



Australian Government

Public Sector Interim Workplace Arrangements 2022



Introduction

1. The Australian Government aims to re-establish the public service as a model employer and employer of choice, and to best facilitate the delivery of essential Australian Government services to the community.
2. The Government is committed to a wages policy for Commonwealth employment underpinned by productivity growth and delivered through fair and genuine negotiations between employees, their representatives and employers.
3. Further, the Government understands the benefits that would result from genuine service wide negotiations on pay and common conditions, with agency specific conditions negotiated at the agency level.
4. In order to realise these aims, the Government will consult on comprehensive workplace relations policy settings for Commonwealth employment, to commence in 2023.
5. The development of a comprehensive policy is a complex undertaking given the current disparity of pay, terms and conditions across the Commonwealth. As a first step, it is necessary to establish interim arrangements that will provide certainty for agencies and their employees where current arrangements are due to expire prior to consultation on, and commencement of, a new comprehensive workplace relations policy. These interim arrangements are designed to avoid further disparity between agencies.

Purpose

6. This document facilitates interim workplace arrangements for Commonwealth agencies and their employees and should be referred to as the ***Public Sector Interim Workplace Arrangements 2022*** (the Interim Arrangements).
7. Importantly, the Interim Arrangements support the Government's commitment to take steps towards addressing fragmentation in remuneration and conditions across Commonwealth agencies through enlivened genuine bargaining.
8. The Interim Arrangements deliver the Government's public sector agenda by:
 - a. recognising the legitimate role of unions to represent employees and support workplace productivity;
 - b. encouraging consultation between agencies and employees and their representatives prior to major workplace decisions;
 - c. ensuring maximum support and flexibility for workers affected by family and domestic violence;
 - d. promoting workplace flexibility as a standard practice; and
 - e. providing certainty on an equitable wage increase across the Commonwealth for the next 12 months.
9. The Interim Arrangements commence on 1 September 2022 and are intended to operate until 31 August 2023, while consultation on, and development of, a comprehensive policy is underway.

10. The Interim Arrangements recognise:
 - a. it is a complex objective to move to common pay and conditions and it will take time;
 - b. employees and agencies require certainty on pay outcomes now;
 - c. other reforms are coming, including the Government's commitment to provide paid Family and Domestic Violence (FDV) leave in the National Employment Standards (NES) and a review of Commonwealth parental leave conditions; and
 - d. consultation with agencies, employees and unions will be key to reforming Commonwealth bargaining and should be a considered process.
11. The *Fair Work Act 2009* (Fair Work Act) provides for industrial rights for all national system employers and employees in Australia. This includes the right to collectively bargain for better remuneration and other conditions. As a temporary measure under the Interim Arrangements, agencies are encouraged take steps to efficiently provide a remuneration increase during the period of these arrangements, as described within, in consultation with employees and their representatives.
12. Agencies and employees are encouraged to make short-term determinations under relevant legislation to provide a timely remuneration increase. The Interim Arrangements promote minimum changes to conditions within this interim period to minimise the impact on future Commonwealth bargaining, which will be aimed at improving commonality of conditions across Commonwealth agencies.
13. Agencies should consult with the Australian Public Service Commission (APSC) prior to engaging in bargaining to discuss the agency's circumstances in the context of the broader public sector workplace relations reform agenda.
14. The Interim Arrangements revoke and replace the *Public Sector Workplace Relations Policy 2020* in its entirety.
15. Existing workplace arrangements are not disturbed, but any previously scheduled wage increase payable during the operational life of this policy should be supplemented to deliver an equitable remuneration increase as provided for under these arrangements.

Coverage and application

16. The Interim Arrangements apply to all Australian Public Service (APS) and non-APS Australian Government entities, and Members of Parliament Staff (hereafter agencies).
17. The Interim Arrangements do not apply to the Australian Defence Force or the High Court of Australia.
18. Government Business Enterprises (GBEs), the Australian National University, the Australian Broadcasting Corporation, the Special Broadcasting Service and the Reserve Bank of Australia are not required to apply the Interim Arrangements, but are encouraged to do so, while taking into account the commercial nature of their business operations. GBEs and the aforementioned entities should engage with their portfolio Minister and the Australian Public Service Commissioner on matters related to enterprise bargaining, industrial action or the making of other industrial instruments.
19. Agency Heads are responsible for ensuring that workplace arrangements are consistent with the terms of the Interim Arrangements and meet all relevant legislative obligations.

20. Exemptions to the Interim Arrangements will only be considered in exceptional circumstances. An application for exemption must be assessed by the APSC and is subject to approval by the Minister for the Public Service with endorsement from the relevant portfolio minister.
21. Agencies covered by the Interim Arrangements should ensure the APSC is informed of significant workplace relations developments. This includes major hearings in the Fair Work Commission related to enterprise agreements, industrial disputation and industrial action.

Interim arrangements

22. During the operational period of the Interim Arrangements, agencies are encouraged to make a determination under s.24(1) of the *Public Service Act 1999* (PS Act), or other relevant enabling legislation, to efficiently provide a remuneration increase for employees, where one is scheduled during the operational life of the Interim Arrangements.
23. Where it is consistent with current agency arrangements, a scheduled remuneration increase may be provided for through common law arrangements.
24. For the avoidance of doubt, a scheduled remuneration increase is where:
 - a. at least 12 months has passed since the most recent remuneration increase has been applied under the agency's expired workplace arrangement; or
 - b. an annual remuneration increase under the agency's in-term workplace arrangement, falls due within the operational period of the Interim Arrangements.
25. 'Workplace arrangement' means an enterprise agreement, common law arrangements, or a determination made under the PS Act or other relevant enabling legislation.
26. Workplace arrangements should be simple, clear and easy to read.

Remuneration

27. Agencies should provide an annual remuneration increase of **3.00 per cent** during the operational period of the Interim Arrangements. Any previously scheduled wage increase payable during the operational life of the Interim Arrangements should be adjusted to **3.00 per cent**.
28. Existing salary-related allowances may be increased in line with general remuneration increases, including any applicable adjustment. Existing expense-related allowances may be increased in line with a relevant economic indicator or statistical measure.
29. Remuneration increases should not be funded through reductions in output or services, or increases in fees, charges, levies, or similar income sources.
30. Remuneration increases include all increases to payments made to employees, other than changes to expense-related allowances.
31. Remuneration increases are to apply prospectively, no sooner than the commencement of a new workplace arrangement.
32. One-off incentive payments are not to be negotiated.
33. Remuneration increases for SES and equivalent employees are to be consistent with the Interim Arrangements. The approval of the APS Commissioner is not required for such increases, however, agencies are to provide the APS Commissioner with information on SES and equivalent remuneration on request.
34. Agencies providing remuneration increases to employees on common law arrangements must consult with the APSC prior to paying any remuneration increase. Agencies are to provide the APS Commissioner with information of such common law arrangements on request.

Approval requirements

35. All collective workplace arrangements must be approved by the APS Commissioner before being made. For the avoidance of doubt, this includes those made for Machinery of Government change purposes, unless the APSC advises otherwise.
36. Collective remuneration determinations must be drafted using the template provided by the APSC.
37. Collective workplace arrangements will only be approved with a duration of no more than 1 year to support transition to genuine bargaining under a new comprehensive policy framework.

SES employees

38. The Interim Arrangements apply to Senior Executive Service (SES) and equivalent employees.
39. Remuneration increases for SES and equivalent employees must be consistent with the Interim Arrangements, including requirements for repackaging remuneration.
40. SES workplace arrangements are not to include provisions which provide a redundancy benefit or similar type of payment to persons whose employment is terminated involuntarily under s.29 of the PS Act.
41. SES workplace arrangements will not include retention period arrangements for excess SES employees.
42. Individual workplace arrangements for SES employees are not subject to approval by the APS Commissioner.
43. Agencies must provide the APS Commissioner with information on SES and equivalent classifications remuneration upon request.

Leave arrangements

44. Workplace arrangements must not allow for the cashing out of personal/carer's leave.
45. Workplace arrangements must ensure long service leave may only to be granted in blocks of at least seven calendar days at full pay, or at least 14 calendar days at half pay, per occasion. It is not to be broken by other forms of leave unless required by legislation.
46. Workplace arrangements must facilitate the portability of accrued paid leave entitlements between APS agencies, the Australian Capital Territory Public Service and the Parliamentary Departments. This is to occur where employees move between APS agencies, the Parliamentary Service and the Australian Capital Territory Public Service, providing there is no break in service.
47. Workplace arrangements are to incorporate leave provisions that support the release of Defence Reservists for peacetime training and development. The Defence Reserve Support model reserve policy is recommended.
48. Parental leave arrangements are being considered by Government in the context of the *Maternity Leave (Commonwealth Employees) Act 1973* Review. Agencies should not seek to alter current arrangements pending further direction from Government.

Family and domestic violence support

49. The Government is committed to providing 10 days of paid family and domestic violence leave as a legal minimum entitlement to employees.

50. As a model employer, it is the Government's expectation that Commonwealth agencies provide support for employees affected by family and domestic violence which meet and exceed these proposed entitlements. Agencies do not need to wait for legislative change, but should facilitate this through existing entitlements in workplace arrangements such as paid miscellaneous leave (or equivalent however described).
51. Agencies are to put in place policies and practices that provide the maximum support available for employees affected by family and domestic violence. Where appropriate in individual circumstances, this may include access to additional miscellaneous leave above legislated minimums.
52. The privacy and safety of employees is paramount. Agencies must take steps to ensure that records of how support is provided cannot be used to identify an employee.
53. Agencies are to ensure that policies in place are comprehensive, and guided by the needs of the individual employee who is affected by family and domestic violence.
54. The APS Family and Domestic Violence Policy Framework template policy is available to guide agencies on creating a policy that can be adapted to agency specific needs.

Redundancy, redeployment and reduction

55. APS agency workplace arrangements are to include compulsory redundancy, redeployment and reduction arrangements for employees identified as excess to requirements.
56. Proposed workplace arrangements are not to enhance existing redundancy, redeployment and reduction entitlements.
57. Redundancy payments provided for in workplace arrangements must meet any minimum amount an employee is entitled to under the NES. The typical APS benefit of 2 weeks' pay per year of service is less beneficial than the NES for employees with two to three, and three to four years' service. In situations such as this, workplace arrangements should identify that the NES will apply instead.
58. To avoid double-dipping on redundancy entitlements, workplace arrangements should include a mechanism that will reduce a retention period by the equivalent number of weeks that an eligible employee would be entitled to under the NES.

Workplace consultation

59. Agencies should positively engage in genuine consultation with employees and unions on workplace matters that affect them.
60. Proposed enterprise agreements are to include the model consultation term prescribed by the *Fair Work Regulations 2009*, or equivalent. Agencies should implement workplace arrangements that go beyond the model consultation term, noting that agencies are not required to do anything that would be inconsistent with their legal obligations (for example ensuring they comply with privacy laws).
61. Further details of the arrangements agencies are to apply are outlined in APSC Circular 2022/08: Genuine and effective consultation in Commonwealth agencies, or any subsequent circular which replaces this Circular.

Union delegates rights

62. Agencies should implement workplace arrangements that enable sustainable, high performing public sector workplaces, and encourages principles that respect and facilitate the role of union workplace delegates, and other union officials.

63. Agencies should implement arrangements that ensure unions can exercise their industrial rights under the Fair Work Act and participate in consultations and engagement that go beyond Fair Work Act requirements. Agencies are not required to do anything that would be inconsistent with legal obligations.
64. Further details of the arrangements agencies are to apply are outlined in APSC Circular 2022/09: Union representation in Commonwealth agencies, or any subsequent circular which replaces this Circular.

Dispute resolution

65. Proposed enterprise agreements are to include the model dispute resolution term or equivalent, prescribed by the *Fair Work Regulations 2009*.
66. It is Government policy that the resolution of disputes in the Commonwealth should occur in good faith and therefore follow the same principles as the good faith bargaining requirements detailed at section 228 of the Fair Work Act.
67. Agencies must be cautious in considering any proposal to broaden the scope of the dispute resolution clause beyond matters that arise under their enterprise agreement and the NES.

Flexibility

68. Flexibility is a normal feature of Commonwealth employment.
69. Flexible working arrangements allow employees to balance family, caring and other responsibilities and interests alongside their work commitments and career goals. Flexible working arrangements include initiatives such as flex time, time off in lieu, part time work, home based work, remote work, hybrid work, telework and job sharing.
70. Agency Heads are responsible for making decisions about the availability of workplace flexibility in the context of their operations and consistent with their enterprise agreements and the Fair Work Act.
71. Individual flexibility terms are to provide flexibility in respect of the matters listed in the model term in the *Fair Work Regulations 2009*, plus remuneration.

Agencies currently bargaining or preparing to bargain

72. Agencies are advised to consult with the APSC before continuing or commencing bargaining.
73. Agencies currently in bargaining are encouraged to consult with bargaining representatives to:
 - a. decide whether the continuation of bargaining is necessary or appropriate at this time; or
 - b. agree to pause bargaining and elect to make a remuneration only determination under the Interim Arrangements.
74. Agencies currently considering whether to commence a new bargaining process, are to first discuss their circumstances with the APSC concerning whether this is necessary or appropriate during the term of the Interim Arrangements. This consultation should occur before any decision or commitment is made to bargaining representatives or employees to issue a Notice of Employee Representational Rights.
75. Draft enterprise agreements will generally only be approved by the APS Commissioner during the operational period of the Interim Arrangements where it is consistent with the intent of the Interim Arrangements. An assessment as to whether bargaining is appropriate, will take into account the agency's industrial circumstances, and whether the agency is compelled to bargain to ensure compliance with legal obligations.

76. Changes to agency terms and conditions will be subject to approval by the APS Commissioner, who will consider service-wide implications. Changes to existing terms and conditions will only be approved in exceptional circumstances under the Interim Arrangements.

Remuneration in bargaining

77. For the avoidance of doubt, any workplace arrangement made during the term of the Interim Arrangements is subject to all provisions of these arrangements, including that remuneration increases are to be a single increase of **3.00 per cent**.
78. Existing pay scales are generally not to be modified to provide for new top pay points, removal of existing pay points, or other mechanisms to accelerate salary advancement.
79. Where entrenched internal structural deficiencies make an agency's existing pay scale unworkable within the context of its operational needs, the APS Commissioner may agree to reasonable variations that address these deficiencies.
80. Existing and ongoing payments to employees may be restructured and consolidated without being regarded as a remuneration increase where the following principles are applied:
- a. the restructuring will generally only apply to employees who receive, or were eligible to receive, the ceasing payment;
 - b. there is no net gain to individual employees; and
 - c. the outcome is at least cost neutral for the agency.
81. Such restructuring of payments may have implications for employer superannuation contributions. In such circumstances, discounting would be required to ensure these principles are observed. The APS Commissioner is to approve such proposals before they are tabled with employees or their representatives.
82. An employee is not to advance through a classification or broadband pay scale if they have not achieved at least a satisfactory level of performance.