



NTPS GENERAL BULLETIN 23/2013

Applies to employees covered by the NTPS 2010 – 2013 Enterprise Agreement

CLARIFYING CPSU MISINFORMATION

Once again I find it necessary to correct misinformation that the CPSU has issued to members about the proposed NTPS 2013 – 2017 Enterprise Agreement. Employees require accurate information about the proposed agreement, whether from the employer or unions, so they can make an informed decision based on the true situation.

The following table provides the necessary correction/ clarification to the misinformation.

(FW Act = *Fair Work Act*; PSEMA = *Public Sector Employment and Management Act*)

CPSU Information – via email 9 September 2013	Correction/Clarification
<p>No involuntary redundancies or job losses arising directly from the implementation of the agreement - Clauses 13.1 and 44.1</p> <p>The CPSU claim this is a change and the commitment is useless.</p>	<p>The application of <u>this provision</u> has not changed and in fact has been in place for many agreements. The commitment ensures that the cost of pay rises will not result in job losses or involuntary redundancies and clarifies that redundancies arising from other reasons are still available as they always have been under the PSEMA.</p> <p>This commitment is significant as many other public services have linked pay increases to the requirement for significant job cuts to pay for them.</p>
<p>Redundancy and Redeployment: definition of potentially surplus - Schedule 10 clause 1.1(a)</p> <p>The CPSU claims CEOs will decide on an unknown basis who is surplus.</p>	<p>The Australian Taxation Office definition of surplus (redundancy) <u>establishes clear criteria which need to be applied by CEOs</u> and there are ATO penalties if CEOs do not get this right. There is no need to state these criteria in Schedule 10 as it applies under Tax law.</p>
<p>Notice of Redundancy: interaction of agreement notice periods and FWA periods - Schedule 10 Clause 5</p> <p>The CPSU claim the 20 or 40 week notice period is further reduced by the FW Act entitlement.</p>	<p>The FW Act entitlement was introduced in 2010 to provide a redundancy entitlement for employees who did not already have one. The NTPS redundancy provisions were introduced long before this, and the FW Act minimum entitlement was <u>never intended to apply in relation to the NTPS entitlement</u>. The new provisions simply reflect this.</p>

CPSU Information – via email 9 September 2013	Correction/Clarification
<p>Redeployment and Redundancy: transfer of business - Clause 60</p> <p>The CPSU claim the change will mean employees will be penalised twice and if refuse an offer of employment with a new employer will be sacked with no redundancy pay.</p>	<p>The 2008 – 2010 EBA (clause 53) <u>which the unions agreed to</u> contained a transfer of business provision which was overlooked in last bargaining and this is <u>simply being reinstated</u>.</p> <p>An employee who has been offered work with a new employer on substantially similar terms and conditions may refuse but cannot then be considered redundant. This is fair as they have been offered a suitable job and is in line with what the FW Act provisions say.</p>
<p>Flexible working hours (flexitime) Guidelines - Clause 34 <i>(clause refers to current 2010-2013 EA)</i></p> <p>The CPSU claim employees will have to apply to be able to use flexitime and that agencies have sought to introduce policies that do not comply with Flexitime guidelines.</p>	<p>Employees currently have to apply to use flexitime so <u>there is no change to this entitlement</u>. <i>(Flexitime now referenced under clause 48 Work Life Balance of the proposed agreement)</i></p> <p>If agencies try to introduce arrangements that do not comply, I will investigate the claim and fix the matter.</p>
<p>Increments - Clause 27</p> <p>The CPSU claim Employment Instruction 4 needs to be in the agreement and that there should be only 3-5 work objectives which are achievable and within an employee's job description and control.</p>	<p><u>There is no change to the current clause</u> or how it operates, that has been agreed with the unions since 1994, <u>except in relation to where an employee will take a grievance</u>, which is now to a review under section 59 of the PSEMA (previously it was to a promotion appeal body).</p>
<p>Management of Change - Clause 17</p> <p>The CPSU claim we are refusing to include consultation provisions for outsourcing and are hiding rights under the FW Act on changes to rosters etc.</p>	<p>As the CPSU knows the <u>current consultation provisions require the CEO/employer to consult in an outsourcing situation</u>, there is no need to list it specifically.</p>
<p>Dispute Settling Procedures - Clause 15.1(b)</p> <p>The CPSU claim certain matters cannot be brought to an independent umpire.</p>	<p><u>The CPSU agreed to include these matters in the agreement last round</u> they have been re-expressed. <u>All the matters can be reviewed</u>; and that is by the Commissioner for Public Employment under s 59 of the PSEMA.</p>

CPSU Information – via email 9 September 2013	Correction/Clarification
<p>Preventing inappropriate behaviour and bullying - Clause 24</p> <p>The CPSU claim OCPE want to hide from employees their FW Act rights to apply to Fair Work Commission to stop bullying.</p>	<p>These FW Act rights are due to commence on 1 January 2014 and will <u>operate independently of any enterprise agreement</u>. It is superfluous to duplicate rights set out in other laws.</p>
<p>Professional Issues</p> <p>The CPSU says grandparented provisions and P3s accessing overtime and restrictive duty will no longer be guaranteed.</p>	<p><u>Grandparenting</u> arrangements were needed in the current agreement to facilitate the Professional classification restructure which was fully implemented in January 2011 and Commissioner's Determinations were issued back then. <u>The arrangements will continue for employees who require them.</u></p> <p><u>P3s</u> who are currently entitled to overtime and restrictive duty <u>will continue to be entitled for the life of the agreement.</u></p>
<p>Change in rostered hours of duty (new clause 10A)</p> <p>The CPSU asked for a notice of change in rostered hours of duty for those under Schedule 2 of the agreement and say that those employees are being discriminated against compared to other employees.</p>	<p>A notice of change in rostered hours for Schedule 2 employees is agreed. What is not agreed is to impose a penalty payment.</p>
<p>Apprentices</p> <p>The CPSU claim apprentices get lower pay because they are not in the agreement.</p>	<p>Apprentice rates of pay are established by a national apprenticeship award that applies to the public and private sector and this is reflected in the schedules to the agreement. <u>This arrangement has been agreed to by the unions for many years</u> and they have not made a strong argument to change this position.</p>
<p>Filling of vacancies as a result of substantial change - Clause 18</p> <p>The CPSU claim there is now no clear process and agencies can do what they want.</p>	<p>As noted by the CPSU these provisions, which are procedural, are <u>now in an Employment Instruction</u> which, contrary to the CPSU's view, <u>spells out more clearly the process for filling vacancies</u>, including when it involves employees on higher duties or fixed period contracts. Read the draft EI for yourself to make up your own mind.</p>

CPSU Information – via email 9 September 2013	Correction/Clarification
<p>Security of Employment - Clause 44.3 to 44.5</p> <p>The CPSU claim these provision allowed for consideration of directly appointing or promoting employees on longer term temporary employment or higher duties.</p>	<p>These provisions are procedural in nature and did not give rise to any entitlement.</p> <p>Removing the clause <u>does not stop CEOs requesting direct appointments as this is based on the PSEMA</u>; not the agreement.</p>
<p>Long Service leave - Clause 55</p> <p>The CPSU claim this is now wholly in the By-law which can be altered.</p>	<p>The PSEMA <u>By-law 8 has always been the primary legislative instrument governing LSL in the NTPS</u>; not the agreement.</p>
<p>Occupational Health and Safety - Cause 20</p> <p>The CPSU comment that there is no OH&S commitment in the agreement.</p>	<p>OH&S rights <u>operate independently of any enterprise agreement</u>. It is superfluous to duplicate rights set out in other laws.</p>
<p>What else should be in the Agreement</p> <p>The CPSU claims entitlements not in the agreement can change at any time without consultation or your agreement.</p>	<p>PSEMA <u>By-laws and Determinations will not be unilaterally varied without consultation</u> with affected parties (relevant unions) prior to formalisation of an amendment. This <u>commitment is in the proposed agreement at clause 8</u>.</p>

To keep you informed the OCPE has a webpage dedicated to enterprise agreement negotiations under the [Enterprise Agreement Negotiation Updates page](#).

The website will be updated regularly with the latest information on negotiations, including bulletins, information sheets and other material.



KEN SIMPSON
 Commissioner for Public Employment
 11 September 2013