

Right to Disconnect

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Authority and Application

Clause 44 of the *Victorian Public Service Enterprise Agreement 2024* (the Agreement) applies to Victorian Public Service (VPS) Departments and Agencies (Employers) and their Employees covered by the Agreement.

Overview

Clause 44 of the Agreement establishes an Employee's right to disconnect from work and refrain from engaging in work-related communications and activities, such as emails, telephone calls or other messages outside of the Employee's working hours or during periods of leave or rostered days off, unless the refusal is unreasonable.

Clause 44 of the Agreement also outlines the circumstances when it would be considered reasonable for the Employer to contact an Employee outside of working hours, when it may be reasonable for the Employee to refuse or ignore contact out of working hours and how disputes arising from an Employee's refusal to monitor, read or respond to contact or attempted contact where the Employer believes the refusal was unreasonable. This policy provides guidance to Employers to support them to operationalise the obligations arising from clause 44 of the Agreement.

Relevant provisions of the Agreement

Clause 44 – Right to Disconnect

Supplementary Guidance Information

1. An Employee's right to disconnect

- 1.1. All Employees have the right to disengage from work and refrain from engaging in work-related communications and activities, such as emails, telephone calls or other messages, outside of the Employee's working hours or during periods of leave or rostered days off.
- 1.2. An Employee will not be penalised or otherwise disadvantaged for refusing to attend to work matters outside of the Employee's working hours or their agreed ordinary hours under a flexible arrangement, unless their refusal is unreasonable in the circumstances.
- 1.3. This right applies to work related communications and activities from their Employer as well as third parties, such as clients, customers and Employees of other departments or organisations.

2. Interaction with the general protections regime

- 2.1. The right to disconnect is a 'workplace right' for the purpose of the general protections regime in Part 3-1 of the *Fair Work Act 2009* (Cth) (FW Act). This means that a person, including an Employer, must not take adverse action against an Employee because the Employee has a right to disconnect, or has exercised, or proposes to exercise the right to disconnect.
- 2.2. Adverse action may include action, or the threat of action, that would disadvantage an Employee, such as dismissal or reducing shifts. If an Employee believes their Employer has contravened the general protections regime, they can make an application to the Fair Work Commission to seek a remedy, such as reinstatement or compensation.

3. Key principles underpinning an Employee's right to disconnect.

- 3.1. The right to disconnect is based on the following key principles:
 - 3.1.1. periods of leave must be respected,
 - 3.1.2. Employees must not be expected to routinely perform work outside of the Employee's working hours, other than in an emergency, incident response situation or in relation to genuine welfare matters,

- 3.1.3. an Employee will not be penalised or otherwise disadvantaged for refusing to attend to work matters outside of the Employee's working hours provided their refusal is reasonable in the circumstances, and
 - 3.1.4. there is no general expectation in the VPS that Employees monitor, read or respond to emails, messages or phone calls outside their working hours or during periods of leave or on rostered days off.
- 3.2. These principles are enshrined in clause 44.2 of the Agreement.
- 4. Circumstances when it may be reasonable for the Employer to contact an Employee outside working hours**
- 4.1. While the Agreement establishes an Employee's right to disconnect from work and refrain from engaging in, or responding to, work-related communications and activities, such as emails, telephone calls or other messages, outside of the Employee's working hours or during periods of leave or rostered days off, it does not preclude:
- 4.1.1. an Employer reasonably contacting an Employee outside working hours (having regard to the factors in clause 44.3 of the Agreement – see paragraph 6 for further guidance),
 - 4.1.2. requiring an Employee to work reasonable additional hours (clause 44.6 of the Agreement),
 - 4.1.3. requiring or rostering an Employee to be on stand-by or perform overtime (clause 44.6 of the Agreement),
 - 4.1.4. recalling an Employee to duty outside the span of hours (clause 44.6 of the Agreement), or
 - 4.1.5. an Employer and Employee agreeing to a flexible work arrangement which may include permitting an Employee to work some of their ordinary hours outside the span of hours (clause 44.5 of the Agreement).
- 4.2. Clause 44.4 of the Agreement provides some examples of when it may be reasonably necessary for an Employer to contact an Employee outside of their working hours. Employees would be expected to respond to contact from the Employer outside of their working hours in these and similar circumstances, unless it would be unreasonable to do so (having regard to the factors outlined in clause 44.3 of the Agreement).
- 5. Types of communications methods which constitute a work-related communications and activity**
- 5.1. Work related communications and activities should be interpreted broadly and would include any form of communication used to engage with Employees, including phone calls, emails, texts, social media, and other messaging services or platforms.
- 6. Factors for determining whether Employer contact and Employee refusal to respond outside working hours was reasonable**
- 6.1. Whether an Employer contacting an Employee outside their working hours and an Employee refusing to respond outside their working hours was reasonable will depend on the circumstances in each case.
- 6.2. Clause 44.4 of the Agreement outlines a range of circumstances when it will be reasonably necessary for an Employer to contact an Employee outside of the working hours. Employers should have consideration of the reason for the contact having regard to the occasions listed

in clause 44.4 of the Agreement before making contact with an Employee outside of working hours.

- 6.3.** Clause 44.3 of the Agreement outlines a number of factors which will go to determining the reasonableness of the refusal, including:
- 6.3.1.** the reason for the contact or attempted contact,
 - 6.3.2.** how the contact or attempted contact was made and the level of disruption the contact or attempted contact causes the Employee,
 - 6.3.3.** whether the Employee is compensated to be available outside working hours, for example, when on-call, or for working additional hours outside of the spread of ordinary hours, or their agreed hours under a flexible work arrangement,
 - 6.3.4.** the nature and seniority of the Employee's role and level of responsibility, and
 - 6.3.5.** the Employee's personal circumstances, including family or caring responsibilities.
- 6.4.** In both cases, the list of factors is non-exhaustive, and other factors may also be relevant, such as, patterns of behaviour, to determining, in the circumstances, the contact or refusal to respond to contact was reasonable.

7. Implications for Employers

- 7.1.** The right to disconnect simply enshrines into the Agreement the appropriate management practices which should already have been standard operating procedure for public service Employers. That is, Employers should not be routinely contacting Employees and expecting their Employees to respond to contact outside their working hours unless there is a reasonable basis to do so, regardless of whether a right to disconnect was enshrined in the enterprise agreement or not.
- 7.2.** In practice, the enshrining of a right to disconnect does not prevent or alter the Employers right to contact their Employees outside working hours provided that contact is reasonable, is not routine and the Employer has considered the reason for contact in the context of clause 44.4 of the Agreement. Where the Employer has considered these factors, and it is reasonable for them to do so they will continue to be able to reasonably contact their Employees outside working hours.
- 7.3.** Even where it is reasonable for an Employer to contact an Employee outside of their working hours, during a period of leave or on a rostered day off, an Employee may refuse to respond to the contact or attempted contact provided their refusal is reasonable.
- 7.4.** An Employee who has exercised their right to disconnect under clause 44 of the Agreement, must not be penalised for doing so. This means an Employee must not be subject to disciplinary action or have the fact they reasonably invoked their right to disconnect taken into consideration as part of the Employee's end of the performance cycle review.

8. Advice to managers

- 8.1.** Prior to contacting an Employee out of hours and expecting the Employee to respond, managers should have regard to their obligations in clause 44 of the Agreement and consider:
- 8.1.1.** whether the contact is necessary or urgent,

- 8.1.2. what is the Employee's role or level of responsibility and given this whether it would be appropriate to contact the Employee outside of their working hours,
 - 8.1.3. whether there are alternatives to contacting the Employee out of hours, for example delaying responses, renegotiating deadlines or asking another Employee to undertake the task within their working hours,
 - 8.1.4. the Employee's personal circumstances, including family or caring responsibilities (if known), and
 - 8.1.5. whether the Employee is compensated (for example, through payment of allowances, incorporation of reasonable additional hours into an annualised salary or provided additional leave or time in lieu etc) to be available or perform work outside of hours.
- 8.2. If, after considering these factors, they consider contact outside of working hours is appropriate and necessary, and the expectation that the Employee respond is reasonable, they should consider the method of contact and likely level of disruption for the Employee, and use their judgement to choose the method of contact which is appropriate for the circumstances having consideration for factors such as:
- 8.2.1. the reason for the contact and its urgency,
 - 8.2.2. the time of day the contact is made,
 - 8.2.3. length of time required to respond,
 - 8.2.4. the personal and family circumstances of the Employee, including caring responsibilities (if known), and/or
 - 8.2.5. the urgency of the response required from the Employee.
- 8.3. Managers should ensure Employees understand their right to disconnect, the general principles enshrined in clause 44.2 of the Agreement and the matters that may be taken into account in determining whether a refusal to respond was reasonable.
- 8.4. Managers and Employees should regularly discuss the type of circumstances in which an Employee may be expected to monitor, read or respond to contact so expectations are clearly understood. These discussions may occur in a range of forums, including recruitment and on-boarding discussions, performance discussions, one-on-one catchups, team meetings, and planning sessions.
- 8.5. Managers should be mindful that if they are sending routine emails to an Employee outside of an Employee's working hours, that the Employee is made aware that there is not an expectation that an Employee routinely monitor, read or action emails where it is reasonable for the Employee not to do so. Managers should also consider delaying sending routine emails to Employees outside the span of hours and scheduling emails to be sent to an Employee during the Employee's working hours where possible.

9. Implications for Employees

- 9.1. Enshrining a right to disconnect into the Agreement does not mean there is a blanket restriction on an Employer contacting their Employees outside of their working hours. Employers can continue to contact Employees outside working hours where there is a reasonable basis to do so and existing arrangements for contacting Employees outside of their work hours will continue, provided, they are reasonable.

- 9.2. Where an Employee believes contact and the expectation for them to respond is unreasonable or where they believe it is reasonable to not respond to a work related communication or activity outside of their working hours, the Employee should have consideration for the factors outlined in clause 44.3 of the Agreement, including their level of seniority and responsibility, their own personal circumstances (including family and caring responsibilities), the level of disruption caused by the contact or attempted contact and whether the Employee is compensated to be available to be contacted or perform work outside of hours.
- 9.3. All these factors in combination will go to determining whether the Employee's refusal to respond was reasonable in the circumstances.
- 9.4. Employees should discuss with their manager where they are not clear of the expectation of their role, with respect to monitoring, reading or responding to contact or attempted contact from their Employer outside of their working hours.

10. Advice for Employees

- 10.1. Employees should ensure they understand their right to disconnect, and the general principles enshrined in clause 44.2 of the Agreement and the matters that may be taken into account in determining whether a refusal to respond was reasonable.
- 10.2. If Employees are unsure of their obligations to monitor or respond to contact outside of working hours, they should discuss the type of circumstances in which they may be expected to monitor, read or respond to work related activity and communications with their manager.
- 10.3. In considering whether or not to respond to a work related communication outside of working hours, an Employee should understand and consider the factors outlined in clause 44.3 of the Agreement, prior to invoking their right to disconnect.

11. Compensation for additional hours worked

- 11.1. Clause 46 of the Agreement provides a regime for the compensation for Employees covered by the Agreement when they are required to work additional hours beyond their ordinary hours of work at the direction of the Employer (or in the circumstances described in clause 46.1 of the Agreement).
- 11.2. While clause 46 of the Agreement does not apply to Employees classified at Grade 5 or higher, the parties to the Agreement have agreed to guidelines in respect to reasonable additional hours and the circumstances when an Employer should grant time in lieu to Employees classified as VPS 5 or above. These arrangements are set out in the Best Practice Employment Commitment (BPEC).
- 11.3. Managers should be mindful of their obligations under these arrangements when contacting Employees outside of hours with the expectation they respond and not that contacting Employees outside of hours and expecting them to respond may give rise to entitlement to compensation in accordance with these arrangements.

12. Resolving disputes about an Employee's right to disconnect

- 12.1. Where a dispute arises about an Employee's refusal to monitor, read or respond to contact or attempted contact outside working hours or during periods of leave or about the reasonableness of any refusal, the parties should first raise and genuinely attempt to resolve the matter at the workplace level between the Employee and their manager.
- 12.2. Where the matter remains unresolved, either party may refer the matter to the dispute resolution procedure under clause 13 of the Agreement or refer the matter to the Fair Work Commission.

12.3. If the matter is referred to the Fair Work Commission, they may make a stop order, deal with the dispute in other ways (for example by holding a conference to try to resolve the dispute) or do both of the above.

13. Practical Examples

13.1. The examples in the table below seek to illustrate the intended operation of this provision.

Illustrative example	Consideration of reasonableness (having regard to the factors set out in clause 44.3 of the Agreement)
<p>Tom is a VPS 3 Policy Officer who is routinely contacted by phone and text out of hours and during periods of leave for minor clarifications or non-urgent matters. Tom finds the volume of contact to be intrusive to him spending time with his family but feels there is an expectation he responds to any contact from his manager no matter what the circumstances or time of day.</p>	<p>It is not reasonable for the manager to contact Tom in this manner because Tom holds a junior position within the team, the matters do not require urgent attention and the volume of contact or attempted contact is unreasonable and disruptive.</p> <p>Having consideration for the requirements of clause 44 of the Agreement, the Employer should reconsider the need to contact Tom and where possible refrain from doing so unless it is reasonable. It would be reasonable for Tom to invoke his right to disconnect.</p>
<p>Sara is a VPS 2 classified Security and Property Officer. Sara is responsible for restricting access to a secure facility at her workplace. At the conclusion of her shift, Sara accidentally takes home the main set of keys preventing access to the facility by other Employees. Sara's manager contacts her to enquire about the whereabouts of the keys and arranges to collect them from Sara.</p>	<p>It is reasonable for the Employer to contact Sara, even though she holds a junior position in team which ordinarily would not have the expectation of outside hours contact because in these circumstances there was a genuine and urgent operational reason to do so.</p> <p>While generally speaking, Sara would have the right to disconnect from attempts to contact her outside of hours, in this case, it would be reasonable that the Employer would expect Sara to respond to contact or attempted contact given the pressing operational reason.</p>
<p>Ezi is a VPS Communications and Media Manager who is regularly required to be on a rostered period of stand-by. Ezi's manager routinely contacts her out of hours when media or communications issues arise but only while she is rostered on the stand-by roster.</p>	<p>It is reasonable for the Employer to contact Ezi outside of working hours in these circumstances. While the contact is regular, routine and outside working hours, Ezi is paid an allowance for being on stand-by and provided compensation when recalled to duty in accordance with the Agreement (and Best Practice Employment Commitment).</p> <p>It is reasonable the Employer would expect Ezi to respond to issues which arise during her rostered stand-by period and the right to disconnect during this time would not apply.</p>
<p>Fatma is a director of a team managing 20 Employees, who works flexibly early in the mornings and late into the evenings to accommodate her personal preferences. She often contacts Employees by email, text and phone during this time and expects her team to respond, even for</p>	<p>It is not reasonable for Fatma to routinely contact her team members outside of their working hours and have a general expectation they respond to her contact. Having regard to the obligations under clause 44 of the Agreement, Fatma should re-assess the need to contact her team members out of hours and take steps to ensure her working preferences do not infringe on</p>

Illustrative example	Consideration of reasonableness (having regard to the factors set out in clause 44.3 of the Agreement)
<p>Employees in the team who work part-time or prefer to complete their ordinary hours during usual working hours.</p>	<p>her teams right to disconnect from engaging in work-related communications and activities, outside of the Employee's working hours or during periods of leave or rostered days off.</p> <p>It is reasonable that for non-urgent, routine queries, team members can invoke their right to disconnect and not routinely monitor, read or respond to emails, messages or phone calls outside their working hours or during periods of leave or on rostered days off. If team members continue to feel there is an expectation they read and respond to Fatma's emails, Fatma should make it clear that even though she prefers to clear her inbox out of hours, her team members are not expected to reply outside their working hours.</p>
<p>Helga is a VPS 6 manager working part-time after returning from a period of parental leave. Helga's usual working arrangements mean she has two non-workdays a week. Helga's manager sometimes calls, emails or texts her during her non-workdays to ensure her work continues to progress in her absence. Helga responds to these queries on her non workdays when there is urgent operational need to do so, if and when she can, given her caring responsibilities.</p>	<p>Helga has the right to disconnect on her non-workdays and understands from discussing with her manager she is not expected to routinely monitor, read or respond to emails, messages or phone calls on these days.</p> <p>Where urgent matters arise, it may be reasonable for Helga's manager to contact her on her non-workdays, but it may equally be reasonable for Helga not to respond or delay responding given her family and caring responsibilities.</p>
<p>Jeff is absent from work on long term leave. Jeff's absence is due to come to an end within a few weeks and Jeff's manager contacts him to ascertain his return-to-work intentions.</p>	<p>While generally Jeff has the right to disconnect during his period of long-term leave, it is reasonable for Jeff's manager to contact him and to expect that he responds at a time which suits Jeff's personal and family circumstances in these circumstances.</p> <p>The right to disconnect would not apply given it is reasonable for the Employer to enquire about his plans to return to work and there is not an ongoing or unreasonable expectation of an immediate response.</p>
<p>Olga is a VPS 6 Project Manager. The project Olga manages requires some reasonable additional hours and her manager routinely calls her after hours as part of overseeing the project's successful implementation. Olga generally responds to contact from her manager but occasionally does not due to her personal and family responsibilities after hours.</p>	<p>Commensurate with the remuneration of classifications for VPS 5 and above, as well as the level of responsibility expected of senior positions classified at these grades and value ranges, Employees classified at VPS 5 and above may be expected to undertake reasonable additional hours to support service delivery. Given this, it is reasonable that the Employer contact the Employee out of hours and expect they respond where it is reasonable for Olga to do so. In doing so the Employer should continue to make an assessment about the reasonableness of the contact and the reasonableness of their expectation she replies.</p> <p>Olga exercises her right to disconnect where it is reasonable for her to do so (for example, due to her</p>

Illustrative example	Consideration of reasonableness (having regard to the factors set out in clause 44.3 of the Agreement)
	<p>personal and family circumstances) but otherwise acknowledges given her role and seniority in the project some out of hours contact is reasonable.</p> <p>Olga and her manager routinely discuss the project and the type and amount of out of hours contact so they both have an understanding of each other's circumstances and the operational requirements of the role and how out of contact can be managed.</p>
<p>Anthony is an IT Manager classified as an STS 7 classification. Anthony's manager contacts him outside working hours, but he is unable to substantively respond on this occasion because he needed to take his ill child to hospital. and instead provides a short text to advise his direct manager of his circumstances.</p>	<p>While generally a senior position classified at this level would have an expectation of some reasonable out of hours contact, in this circumstance it was reasonable for Anthony to only provide a quick response by text to his manager to advise that he was unable to respond due to dealing with a family medical emergency and invoke his right to disconnect. In these circumstances it would be unreasonable for the Employer to have expected Anthony to have responded fully to the work-related communication and the Employer refrains from further contact and instead asks Anthony's colleague to action anything which could not wait until Anthony's next scheduled ordinary hours of work.</p>
<p>Rose works in a department's emergency management and response unit as a VPS 4 Employee. As part of her role, it is expected she respond to emerging emergencies in her area of responsibilities. If she is recalled to work, compensation is payable in accordance with the terms of the Agreement.</p>	<p>While generally an Employee at VPS 4 level is able to exercise their right to disconnect, it is reasonable for the Employer to contact Rose and expect her to respond, outside her working hours in this circumstance because of the emergency situation, the nature of her role and the fact she would be compensated for recall to duty in accordance with the Agreement in the event the emergency required her to return to the workplace outside her working hours.</p>
<p>Jeremy is a VPS 3 classified shift worker who is contacted on his rostered day off to ascertain whether he is available to fill a roster vacancy.</p>	<p>The right to disconnect does not apply. While generally Jeremy has the right to disconnect during his rostered day off, it is reasonable for the Employer to attempt to contact Jeremy on his rostered day off for this purpose.</p> <p>It is also reasonable for Jeremy to respond at a time which suits Jeremy's personal and family circumstances (noting that if he does not respond then the vacancy may go to another Employee).</p>
<p>Hugo is a VPS 4 classified part-time Employee. On one of his non-workdays he receives a text, phone call and email from his manager to advise that his usual workplace has been damaged such that it is not safe for him to attend that location for the foreseeable future and to provide advice on where and how to attend for duty in the interim.</p>	<p>The right to disconnect does not apply. Even though Hugo has the right to disconnect on his non-work days, it is appropriate and reasonable for the Employer to contact him on his non-work day given the emergency situation affecting his workplace and the pressing need to convey important information to ensure Hugo can safely return to duty for his next scheduled work day and there is not an ongoing or unreasonable expectation of an immediate response.</p>
<p>Ange is a VPS 6 Legal Officer working part-</p>	<p>The right to disconnect does not apply. Even though</p>

Illustrative example	Consideration of reasonableness (having regard to the factors set out in clause 44.3 of the Agreement)
<p>time three days a week. A court hands down a decision on one of her non-workdays, requiring certain actions be taken by the court-imposed deadline. Responding to these actions cannot wait until Ange's next scheduled workday and there is not another Legal Officer who is across the case who could perform the actions in her absence.</p>	<p>Ange generally has the right not to monitor or respond to work related contact on her non-workdays, the pressing operational need of the court-imposed deadline and her status as a senior classified Employee in charge of the matter, means it is reasonable for the Employer to contact Ange on her non-workday and expect that she respond.</p>

Making decisions under this policy

Under s.20(1) of the *Public Administration Act 2004*, the public service body head has all the rights, powers, authorities and duties of an Employer, which will usually be delegated to staff within their Department or Agency. Employers should ensure that any actions under this policy are only taken by an Employee with the delegation to do so. Each Department and Agency should give effect to this policy in accordance with its own delegations.

Dispute resolution

An Employee who is directly affected by a decision made or action taken pursuant to clause 44 of the Agreement may apply for a review of actions under the Employer's review of actions policy or seek to resolve a dispute through the Resolution of Disputes procedure at clause 13 of the Agreement.

Further Information

Employees should refer to their Department or Agency's intranet for information on procedural requirements, systems and approval delegations.

For further information and advice please contact your local Human Resources or People and Culture Unit (or equivalent).

Related policies or documents

Common Policies

- Flexible Working Arrangements – Specific Circumstances
- Review of Actions

All policies can be found at <https://www.vic.gov.au/common-policies-victorian-public-service-enterprise-agreement>.

Other Resources

The Fair Work Commission has also prepared guidelines on the right to disconnect:

<https://www.fwc.gov.au/issues-we-help/right-disconnect-disputes/what-right-disconnect>.

The Victoria Public Service Commission has published a Flexible work policy, which applies to VPS Employees. A copy of the policy can be found at:

<https://vpsc.vic.gov.au/workforce-capability-leadership-and-management/flexible-work/flexible-work-policy/>.

Authorised by Industrial Relations Victoria:

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If you print and store this document, you may be looking at an obsolete version. Always check the latest version of this document at <https://www.vic.gov.au/common-policies-victorian-public-service-enterprise-agreement>.