



## Non-APS Bargaining - Government Parameters

The *Australian Government Public Sector Workplace Relations Policy 2023* sets expectations for non-APS agency bargaining conduct. This document outlines Government parameters on pay and conditions to inform non-APS agencies' development of positions prior to bargaining and as bargaining progresses.

### 1. Remuneration and conditions adjustments

The Policy provides that:

#### Changes to Remuneration and Conditions

97. Remuneration and conditions adjustments includes:
  - a. increases to payments made to employees, other than changes to expense-related allowances; and
  - b. changes to conditions resulting in increased employee costs, including changes to classification structures; but
  - c. excludes any payments or changes to conditions advised by the APSC.
98. Agencies may make remuneration and conditions adjustments within Government parameters, as advised by the APSC.
99. Changes to remuneration and conditions are to be affordable and funded from within existing agency budgets, without the redirection of programme funding. Remuneration and conditions adjustments are not to be funded through reductions in output or services, or increases in fees, charges, levies, or similar income sources beyond ordinary indexing practices.
100. Remuneration increases are to apply prospectively.

### 2. Parameters – guiding principles

The Government parameters are set having regard to the following principles:

- a. Bargaining conduct and outcomes will reflect best practice and recognise the role of the Government in setting the high standard of employer behaviours it champions.
- b. Workplace arrangements need to support the ability of Commonwealth agencies to function efficiently, including by sustaining capacity and capability requirements.
- c. Agencies are encouraged to incorporate APS common terms where practicable.
- d. Agreements are to be fair and fiscally responsible, in line with reasonable community expectations.

### 3. Parameters

This document provides information on Government parameters. This document has been updated to reflect outcomes in APS bargaining and should be read in conjunction with the Statement of Common Conditions.

### 4. When to consider the parameters

Non-APS agencies should give due consideration to these parameters in formulating their bargaining positions. The APSC will assess bargaining positions and draft agreements against the parameters outlined in this document.

Under clause 91 of the Policy, approval from the APS Commissioner must be obtained prior to any proposed increases in remuneration or changes to conditions with a financial impact being discussed with employees and/or their representatives. Agency Heads are to provide the APS Commissioner with a signed Funding and Remuneration Declaration, using the template provided by the APSC.

The Funding and Remuneration Declaration requires agencies to provide costing details of all remuneration and conditions adjustments that would result in increased employee costs. The declaration also requires agencies to identify whether the change counts towards the agency's remuneration and conditions adjustment calculation.

### 5. Categories of changes

Remuneration and conditions changes fall within the following categories:

Category	Is the change supported?	Is the cost of the change included in the remuneration and conditions adjustment calculation?
1	Yes.	No. The change is consistent with policy expectations for Commonwealth agencies.
2	Only with a policy exemption, in exceptional circumstances.	For decision as part of a policy exemption request.
Other	Consult with the APSC.	Consult with the APSC.

#### 5.1 Category 1 changes

Category 1 changes include APS service-wide bargaining outcomes. This provides the opportunity for non-APS agencies to bargain for improved conditions where they are currently below the Commonwealth's approach to APS commonality and the changes are practical and affordable for that agency. Non-APS agencies may maintain existing entitlements that exceed the parameters.

Category 1 changes also include changes contemplated in Part 2 of the Policy. For example, clause 105 supporting the release of Defence Reservists for peacetime training and development.

Non-APS agencies may include Category 1 conditions in their agreements without any reduction to their headline pay offer or funding the change through other measures.

APS bargaining has resulted in a number of common clauses that may be adopted by a non-APS agency where appropriate. In adopting such clauses and conditions, non-APS agencies may need to make appropriate edits to ensure it aligns with the agency's own employment framework. For example; removing references to the APS and *Public Service Act 1999* and removing references to APS specific matters such as the APS Consultative Committee, APS Code of Conduct, and APS classification levels, and inserting agency-specific references.

## **5.2 Category 2 changes**

Category 2 changes will require an exemption from the Policy. Under clause 93 of the Policy, exemptions will be considered in exceptional circumstances. An application for exemption must be assessed by the APSC and is subject to endorsement from the agency's portfolio minister and approval from the Minister for the Public Service.

Agencies should consult with the APSC early if they are considering an exemption request.

## **5.3 Other changes**

Agencies may propose other changes that do not fall within Category 1 or Category 2. These proposed changes will be considered by the APSC on a case-by-case basis.

As a general principle, other changes are likely to be supported where they address a genuine business need in a reasonable, proportionate and affordable way. Proposed changes may not be supported where they would create an undesirable precedent for conditions in the Commonwealth public sector or are not consistent with reasonable community expectations. The proposed change may be considered in the context of the agency's overall package of conditions.

The possible outcomes may include:

- a. The change is supported and does not need to be funded through offsets or a reduction in the headline wage increase.
- b. The change is supported, contingent on being funded through identified offsets, a reduction in the headline wage increase or other productivity gains.
- c. The change would require a policy exemption to proceed.

To enable discussion with the APSC, proposed changes in this category should be supported by a statement:

- a. Outlining the organisational issue.
- b. Outlining the proposed change.
- c. Explaining how the change will address the issue.
- d. Outlining whether any other options have been considered to address the organisational issue and why the proposed option is preferred.
- e. Outlining any indicative costs and possible offsets.

## **5.4 Inclusion of policy in Enterprise Agreements**

Enterprise agreements are legal documents that cover certain employers and employees, and set out minimum employment terms and conditions.

Policies are a set of general guidelines outlining an organisation's plan or strategy for addressing particular issues. Policies often give practical effect to substantive conditions outlined in an enterprise agreement. Where there is any inconsistency between policy and terms of an enterprise agreement, the express terms of the agreement prevail.

There is benefit in including substantive employee entitlements in enterprise agreements where

these are visible and readily accessible, and can form part of the agency's transparent Employee Value Proposition.

Agencies may negotiate the inclusion of content from existing agency policy in their enterprise agreement. Policies may be bargained into enterprise agreements on three conditions:

- a. the policy provides a substantive employee entitlement (excluding procedural matters);
- b. the matter covered by the policy was previously in an enterprise agreement, but was bargained out and placed into policy in accordance with past Government bargaining policies; and
- c. the matter is currently located in policy.

## **6. Remuneration**

### **6.1 Government wage offer**

Non-APS agencies may make remuneration and conditions adjustments up to the value of the Government's wage offer. That wage offer is an annual increase of 4 per cent, 3.8 per cent and 3.4 per cent over 3 years. Eligible non-APS agencies may also make a 0.92 per cent one-off payment in accordance with clause 6.4 below and APSC guidance.

### **6.2 Wage increases – transitional period**

As a transitional measure, agencies may pay a wage increase from the anniversary date of the last scheduled wage increase where:

- a. there are no further increases due under the agency's current workplace instrument; and
- b. the nominal expiry date of the agency's enterprise agreement or the 12-month anniversary of the agency's last pay increase falls between 1 September 2023 and 14 March 2024; and
- c. the agency commences a ballot for a new enterprise agreement on or before 14 March 2024, which results in a majority of employees voting to approve the agreement.

This transitional arrangement operates as an exception to clause 100 of the Policy which requires remuneration increases to apply prospectively. Agencies that pay a wage increase from the anniversary date of the last scheduled wage increase may recognise the anniversary date of the scheduled wage increase for the purposes of the second and third year wage increases and Nominal Expiry Date of the agreement, rather than the anniversary of the commencement date of the agreement.

Alternatively, non-APS agencies subject to these transitional arrangements may still align the second and third year wage increases and Nominal Expiry Date with the anniversary date of the commencement of the agreement, if they choose.

### **6.3 Wage increases – post-14 March 2024**

Agencies that have an anniversary date after 14 March 2024 are permitted to apply the bargained pay increase effective from the 12-month anniversary of the last wage increase, provided the agency commenced its access/consideration period on or before the nominal expiry date or 12-month anniversary of the last wage increase.

Agencies that pay a wage increase from the anniversary date of the last scheduled wage increase may recognise the anniversary date of the scheduled wage increase for the purposes of the second and third year wage increases and Nominal Expiry Date of the agreement, rather than the anniversary of the commencement date of the agreement.

#### **6.4 One-off payment**

Within APS negotiations, the Government agreed to bring the first scheduled pay increase of 4 per cent forward by 12 weeks, using a one-off payment equivalent to 0.92 per cent of base salary.

Non-APS agencies will be able to make a similar one-off payment. Eligible non-APS agencies are permitted to deliver the early pay increase as a one-off payment up to 0.92 per cent of (pre-adjusted) base salary, in accordance with APSC guidance.

To be eligible for the one-off payment, agencies must commence an access/consideration period that results in a successful ballot by the later of:

- a. 14 March 2024; or
- b. the nominal expiry date of the current instrument or the 12-month anniversary date of the final increase provided under a determination.

Non-APS agencies can make a determination under their enabling legislation to facilitate the one-off payment. The payment can be made after a successful enterprise agreement vote while awaiting Fair Work Commission approval of the agreement.

For non-APS agencies with common law arrangements, the one-off payment is payable from the anniversary of the last wage increase.

#### **6.5 SES equivalent pay increases**

Agencies are permitted to provide SES equivalent employees with a pay increase from the anniversary date of their last increase, of an amount no higher than the increase to be provided to the agency's non-SES employees.

## Parameters on Specific Conditions

Topic	Category 1		Category 2
	Statement	Non-APS specific	
<b>Section 1 – Technical matters</b>			
<b>Parties</b>	Not applicable to non-APS.	Application to non-SES equivalent employees of the agency.	
<b>Operation of agreement</b>	Not applicable to non-APS.	Nominal expiry date of 3 years from commencement.  If Transitional Pay Arrangements apply, nominal expiry date 3 years from the anniversary of the first pay increase.	More than 3 year agreement.
<b>Delegations</b>	Refer to common clause.		
<b>Definitions</b>	Refer to common clause, to the extent applicable to the agency.		
<b>NES precedence clause</b>	Refer to common clause.		
<b>Closed comprehensive agreement</b>	Refer to common clause.		
<b>Individual flexibility arrangements</b>	Refer to common clause.		Inclusion of matters which direct agencies to establish jobs in particular locations.  Provision of guaranteed access to flexible working arrangements for cohorts of employees.

## Parameters on Specific Conditions

Topic	Category 1		Category 2
	Statement	Non-APS specific	
<b>Section 2 – Remuneration</b>			
Commonwealth pay increase	Refer to common clause.	<p>Redistribute the pay offer in the second or third year (where it does not exceed the amount of the first year increase).</p> <p>Salary rate adjustments to meet an Award minimum where the pay offer is not sufficient to meet an Award minimum rate.</p>	<p>Pay increase that exceeds the APS Common Condition (including to address pay fragmentation).</p> <p>Redistribution of the pay offer to more than 4 per cent in any one year.</p> <p>Changes to classification structure with a material new cost.</p>
Commonwealth pay fragmentation mechanism	Not applicable to the non-APS.		
Payment of salary	Refer to common clause, except clause 6.		
Salary setting	Refer to common clause.		
Incremental advancement	Refer to common principles.		
Superannuation	Refer to common clause.	<p>Superannuation clause to recognise choice, stapled and default superannuation funds.</p> <p>Clearly define which employer contribution method applies to different accumulation funds.</p>	<p>Increase employer superannuation contributions above 15.4 per cent.</p> <p>Where moving from FSC to OTE, include the payment of employer contributions on unpaid parental leave, unless it is already included in the agency's agreement.</p>

## Parameters on Specific Conditions

Topic	Category 1		Category 2
	Statement	Non-APS specific	
		<p>Increase of employer superannuation contributions to 15.4 per cent regardless of choice of fund or stapled fund where fund rules permit.</p> <p>Transition from Fortnightly Contribution Salary (FCS) to Ordinary Time Earnings (OTE) employer contribution method.</p>	
Overpayments	Refer to common clause.		
Supported wage system	Refer to common clause.		
Junior rates of pay	Refer to common clause. Remove any junior rates of pay provisions.		
Specialists	Retain existing conditions related to specialists.		Introduce specialist allowance or pay structures.
<b>Section 3 – Allowances and reimbursements</b>			
Higher duties	Refer to common clause.		Reduce qualifying period for higher duties to less than 2 working weeks.
Allowances (including travel allowances, excluding higher duties allowance, workplace responsibility allowances and community language allowance)	Retain existing allowances.	<p>Introduce a new allowance in line with APSC Guidance, subject to approval.</p> <p>Increase salary related allowances in line with general salary increase.</p> <p>Increase expense-related allowances in line with established indexing arrangements.</p>	<p>Introduce a new allowance to provide a remuneration increase by another name (e.g. Healthy Lifestyle Allowance, Working in the Office Allowance, EL1 Professional Allowance).</p> <p>Increase an existing allowance to provide a remuneration increase by another time.</p>
Workplace responsibility allowances	Refer to common clause.		



## Parameters on Specific Conditions

Topic	Category 1		Category 2
	Statement	Non-APS specific	
Community language allowance	Refer to common clause.		
<b>Section 4 – Classifications and broadbands</b>			
Graduates	Refer to common clause.		
Classification and work level standards	Not applicable to non-APS.	Retain current classification structure.	Changes to classification structures with a material new cost.
<b>Section 5 – Working hours and arrangements</b>			
Employment types	Not applicable to non-APS.	Employment types defining ongoing, non-ongoing, casual, full time and part time.	
Labour hire	Retain existing conditions on labour hire.		Conditions governing the use of labour hire and contracting arrangements.
Job security	Refer to common clause, except for APS specific references.		
Casual employment	Refer to common clause.	Retain existing conditions that are more beneficial.	Increase casual loading above 25 per cent.
Non-ongoing employment	Refer to common clause.	Retain existing conditions that are more beneficial.	
Working hours (including 4 day work week or trial)	Retain existing working hours or increase to 37.5 hours per week.	Decrease working hours to 37.5 hours per week.	Decrease working hours to less than 37.5 hours per week. Introduce a 4-day work week or trial.
Flex for APS 1-6	Retain existing conditions.	Flex for APS 1-6 equivalent employees of the agency.	
Executive Level TOIL	Refer to common clause.	Application to Executive Level equivalent employees of the agency.	
Overtime and restriction	Retain existing conditions related to overtime and restriction.	Include appropriate overtime and restriction provisions.	

## Parameters on Specific Conditions

Topic	Category 1		Category 2
	Statement	Non-APS specific	
	Bargain conditions related to overtime and restriction.		
Shift work, including shift penalties	Retain existing conditions for shift workers. Bargain conditions related to shift work.	Include shift worker provisions and appropriate penalty rates.	
Flexible working arrangements, including working from home	Refer to common clause.	Agencies may provide equipment necessary for, or reimbursement for costs associated with establishing a safe home office.	
Employees with caring responsibilities	Retain existing conditions related to employees with caring responsibilities.		
Range of locations for work	Retain existing conditions related to the range of location of work.		
Part-time work (no unilateral conversion)	Refer to common clause.		
Christmas closedown (the period an agency closes or reduces their usual business activities, including Christmas Day and New Years Day)	Retain existing conditions related to Christmas closedown.	Introduce Christmas closedown between 25 December and 1 January where an agency does not have additional leave arrangements in place in lieu of Christmas closedown.	Introduce recognition of non-public holidays as public holidays between 25 December and 1 January.
Public holidays	Refer to common clause.	Retain current additional public holidays where they exist in an Agreement.	
<b>Section 6 – Leave</b>			
Annual leave – all aspects other than excess leave and cash out provisions	Refer to common principles.	Retain existing conditions that are more beneficial.	Increase annual leave above 4 weeks or current entitlement (whichever is more generous).

## Parameters on Specific Conditions

Topic	Category 1		Category 2
	Statement	Non-APS specific	
Annual leave – excess leave	Retain existing conditions on excess annual leave.	Excess annual leave is 2 or more years leave accrual.	
Annual leave – cash out provisions	Retain existing cash out of annual leave conditions.	Bargain cash out of annual leave.	Introduce cash out of annual leave provisions that do not include a requirement that at least 2 weeks annual leave or long service leave be taken in the preceding 12 months. Introduce cash out of annual leave provisions that results in an employee’s entitlement being less than 4 weeks.
Purchased leave	Retain existing conditions on purchased leave.	Bargain to include purchased leave provisions.	
Personal / carer’s leave	Refer to common clause.		Increase personal/carer’s leave above 18 days or current entitlement (whichever is more generous).  Introduce a provision allowing for the cashing out of personal/carer’s leave.
Portability of leave	Not applicable to non-APS agencies.	Recognition of leave from APS and non-APS agencies, to the extent allowable by law.	
Leave without pay – period of leave without pay that counts as service	Retain existing conditions on leave without pay.	Change or clarify when leave without pay counts toward service.	
Leave without pay – all aspects other than the period that counts as service	Retain existing conditions on leave without pay.		
Re-crediting of leave	Refer to common clause.		

## Parameters on Specific Conditions

Topic	Category 1		Category 2
	Statement	Non-APS specific	
Long service leave	Refer to common clause.		Increase entitlement to long service leave above the <i>Long Service Leave (Commonwealth Employees) Act 1976</i> . Allow long service leave to be granted in periods of less than 7 day blocks, or allow long service leave to be broken by other leave, except as provided for by legislation.
Miscellaneous leave	Retain existing conditions on miscellaneous leave.	Include the ability to provide miscellaneous leave to casual employees, to provide for paid family and domestic violence leave Adopt the term “miscellaneous leave” (as opposed to “other leave” or “special leave”).	Introduce extensive lists of uses for miscellaneous leave into agreements.
Cultural, ceremonial and NAIDOC leave	Refer to common clause.	Retain existing conditions that are more beneficial.	
Parental leave	Refer to common clause.	Introduce parental leave entitlements up to APS Common Condition. Retain existing conditions that are more beneficial.	Introduce parental leave entitlement in excess of APS Common Condition or current entitlements.
Bereavement and compassionate leave	Refer to common clause.	Retain existing conditions that are more beneficial.	Increase bereavement or compassionate leave above 3 days per occasion or current entitlements.
Sabbatical leave	Retain existing conditions on sabbatical leave.	Bargain for sabbatical leave.	
Emergency response leave	Refer to common clause.	Retain existing conditions that are more beneficial.	Introduce paid leave in excess of APS Common Condition or current entitlements.

## Parameters on Specific Conditions

Topic	Category 1		Category 2
	Statement	Non-APS specific	
Jury duty	Refer to common clause.	Retain existing conditions that are more beneficial.	Introduce paid leave in excess of APS Common Condition or current entitlements.
Volunteer leave	Retain existing conditions related to volunteer leave.		Introduce volunteer leave.
Defence reservist leave	Refer to common clause.	Retain existing conditions that are more beneficial.	Introduce paid leave in excess of APS Common Condition or current entitlements.
Defence service sick leave	Refer to common clause.	Retain existing conditions that are more beneficial, including a more generous accruing entitlement.	Introduce paid leave in excess of APS Common Condition or current entitlements.
Leave to attend proceedings (witness leave)	Refer to common clause.	Retain existing conditions that are more beneficial.	Introduce paid leave in excess of APS Common Condition or current entitlements.
Other leave types (including; Pandemic leave, Gender affirmation leave, Menstrual and menopause support and leave and Disability leave)	Retain existing conditions related to other leave types.		Introduce a new leave entitlement including; Pandemic leave, Gender affirmation leave, Menstrual and menopause support leave and/or Disability leave.
<b>Section 7 – Employee support and workplace culture</b>			
Blood donation	Refer to common clause.	Retain existing conditions that are more beneficial.	Introduce an entitlement in excess of APS Common Condition or current entitlements.
Vaccinations	Refer to common clause.	Retain existing conditions that are more beneficial.	
Employee Assistance Programs (EAP)	Refer to common clause.	Retain existing conditions that are more beneficial. Include conditions that allow for financial counselling for employees.	

## Parameters on Specific Conditions

Topic	Category 1		Category 2
	Statement	Non-APS specific	
Safe workplaces	Retain existing conditions related safe workplaces.		
Respect at Work	Refer to common clause.	Retain existing conditions that are more beneficial.	
Family and domestic violence support	Refer to common clause.	Retain existing conditions that are more beneficial.	
Integrity and transparency, including scientific integrity	Specific to APS agencies.	Retain existing conditions. Bargain for an integrity and transparency clause suitable to the agency.	
First Nations employment (cultural competency training)	Refer to common clause, except APS-specific references.	Retain existing conditions that are more beneficial. Bargain for a cultural competency training clause suitable to the agency.	
Gender equality	Retain existing conditions related to gender equality.		
Diversity	Retain existing conditions related to diversity.	Agreements are to use gender inclusive language. Agreements to include a definition of family that recognises kinship for all purposes.	Inclusion of matters in relation to diversity which are otherwise covered in legislation or can be managed through a consultative committee.
Lactation and breastfeeding support	Refer to common clause.	Retain existing conditions.	
Disaster support	Refer to common clause.	Retain existing conditions.	
<b>Section 8 – Performance and development</b>			
Performance management	Retain existing conditions related to performance management.	Include performance management provisions suitable to the agency.	

## Parameters on Specific Conditions

Topic	Category 1		Category 2
	Statement	Non-APS specific	
Reward and recognition	Retain existing conditions related to reward and recognition.	Roll into ordinary pay existing bonus payments, appropriately discounted based on historical payments.	Introduce new bonuses or extend eligibility of existing bonuses.
Key Performance Indicators (KPIs)	Retain existing conditions related to KPIs.	Bargain for a KPI clause suitable to the agency.	
Workloads	Refer to common clause.	Retain existing conditions. Retain clauses on the assignment of duties.	
Study assistance	Retain existing conditions related to study assistance.	Bargain for a study assistance clause suitable to the agency.	
Learning and development	Retain existing conditions related to learning and development.	Bargaining for a learning and development clause suitable to the agency.	
Professional qualifications	Retain existing conditions related to professional qualifications.	Introduce reasonable reimbursements and/or an equivalent allowance, for membership and accreditation or registration fees, including maintenance, where the agency considers it necessary for the employee to perform their role.	
<b>Section 9 – Travel and location based conditions</b>			
Travel, other than travel allowances	Retain existing conditions related to travel.	Bargain for travel provisions, other than travel allowances, suitable to the agency.	
Relocation assistance	Refer to common clause.	Retain existing conditions. Introduce additional entitlements under the APS Award (where applicable).	

## Parameters on Specific Conditions

Topic	Category 1		Category 2
	Statement	Non-APS specific	
Remote localities	Retain existing conditions related to remote localities.	Incorporate conditions in line with those provided by the Department of Agriculture, Fisheries and Forestry (DAFF).	
Regional jobs	Retain existing conditions related to regional jobs.		
<b>Section 10 – Consultation, representation and dispute resolution</b>			
Consultation and consultative committees	Refer to common clause, to be read in conjunction with <i>APSC Circular 2022/08: Genuine and effective employee and union consultation in Commonwealth agencies</i> , while it remains in force.	Retain more detailed consultation terms. Include facilitative clauses on agency consultative committees.	
Dispute resolution	Refer to common clause.	Retain existing conditions. Retain facilitative clauses such as additional internal steps to resolve a dispute at a workplace level.	
Delegates' rights	Refer to common clause, to be read in conjunction with <i>APSC Circular 2022/09: Union representation in Commonwealth agencies</i> , while it remains in force.	Retain existing conditions. Retain more detailed arrangements, such as in a Protocol or Terms of Reference document. Retain existing Freedom of Association and Employee Representation provisions.	
Employee representational rights	Retain existing conditions on employee representational rights.	Bargain for employee representational rights provisions suitable to the agency.	
<b>Section 11 – Separation and retention</b>			



## Parameters on Specific Conditions

Topic	Category 1		Category 2
	Statement	Non-APS specific	
Resignation (separation)	Refer to common clause.	Bargain for resignation provisions suitable to the agency. Bargain for facilitative clauses which provide for the variation of other terms of resignation.	
Redeployment, retraining and redundancy.	Retain existing conditions on redeployment, retraining and redundancy.		Enhancements of existing redeployment, retraining and redundancy provisions.
<b>Section 12 – Other APS-wide matters</b>			
Capability and labour market shortages	Retain existing conditions on capability and labour market shortages.		Introduce new provisions on capability and labour market shortages.
Recruitment and mobility	Retain existing conditions on recruitment and mobility.	Bargain for recruitment and mobility conditions suitable to the agency.	
Climate change	Retain existing conditions on climate change.		Introduce climate change provisions, including commitments or additional leave types.