

WHAT'S DIFFERENT ABOUT THE ACT PUBLIC SECTOR MEDICAL PRACTITIONERS ENTERPRISE AGREEMENT 2017-2021

PURPOSE

The purpose of this document is to explain the main proposed amendments in the ACT Public Sector Medical Practitioners Enterprise Agreement 2017-2021 ("**the Agreement**"), to ensure that employees have a good understanding of the outcomes negotiated with unions and other representatives.

NOTE: In May 2020 the Fair Work Commission found that the earlier version of the Agreement that was put to ballot of employees in December 2019-January 2020 could not be approved. The Agreement as now proposed in its current form seeks to rectify some of the technical issues and makes some subsequent minor changes to dates and operation. Largely these amendments relate to how the employers, ACTPS and Calvary are represented in the Agreement, and also address some minor issues for which the FWC had required undertakings.

The remaining contents of the Agreement remain unchanged from what was put to ballot previously and are described below.

GENERAL

A number of changes contained in the proposed Agreement have sought to clarify minor technical and operational requirements relating to existing entitlements and processes including changes that ensure consistency with legislation, and changes that ensure consistency within the Agreement itself.

MAJOR AMENDMENTS IN THE PROPOSED AGREEMENT

Duration (Clause 4)

The nominal expiry date is proposed to be 31 October 2021.

Remuneration (Clause 27)

PAY OFFER

The Government's pay offer covers a period of four years duration with percentage increases being provided at regular intervals.

The full offer is:

- 2.25% from the first full pay period on or after 1 October 2017;
- 0.5% from the first full pay period on or after 1 June 2018;
- 1.35% from the first full pay period on or after 1 December 2018;
- 1.35% from the first full pay period on or after 1 June 2019;
- 1.35% from the first full pay period on or after 1 December 2019;
- 1.35% from the first full pay period on or after 1 June 2020;
- 1.35% from the first full pay period on or after 1 December 2020; and

- 1.35% from the first full pay period on or after 1 June 2021.

In line with the government's commitment to pay increases on date of successful ballot rather than FWC approval, the increases up to and including the one from 1 June 2020 have already been applied administratively.

Allowances

All allowances in Annex C, unless specifically excluded, will be increased by the same percentage amounts as the pay increases outlined above.

Onerous hours (Clause 43)

Some changes have been made to the Onerous hours provision for Senior Medical Practitioners (SMP), to make access to the provision clearer and easier to manage. The provision is still based on a requirement for an SMP to work in excess of normal duties.

- Eligibility will need to be determined by an SMP firstly demonstrating that they have worked more than 90 hours in a fortnight (incl working hours and call backs).
- Once eligible, a payment of 5% of the SMP's pay will be made for subsequent fortnights where the SMP works at least 100 hours and 10% when the hours worked in a fortnight exceed 120 hours.
- Should an eligible SMP work less than 90 hours in a fortnight, they will need to requalify.
- There are no pro-rata provisions for part-timers.

Superannuation (Clause 54)

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

Members of preserved schemes like the CSS and PSS will continue to receive contributions as set out at Clause 54.4.

Members of Superannuation Guarantee Funds are currently receiving 10.5% (9.5% Super guarantee + the current additional employer contribution of 1%). This will increase to:

- 10.75% (9.5% + 1.25%) on 1 July 2018;
- 11% (9.5% + 1.5%) on 1 July 2019; and
- 11.5 % (9.5% + 2%) on 1 July 2020.

These increases in superannuation contributions have already been put in place.

The Government will continue to offer 1% additional employer contribution for members of Superannuation Guarantee Funds who choose to contribute at least 3% of their salary to their superannuation.

Superannuation on Parental Leave

The Government offer will extend superannuation contributions to the unpaid portion of the first 12 months of parental leave. This includes birth leave (aka maternity leave) and unpaid parental and grandparental leave.

Advancement to Senior Specialist (Clause 14)

The previous mechanism for promotion from specialist to senior specialist has been replaced by a single broad-banded specialist/senior specialist classification, with competency-based assessment to be the basis for advancement to the Senior Specialist grade. Under the new scheme, it will not be necessary for a position to be advertised for an application for advancement to be considered.

CHS and ASMOF will consult on competency requirements to support the broadband arrangement in the new Agreement, with a new policy to be introduced to support the advancement process.

Before the Agreement commences, promotion to Senior Specialist will continue to be available consistent with the current policy.

Hours of Work – Senior Medical Practitioners (Clause 23.1)

The words “not less than” have been deleted from 23.1.2 to provide a clearer definition of the working hours of senior medical practitioners.

Span of Hours (Clause 23.10)

The span of hours for Monday to Friday has been changed to 7am to 7pm. This is both consistent with core ACTPS provisions and provides greater flexibility for structuring ordinary time working hours.

Rest Relief After Overtime (Clause 39)

The clause has been amended to address circumstances where overtime is the result of a recall, and not contiguous with normal duty. It provides for the nine hour break free from duty to occur either before or after the recall.

For example, an eligible employee who finishes their normal shift at 1700 and is recalled to duty at 0600 the following morning, prior to their normal start at 0830, will be considered to have had the requisite nine hour break in the period between the end of their normal shift (1700) and their recall to duty (0600).

On-call / Recall (Clause 42.3)

Subclause 42.3 has been changed to provide that where recall (which includes incidents that require advice, but not attendance at the workplace) becomes a regular pattern for an employee not on the on-call roster, there will be a review of the on-call rosters, including the roster patterns and which employees are included on the roster.

Additional Hours (Clause 44.1)

New provisions have been included to provide additional remuneration for senior doctors who work additional hours to meet periods of identified additional high demand. Such additional work will be paid at the hourly rate of the SMPs base pay plus 100%. These payments will not count as pay for any purposes, including superannuation.

SMPs in Radiology (Clause 44.2)

ARIns currently provide for Consultants working in Radiology to be paid a daily rate when required to attend for duty on a day that the Consultant would not otherwise be in attendance: private practice days and non-rostered weekends for example. These longstanding provisions are being incorporated in the EA at a consolidated daily rate of \$3041 from the commencement of the Agreement. This payment replaces any provisions in existing ARIns for the same purpose and will be indexed going forward.

This provision operates to the exclusion of Clause 44.1.

Anaesthetists Extra Surgery Scheme (Clause 44.10)

There are currently a range of additional work provisions for anaesthetists provided for under ARIns. These are being consolidated and included in the EA as a single set of arrangements under which an anaesthetist will receive payment where they agree to a request from the head of service to undertake additional work in conjunction with an approved Extra Surgery Scheme. This payment replaces any provisions in existing ARIns for the same purpose.

The consolidated rates are:

\$332 an hour for work undertaken between Monday and Friday inclusive

\$432 an hour on weekends and public holidays

\$360 per 24 hour additional on-call associated with work under the Extra Surgery Scheme.

Note that where an anaesthetist undertakes additional work to meet periods of identified high demand outside the Extra Surgery Scheme, such work will be covered by the provisions of Clause 44.1

Rights of Private Practice (Clause 46)

The responsibility of both the employer and all specialists and senior specialists to ensure that every effort is made to promptly bill private patients has been made more explicit, and the obligation of the employer to provide appropriate support for private practice billing, including the recovery of outstanding accounts, has been clarified.

A new term – “Scheme Pay” has been introduced and defined to provide clarity as to what allowances are taken into account in the calculation of private practice payments. Scheme pay includes base pay plus allowances paid under Clause 42 (On-call and Recall Arrangements) and 58 (Management Allowance).

The Rights of Private Practice arrangements have been amended to include the specific and consolidated details of the Pathology Scheme, the Radiology Scheme and the Radiation Oncology Scheme, which are currently set out in group or individual ARINs outside of the Agreement.

Having the Schemes set out in the Agreement will provide a greater degree of transparency, clarity and consistency of the entitlements available to all staff, as well as removing the existing requirement for annual review applying to external arrangements.

A provision has been included to provide a mechanism for addressing any inadvertent disadvantage arising from the incorporation of the schemes in the EA (46.11-46.13). This includes circumstances where an employee is financially disadvantaged in respect to their private practice entitlements by moving to one of the schemes in sub-clauses 46.5.4 to 46.10.

Pathology Scheme (Clause 46.5.4)

The existing private practice arrangements for pathology have been in place since 2009. Those arrangements, including the 75% bonus, 100% facility fee and 5% contribution to the private practice fund have all been included in the proposed Agreement. The wording of the provision at 46.5.4 mirrors the provisions of the existing arrangement.

Radiology Scheme (Clause 46.5.5)

The “Radiology Scheme” as referenced in Clause 47.4(e) of the current EA has been through a number of iterations since its introduction, including through the use of SEAs and ARINs, with a number of enhancements introduced over time. These have seen both the method of calculation simplified, and the benefits increased. Current arrangements are provided for in the group ARIn/SEA 301 (the Radiology Scheme as it currently stands) and individual ARINs giving effect to that group ARIn/SEA 301.

As there are differences in the practical application of the current arrangements for individuals, every radiologist currently accessing the “Radiology Scheme”, has had the details of their specific entitlements under the existing arrangements and the proposed arrangements provided to them in separate correspondence. This includes options for preserving positions for existing superannuation entitlements.

The consolidated Radiology Scheme:

- specifies the levels of entitlement as specific percentages of base salary, as opposed to set dollar amounts, allowing for ease of indexation;
- retains the existing level of contribution to the private practice fund; and
- introduces a safeguard against variation by requiring the agreement of at least 50% of radiologists before any change can be made to the Radiology Scheme.

The consolidation and incorporation of these arrangements into the Agreement provides both transparency and clarity around the Radiology Scheme.

Specialist Radiation Oncology Scheme (Clause 46.5.6)

The Radiation Oncology Scheme is currently set out in ARIn/SEA 186. The provisions included in ARIn/SEA 186 have been included in the Agreement in essentially the same terms as currently apply. Existing thresholds for payment, methods of calculation of entitlements, provisions for new staff and those returning from existing leave, facility fees and the source of funding remain unchanged.

For staff covered by these arrangements:

- you will still receive a bonus in accordance with your elected Scheme;
- the additional payment of 35% of your Private Practice billings received by CHS remains in place;
- the annual revenue threshold remains in place.

- Radiation Oncologist Staff specialists who elected Scheme C will still be entitled to the difference between the maximum bonus and the bonus received;

The provision also includes a safeguard against variation without the agreement of a radiation oncologist majority (ie. at least 50% of radiation oncologists).

The Regional Service Development Allowance remains in place.

This has been transferred from ARIn/SEA 186 to Clause 46.6 of the proposed Agreement, and will become subject to indexation once the Agreement comes into effect.

Leave (Clause 46.9)

This provision clarifies that the fixed allowance payments under Scheme A, the Pathology Scheme and the Radiology Scheme will be paid during all periods of paid leave, but are not payable in the following circumstances:

- Accrued leave paid out on resignation;
- Accrued leave paid out on retirement;
- Leave paid in-lieu under clause 85;
- Leave purchased under clause 87;
- Leave cash-out under clause 88.

Note that private practice payments that are based on revenue generation are not affected.

Superannuation (Clause 46.9)

This provision specifies the consistent treatment of all private practice schemes – i.e. that they do not count for superannuation purposes.

Any staff subject to a pre-existing commitment in relation to the superannuation treatment of private practice payments will have these arrangements confirmed and set out in individual agreements. Those staff affected have been separately provided with details of those arrangements.

Inadvertent Disadvantage Clause 46.11

The changes to the private practice provisions of the Agreement are significant, bringing together a number of schemes previously set out separately, often enacted on an individual level. The intention of these changes is to codify the arrangements in place as at 31 December 2018 for pathologists, radiation oncologists and radiologists.

As a safeguard, a provision has been included to ensure no inadvertent disadvantage occurs including a mechanism for addressing any such situations which may arise.

Review of Facility Fees Clause 46.14

The facility fees applying to the various private practice schemes will be reviewed during the life of the Agreement (46.14).

Management Allowance (Clause 58)

The Level of Allowance criteria now includes Criterion A. The review procedure has been changed to provide that, following a review, any change will occur at the determination date and if a person leaves the position, the allowance ceases immediately.

Donate Life (Clause 62)

A new clause covering the additional provisions applying to senior medical practitioners working on the Donate Life Program has been included. The clause sets out the context in which those payments will be available, but does not specify payments made to SMPs working in the program as these are subject to external funding agreements. Specific entitlements will be set out in individual ARInS.

Those doctors currently involved in the Donate Life program have been provided with details of their current arrangements.

Training Education and Study Leave (TESL) (Clause 103.13.4.)

The criteria for accessing TESL has been updated to reinforce the need for an employee's mandatory training to be up to date prior to TESL being taken.

Medical Education Expenses (MEE) (Clause 104)

The clause now includes a provision for the review of the administration of MEE and the Memorandum of Understanding with ASMOF governing the Private Practice Fund.

Conference Leave- Junior Medical Officers (Clause 107)

The provision for Conference Leave for JMOs has been redesigned to provide clarity around the extent of the leave available (up to 80 hours per year) where previously there had been no clarity as to the extent of the provision.

- JMO conference leave has been set at 80hrs per year.
- JMOs study leave is also available under existing terms and conditions.

The current provision will remain in place until the new Agreement commences and there will be a one-month transitional period after the new Agreement comes into effect.

Education Allowance – JMOs (New Clause 108)

The existing reimbursement provisions for education expenses will be replaced by a fortnightly allowance-based system. The new allowance will commence when the new Agreement commences.

Transitional provisions have been included to cover any outstanding claims under the existing reimbursement system. All claims for reimbursement under the transitional arrangements must be in relation to activities occurring before the Agreement comes into force and must be submitted within one month of the Agreement commencing.

Dictionary

Definitions for AHRPA, Business Day and Scheme Pay have been included.

The definition of Staff Specialist / Specialist has been updated to better reflect the focus on AHPRA registration.

OTHER CHANGES: CORE

These changes are consistent with changes applied across the ACT PS in the most recent bargaining round.

Employment (Clause 9)

The Government remains committed to providing job security for employees as far as possible. Several amendments in the proposed Agreement are aimed at strengthening this commitment.

Review of Employment Status (Clause 10)

The right in the current Agreement for casuals to request a review of their employment status is being extended to temporary employees as well.

Probation (Clause 13)

The probation process has been amended to clarify that the standard period of probation is six months. More flexibility has been introduced around the requirement for when the reviews need to take place. The proposed Agreement stipulates 2 reviews at appropriate and reasonable points, rather than require the reviews to occur at the 2-month and 4-month mark.

Attraction and Retention Incentives (Annex B)

The Attraction and Retention Incentive (ARIn) framework has been amended to create clearer ARIn types and to simplify the process.

While the review requirements remain for renewable ARIns, Group Block Approvals will now be in place for a fixed period of two years, without a need for review. Group Block approvals will be reviewed prior to a new Group Block ARIn being negotiated to assess whether they should form part of the employment conditions.

Salary Related matters

Classification/Work Value Review (Clause 50)

The clause dealing with an employee's or group of employees' right to request a review of their classification and the work value of their position(s), is being strengthened to ensure that genuine reviews will be undertaken where warranted.

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

Workplace Flexibility (Clause 65-66)

The proposed Agreement significantly simplifies and strengthens the ability for employees to access a range of entitlements in the Agreement to ensure they can balance their work and personal commitments. The proposed clauses provide flexibility well above the minimum requirements of the Fair Work Act, while incorporating the concept of 'Reasonable Business Grounds' into the Agreement to allow any disputes to be raised through the Dispute Avoidance/Settlement Procedures of the Agreement, an avenue currently more restricted in the existing Agreement.

In summary – any employee, may for any reasons request a Flexible Working Arrangement. This may be a part-time or job-sharing arrangement, or varied start and finish times, flexible access to leave and any number of other arrangements.

Any such request can only be refused on reasonable business grounds, and those business grounds are listed in the Agreement, and are more restrictive than those under the Fair Work Act.

These arrangements will be recorded in writing and can be for a period of up to three years, at which they will be reviewed. If the employee so requests, a new arrangement can then be entered into unless there are reasonable business grounds for refusing the request.

Leave

NAIDOC Leave (Annex D)

Leave for the purpose of attending NAIDOC week activities is currently only available to employees of Aboriginal and Torres Strait Islander descent. The leave entitlement is being extended to everyone, other than casual employees.

That means that any employee who wishes to attend NAIDOC week activities will be able to access up to one day's paid leave, subject to operational requirements.

Bonding Leave (Clause 92)

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

Currently, an employee may access two weeks (10 working days) of Bonding leave, followed by one week of Personal Leave for bonding purposes.

The initial two weeks, need to be accessed as a single block and the additional Personal Leave must be taken within the first 14 weeks from the birth of the child.

The new Agreement will allow the employee to access the leave at any stage within the 14 weeks, as one block or broken into smaller blocks. There is also an added provision which allows for the 14-week limit to be extended in exceptional circumstances.

Concurrency Care (Clause 97)

The proposed Agreement introduces a new concept of Concurrency Care, to ensure that Adoption and Permanent Care Leave, as well as Foster and Short-Term Care Leave, can be accessed in cases where an employee is providing concurrency care through a registered Community Organisation.

Public Holiday Pay in Lieu for Shiftworkers Rostered Off on a Public Holiday (Clause 37)

Currently, if a shift worker is rostered off on a Public Holiday, they are entitled to an additional day off. If they cannot access the additional day off, they can instead receive a day's pay. That day is currently calculated based on a standard day, rather than the length of the shift. The Government has agreed to extend this to the length of the shift for non-standard shifts in circumstances where the difference between the shift length and the standard day is not otherwise compensated by, for example, additional Annual Leave, Composite Pay Rate or Accrued Days Off.

Family Violence Leave (Clause 93)

The Family Violence Leave provisions have been clarified to ensure better access for employees. This includes expanding the list of examples of the purpose for which leave can be taken and including clarification that leave may also be needed for travel and recovery after appointments etc.

Communication, Consultation and Union Representation (Clause 124)

Both in and out of the Agreement the Government is putting effort into improving consultation processes to ensure that employees and their representatives have a genuine opportunity to influence decisions prior to them being made. The proposed Agreement includes improved processes around Consultation and Consultative Committees and includes better articulated rights for union delegates.

Workplace Values and Behaviours (Section N)

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

Transparency and fairness are integral to any misconduct and underperformance process.

Key changes include:

- A re-focussed preliminary assessment process, which seeks to move away from an automatic assumption that there is an adversarial relationship between a victim and offender, ensuring assessments are conducted swiftly and at a local level as far as possible.
- The introduction into the Agreement of the Public Sector Standards Commissioner (PSSC), an independent office established in the Public Sector Management Act changes in 2016. The PSSC now oversees investigations through the Professional Standards Unit and is responsible for making findings of misconduct.
- Greater clarity around what happens to misconduct processes if an employee leaves the ACTPS while the process is on foot.
- New rights for employees to have input into a decision of finding of misconduct, prior to a final finding and prior to a decision about sanction, to which an employee has a separate right to reply.
- The right for an employee to appeal a finding as well as a sanction. Currently the appeal right is restricted to the sanction itself.

Internal Reviews and Appeals (Section P)

Amendments to these processes are largely aimed at clarifying current processes and to improve transparency, including providing greater independence for appeals.

Key changes include:

- A new section dealing with Reviews and Appeals of certain recruitment processes. These are currently co-located with other Reviews and Appeals, which was considered confusing as the processes are not consistent with those that apply to misconduct, underperformance and other decisions.
- Appeals have been made determinative. Currently, the Appeal Panel makes a recommendation to the Head of Service (or delegate), who then decides whether or not to accept the recommendations. In the new Agreement, the decision of the Appeal Panel stands, but may still be disputed in the Fair Work Commission using the Dispute Avoidance/Settlement Procedures.

Redeployment and Redundancy (Section S)

The Government remains committed to maintaining the size of the ACTPS and stands by its policy that there will be no involuntary redundancies.

However, there are still circumstances where positions become redundant as a result of restructures, changes to technology and the like. In such situations it is important that affected employees have the support necessary to ensure that they can be redeployed, or that there are other solutions where that is not possible, including voluntary redundancy.

Several changes have been made to the current provisions to ensure that redeployment is the genuine aim in all circumstances, where redundancies are unavoidable and where employees want to remain in the ACTPS.

Key changes include:

- Clearer processes that require consultation and that require that an employee has been declared potentially excess before being able to be declared excess.
- The ability to transfer an employee to a lower classification without their agreement has been removed.
- All potentially excess employees, who haven't been offered a voluntary redundancy, or who have refused a voluntary redundancy, will be placed on a redeployment register and will be considered in isolation for positions.
- Employees may only be declared excess if they have been offered, but have refused voluntary redundancy.
- If an excess employee reaches the end of the retention period, and cannot be transferred to another position at level, the employee can choose to leave the ACTPS with a payment, which equals what they would have received as a voluntary redundancy, less the amount paid in salary during the retention period. This means no-one will be worse off by choosing to seek redeployment by entering a retention period rather than accepting a voluntary redundancy up front.
- The exclusion period, during which an employee who has taken a voluntary redundancy is prevented from re-entering the ACTPS has been reduced from two years, to the time that is equivalent to the redundancy payment they received.