

IN THE FAIR WORK COMMISSION

Matter No.: AM2023/21

Matter: Modern Awards Review 2023 – Work and Care

Submissions of the CPSU (PSU-Group)

Background

1. On 15 September 2023, Fair Work Commission (FWC) President Hatcher announced the commencement of a review of modern awards (the Awards review) to be conducted on the FWC's own motion by a 5 Member Full Bench.
2. In correspondence to FWC President Hatcher, the Minister for Employment and Workplace Relations, the Hon Tony Burke, MP, suggested a key priority of the review is considering the impact of workplace relations settings on work and care, having regard to the relevant findings and recommendations in the Senate Select Committee on Work and Care Final Report.¹
3. On 29 January 2024, the FWC published the Work and Care Discussion Paper (the discussion paper) to begin the research and consultation process (work and care stream) of the Awards review.
4. At paragraph [9], the FWC invited interested parties to provide submissions in response to the discussion questions in the paper and other relevant submissions addressing the issue of work and care by 12 March 2024. The CPSU-PSU Group makes the following submissions in accordance with the President's Statement.
5. The CPSU-PSU Group (CPSU) is the main union for employees in the Commonwealth, ACT and NT public sectors and covers employees in ABC, CSIRO, Australia Post, Telstra, telecommunications, contract call centres, employment services, commercial broadcasting, the aviation industry and science and research. Women represent 58 per

¹ FWC Work and Care Discussion Paper paragraph [2].

cent of the union's membership and closer to 60 per cent of members from the Australian Public Service (APS).

6. The CPSU has a primary interest in the Australian Public Service Enterprise Award 2015 (APS Award) and the Australian Government Industry Award 2016 (AGIA) and makes the following submission in the context of these awards.
7. The CPSU also has an interest in the variation of the several other modern awards, listed below. While this submission does not specifically address each of these awards, we consider that the issues related to work and care have broad applicability.
 - *Airservices Australia Enterprise Award 2016;*
 - *Australian Broadcasting Corporation Enterprise Award 2016;*
 - *Australian Bureau of Statistics (Interviewers) Enterprise Award 2016;*
 - *Australian Capital Territory Public Sector Enterprise Award 2016;*
 - *Australian Federal Police Enterprise Award 2016;*
 - *Australian Nuclear Science and Technology Organisation (ANSTO) Enterprise Award 2016;*
 - *Australia Post Enterprise Award 2015;*
 - *Broadcasting, Entertainment, Entertainment and Cinema Award 2016;*
 - *CSIRO Enterprise Award 2016;*
 - *Northern Territory Public Sector Enterprise Award 2016;*
 - *Parliamentary Departments Staff Enterprise Award 2016;*
 - *Telecommunications Services Award 2016; and*
 - *Telstra Award 2015*
8. The CPSU has reviewed and supports the ACTU's submission and recommendations.

Review to encompass all modern awards

9. The discussion paper recognises caring is a common responsibility of Australian workers and comes in range of forms including the provisions of unpaid care to people with disability, older Australians and parents and guardians of children and young people.

There are also individuals who provide and have regular care responsibilities for extended family, kinship relations and friends, however these are not readily recognised or supported by current workplace arrangements. Work and care responsibilities cross all industries, although these may be more pronounced in particular sectors due to gender norms and inequalities amongst other reasons.

10. The paper also highlights the distinct challenges and impacts associated with caring, including for employees with caring responsibilities who are women, First Nations Australians, culturally diverse and employees with disability. There is a clear and obvious need to address what are clearly structural barriers that entrench gender norms, marginalize individual workers and mean employers are unable to attract, retain and develop the diverse talent needed for their organisations to thrive and, in the case of public sector bodies, best reflect and serve a diverse Australian community.
11. The Senate Select Committee on Work and Care Final Report recommended the 'Australian Government take a comprehensive and integrated approach to address the challenges of work and care in Australia',² including to seek to establish a new 'work and care social contract' appropriate for the 21st century. It noted that that '[s]imply providing a living income in exchange for work is no longer fit for a world where so many workers are required to combine their jobs with care for others'.³
12. Modern awards, together with the National Employment Standards (NES) and minimum wage order, provide an important minimum safety net of terms and conditions to employees in the national employment system.
13. Given the range of permitted terms and conditions in modern awards,⁴ there is considerable scope for variations to modern awards that may better allow employees to balance their work and caring responsibilities – provided the FWC is satisfied it is necessary to do so to achieve the modern awards objective under s134 of the FW Act.

² Discussion paper [13].

³ Discussion paper [14].

⁴ See FW Act, ss 139, 140, 141, 142, 63, 93, 107, 55 and also ss 143, 144, 145A, 146, 147, 149C and 149E (from 1 July 2024).

14. Modern awards are integral to setting the safety net for workers in the national employment system. Variations to modern awards that lift this safety net have positive flow on effects to employees covered by enterprise agreements, where the standard to meet the better off overall test is lifted.
15. The implications of workplace relations settings on work and care impact employees across all industries and sectors. There are in total 121 modern awards and an additional number of enterprise modern awards applying to businesses or public sector bodies. The review and discussion paper cites analysis of work and care provisions in 25 modern awards as provided by FWC staff.
16. **Recommendation:** Consultation should extend to interested parties beyond the specified 25 modern awards – this is vital to properly informing the FWC’s consideration on the issues identified in the discussion paper.

Commonwealth public sector bargaining and provisions relevant to work and care

17. On 28 March 2023, the *Public Sector Workplace Relations Policy 2023* (Policy) was released, setting down expectations for bargaining in the Commonwealth public sector (APS and non-APS). The policy seeks to move away from a decentralised approach to bargaining in the sector which has been the practice over recent decades. In adopting a more centralised, including a service-wide approach in APS, the policy seeks to address existing pay and conditions fragmentation in the sector.
18. The Policy identifies principles and objectives for APS bargaining including being a model employer; mobility, attraction and retention; fairness and equality; sustainability and a unified Public Service.⁵
19. From 30 March 2023 to 30 November 2023, the CPSU engaged in bargaining across the Australian Public Service as a whole (service-wide bargaining). This has been a comprehensive process, following which, a Statement of Common Conditions was produced by the Australian Public Service Commission (APSC) (following extensive negotiation with unions and bargaining representatives) outlining the outcomes of

⁵ Australian Government, *Public Sector Workplace Relations Policy 2023*, paragraphs [7]-[9].

negotiations in relation to over 90 matters raised in service-wide bargaining, with over 50 matters achieving an agreed outcome. The Statement of Common Conditions was finalised on 30 November 2023⁶.

20. The conditions published in the Statement of Common Conditions have been incorporated into all APS agency enterprise agreements, and non-APS agencies are to have regard to the Statement of Common Conditions when negotiating their agreements.
21. Several of these conditions are relevant to workplace relations settings on work and care and questions raised in the discussion paper, including:
 - a. Part time work (no unilateral conversion)
 - b. Flexible working arrangements (including working from home)
 - c. Personal & carer's leave
 - d. Bereavement leave
 - e. First nations ceremonial leave
 - f. Lactation breaks
 - g. Cultural leave
 - h. Definition of family to include traditional kinship
22. The CPSU's submissions will address the discussion questions concerning the matters listed in paragraph [19] with model terms included in **Attachments A - D**. These model terms which represent negotiated outcomes of service-wide bargaining have direct application in this review to potential variations to the APS Enterprise Award and AGIA and other public sector enterprise awards. These model terms may also inform the FWC's considerations in respect to other modern awards. In addition the above list of matters, our submissions will address on-call requirements, overtime, and excess travel time.

⁶ APSC Statement of Common Conditions at <https://www.apsc.gov.au/news-and-events/latest-news/release-statement-common-conditions>

Response to Discussion Paper Questions

Question 1 and 6: Part time and minimum payment periods

23. Part-time employment is an important type of employment that enables employees to balance their work and family commitments. Women are more than twice as likely as men to work part-time hours in Australian workplaces.⁷
24. Over the past 20 years in the APS, the number of women working part-time has steadily increased, while for men it has remained largely unchanged.⁸ In developing the *APS Gender Equality Strategy 2021-26*, the APSC found men indicated a range of reasons they were less likely to work part-time, including judgement from others about their commitment to their work and career, as well as the reduced salary as a result of part-time work.
25. The discussion paper identifies rationale for minimum payment periods including for part time and casual employees from case law and relevant FWC decisions:
- 'Rationale for minimum periods is one of protecting employees from unfair prejudice or exploitation'.⁹
 - 'Minimum engagement periods have developed in ad hoc fashion ...However, their fundamental rationale has essentially been to ensure that employees receive a sufficient amount of work, and income, for each attendance at the workplace to justify the expense and inconvenience associated with the attendance'.¹⁰
26. Modern awards should set out minimum payment periods for part-time employees for the very reasons provided above. For example, the APS Enterprise Award at clause 6.3(f) requires a minimum engagement of 3 hours, providing an important protection for these workers.

⁷ ABS, Understanding full-time and part-time work (February 2021).

⁸ [Australian Public Service Gender Equality Strategy 2021-26](#).

⁹ *Re Victorian Employers' Chamber of Commerce and Industry* [2012] FWAFB 6913 [12].

¹⁰ *4 yearly review of modern awards – Casual employment and part-time employment* [2017] FWCFB 3541 [399].

27. The APS Statement of Common Conditions sets out a minimum engagement of 3 hours for casual employees, which goes some way to addressing minimum payment periods across the APS. However, only some APS enterprise agreements contain a minimum engagement for part-time employees. The lack of minimum engagement provisions for part-time employees has been a concern raised by the FWC before approving several APS agreements.

A casual employee shall be engaged for a minimum of 3 hours per engagement or shall be paid for a minimum of 3 hours at the appropriate casual rate.

28. Employees should have certainty and security in their hours of work. The Statement of Common Conditions sets out two clauses guaranteeing that an employee cannot be unilaterally converted between full time and part time hours.

Employees engaged on a full-time basis will not be compelled to convert to part-time employment.

Employees engaged on a part-time basis will not be compelled to convert to full-time employment.

The CPSU supports the inclusion of such provisions in modern awards.

29. **Recommendations:** To better support and protect employees to balance their work and care responsibilities, modern awards including modern enterprise awards must ensure:

- Fairness and certainty in relation to minimum engagement.
- Part time workers are paid overtime for working outside their agreed hours.
- Part time workers (and workers in insecure work) have a right to say no to extra hours with the protection from negative consequences consistent with the recommendation 21 of the Final Report of the Senate Select Committees on Work and Care.
- There should be no requirement for part-time employee to convert to full-time, or conversely for full-time employee to convert to part-time. The CPSU notes such protections have recently been guaranteed in service-wide bargaining and adopted in the Statement of Common Conditions for APS agencies and to which non-APS agencies should also have regard.

- Part time workers, or employees with regular hours agreements to accommodate caring responsibilities must (roster practices). This is considered below in relation to discussion question 8.

Question 2: Flexibility

30. The discussion paper engages in a broad discussion about flexible working arrangements, but this question focuses on changes to individual flexibility arrangement (IFA) provisions in modern awards.
31. The CPSU supports the ACTU's submission in respect of IFAs and proposes to deal in this section with flexible working arrangements more broadly.

Flexible working arrangements

32. At paragraph [106] of the Work and Care Discussion Paper, the FWC refers to research that indicates women who have access to flexible hours before having children are more likely to remain employed after having children. This paragraph also makes reference to *Working Future: The Australian Government's White Paper on Jobs and Opportunities*, which suggests people are more likely to leave the workforce altogether when caring for older people or people with a disability if they can't access flexibility.
33. The discussion paper also identifies that a lack of flexibility in senior, high-status and well-paid roles creates barriers in the workplace that can exclude employees with caring responsibilities and particularly women with caring responsibilities, from these roles. As a result, women opt for roles that may be below their skill level with poorer pay, and do not fulfill their potential or their contribution to the workplace.
34. Public sector employers in the CPSU's main areas of coverage have recognised that work flexibility is a core to the employee value proposition and benefits the employer through greater employee retention, improved productivity and performance.
35. In service-wide bargaining, the CPSU negotiated the inclusion of a broad flexible work clause that applies to all employees, not just those within the confines of s65 of the Act

and the NES. Flexible working arrangements achieved in service-wide bargaining include:

- Right to request for all workers – this removes stigma associated with its use when mostly limited to employees with caring responsibilities and helps to break down the gender norm of women carrying the burden of unpaid caring work
- A bias towards ‘yes’ or employers approving requests
- No caps on the number of days employees can work from home
- A requirement for the employer to discuss possible alternatives with the employee before rejecting a request
- Allowing workers to revert back to previous hours at the end of the arrangement or prior to that date by agreement, or continue the arrangement following review
- Connection to country an express consideration in approval of requests for flexible work

A copy of this clause is provided at **Attachment A**.

36. **Recommendations:** To better support and protect employees to balance their work and care responsibilities, modern awards including modern enterprise awards must ensure:

- Employers have a positive duty to reasonably accommodate flexible working arrangements unless it results in unjustifiable hardship rather than reasonable business grounds. This brings the provisions into line with anti-discrimination law and would enable more workers to access flexible work. This is consistent with recommendation 3 of the Interim Report of the Senate Select Committee on Work and Care.
- Awards should be varied to ensure the right to request is available for all workers and remove the requirement for an employee to complete 12 months of service before they may make a request.
- Expand the definition of carer to include all employees with caring responsibilities, not just those within the meaning of the Carer Recognition Act.

37. A variation to modern awards that provides for all employees to request access to flexible working arrangements will help make flexible work a normal and accepted part of working life.

Question 4: Working from home

38. The discussion paper identifies that technological changes have enabled people in many occupations to work from home or remotely. The COVID-19 pandemic accelerated the shift to remote working with 40 per cent of workers reporting they regularly worked from home in 2022, up 20-30 per cent of workers prior to the pandemic.¹¹
39. In 2020, the CPSU collaborated with researchers Professor Linda Colley, Central Queensland University, and Associate Professor Sue Williamson, UNSW Canberra, to undertake a research project, *Working during the pandemic*¹², to gather data about the experience of public sector employees working during COVID-19. Drawing on 6,377 responses from employees in the federal public sector, Northern Territory public sector, and ACT Government, the CPSU was able to use the results of that research to advocate for agencies to adopt new working from home policies and ensure that working from home continues to be available to employees who want it.
40. This research was revisited in 2021 to ask employees what had changed and what issues were emerging. With two years of evidence collected, the report *Working during the pandemic: the future of work is hybrid*¹³ was published.
41. The key findings of this research include:
- Employees overwhelmingly want ongoing access to working from home, and they are largely supported by their supervisors.
 - Most employees want to access a mix of home and office-based work.
 - The ability to work from home continues to offer benefits to employees and employers. Employees and their supervisors agree that productivity is the same or higher when employees work from home.
 - Employees' individual circumstances differ. The greatest benefits from flexibility arise when employees have autonomy over whether and how much to work from home.

¹¹ Discussion paper [134]

¹² CPSU: [Working during the pandemic](#)

¹³ CPSU: [Working during the pandemic: the future of work is hybrid](#)

42. The report outlined that flexible work allows employees to better combine work and home life. As caring responsibilities are still disproportionately undertaken by women, women are better placed to forge meaningful careers in organisations that offer flexible work. The ability to work from home, and its normalization, may also facilitate men taking on more caring responsibilities, thereby supporting gender equality at home and in the workplace.

43. The report made 9 recommendations, including:

- Agencies should work with employees and unions to include improved working from home provisions in enterprise agreements as they are negotiated. This will also make the offer of flexibility more visible to prospective employees.
- Agencies should remove restrictions on the ability of supervisors to approve working from home requests (no caps).
- Employees' individual circumstances should guide the mix of office and home-based work, and there should be a presumption that working from home requests will be approved.

44. In service-wide bargaining, the flexible working arrangements clause negotiated by the CPSU to be included in all APS enterprise agreements includes a section on working from home that encapsulates the above recommendations (see **Attachment A**).

45. Working from home provisions are not a feature of modern awards. However, there is a clear necessity for workplace arrangements to recognize worker needs, including caring circumstances, and there is a clear and obvious need for employers to provide remote working opportunities to attract and retain diverse talent and community expectations.

46. **Recommendations:** To better support and protect employees to balance their work and care responsibilities, modern awards including modern enterprise awards must ensure:

- Any award variation in relation to the right to request working from home should be consistent with the considerations listed above for rights relating to flexible working arrangements, including a right to request working from home arrangements for all

workers with access to the FWC for dispute resolution, right to request available to all workers with no qualifying service limitations to apply.

Question 5: Right to disconnect

47. The CPSU notes that the question of variations to modern awards in relation to a right to disconnect no longer forms part of this review and will be the focus of a separate FWC review.

Question 8: Notice of rosters

48. The discussion paper references suggestions from the Work and Care Interim Report that ‘rostering practices should give employees consistent and predictable working schedules, genuine consultation on when and how they work, and the ability to turn down extra hours without reprimand’.¹⁴

49. The Work and Care Final Report recognised the capacity for changes to rosters, particularly at short notice, to ‘severely and adversely impact working carers and their right to fair working conditions’.¹⁵ It recommended strengthening ‘roster justice’ by ensuring, ‘employers genuinely consider the views of employees when considering changes to rosters, especially those changes made at short notice, and other work arrangements’.

50. The discussion paper notes observations from the Work and Care Final Report and Employment White Paper, that notice periods for rosters can play a critical role in work and care planning.¹⁶

51. The CPSU supports greater certainty and stability in rostering, providing job security and work life balance, and accommodating caring responsibilities.

¹⁴ Discussion paper [153].

¹⁵ Ibid.

¹⁶ Discussion paper [177].

52. The CPSU agrees with the suggestions of the Committee. The nature and work carried out by rostered workers in the CPSU's areas of coverage vary greatly, however it is a common theme that employees with caring responsibilities working in rostered environments seek the ability for their caring responsibilities to be recognised, considered, and accommodated. While there are provisions in some enterprise agreements which may provide the minimum roster justice principles suggested by the Committee – it is our view that modern awards include basic employer obligations to consider employee caring circumstances and needs when developing and changing rosters.
53. The APS, NTPS, ACTPS and AGIA Awards largely provide rostering entitlements in relation to shift workers. Apart from minimum consultation requirements where the employer proposes to change an employee's regular roster, these provisions leave a gap in minimum entitlements for rostered workers who fall outside the definition of a shift worker. Enterprise agreements covering public sector employees typically include such rostering principles for rostered workers who are not only shift workers. Without minimums set out in the award, there is no baseline for enterprise agreements in setting rostering provisions.
54. The discussion paper noted at paragraphs [179] and [180] that some modern awards impose restrictions on employers from rostering employees to work outside their nominated availability or in excess of their guaranteed hours.
55. The CPSU submits variations to modern awards that enable employees to have control over additional hours they take on, or the ability to reject additional hours, outside of their nominated availability or guaranteed hours would benefit employees balancing work and care.
56. **Recommendations:** To better support and protect employees to balance their work and care responsibilities, modern awards including modern enterprise awards must ensure:
- All workers have access to regular, predictable patterns and hours of work, for example by requiring employers to implement rostering practices that are predictable, stable and focused on fixed shift scheduling.

- That roster changes are by mutual agreement only or in the alternate, 28 days' notice of roster changes for all workers, including casuals (except in exceptional circumstances), and require employers to genuinely consider employee views about the impact of proposed roster changes, and take the views of the employee, including employees with caring responsibilities, into consideration when changing rosters and other work arrangements.
- Require employers to give advance notice of 28 days of rosters (or other periods relevant to particular industries as nominated by relevant unions (except in exceptional circumstances), and genuinely consider employee views about the impact of proposed roster changes and to accommodate the needs of the employee.
- Ensure employees have a 'right to say no' to extra hours with protection from negative consequences.
- Right to Care Roster Clause which outlines a worker's right to a roster that accommodates caring responsibilities (positive obligation).
- Workers should be able to bring rostering disputes to the FWC for conciliation and arbitration, and have the status quo apply until the matter is resolved.

Question 10: Overtime, TOIL and make up time

57. Overtime provisions are a fixture of the Australian workplace relations system and form part of the modern awards objective.¹⁷ These provisions are designed to compensate employees who perform work outside of their ordinary or rostered hours.

58. For employees with caring responsibilities, overtime may be viewed either as the opportunity for additional income or as an intrusion conflicting with the individual's caring responsibilities.

59. Payment of overtime depends on interactions between ordinary or guaranteed hours, span of hours, days worked, type of employment and additional provisions.

60. The APS Enterprise Award sets a 'salary barrier' for the purposes of overtime payment at the minimum hourly rate payable to an employee at the Executive Level 1

¹⁷ Discussion paper [183], FW Act s134(1)(da).

classification. This leaves senior employees across the APS without guaranteed access to overtime payment. APS enterprise agreements provide for overtime for Executive level employees to varying degrees – arrangements that are equivalent to those applying to APS 1-6 classification employees, to arrangements that only allow for overtime in ‘exceptional circumstances’, to no provisions at all or outright exclusion from receiving overtime payment.

61. The Government policy parameters set for service-wide bargaining placed limits on agencies seeking to improve their Executive level overtime provisions. A variation to modern awards to recognize that senior employees should be entitled to overtime would set a new minimum across the APS.
62. **Recommendations:** To better support and protect employees to balance their work and care responsibilities, modern awards including modern enterprise awards must ensure:
- All employees covered by a modern award required to work overtime shall have access to overtime payments regardless of their classification or salary level.

Question 11: On-call and recall to duty

63. The discussion paper cites ABS data that around 1.9m Australian workers are usually required to be on call or standby in their main job.¹⁸
64. Some modern awards provide on-call provisions, i.e., the employee is paid for being ready to work during times outside their ordinary hours or usual shift, which is often at short notice.
65. For employees with caring responsibilities, ‘availability creep’, i.e., an expectation for workers to remain on call and available to secure sufficient paid work, is found to have a profound impact on employee’s ability to effectively manage work and care.¹⁹
66. The CPSU notes on-call and/or restriction duty allowances are payable under various awards relevant to the union’s membership. Under the APS Enterprise Award, such

¹⁸ Discussion Paper [203].

¹⁹ Discussion paper [205], Work and Care Report, 119

allowances are not generally available to employees above the salary barrier despite the requirement to be on stand-by or on call and potentially interrupt availability to provide care. The CPSU considers that any employee covered by the award who is required to be on standby for the purposes of work should be entitled to an on-call allowance, regardless of their classification or salary level.

67. There are important intersections between this issue and employees' right to disconnect.

68. **Recommendation:** To better support and protect employees to balance their work and care responsibilities, modern awards including modern enterprise awards must ensure:

- All employees covered by a modern award required to be on-call or standby to work shall be paid an on-call duty allowance regardless of their classification or salary level.

Question 12: Travel time

69. The discussion paper refers to the Select Senate Committee on Work and Care's Final Report finding that not all modern awards provide for paid travel time to different locations or work sites – meaning that caregivers may be giving up personal time without additional pay.²⁰

70. The CPSU notes excess travel time is payable under various awards relevant to the union's membership. Under the APS Enterprise Award, such payments are not generally available to employees above the salary barrier despite the requirement to travel to different work locations or sites and likely impacts management of care. The CPSU considers that any employee covered by the award who is required to travel for such purposes should be entitled to excess travel time payment, regardless of their classification or salary level.

71. **Recommendation:** To better support and protect employees to balance their work and care responsibilities, modern awards including modern enterprise awards must ensure:

²⁰ Discussion paper [207], Senate Select Committee on Work and Care, Final Report, (March 2023) 92-94.

- All employees covered by a modern award required to travel to different work sites or locations should be compensated for the excess travel time regardless of their classification or salary level.

Question 14: Personal/carer's leave

72. The discussion paper outlines several concerns the Work and Care Senate Committee raised with personal/carer's leave entitlements in the modern awards framework, including that the FW Act does not provide paid carer's leave to casual employees, the leave entitlements are narrow in scope and lack flexibility, and the definition of carer and its limited applicability to "immediate family" and "household member" are narrowly defined.²¹

73. The Senate Select Committee Final Report recommendation 18 sets out that:

The committee recommends the Australian Government consider the adequacy of existing leave arrangements and investigate potential improvements in leave arrangements in the Fair Work Act 2009, including separate carer's leave and annual leave.

74. The APS Statement of Common Conditions sets out principles in accordance with which all APS agencies have drafted or will draft their personal/carer's leave clauses. In addition to establishing a minimum entitlement of 18 days paid personal/carer's leave, the clause provides for relaxed evidence requirements and broad usage, and access to personal/carer's leave at half pay.

75. Personal/carer's leave in APS agreements goes into some detail about what caring arrangements may look like, without limiting the use of carer's leave, by setting out that an employee may care for someone who has a medical condition (including when they are in hospital), has a mental illness, a disability, someone who is frail or aged, or is a child (not limited to a child of the employee).

²¹ Discussion paper [234]

76. In combination with the broad definition of family adopted across the APS (see below), personal/carer's leave in the public sector is accessible for caring purposes for a wide range of employees. A copy of the common principles for personal/carer's leave is provided at **Attachment B**.

77. **Recommendation:** To better support and protect carers to balance their work and care responsibilities, modern awards including modern enterprise awards must ensure:

- Personal/carer's leave provisions enable broad usage and a flexible approach.
- Broad provisions for access to carer's leave that acknowledge a wide range of caring responsibilities.
- Broad definition of family that includes traditional kinship to support relationship or obligations under the customs and traditions of the community or group to which the employee belongs.

Question 15: Definition of immediate family

78. The CPSU agrees with the ACTU's submission and recommendations in response to this question. The CPSU supports a broad definition of family as it relates to access to personal/carer's leave and flexible working arrangements.

79. APS enterprise agreements will, at a minimum, contain the following definition of family:

Family means:

- a. a spouse, former spouse, de facto partner or former de facto partner of the employee;
- b. a child, parent, grandparent, grandchild, or sibling of the employee;
- c. a child, parent, grandparent, grandchild, or sibling of a spouse, former spouse, de facto partner or former de facto partner of the employee;
- d. a member of the employee's household; or
- e. a person with whom the employee has a relationship of traditional kinship where there is a relationship or obligation, under customs and traditions of the community or group

to which the employee belongs.

80. A broad definition of family that includes kinship relationships will help to address structural barriers to balancing work and care faced by First Nations employees and employees from culturally diverse backgrounds.

81. **Recommendation:** The CPSU submits modern awards should include a broad definition of family to enable better access to leave and flexible working arrangements.

Question 18: Ceremonial leave

82. The discussion paper highlights that for many First Nations Australians caring for family and community members falls within cultural expectations and traditional kinship responsibilities.²² Further, First Nations Australians also experience difficulties accessing care and support services directly impacting their ability to care and work.²³

83. Some modern awards recognise ceremonial or cultural rights of First Nations employees through provision of ceremonial or cultural leave. As part of the *4 yearly review of modern awards – Group 2* decision, the Full Bench extended an entitlement to ceremonial leave to modern awards outside the health and community services sector, having held that the entitlement was consistent with the modern awards objectives at s134(1)(c) of the FW Act.²⁴

84. The APS, ACTPS and AGIA awards only provides for ceremonial leave without pay. The APS and ACTPS Awards cap this unpaid leave at 10 days per year. The NTPS Award does not provide for any ceremonial leave.

85. In service-wide bargaining, the CPSU negotiated a ceremonial leave clause to be included in all APS enterprise agreements (see **Attachment C**). This clause sets out for

²² Discussion paper [59].

²³ Ibid [61].

²⁴ Ibid [62].

6 days paid leave over 2 calendar years. Several agencies retained an additional unpaid leave entitlement provided by their former enterprise agreement.

First Nations ceremonial leave

- 1 *First Nations employees may access up to 6 days of paid leave over 2 calendar years to participate in significant activities associated with their culture or to fulfil ceremonial obligations.*
- 2 *The Agency Head may approve additional leave for cultural or ceremonial purposes as miscellaneous leave, with or without pay.*
- 3 *First Nations ceremonial leave can be taken as part days.*
- 4 *First Nations ceremonial leave is in addition to compassionate and bereavement leave.*

86. **Recommendations:** To better support and protect First Nations employees with caring responsibilities to balance their work and care responsibilities, modern awards including modern enterprise awards must ensure:

- Provision of paid and unpaid ceremonial leave provisions for First Nations employees to meet their traditional kinship responsibilities and obligations.
- Broader definition family that includes traditional kinship.
- Cultural competency training for managers to ensure First Nations employees are appropriately supported.

Question 19: Other variations

87. The CPSU supports the other variations called for by the ACTU.

88. The CPSU proposes variations to all modern awards that reflect the following outcomes of service-wide bargaining would improve employees' ability to balance work and care.

Bereavement leave

89. The discussion paper indicates that modern awards largely refer to the NES entitlement to compassionate leave.

90. An outcome of service-wide bargaining has been to separate compassionate and bereavement leave into two distinct entitlements. APS enterprise agreements will set out

that employees are entitled to 3 days paid compassionate leave where a member of their family/household, or someone they have a close personal relationship with, contracts, develops or sustains a life-threatening illness or injury, or the employee or their partner has a miscarriage. In addition, employees are entitled to 3 days paid bereavement leave where a person (as described for compassionate leave) dies, or a child is stillborn, where that child was a member of the employee's family or household.

91. **Recommendation:** The CPSU submits variations to modern awards that set out compassionate and bereavement leave as distinct entitlements would benefit employees with caring responsibilities during difficult circumstances.

Cultural leave

92. The discussion paper cites data from Carers Australia that 25 to 30 per cent of all Australian carers (approx. half a million) are from culturally and linguistically diverse backgrounds.²⁵ It also identifies key challenges for these carers including (among others) cultural obligations or rules relating to how someone with a disability or an older person is cared for, who performs the caring role and what this should involve and hesitancy engaging with and concerns about cultural appropriateness of formal services.
93. The discussion paper also cites evidence provided to the Work and Care Senate Committee which reinforces the structural barriers faced by CALD and migrant workers with caring responsibilities.
94. The CPSU's consultation with members who identify as CALD identify similar issues within their workplaces including lack of understanding in agencies and among managers of cultural obligations and responsibilities, particularly in care of elderly parents and other family members. The CPSU has made submissions on these issues to the Australian Government's Multicultural Framework Review.²⁶
95. An outcome of service-wide bargaining is that all APS enterprise agreements will provide 3 days paid leave per calendar year for the purpose of attending significant religious or

²⁵ Discussion paper, [70].

²⁶ https://www.cpsu.org.au/CPSU/Content/News/Submission_to_the_Multicultural_Framework_Review.aspx.

cultural obligations associated with the employee's particular faith of culture. The full clause is provided at **Attachment C**.

96. **Recommendations:** To better support and protect culturally and linguistically diverse employees with caring responsibilities to balance their work and care responsibilities, modern awards including modern enterprise awards must ensure:
- Provision of paid and unpaid cultural leave provisions for CALD employees to meet their cultural expectations and obligations
 - Broader definition family that includes kinship to support relationship or obligations under the customs and traditions of the community or group to which the employee belongs

Lactation breaks

97. The discussion paper references observations of the Work and Care Senate Select Committee that Australia is an outlier in comparison with international standards for working conditions that assist employees with caring responsibilities, including from recovery from birth, caring for infants and breastfeeding. We are among few nations without statutory entitlements to breast feeding breaks at work or facilities.²⁷
98. Only a small number of APS agencies are accredited Breastfeeding Friendly Workplaces²⁸ and the APSC has found inconsistent support from workplaces for breastfeeding on return to work, with some employees reporting a lack of appropriate facilities to express milk or the privacy to feed their child.²⁹
99. SJBPA Act amended the FW Act to include breastfeeding as a protected attribute under s351 and to prohibit the inclusion of terms in modern awards that discriminate against an employee because of, or for reasons including breastfeeding.

²⁷ Discussion paper, [219].

²⁸ APS Gender Equality Strategy 2021-26.

²⁹ Ibid.

100. Enterprise Agreements across the APS now include a common lactation breaks provision, which enables paid time to breastfeed or express milk, appropriate facilities, and flexible working arrangements. The full clause is provided at **Attachment D**.
101. Modern awards must recognise a breastfeeding mother's right to reasonable paid time for lactation and breast-feeding purposes and for access to reasonable facilities, or where reasonable facilities cannot be provided access to flexible work arrangements.
102. To better support and protect breast-feeding mothers to balance their work and care responsibilities, modern awards including modern enterprise awards must ensure:
- Breastfeeding mother's right to reasonable paid time for lactation and breast-feeding purposes
 - Access to reasonable facilities in the workplace or where reasonable facilities cannot be provided access to flexible work arrangements.

Attachment A

Flexible working arrangements (including working from home)

1. The <agency>, employees and their union recognise:
 - 1.1 the importance of an appropriate balance between employees' personal and working lives, and the role flexible working arrangements can play in helping to achieve this balance;
 - 1.2 access to flexible work can support strategies to improve diversity in employment and leadership in the APS;
 - 1.3 access to flexible work supports APS capability, and can assist in attracting and retaining the employees needed to deliver for the Australian community, including employees located at a wider range of locations;
 - 1.4 that flexibility applies to all roles in the <agency>, and different types of flexible working arrangements may be suitable for different types of roles or circumstances; and
 - 1.5 requests for flexible working arrangements are to be considered on a case-by-case basis, with a bias towards approving requests.
2. The <agency> is committed to engaging with employees and their union to build a culture that supports flexible working arrangements across the <agency> at all levels. This may include developing and implementing strategies through an <agency> consultative committee.
3. Flexible working arrangements include, but are not limited to, changes in hours of work, changes in patterns of work and changes in location of work.

Requesting formal flexible working arrangements

4. The following provisions do not diminish an employee's entitlement under the NES.
5. An employee may make a request for a formal flexible working arrangement.
6. The request must:
 - 6.1 be in writing;
 - 6.2 set out details of the change sought (including the type of arrangement sought and the proposed period the arrangement will operate for); and
 - 6.3 set out the reasons for the change, noting the reasons for the change may relate to the circumstances set out at section 65(1A) of the FW Act.
7. The <Agency Head> must provide a written response to a request within 21 days of receiving the request.
8. The response must:

- 8.1 state that the <Agency Head> approves the request and provide the relevant detail in clause 9 [Where the Agency Head approves the request this will form an arrangement...]; or
- 8.2 if following discussion between the <agency> and the employee, the agency and the employee agree to a change to the employee's working arrangements that differs from that set out in the request – set out the agreed change; or
- 8.3 state that the <Agency Head> refuses the request and include the following matters:
 - 8.3.1 details of the reasons for the refusal; and
 - 8.3.2 set out the <agency's> particular business grounds for refusing the request, explain how those grounds apply to the request; and
 - 8.3.3 either:
 - 8.3.3.1 set out the changes (other than the requested change) in the employee's working arrangements that would accommodate, to any extent, the employee's circumstances outlined in the request and that the agency would be willing to make; or
 - 8.3.3.2 state that there are no such changes; and
 - 8.3.4 state that a decision to refuse the request, or failure to provide a written response within 21 days is subject to the dispute resolution procedures of the enterprise agreement, and if the employee is an eligible employee under the FW Act, the dispute resolution procedures outlined in sections 65B and 65C of the FW Act.
9. Where the <Agency Head> approves the request this will form an arrangement between the agency and the employee. Each arrangement must be in writing and set out:
 - 9.1 any security and work health and safety requirements;
 - 9.2 a review date (subject to clause 13 [Approved flexible working arrangements will be reviewed by the agency...]); and
 - 9.3 the cost of establishment (if any).
10. The <Agency Head> may refuse to approve the request only if:
 - 10.1 the <agency> has discussed the request with the employee; and
 - 10.2 the <agency> has genuinely tried to reach an agreement with the employee about making changes to the employee's working arrangements to accommodate the employee's circumstances (subject to any reasonable business grounds for refusal); and
 - 10.3 the <agency> and the employee have not reached such an agreement; and
 - 10.4 the <agency> has had regard to the consequences of the refusal for the employee; and

- 10.5 the refusal is on reasonable business grounds.
- 11. Reasonable business grounds include, but are not limited to:
 - 11.1 the new working arrangements requested would be too costly for the <agency>;
 - 11.2 there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested;
 - 11.3 it would be impractical to change the working arrangements of other employees, or to recruit new employees, to accommodate the new working arrangements requested;
 - 11.4 the new working arrangements requested would be likely to result in a significant loss in efficiency or productivity;
 - 11.5 the new working arrangements requested would be likely to have a significant negative impact on customer service; and
 - 11.6 it would not be possible to accommodate the working arrangements without significant changes to security requirements, or where work health and safety risks cannot be mitigated.
- 12. For First Nations employees, the <agency> must consider connection to country and cultural obligations in responding to requests for altering the location of work.
- 13. Approved flexible working arrangements will be reviewed by the <agency> and the employee after 12 months, or a shorter period, if agreed by the employee. This is to ensure the effectiveness of the arrangement.

Varying, pausing or terminating flexible working arrangements

- 14. An employee may request to vary an approved flexible working arrangement in accordance with clause 6 [The request must be in writing, set out details of the change sought...]. An employee may request to pause or terminate an approved flexible working arrangement.
- 15. The <Agency Head> may vary, pause or terminate an approved flexible working arrangement on reasonable business grounds, subject to clause 17 [Prior to the Agency Head varying, pausing or terminating the arrangement...].
- 16. The agency must provide reasonable notice if varying, pausing or terminating a flexible working arrangement without the agreement of the employee, having regard to the circumstances of the employee. Exceptions to this requirement are urgent and critical operational circumstances or an employee's demonstrated and repeated failure to comply with the agreed arrangements.
- 17. Prior to the <Agency Head> varying, pausing or terminating the arrangement under clause 15 [The Agency Head may vary, pause or terminate an approved flexible working arrangement...], the <agency> must have:
 - 17.1 discussed with the employee their intention to vary, pause or terminate the arrangement with the employee;

- 17.2 genuinely tried to reach an agreement with the employee about making changes to the employee's working arrangements to accommodate the employee's circumstances (subject to any reasonable business grounds for alteration);
- 17.3 had regard to the consequences of the variation, pause or termination for the employee;
- 17.4 ensured the variation, pause or termination is on reasonable business grounds; and
- 17.5 informed the employee in writing of the variation, pause or termination to the approved flexible working arrangement, including details set out in clause 8.3 [state that the Agency Head refuses the request and include the following matters...].

Working from home

18. The <agency> will not impose caps on groups of employees on the time that may be approved to work from home or remotely, with each request to be considered on its merits.
19. The <agency> may provide equipment necessary for, or reimbursement, for all or part of the costs associated with establishing a working from home arrangement.
20. An employee working from home is covered by the same employment conditions as an employee working at an office site under this agreement.
21. The <agency> will provide employees with guidance on working from home safely.
22. Employees will not be required by the <agency> to work from home unless it is lawful and reasonable to do so. This may include where circumstances prevent attendance at an office during a pandemic or natural disaster. In these situations, the <agency> will consider the circumstances of the employees and options to achieve work outcomes safely.

Ad-hoc arrangements

23. Employees may request ad-hoc flexible working arrangements. Ad-hoc arrangements are generally one-off or short-term arrangements for circumstances that are not ongoing.
24. Employees should, where practicable, make the request in writing and provide as much notice as possible.
25. Requests for ad-hoc arrangements are not subject to the request and approval processes detailed in clauses 4 to 13 [Requesting formal flexible working arrangements].
26. The <agency> should consider ad-hoc requests on a case-by-case basis, with a bias to approving ad-hoc requests, having regard to the employee's circumstances and reasonable business grounds.
27. Where a regular pattern of requests for ad-hoc arrangements from an employee emerges, the <agency> should consider whether it is appropriate to seek to formalise the arrangement with the employee.

Altering span of hours

28. An employee may request to work an alternative regular span of hours (bandwidth hours). If approved by the <Agency Head>, hours worked on this basis will be treated as regular working hours and will not attract overtime payments. The <agency> will not request or require that any employee alter their regular span of hours (bandwidth hours) under these provisions.

Attachment B

Personal/carer's leave

Include conditions consistent with the below principles:

Entitlement to personal/carer's leave

1. 18 days paid leave per annum (pro-rata for part-time employees).
2. Leave at half pay may be approved by the <Agency Head>.

Accrual of personal/carer's leave

3. For an ongoing employee, 18 days personal/carer's leave will be credited upon the employee's commencement with the APS. After 12 months, the employee's leave will accrue daily, credited at least monthly. This is to be implemented by agencies by 1 January 2026.
4. For a non-ongoing employee, the personal/carer's leave will be credited upon the employee's commencement with the agency. This will be 18 days leave pro-rated based on the employee's initial contract period, and is capped at 18 days. After the initial contract period or 12 months, whichever is shorter, or where the employee has an existing entitlement to personal/carer's leave, leave will accrue daily, credited at least monthly.
5. A casual employee may be absent without pay when not fit for work due to personal illness or injury. A casual employee may access 2 days unpaid carer's leave per occasion, consistent with the NES.

Transitional arrangements

6. Where an agency does not currently provide for daily accrual of personal/carer's leave in subsequent years of employment, the agency may include transitional arrangements.
7. Where an employee:
 - a. has, or cares for someone with, a chronic condition or other ongoing illness; or
 - b. is recovering from surgery; or
 - c. is pregnant; or
 - d. is returning from parental leave or has a child commencing day care;and, as a result of the transition to daily accrual of personal/carer's leave, does not have sufficient credit to cover an absence for which they would otherwise be able to take personal/carer's leave, the <Agency Head> will advance the employee's accrual up to the 12 month anniversary when their leave would otherwise be credited.

Usage

8. Personal/carer's leave to be used:
 - a. due to personal illness or injury;
 - b. to attend appointments with a registered health practitioner;
 - c. to manage a chronic condition; and/or
 - d. to provide care or support for a family member (including a household member) or a person they have caring responsibilities for; because:
 - i. of a personal illness or injury affecting the person; or
 - ii. of an unexpected emergency affecting the other person.

Carers

9. A person that an employee has caring responsibilities for may include a person who needs care because they:
 - a. have a medical condition, including when they are in hospital;
 - b. have a mental illness;
 - c. have a disability;
 - d. are frail or aged; and/or
 - e. are not a child, not limited to a child of the employee.

Evidence

10. Evidence may be requested after:
 - a. more than 3 consecutive days; or
 - b. more than 8 days without evidence in a calendar year.
11. Acceptable evidence includes:
 - a. a certificate from a registered health practitioner;
 - b. a statutory declaration; or
 - c. another form of evidence approved by the Agency Head.
12. A certificate from a registered health practitioner may be used as evidence of a chronic condition for up to 12 months for both personal and carer's leave.

Attachment C

Definition of family

Family means:

- a. a spouse, former spouse, de facto partner or former de facto partner of the employee;
- b. a child, parent, grandparent, grandchild, or sibling of the employee;
- c. a child, parent, grandparent, grandchild, or sibling of a spouse, former spouse, de facto partner or former de facto partner of the employee;
- d. a member of the employee's household; or
- e. a person with whom the employee has a relationship of traditional kinship where there is a relationship or obligation, under customs and traditions of the community or group to which the employee belongs.

Ceremonial leave and cultural leave

First Nations ceremonial leave

1. First Nations employees may access up to 6 days of paid leave over 2 calendar years to participate in significant activities associated with their culture or to fulfil ceremonial obligations.
2. The <Agency Head> may approve additional leave for cultural or ceremonial purposes as miscellaneous leave, with or without pay.
3. First Nations ceremonial Leave can be taken as part days.
4. First Nations ceremonial leave is in addition to compassionate and bereavement leave.

Cultural leave

1. The <Agency Head> may grant up to 3 days of paid leave per calendar year for the purpose of attending significant religious or cultural obligations associated with the employees' particular faith or culture.
2. The <Agency Head> may approve additional leave for cultural purposes as miscellaneous leave, with or without pay.
3. Cultural leave can be taken as part days.
4. For the avoidance of doubt, this leave does not cover cultural purposes or obligations which are eligible for paid leave under <clause reference to First Nations ceremonial leave>.

Attachment D

Lactation and breast feeding support

1. Reasonable paid time during work hours will be provided for lactation breaks for breastfeeding, expressing milk and other associated activities.
2. The <agency> will provide access to appropriate facilities for the purpose of breastfeeding or expressing milk, subject to clause XXX [Where it is not practicable for any site to have a designated space...]. In considering whether a space is appropriate, an agency should consider whether:
 - a. there is access to refrigeration;
 - b. the space is lockable; and
 - c. there are facilities needed for expressing, such as appropriate seating.
3. Where it is not practicable for an <agency> site to have a designated space, a flexible approach will be taken so that the employee can access the support required.
4. The <agency> will facilitate discussion between individual employees and their managers about accommodating the employee's lactation needs and practical arrangements to meet these needs.
5. The manager and employee shall discuss any flexible working arrangements that may be needed to support lactation. This may include consideration of arrangements such as working from home and/or remote working or varying work hours on an ad-hoc or regular basis. Wherever possible, requests by an employee will be accommodated, noting these needs may be changed over time.
6. Further information is available in policy.