



**ACT**  
Government

# Guidance on the Right to Disconnect in the ACTPS

Office of Industrial Relations and  
Workforce Strategy

Chief Minister, Treasury and Economic Development Directorate (CMTEDD)

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# Contents

Guidance on the Right to Disconnect in the ACTPS .....	
Contents .....	2
Right to Disconnect .....	3
Introduction / Purpose .....	3
Application.....	3
Key Legislative Provisions.....	3
What is the right to disconnect? .....	4
What is unreasonable contact?.....	4
Dispute Resolution .....	5
Considerations for Directorates and Agencies .....	5
Consultation .....	7
References.....	7
Further Information.....	7
Review .....	7
Approval Authority .....	8

# Right to Disconnect

## Introduction / Purpose

1. This document provides directorates and agencies with advice and guidance on the implementation of the right to disconnect provisions in the *Fair Work Act 2009* (Fair Work Act), which will commence on 26 August 2024.
2. The Fair Work Commission (FWC) will publish a guideline on the right to disconnect. Directorates and agencies should read this document alongside the FWC's guidelines once available.
3. The ACTPS recognises and supports the right for employees to disconnect from work-related information and communication technologies outside of their agreed ordinary working hours, except where certain circumstances justify contact.

## Application

4. This policy is a whole of government instruction issued by the Head of Service under section 17(2)(a) of the Public Sector Management Act 1994 (PSM Act) and binds all employees engaged under the PSM Act and all public sector employers within the meaning of section 152(1) of the PSM Act.
5. For the purposes of this policy, any reference to the Head of Service and/or Director-General is also taken to be a reference to a public sector employer within the meaning of section 152(1) of the PSM Act.
6. For the purposes of this policy, employee means an officer, a temporary employee or a casual employee who is employed or engaged under the PSM Act.
7. This policy applies to all ACT Government Directorates and Public Sector bodies in relation to employees covered by an Enterprise Agreement.
8. If an employee is covered by an enterprise agreement that has more favourable right to disconnect terms, those terms continue to apply to the employee.
9. For the purposes of this policy "ordinary working hours" includes any agreed and remunerated working hours. This may also include overtime and on call remunerated arrangements where applicable.

## Key Legislative Provisions

10. [Fair Work Legislation Amendment \(Closing Loopholes No.2\) Act 2024](#)
11. [ACTPS Enterprise Agreements](#)

## What is the right to disconnect?

12. The *Fair Work Legislation Amendment (Closing Loopholes No.2) Act 2024* (the legislation) introduced a new 'right to disconnect' provision in the Fair Work Act. The legislation will grant all employees an enforceable workplace right to refuse to monitor, read or respond to contact, or attempted contact, from an employer outside of their ordinary working hours, unless refusing to do so is unreasonable.
13. The right to disconnect also extends to contact from a third party. That is, employees can refuse to monitor, read or respond to contact, or attempted contact, from a third party outside of their ordinary working hours, unless refusing to do so is unreasonable. A third party may include clients, external stakeholders, members of the public, or employees in other directorates/agencies.
14. The right to disconnect does not prevent managers, colleagues or third parties from contacting employees. Rather, it allows employees to choose not to respond to, answer or engage with such contact.
15. The right to disconnect does not extend to employees who, as part of their employment are rostered to be 'on call' or receive an allowance or overtime for working outside ordinary working hours.
16. As a general principle, a manager may contact an employee outside of ordinary working hours if the employee receives additional remuneration to compensate them for such.
17. Executive Members (SES Members or equivalent) should expect that they are at times required to be contactable outside of ordinary working hours and work reasonable additional hours. This is consistent with the seniority of these roles and total remuneration. However, managers should make efforts to minimise out of hours contact where possible and are encouraged to discuss and set general expectations that suit the workplace and the particular role.
18. The overall aim of the changes is to create and encourage healthy work life balance. Managers should make efforts to minimise out of hours contact and ensure all employees have opportunities to disconnect from work.
19. The right to disconnect is a new workplace right and employees will be protected from employers taking adverse action against them for exercising it. For example, it would be unlawful for a manager to performance manage an employee due to them having refused unreasonable contact during their employment.
20. If employers proceed with any adverse action, an employee may start a general protections claim against their employer.

## What is unreasonable contact?

21. What reasonable, or unreasonable contact looks like in practice will vary across workplaces and individual circumstances.
22. There are however several factors listed within the legislation to help determine whether an employee's refusal to monitor, read or respond to contact is unreasonable.

23. The following is a list of matters that must be taken into account when determining if a refusal is unreasonable:
  - a. The reason for the contact or attempted contact.
  - b. The method of contact and level of disruption it causes the employee.
  - c. Whether the employee is being compensated to remain available to perform additional work outside ordinary hours.
  - d. The nature of the employee's role and the employee's level of responsibility.
  - e. The employee's personal circumstances (including family or caring responsibilities).
  - f. Other factors may also be considered, for example, patterns of behaviour.
24. The legislation doesn't define the term 'contact'. Directorates and agencies should interpret the term broadly to include any form of communication used to engage with employees, including phone calls, emails, texts, social media and messaging services.
25. There are exemptions to the right to disconnect where contact is required under a law of the Commonwealth, state or territory. This means that it would be unreasonable for an employee to refuse to monitor, read or respond to contact from their employer or a third party where they are legally required to engage in contact.

## Dispute Resolution

26. The Fair Work Commission may deal with disputes between an employer and an employee about the right to disconnect, including by making orders to stop an employee from refusing contact or to stop an employer from taking certain actions.
27. If there is a dispute regarding unreasonable contact, our enterprise agreements and the legislation requires the dispute attempts to be resolved at the local level in the first instance.
28. If an employee has a concern that contact outside of hours may be unreasonable, it is best practice and encouraged, that they first address the concerns with their manager before refusing to respond.
29. If a resolution can't be determined, the Fair Work Commission will have powers to make stop orders that may apply to the employee (to stop refusing contact) or the employer (to stop taking certain actions). Both employer and employee can apply for a stop order. That is, either an order to stop an employee from refusing contact or to stop an employer from taking certain actions. This is consistent with the FWC's powers in the existing 'stop bullying' and 'stop sexual harassment' jurisdictions. A person who contravenes a stop order may be liable for a civil penalty.

## Considerations for Directorates and Agencies

30. Directorates should identify what roles within the directorate may receive out of hours contact and the expectations if they were to respond. When doing this, directorates and agencies need to consider how this will affect flexible working arrangements and hybrid working arrangements.

31. Managers and employees are encouraged to talk about contact out of hours and set expectations that suit the workplace, particular role and the employee's circumstances. It is best practice to formalise these arrangements in writing.
32. Managers, Directorates and agencies should implement clear expectations in the workplace that deal with out of hours contact, ensuring both employees and managers are across their obligations. Managers should also consider whether any workflow or organisational changes would prevent the need for out of hours contact.
33. Managers and employees must use sound judgement when determining if it is reasonable for them to contact the employee and expect a response back.
34. There will be times where there are roles and workplaces within the ACTPS that may require employees to be contactable outside of their ordinary work patterns. Directorates and agencies need to encourage and assist their managers in identifying the particular roles/ teams and commence conversations about what might occur in such situations. As part of these conversations managers and employees should discuss the different circumstances in which it may be expected for employees to respond to contact, and when it is appropriate for managers to contact employees outside of work hours. These conversations should be had prior to the contact being made.
35. When discussing contact out of hours, it is important that managers and employees discuss all of the following:
  - a. The circumstances when it might be appropriate or necessary for out of hours contact.
  - b. The preferred channel of communication for such contact.
  - c. If out of hours contact is reasonable, for example it is an emergency or the manager needs to discuss a roster change or discuss return to work arrangements, the manager needs to explore whether it is appropriate for the employee to access flex, be paid overtime or compensated in some form.
  - d. The family and personal circumstances of the employee must be discussed. This will provide the manager with further knowledge and assist in ascertaining what form of contact is most appropriate.
36. Managers need to be aware of their employees ordinary working patterns, including employees who may have flexible working arrangements in place. For example, an employee may seek to adjust their working hours on Mondays to facilitate school pick-up. The manager and employee should agree to the specific working hours to ensure that the workplace is aware of when the employee has completed their ordinary working hours and when the right to disconnect should be considered. Considerations also need to be made for hybrid working arrangements.
37. Conversations about availability need to occur regularly as employee's personal circumstances may change or there may be occasions where the employee will not be available due to a doctor's appointment, school event etc.

38. Prior to any contact, managers need to determine if the matter to be discussed is urgent or necessary. The legislation provides that the 'reason' for the contact or attempted contact is a relevant factor. As a general principle, it may be appropriate for a manager to contact an employee out of hours if the contact relates to an emergency or if the contact is necessary or urgent.
39. The level of responsibility/seniority of the employee is determined to be a relevant factor within the legislation. That is, as a general principle, managers should avoid contacting junior employees outside of their ordinary working pattern unless it is an emergency or contact is a recognised part of the employee's role and responsibilities.
40. The legislation provides that the extent to which an employee is compensated for remaining contactable is a relevant factor. Compensation includes both monetary and non-monetary compensation.

## Consultation

41. TBA.

## References

42. [Right to disconnect - Fair Work Ombudsman](#)
43. [The Department of Employment and Workplace Relations fact sheet](#)

## Further Information

44. For further information on the right to disconnect rules contact your directorate HR representative or email [eba@act.gov.au](mailto:eba@act.gov.au).

## Review

45. This policy is due for review 3 years from the last issued or reviewed date, or earlier where there are changes that affect the operation of the policy.

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# Approval Authority

46. This policy is approved by xx , [INSERT MONTH AND YEAR].