



# **NSW Public Sector Wages Policy 2011**

June 2011

## 1. Introduction

- 1.1. The primary aim of this policy is to ensure better services and value for the public. In this context, the Government is committed to a policy of fair working conditions and allowing increases in remuneration and other conditions of employment that do not reduce services and are consistent with maintaining fiscal sustainability.
- 1.2. Since 1997 real average wage increases in the NSW public sector have increased by 21.9 per cent. The policy is designed to maintain the real value of public sector wages over the medium term in line with the mid-point of the Reserve Bank of Australia's target range for inflation over the cycle.
- 1.3. Employee related costs are the largest component of Government expenditure, accounting for almost half of Government expenses.

## 2. Application of the Policy

- 2.1. The NSW Public Sector Wages Policy 2011 ("the policy") applies to all public sector agencies ("agencies") other than State Owned Corporations – including Public Service Departments, other Divisions of the Government Service and independent statutory bodies.
- 2.2. The policy applies to all matters before the Industrial Relations Commission of New South Wales ("the IRC") and to any negotiations, variations, claims or offers by agencies that impact on remuneration or other conditions of employment, whether or not they are formalised in an industrial instrument.
- 2.3. For the purposes of this policy, an industrial instrument shall mean an award, agreement, common law contract or any other arrangement regulating the remuneration or other conditions of employment of public sector employees.
- 2.4. Local agreements – including local working hours arrangements made pursuant to clause 10 of the *Crown Employees (Public Service Conditions of Employment) Award 2009* and any successor award – must also comply with the policy.
- 2.5. Provisions such as leave reserved matters that are in existing industrial instruments will continue to apply until the instruments are superseded. However, any claims arising from those provisions will be subject to this policy.
- 2.6. No offers may be made in relation to an increase in employee related costs until bargaining parameters have been approved in accordance with this policy.
- 2.7. This wages policy replaces the previous policy distributed in Memorandum M2007 – 12.

## 3. The Policy

- 3.1. The policy provides:
  - 3.1.1. Public sector employees are entitled to guaranteed minimum conditions of employment, as defined in this policy.
  - 3.1.2. Equal remuneration for men and women doing work of equal or comparable value.

- 3.1.3. Public sector employees may be awarded increases in remuneration or other conditions of employment that do not increase costs by more than 2.5 per cent per annum.
- 3.1.4. Increases in remuneration or other conditions of employment that increase employee related costs by more than 2.5 per cent per annum can be awarded, but only if sufficient employee related cost savings have been achieved to fully offset the increased employee related costs. For this purpose:
  - 3.1.4.1. whether relevant savings have been achieved is to be determined by agreement of the relevant parties or, in the absence of agreement, by the IRC, and
  - 3.1.4.2. increases may be awarded before the relevant savings have been achieved, but are not payable until they are achieved, and
  - 3.1.4.3. the full savings are not required to be awarded as increases in remuneration or other conditions of employment.
- 3.1.5. Awards and orders are to resolve all issues the subject of the proceedings (and not reserve leave for a matter to be dealt with at a later time or allow extra claims to be made during the term of the award or order). However, this does not prevent further variations made with the agreement of the relevant parties.
- 3.1.6. Changes to remuneration or other conditions of employment may only operate on or after the date the relevant parties finally agreed to the change (if the award or order is made or varied by consent) or the date of the IRC's decision (if the award or order is made or varied in arbitration proceedings).
- 3.1.7. Policies regarding the management of excess public sector employees are not to be incorporated into industrial instruments.
- 3.2. Paragraph 3.1.6 does not apply if the relevant parties otherwise agree or there are exceptional circumstances.
- 3.3. The relevant parties in relation to a matter requiring agreement under this section are the employer and any other party to the proceedings that is an industrial organisation of public sector employees with one or more members whose interests are directly affected by the matter.

## 4. Guaranteed Minimum Conditions of Employment

- 4.1. The guaranteed minimum conditions of employment are as follows:
  - 4.1.1. Unpaid parental leave that is the same as that provided by the National Employment Standards.
  - 4.1.2. Paid parental leave that applies to the relevant group of public sector employees on the commencement of this policy.
  - 4.1.3. Employer payments to employee superannuation schemes or funds (being the minimum amount prescribed under the relevant law of the Commonwealth).
  - 4.1.4. Long service or extended leave (being the minimum leave prescribed under Schedules 3 and 3A of the *Public Sector Employment and Management Act 2002* or the *Long Service Leave Act 1955*, whichever Act is applicable to the employment concerned).

- 4.1.5. Annual leave (being the minimum leave prescribed under the *Annual Holidays Act 1944*).
- 4.1.6. Sick leave entitlements under section 26 of the *Industrial Relations Act 1996*.
- 4.1.7. Public holiday entitlements under the *Public Holidays Act 2010*.
- 4.1.8. Part-time work entitlements under Part 5 of Chapter 2 of the *Industrial Relations Act 1996*.
- 4.2. For the purposes of achieving employee related cost savings, existing conditions of employment of the kind but in excess of the guaranteed minimum conditions of employment may only be reduced with the agreement of the relevant parties in the proceedings.

## 5. Definition of Employee Related Costs and Cost Savings

- 5.1. Employee related costs are the costs to the employer of the employment of public sector employees, being costs related to:
  - 5.1.1. the salary, wages, allowances and other remuneration payable to the public sector employees; and
  - 5.1.2. superannuation and other personal employment benefits payable to or in respect of the public sector employees.
- 5.2. Employee related cost savings are savings:
  - 5.2.1. that are identified in the award or order of the IRC that relies on those savings, and
  - 5.2.2. that involve a significant contribution from public sector employees and generally involve direct changes to a relevant industrial instrument, work practices or other conditions of employment, and
  - 5.2.3. that are not existing savings as defined in paragraph 5.3, and
  - 5.2.4. that are additional to whole of government savings measures (such as efficiency dividends), and
  - 5.2.5. that are not achieved by a reduction in guaranteed minimum conditions of employment below the minimum level.
- 5.3. Savings are existing savings if they are identified in a relevant industrial instrument made before the commencement of this policy (or in an agreement contemplated by such an industrial instrument) and are relied on by that industrial instrument, whether or not the savings have been achieved and whether or not they were or are achieved during the term of that industrial instrument.

## 6. Additional Requirements

- 6.1. In addition to the requirements of the policy stipulated above, industrial instruments must conform to the following principles:
  - 6.1.1. Government policies on workforce matters cannot be included an agency's bargaining parameters unless approved by the Cabinet Standing Committee on the Expenditure Review ("the Expenditure Review Committee").

- 6.1.2. The Government supports all public sector employees having access to salary sacrifice arrangements for superannuation and other purposes. Agencies negotiating industrial instruments should consider including such arrangements.
- 6.1.3. In considering employment conditions, agencies should have regard to the inclusion of appropriate arrangements to allow public sector employees to balance their work and personal lives, particularly at times when they may have caring responsibilities.
- 6.1.4. New industrial instruments should not predate the expiry of existing instruments.
- 6.1.5. Remuneration and other conditions of employment must be negotiated concurrently and, where possible, contained in a single, comprehensive industrial instrument.
- 6.1.6. All awards and agreements should contain the following no extra claims clause:
  - The parties agree that, during the term of this [award/agreement], there will be no extra wage claims, claims for improved conditions of employment or demands made with respect to the employees covered by the [award/agreement] and, further, that no proceedings, claims or demands concerning wages or conditions of employment with respect to those employees will be instituted before the Industrial Relations Commission or any other industrial tribunal.*
  - The terms of the preceding paragraph do not prevent the parties from taking any proceedings with respect to the interpretation, application or enforcement of existing [award/agreement] provisions.*
- 6.1.6.1. Any variation from these words must be approved by the Expenditure Review Committee.
- 6.1.7. Memorandums of Understanding and other unregistered agreements are not to be entered into without the approval of the Expenditure Review Committee. Ongoing commitments in previously signed MoUs should be adhered to.

## 7. Examples of Employee Related Cost Savings

- 7.1. As a guide, measures from which employee related cost savings may arise include:
  - 7.1.1. where they result in direct changes to the provisions of an industrial instrument or to working conditions including changes to staffing levels, human resource policies, rostering arrangements, workforce composition, work intensity or job redesign, provided they lead to savings
  - 7.1.2. changes to conditions of employment which increase employee productivity and which will be realised as a cost saving
  - 7.1.3. the expansion of the scope of work public sector employees perform in ways that enhance their productivity and realise savings
  - 7.1.4. the agreed implementation or modification of workforce management policies which result in better utilisation of staff.
- 7.2. Examples of employee related cost savings include:
  - 7.2.1. changes to rostering arrangements to better reflect customer service
  - 7.2.2. increases to normal working hours that involve direct customer interaction
  - 7.2.3. reduction in the days of absence allowable before a medical certificate is required

- 7.2.4. requiring a minimum period of leave every 12 months to reduce leave liabilities
- 7.2.5. limiting access to 'top up' sick leave
- 7.2.6. reduced accrual of leave during unpaid sick leave
- 7.2.7. limiting access to transferred employees compensation payments
- 7.2.8. call backs within 4 hour periods not to attract additional payment
- 7.2.9. higher duties allowances only paid after a minimum of 5 days acting
- 7.2.10. reduction in the accrual of maximum rostered days off
- 7.3. Employee related cost savings should not include:
  - 7.3.1. productivity improvements which do not result in employee related cost savings
  - 7.3.2. savings which the agency has already nominated as part of its efficiency dividend or other whole of government savings measures
  - 7.3.3. savings that were realised prior to the commencement of this policy or during the period covered by an industrial instrument made prior to the commencement of this policy
  - 7.3.4. revenue increases
  - 7.3.5. enforcement of existing provisions in industrial instruments and policies, which agencies can implement without agreement
  - 7.3.6. an agency reform process that is unrelated to employee related cost savings and in relation to which the workforce has undertaken to provide its cooperation
  - 7.3.7. the avoidance of future costs which have not been formally budgeted
  - 7.3.8. whole of government policy or legislative change introduced outside of a bargaining process
  - 7.3.9. office relocations.
- 7.4. A decision to discontinue a service should generally not be counted as an employee related cost saving measure except in so far as it will require additional productivity and skills from the remaining employees.
- 7.5. A component of savings from investments in new technology should be retained by the agency or used as a contribution towards efficiency dividends. A portion of savings from the investment in new technology may be included for the purpose of increases in remuneration or other conditions of employment when:
  - 7.5.1. it results in a saving in employee related costs
  - 7.5.2. requires a significant change in work practice or skills, and
  - 7.5.3. an agency has retained an appropriate share of the benefits taking into account the cost and risk of the investment decision.

## 8. Process to Negotiate Wages and Conditions

- 8.1. Agencies must consult the Wages Policy Taskforce on any proposal that may result in changes to remuneration or other conditions of employment – including agreements

negotiated under clause 10 of the *Crown Employees (Public Service Conditions of Employment) Award 2009* or any successor award – prior to commencing negotiations.

- 8.2. The Wages Policy Taskforce is convened by the Department of Premier and Cabinet (“DPC”) and includes representatives of NSW Treasury, the Department of Finance and Services and the Public Service Commission (when established).

#### Develop a bargaining agenda

- 8.3. Agencies must contact DPC 6 months prior to the expiry of an industrial instrument. The Wages Policy Taskforce will assist the agency to develop its bargaining parameters. Agencies will appropriately resource the Taskforce.
- 8.4. Agencies covered by sector wide instruments will be consulted by DPC in respect of cross agency reforms.
- 8.5. The Government may identify priority areas of reform that agencies may be required to include in their bargaining parameters. Agencies must also consider any other priority areas of reform within their organisation.

#### Gain approval of bargaining parameters

- 8.6. Bargaining parameters must be approved by the Wages Policy Taskforce or the Expenditure Review Committee 3 months prior to the expiry of the current industrial instrument and before an offer is made.
- 8.7. The approval process involves the following steps:
- 8.7.1. The Wages Policy Taskforce reviews the proposed bargaining parameters.
- 8.7.2. Where the proposed bargaining parameters are consistent with the policy and government priorities and any proposed increases to remuneration or other conditions of employment that do not increase costs by more than 2.5 per cent per annum, the Wages Policy Taskforce may approve the bargaining parameters. The Taskforce will report to the Expenditure Review Committee on the proposed offer.
- 8.7.3. Where the proposed bargaining parameters are consistent with the policy and government priorities and any proposed increases to remuneration or other conditions of employment that increase employee related costs by more than 2.5 per cent per annum, following consideration by the Wages Policy Taskforce, the agency’s portfolio Minister submits the parameters to the Expenditure Review Committee for approval.
- 8.7.4. When submitting the bargaining parameters to either the Wages Policy Taskforce or the Expenditure Review Committee, the agency must provide details of proposed changes to wages and conditions of employment, reform measures and cost savings, as well as a proposed negotiating strategy. Details of proposed employee related cost savings measures must include:
- 8.7.4.1. advice on how the delivery of each of the employee related cost savings will be quantified and reported
- 8.7.4.2. a monitoring plan proposing the process and time frame for assessing the delivery of each of the employee related cost savings measures and identifying the payment strategy, noting that some savings may be realised before others

- 8.7.4.3. evidence that the proposed employee related cost savings are separate to measures already committed as part of efficiency dividends or other whole of Government savings measures
- 8.7.4.4. a workforce management plan that outlines how the agency's bargaining parameters align with its overall workforce strategy.
- 8.7.5. When submitting bargaining parameters to the Expenditure Review Committee, the proposal must be presented in the form of a Cabinet Minute and must contain a Financial Impact Statement endorsed by NSW Treasury.
- 8.8. When considering bargaining parameters, the Wages Policy Taskforce and Expenditure Review Committee will consider whole of Government implications and potential flow on impacts across the public sector.
- 8.9. The Expenditure Review Committee may require agencies to prepare an additional business case to support the quantum of any proposed increase.

#### Negotiation principles

- 8.10. Following Wages Policy Taskforce or Expenditure Review Committee approval of bargaining parameters, an agency may commence negotiations in accordance with the approved parameters.
- 8.11. Agencies should approach negotiations in a cooperative and problem solving manner, focussing on common interests, objectives and long term gains for stakeholders. All parties are expected to behave in an open manner, with integrity and honesty.
- 8.12. Agencies should ensure appropriate communication with their employees and other relevant parties regarding their bargaining agenda, the negotiating process and outcomes.
- 8.13. In appropriate cases, DPC will provide assistance with negotiations.

#### Report to the Wages Policy Taskforce prior to final agreement

- 8.14. The agency must keep the Wages Policy Taskforce informed of progress of the negotiations and provide details of any settlement proposal to the Wages Policy Taskforce prior to making any final offer.
- 8.15. An agency may settle an industrial instrument within bargaining parameters approved by the Wages Policy Taskforce or the Expenditure Review Committee, in consultation with DPC. For settlement proposals outside of previously approved parameters, the agency is required to submit a further formal request to Expenditure Review Committee for approval.

#### Formalise the industrial instrument

- 8.16. Before finalising negotiations and before filing an industrial instrument (or consenting to its filing) for approval, agencies must advise DPC of the outcome of the negotiations or offers made to public sector employees or other relevant parties and provide it with a final copy of the proposed industrial instrument and identified employee related cost savings measures for approval.

#### Monitoring, reviewing and verifying cost savings measures

- 8.17. Appropriate consultation with the workforce in relation to the implementation of the agreed reform measures should take place during the life of the industrial instrument to

ensure the successful implementation of the measures and the achievement of the associated employee related cost savings.

- 8.18. Agencies will be required to report to the Wages Policy Taskforce on progress towards the achievement of employee related cost savings and implementation of reform measures, as set out in the agency's monitoring plans, and to seek authorisation for the payment of increases to remuneration or other conditions of employment based on those achieved savings. This process should generally occur at least 2 months prior to the date of any scheduled increase.
- 8.19. Once the Wages Policy Taskforce has verified that the employee related cost savings have been achieved, payment of any scheduled increases to remuneration or other conditions of employment dependent on those savings is to be authorised by the date specified in the industrial instrument.
- 8.20. In the event that authorisation to pay a scheduled increase is not granted, the agency is required to notify the relevant parties. In the event the relevant parties do not accept the decision not to pay the scheduled increase the matter may be referred for resolution to the IRC.
- 8.21. NSW Treasury will provide the Expenditure Review Committee with periodic reports on agency progress on the achievement of employee related cost savings and the implementation of reforms.