

Without Prejudice

STATEMENT OF ACT GOVERNMENT OBJECTIVES AND INTERESTS IN COMMON TERMS AND CONDITIONS ENTERPRISE NEGOTIATIONS – 2011

INTRODUCTION:

- In 2009/10 the Government Negotiating Team provided a detailed Statement of Objectives to enterprise bargaining representatives participating in the negotiation of new common terms and conditions as they applied to ‘agency-based’ enterprise agreements.
- The broad objectives outlined in that 2009/10 Statement remain relevant in 2011, and noting that almost all enterprise agreements are to be negotiated in 2011, those objectives are pertinent to all agreements including those applying to specific occupational groups.
- The broad objectives are summarised below at Appendix A.
- In past rounds of enterprise negotiation all parties have endeavoured to establish agreements in the interests of the ACT community and ACT Public Sector workforce.
- To this end, the 2010 Common Terms and Conditions saw the confirmation of Government commitments to:
 - grandparental leave - up to 52 weeks unpaid;
 - maternity leave - increased from 14 to 18 weeks paid;
 - primary care giver leave - increased from 14 to 18 weeks paid;
 - volunteering leave - 3 days paid for voluntary community service and 4 days paid for voluntary emergency leave;
 - bonding leave - increased from 5 to 10 days paid; and
 - enhanced scope to access dispute resolution provisions.
- The 2010 Common Terms and Conditions also included changes to:
 - bereavement leave - increased from 3 to 5 days paid per occasion;
 - the adjustment of allowances by the percentage increases in pay;
 - the removal of youth wage classifications;
 - increases in vacation childcare program payments;
 - the use of Time Off in Lieu for absences below 1 day; and
 - the inclusion of Family and Community Day in the public holidays clause.

THE ACTPS EMPLOYMENT FRAMEWORK:

- Most importantly, the 2009/10 negotiations saw the Government advance a reform agenda for enterprise negotiations based upon the need to reconcile the various elements of the legislative employment framework and invited unions to participate not simply in the creation of new enterprise agreements but the reform of the framework more generally.

Without Prejudice

- This work is necessary as successive rounds of agreement-making have seen matters originally covered exclusively in the Public Sector Management (PSM) Act and PSM Standards modified by Agreements. In several instances Agreements have expressly overridden the Act or Standards in relation to particular matters.
- Over time, the interaction between the components has become unnecessarily complicated, making the employment framework difficult to interpret for practitioners and individual staff.
- Preliminary amendments to the PSM Act in support of this effort to harmonise the employment framework have been passed by the Legislative Assembly and the contents of the amendments, and associated changes to the PSM Standards, were the subject of consultation with unions and other bargaining representatives during the 2009/10 negotiations and subsequently through Joint Council.
- The importance of the employment framework to the long term effectiveness of the ACT Public Service is underlined in the recommendations of Dr Allan Hawke in his Review of ACT Public Sector Structures and Capacity.
- While the Government will progressively consider and respond to the specific recommendations of Dr Hawke, he has commented on the importance of an employment framework that supports 'One Service' and facilitates flexible employment and engagement practices. As such, further reforms to better align elements of the employment framework will remain a focus for the 2011 negotiations, as is the drafting of an accessible and easily understood document for the ACTPS workforce. The Government's specific objectives for the 2011 common terms and conditions are summarised at Appendix B.
- The proposed reforms are not intended to remove entitlements – indeed a number of entitlements captured in legislation were moved into agreement in 2010 – nor is it intended to threaten employee rights by properly providing for such rights within legislation and regulation. Rather, as noted by Dr Hawke in his Review, employees see the current employment framework as a key inhibitor to achieving a sustainable high performance culture, and its reform can only be to the benefit of staff, management and the ACT community.
- The reluctance of some bargainers towards the proposed reforms in the last Round and to question the need for fundamental framework change is understandable, especially in light of the complexities generated by the commencement of the *Fair Work Act 2009*. It is hoped that in the 2011 Round there will be a most positive response to the Government's efforts, particularly in the context of the work and recommendations of Dr Allan Hawke.

AGREEMENT STRUCTURE AND DURATION:

- Dr Allan Hawke in his review of the ACT Public Service recommended amongst other things that the Government consider adopting a 'single classification enterprise agreement' for the Service.

Without Prejudice

- However, the proposal for a single clerical and general agreement was categorically rejected by unions early in the 2009/10 negotiations and in light of the limited time up to the 30 June 2011 expiry date, the Government has determined to seek to negotiate separate clerical and general agreements for each new Directorate in the 2011 round of negotiations and to continue with separate occupational-specific agreements, including a separate agreement for health professionals in ACT Health.
- The Government will nevertheless seek to include commitments in the 2011 agreements to work towards and adopt a single agreement in the next round of negotiations.
- Under the proposed arrangements, the structure of agreements would be as follows:
- Nine separate agreements for each Directorate:
 - Chief Minister's (incorporating the Cultural Facilities Corporation agreement)
 - Treasury
 - Economic Development
 - Justice
 - Health
 - Education
 - TAMS
 - Community Services
 - Sustainable Development
- Eight separate occupation-specific agreements as already in place plus a new one for health professional staff in ACT Health:
 - DET Teaching Staff
 - CIT Teachers
 - ACT Ambulance Service
 - ACT Fire Brigade
 - Medical Practitioners
 - Nursing and Midwifery
 - ACTION
 - Health Professionals
- Five separate agreements for some of the other agency/employment groups:
 - CIT Clerical
 - Auditor-General's Office
 - Legislative Assembly Secretariat
 - Legislative Assembly Members' Staff
 - Legal Aid Office
- Detailed arrangements will remain subject to Government consideration of the specific structural changes proposed by Dr Hawke. However, this should not preclude progress in negotiating the Common Terms and Conditions.
- The Government also proposes to seek a 2 year duration for agreements with a common expiry date of 30 June 2013. This will allow for the alignment of the next round of

Without Prejudice

enterprise negotiations with the outcomes of the comprehensive review and modernisation of the PSM Act , as recommended by Dr Hawke, and the possible introduction of changes to classification arrangements arising from the current Classification Review Exercise.

NEGOTIATION PROCESSES:

- In 2009/10 bargainers agreed to a set of principles for the conduct of the Round. Suggested principles for the 2011 Round based upon these are provided at [Appendix C](#).
- In 2011 negotiations processes will again need to comply with the requirements of the *Fair Work Act 2009* and this places particular obligations on all bargaining representatives, and requires the proper recording and dissemination of information arising from negotiations.
- Given the importance of negotiated outcomes in the 2011 Round, Mr Andrew Cappie-Wood, Chief Executive of the Chief Minister’s Department, will lead the Government Negotiating Team for negotiations on the Common Terms and Conditions component of the proposed enterprise agreements. A single regular face-to-face forum of the Government Negotiating Team and all union and non-union bargaining representatives will be scheduled to meet from early March 2011, to be held in the Nara Centre, Civic.
- It is intended that these meetings will confine themselves to the consideration of issues and claims as they relate to individual sections of the common terms and conditions.
- It is intended that this work be supported by the establishment of a Drafting Group to give effect to agreed outcomes.
- It is intended that occupation-specific agreements and directorate-specific schedule negotiations should begin as soon as ‘in-principle’ agreement on key issues in common terms and conditions is reached. This will mean simultaneous negotiation on directorate schedules and occupation-specific agreements but should allow for speedy resolution within the 30 June 2011 timeframe.
- Both scheduled face-to-face meetings and the drafting process will be supported in turn by the Bargaining Website utilised in 2009/10 for the submission of claims and responses, the tracking of the negotiation process and the posting of records and documents.

CONCLUDING REMARKS:

- The Government Negotiating Team will elaborate or clarify any issues addressed in this paper, and will give genuine consideration to all claims and proposals that are made by unions and other bargaining representatives during the course of negotiations.

* * * * *

NEGOTIATION OBJECTIVES

To create ‘One Service’	Negotiating industrial arrangements that are in the interest of ‘one service’, employee mobility and administrative efficiency.
To retain our people	Treating job security as a priority, developing measures that assist employees to remain with the ACTPS and recognising the changing demographic of the Service and subsequent shift in needs and interests.
To attract future employees	Providing the best possible package of employment conditions to make the ACTPS more attractive for prospective employees.
To develop our people	Adding to the Government's already increased investment in training and development.
To support a sustainable workplace	Developing ACTPS employment arrangements that assist in reducing the carbon footprint of the ACTPS.
To support an efficient workplace	Improving arrangements for human resource management including removal of impediments to efficient and cost effective administration.
Alignment with other instruments	Harmonising the Employment Framework by removing duplications, rationalising the role of each instrument, and addressing anomalies.
Achieving simplicity	Developing a coherent set of employment conditions which are easily understood by practitioners and employees.
Ensuring fairness	Developing an agreement that ensures staff obligations, responsibilities and entitlements are clearly expressed and equitably enforced.
Recognition of our people	Developing rewards that properly recognise high quality work and commitment.
A better work life balance	Further developing the suite of options which allow for effective work/life balance in the ACTPS.
A healthy working environment	Developing arrangements to ensure a fit, healthy and safe workforce.

GOVERNMENT'S SPECIFIC OBJECTIVES FOR THE 2011 COMMON TERMS AND CONDITIONS AND THE ALIGNMENT OF THE ACTPS EMPLOYMENT FRAMEWORK

The Government's main focus of the 2011 round is to continue progressing harmonisation of the legislative framework with an overarching intention that the enterprise agreements should be entitlements-based and the PSM Act and Standards should contain general employment provisions. The main proposals are to:

- retain an underlying entitlement in respect of four key behavioural elements in the enterprise agreements but state that the rights, obligations and procedures are as provided for in the PSM Standards (or other instruments as appropriate) - the four key elements are:
 - misconduct;
 - underperformance;
 - internal review;
 - appeals; and
- move (or delete) the following (less contentious matters) from agreements to PSM Standards or other instruments as appropriate:
 - termination of agreement (delete from agreements);
 - types of employment;
 - probation;
 - joint selection committees;
 - averaging of hours (duplication of FW Act);
 - outsourcing and contractors;
 - filling a nominal vacancy over 12 months;
 - notice of termination (ie resignation);
 - overpayment and underpayment processes;
 - medically unfit staff - including referral processes for medical examinations;
 - privatisation;
 - process aspects of redeployment and redundancy (but retain entitlements in agreements).

Other proposed amendments to the Common Terms and Conditions include clarifying identified ambiguities and improving overall presentation of the document including:

- rewrite the Scope of Agreement (Section A) to simplify, clarify the broad objectives of the agreement, incorporate some of the existing flexible working arrangements content and remove some of the existing prescriptive detail;
- rewrite and simplify the flextime clauses; and
- clarify definitions of shiftworker, 'accrued days off' and 'rostered days off'.

While not strictly linked to enterprise agreements, during the life of the 2011 agreements it is proposed to overhaul long service leave to be based on working hours and enable improved accessibility to entitlements. Initially the existing long service leave provisions would be moved from the PSM Act into Standards with a view to moving the entitlements into agreements in a subsequent round.

BARGAINING PRINCIPLES AND PROCESSES

These bargaining principles and processes will apply to all bargaining representatives involved in the negotiation of the proposed Enterprise Agreements.

Bargaining Principles

1. Bargaining representatives will negotiate in good faith in accordance with the requirements of the *Fair Work Act 2009*.
2. In particular, bargaining representatives will apply these good faith bargaining requirements by:
 - attending and participating in meetings at reasonable times;
 - disclosing relevant information (other than confidential or commercially sensitive information) in a timely manner;
 - responding to proposals made by other bargaining representatives in a timely manner;
 - giving genuine consideration to proposals by other bargaining representatives and giving reasons for the bargaining representatives responses to those proposals;
 - refraining from capricious or unfair conduct that undermines freedom of association or collective bargaining; and
 - recognising and bargaining with the other bargaining representatives.
3. Good faith bargaining does not require bargaining representative to make concessions during negotiations; nor is a particular bargaining representative required to agree on a term or terms proposed for inclusion in the proposed enterprise agreement.
4. Bargaining representatives will treat each other representative with respect, reflecting the fact that each bargaining representative has the right to represent their best interests.
5. Bargaining representatives will put forward any proposals or views in writing that they wish to be considered by the other bargaining representatives during the negotiations.
6. All bargaining representatives will be provided with the same access to information on all aspects of the negotiations, including all proposals and responses, meetings held, the draft agreement and any other information that is provided by a bargaining representative.
7. All bargaining representatives must be given an adequate opportunity to participate at meetings and to put their views and an opportunity to consider and comment on the proposals of other bargaining representatives.

Without Prejudice

8. Bargaining representatives will endeavour to develop and agree on Common Terms and Conditions for incorporation in proposed enterprise agreements that:
 - are primarily entitlements based;
 - assist in the harmonisation of the employment framework; and
 - avoid unnecessary detail.
9. The bargaining representatives will endeavour to agree on directorate-specific schedules to the proposed enterprise agreements that concern only those matters that are necessary for the business and services of that agency and for their employees and do not unnecessarily contradict the Common Terms and Conditions.
10. Recognising Common Terms and Conditions underpin all proposed enterprise agreements, bargaining representatives will endeavour to agree to adopt the common terms and conditions as far as reasonably possible and practical in respect of each occupational-specific agreement subject to business requirements.
11. Bargaining representatives may consult with those whom they represent during the course of the negotiations and may keep them informed about the negotiations.
12. Chief Minister's Department (CMD) will ensure that all employees to be covered by the new enterprise agreements are kept informed of the progress of negotiations and will ensure that opportunities are given to employees to provide any views they may have.
13. Bargaining representatives will endeavour to reach in principle agreement on the terms of the proposed Common Terms and Conditions component of enterprise agreements by no later than mid April 2011 and final agreement no later than 30 June 2011. It is noted that each bargaining representative may need to seek formal endorsement of the proposed enterprise agreement from those they represent.

Bargaining Processes

In order to support these bargaining principles, the following processes will be established and will be followed by all bargaining representatives.

14. The names and contact details of each bargaining representative and who they represent will be provided to all other bargaining representatives.
15. To assist in meeting the deadlines, employee bargaining representatives will put forward any proposals they may have for the proposed enterprise agreement as soon as practicable.
16. Processes in relation to the Common Terms and Conditions component will be established and managed by CMD for receiving and recording proposals, for informing all other representative of such proposals, and providing access to the responses to these proposals to all other bargaining representatives.
17. All meetings of the Government Negotiating Team (GNT) and a bargaining representative will be recorded by a summary of discussions and outcomes. Records

Without Prejudice

of meetings with bargaining representatives, agendas and papers will be made available to all bargaining representatives. Agencies may be represented on the GNT where appropriate.

18. For purposes of avoiding confusion and to aid drafting in relation to Common Terms and Conditions, there will be a document that will be developed and managed by CMD. The document will be electronic, with physical versions printed as required. A copy of the electronic document will be available to all bargaining representatives.
19. Arrangements will be established and managed by CMD that will enable regular information/advice on Common Terms and Conditions to be provided to employees to be covered by the proposed enterprise agreements about progress of the negotiations.