

Industrial Relations (Public Sector Conditions of Employment) Regulation 2011

[2011-294]



New South Wales

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Authorisation

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Industrial Relations (Public Sector Conditions of Employment) Regulation 2011



New South Wales

1 Name of Regulation

This Regulation is the *Industrial Relations (Public Sector Conditions of Employment) Regulation 2011*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

3 Definition

In this Regulation:

the Act means the *Industrial Relations Act 1996*.

4 Declarations under section 146C

The matters set out in this Regulation are declared, for the purposes of section 146C of the Act, to be aspects of government policy that are to be given effect to by the Industrial Relations Commission when making or varying awards or orders.

5 Paramount policies

The following paramount policies are declared:

- (a) Public sector employees are entitled to the guaranteed minimum conditions of employment (being the conditions set out in clause 7).
- (b) Equal remuneration for men and women doing work of equal or comparable value.

Note—

Clause 6 (1) (c) provides that existing conditions of employment in excess of the guaranteed minimum conditions may only be reduced for the purposes of achieving employee-related cost savings with the agreement of the relevant parties.

Clause 9 (1) (e) provides that conditions of employment cannot be reduced below the guaranteed minimum conditions of employment for the purposes of achieving employee-related cost savings.

6 Other policies

- (1) The following policies are also declared, but are subject to compliance with the declared paramount policies:
 - (a) Public sector employees may be awarded increases in remuneration or other conditions of employment, but only if employee-related costs in respect of those employees are not increased by more than 2.5% per annum as a result of the increases awarded together with any new or increased superannuation employment benefits provided (or to be provided) to or in respect of the employees since their remuneration or other conditions of employment were last determined.
 - (b) Increases in remuneration or other conditions of employment can be awarded even if employee-related costs are increased by more than 2.5% per annum, but only if sufficient employee-related cost savings have been achieved to fully offset the increased employee-related costs beyond 2.5% per annum. For this purpose:
 - (i) whether relevant savings have been achieved is to be determined by agreement of the relevant parties or, in the absence of agreement, by the Commission, and
 - (ii) increases may be awarded before the relevant savings have been achieved, but are not payable until they are achieved, and
 - (iii) the full savings are not required to be awarded as increases in remuneration or other conditions of employment.
 - (c) 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.
 - (d) 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 variations made with the agreement of the relevant parties.
 - (e) 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 Commission's decision (if the award or order is made or varied in arbitration proceedings).
 - (f) Policies regarding the management of excess public sector employees are not to be incorporated into industrial instruments.
- (2) Subclause (1) (e) does not apply if the relevant parties otherwise agree or there are

exceptional circumstances.

- (3) The **relevant parties** in relation to a matter requiring agreement under this clause are the employer and any other party to the proceedings that is an industrial organisation of employees with one or more members whose interests are directly affected by the matter.
- (4) In subclause (1) (a), **new or increased superannuation employment benefits** means any new or increased payments by an employer to a superannuation scheme or fund of an employee as a consequence of amendments to the [Superannuation Guarantee \(Administration\) Act 1992](#) of the Commonwealth or the [State Authorities Non-contributory Superannuation Act 1987](#).

7 The guaranteed minimum conditions of employment

- (1) For the purposes of this Regulation, the **guaranteed minimum conditions of employment** are as follows:
 - (a) Unpaid parental leave that is the same as that provided by the National Employment Standards.
 - (b) Paid parental leave that applies to the relevant group of public sector employees on the commencement of this clause.
 - (c) Employer payments to employee superannuation schemes or funds (being the minimum amount prescribed under the relevant law of the Commonwealth).
- (2) The **guaranteed minimum conditions of employment** also include the following:
 - (a) Long service or extended leave (being the minimum leave prescribed under Schedules 3 and 3A to the [Public Sector Employment and Management Act 2002](#) or the [Long Service Leave Act 1955](#), whichever Act is applicable to the employment concerned).
 - (b) Annual leave (being the minimum leave prescribed under the [Annual Holidays Act 1944](#)).
 - (c) Sick leave entitlements under section 26 of the Act.
 - (d) Public holiday entitlements under the [Public Holidays Act 2010](#).
 - (e) Part-time work entitlements under Part 5 of Chapter 2 of the Act.

8 Meaning of employee-related costs

- (1) For the purposes of this Regulation, **employee-related costs** are the costs to the employer of the employment of public sector employees, being costs related to the salary, wages, allowances and other remuneration payable to the employees and the superannuation and other personal employment benefits payable to or in respect of

the employees.

- (2) In subclause (1), **superannuation benefits** include any payments by the employer to a superannuation scheme or fund of an employee as a consequence of the enactment of or amendments to the [Superannuation Guarantee \(Administration\) Act 1992](#) of the Commonwealth or the [State Authorities Non-contributory Superannuation Act 1987](#).

9 Meaning of employee-related cost savings

- (1) For the purposes of this Regulation, **employee-related cost savings** are savings:
- (a) that are identified in the award or order of the Commission that relies on those savings, and
 - (b) 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
 - (c) that are not existing savings (as defined in subclause (2)), and
 - (d) that are additional to whole of Government savings measures (such as efficiency dividends), and
 - (e) that are not achieved by a reduction in guaranteed minimum conditions of employment below the minimum level.
- (2) Savings are **existing savings** if they are identified in a relevant industrial instrument made before the commencement of this Regulation (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.

10 Exception for pending proceedings concerning police officers

This Regulation does not apply to the following proceedings:

- (a) proceedings pending on the commencement of this Regulation before the Commission in respect of police officers and designated IRC 325/2011 (limited to those proceedings as in force on the commencement of this Regulation),
- (b) proceedings on a cross-claim or counter application made in connection with those pending proceedings.