Australian Broadcasting Corporation

LIMITATIONS ON NEW BUYOUTS

FREQUENTLY ASKED QUESTIONS

Last Updated:	August 2021

1. **What is changing about the way buyouts are offered at the ABC?**

   New buyouts will no longer be available to remunerate employees, except in limited circumstances. The preferred salary arrangement is that employees are paid a base salary, plus any overtime, penalties and meal allowances under the ABC Enterprise Agreement (EA) in the pay period in which they are due.

   All new buyouts that are offered to an employee must 'buy out' all entitlements to overtime, penalties, meal allowance, annual leave loading and part-time additional hours. It will not be an option to buy out some of these components, but not all of them.

2. **When are these changes effective?**

   These changes are effective immediately.

3. **Why is the ABC limiting the use of buyouts to remunerate employees?**

   Our review has identified that the use of buyouts within the ABC has frequently not resulted in employees being better off overall as is required under the EA.

   Buyouts require ongoing monitoring to ensure employees are better off than if they were paid penalties, overtime and meal allowances under the EA. They involve a high degree of manual intervention, which creates a risk of error and underpayments.

   It is also difficult to accurately set a buyout, particularly if an employee will also be offered a market allowance. Market allowances inflate an employee's "ordinary rate" of pay for certain entitlements, resulting in higher payments to employees for overtime and certain penalties.

4. **Are there still some situations where I can offer an employee a buyout?**

Yes. You may offer an employee a buyout in the following circumstances:

- If the employee is currently on a buyout, and their contract is being extended (and there is no break in service); or
- you have obtained Director approval to offer a new buyout before negotiating salary with the employee.

Please note that if there has been a break of service of even one day, or if an existing employee is moving to a new role, this is considered a new buyout and therefore requires Director approval.

5. **I'd like to offer a new buyout to an employee, and I need Director approval. What should I include in my email to the Director?**

In your email to the Director seeking approval for a new buyout, you need to state:

- the role and band under the Work Level Standards;
- the total annual proposed salary arrangement for the employee and a detailed breakdown stating the employee's minimum base salary under the EA, the buyout component, and if applicable, the market allowance component;
- the reason/s it is not practicable or appropriate to pay the employee overtime, penalties and allowances in the pay period they fall due, and instead pay a buyout; and
- how the employee will be better off overall than they would otherwise be under the terms and conditions of the EA.

You should also confirm that you have calculated the buyout correctly, and that the employee will be better off under the buyout arrangement than if they were paid their applicable entitlements in each pay period in accordance with the EA.

6. I have an employee falling within one of the two situations above (contract being extended, and/or Director approval required) – what is the process for offering the buyout?

The process for offering a new buyout is:

a. Provide People & Culture with a sample of the work pattern, using the template, to be covered by the buyout;

b. People & Culture will provide an estimate, based on the work pattern and engagement details provided, of the buyout percentage required to cover all the employee entitlements;

c. Obtain Director approval, as detailed above, which is required except where it is an extension to an existing buyout arrangement with no break in service;

d. Submit a request form via myRequests for a contract to be prepared, that attaches:

   – the anticipated work pattern and calculation prepared by People & Culture to determine the buyout amount; and

   – Director approval, if applicable.

e. Payroll Services and the National Contracts Unit will review the information provided via myRequests and prepare a contract which will be sent via DocuSign to the manager and the employee for signing. At the same time, the employee will be sent a copy of the anticipated work pattern and calculation determining the buyout amount. This calculation should include sufficient detail to satisfy the ABC's obligation under the EA to provide the employee with an estimate of the payments they would have been entitled to for the prospective year.

7. When calculating a buyout, what allowances are included?

Meal allowance entitlements, and, if applicable, meal allowance compensation under Schedule D of the EA are included in a buyout.

Other allowances such as isolated locality allowance, private vehicle allowance, television clothing allowance or first aid allowance are not included in a buyout. If an employee is entitled to any of these allowances, these will be paid separately to any buyout.

8. I'm currently in negotiations with an employee for a new buyout, but I don't have Director approval, and under the new process I need to obtain it. What should I do?

You will be required to obtain Director approval but, in the meantime, you should contact the People & Culture Helpdesk and they can provide guidance on this.

9. Do I need to take any action in relation to employees with existing buyout arrangements?

There is no need for you to take action in relation to employees on existing contracts with a buyout unless they are moving to a new role, in which case you need to follow the process above (if you wish to offer them a buyout in their new role).

People & Culture is still in the process of assessing whether existing buyouts are sufficient. Further information about this will be communicated in due course.

10. When should a buyout arrangement be reviewed or terminated?

Buyouts must be reviewed at least annually to make sure they are sufficient. If an employee's pattern of ordinary hours of work changes during the period of the buyout agreement or the buyout loading is found to be wrongly calculated or extraordinary events have intervened, the buyout may be reviewed, and the rate changed by agreement to reflect the new circumstances. Failing this, the buyout agreement may be terminated by the employee or the ABC two weeks before the commencement of the next roster cycle.

If you believe a buyout agreement needs to be reviewed or terminated, please email the People & Culture Helpdesk.

11. How am I able to budget effectively without engaging employees on a buyout?

If you can estimate the pattern of work an employee will be required to work for the prospective year (which would be necessary if you were going to engage an employee on a buyout), then you should be able to budget their wages effectively even if you don't engage them on a buyout.

This is because an employee who is paid their EA entitlements in the pay period in which they are due, instead of an annual buyout arrangement, should receive approximately the same amount in total over the same period.

12. How can I attract and retain employees if they are no longer offered a buyout as part of their salary?

A buyout is intended to be paid in lieu of specific entitlements under the EA, and is not an appropriate mechanism to use to increase an employee's salary so that it is in excess of the EA.

If you wish to pay an employee in excess of the EA, you may offer a market allowance. A market allowance is an amount paid in recognition of an employee's performance and duties in a specific role.

An employee who is paid a market allowance is still entitled to be paid for specific entitlements, such as overtime and shift penalties, under the EA. Please also note that market allowances result in higher rates for overtime and certain penalties for employees below Band 7. You will need to consider this in your budgeting.

If you offer a market allowance, the contract provides that the market allowance may reduce or cease if the employee ceases performing the role that attracts the market allowance.

For more information on buyouts and market allowances please refer to this fact sheet.

13. Can employees still be offered a Salary Package under the EA?

Salary packages under clause 21.1 of the EA are subject to the same limitations and approvals as new buyouts, as set out above.

14. I want to offer an employee a higher weekly rate than the minimum under the EA. How do I do that?

As a starting point you should confirm at what band the employee will be engaged and what the minimum EA salary for the band and paypoint is. If you're not sure how to determine this, seek advice from the People & Culture Helpdesk.

It is then important to consider whether the employee will be expected to work more than the maximum ordinary hours per week and whether they will work on shifts that attract penalty rates (for example, late shifts or weekend work). You should also consider any allowances they may be entitled to while performing their role. Once you have a reasonably clear idea of what the base rate and any applicable overtime, shift penalties, and allowances will equate to on a weekly basis you may then decide you want to offer a market allowance on top of the estimated weekly amount.

Determining the market allowance amount after you have considered the payments the employee will also receive for working overtime or on shifts that attract penalty rates, will ensure that you manage your wages budget while still being able offer an above EA payment to attract and/or retain an employee.

If you need assistance estimating the payments the employee will be entitled to based on their anticipated work hours, please contact People & Culture for assistance.

FURTHER INFORMATON

If you have any other questions, please email the People & Culture Helpdesk.