full at the start of each employment year in line with an employee's anniversary date and does not accumulate from year-to-year. Where an employee has exhausted their leave allocation in any single year of employment, consideration will be given to providing additional leave which will not be unreasonably refused.

b) Pro-rata entitlements for part-time employees will continue to apply provided that the pro-rata arrangements result in at least 10 days of paid family violence leave per annum for each part-time employee.

1.6 Leave for Casual Employees

a) Casual employees are entitled to up to 10 days paid family and domestic violence leave and a further 10 days of leave without pay for family violence purposes in any single year starting from the employee's anniversary date.

b) This leave is available in full at the start of each employment year in line with an employee's anniversary date and does not accumulate from year-to-year.

c) The employer may use its discretion to grant further family and domestic violence leave to a casual employee experiencing family and domestic violence on a case-by-case basis which will not be unreasonably refused.

1.7 Rate of pay during a period of Family and Domestic Violence Leave

a) Family and domestic violence leave will be paid at the employee's full rate of pay, including any applicable allowances, overtime payments or penalty rates, regardless of any agreement provision to the contrary.

b) The employee's full rate of pay is worked out based on the amount they would have been paid had they not taken the period of leave.

1.8 Taking of Family and Domestic Violence Leave

a) Family and Domestic Violence 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 and domestic 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 1.4(a) from an employee seeking to utilise their personal/carer's leave entitlement.

1.9 Individual Support

a) In order to provide support to an employee experiencing family and domestic violence and to provide a safe work environment to all employees, the employer will approve any reasonable request from an employee experiencing family and domestic violence for:

   i. temporary or ongoing changes to their span of hours or pattern or hours and/or shift patterns; or

   ii. temporary or ongoing job redesign or changes to duties; or

   iii. temporary or ongoing relocation to suitable employment; or

   iv. a change to their telephone number or email address to avoid harassing contact; or

   v. any other appropriate measure including those available under existing provisions for flexible work arrangements.

b) Requests from an employee to change their working arrangements under this clause must be treated and responded to in the same manner as requests made for flexible working arrangements under clause XX of the Agreement (insert applicable right to request flexible working arrangements clause).

c) Any changes to an employee's role should be reviewed at agreed periods. When an employee is no longer experiencing family and domestic violence, the terms and conditions of employment may revert back to the terms and conditions applicable to the employee's substantive position.

d) The employer may also implement a workplace safety plan upon request by and in consultation with the employee, which includes specific measures to minimise risk that the employee will be subject to violent or abusive behaviour at work from the perpetrator of family violence and protocols for dealing with a crisis situation.

e) Upon request from the employee and where the employer has the technological capabilities to do so, the employer may use existing IT services to screen the employee's devices, including private devices, for spyware and malware.

f) An employee experiencing family and domestic 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 and domestic violence.

g) An employee that discloses that they are experiencing family and domestic violence will be given information regarding available support services.

Flexible Work

Public Sector Industrial Relations Policies

Contents

1. Application

This Policy applies 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.

2. Overview

The Government is committed to promoting and implementing flexible, diverse and supportive workplaces that ensure employees can balance work and their personal, family or other commitments outside of work. The Government supports flexible work practices that meet the needs of employees as well as maintaining the needs of the work area to deliver services to the Victorian community.

Balancing the needs of the individual employee and the needs of the business can be achieved through cooperation and consultation between the Government, employers, unions, and employees.

3. Flexible work

Flexible working (which may include Hybrid work) is one of the key drivers of employee engagement, which is linked to higher productivity, creativity and motivation in the workplace as well as improved employee wellbeing. Access to flexible working is linked to improved organisational productivity, greater workforce diversity, enhanced attraction and retention of employees, and improved employee well-being. To be a contemporary employer of choice, Victorian public sector employers need to cultivate a culture where working flexibly is considered business as usual.

Enterprise bargaining is one way that working arrangements can be reviewed and updated to better provide employees with a meaningful level of control over when, where, and how work is accomplished, for example, to work remotely, change their hours, use leave flexibly, change the days they work or use other options that work for both employee and manager.

There are many types of flexibilities, which can be ad-hoc, short-term or long-term. Examples of flexible working can include (but is not limited to):

- flexible hours of work, including flexible start and finish times
- compressed working week
- job sharing
- tele-commuting / working remotely
- part-time work
- using accrued leave to work part-time or at reduced time fraction

Processes and practices will necessarily differ from agency to agency, but the goal should be to reach an outcome in which an individual's needs for flexibility are met, consistent with business requirements, industrial instruments, and legislative requirements. And in doing so, noting that depending upon the nature of an employee's role, not all flexibilities may be available to all roles, but some flexibilities will be an option for all employees.

Flexible Work – Government Expectations

All public sector employers must have a flexible work policy in place, which must be reached in consultation with the relevant union/s and will apply to all employees in addition to the right to request flexible working arrangements under section 65 of the *Fair Work Act 2009* (Cth) (FW Act).

The policy must be based on and incorporate the following principles:

- Flexibility is the default position for all public sector roles and is available to all employees regardless of the reason it is being requested, when the employee commenced their employment or the employee's role. While all roles can include some type of flexibility, not all types of flexibility will be possible in all roles.
- An individual employee's flexible work arrangements should be discussed at the local level, subject to operational requirements, and should be considered in consultation with both line management and the organisation's Human Resources or People and Culture Unit (or equivalent), so that there is appropriate oversight and consistent practice across the organisation.
- Managers and employees will genuinely consider all forms of flexible working and an employee's flexible working request must be responded to within a reasonable timeframe (for example a response must be provided within 21 days).
- The employer may only refuse an employee's requested flexible work arrangements if they have first discussed the request with the employee and genuinely tried to reach

agreement about making the requested changes to the employee's working arrangements, having regard to the consequences of the refusal for the employee. The refusal must be based on reasonable business grounds. Reasonable business grounds may include:

  - that the flexible working arrangements requested would be too costly for the employer
  - that there is no capacity to change the working arrangements of other employees to accommodate the employee's proposed new flexible working arrangements request
  - that it would be impractical to change the working arrangements of other employees, or recruit new employees, to accommodate the new flexible working arrangements requested by the employee
  - that the new flexible working arrangements requested by the employee would be likely to result in a significant loss in efficiency or productivity
  - that the new flexible working arrangements requested would be likely to have a significant negative impact on customer or client service.

- Where the request is refused, the employer must provide reasons for the refusal in writing. In circumstances where the employer is unable to accommodate the employee's requested flexible work arrangements, managers should explore possible alternative ways to provide flexibility for the employee.
- Employees who are directly impacted by a decision made, or action taken, pursuant to the employer's flexible work policy may seek to resolve a dispute through the dispute resolution process described under the employer's enterprise agreement.
- Flexibility is enabled by organisational systems, processes, and services (including access to technology) and employers should ensure they have appropriate systems in place to support flexible and hybrid ways of working.
- Flexibility is led and role modelled by senior leadership.
- Flexible and hybrid working arrangements will reflect different workforces, organisational arrangements and operational requirements.
- Any flexible working arrangements agreed to should be reviewed on a regular basis to ensure they continue to meet the needs of both the employer and employee.
- Flexible work should not:
  - lead to reduced service delivery to the Victorian community.
  - negatively impact the achievement of team and the organisation's objectives.
  - materially change the work required or performance of the work.

4. Right to request flexible working arrangements

Under section 65 of the FW Act, certain employees have a legal right to request flexible working arrangements from their employer. This right forms part of the National Employment Standards (NES) under the FW Act.

A request for flexible working arrangements must be submitted in writing setting out details of the change sought and the reasons for the change. The employer must give a written response within 21 days.

An employer may only refuse the request for flexible work arrangements under section 65 of the FW Act if:

- the employer has discussed the request with the employee, and
- the employer has genuinely tried to reach an agreement with the employee about making changes to the employee's working arrangements to accommodate the circumstances, and
- the employer and the employee have not reached such an agreement regarding the employee's working arrangements, and
- the employer has had regard to the consequences of the refusal for the employee, and
- the refusal is on reasonable business grounds.

Reasonable business grounds will include, but are not limited to:

- that the working arrangements requested would be too costly for the employer
- that there is no capacity to change the working arrangements of other employees to accommodate the working arrangements requested
- that it would be impractical to change the working arrangements of other employees, or recruit new employees, to accommodate the working arrangements requested
- that the working arrangements requested would be likely to result in a significant loss in efficiency or productivity
- that the working arrangements requested would be likely to have a significant negative impact on customer service.

If the employer refuses the request, the written response must:

- include details of the reasons for the refusal and setting out the employer's particular business grounds for refusing the request and explaining how those grounds apply to the request; and
- either set out the changes (other than the requested change) in the employee's working arrangements that would accommodate, to any extent, the circumstances

mentioned by the employee in their request and that the employer would be willing to make, or state that there are no such changes; and

- set out the avenues available to the employee to resolve any disputation, which must include:
    - in the first instance, the employer and employee must attempt to resolve the dispute at the workplace level, by discussions between them.
    - if discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the dispute to the Fair Work Commission and to be dealt with in accordance with section 65B and 65C of the FW Act.

5. Individual Flexibility Agreements

Division 5 of Part 2 – 4 of the FW Act requires that all enterprise agreements include an individual flexibility term that enables an individual employee and their employer to agree to working arrangements which vary the effect of an enterprise agreement in relation to that individual in order to meet the genuine needs of the individual employee and employer. If an enterprise agreement does not include a compliant individual flexibility term, then the model flexibility term as provided in Schedule 2.2 of the Fair Work Regulations will apply as if it is a term of the enterprise agreement.

The individual flexibility term allows an employer and employee to enter into an individual flexibility arrangement (IFA) to vary the effect of terms of an enterprise agreement dealing with arrangements such as when work is performed, overtime rates, penalty rates, allowances or leave loading (or any other provision as agreed in the flexibility term in the enterprise agreement).

Public sector employers are encouraged to adopt the model provision provided in Schedule 2.2 of the Fair Work Regulations and agree to engage with employees and their union(s) and/or employee representatives on the terms of the enterprise agreement which may be varied by an IFA.

Importantly, IFAs:

- may be initiated by the employer or employee but should not be used by public sector employers to undermine collective bargaining,
- must genuinely be agreed in writing and signed by both the employer and employee,
- must result in the individual employee being better off overall than the employee would have been if no individual flexibility arrangement was agreed to,
- cannot be used to reduce or remove employee entitlements, and
- may be ended at any time by written agreement between an employer and employee. Otherwise, the IFA can be ended by giving the other party appropriate notice detailed in the flexibility provision in the enterprise agreement or FW Act as appropriate.

6. Further Information

For further information and advice employees and public sector union representatives should contact the local Human Resources or People and Culture Unit (or equivalent) of the relevant entity in the first instance.

People and Culture Representatives of Public Sector Entities should contact their Portfolio Department for further assistance in the first instance.

People and Culture Representatives of Portfolio Departments should contact their usual Industrial Relations Victoria portfolio contact for further assistance in the first instance.

7. Related Policies or Documents

- Enterprise Bargaining and Agreement Making
- Right to Disconnect
- Alternative ways of working

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Gender Affirmation Leave and other supports

Public Sector Industrial Relations Policies

Contents

1. Application

This Policy applies 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.

2. Overview

The Government promotes the development of safe, inclusive and diverse workplaces that support transgender, gender diverse and non-binary employees. A supportive work environment plays a central role in enhancing wellbeing. Employers have a responsibility to ensure transgender, gender diverse and non-binary employees have a supportive environment to work in.

Gender affirmation is a process through which an employee affirms their gender identity to align more closely with their internal sense of self. Gender affirmation may also be referred to as gender transition. Gender affirmation is an employee-led process that an individual will go through at their own pace and may require different employer supports along the way. The gender affirmation process may be impacted by a range of things including: cultural, racial, religious, disability-related, and socioeconomic factors. Gender affirmation is not a linear process, and there is no set timeframe, duration, or clear start or end point.

It is against the law to discriminate against someone based on their gender identity, sex, or sex characteristics, such as someone with intersex variations. Each transgender, gender-diverse and non-

binary employee is unique and will have a different affirmation experience. Enterprise agreement provisions must be inclusive, support these differences, and must not unduly restrict access to the entitlements provided.

Employers will need to develop workplace specific supports - such as flexible work arrangements, flexible access to leave and inclusive workplace policies - to ensure employees affirming their gender are able to plan their affirmation within the workplace free from discrimination, bullying, sexual harassment, vilification and victimisation, and ensure access to emotional wellbeing supports such as Employee Assistance Programs (EAP) throughout all stages.

3. Gender Affirmation Leave

Public Sector employers must include in their enterprise agreements gender affirmation provisions that:

- Provide up to 20 days' paid leave to employees (excluding casuals) to support gender affirmation, including but not limited to medical, psychological, legal, administrative, and social affirmation activities, to be taken flexibly over the life of the employee's employment.
- Provide access to additional unpaid leave (up to 48 weeks) for employees other than casual employees.
- Provide access to unpaid leave of up to 52 weeks duration for casual employees.
- Provide that employees who exhaust the paid leave component of the Gender Affirmation Leave may access other forms of accrued paid leave.
- Provide that Gender Affirmation Leave will not be unreasonably refused.
- Provide that Gender Affirmation Leave may be taken flexibly as consecutive, single or part days (as agreed between the employee and employer).
- Outline appropriate notice and evidentiary requirements for accessing leave and other supports.
- Consider intersectional barriers that transgender, gender-diverse and non-binary employees may experience.

To support public sector employers to meet these expectations, a model clause representing current best-practice standards for inclusivity and employee wellbeing is provided in **Attachment A**. Employers are encouraged, though not required, to adopt this model clause or may develop a more beneficial provision. In the absence of using the model clause, public sector employers are responsible for ensuring their provisions meet or exceed the minimum standards and guidelines outlined in this policy.

4. Other supports

Employers and managers have a responsibility to ensure transgender, gender-diverse and non-binary employees have a supportive and inclusive workplace environment to work in. Further to providing paid and unpaid leave entitlements, employers should offer other workplace supports including, but not limited to:

- **Updating human resources and IT systems:** Ensuring chosen names, pronouns, gender markers, and email accounts reflect employees' affirmed identities promptly and respectfully.
- **Provision of** guides for managers and other employees to support them to provide inclusive and appropriate supports to the employee affirming their gender.
- **Inclusive facilities:** such as all-gender bathrooms and accessible changing rooms. Accessible and inclusive facilities should be clearly identified.
- **Communication and confidentiality protocols:** Clear guidance around respectful and inclusive communication, appropriate disclosure of information, and privacy protections consistent with the *Privacy and Data Protection Act 2014* (Vic) and the *Health Records Act 2001* (Vic).

Employers must also support the wellbeing of employees affirming their gender through dedicated resources such as providing access to Employee Assistance Programs (EAP) and establishing a point of contact within the Human Resources or People & Culture team (or equivalent). Workplace supports should consider intersectional barriers that transgender, gender-diverse and non-binary employees may experience.

For VPS employers, the Victorian Public Sector Commission has developed resources to support employers through an employee's gender affirmation journey. While these resources are intended for VPS employers, broader public sector employers may find them a useful guide.

5. Further Information

Employees and public sector union representatives seeking advice or assistance should contact their local Human Resources or People and Culture Unit (or equivalent) for further assistance in the first instance.

People and Culture representatives in Public Sector Entities requiring further support should contact their Portfolio Department for further assistance in the first instance.

People and Culture representatives within Portfolio Departments should contact their usual IRV portfolio contact for additional guidance in the first instance.

All enquiries will be treated confidentially and handled sensitively, in accordance with relevant privacy legislation including the *Privacy and Data Protection Act 2014* (Vic) and the *Health Records Act 2001* (Vic).

Employees may also directly access wellbeing support through their organisation's EAP.

Employees seeking external information, or support may also contact specialist external services, including:

- Victorian Equal Opportunity and Human Rights Commission
- Transgender Victoria
- Switchboard Victoria / QLife
- Beyond Blue
- Lifeline

6. Related Policies or Documents

- Gender affirmation in Victorian public sector workplaces

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7. Attachment A

Model Provision – Gender Affirmation Leave

X. Gender Affirmation Leave

X.1 The employer encourages a culture that is supportive of transgender, gender-diverse and non-binary employees and the importance of providing a safe environment for employees undertaking gender affirmation.

X.2 Gender Affirmation Leave is available to transgender, gender-diverse and non-binary employees who are undergoing a process to affirm their gender. Employees may affirm their gender through medical, psychological, social, legal, or administrative means.

X.3 Employees may give effect to their affirmation in a number of ways and are not required to undertake specific types of changes, such as surgery, to access leave under this clause.

X.4 Amount of gender affirmation leave

(a) An employee (other than a casual employee) who is undergoing a process of affirming their gender is entitled Gender Affirmation Leave for the purpose of supporting the employee's affirmation. Gender Affirmation Leave will comprise:

> **(i)** up to 20 days of paid leave, for essential and necessary gender affirmation procedures, and
>
> **(ii)** up to 48 weeks of unpaid leave.

(b) The Gender Affirmation Leave entitlements outlined in clause X.4 are employee-led, based on individual needs and circumstances, and may be accessed by the employee flexibly over the life of the employee's employment.

(c) Essential gender affirmation procedures may include, but are not limited to:

> **(i)** medical or psychological appointments,
>
> **(ii)** hormonal appointments,
>
> **(iii)** surgery and associated appointments,
>
> **(iv)** appointments for updating legal status or identity documentation,
>
> (v) psychological counselling or support,
>
> **(v)** any other similar or necessary appointment or procedure to give effect to the employee's affirmation, as agreed with the employer.

(d) An employee may utilise accrued Annual or Long Service Leave or, where appropriate, Personal Leave, to complement leave taken under this clause.

(e) Gender Affirmation Leave may be taken as consecutive, single or part days as agreed with the employer.

(f) Paid leave under this clause will not accrue from year to year and cannot be cashed out on termination of employment.

X.5 Gender Transition Leave – Casual employees

Casual employees are entitled to access unpaid leave of up to 52 weeks duration for gender transition purposes.

X.6 Notice and evidence requirements

(a) An employee seeking to access Gender Affirmation Leave must provide the employer with reasonable written notice of their intended commencement date and expected period of leave as soon as practicable, unless otherwise agreed by the employer. Approval of a request to access leave at short notice will not be unreasonably withheld, having regard to the length of the absence and operational requirements of the Employer, acknowledging that there may be instances where last minute appointments may arise

(b) An employee seeking to access Gender Affirmation Leave may be required to provide suitable supporting documentation or evidence of their attendance at essential gender affirmation procedures. This may be in the form of a document issued by a registered practitioner, a lawyer, or a state, territory or federal government organisation, statutory declaration or other suitable supporting documentation.

(c) For the purpose of this clause, registered health practitioner has the same meaning as set out in **clause X**.

Gender Equality

Public Sector Industrial Relations Policies

Contents

1. Application

This Policy applies 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.

2. Overview

The Victorian Government is committed to achieving gender equality in Victoria, and a public sector that is free of gender-based inequalities and discrimination, in which all employees can achieve their full potential regardless of gender. The Government recognises that gender bias and discrimination can occur at any point throughout employment including in recruitment, remuneration, training and development opportunities, career progression, access to leave, and responses to family and caring responsibilities, including flexible and part-time work arrangements.

Departments and agencies are expected to take affirmative steps to eliminate the gender pay gap, achieve equal pay for work of equal or comparable value, and to address current and historical systems, behaviours, actions, and attitudes that contribute to the gender pay gap and to other forms of gender inequality. Public sector employers are expected to consult with employees and unions to develop strategies designed to address the gender pay gap and gender inequality across the public sector.

3. Gender Equality Act 2020

The *Gender Equality Act 2020* (Vic) (GE Act) requires certain state and local government organisations and universities (Defined Entities/ Duty Holders) to consider and promote gender equality within their organisation and to take necessary and proportionate action towards achieving gender equality.

Public sector agencies with less than 50 employees are not Defined Entities for the purposes of the GE Act but are nonetheless expected to review the obligations under the Act and undertake the requirements where they can. Even where not a Defined Entity, all public sector employers are expected to promote gender equality and to take any necessary and proportionate actions towards achieving gender equality.

Further information on the GE Act, including the objects of the GE Act and the obligations on public sector employers, can be found at https://www.genderequalitycommission.vic.gov.au/.

4. Public Sector Gender Equality Commissioner

The GE Act also establishes a Public Sector Gender Equality Commissioner whose roles include promoting and advancing the objectives of the GE Act; supporting Defined Entities to improve gender equality and comply with the GE Act; and ensuring compliance with the requirements of the GE Act.

Dispute resolution powers of the Gender Equality Commissioner

Under the GE Act, the Gender Equality Commissioner may also deal with a dispute arising under an enterprise agreement or workplace determination covering a public service department or agency, where the enterprise agreement allows. A dispute may relate to a systemic gender equality issue, where the agreement or workplace determination includes a clause that provides for this. All public sector enterprise agreements are expected to include a clause providing for referral of disputes relating to a systemic gender equality issue to the Gender Equality Commissioner. To assist, a model provision has been provided at **Attachment A**.

5. Gender pay equity principles

To underpin the Government's commitment to gender equity in the Victorian public sector, the following gender pay equity principles for the public sector have been adopted (as per the Gender Equality Regulations 2020):

- **Principle 1 – Establishing equal pay for work of equal or comparable value**. Equal or comparable value refers to work valued as equal in terms of skill, effort, responsibility and working conditions. This includes work of different types.
- **Principle 2 – Freedom from bias and discrimination**. Employment and pay practices are free from the effects of unconscious bias and assumptions based on gender.
- **Principle 3 – Transparency and accessibility**. Employment and pay practices, pay rates and systems are transparent. Information is readily accessible and understandable.

- **Principle 4 – Relationship between paid and unpaid work**. Employment and pay practices recognise and account for different patterns of labour force participation by workers who are undertaking unpaid and/or caring work.
- **Principle 5 – Sustainability**. Interventions and solutions are collectively developed and agreed, sustainable and enduring.
- **Principle 6 – Participation and engagement**. Employers, unions and employees work collaboratively to achieve mutually agreed outcomes.
- **Principle 7 – Recognising intersectional gender inequality**. Employment and pay practices account for and recognise that gender inequality may be compounded by other forms of disadvantage or discrimination that a person may experience based on factors including age, disability, gender identity, race, religion, sexual orientation and being of Aboriginal or Torres Strait Islander descent.

6. Public sector Gender Equality expectations

Comply with the GE Act

Public sector employers that are Defined Entities under the GE Act are required to comply with their enforceable statutory obligations under that Act. Public sector employers that are not Defined Entities for the purposes of the GE Act are nonetheless expected to review the obligations under that Act and act in accordance with the requirements of that Act wherever possible.

Act in accordance with the gender pay equity principles

All public sector employers are expected to conduct themselves consistently with the above stated gender equity pay principles.

Ensure transparency of pay practices

Pay transparency and accessibility is essential to eliminating gender pay gaps. To support the elimination of bias and discrimination in pay practices, public sector agencies are expected to take appropriate steps to ensure remuneration arrangements are transparent to employees, including by capturing all pay scales within enterprise agreements.

Consider flexible ways of working

Women and men have different patterns of participation in the paid workforce, primarily because women spend a greater proportion of their time on unpaid and/or caring work. This can lead to women being disadvantaged in areas such as pay, progression, security of employment and retirement income. Acknowledging this, public sector agencies are expected to:

- design and allocate work in a manner that allows for different patterns of employment, taking into account the impact of unpaid and caring work on women's employment patterns and outcomes; and

- remove barriers to employment, progression and employment security associated with women's disproportionate experience of unpaid work and caring responsibilities outside of the workplace.

Incorporate measures in enterprise agreements to resolve systemic gender equality issues and promote gender equity

The promotion of gender equity is identified as a key Public Sector Priority under the Government's Wages Policy and Enterprise Bargaining Framework, capturing initiatives such as the elimination of the gender pay gap. Enterprise bargaining, as the primary mechanism for setting terms and conditions of employment for public sector employees, presents an opportunity for public sector agencies to remove or reduce the structures, processes or entitlements which may act as an impediment to achieving gender pay equity.

As a part of bargaining, public sector entities should also review their enterprise agreements to identify structures or processes which may contribute to gender pay inequity. Opportunities for reform will vary from agreement to agreement but may include:

- amending entitlements to encourage a more equal share of caring responsibilities between parents,
- providing increased access to paid parental leave by reducing or removing qualifying periods or increasing paid parental leave entitlements above the minimum levels required by the Government's Public Sector Industrial Relations Policies,
- introducing initiatives which seek to minimise the impact of absence for parental leave of up 52 weeks on performance-based pay advancements or progression,
- introducing initiatives which seek to address the disparity in retirement income arising from long periods out of the workforce to have or care for children, and/or
- requiring agreements to be interpreted or applied with the gender equality implications in mind.

All public sector agencies are also encouraged to include the Gender Equality model provision in their enterprise agreements, which provides a mechanism to resolve systemic gender equity and equality issues (**Attachment A**).

Undertake commitments to improve operational practices in their Best Practice Employment Commitments

In addition to structural reform to enterprise agreement processes or entitlements, agencies should also review and identify current operational practices that may contribute to or exacerbate the gender pay gap and other gender based inequities.

In accordance with the Government's Wages Policy and Enterprise Bargaining Framework, public sector employers must also make a Best Practice Employment Commitment (BPEC) which outlines measures to operationalise elements of the Public Sector Priorities, including measures that promote gender equity.

Opportunities for operational reform will vary across workplaces but may include commitments to:

- review renumeration and pay policies and practices, including on appointment, promotion, or reclassification to ensure they are transparent and fair, and conduct gender pay equity audits to identify practices and areas that may be improved
- adopt affirmative practices to encourage women to accept roles in work areas/roles traditionally dominated by men
- provide equitable access to flexible working arrangements, and ensure that employees on flexible working arrangements have access to meaningful work and the same benefits, training and promotional opportunities as employees working in more traditional ways
- review position descriptions to ensure all roles are fully and fairly described and equally valued, and work value factors such as skill, level of responsibility and working conditions consistently measured, regardless of whether roles are in industries traditionally dominated by men or women.
- ensure recruitment, and performance development and progression policies are applied equally regardless of gender
- ensure workplace policies minimise the effects of long-term leave (such as parental leave) on remuneration, promotional opportunities, and performance development and progression outcomes
- introduce training to increase awareness of gender stereotyping and conscious/unconscious bias
- review instances of insecure work arrangements for gender pay impacts.

Public sector employers should ensure that, when reviewing operational practices, consideration is given to whether gender inequality may be compounded by other forms of disadvantage or discrimination, on the basis of Aboriginal or Torres Strait Islander descent, age, disability, ethnicity, gender identity, race, religion, sexual orientation or other attributes, that may be experienced across different workforces.

Consult and engage with Employees and Unions in the implementation of Gender Equality Measures

Government expects that public sector employers engage with unions and employees in a transparent and collaborative manner throughout the development of any Gender Equality Measures as required by the GE Act or this policy. Employers should actively engage with their employees in a way which is inclusive and recognises their diversity and different perspectives.

7. Further Information

For further information and advice employees and public sector union representatives should contact the local Human Resources or People and Culture Unit (or equivalent) of the relevant entity for further assistance in the first instance.

People and Culture Representatives of Public Sector Entities should contact their Portfolio Department for further assistance in the first instance.

People and Culture Representatives of Portfolio Departments should contact their usual IRV portfolio contact for further assistance in the first instance.

8. Related Policies or Documents

- Parental Leave, Personal/Carers Leave and Compassionate Leave Policy
- Commission for Gender Equality in the Public Sector website

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9. Attachment A

Model Provision – Gender Equality

1. Gender Equality

1.1. Commitment to collaborative approach to achieving gender pay equity

The employer will work collaboratively with employees and the Union to identify, support, and implement strategies designed to eradicate the gender pay gap, gender inequality and discrimination.

1.2. Gender Pay Equity Principles

The provisions of this Agreement are to be interpreted consistently with the following gender pay equity principles:

1.2.1. Establishing equal pay for work of equal or comparable value: Equal or comparable value refers to work valued as equal or comparable in terms of skill, effort, responsibility and working conditions. This includes work of different types.

1.2.2. Freedom from bias and discrimination: Employment and pay practices are free from the effects of unconscious bias and assumptions based on gender.

1.2.3. Transparency and accessibility: Employment and pay practices, pay rates and systems are transparent. Information is readily accessible and understandable.

1.2.4. Relationship between paid and unpaid work: Employment and pay practices recognise and account for different patterns of labour force participation by workers who are undertaking unpaid and/ or caring work.

1.2.5. Sustainability: Interventions and solutions are collectively developed and agreed, sustainable and enduring.

1.2.6. Participation and engagement: Workers, unions and employers work collaboratively to achieve mutually agreed outcomes.

1.2.7. Recognising intersectional gender inequality: Employment and pay practices account for and recognise that gender inequality may be compounded by other forms of disadvantage or discrimination that a person may experience based on factors including age, disability, gender identity, race, religion, sexual orientation and being of Aboriginal or Torres Strait Islander descent.

1.3. Meaning of ‘pay’

In this clause, ‘pay’ refers to remuneration including but not limited to salary, bonuses, overtime payments, allowances, and superannuation.

1.4. Claims relating to systemic gender equality issues

1.4.1. A systemic gender equality issue means, as set out in the *Gender Equality Act 2020* (Vic), an issue of a systemic nature within the employer which adversely affects a class or group of employees of the employer, relating to:

i. The gender composition of any or all workforce levels of the employer; or

ii. The gender composition of governing bodies; or

iii. Equal remuneration for work of equal or comparable value across any or all workforce levels of the employer irrespective of gender; or

iv. Sexual harassment in the workplace; or

v. Recruitment and promotion practices in the workplace; or

vi. Availability and utilisation of terms, conditions and practices in the workplace relating to Family and Domestic Violence Leave, Flexible Working Arrangements and working arrangements supporting employees with family or caring responsibilities; or

vii. Gendered workplace segregation, or

viii. Any other prescribed matters.

1.4.2. The Union and/or a class or group of employees (Claimant/s) may seek resolution of a dispute relating to a systemic gender issue (Claim) in accordance with this clause.

1.4.3. A Claim or Claims under this clause must be made in writing to the employer.

1.4.4. In the first instance the Claim should include sufficient detail for the employer to make a reasonable assessment of the nature of the Claim, the employees impacted by the Claim and any proposals to resolve the Claim.

1.4.5. The employer must meet and discuss the Claim with the Claimant prior to responding to the Claim.

1.4.6. The employer must respond to the Claim in writing to the Claimant/s, within a reasonable time, including enough details in the response to allow the Claimant to understand the employer's response to each element of the Claim, including reasons why the Claim is accepted or rejected.

1.4.7. Where agreement is reached between the parties within the workplace, this agreement and agreed resolution must be documented.

1.4.8. If the Claim, or some elements of the Claim are unable to be resolved between the employer and the Claimant/s, either the Claimant/s or the employer may refer unresolved elements of the Claim to the Public Sector Gender Equality Commissioner (Commissioner) to deal with. In doing so the parties should present, subject to the terms of the *Gender Equality Act 2020* (Vic), the agreed and unagreed items of the Claim to the Commissioner.

1.4.9. In dealing with a Claim, the Commissioner:

i. Must consider the Gender Pay Equity Principles articulated in clause 1.2 above; and

ii. Must be objective and free from assumptions based on gender; and

iii. Must acknowledge that current pre-existing views, conclusions, or assessments of comparable worth or value may not be free of assumptions based on gender; and

iv. Must ensure that skills, responsibilities, effort, and conditions that are commonly undervalued such as social and communication skills, responsibility for wellbeing of others, emotional effort, cultural knowledge and sensitivity are considered; and

v. Must ensure that dispute resolution outcomes consider current or historical gender-based discrimination and do not further promote systemic undervaluation; and

vi. Must deal with the Claim in a manner that is independent of the employer or the Claimant; and

vii. Must consider evidence that the Claim may not be isolated to the employer subject to the Claim but may affect employees from other public sector employers not covered by this Agreement; and

viii. May jointly deal with a Claim and any other dispute which has been referred to the Commissioner which relates to the same or similar systemic gender equality issues; and

ix. Must consider the views of the Claimant prior to jointly dealing with multiple Claims or disputes; and

x. May otherwise deal with the Claim in any way the Commissioner considers appropriate, consistent with the requirements of the *Gender Equality Act 2020* (Vic). This can include mediation, conciliation, making recommendations or offering opinions. However, the Commissioner cannot make any binding determination in relation to a Claim.

1.4.10. If a Claim is unable to be resolved by the Commissioner, either the Claimant or the employer may refer the Claim to the Fair Work Commission as a dispute of a collective character for resolution pursuant to clause X (Dispute Resolution Clause).

1.4.11. This clause does not apply to any dispute regarding a matter or matters arising in the course of bargaining in relation to a proposed enterprise agreement.

1.4.12. A Claimant or the employer may choose to be represented at any stage by a representative, including a Union representative or employer's organisation.

1.4.13. The Claimant and employer 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.

1.4.14. Whilst a Claim 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 their 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. No party will be prejudiced as to the final settlement of the Claim by the continuance of work in accordance with this clause.

1.5. Gender Equality Action Plans

The employer will consult with the governing body of the entity, the employees, the relevant Union/s and any other relevant person in the preparation of Gender Equality Action Plans under the *Gender Equality Act 2020* (Vic).

Leave and other supports for First Nations public sector employees

Public Sector Industrial Relations Policies

Contents

1. Application

This Policy applies 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.

2. Overview

The Victorian Government acknowledges Aboriginal and Torres Strait Islander people as the Traditional Custodians of the land and acknowledges and pays respect to their Elders, past and present.

The Government promotes the development of safe and inclusive workplaces that support First Nations public sector employees. A supportive work environment plays a central role in enhancing wellbeing and workforce participation. Employers have a responsibility to ensure First Nations employees have a supportive environment to work in.

From a principle of self-determination, the Victorian Government acknowledges the need to prioritise culture, address racism and promote cultural safety in the workplace. To promote cultural safety in the workplace this policy requires all public sector employers to include terms in all future enterprise

agreements that provide for paid cultural and ceremonial leave and for leave for elected public sector employees to participate in the First People's Assembly of Victoria (FPAV) as set out in this policy.

3. Cultural and Ceremonial Leave

Victorian public sector enterprise agreements must include Cultural and Ceremonial provisions for employees of Aboriginal or Torres Strait Islander descent that provides a minimum of:

- one day of paid leave per annum to participate in National Aboriginal and Islander Day Observance Committee (NAIDOC) week activities and events, and
- leave for ceremonial purposes connected with the death of a member of their immediate family or extended family, or for other ceremonial obligations under Aboriginal and Torres Strait Islander lore. This leave is in addition to existing compassionate leave entitlements.
    - "Extended family" has a meaning that recognises that extended families exist within Aboriginal and/or Torres Strait Islander society and obligations of Aboriginal and/or Torres Strait Islander employees may exist regardless of the existence of a bloodline relationship or not. Family also extends to cover relationships where there is a close association, which need not be a blood relationship.

To support public sector employers to meet these expectations a model clause is provided at **Attachment A**. While not mandatory, employers are encouraged to use this model clause or a more beneficial entitlement. In the absence of using the model clause, public sector employers are responsible for ensuring their clauses provide an entitlement that is no less beneficial than the minimum entitlements reflected in this policy.

4. Leave to attend First Peoples' Assembly of Victoria

Victorian Public Sector enterprise agreements must include leave entitlements which permit elected members of the First People's Assembly of Victoria (FPAV) to absent themselves from the workplace to fulfil their elected responsibilities. These provisions must:

- Provide up to 10 days of unpaid leave per calendar year for elected employees to fulfil their official functions during their elected term, with make-up pay covering the difference between any payment received by the employee from the First People's Assembly of Victoria for the employee's fulfilment of their official functions and the employee's Salary for that period of unpaid leave.
- Provide leave for elected employees to attend sessions of the FPAV to participate in constituent consultation relevant to their role or for any other ancillary purpose as agreed with the employer.

Where an employee takes unpaid leave under this arrangement, the absence does not break continuity and counts as service for the purposes of accruing paid entitlements.

To support public sector employers to meet these expectations, a model clause is provided at **Attachment B**. While not mandatory, employers are encouraged to use this model clause. In the absence of using the model clause, public sector employers are responsible for ensuring their clauses provide an entitlement that is no less beneficial than the minimum entitlements reflected in this policy.

5. Further Information

For further information and advice employees and public sector union representatives should contact the local Human Resources or People and Culture Unit (or equivalent) of the relevant entity for further assistance in the first instance.

People and Culture Representatives of Public Sector Entities should contact their Portfolio Department for further assistance in the first instance.

People and Culture Representatives of Portfolio Departments should contact their usual IRV portfolio contact for further assistance in the first instance.

6. Related Policies or Documents

- Personal, Carers and Compassionate Leave
- Flexible Work
- Attraction and retention

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7. Attachment A

Model Provision – Cultural and Ceremonial Leave

1. Cultural and Ceremonial Leave:

NAIDOC Week Leave

1.1. An employee of Aboriginal or Torres Strait Islander descent is entitled to one day of paid leave per calendar year to participate in National Aboriginal and Islander Day Observance Committee (NAIDOC) week activities and events.

1.2. NAIDOC week leave does not accrue from year to year and is not paid out on termination of employment.

Ceremonial Leave

1.3. Ceremonial leave will be granted to an Aboriginal and/or Torres Strait Islander employee for ceremonial purposes:

a. connected with the death of a member of the immediate family or extended family; or

b. for other ceremonial obligations under Aboriginal and Torres Strait Islander lore.

1.4. For the purposes of this subclause “extended family” has a meaning that recognises that extended families exist within Aboriginal and/or Torres Strait Islander society and obligations of Aboriginal and/or Torres Strait Islander employees may exist regardless of the existence of a bloodline relationship or not. Family also extends to cover relationships where there is a close association, which need not be a blood relationship.

1.5. Where leave is taken for the purposes outlined in this subclause, up to three days in each year of employment will be with pay. Paid Ceremonial Leave will not accrue from year to year and is not paid out on termination of employment.

1.6. Leave granted under this clause is in addition to Compassionate Leave.

1.7. To support the employee to fulfil their ceremonial obligations the employee may also access any other accrued leave, time in lieu, or otherwise may be granted unpaid leave in accordance with the requirements of those entitlements.

8. Attachment B

Model Provision – Leave to attend First People's Assembly of Victoria

2. Leave to participate in the First Peoples' Assembly of Victoria

2.1. An employee who is a member of the First Peoples Assembly of Victoria is entitled to up to 10 days unpaid leave per calendar year to fulfil their official functions during their term of office.

2.2. Leave will be available to attend sessions of the First Peoples' Assembly of Victoria to participate in constituent consultation relevant to their role or for any other ancillary purpose as agreed with the employer.

2.3. The employee may also utilise flexible working arrangements, in addition to leave provided in this clause, to help support their representative functions, with the agreement of the employer.

2.4. Where the employee takes unpaid leave under clause 2.1, and where any payment received by the employee from the First People's Assembly of Victoria for the employee's fulfilment of their official functions is below the employee's Salary for that period of unpaid leave, the employer will pay to the employee make-up pay for the period of leave.

2.5. Where an employee takes unpaid leave under this clause, the absence does not break continuity and counts as service for the purposes of accruing paid entitlements.

Long Service Leave

Public Sector Industrial Relations Policies

Contents

1. Application

This Policy applies 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.

2. Overview

In the Victorian public sector, the entitlement to long service leave can derive from a variety of instruments, including the National Employment Standards under the *Fair Work Act 2009* (Cth) (FW Act) and the *Long Service Leave Act 2018* (Vic) (LSL Act). Public sector employers must properly identify the source of long service leave entitlements for their employees to ensure that they meet their statutory obligations.

3. Sources of long service leave entitlements

National Employment Standards (NES)

The NES are the minimum safety net of entitlements for employees as provided under the FW Act. Section 113 of the FW Act incorporates 'applicable award-derived long service leave terms' into the NES. The effect of which is to incorporate the long service leave entitlements of an award that would have covered the employee at the time of the commencement of the FW Act (1 January 2010), had the employee been employed at that time as an NES entitlement.

Not all public sector employees would have been covered by a pre-modern award at the commencement of the FW Act. However, where this is the case and this provision of the FW Act is enlivened, the pre-modern award long service leave entitlement will comprise part of the employee's

NES entitlements. For example, for Victorian Public Service employees, the minimum entitlements for long service leave for the NES purposes will derive from the *Victorian Public Service Award 2005*. Other public sector employees will, similarly, only have an award derived long service leave entitlement if their employer is specifically listed as a respondent to a pre-modern award.

Section 56 of the FW Act makes clear that a term of a modern award or enterprise agreement has no effect to the extent that it is detrimental to an employee in any respect when compared to the NES. This means that any applicable enterprise agreement term has no effect to the extent that it is detrimental in any respect when compared to the pre-modern award entitlement.

Long Service Leave Act 2018

Where a public sector employer is not a direct respondent to a pre-modern award, any LSL entitlement included in a public sector employer's enterprise agreement will not be an entitlement under the NES. In this scenario, had an employee been employed when the FW Act commenced operation (1 January 2010) there would have been no award-derived long service leave entitlement. In these circumstances, the LSL Act will set the applicable minimum standards.

Public sector employers with no award-derived long service leave entitlements must ensure that their enterprise agreements provide long service leave terms that are at least as favourable as the LSL Act is the minimum standard. Where the provisions are not as favourable, employers are expected to apply the LSL Act's more favourable provisions.

To that end, public sector employers must ensure that long service leave provisions in their enterprise agreements:

- provide that up to the first 52 weeks of unpaid parental leave counts towards a period of continuous service, and
- ensure that the employer complies with any relevant legislation, and
- do not permit the employer to withhold payment of long service leave on termination due to disciplinary misconduct processes.

Other legislation and/or regulations

In certain sectors, LSL entitlements may be derived from legislation other than the LSL Act, to the exclusion of the LSL Act and/or the NES, including but not limited to the *Education and Training Reform Act 2006* (Vic). Where this is the case, LSL entitlements provided by the relevant legislation will set the applicable minimum standards. Public sector employers must ensure compliance with the relevant legislation where applicable. Portfolio departments should also consider any legislation-derived long service leave entitlements when assessing portfolio agency enterprise agreement outcomes.

4. Summary of long service leave entitlements in the Victorian public sector

The table below provides a summary of LSL entitlements for Victorian Public Service and Victorian public sector employers where they derive an entitlement from an enterprise agreement, a pre-

modern award derived long service leave entitlement (NES entitlement), or the LSL Act. The table is not intended to cover all scenarios across the Victorian Public Service and Public Sector, noting that LSL entitlements may be derived from other legislation and/or associated regulations.

Employer	Enterprise Agreement	Pre-modern award derived long-service leave entitlement	NES entitlement to long service leave	Effect
Victorian Public Service	*Victorian Public Service Enterprise Agreement 2024* (or its successor(s))	Yes – under the *Victorian Public Service Award 2005*	Yes	LSL provision in enterprise agreement cannot be detrimental in any respect, compared to the pre-modern award entitlement.
Public sector employer	Various	Yes – where there is an award to which they are a direct respondent	Yes – derived from the pre-modern award	
Public sector employer	Various	None	No – however, the LSL Act is not displaced by the FW Act and in these circumstances establishes the legal minimum.	Where the LSL entitlement in the relevant enterprise agreement is less beneficial than the LSL Act, provisions of LSL Act will apply.

5. Further Information

For further information and advice employees and public sector union representatives should contact the local Human Resources or People and Culture Unit (or equivalent) of the relevant entity in the first instance.

People and Culture Representatives of Public Sector Entities should contact their Portfolio Department for further assistance in the first instance.

People and Culture Representatives of Portfolio Departments should contact their usual Industrial Relations Victoria portfolio contact for further assistance in the first instance.

6. Related Policies or Documents

- Enterprise Bargaining and Agreement Making

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Parental Leave, Personal/Carers Leave, Reproductive Health and Wellbeing Leave, and Compassionate Leave

Public Sector Industrial Relations Policies

Contents

1. Application

This Policy applies 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.

2. Overview

The Government is committed to:

- promoting and implementing flexible, diverse and supportive workplaces that ensure employees can balance their work and family responsibilities,
- ensuring that public sector employers have appropriate arrangements in place to allow employees to take time off to help them deal with personal illness, injury, caring responsibilities, and family emergencies,
- ensuring public sector employers implement workplace practices that enable employees to balance their work and family responsibilities regardless of their personal or family circumstances
- eliminating the gender pay gap and improving the financial security of women while they work and when they retire
- supporting employees who experience pregnancy loss
- supporting employees who experience reproductive health and wellbeing issues.

Achieving the right balance between family commitments and the needs of business can be achieved through cooperation between the Government, employers, unions and employees. To support this commitment the Victorian Government expects all public sector employers to embed a range of supportive workplace practices for employees new and expectant parents. These include:

- making paid parental leave available regardless of gender,
- up to five days paid pre-natal or up to two days pre-adoption leave,
- six weeks paid leave for an employee who is the Surrogate, and enters into a formal surrogacy arrangement, which complies with Part 4 of the *Assisted Reproductive Treatment Act 2008* (Vic)
- the continuation of employer superannuation contributions in respect of a period of paid parental leave.

Public sector must also include provisions regarding personal/carers leave and compassionate leave that comply with the requirements outlined in this policy.

Public sector agencies are required to include clauses for all topics where model provisions are provided and are encouraged to use the model clauses set out in **Attachments A - D** of this policy (subject to any workforce-specific amendments negotiated during enterprise bargaining). Minimum standards established by this policy will flow through to employers and employees when enterprise agreements are next negotiated.

Public sector employers and employees may negotiate additional provisions under the Government's Wages Policy and Enterprise Bargaining Framework, including enhancements to the minimum expectations set out in this policy, as well as the inclusion of other provisions relating to reproductive health and wellbeing matters, pregnancy loss leave, surrogacy leave, menstruation and menopause leave and associated flexibilities, and other gender equity enhancements.

3. Parental Leave

Strong parental leave entitlements play a major role in supporting women's economic opportunity, career progression, increased participation in the workforce and greater financial wellbeing for women. The availability of paid parental leave for each parent fosters a more equal division of unpaid care and paid work which results in a better family-work-life balance.

Public Sector employers must include in their enterprise agreements parental leave provisions that:

- comply with the minimum parental leave provisions in the National Employment Standards (NES) in the *Fair Work Act 2009* (Cth) (FW Act)
- include a minimum eight weeks paid parental leave
- include pre-natal leave for an employee who is pregnant, and pre-natal leave for an employee's whose spouse (or de factor partner) is pregnant
- include pre-adoption leave
- remove qualifying periods for public sector employees to be eligible for paid parental leave
- provide for paid and unpaid parental leave of up to 52 weeks to count as service for the purposes of long service leave (when taken within the first 104 weeks after the birth or adoption of a child)
- outline what employees on parental leave will be paid during the paid parental leave component (including superannuation)
- provide for leave to be taken flexibly, including at half pay
- provide that an employee whose child is born by surrogate is eligible to access paid parental leave
- provide paid lactation breaks when employees return to work
- do not reduce or trade off existing paid parental leave entitlements which are in excess of the minimums provided in this policy.

To support public sector employers to meet these expectations a model clause is provided below at **Attachment A**. While not mandatory, employers are encouraged to use this model clause. In the absence of using the model clause, public sector employers are responsible for ensuring their clauses reflect the minimum expectations outlined in this Policy.

The Government recognises that unpaid absences to have and care for children as well as the uneven share of unpaid caring work can contribute to gender pay inequity in the public sector. In addition to the mandatory requirements noted above, employers may wish to include some or all of the following:

- removal or reduction of restrictions on how and when parental leave is taken, to allow parents to take leave in a manner which better suits their personal circumstances, for example, in multiple periods
- initiatives which seek to minimise the impact of absences on parental leave of up 52 weeks on performance-based pay advancements or progression
- additional secondary caregiver leave that may be made available to a parent who takes on the role of primary caregiver following the primary carers return to work.

Employer-funded 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.

During enterprise bargaining, public sector employers must not reduce or trade off existing paid parental leave entitlements of employees upon the expiration of a current agreement.

Commonwealth Parental Leave Pay Scheme

The Commonwealth Government Parental Leave Pay scheme provides government-funded Parental Leave Pay at the National Minimum Wage to employees who meet the eligibility criteria. For more information about government-funded paid parental leave visit Services Australia: https://www.servicesaustralia.gov.au/parental-leave-pay.

Employer-funded paid parental leave does not affect an employee's eligibility for the Commonwealth scheme. Employees can access both. Employers must not use the Commonwealth Parental Leave Pay scheme to offset the cost of the existing enterprise agreement entitlements.

Preservation of Parental Leave

The Victorian Government expects that employer-funded paid parental leave will be preserved for the employee if their child is stillborn or dies, unless otherwise agreed with the employee. Where an employee would otherwise have been entitled to paid parental leave under their enterprise agreement, if the child had not been stillborn or died, public sector employees remain entitled to take this leave, unless otherwise agreed between the employee and employer. An entitlement to unpaid parental leave must also be preserved in these circumstances, consistent with the FW Act.

4. Payment of Superannuation Contributions during periods of parental leave

To help address the gendered gap in retirement incomes, all public sector employers must include provisions for the payment of superannuation during periods of parental leave in their enterprise agreements. The provisions must provide for all Victorian public sector employees to have superannuation contributions made in respect of their period of paid parental leave. The employer will pay superannuation contributions according to the ordinary pay cycle during periods of paid parental leave.

A model clause is set out below in **Attachment B**. While not mandatory, employers are encouraged to use this model clause. In the absence of using the model clause, public sector employers are responsible for ensuring their clauses reflect the minimum expectations outlined in this Policy. Employers and employees may negotiate enhanced superannuation provisions, including the payment of superannuation during periods of unpaid parental leave.

Employees who receive the Commonwealth Parental Leave Pay from 1 July 2025, will be eligible to be Paid Parental Leave Superannuation Contribution (PPLSC), which is paid by the Australian Taxation Office (ATO). For more information about PPLSC visit the ATO website.

Employers must continue to comply with their superannuation obligations under their relevant industrial instrument during the period for which the employee is also in receipt of the PPLSC.

5. Personal/Carers Leave

Public Sector employers must include in their enterprise agreements personal/carer's leave provisions that:

- comply with the minimum personal/carers leave provisions in the NES, and,
- includes access to personal carers leave for Assistance Animals (see below), and
- allows employees access to accrued personal leave entitlements for the purpose of dealing with Reproductive Health and Wellbeing issues, including (but not limited to) dealing with symptoms associated with menstruation and menopause (see below).

Assistance Animals

To support employees who require an Assistance Animal to participate in the workplace, public sector employers should expand the operation of the personal/carers leave provisions to allow employees with a disability to access leave if their assistance animal is ill or injured.

Access to leave under these provisions should be limited to an Assistance Animal that is a trained animal that helps an employee to ease or manage the effects of a disability or condition in the workplace, for example a guide dog. Not all animals are assistance animals, even if they assist an employee in some way. Companion, therapy, and facility animals should not be considered Assistance Animals for the purposes of these provisions.

To support public sector employers to meet these expectations a model clause is provided below at **Attachment C**. While not mandatory, employers are encouraged to use this model clause. In the absence of using the model clause, public sector employers are responsible for ensuring their clauses reflect the minimum expectations outlined in this Policy.

Reproductive Health and Wellbeing

Public sector employers must include in their enterprise agreements appropriate supports and access to existing accrued entitlements for employees dealing with reproductive health and wellbeing issues.

At a minimum, it is expected that Victorian Public Sector enterprise agreements include entitlements which provide for:

- an option of working from home, subject to operational requirements and/or occupational health and safety requirements, where an employee is experiencing symptoms associated with reproductive health issues.
- 'in the workplace' supports which prioritise the comfort and wellbeing of the employee including, but not limited to, resting in a quiet area or limited face to face contact, subject to operational requirements and/or occupational health and safety requirements.
- the ability to access accrued personal leave for the purpose of dealing with the symptoms of reproductive health issues, including (but not limited to) dealing with symptoms associated with menstruation and menopause.

Employers and employees may also wish to agree standalone paid leave entitlements through enterprise bargaining agreements, subject to complying with Wages Policy and the Enterprise Bargaining Framework. Clause 58 of the *Victorian Public Service Enterprise Agreement 2024* provides an example of where reproductive health and wellbeing leave and supports have been introduced via an enterprise agreement. It is not mandatory to utilise this clause, however, public sector employers may find it useful when introducing reproductive health and wellbeing provisions into their own enterprise agreements.

6. Compassionate Leave

Public sector employers must ensure they have appropriate arrangements in place to support employees required to absent themselves from the workplace where:

- a member of their immediate family or household contracts or develops a life-threatening illness, or injury or dies; or
- their child is stillborn, where the child would have been a member of the employee's immediate family or a member of the employee's household, if the child had been born alive; or
- the employee or the employee's spouse or de facto partner, has a miscarriage.

Public Sector employers must include in their enterprise agreements compassionate leave provisions that:

- comply with the minimum compassionate leave provisions in the NES; and
- provide discretion for employers to grant compassionate leave even if the person who has died or contracted a life-threatening illness or injury does not strictly meet the definition of immediate family or household in the FW Act but is otherwise holds a significant family or personal connection.

To support public sector employers to meet these expectations a model clause is provided below at **Attachment D**. While not mandatory, employers are encouraged to use this model clause. In the absence of using the model clause, public sector employers are responsible for ensuring their clauses reflect the minimum expectations outlined in this Policy.

7. Further Information

For further information and advice employees and public sector union representatives should contact the local Human Resources or People and Culture Unit (or equivalent) of the relevant entity for further assistance in the first instance.

People and Culture Representatives of Public Sector Entities should contact their Portfolio Department for further assistance in the first instance.

People and Culture Representatives of Portfolio Departments should contact their usual Industrial Relations Victoria portfolio contact for further assistance in the first instance.

8. Related Policies or Documents

- Flexible Work
- Gender Equality

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9. Attachment A

Model Provision – Parental Leave

(The cross-references in this model clause need to be adjusted to reflect the sub-clauses that are adopted or agreed through enterprise bargaining.)

X Parental Leave

X.1 Application

a) Eligible Employees are entitled to parental leave under this clause if the leave is associated with:
   i. the birth of a Child of the Employee, the Employee's Spouse or the Employee's legal surrogate or the placement of a Child with the Employee for adoption; and
   ii. the Employee has or will have a responsibility for the care of the Child.

b) An Employee currently on parental leave (excluding an Employee on Extended Family Leave under **clause x.33**) is not required to return to work in order to access a further period of parental leave under this clause.

X.2 Definitions

For the purposes of this clause:

a) **Eligible Employee** means:
   i. a full-time or part-time Employee, whether employed on an ongoing or fixed term basis, or
   ii. a Regular Casual Employee 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) **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 or the Employee's legal surrogate; or
   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.

c) **Primary Caregiver** means the person who takes primary responsibility for the care of a newborn or newly adopted Child. The Primary Caregiver is the person who meets the Child's physical needs more than anyone else. Only one person can be a Child's Primary Caregiver on a particular day.

d) **Secondary Caregiver** means a person who has parental responsibility for the Child but is not the Primary Caregiver.

e) **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.

X.3 Summary of Parental Leave Entitlements

Table x: Parental Leave Entitlements

(the following table describes minimum conditions for public sector Employees, these may be supplemented through enterprise bargaining subject to any costs being met.)

	Paid leave	Unpaid leave	Total
Primary Caregiver			
Primary Caregiver Parental Leave	8 weeks	Up to 44 weeks	52 weeks
Regular Casual Employee		Up to 52 weeks	52 weeks
Secondary Caregiver			
Secondary Caregiver Parental Leave		Up to 52 weeks	52 weeks
Regular Casual Employee		Up to 52 weeks	52 weeks
Pre-natal leave			
Pregnant employee	38 hours		
Spouse	7.6 hours		
Pre-adoption leave			
Pre-adoption leave	2 days		
Permanent Care Leave			
Permanent Care Leave		Up to 52 weeks	52 weeks
Grandparent Leave			
Grandparent Leave		Up to 52 weeks	52 weeks

X.4 Parental Leave – Primary Caregiver

a) An Eligible 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 parental leave, comprising:
   i. 8 weeks paid parental leave; and
   ii. up to 44 weeks unpaid parental leave.

b) An Eligible Employee who will be the Primary Caregiver and who is a Regular Casual Employee, is entitled to up to 52 weeks unpaid parental leave.

c) 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, or
    ii. if their Spouse has received, or will receive, 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.

X.5 Parental Leave – Secondary Caregiver *(the inclusion of paid leave is subject to enterprise bargaining)*

a) An Eligible 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 parental leave, comprising:
    i. x weeks paid parental leave; and
    ii. x weeks Additional paid Secondary Caregiver parental leave, subject to the conditions in **clause x.6**, and
    iii. unpaid parental leave to bring the total available paid and unpaid leave to 52 weeks.
b) An Eligible Employee who will be the Secondary Caregiver, and who is a Regular Casual Employee is entitled to up to 52 weeks unpaid parental leave.
c) Only one parent can receive Secondary Caregiver parental leave entitlements in respect to the birth or adoption of their Child.
d) An Employee cannot receive Secondary Caregiver parental leave entitlements where the Employee has received Primary Caregiver parental leave entitlements in relation to their Child.

X.6 Additional paid leave for Secondary Caregiver *(the inclusion of paid additional secondary caregiver leave is subject to enterprise bargaining)*

a) A Secondary Caregiver is entitled to up to an additional x weeks' paid leave within the first 78 weeks of the date of birth or adoption of the Child provided that:
    i. the Secondary Caregiver assumes primary responsibility for the care of a child, by meeting the Child's physical needs more than anyone else; and
    ii. the Secondary Caregiver's spouse is not concurrently taking primary responsibility for the care of the Child or receiving paid parental leave, primary caregiver entitlements or a similar entitlement from their employer.
b) Where a Secondary Caregiver takes additional paid leave, the total quantum of the paid leave will be X weeks' pay at the Employee's ordinary hours of 38 hours per week for a full-time employee pro-rata for part-time employees. Where a Secondary Caregiver uses this entitlement flexibly, and/or does not work a standard roster pattern, this quantum may be expressed as hours of leave (456 for a full-time employee) to be taken on the Employee's rostered days.
c) To access additional paid leave, the Employee must have been eligible for paid Secondary Caregiver leave at the time of birth or adoption of their Child, irrespective of when the Employee elects to take the paid leave under this clause.

X.7 Pre-Natal Leave

a) A pregnant Employee will have access to paid leave totalling up to 38 hours per pregnancy, pro-rata for part-time Employees, to enable the Employee to attend routine medical appointments associated with the pregnancy.
b) An Employee who has a Spouse who is pregnant will have access to paid leave totalling up to 7.6 hours per pregnancy, pro-rata for part-time Employees, 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) The Employer should be flexible enough to allow the Employee the ability to leave work and return on the same day.
e) Paid pre-natal leave is not available to casual Employees.

X.8 Pre-adoption leave

a) An Employee seeking to adopt a Child is entitled to two days paid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure.
b) An Employee seeking to adopt a Child may also access further unpaid leave. The Employee and the Employer should agree on the length of any unpaid leave. Where agreement cannot be reached, the Employee is entitled to take up to two days unpaid leave.
c) Where accrued paid leave is available to the Employee, the Employer may require the Employee to take such leave instead of taking unpaid leave under this sub-clause.
d) The Employer may require the Employee to provide satisfactory evidence supporting the leave.
e) The Employer should be flexible enough to allow the Employee the ability to leave work and return on the same day.
f) Paid pre-adoption leave is not available to casual Employees.

X.9 Permanent Care Leave

An Employee will be entitled to access parental leave in accordance with this clause at a time agreed with the Employer if they:

a) are granted a permanent care order in relation to the custody or guardianship of a Child pursuant to the *Children, Youth and Families Act 2005* (Vic) (or any successor to the legislation) or a permanent parenting order by the Family Court of Australia, and
b) will be the Primary or Secondary Caregiver for that Child.

X.10 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.

X.11 Access to parental leave for an Employee whose Child is born by surrogate

An Employee whose Child is born through a surrogacy arrangement which complies with Part 4 of the *Assisted Reproductive Treatment Act 2008* (Vic) (or successor instrument), is eligible to access the parental leave entitlements outlined in **clause x**.

X.12 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 x**.
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.

X.13 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 **clause x**.

X.14 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, if the Employer deems it practicable, 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 the Employer does not think it to be reasonably practicable to transfer the Employee to a safe job, the Employee may take No Safe Job Paid 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 Paid Leave is in addition to any other leave entitlement the Employee has.

X.15 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 12 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 x**;
b) where the pregnancy terminates after the completion of 12 weeks but before the completion of 20 weeks, during the certified period/s the Employee is entitled access any paid and/or unpaid personal/carer's leave entitlements in accordance with **clause x** and/or to unpaid special maternity leave not exceeding the total amount of parental leave available under **clause x**.
c) 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 x** and thereafter, to unpaid special maternity leave.

x.16 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 and how they propose to arrange their parental leave (for example, if they propose to use the leave flexibly in blocks or in a single continuous period). 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; and
    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 x.16(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. for 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. for 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 the 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.

X.17 Commencement of parental leave

a) An Employee who is pregnant may commence Primary Caregiver parental leave at any time within x weeks prior to the expected date of birth of the Child. In all other cases, Primary Caregiver parental leave commences on the day of birth or placement of the Child.
b) Secondary Caregiver parental leave may commence up to one week prior to the expected birth or placement of the Child. Where a Secondary Caregiver takes additional paid leave in accordance with **clause x.6**, the additional leave will commence on the date the Employee takes on primary responsibility for the care of a Child.

c) Hospitalised children

Where an Employee's Child is required to remain in hospital after the Child's birth or is hospitalised immediately after the Child's birth, including because the Child:

i. was born prematurely, or
ii. developed a complication or contracted an illness during its period of gestation or at birth, or
iii. developed a complication or contracted an illness following the Child's birth,

and the Employee would otherwise take parental leave during this period, the Employer and Employee may agree that the Employee will not take parental leave while the Child remains in hospital, and may work during that period. Any agreement in this regard will be made and have effect in accordance with section 78A of the FW Act. During this time the Employee may access other forms of leave available to them under the Agreement.

Should an Employee access other forms of leave or work during this agreed period then their parental leave period will be extended by a period equal to the period they accessed other leave or worked.

d) The Employer and Employee may agree to alternative arrangements regarding the commencement of parental leave.
e) The period of parental leave for the purpose of calculating an Employee's maximum entitlement to paid and unpaid parental leave will commence from the date parental leave commences or otherwise no later than the date of birth of the Child, irrespective of when the Employee elects to use any paid entitlements they may have under this clause, not including a situation that arises under **clause x.17(c)**.

X.18 Rules for taking parental leave entitlements

a) While an Employee's eligibility for parental leave is determined at the time of birth or adoption of the Child, the Employee and Employer may agree to permit the Employee to use the paid leave entitlements outlined in this clause at any time within the first 52 weeks of parental leave, or where an extension is granted under **clause x.23(b)**, within the first 78 weeks where **clause**

x.6 is invoked or otherwise the first 104 weeks (*the inclusion of paid additional secondary caregiver leave is subject to enterprise bargaining)*).

b) Parental leave does not need to be taken in a single continuous period. The Employer and Employee will agree on the duration of each block of parental leave. The Employer will consider their operational requirements and the Employee's personal and family circumstances in considering requests for parental leave in more than one continuous period. Approval of such requests will not be unreasonably refused.

X.19 Using other accrued leave in conjunction with Parental Leave

a) An Employee may in lieu of parental leave, access any annual leave or long service leave or other accrued entitlements (except Personal / Carer's Leave or Compassionate Leave) which they have accrued subject to the total amount of leave not exceeding 52 weeks or a longer period as agreed under **clause x.23(b)**.

b) Any other leave taken during a period of parental leave does not have the effect of extending or breaking the period of parental leave, not including a situation that arises under **clause x.17(c)**.

X.20 Public holidays during a period of paid parental leave

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.

X.21 Effect of unpaid parental leave on an Employee's continuity of employment

Other than provided for in **clause x** (Long Service Leave), unpaid parental leave under **clauses x.4, x.5, x.23** and **x.29** shall not break an Employee's continuity of employment but it will not count as service for leave accrual or other purposes.

x.22 Keeping in touch days

a) **During** a period of parental leave, the 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 FW Act.

X.23 Extending parental leave

a) Extending the period of parental leave where the initial period of parental leave is less than 52 weeks

i. An Employee, who is on an initial period of parental leave of less than 52 weeks under **clause x.4** or **x.5**, is entitled to extend the period of their parental leave on one occasion up to the full 52 week entitlement. An Employer may agree to extend the period of parental leave on more than one occasion up to the full 52 week entitlement, upon request by the Employee.

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 beyond the initial 52-week period to a maximum of 104 weeks

i. An Employee who is on parental leave under **clause x.4** or **x.5** may request an extension of unpaid parental leave for a further period of up to 52 weeks immediately following the end of the current parental leave period.

ii. 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.

iii. The Employer shall consider the request having regard to the Employee's circumstances, the consequences of any refusal for the Employee and,

provided the request is based on the Employee's parental responsibilities, may only refuse the request on reasonable business grounds.

iv. The Employer must not refuse the request unless the Employer has given the Employee a reasonable opportunity to discuss the request and genuinely tried to reach an agreement with the Employee about an extension of the period of unpaid parental leave for the Employee.

v. 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 state whether the Employer accepts or refuses the request. If the Employer refuses the request, the response must also include the details of the reasons for any refusal, set out the Employer's particular business grounds for refusing the request, explain how those grounds apply to the request and either:

- set out the extension of the period of unpaid parental leave for the Employee (other than the period requested by the Employee) that the Employer would be willing to agree to; or
- state that there is no extension of the period that the Employer would be willing to agree to

vi. Disputes about an Employer's refusal under this provision can be referred to the dispute resolution procedure outlined in **clause x** of the Agreement.

x.24 Total period of parental leave

i. The total period of parental leave, including any extensions, must not extend beyond 104 weeks.

x.25 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 Employee's average number of ordinary hours over the past three years from the proposed commencement date of parental leave (Averaging Period). For the avoidance of doubt, the averaging arrangements in this sub-clause do not apply to Pre-Natal Leave taken in accordance with **clause x.7** of this Agreement.

b) Where an Employee has less than three years of service the Averaging Period will be their total period of service with the Employer.

c) The calculation will exclude any of the following periods which fall during the Averaging Period:
   i. periods of unpaid parental leave, and
   ii. any time worked at a reduced time fraction in order to better cope during pregnancy, and
   iii. authorised unpaid leave for an unforeseen reason beyond the Employee's control, and
   iv. time worked at a reduced time fraction on returning to work after a period of parental leave under **clause x.30(c).**

d) For the purposes of **clause x.25(c)(iii)**, an 'unforeseen reason beyond the Employee's control' may include, for example, a personal illness or injury suffered by the Employee, or the care or support of an ill or injured Immediate Family or household member by the Employee. But would not include leave taken for lifestyle or personal reasons, career breaks or leave to undertake other employment.

e) The average number of weekly hours, determined in accordance with **clause x.25(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.

x.26 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.

x.27 Employer Superannuation contributions in respect of Primary Caregiver Parental Leave

An Employee who returns to work at the conclusion of a period of Primary Caregiver Parental Leave will be entitled to have superannuation contributions made in respect of the period of the Employee's Primary Caregiver Parental Leave, subject to requirements in **clause x** (Superannuation).

x.28 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.

x.29 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 **clause x.30(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 x.14** 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. Consistent with **clause x** of the Agreement, a request under this clause must be treated and responded to in the same manner as a request under **clause x** of this Agreement.

   (ii) Where an Employee wishes to make a request under **clause x.30(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.

x.30 Lactation breaks

a) **Employees** cannot be discriminated against for breastfeeding or chestfeeding or expressing milk in the workplace.

b) An Employee who wishes to continue breastfeeding or chestfeeding after returning to work from a period of parental leave or keeping in touch days, may take reasonable time during working hours without loss of pay to do so.
c) Paid lactation breaks are in addition to normal meal and rest breaks provided for in this Agreement.

x.31 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 x.32(a)**.

x.32 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 from the commencement date of parental leave.
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.

x.33 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 the 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) The limitation in **clause x** on the use of fixed term employment to replace the Employee does not apply in this case.

x.34 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.

10. Attachment B

Model Provision – Payment of superannuation during periods of parental leave

X. Employer superannuation contributions during periods of Parental Leave

(a) An Employee is entitled to have superannuation contributions made in respect of the period of the employee's paid Parental Leave.

(b) The Employer will pay the superannuation contributions to the Employee's fund according to the ordinary pay cycle as provided for in clause x (Superannuation).

(c) The lump sum payment will be made on or before the first superannuation guarantee quarterly payment due date following the Employee's return to work at the conclusion of their Parental Leave.

(d) The quantum of superannuation contributions payable under this clause will be calculated based on:

(i) The number of weeks of paid parental leave taken by the Employee; and

(ii) The Employee's weekly pay calculated for the purposes of parental leave; and

(iii) The applicable contribution rate under the *Superannuation Guarantee Administration Act 1992* (Cth) at the time the payment is made.

11. Attachment C

Personal / Carers Leave

X1. Definitions

X1.1 **Assistance Animal** means an animal formally trained to assist a person with a disability to alleviate the effect of their disability. This includes:

(a) A guide dog for people with vision impairment; or

(b) hearing dogs for people with hearing impairment, or

(c) assistance dogs for people with a physical disability, or

(d) medical alert animals that help people before and during a medical emergency, or

(e) psychiatric service animals that help people with a mental illness, or

(f) any other animal agreed by the Employer or to which an Assistance Animal Pass granted by the Department of Transport and Planning (or any of its successor Departments) applies.

An Assistance Animal does not include a pet, companion, or therapy animals.

X1.2 **Registered Practitioner** means one of the following: Aboriginal and Torres Strait Islander Health Practitioner, Chinese Medicine Practitioner, Chiropractor, Dental Practitioner, Medical Practitioner, Medical Radiation Practitioner, Nurse, Midwife, Occupational Therapist, Optometrist, Osteopath, Paramedic, Pharmacist, Physiotherapist, Podiatrist, Psychologist, or any other profession registered under the *Health Practitioner Regulation National Law (Victoria) Act 2009*.

X2. Casual Employees are not entitled to Paid Personal/Carer's Leave

X2.1 Casual Employees are not entitled to Paid Personal/Carer's Leave.

X3. Entitlement to Paid Personal/Carer's Leave

X3.1 (**Insert agreed or relevant amount of sick leave or personal leave award entitlement)** days/hours will be available in the first year of service.

X3.2 **(Insert agreed to relevant sick leave or personal leave award entitlement)** days/hours will be available per annum in the second and subsequent years of service.

X3.3 An employee's entitlement to paid personal/carer's leave accrues progressively during a year of service (other than periods of employment as a casual employee of the employer, or periods of unpaid leave or unauthorised absence) according to the employee's ordinary hours of work and accumulates from year to year.

X4. Taking Paid Personal/Carers Leave

X4.1 An employee may take paid personal/carer's leave if the leave is taken:

(a) because the employee is not fit for work because of a personal illness, or personal injury, affecting the employee; or

(b) to provide care or support to a member of the employee's immediate family, a member of the employee's household or the employee's Assistance Animal, requires care or support because of:

(i) a personal illness, or personal injury, affecting the member or Assistance Animal; or

(ii) an unexpected emergency affecting the member or Assistance Animal.

(c) to attend a medical appointment with a Registered Practitioner subject to the evidence requirements in x.6.

X5. Employee not to be on Paid Personal/Carer's leave at certain times

Public Holidays

X5.1 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.

Period of paid family and domestic violence leave

X5.2 If the period during which an employee takes paid personal/carer's leave includes a period of paid family and domestic violence leave, the employee is taken not to be on paid/ personal/carer's leave for the period of that paid family and domestic violence leave.

X6. Notice and Evidence Requirements

X6.1 (**Insert agreed notice or evidence requirements here)**

X7. Entitlement to unpaid carer's leave

X7.1 An employee is entitled to X days **(insert agreed/minimum required number of days)** of unpaid carer's leave for each occasion (a permissible occasion) when a member of the employee's immediate family, a member of the employee's household or the employee's Assistance Animal, requires care or support because of:

(a) a personal illness, or personal injury, affecting the member; or

(b) an unexpected emergency affecting the member.

Taking Unpaid Carer's Leave

X7.2 An employee may take unpaid carer's leave for a particular permissible occasion if the leave is taken to provide care or support as referred to in X7.1.

(a) An employee may take unpaid carer's leave for a particular permissible occasion as:

(i) A single continuous period of up to 2 days; or

(ii) Any separate periods to which the employee and his or her employer agree.

(b) An employee cannot take unpaid carer's leave during a particular period if the employee could instead take paid personal/carer's leave.

(c) The notice and evidence requirements of X.6 must be complied with.

12. Attachment D

Compassionate Leave

X1. Entitlement to compassionate leave

X1.1 An employee is entitled to 2 days of compassionate leave for each occasion (a permissible occasion) when:

(a) 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; or

(ii) sustains a personal injury that poses a serious threat to his or her life; or

(iii) dies; or

(b) a child is stillborn, where the child would have been a member of the employee's immediate family, or a member of the employee's household, if the child had been born alive; or

(c) the employee or the employee's spouse or de facto partner, has a miscarriage.

X1.2 Clause 1.1(c) does not apply:

(a) if the miscarriage results in a stillborn child; or

(b) to a former spouse, former de facto partner, of the employee.

X2. Taking compassionate leave

X2.1 An employee may take compassionate leave for a particular permissible occasion if the leave is taken:

(a) to spend time with the member of the employee's immediate family or household who has contracted or developed the personal illness, or sustained the personal injury, referred to in section 104; or

(b) after the death of the member of the employee's immediate family or household, or the stillbirth of the child, referred to in section 104 of the FW Act; or

(c) after the employee, or the employee's spouse or de facto partner, has the miscarriage referred to at X1.1(c)

X2.2 An employee may take compassionate leave for a particular permissible occasion as:

(a) a single continuous 2 day period; or

(b) 2 separate periods of 1 day each; or

(c) any separate periods to which the employee and his or her employer agree.

X2.3 If the permissible occasion is the contraction or development of a personal illness, or the sustaining of a personal injury, the employee may take the compassionate leave for that occasion at any time while the illness or injury persists.

X3. Notice and Evidence Requirements:

X3.1 (Insert any notice and evidence requirements here. Notice and Evidence Requirements may be linked to Personal/Carers Leave clauses in your agreement).

X4. Other significant family or personal connections:

X4.1 An employee may, at the discretion of the Employer, be granted compassionate leave with or without pay when a person with a significant family or personal connection not the Employee, but who is not a member of the Employee's immediate family or household, dies or sustains a personal illness or injury that poses a serious threat to that person's life.

Right of Entry

Public Sector Industrial Relations Policies

Contents

1. Application

This Policy applies 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.

2. Overview

Commonwealth and State legislation provide registered employee organisations (i.e. unions) with rights to lawfully enter workplaces. These laws seek to balance:

- the right of unions to represent their members in the workplace, hold discussions with potential members, and investigate suspected contraventions of workplace laws and instruments, including occupational health and safety laws; and
- the right of occupiers of premises and employers to go about their business without undue inconvenience

Consistent with the requirements outlined in this Policy the Victorian Government supports the rights of employees to have access to their union and the public sector unions to have lawful access to the workplace by providing requisite notice and without hindering normal operations.

The *Fair Work Act 2009* (Cth) (FW Act) and the *Occupational Health and Safety Act 2004* (Vic) (OHS Act) set out the circumstances and requirements placed on organisations in order to lawfully enter the workplace.

3. Right of entry under the *Fair Work Act 2009*

Public Sector employers must allow holders of permits issued under the FW Act to access the workplace for the purposes of investigating suspected breaches of the workplace relations laws, or to hold discussions with workers whose industrial interests the permit holder's organisation is entitled to represent. Under the FW Act, an employer may require a permit holder to provide notice. Where this is required, permit holders must generally provide an entry notice at least 24 hours but not more than 14 days before the entry. Further information on these obligations can be found at Right of Entry under the FW Act.

4. Right of entry to investigate suspected breaches of the OHS Act

Part 8 of the OHS Act gives authorised representatives of registered employee organisations a right to enter Victorian workplaces to enquire into suspected breaches of the OHS Act, or the regulations made under the OHS Act. To enquire into suspected breaches, authorised representatives also have the right to consult with any employee at the workplace who is a member or is eligible to be a member of their organisation, with their consent. Departments and agencies must allow access to the workplace for this purpose. Further information on these obligations can be found at Right of Entry under the *Occupational Health and Safety Act 2004*.

Employers must work cooperatively and constructively with public sector unions to facilitate lawful access to their workplaces in accordance with the requirements set out in the relevant Act.

5. Further Information

For further information and advice employees and public sector union representatives should contact the local Human Resources or People and Culture Unit (or equivalent) of the relevant entity for further assistance in the first instance.

People and Culture Representatives of Public Sector Entities should contact their Portfolio Department for further assistance in the first instance.

People and Culture Representatives of Portfolio Departments should contact their usual Industrial Relations Victoria portfolio contact for further assistance in the first instance.

6. Related Policies or Documents

- Role of Public Sector Unions
- Consultation and Co-operation in the Workplace

Authorised by Industrial Relations Victoria

Version	1.1 Final as approved
Date	February 2026

Right to Disconnect

Contents

1. Application

This Policy applies 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.

2. Overview

The Government supports the right of employees to have agreed working hours and maintain work/life balance. This includes not routinely engaging in work related communications, such as emails, telephone calls or other messages, outside of their working hours. Public sector employers should not be routinely contacting employees and expecting their employees to respond outside their working hours, unless there is a reasonable basis to do so.

3. Right to disconnect

Under the *Fair Work Act 2009* (Cth) (FW Act), employees have the right to disengage from work and refrain from engaging in work-related communications and activities, such as emails, telephone calls or other messages, outside of their working hours, unless this refusal to respond is unreasonable. This right applies to work related communications and activities from the employer as well as third parties, such as clients, customers, colleagues, and employees of other organisations.

Consistent with this right, and Government's support for work/life balance across the public sector, employees should not be expected to routinely perform work outside of the employee's working hours, other than in an emergency, incident response situation or in relation to genuine welfare matters. Employees must not be penalised or otherwise disadvantaged for refusing to attend to work matters outside of their working hours or agreed ordinary hours under a flexible working arrangement, unless their refusal is unreasonable in the circumstances.

The right to disconnect does not prohibit an employer or third party from contacting or attempting to contact an employee outside of their working hours. However, an employer can only expect an employee to monitor, read or respond to out of hours contact when it is reasonable to do so. It is expected that employers and employees regularly discuss the type of circumstances in which an employee may be reasonably expected to monitor, read or respond to contact outside of work hours so that expectations are clearly understood.

Consistent with the formal workplace right to disconnect under the FW Act and its inclusion in modern awards, all public sector employers must include a right to disconnect clause in their enterprise agreement. A model provision has been provided below to support public sector employers to ensure minimum compliance with the FW Act (see **Attachment A**).

When an employee's refusal will be unreasonable

An employee's refusal to monitor, read or respond to contact will be unreasonable if the contact or attempted contact is required by law. If the contact or attempted contact is not required by law, certain matters must be considered when deciding whether an employee's refusal is unreasonable, including:

- The reason for the contact (or attempted contact).
- How the contact (or attempted contact) is made and how much disruption it causes the employee.
- Any compensation (monetary or non-monetary) that the employee receives to be available to work when the contact (or attempted contact) is made, or, to work outside their working hours.
- The employee's role and their level of responsibility.
- The employee's personal circumstances, including family or caring responsibilities (if known).

Whether an employee's refusal to monitor, read or respond to contact is unreasonable is an objective test based on what a reasonable person, having access to all the facts, would consider to be appropriate in the circumstances. Section 333M of the FW Act will be considered when determining the reasonableness of an employee's refusal to accept contact.

Interaction with the general protections regime

The right to disconnect is a 'workplace right' for the purpose of the general protections regime in Part 3-1 of the *Fair Work Act 2009* (Cth). This means that a person, including an employer, must not take adverse action against an employee because the employee has a right to disconnect, or has exercised, or proposes to exercise the right to disconnect.

Adverse action may include action, or the threat of action, that would disadvantage an employee, such as dismissal or reducing shifts. If an employee believes their employer has contravened the general protections regime, they can make an application to the Fair Work Commission to seek a remedy, such as reinstatement or compensation.

4. Further Information

For further information and advice employees and public sector union representatives should contact their local Human Resources or People and Culture Unit (or equivalent) of the relevant entity for further assistance in the first instance.

People and Culture Representatives of Public Sector Entities should contact their Portfolio Department for further assistance in the first instance.

People and Culture Representatives of Portfolio Departments should contact their usual IRV portfolio contact for further assistance in the first instance.

5. Related Policies or Documents

- Flexible Work

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6. Attachment A

Model Provision – Right to Disconnect

1. Employee right to disconnect

1.1. Clause XX provides for the exercise of an employee's right to disconnect under section 333M of the *Fair Work Act 2009* (Cth).

NOTE:

a) Section 333M provides that, unless it is unreasonable to do so, an employee may refuse to monitor, read or respond to contact, or attempted contact, from:

1) their employer outside of the employee's working hours,

2) a third party if the contact or attempted contact relates to their work and is outside of the employee's working hours.

b) Section 333M(3) lists matters that must be taken into account in determining whether an employee's refusal is unreasonable.

c) Section 333M(5) provides that an employee's refusal will be unreasonable if the contact or attempted contact is required under a law of the Commonwealth, a State or a Territory.

d) Sections 333N provides for the resolution of disputes about whether an employee's refusal is unreasonable and about the operation of section 333M.

e) The general protections in Part 3-1 of the *Fair Work Act 2009* (Cth) prohibit an employer taking adverse action against an employee because of the employee's right to disconnect under section 333M of the *Fair Work Act 2009* (Cth).

1.2. An employer must not directly or indirectly prevent an employee from exercising their right to disconnect under the *Fair Work Act 2009* (Cth).

1.3. Clause XX.3 does not prevent an employer from requiring an employee to monitor, read or respond to contact, from the employer outside of the employee's working hours where:

a) the employee is being paid the stand-by allowance under clause XX; and

b) the employer's contact is to notify the employee that they are required to attend or perform work or give other notice about the stand-by.

1.4. Clause XX.3 does not prevent an employer from contacting, or attempting to contact, an employee outside of the employee's working hours in circumstances including to notify them of:

a) a recall to work under clause XX, or

b) an emergency roster change under clause XX.

Secure Employment

Contents

1. Application

This Policy applies 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.

2. Overview

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. Public Sector employers will give preference to ongoing forms of employment over casual and fixed term arrangements wherever possible.

In support of these commitments, enterprise agreements should include limitations on the use of casual and fixed term forms of employment (consistent with the terms of this policy and the *Fair Work Act 2009* (Cth) (FW Act)) as well as a clause that outlines an overarching commitment to secure employment. **Attachment A** provides an example of an overarching model secure employment clause for public sector employers.

Public sector employers must ensure compliance with the FW Act, which places limitations on the use of fixed-term contracts of employment and provides avenues for conversion of fixed term and casual

conversion to ongoing employment. The below policy position provides guidance to public sector employers on complying with these obligations.

3. Use of Fixed Term Employment

Where there is a genuine need for the use of fixed term or casual employment arrangements the following principles apply to all public sector employers. The use of fixed term employment across the public sector (including maximum term contracts) is limited to:

- replacement of employees during a temporary absence of another employee (for example, because an employee is on approved leave, or the employee is filling a vacancy, resulting from another employee undertaking a temporary assignment or secondment), or
- undertaking essential work during a peak demand period, or
- undertaking work during emergency circumstances, or
- undertaking a distinct and identifiable task involving specialised skills, which is funded for a specific purpose, or
- a contract in relation to a training arrangement, or
- temporarily filling a vacancy where:
    - following an appropriate selection process, a suitable ongoing employee is not available, or
    - the employee is filling a vacant role whilst a review of the area is undertaken (provided that such an appointment does not exceed a period of twelve months).

In other than exceptional or unforeseen circumstances, fixed term appointments to a specific position will be for a maximum of **three years.** Where there is a possibility of a position being terminated earlier than the date initially specified, a maximum term contract with a provision for termination should be used rather than a fixed-term contract with no option to terminate other than through the effluxion of time.

In advertising positions, the employer will identify the reason for the fixed term position. Where public sector employers have existing limitations on the use of fixed term contracts in their enterprise agreements they are expected to integrate those with the above requirements through enterprise bargaining for a replacement agreement.

Application of fixed term employment limitations in the FW Act

Section 333E of the FW Act provides limitations on the use of fixed term contracts for the same or substantially similar work beyond two years (including extensions or renewals) or consecutive contracts, subject to various exceptions outlined in the FW Act. Consistent with the Victorian Government's commitments, these legislative provisions aim to reduce the prevalence of fixed term employment and promote secure employment.

The Victorian Government takes a policy position that, regardless of any constitutional limitations, all public sector employers will be subjected to the secure employment regime under the FW Act and requires all public sector employers to apply the FW Act limitations on fixed term employment as if they legally apply.

Interaction between the FW Act and this Policy

To ensure that all public sector employers comply with the requirements of the FW Act, public sector employers must include in their enterprise agreements, fixed term arrangements that:

- provide a list of permissible reasons for entering into fixed term employment (which align with the limited exceptions at section 333F of the FW Act and the circumstances listed above at 'Use of Fixed Term Employment'), and
- allows for the parties to enter into a fixed term contract for one of those permissible reasons for a duration of up to **three years** (with some limited exceptions).

Exceptions permitting maximum terms beyond the three-year maximum term until the permissible reasonable no longer applies may include where:

- there are exceptional or unforeseen circumstances
- the fixed term engagement is backfilling another employee who is on parental leave
- the employee is engaged on a training arrangement of longer than three years duration

Exceptions that permit fixed term contracts beyond the three-year maximum allowed under this policy are expected to be rare and should be limited to the specific operational requirements of the public sector employer.

Any exceptions that allow for the parties to enter into fixed term contracts beyond the three-year maximum duration allowed under this policy must only be applied in circumstances where a permissible exception to fixed term contract limitations already applies, and which aligns to the exceptions outlined at section 333F of the FW Act. In this circumstance any extension beyond the three-year maximum must be limited to the duration of the reason under the exemptions that apply to the fixed-term contract.

4. Fixed term conversion

An employee must only be engaged in a fixed term role for a permissible reason outlined above, and which is aligned to the fixed-term contract exceptions to limitations under the FW Act. Where a permissible reason applies, an employee may only be engaged on a fixed term contract on the basis of that reason for a maximum duration of three years per this Policy (subject to any limited exceptions in an employer's enterprise agreement).

Other than in exceptional and unforeseen circumstances, the employer must make an offer of ongoing employment to a currently employed fixed term employee if the employee has been employed on a fixed term contract(s) to the same or a substantially similar position for the maximum permitted duration (subject to the circumstances described in the applicable enterprise agreement).

The offer must be:

- made in writing
- an offer to convert to ongoing employment at the same classification or equivalent as the employee's fixed term role
- consistent with the employee's existing number of ordinary hours
- given to the employee within the period of 21 days before their fixed term employment has reached its maximum duration.

The employer is not required to make an offer to an employee if there:

- are reasonable business grounds not to do so
- the role in question relates to a parental leave back-fill role or the back-fill of an employee who is posted overseas
- where exceptional or unforeseen circumstances apply.

In this event, the employer must give written notice to the employee. The notice must:

- advise the employee that the employer is not making an offer of ongoing employment; and
- provide details of the reasons for not making the offer, including the reasonable business grounds and details of any exceptional or unforeseen circumstances; and
- be given to the employee within the period of 21 days before their fixed term employment has reached its maximum duration under this clause.

Reasonable business grounds include where:

- there is no ongoing vacancy available in which to place the Employee
- the employee's position will cease to exist in the coming 12 months
- the employee is engaged under the contract in relation to a training arrangement of longer than three years duration.

If an employer fails to make an offer of ongoing employment to an eligible fixed term Employee, the employee may request in writing conversion to ongoing employment. Approval to convert to ongoing employment will not be withheld unless one of the reasonable business ground exceptions apply.

5. Use of casual employment

Where there is a genuine need for the use of casual employment arrangements the following principles apply to all public sector employers. Public Sector Employers must not use casual employees for the purpose of undermining the job security of ongoing employees or for the purpose of turning over a series of casual employees to fill an ongoing vacancy or as a means of avoiding obligations under an enterprise agreement or this Poli cy. Public sector employers must consider the

appropriateness of the engagement of employees as casuals in the context of their overarching secure employment obligations under this Policy.

In accordance with this overarching policy position, enterprise agreements should limit the use of casual employment to:

- meeting short term work demands; or
- filling specialist skill roles that are not expected to continue and could not have been anticipated or met by existing employee levels.

In particular, employers must keep these principles in mind when considering:

- the engagement of a casual employee to ensure that the engagement is for one of the permitted reasons outlined above, and/or
- whether reasonable business grounds apply when determining whether there is an entitlement to casual conversion.

6. Casual Conversion

The FW Act provides that casual employees that are employed on or after 26 August 2024, and who have been employed for six months, may provide their Employer with written notification that they intend to change to permanent employment. Casual employees that were employed before 26 August 2024 may make a written notification that they intend to change to permanent employment from 26 February 2025.

Casual employees may provide their employer with a notification if they have been employed for at least 6 months and believe their employment relationship no longer meets the definition of casual employment under the FW Act. Under the FW Act, an employee is a casual employee only if:

- the employment relationship is characterised by an absence of a firm advance commitment to continuing and indefinite work; and,
- the employee would be entitled to a casual loading or a specific rate of pay for casual employees under the terms of a fair work instrument, such as a modern award, enterprise agreement or workplace determination, if the employee were a casual employee, or if the employee is entitled to such a loading or rate of pay under the contract of employment.

Employers may only refuse a written notification on the grounds that:

- the employee's current employment relationship with the employer still meets the FW Act's definition of Casual Employee;
- there are fair and reasonable operational grounds for not accepting the notification, such as:
    - substantial changes would be required to the way work in the employer's business is organised.

- there would be significant impacts on the operation of the employer's business, or
- substantial changes to the employee's employment conditions would be reasonably necessary to ensure the employer does not contravene either an award or agreement that would apply to the employee as a full-time or part-time employee.

or;

- where accepting the notification would result in the employer not complying with a recruitment or selection process required by or under a law of the Commonwealth or a State or a Territory.

The provisions under the FW Act may not apply as a matter of law to all Public Sector employers. However, the Victorian Government has taken a policy position that all public sector employers be subjected to the secure employment regime under the FW Act and requires all public sector employers to apply the FW Act provisions as if they do legally apply. Given this, employers must have regard to both the provisions of the FW Act and any existing casual conversion arrangements outlined in enterprise agreements when giving effect to the Government's secure employment provisions.

7. Labour hire and professional services

The Government is committed to becoming more efficient in how it uses public resources to drive growth and development reducing the use of labour hire and professional services to make public service jobs more secure and build the internal capability of the VPS.

The decision to seek external support to deliver government policies, projects and programs is often driven by the need for specialist or technical skills or additional capacity to ensure new initiatives are delivered in a timely and effective manner.

To ensure the valid use of labour hire and professional services, the Government has implemented the following guidelines for VPS employers:

- Administrative Guidelines on Engaging Labour Hire in the Victorian Public Service; and
- Administrative Guidelines on Engaging Professional Services in the Victorian Public Service.

These guidelines apply to public service bodies mandated to comply with the Victorian Government Purchasing Board[1] policies.

[1] The Victorian Government Purchasing Board's goods and services policies apply to:
- Departments, specified entities and expansion agencies
- Victorian Public Sector Commission
- Offices or bodies specified in section 16(1) of the *Public Administration Act 2004*
- Administrative Offices established in relation to a department under Section 11(a) of the *Public Administration Act 2004*

Where public sector agencies are not mandated to comply with these guidelines, they must align their labour hire and professional services use with the following principles:

Table 1: Principles to apply to the use of labour hire in the broader Victorian Public Sector

Principle 1: Valid engagement circumstances

Use of labour hire should be limited to the following circumstances:

- Internal and/or external recruitment action has not been successful or is unlikely to be successful.
- An existing employee is on short-term leave or secondment.
- Recruitment is underway to fill a vacancy, and temporary backfill is required.
- The employment and job security of employees should not be undermined.

If a proposal to engage labour hire does not meet principle one, labour hire is not appropriate and alternate sourcing arrangements should be made.

Principle 2: Engagement conditions

Where a proposed engagement satisfies principle one, the following conditions should also be applied:

- All labour hire engagement must be approved by a senior executive or equivalent.
- Engagements cannot continue for longer than 12 months unless approved by the Agency Head or equivalent and:
  - the role is deemed critical to the business and the workload cannot be redistributed
  - fixed term or ongoing recruitment was unsuccessful or not appropriate
- Wages paid to labour hire workers must not be below the designated or equivalent level of the position being filled in the applicable enterprise agreement.
- Written approval must be granted before a contract to provide labour hire personnel can be entered, and before any labour hire personnel commences work.

Table 2: Principles for engaging professional services in the broader Victorian Public Sector

Principle 1: Enduring government or public sector functions Professional services should not be engaged to undertake work identified as a core or enduring public sector function. Enduring public sector functions are defined as the work products and services that are intrinsic to the running of the public service and delivery of Government priorities.
Principle 2: Valid engagement circumstances Professional services engagements should be limited to the following circumstances: • Work requiring skills or expertise not efficient to recruit or maintain within an organisation. • Genuine need for independence. • The engagement connects the entity with the latest technical advances, emerging key skills or expertise and builds internal capability so overtime these functions can be completed internally. • The employment and job security of employees should not be undermined. • Work requiring capacity due to unpredictable demands that require immediate or time critical action.

8. Labour Hire Licensing Act

The *Labour Hire Licensing Act 2018* (Vic) (LHL Act) introduced a licensing scheme for providers of labour hire, to protect workers from being underpaid and exploited. The Labour Hire Licensing Authority is responsible for implementing the LHL Act. Further information can be found here: *Labour Hire Licensing Act 2018*.

Public sector employers must only engage labour hire workers from licensed providers.

9. Further Information

For further information and advice employees and public sector union representatives should contact the local Human Resources or People and Culture Unit (or equivalent) of the relevant entity for further assistance in the first instance.

People and Culture Representatives of Public Sector Entities should contact their Portfolio Department for further assistance in the first instance.

People and Culture Representatives of Portfolio Departments should contact their usual IRV portfolio contact for further assistance in the first instance.

10. Related Policies or Documents

- Public Sector IR Principles

- Employment Categories and Secure Employment Common Policy
- Application of the *Fair Work Act 2009* (Cth) to public sector employers

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11. Attachment A

Model Provision – Secure Employment

In drafting public sector enterprise agreements parties must consider including the following provision in support of their commitments to secure employment:

1. Secure Employment

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

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

Glossary

Public Sector Industrial Relations Policies

Contents

1. Application

This Policy applies 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.

2. Glossary

AEU	Australian Education Union
ATO	Australian Taxation Office
Agency	Public sector bodies of the State of Victoria (as defined under the PA Act and other Victorian legislation) other than a department
BPEC	Best Practice Employment Commitment
BOOT	Better Off Overall Test
Cth	Commonwealth
DPC	Department of Premier and Cabinet
DTF	Department of Treasury and Finance
EAP	Employee Assistance Program
Public sector employee (employee)	Non-executive level employees of departments and public sector bodies of the State of Victoria (as defined under the PA Act and other Victorian legislation)

Public sector employer (employer)	All departments and public sector bodies of the State of Victoria (as defined under the PA Act and other Victorian legislation)
FPAV	First People's Assembly Victoria
FW Act	Fair Work Act 2009 (Cth)
FWC	Fair Work Commission
FW Regulations	Fair Work Regulations 2009 (Cth)
Government, the	The Victorian Government
IFA	Individual Flexibility Arrangements
IRV	Industrial Relations Victoria
LSL Act	Long Service Leave Act 2018 (Vic)
MoG	Machinery of Government
NAIDOC	National Aboriginal and Islander Day Observance Committee
NES	National Employment Standards
NERR	Notice of Employee Representational Rights
OHS Act	Occupational Health and Safety Act 2004 (Vic)
PA Act	Public Administration Act 2004 (Vic)
PEER	Public Entity Executive Remuneration Policy
Public Sector Employer	All departments and public sector bodies of the State of Victoria (as defined under the PA Act and other Victorian legislation)
– s, s	Section
SDPP	Service Delivery Partnership Plan
TSP	Targeted Separation Package
UFU	United Firefighters Union

VDP	Voluntary Departure Package
VPSC	Victorian Public Sector Commission

3. Further Information

For further information and advice employees and public sector union representatives should contact the local Human Resources or People and Culture Unit (or equivalent) of the relevant entity for further assistance in the first instance.

People and Culture Representatives of Public Sector Entities should contact their Portfolio Department for further assistance in the first instance.

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