



Australian  
Human Rights  
Commission

# Australian Human Rights Commission

## Enterprise Agreement

2016-19

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## Part 1 – TECHNICAL AND GENERAL MATTERS

### 1. Title

1.1. This Agreement shall be known as the Australian Human Rights Commission Enterprise Agreement 2016-19.

### 2. Coverage

2.1. This Agreement is made under section 172 of the Fair Work Act 2009.

2.2. This Agreement applies to:

- President of the Australian Human Rights Commission and
- All non-SES employees of the Australian Human Rights Commission

2.3. The parties to this Agreement are bound by its terms.

### 3. Commencement and nominal expiry dates

3.1. This Agreement will commence operation 7 days after approval by the Fair Work Commission and will nominally expire 3 years from the date of commencement.

### 4. Comprehensive agreement

4.1. This Agreement is a comprehensive agreement, noting that other Commonwealth laws concerned with employment such as those below, continue to apply according to their terms.

- *Public Service Act 1999*
- *Fair Work Act 2009*
- *Privacy Act 1988*
- *Long Service Leave (Commonwealth Employees) Act 1976*
- *Maternity Leave (Commonwealth Employees) Act 1973*
- *Paid Parental Leave Act 2010*
- *Superannuation Act 1976*
- *Superannuation Act 1990*
- *Superannuation Productivity Benefit Act 1988*
- *Superannuation Act 2005*
- *Superannuation Benefits (Supervisory Mechanisms) Act 1990*
- *Safety, Rehabilitation and Compensation Act 1988*
- *Work Health and Safety Act 2011*

4.2. There are policies and guidelines that support the operation of this Agreement. These policies and guidelines are not incorporated into and do not form part of this Agreement. If there is any inconsistency between the policies and guidelines and the express terms of this Agreement, the express terms of this Agreement will prevail to the extent of any inconsistency.

## **5. Individual Flexibility Arrangement**

5.1 The President and an employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of any of the terms of the agreement where the arrangement meets the genuine needs of the employee and the Commission.

5.2 The President must ensure that a flexibility arrangement agreed under this clause:

- (i) is about permitted matters under s 172 of the *Fair Work Act 2009*
- (ii) does not include unlawful terms under s 194 of the *Fair Work Act 2009*;
- (iii) results in the employee being better off overall than if no arrangement was agreed to;
- (iv) is in writing
- (v) includes the name of the employer and employee
- (vi) is signed by the employee and the delegate and if the employee is under 18 years of age, signed by their parent or guardian
- (vii) is able to be terminated by either the employee or the delegate giving not more than 28 days written notice, or at a time by agreement between the employee and the President in writing; and
- (viii) is given to the employee a copy within 14 days after it is agreed to.

5.3A flexibility arrangement must be genuinely agreed between the employee and the President.

## **6. Variations of agreement**

6.1. This Agreement may be varied by application to Fair Work Commission pursuant to Division 7, of Part 2-4 of the *Fair Work Act 2009*

## **7. Interpretations**

‘Action’ includes a refusal or failure to act.

‘APS’ means the Australian Public Service.

‘Child’ means a child as defined under Section 17(1) of the *Fair Work Act 2009*.

‘Commission’ means the Australian Human Rights Commission and shall include any person with an appropriate delegation to act on its behalf.

‘Employee’ means an ‘employee’ whether full-time or part-time employed by the Australian Human Rights Commission under and within the meaning of the *Public Service Act 1999*.

‘Family’ means the members of an employee’s family including, where the President agrees, on reasonable grounds, a significant other who has a strong affinity with the employee including immediate family as defined under s 12 of the Fair Work Act.

‘FWA’ means Fair Work Act.

‘FWC’ means the Fair Work Commission

‘Maternity Leave’ is a period of absence of up to 52 weeks in accordance with the *Maternity Leave (Commonwealth Employees) Act 1973*.

‘NES’ means the National Employment Standards.

‘Registered Health Practitioner’ means a medical service provider or alternative health provider, licensed or registered, and recognised by a private health fund or by Comcare.

‘Medical evidence’ means a certificate provided by a Registered Health Practitioner as defined above.

‘President’ means the Head of Agency of the Australian Human Rights Commission.

‘Salary’ is the employee’s rate of salary/pay (in accordance with the salary/pay rates at Appendix A) will be salary for all purposes. Specifically, where salary sacrifice arrangements (and purchased leave options, or other relevant arrangements) are in place, the employee’s salary for purposes of superannuation, severance and termination payments will be determined as if the salary sacrifice (or other) arrangement had not been entered into.

‘SES’ means the Senior Executive Service.

‘Supervisor’ means the employee responsible for a section or team within the Commission.

## **8. Procedures for dealing with disputes**

8.1. If a dispute relates to:

- (i) a matter arising under the agreement; or
- (ii) the National Employment Standards;

- this term sets out the procedures to settle the dispute.
- 8.2. An employee who is party to the dispute may appoint a representative for the purposes of the procedures in this term.
- 8.3. In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the employee or employees and relevant supervisors and/or management.
- 8.4. If discussions at the workplace level do not resolve the dispute, a party may refer the matter to the Fair Work Commission.
- 8.5. The FWC may deal with the dispute in 2 stages:
- (i) the FWC will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
  - (ii) if the FWC is unable to resolve the dispute at the first stage, the FWC may then:
    - a. arbitrate the dispute; and
    - b. make a determination that is binding on the parties.

Note: if the FWC arbitrates the dispute, it may also use the powers that are available to it under the Act.

A decision that the FWC makes when arbitrating a dispute is a decision for the purpose of Division 3 of Part 5.1 of the Act. Therefore, an appeal may be made against the decision.

- 8.6. While the parties are trying to resolve the dispute using the procedures in this term:
- (i) an employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety
  - (ii) an employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace, unless:
    - a. the work is not safe
    - b. applicable occupational health and safety legislation would not permit the work to be performed
    - c. the work is not appropriate for the employee to perform
    - d. there are other reasonable grounds for the employee to refuse to comply with the direction.

- 8.7. The parties to the dispute agree to be bound by a decision made by the FWC in accordance with this term.

## **9. Delegations**

9.1. The President may delegate any or all of his or her powers and functions under this Agreement, including the power of delegation and may do so subject to conditions but no such delegation shall prevent the personal exercise by the President of a power or function so delegated.

## **Part 2 – OBJECTIVES AND PRINCIPLES**

### **10. Objectives and Principles**

10.1. This Agreement is to assist the Commission in achieving its purpose, vision, and strategic goals as reflected in the Commission's Corporate Plan.

10.2. Consistent with the APS Values, the Commission is committed to effective workplace relations that value communication, consultation with employees and their representatives and cooperation and input from employees about matters that affect their workplace, including employment guidelines, procedures and policies. The Commission will allow reasonable time for such consultation and establish ad-hoc committees as necessary. Consultation on major changes affecting the Commission will be in accordance with Appendix B.

10.3. The role of workplace representatives, including union delegates and employee representatives, will be respected and facilitated, in accordance with the Fair Work Act.

### **11. Anti-discrimination and workplace diversity**

11.1. The Commission is an organisation, which values fairness, equity and diversity. As the body with a statutory responsibility to ensure the observance of human rights in Australia it is important that respect and acceptance of diversity is an integral part of our own workplace. Consistent with that aim, the Commission is committed to preventing and eliminating racial hatred and sexual harassment as well as discrimination on the grounds of race, colour, descent, national or ethnic origin, national extraction, immigrant status, sex, gender identity, intersex status and sexual orientation, marital or relationship status, breastfeeding, family responsibilities, pregnancy, age, disability, religion, political opinion, irrelevant criminal record, membership or non-membership of a trade union or social origin.

11.2. The Commission is committed to increasing employment opportunities and accessibility for all who experience employment disadvantage including, people with a disability, Aboriginal and Torres Strait Islander peoples, people from culturally and linguistically diverse backgrounds, mature age workers and Lesbian, Gay, Bisexual, Transgender, Intersex and Queer workers.

### **12. Code of conduct and APS values**



12.1. In implementing this Agreement and in undertaking his or her duties, an employee shall comply with *Australian Public Service Values* and *Codes of Conduct* and shall not behave in a manner contrary to the interests of the Commission. Employees are required to comply with all Commission policies and guidelines as a condition of employment.

12.2. The following actions are required standards of conduct, employees:

(i) who participate in a private capacity in public discussions must:

- a. ensure that the audience is clear that the public comment is being made in a private capacity and that the employee is not speaking on behalf of the Commission or the Government; and
- b. ensure that the public comment cannot be seen as compromising his or her ability to continue to carry out his or her official duties in an unbiased and apolitical manner; and
- c. not make public comment in circumstances where the employee's status or other reasons will make it difficult for the audience to believe that the comments are being made in a private capacity.

(ii) must comply with Commission policies and use the resources, equipment and facilities of the Commission in a proper and lawful manner, recognising the particular nature of the Commission's role and functions.

(iii) must seek approval if they wish to engage in outside employment. Any outside employment must not pose a conflict of interest with their employment in the Commission.

### 12.3 Breaches of the Code of Conduct:

- (i) Matters concerning possible breaches of the *Code of Conduct* as specified at 12.1 and 12.2 above, will be dealt with in accordance with the procedures established by the President pursuant to relevant provisions of the *Public Service Act 1999*, *Public Service Commissioner's Directions* and the *Public Service Regulations 1999* and principles governing the application of natural justice.

**Non ongoing employees and employees on probation are excluded from the provisions of clause 12.3 as this is dealt with under the terms of their engagement.**

## Part 3 – EMPLOYMENT CONDITIONS

### Part 3A Performance Management and Learning and Development

#### 13. Performance management framework

13.1. The purpose of the Commission's Performance Management Scheme is to strengthen and support the Commission in performing its functions by providing regular and formal assessment of employees' work performance and to provide employees with skill development and career advancement opportunities.

13.2. Further information can be found in the ***Performance Management Guidelines***.

13.3 Annual assessment of an employee's performance will be the basis of salary progression within the pay points assigned to their classification and may also be taken into account:

(i) when considering an employee for temporary reassignment of duties or promotion; or

(ii) as a basis to commence proceedings in relation to the unsatisfactory performance of duties or misconduct.

13.4 Employees and supervisors will develop a performance agreement and employees will have their work performance assessed and rated by their immediate supervisors using a four point scale. Employees will advance by one salary point in the relevant classification pay range subject to meeting the performance standard rating of "effective" or better. Employees rated "not effective" will not be eligible for salary progression and may be subject to an underperformance process.

13.5 Employees who are not satisfied with the supervisor's assessment may request a review of the supervisor's assessment by following the Commission's procedures in respect to review of actions.

#### **Managing underperformance**

13.6 There may be occasions when an employee's performance is consistently falling below the expected standard, even though the employee's supervisor has taken measures to overcome the problems as part of his or her day-to-day management responsibilities. It is important that these matters be addressed promptly and fairly rather than waiting until the next formal performance management feedback session and any relevant matters must be included in the next formal feedback session if ongoing action is required. The procedure for handling poor performance can be found in the **Managing**

**Underperformance Guidelines** and applies to all employees except for the following, who are dealt with under the terms of their engagement:

- (i) an ongoing employee who is on probation;
- (ii) a non-ongoing employee who is employed for a specified term or for the duration of a specified task; and
- (iii) a non-ongoing employee engaged on an irregular or intermittent basis.

13.7 The process will include written warnings and a structured performance assessment plan developed with the employee. The plan will be implemented over a period of 2 months unless there are exceptional circumstances. An employee may choose to have a support person accompany them in a discussion with a manager where there are issues about the employee's performance.

13.8 The underperformance process must have regard for the principles of procedural fairness and natural justice.

13.9 Where the delegate determines, on the basis of assessment, that the employee's performance remains unsatisfactory; action will be commenced to:

- (i) assign the employee to other duties, or
- (ii) reduce the employee's classification, or
- (iii) terminate the employment, or
- (iv) take some other form of appropriate action.

## 14. Learning and development

14.1. The Commission will provide employees with support to access those learning and development activities that:

- (i) have a clear connection with the work of the Commission; *and*
- (ii) have a direct link to individuals' work responsibilities; *and*
- (iv) assist ongoing career development.

14.2. Learning and development activities include on and off the job training, formal study and will be specified in annual performance agreements for each employee.

14.3. The Commission will, subject to prior approval of such arrangements including the cost, reimburse reasonable additional expenses arising from additional care arrangements when the employee is required to attend a particular training activity outside normal hours of work or away from his or her normal work location.

## 15. Studies Assistance

15.1 The Commission supports the principle of life-long learning. Employees will be encouraged to undertake tertiary study to improve their career development opportunities.

- (i) Approval for studies assistance is not an automatic entitlement but may be granted subject to operational requirements of the Commission and equity with other employees of the Commission.
- (ii) In considering approval for studies assistance, the relevance of the proposed studies to the needs of the Commission, operational priorities and resource capacity will be taken into account.
- (iii) Employees who have been unable to complete schooling or commence tertiary studies due to personal circumstances will be encouraged to apply for assistance.

Further information is available in the *Studies Assistance Guidelines*.

## Part 3B Classification, Salary Rates and Remuneration Arrangements

### 16. Annual salary increases

16.1. Employees will receive a productivity salary increase of:

- (i) 3% on the first full pay period following commencement of the Agreement
- (ii) 2% on the first full pay period 12 months after the commencement of the Agreement
- (iii) 1% on the first full pay period 24 months after the commencement of the Agreement.

16.2. Remuneration increases are set out in the salary tables at Appendix A.

### 17. Classification structure and remuneration

17.1. The range of duties assigned to each position, and the employees engaged to perform them, shall be allocated an approved APS classification within the classification structure included at Appendix A.

17.2. Where an employee commences employment with the Commission, or is moved or promoted to a position in the Commission, salary will be payable at the minimum salary point applicable to the employee's position

classification unless the President authorises payment above the minimum point in that salary range having regard to the skills, qualifications, experience, market considerations and equity with other employees. The President may authorise payment above the maximum point of the salary range, where immediately prior to commencing with the Commission, the employee was in receipt of salary above the maximum point in the current salary range.

- 17.3. The Commission may approve the movement from APS1 to APS2 and APS3 to APS4 in a broadband, following a performance rating of effective, where the employee has the necessary skill and proficiency, and subject to work availability.

17.4. **Salary Advancement**

Advancement through the pay points of the employee's position classification can only occur when an employee receives a rating of 'effective' or above in their annual performance assessment.

- 17.5. **Incorrect Salary Point:** Where, at the time of engagement, an employee's salary is set at an incorrect salary point within the applicable salary scale the Commission may authorise in writing the payment of the correct salary point.

- 17.6. **Reversion:** Where an employee requests in writing to perform work at a lower work value level the Commission may determine in writing that the employee shall be paid a rate of salary applicable to the lower work value position classification.

- 17.7. **Irregular or Intermittent Employees:** Non-ongoing employees who are employed on an irregular or intermittent basis may be paid an additional loading of 20% of salary in lieu of paid leave (excludes Long Service Leave) and public holidays on which they are not rostered to work.

**18. Method for payment of salary and salary packaging**

- 18.1. An employee shall be paid fortnightly in arrears and by electronic funds transfer into a financial institution account of his or her choice.

- 18.2. In the event of an overpayment of salary or allowances monies will be recovered from future pays in accordance with the Commission's Accountable Authority Instructions.

- 18.3. The fortnightly pay shall be based upon the following formula:

$$\text{fortnightly pay} = \text{remuneration} \times \frac{12}{313}$$

- 18.4. Employees may salary sacrifice to nominated superannuation funds.

## **19. Trainee/Graduate rates of pay**

19.1 Graduates will be engaged by the President at an APS3/4 classification level.

## **20. Supported Wage Arrangements**

20.1. Where the Commission engages employees eligible for the Supported Wage System, wages will be paid in accordance with Appendix C and any current rules or guidelines accompanying that System.

## **21. Remuneration for higher duties**

21.1 Where an employee is temporarily assigned duties at a higher classification, remuneration will be paid at the minimum rate applicable to the higher classification (pro-rated for partial or part-time duties), unless otherwise determined to be at a higher rate by the Commission. The employee shall only be eligible for further salary advancement with rating of effective or better under the Commission's Performance Management Scheme.

21.2 An employee shall not be considered to be temporarily assigned duties at a higher classification except where the period exceeds 5 days or in the case of operational type positions such lesser period as determined by the President.

21.3 Where an employee is temporarily assigned duties and the full range of duties is not performed the Commission may determine the remuneration to be paid to the employee.

21.4 An employee temporarily assigned duties at a higher classification level shall be entitled to receive the rate applicable for the higher position during a period of paid leave or public holiday provided that the employee would have received the rate applicable for the higher position if he or she had not been absent from the workplace for the period of the paid leave or the public holiday.

21.5 An employee who has been temporarily assigned duties at a higher level and has been assessed under the Commission's Performance Management Scheme to receive a salary increase within the higher classification level may retain that salary point on promotion. The delegate will take into account the length of the period of higher duties and how recent the higher duties were performed.

21.6 Where non-Senior Executive Service employees are temporarily assigned duties in Senior Executive Service jobs for short periods, they will be paid additional salary. The amount of additional salary will be determined by the President.

## 22. Payment of overtime

22.1 An employee who may be directed by the Commission to work outside of standard hours shall be working overtime and shall be entitled to be paid or to receive time off in lieu in accordance with this clause.

22.2 The hourly rate for overtime payment will be ascertained by applying the following formulae:

**Time and a half rate:**

$$\frac{\text{annual salary}}{313} \times \frac{6}{36 \frac{3}{4}} \times 1.5$$

**Double time rate:**

$$\frac{\text{annual salary}}{313} \times \frac{6}{36 \frac{3}{4}} \times 2$$

**Double time and a half rate:**

$$\frac{\text{annual salary}}{313} \times \frac{6}{36 \frac{3}{4}} \times 2.5$$

22.3 For the purpose of calculating the formula at 22.2 prescribed weekly hours before overtime is payable will be 36 <sup>3</sup>/<sub>4</sub>.

22.4 **Executive Level employees:** Payment of overtime will only be approved for Executive Level employees in exceptional circumstances. Where the Commission has approved payment to employees at the Executive Level 1 or 2, payment shall be made at the maximum rate applicable to an APS Level 6.

22.5 **Time-off-in-lieu:** Where the Commission and an employee agree, time off in lieu of payment for overtime may be taken, with the time off accrued at the overtime multiplier, within four weeks or such other agreed period from the time of working the overtime. Where the time off is not taken within four weeks or such other agreed period then payment for the overtime shall be made.

22.6 **Monday to Saturday:** Overtime worked Monday to Saturday will be paid at time and a half for the first 3 hours each day and double time thereafter.

22.7 **Sunday:** Overtime worked on a Sunday will be paid at the rate of double time.

22.8 **Public holiday:** Overtime on a Public Holiday will be paid at time and a half during standard hours and double time and a half outside of standard hours (as defined in Clause 26).

22.9 **Eight hour break:** An employee who works so much overtime that the employee has not had at least 8 consecutive hours off duty plus reasonable travelling time:

- (i) between the termination of the employee's ordinary duty on any day or shift, and the commencement of the employee's ordinary work on the next day or shift; or
- (ii) on a Saturday, Sunday or a public holiday, not being an ordinary working day, or on a rostered day off, in the 24 hours preceding the employee's ordinary commencing time on the employee's next ordinary day or shift;

will be granted time off under subclause 22.10.

22.10 An employee who is compelled to work so much overtime that the employee meets the conditions of subclause 22.9 will:

- (i) be allowed to leave work after such overtime for a period of 8 consecutive hours off duty, plus reasonable travelling time, and will suffer no loss of pay for ordinary working time occurring during the employee's absence;
- (ii) provided that if an employee is required to resume or continue work on the specific written instruction of the Commission, without having had 8 consecutive hours off duty plus reasonable travelling time the employee will be paid at double ordinary time rates (for time worked) until the employee has had 8 consecutive hours off duty plus reasonable travelling time; and
- (iii) the employee is to suffer no loss of pay for ordinary working time occurring during the employee's absence.

22.11 **Overtime not continuous with ordinary duty:** Subject to this clause, where an employee is required to perform overtime duty and such duty is not continuous with ordinary duty, the minimum overtime payment for each separate overtime attendance will be four hours at the prescribed overtime rate.

22.12 Where more than one attendance is involved, the minimum overtime payment provision will, subject to the prescribed minimum payment, not operate to increase an employee's overtime remuneration beyond that to which the employee would have been entitled had the employee remained on duty from the commencing time of duty on one attendance to the ceasing time of duty on a subsequent attendance.

22.13 For the purposes of determining whether an overtime attendance is or is not continuous with ordinary duty, or is or is not separate from other duty, meal periods will be disregarded.



22.14 Where an overtime attendance, not continuous with ordinary duty, involves duty both before and after midnight, the minimum payment provisions of this subclause will be satisfied when the total payment for the whole of the attendance equals or exceeds the minimum payment applicable to one day. Where a higher overtime rate applies on one of the days, the minimum payment will be calculated at the higher rate.

22.15 **Meal Allowance:** Where an employee is required to work overtime for periods of 3 or more hours a meal allowance shall be paid in accordance with the ATO Reasonable Allowances rates. Payment will be made through the payroll system. An additional amount may be paid for overtime worked in excess of 10 hours. In exceptional circumstances the delegate may consider a further payment

22.15 **Reimburse Reasonable Expenses:** Where an employee agrees or is directed to work overtime the Commission will, subject to prior approval of such arrangements including the cost, reimburse reasonable additional expenses arising from any additional care arrangements due to the requirement to work overtime.

## 23. Superannuation

23.1 The Commission will make superannuation contributions in accordance with its obligations under relevant legislation.

23.2 Where an employee has chosen an accumulation superannuation fund other than the PSS Accumulation Plan (PSSap), the employer contribution will be a minimum of 15.4% of the fortnightly superannuation contribution (or ordinary time earnings) salary the same as that required for employees who are members of PSSap. This will not be reduced by any other contributions made through salary sacrifice arrangements. This clause does not apply where a superannuation fund cannot accept employer superannuation contributions (e.g. unable to accept contributions for people aged over 75).

23.3 Employer superannuation contributions will not be paid on behalf of employees during periods of unpaid leave that does not count as service, unless otherwise prescribed by legislation.

23.4 Employer superannuation contributions will be paid on behalf of employees during periods of approved unpaid parental leave.

23.5 The Commission limits superannuation choice to complying superannuation funds that allow employee and/or employer contributions to be paid through fortnightly electronic funds transfer.

## Part 3C Flexible Work Arrangements and Work Life Balance

### 24. Work/life balance

24.1 Employees have the right to request flexible working arrangements under the Fair Work Act. The Commission acknowledges that employees have to balance their working life with other commitments, including family and the community. This is recognised through the provision of a range of flexible attendance arrangements, leave provisions and assistance programs. When applying flexible attendance arrangements and other employment conditions, the Commission and its employees will consider the operational needs of the Commission and any effect on other employees to ensure equitable outcomes. Under the FWA requests may be refused on reasonable business grounds. Where a request is not agreed to, the Commission will consider other alternatives where possible and outline reasons in writing where a request is not supported, within 21 days of receiving the request.

### 25. Part-time requests

25.1 All applications for part-time work must be in writing. Further information can be found in the ***Workplace Flexibility Policy and the Part-time Work Policy***.

25.2 The Commission will consider requests from employees for a range of different circumstances including but not limited to:

- (i) return from maternity/parental leave
- (ii) pre-retirement transition
- (iii) Short term requests such as personal illness carer needs or study.

25.3 Proposals for part-time work may be initiated by managers.

25.4 A part-time employee shall accrue all entitlements under this Agreement, other than entitlements to reimbursement and expense related allowances, on a pro rata basis.

25.5 Where a request cannot be accommodated, the Commission will outline the reasons in writing to the employee within 21 days of receiving the request. Under the FWA requests may only be refused on reasonable business grounds.

### 26. Hours of work

26.1 **Standard hours:** Standard hours of work shall be 147 hours in each four week settlement period.

26.2 **Standard Hours and Bandwidth:** Standard hours shall be worked within the bandwidth of 7:00am to 6.30pm, Monday to Friday. A standard day is 8.30am to 4.51pm with an hour for lunch between 12.30pm and 1.30pm.

26.3 Notwithstanding subclause 26.2, standard hours may be worked outside of the bandwidth stipulated with agreement, where operational requirements may be met and with the approval of the President.

26.4 **Core hours:** Core hours will be 10.00am to 12.00pm and 2.00pm to 4.00pm unless varied by agreement by an employee and their supervisor based on operational needs and with the approval of the President. Employees shall ordinarily be present at work during core hours.

26.5 **Unpaid meal breaks:** An employee must not work for longer than five hours without an unpaid break for a meal of a minimum of thirty minutes and no longer than 2 hours.

26.6 **Start and finish times:** Starting and finishing times within the bandwidth are to be determined by the Commission, after consultation with employee/s. To optimise effective client service supervisors may require employees (including part-time employees where this is consistent with their ordinary hours) to attend at specific times during general business hours of 8.30am to 5pm. It is understood that these arrangements should provide employees flexibility to balance work and personal obligations subject to operational requirements of the Commission, the need for appropriate supervisory arrangements to be in place and Work Health and Safety principles.

26.7 **Reimbursement for Family Care Arrangements:** Where the Commission requires employees to be away from home outside bandwidth hours (including normal travel time) or to work outside their regular hours managers will approve payment or reimbursement of the reasonable cost of additional family care arrangements on the production of receipts.

26.8 **Scheduling Meetings:** To assist employees balance their work and family/personal life responsibilities, workplace meetings will generally not be scheduled before 9am and will conclude by 4.30pm unless previously agreed.

26.9 **Flexleave:** Employees classified as APS 1 – 6 shall have access to flexleave provisions. A maximum of 4 standard days can be carried over at the conclusion of any settlement period and a maximum of 10 hours flex debit is permitted. Managers are responsible for ensuring that employees do not accrue excessive flexleave and carryover of flexleave balances beyond the settlement period will only be approved in exceptional circumstances. Further information can be found in the **Commission's Flex and Overtime Policy and Guidelines**. Flexleave credits accrue only for time worked within the bandwidth or where there is an agreement to work outside the bandwidth.

26.10 **Executive Level Employees:** Executive Level employees may access Time Off in Lieu. Executive Level employees will be able to access these TOIL days by agreement and subject to operational requirements. It is expected that Executive Level employees will show sound judgement in reviewing workloads, priorities and work practices to reduce the amount of

excess hours required for both themselves and their teams. TOIL days should be taken as soon as practical after the additional hours worked, and within 3 months maximum as agreed between the Manager and employee. TOIL days will not be paid out in any circumstances nor will it be treated on an hour for hour basis. Further information can be found in the **TOIL Policy**.

26.11 **Absences without approval:** Where an employee is absent from duty without approval, all pay and other benefits provided under this agreement, eg flextime, will cease to be available until the employee resumes duty or is granted leave. Where flextime no longer applies, employees will revert to standard hours (as defined in this clause).

26.12 **Domestic Travel time during bandwidth hours:** Employees who are on flextime under clause 26.9 may claim domestic business related travel time during the additional bandwidth hours of 6am and 7.30pm as recognition of this additional travel time.

## 27. Home-based work

27.1 The President may approve applications for home based work on either an on-going or temporary basis, where consistent with client service, the inherent requirements of the role and other operational requirements. Further information can be found in the **Home Based Work policy and guidelines**.

27.2 Any on-going or temporary arrangement may be terminated by the President for reasons such as ineffectiveness of the arrangement, or failure of the employee to comply with requirements. Where the President has decided to terminate an arrangement, the employee concerned shall be given reasonable notice of the termination.

## 28. Healthy lifestyle

28.1 The Commission encourages its employees to consider healthy lifestyle activities as a means to develop and maintain work and life balance. The Commission will provide annual influenza injections for interested employees and reimburse up to \$275 per financial year for approved health and well-being activities. Further information can be found in the **Healthy Lifestyle Program Guidelines**.

## 29. Career break scheme

29.1 Employees will be eligible to apply for a three month unpaid career break scheme after they have been employed for 5 years and for a further three months unpaid for each subsequent 5 year period. The three month period is in calendar days and will be non-cumulative. All approvals will be subject to operational requirements and the negotiation of a mutually agreeable period of absence. Where it is of direct benefit to the work of the Commission and the career development of the employee it will count as service unless otherwise required by legislation.

### 30. Retirement transition

30.1 Employees who have stated an intention to retire from the workforce within 2 years are able to participate in a retirement transition arrangement. Financial assistance of up to \$500 (in total per employee) will be provided for access to retirement seminars and/or superannuation and financial advice. Transition arrangements may vary between individuals as both individual and operational needs are considered but may include access to part-time work (refer clause 25 for part-time provisions) and/ or changes in work level or responsibilities by agreement.

## Part 3D Leave Provisions and Public Holidays

### 31. Annual leave

31.1 **Credit:** A full-time employee shall accrue 20 days paid annual leave per completed year of service. Annual leave accrues progressively.

31.2 **Access to Pro-rata leave:** A pro rata accrual of annual leave may be accessed prior to the completion of a year of service (eg. an employee with six months completed service may apply for and be granted 10 days leave).

31.3 Annual leave shall be taken at such a time or times and in such a period or periods as may be agreed between the employee and the employee's supervisor subject to operational requirements. Annual leave will not be prepaid.

31.4 Employees are encouraged to take their annual leave credits in the year of accrual and are expected to take at least 2 weeks per annum.

31.5 **Maximum Leave Credit:** Employees with annual leave credits in excess of six weeks may be directed to take leave until the excess credit is cleared.

31.6 **Cash out of leave:** An employer and an employee may agree to the employee cashing out an amount of the employee's accrued paid annual leave subject to:

(a) paid annual leave must not be cashed out if the cashing out would result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks; and

(b) each cashing out of a particular amount of paid annual leave must be by a separate agreement in writing between the employer and the employee; and

(c) the employee must be paid at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.

### 32. Purchased leave scheme

32.1 An employee may, with the approval of the President, purchase from one to six additional weeks of leave from the Commission. Further information can be found in the ***Commission's Purchased Leave Policy and Guidelines***.

### 33. Personal/carer's leave

33.1 **Grant:** Personal/carer's leave may be taken only in the event of personal illness, the illness of a member of the employee's family or household or an unexpected emergency affecting the employee or their family or household. Personal Leave must not be used for the purposes of an unexpected emergency affecting the employee if it would reduce the employee's paid entitlement for illness and caring purposes to below the minimum 10 days (pro-rata for part-time employees) provided for under the NES in the FWA.

#### 33.2 Entitlement:

(i) **Ongoing Employees:** An employee shall be entitled to 18 days paid personal / carer's leave upon engagement and shall accumulate 18 days paid personal / carer's leave per completed year of service.

(ii) **Non-Ongoing employees:** A non-ongoing employee shall accumulate paid personal / carer's leave progressively with 1.5 days accruing, progressively, for each month of employment.

(iii) If a non-ongoing employee is then engaged on an ongoing basis, they shall be credited with a full entitlement to personal/ carers leave as if they had accrued from the date of their commencement in the Commission less any leave already taken.

(iv) An employee in receipt of compensation for more than 45 weeks will accrue personal/carer's leave on the basis of the hours actually worked.

(v) An employee will not be entitled to paid personal/carer's leave while also entitled to paid leave under the *Maternity Leave (Commonwealth Employees) Act 1973* or where covered by the provisions of Clause 39, Primary Carer's Leave.

(vi) Unused Personal/Carer's leave will accumulate from year to year but will not be paid out on separation.

(vii) The Commission recognises that caring arrangements may include supporting ill family members interstate or in hospital and caring for grandchildren where a primary carer is unable to do so.

### 33.3 **Documentary Evidence**

(i) An application for personal / carer's leave for a period of three or more consecutive days shall be accompanied by a certificate from a registered health practitioner or a statutory declaration made by the employee.

(ii) There will be no requirement to produce a certificate to support an application for personal/carers leave (less than 3 days) for the first 15 days taken in any accrual year. However, the President may request an employee to provide a certificate from a registered health practitioner when any future absence on personal/carers leave occurs.

(iii) Where there are reasonable grounds for the President to hold concerns for an employee's health and wellbeing, the President may request the employee to provide a certificate from a medical service provider when any absence on personal/carers leave occurs.

(iv) **Re-credit:** An employee who is entitled to personal carer's leave whilst on annual leave or long service leave and who produces satisfactory documentary evidence, may apply for personal leave. Annual leave and long service leave will be re-credited to the extent of the period of personal leave granted unless otherwise required by legislation.

**33.4 Notification:** An employee absent from the workplace on account of illness shall inform (by an agreed method) his or her immediate supervisor or relevant workplace manager before the normal commencing time of work.

**33.5 Other leave:** Absences from the workplace on account of illness for a period below one day may be taken as flextime, where flextime arrangements apply and credits are available.

**33.6 Invalidity:** An employee will not, without the employee's consent, be retired on invalidity grounds before the employee's paid personal leave credit has expired except as otherwise provided by legislation.

## 34. **Compassionate and Bereavement leave**

34.1 Two days, on each permissible occasion, will be granted for the purposes of spending time with a member of the employee's family or household who has a personal illness or injury that is life threatening, taken in accordance with s 105 of the NES.

34.2 Three days paid leave will be granted to an employee upon the death of an employee's immediate family or household per occasion. An employee may access this leave in accordance with s 105 of the NES.

34.3 Casual employees are entitled to 2 days unpaid compassionate leave per occasion.

34.4 An employee may be required to provide evidence to support each application for compassionate or bereavement leave.

### **35. Maternity/Parental leave**

35.1 Employees who are pregnant, or give birth are covered by the provisions set down in the *Maternity Leave (Commonwealth Employees) Act 1973* (the ML Act).

35.2 Employees with an entitlement to paid leave under the ML Act are provided with an additional 6 weeks of paid leave, to be taken continuous with a period of paid maternity leave provided by the ML Act.

35.3 An employee not entitled to leave provided by clauses 35.1 or 35.2 who adopts or permanently fosters a child, or who takes responsibility for a newborn, and has, or will have, responsibility for the care of that child, is entitled to up to 52 weeks' parental leave. This leave may be taken in a single period or in multiple periods that aggregate a maximum of 52 weeks. For primary care givers, 18 weeks of that leave will be paid where the employee satisfies the same qualifying service requirements as those required to receive paid leave under the ML Act. Parental leave is to commence from the birth or placement of a child for adoption or permanent fostering, unless otherwise provided for in legislation.

35.4 Up to two weeks of this paid leave can be taken by the employee, prior to the date of adoption or fostering, to assist in finalising administrative arrangements associated with the adoption or fostering.

35.5 Employees are entitled to parental leave for adoption or permanent foster care when that child:

- a. Is under 16 years of age;
- b. Has not, or will not, have lived continuously with the employee for a period of 6 months or more as at the day (or expected day) of placement; and
- c. Is not (otherwise than because of the adoption) a child of the employee or the employee's spouse/partner.

35.6 Documentary evidence of approval for adoption or enduring parental responsibilities under formal fostering arrangements must be submitted when applying for parental leave for adoption or permanent foster carer purposes.



35.7 Employees who are eligible for paid maternity or parental leave may elect to have payment for that leave spread over a maximum of 36 weeks at a rate no less than half normal salary. Where payment is spread over a longer period, a maximum of 18 weeks of the leave period will count as service.

35.8 On ending the initial period of 52 weeks of maternity or parental leave, employees may request an extension of unpaid parental leave for a further period of up to 52 weeks. The second period of unpaid leave is to commence immediately following the initial period.

35.9 Unpaid maternity or parental leave will not count as service for any purpose except for any unpaid leave taken during the first 18 weeks.

35.10 This leave is inclusive of public holidays and will not be extended because a public holiday (or Christmas closedown) falls during a period of paid or unpaid maternity or parental leave. On ending maternity or parental leave, employees have the return to work guarantee and the right to request flexible working arrangements that are provided by (or equivalent to those provided by) the *Fair Work Act 2009*.

35.11 Where both partners are Commission employees and one partner has accessed, or intends to access, paid maternity or primary carer leave; the other partner may only access primary carer's leave on a non-concurrent basis and so that the combined period of paid leave does not exceed 18 weeks.

### **Supporting Parent Leave**

35.12 12 Employees who are carer's but not the primary care giver to a child and who are not covered by the ML Act or eligible for paid leave under clause 35.3 of this Agreement are entitled to 6 weeks' paid leave.

35.13 This leave will count as service for all purposes and may be taken in one block or, subject to operational requirements, as part of a flexible work arrangement within 12 months of the birth, adoption or permanent fostering of a child or their partner's child.

35.14 Documentary evidence as outline in 35.5, or a birth certificate following the birth of the child must be submitted when applying for this leave.

35.15 Payment of this leave may be spread over a maximum of 12 weeks at a rate no less than half normal salary. Where payment is spread over a longer period, a maximum of 6 weeks of the leave period will count as service.

## **36. Jury leave**

36.1 An employee is entitled to paid leave to attend jury service. An employee will continue to be paid by the Commission in lieu of any other payment for jury leave. An employee shall be required to pay to the Commission the amount received for jury service except payments relating to meals, accommodation or fares.

### **37. Miscellaneous leave**

37.1 At the discretion of the President, additional paid or unpaid leave may be provided. Further information can be found in the ***Miscellaneous Leave Policy***. The President may refuse an employee request under this clause and will provide in writing within 21 days the reasons for any refusal of the request.

### **38. Elder and Disability Carer's leave**

An employee with 12 months of continuing service may request unpaid discretionary leave of up to 12 months to provide care or support to:

- (i) an elderly parent,
- (ii) a child with a disability,
- (iii) a family member with high support needs,

where there is a requirement for ongoing care or support.

39. One day paid leave per annum may be granted by the President for the purpose of moving house.

40. Special paid or unpaid leave to attend funerals, participate in approved study activities or attend medical appointments associated with pregnancy are at the President's discretion.

### **41. Community Volunteer Leave**

The President may support community volunteer leave of one day paid per calendar year for employees to undertake voluntary work for a not-for-profit community organisation. The timing of the leave must be approved by the supervisor. Additional unpaid leave of up to 4 days per calendar year may be approved based on operational requirements.

### **42. Cultural Leave**

The President may support Aboriginal and Torres Strait Islander staff to attend cultural/religious or ceremonial events in the following circumstances:

- (i) paid leave to attend events related to NAIDOC week
- (ii) unpaid leave for days of cultural, religious or ceremonial significance

### **43. (a) Leave for ADF Reserve and Continuous Full Time Service or Cadet Force obligations**

- (i) An employee may be granted leave (with or without pay) to enable the employee to fulfil Australian Defence Force (ADF) Reserve and continuous full time service (CFTS) or Cadet Force obligations.
- (ii) An employee is entitled to leave with pay, of up to four weeks during each financial year, and an additional two weeks in the first year of ADF Reserve service, for the purpose of fulfilling service in the ADF Reserve.
- (iii) With the exception of the additional two weeks in the first year of service, leave can be accumulated and taken over a period of two years.
- (iv) An employee who is an officer or instructor of cadets in a Cadet Force may be granted paid leave of up to three weeks each financial year to perform duties as an officer or instructor of cadets. For these purposes 'Cadet Force' means Australian Navy Cadets, Australian Army Cadets, or the Australian Air Force Cadets.
- (v) Defence Reserve leave counts as service for all purposes, except for unpaid leave to undertake continuous full time services (CFTS). Unpaid leave for the purpose of CFTS counts as service for all purposes except annual leave accrual.

#### **43(b) Leave for Emergency Services duties**

- (i) An employee will be provided with unpaid leave for emergency services duties encompassing leave for all emergency services responses, regular training, reasonable recovery time and ceremonial duties.

#### **44. Long Service Leave**

44.1 An employee covered by this Agreement is eligible for long service leave in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976*.

44.2 The minimum period for which long service leave will be granted is 7 calendar days at full pay (or 14 calendar days at half pay). Long service leave cannot be broken with other periods of leave, except as otherwise provided by legislation.

#### **45 Portability of accrued annual leave and sick leave entitlements**

45.1 Where an employee joins the Commission from an employer staffed under the *Public Service Act 1999*, the *Parliamentary Service Act 1999* or from the ACT Government Service, accrued annual leave and personal/carer's leave (however described) will be transferred (or recognised), provided that there is no break in continuity of service. Any recognised Annual Leave excludes any accrued leave paid out on separation.

#### **46 Public holidays and Christmas Closedown**

46.1 Employees are entitled to the following public holidays:

- New Year's Day (1 January)
- Australia Day (26 January)
- Good Friday
- Easter Monday
- Anzac Day (25 April)
- Queen's birthday holiday (on the day on which it is celebrated in a State or Territory or a region of a State or Territory)
- Christmas Day (25 December)
- Boxing Day (26 December)
- any other day, or part-day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday, other than a day or part-day, or a kind of day or part-day, that is excluded by the Fair Work Regulations from counting as a public holiday.

46.2 If under a state or territory law, a day or part day is substituted for one of the public holidays listed above, then the substituted day or part day is the public holiday.

46.3 The President and an employee may agree on the substitution of a day or part day that would otherwise be a public holiday, having regard to operational requirements.

46.4 An employee, who is absent on a day or part-day that is a public holiday in the place where the employee is based for work purposes, is entitled to be paid for the part or full day absence as if that day or part-day was not a public holiday, except where that person would not normally have worked on that day.

46.5 Where a public holiday falls during a period when an employee is absent on leave (other than annual or paid personal/carers leave) there is no entitlement to receive payment as a public holiday. Payment for that day would be in accordance with the entitlement for that form of leave (eg if on long service leave on half pay, payment is on half pay).

#### 46.6 Christmas Closedown

(i)The Commission will close its normal operations from close of business on the last working day before Christmas, with business resuming on the first working day after New Year's Day.

(ii) Employees will be provided with time off for the working days between Christmas and New Year's Day and will be paid in accordance with their ordinary hours of work. Where an employee is absent on leave, payment for the Christmas closedown provision will be in accordance with the entitlement for that form of leave, (e.g. if on long service leave half pay, payment is on half pay).

(iii) There will be no deduction from Annual or Personal/carer's leave credits for the closedown days

## **Part 3E Separation Procedures**

### **47 Resignation**

#### 47.1 Notice Periods:

The President expects that employees would provide reasonable notice of their intention to resign. This notice period should be a minimum of two weeks where possible.

### **48 Redundancy**

#### 48.1 **Excess employee**

(i) The procedure for handling excess employees set out below applies to all employees except:

- a. an ongoing employee who is on probation;
- b. a non-ongoing employee.

(ii) When the President is aware that an employee is likely to become excess, the President will advise the employee of the situation at the earliest practicable time. An employee is an excess employee if:

- a) the Commission has a greater number of employees than is necessary for the effective performance of a particular role or function within the Commission;
- b) the services of the employee cannot be effectively used because of technological or other changes in the work methods of the Commission or changes in the nature, extent or organisation of the functions of the Commission; or
- c) where the duties usually performed by the employee are to be performed at a different locality, the employee is not willing to perform duties at the locality and the President has determined that the provisions of this

clause will apply to that employee.

#### 48.2 Consultation process

The President will hold discussions with an excess employee. The maximum period allowed for such consultations should not exceed 4 weeks. Discussions will be held to consider:

- (i) measures that could be taken to resolve the situation, including redeployment opportunities for the employee, at or below level, within or outside the Commission;
- (ii) whether termination of employment (voluntary redundancy) might be appropriate;
- (iii) where the employee chooses a representative, the President will hold the discussions with the employee's representative.

#### 48.3 Early separation

- (i) Where an employee is likely to be the subject of action under these provisions, the President may provide to that employee an early separation opportunity.
- (ii) This option provides for separation to occur within 14 days of the employee being advised that they are excess under clause 48.1.
- (iii) It attracts an additional payment of 8 week's salary (or 10 weeks for an employee over 45 years of age with at least 5 years continuous service), over and above any other amount paid on separation in accordance with clause 48.5.
- (iv) The payment is in lieu of the time that may have reasonably been expected to elapse for the purposes of the consultation, consideration periods and notice periods.

#### 48.4 Separation with consent

- (i) Where an employee is advised in writing that they are excess and that it is proposed to terminate the employee in accordance with s.29 of the *Public Service Act 1999*, the employee will have a maximum period of one month to consider their position and provide their consent to the termination of their employment or request redeployment assistance.
- (ii) The President will not give an employee notice of termination of their employment under s.29 of the *Public Service Act 1999* until the expiration of that one-month period (unless the employee requests an earlier termination of employment date within that one-month period).
- (iii) Within that month, unless agreed otherwise, an employee consenting to termination of employment must be given all the relevant financial information, including:

- amount of redundancy pay, pay in lieu of notice and cashable leave credits;
- amount of accumulated superannuation contributions;
- options open to the employee concerning superannuation;
- taxation rules applying to the various payments;
- assistance up to a maximum of \$800 for financial advice and career counselling, reimbursed on production of receipts; and

The employee is only entitled to receive one offer of voluntary retirement

#### 48.5 Redundancy benefit:

Where the provisions of this clause provide for less than the National Employment Standards (NES), the NES will prevail.

- (i) An excess employee who agrees to be voluntarily retrenched (including with an early separation offer) and whose employment is terminated by the delegate under s.29 of the *Public Service Act 1999* on the grounds they are excess to requirements is entitled to be paid a sum equal to two weeks' salary for each completed year of continuous service, plus a pro rata payment for completed months of service since the last completed year of service, subject to any minimum amount the employee is entitled to under the NES.
- (ii) The minimum sum payable will be 4 weeks salary and the maximum will be 48 weeks salary.
- (iii) The redundancy benefit will be calculated on a pro-rata basis for any period where an employee has worked part-time hours during their period of service and the employee has less than 24 years full-time service.
- (iv) For the purpose of calculating payment, salary will include:
  - a. the employee's salary;
  - b. the salary including higher duties, where the employee has been receiving higher duties allowance for a continuous period of at least 12 months immediately preceding the date on which the employee is given notice of termination of employment
  - c. other allowances in the nature of salary which are paid during periods of annual leave and on a regular basis, excluding allowances which are a reimbursement for expenses incurred, or a payment for disabilities associated with the performance of duty.

**48.6 Period of notice:**

(i) Where the excess employee agrees to be voluntarily retrenched, the President may terminate the employment of the employee by giving the required notice of termination of employment under s.29 of the *Public Service Act 1999*. The period of notice will be 4 weeks (or 5 weeks for an employee over 45 years of age with at least 5 years of continuous service).

(ii) Where an employee whose employment is terminated at the beginning of or within the notice period, the employee will receive payment in lieu of notice for the unexpired portion of the notice period. This amount is additional to any redundancy benefit payment.

**48.7 Periods of service:**

(i) For earlier periods of service to count there must be no breaks between the periods of service, except where:

- a. the break in service is less than 1 month and occurs where an offer of employment with the new employer was made and accepted by the employee before ceasing employment with the preceding employer; or
- b. the earlier period of service was with the APS and ceased because the employee was deemed to have resigned from the APS on marriage under the then section 49 (as repealed in 1966) of the repealed *Public Service Act 1922*.

(ii) Subject to 48.7 (i) service for redundancy pay purposes means:

- a. service with the Commission;
- b. Government service as defined in section 10 of the *Long Service Leave Act 1976*;
- c. service with the Commonwealth (other than service with a joint Commonwealth-State body corporate in which the Commonwealth has a controlling interest) which is recognised for long service leave purposes;
- d. service with the Australian Defence Forces;
- e. APS service immediately preceding deemed resignation under the then section 49 (as repealed in 1966) of the repealed *Public Service Act 1922*, if the service has not previously been recognised for severance pay purposes; and
- f. service in another organisation where an employee was moved from the APS to give effect to an administrative re-arrangement; or where an employee is engaged as an APS employee as a result of an administrative re-arrangement; and such service is recognised for long service leave purposes.



- (iii) Any period or service which ceased through termination of employment on the following grounds will not count as service for redundancy pay purposes:
- a. the employee lacks, or has lost an essential qualification for performing his or her duties;
  - b. non-performance, or unsatisfactory performance of duties;
  - c. inability to perform duties because of physical or mental incapacity;
  - d. failure to satisfactorily complete an entry level training course;
  - e. failure to meet a condition imposed under subsection 22(6) of the *Public Service Act*, including probation;
  - f. a breach of the Code of Conduct;
  - g. for a reason equivalent to a reason listed above at 48.7 (a) to (f) under the repealed *Public Service Act 1922*
  - h. any other ground prescribed by the *Public Service Regulations*;
  - i. through voluntary retrenchment at or above the minimum retiring age applicable to the employee; or
  - j. with the payment of a redundancy benefit or similar payment or an employer financed retirement benefit.
- (iv) Absences from work which do not count as service for long service leave purposes will not count as service for severance pay purposes.

#### 48.8 Redeployment

- (i) The President will assist employees throughout the redeployment process by providing, amongst other things, reasonable expenses and time off to attend necessary employment interviews where costs are not met by the prospective employer.
- (ii) If an excess employee wishes to be redeployed rather than consent to termination of employment, the President will take all reasonable steps, consistent with the efficient management of the Commission, to assign duties to that employee in accordance with s. 25 of the *Public Service Act*.
- (iii) In the first instance, this placement will be handled within the Commission. APS redeployment options may also be considered in accordance with APS redeployment policy.
- (iv) The President may also choose to offer the services of a selected outplacement/career management provider at any point in the process (on and from the point the employee is advised that they are likely to become excess).
- (v) The redeployment process commences from the date the employee is advised, in writing, that they are an excess employee.
- (vi) Where the President is satisfied that there is insufficient productive work available for the employee within the Commission during the remainder of his or her redeployment period, the President may, with the agreement of the

employee, terminate the employee's employment under s.29 of the *Public Service Act 1999* and pay an agreed lump sum not greater than the salary which would be payable for the balance of the redeployment period.

(vii) It remains open to an employee to consent to termination at the end of two months, in preference to continuing redeployment action. If an employee consents to termination of employment at this point and this employment is terminated by the President under s.29 of the *Public Service Act 1999* on the grounds he/she is excess to requirements they will be eligible to receive the full redundancy benefit.

#### 48.9 Salary maintenance

Where the President reduces the classification of an employee under s.23 of the *Public Service Act 1999*, salary maintenance will be applied from the date of reduction in classification for a period of 6 months. Salary maintenance will be calculated on the basis of the employee's regular and ongoing salary.

#### 48.10 Involuntary termination of employment

(i) If after 13 weeks from the date an employee has been identified as an excess employee:

- a. the President has been unable to assign duties to the employee (at or below level) despite having taken all reasonable steps to do so; and
- b. the employee has not consented to termination of employment,

the President may decide to involuntarily terminate the employment of the excess employee under s.29 of the *Public Service Act 1999*.

(ii) An excess employee cannot have their employment terminated involuntarily unless they have rejected the opportunity to provide their consent to their termination of employment.

(iii) An excess employee will not be compulsorily terminated without being given the required period of notice of 4 weeks (or five weeks in the case of an employee over 45 years of age with at least five years' service).

(iv) In practice, notice of termination will be given four or five weeks before the end of the redeployment period described above to satisfy the requirements of the Fair Work Act 2009. If redeployment arrangements are subsequently made after the issue of the notice of termination, the notice will be withdrawn.

(v) Employees whose employment has been terminated involuntarily by the President under s.29 of the *Public Service Act 1999* will receive the same entitlements on termination as employees who consent to termination of employment except that the redundancy benefit will be reduced to account for salary payments received during the redeployment period. The reduction in the amount of the redundancy benefit cannot be more than half the amount the

employee would have received if they had provided their consent to termination of their employment subject to any minimum amount the employee is entitled to under the NES.

(vi) An employee with less than 12 years of service, who elects for redeployment, will have the 13 week redeployment period reduced to the period as set out below.

Years of Service	Redeployment Period	NES Redundancy Benefit
1	11 weeks	4 weeks
2	9 weeks	6 weeks
3	9 weeks	7 weeks
4	9 weeks	8 weeks
5	8 weeks	10 weeks
6	8 weeks	11 weeks
7	7 weeks	13 weeks
8	7 weeks	14 weeks
9	6 weeks	16 weeks
10	11 weeks	12 weeks
11	12 weeks	12 weeks

#### **49 Payment on death**

49.1 Where an employee has died or the President has directed that an employee will be presumed to have died on a particular date, the President may authorise the payment of the amount to which the former employee would have been entitled had the employee ceased employment as if the employee had resigned or retired. Payment may be made to dependants or the partner of the former employee or the former employee's legal personal representative. If a payment has not been made within 12 months of the former employee's death, it shall be paid forthwith to the legal personal representative. Long Service Leave credits will be paid out in accordance with the *Long Service Leave Act (Commonwealth Employees) 1976*.

#### **50 Absence without approval and abandonment of employment**

50.1 Where an employee is absent from work without approval, eg without the express approval of their supervisor, or not in accordance with a term of this agreement, the absence will be treated as an 'unauthorised absence' and will not count as service for any purpose under this agreement, including remuneration and leave accrual. Any amounts paid to an employee in respect of an unauthorised absence are overpayments and the President will seek to recover those amounts in accordance with the provisions of the Accountable Authority Instructions.

50.2 Where an employee is absent from duty without permission for more than 21 calendar days, they will be considered to have abandoned their employment unless they can prove to the satisfaction of the President that the absence was, in all the circumstances, warranted. Where an employee is unable to substantiate that their absence from duty is or was warranted, their employment may be terminated under s 29 of the *Public Service Act*, subject to Part 3-2 of the *Fair Work Act*, on the ground of 'non-performance of duties'.

## **Part 3F Safe and Supportive Working Environment**

### **51 Work health and safety**

51.1 The Commission and its employees will work cooperatively on WHS matters. Further information can be found in the ***WHS, Rehabilitation and First Aid Policies***.

### **52 Employee assistance**

52.1 The Commission provides employees with access to a no cost, confidential, professional counselling service to help them resolve both personal and work related problems. On commencement employees will be advised of the availability of the employee assistance program (EAP) service.

52.2 There will be no initial cost to employees who contact the counselling service however if the counselling service refers the employee to another service or agrees to provide services in addition to those under contract to the Commission then the employee will be responsible for any costs which may arise.

52.3 Supervisors may access the service to support them in their roles and should encourage employees to use the service where appropriate.

### **53 Reasonable adjustment**

53.1 The Commission is committed to providing any essential work related aids and equipment to ensure that employees are provided with the opportunity to work as efficiently and effectively as possible. The Commission will make workplace adjustments to accommodate the needs of employees wherever it is necessary, possible, and reasonable.

## **Part 3H Allowances**

### **54 First aid certificate allowance**

54.1 Where the Commission is satisfied that an employee possesses a current Senior first aid certificate (issued by a recognised training provider) and continuing ability commensurate with that qualification and the employee has first

aid responsibilities, the employee will be appointed as a first aid officer and paid an allowance of \$40.00 per fortnight.

### **55 Health and safety representative allowance**

55.1 An employee who has attended an approved and accredited Health and Safety course and who performs the duties of a Health and Safety Representative (HSR) shall be paid an allowance of \$25.00 per fortnight. Payment of the allowance will be conditional on the HSR attending OH&S meetings.

### **56 Fire warden allowance**

56.1 An employee who has a recognised responsibility as a Fire Warden and who has attended fire warden training shall be paid an allowance of \$25.00 per fortnight. Payment of the allowance will be conditional on the employee attending regular training as required and participating in fire drills.

### **57 Motor vehicle allowance**

57.1 Where the Commission considers that it will result in greater efficiency or involve less expense, it may authorise an employee to use a private motor vehicle owned or hired by that employee at their own expense for official purposes.

57.2 Motor vehicle allowance will be payable in accordance with the ATO Reasonable Allowance rates, as varied from time to time.

### **58 Travelling allowance**

58.1 A travelling allowance shall be payable to an employee who undertakes travel on official business and is required to be absent overnight.

58.2 Travelling allowances are in addition to the cost of conveyance.

58.3 An employee who is travelling to a place of work in anticipation of a permanent move to that place of work, and who has been advised in writing that the move is to be made permanent, will not be eligible to receive travelling allowance during employment at that place of work.

#### **58.4 Travelling Allowance Rates:**

(i) An employee who is required to be absent overnight from the employee's usual place of work on official business, under clause 58.1 will be paid, prior to undertaking the travel, in accordance with the Australian Taxation Office rulings on reasonable daily travel allowance amounts (equivalent non-SES rates). These rates are contained in the Commission's **Official Business Travel Rates Guidelines** and updated annually in accordance with the ATO ruling.

(ii) **Private Non-Commercial rate:** Where commercial accommodation is not required the employee is not eligible to receive a payment under clause 58.4(i). The employee will be eligible to receive a payment for every overnight absence in accordance with Australian Taxation Office rulings for reasonable daily travel allowance (equivalent non-SES) amounts for meals and incidentals (for capital cities) published annually.

58.5 **Reviewed travelling allowance** - after an employee has resided in the one locality for a period of 21 days, the employee will be paid an allowance equal to the amount actually expended on accommodation, meals and incidentals, or an amount which the Commission considers to be reasonable in the circumstances.

58.6 **Part Day Travelling Allowance:** It is recognised that employees may be required to be absent for more than a standard day when travelling to attend meetings in regional areas or interstate. To compensate an employee for time spent travelling and additional costs, an employee who is required to be absent from the employee's usual place of work on official business for a period of not less than 10 hours but is not absent overnight, may be paid \$100.

58.7 **Approval of Additional Expenses:** Where proof is provided to the satisfaction of the Commission that the allowance payable to an employee under 58.1, 58.4 and 58.6 is either insufficient to cover, or in excess of, expenses which have been, or may be, incurred, the Commission may direct the payment in lieu of that allowance as is necessary to meet those expenses.

58.8 **Repayment when travel not undertaken:** An employee who fails to undertake the anticipated travel, or who undertakes the travel for a lesser period than anticipated, will repay either the full travel allowance, or the difference between the allowance paid and the amount that would have been payable for the actual absence.

58.9 **Accommodation/Meals provided by the Commonwealth:** Where an employee is provided with either accommodation or adequate meals, or both, at Commonwealth expense:

(i) the employee will not be paid those components of the allowance under subclause 58.1 in respect of any accommodation or meals provided; and

(ii) payment will be made in respect of incidental expenses during the period as the Commission directs.

58.10 Where an employee who is absent on duty from the employee's usual place of work takes personal / carer's leave for a condition for which the employee is not at fault and is unable to return home, the employee is entitled to be reimbursed an amount equal to the costs incurred by the employee up to the amount that would be payable under subclause 58.1.

**58.11 Reimbursement for carer's costs:** Where an employee is required to travel for the purpose of official duty away from his or her usual place of work the employee will, subject to prior approval of the arrangements and the cost, be entitled to be reimbursed for any additional costs associated with additional care arrangements.

**58.12 Airline Lounge Membership**

Employees who undertake work related travel and are not eligible to be considered under the Commission's corporate business lounge membership may enter into a salary sacrifice arrangement. Employees must certify that their travel is predominately work related for Fringe Benefit Tax purposes.

**58.13 Overseas Travel:**

(i) An employee required to travel on official business overseas will be provided with a recoverable cash advance to meet reasonable accommodation, meal and incidental expenses. The cash advance will be administered on a case by case basis having regard to the costs associated with the country being visited. The rates in accordance with the Australian Taxation Office Rulings will be used as a basis for determining reasonable expenses.

(ii) An employee will be required to comply with the conditions for overseas travel set out in the Commission's overseas travel diary and acquit any payments.

**59 Class of air travel**

59.1 An employee is entitled to economy class where required to travel on official business within Australia.

59.2 An employee is entitled to business class where required to travel on official business overseas.

**60 Relocation expenses**

60.1 The Commission may determine the extent of any financial assistance for relocation from one locality to another upon promotion, engagement or movement of an employee.

**61 Loss, damage and indemnity**

61.1 The Commission may approve reimbursement to an employee for loss or damage to clothing or personal effects which occurred in the course of the employee's work.

## APPENDIX A – Salary increases

\*Refer to Clause 16- Increases in Rates of Pay

Classification		Current salary	7 days after approval from FWC 3%	12mths from previous increase 2%	24mths from previous increase 1%	
Broadband	APS 1	APS 1.1	41717	42969	43828	44266
		APS 1.2	44364	45695	46609	47075
		APS 1.3	47010	48420	49389	49883
	APS 2	APS 2.1	48512	49967	50967	51476
		APS 2.2	50947	52475	53525	54060
		APS 2.3	53382	54983	56083	56644
Broadband	APS 3	APS 3.1	53775	55388	56496	57061
		APS 3.2	56477	58171	59335	59928
		APS 3.3	59178	60953	62172	62794
	APS 4	APS 4.1	59933	61731	62966	63595
		APS 4.2	63141	65035	66336	66999
		APS 4.3	66351	68342	69708	70405
	APS 5	APS 5.1	66848	68853	70231	70933
		APS 5.2	70232	72339	73786	74524
		APS 5.3	73617	75826	77342	78115
	APS 6	APS 6.1	73998	76218	77742	78520
		APS 6.2	79281	81659	83293	84126
		APS 6.3	84563	87100	88842	89730
	EL 1	EL1.1	92560	95337	97244	98216
		EL1.2	98027	100968	102987	104017
		EL1.3	103493	106598	108730	109817
	EL2	EL2.1	111285	114624	116916	118085
		EL2.2	123469	127173	129717	131014
		EL2.3	130787	134711	137405	138779



## APPENDIX B - Consultation on major changes

1. This term applies if the employer:
  - a. has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or
  - b. proposes to introduce a change to the regular roster or ordinary hours of work of employees.

### Major change

2. For a major change referred to in paragraph (1)(a):
  - a. the employer must notify the relevant employees of the decision to introduce the major change; and
  - b. subclauses (3) to (9) apply.
3. The relevant employees may appoint a representative for the purposes of the procedures in this term.
4. If:
  - a. a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
  - b. the employee or employees advise the employer of the identity of the representative; the employer must recognise the representative.
5. As soon as practicable after making its decision, the employer must:
  - a. discuss with the relevant employees:
    - i. the introduction of the change; and
    - ii. the effect the change is likely to have on the employees; and
    - iii. measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and
  - b. for the purposes of the discussion--provide, in writing, to the relevant employees:
    - i. all relevant information about the change including the nature of the change proposed; and
    - ii. information about the expected effects of the change on the employees; and
    - iii. any other matters likely to affect the employees.
6. However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
7. The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
8. If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in paragraph (2)(a) and subclauses (3) and (5) are taken not to apply.
9. In this term, a major change is likely to have a significant effect on employees if it results in:
  - a. the termination of the employment of employees; or
  - b. major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or

- c. the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
- d. the alteration of hours of work; or
- e. the need to retrain employees; or
- f. the need to relocate employees to another workplace; or
- g. the restructuring of jobs.

**Change to regular roster or ordinary hours of work**

10. For a change referred to in paragraph (1)(b):

- a. the employer must notify the relevant employees of the proposed change; and
- b. subclauses (11) to (15) apply.

11. The relevant employees may appoint a representative for the purposes of the procedures in this term.

12. If:

- a. a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
- b. the employee or employees advise the employer of the identity of the representative;

the employer must recognise the representative.

13. As soon as practicable after proposing to introduce the change, the employer must:

- a. discuss with the relevant employees the introduction of the change; and
- b. for the purposes of the discussion--provide to the relevant employees:
  - i. all relevant information about the change, including the nature of the change; and
  - ii. information about what the employer reasonably believes will be the effects of the change on the employees; and
  - iii. information about any other matters that the employer reasonably believes are likely to affect the employees; and
- c. invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).

14. However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.

15. The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.

16. In this term: "relevant employees" means the employees who may be affected by a change referred to in subclause (1).

## APPENDIX C – Supported Wage System

### SWS Schedule C (from APS Enterprise Award 2015)

**C.1** This schedule defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this award.

**C.2** In this schedule:

**Approved assessor** means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual's productive capacity within the supported wage system

**Assessment instrument** means the tool provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system

**Disability Support Pension** means the Commonwealth Government pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991 (Cth)*, as amended from time to time, or any successor to that scheme

**Relevant minimum wage** means the minimum wage prescribed in this award for the class of work for which an employee is engaged

**Supported Wage System (SWS)** means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the JobAccess website ([www.jobaccess.gov.au](http://www.jobaccess.gov.au))

**SWS wage assessment agreement** means the document in the form required by the Department of Education, Employment and Workplace Relations that records the employee's productive capacity and agreed wage rate

#### **C.3 Eligibility criteria**

**C.3.1** Employees covered by this schedule will be those who are unable to perform the range of duties to the competence level required within the class for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.

**C.3.2** The schedule does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their employment.

#### **C.4 Supported wage rates**

**C.4.1** Employees to whom this clause applies shall be paid the applicable percentage of the relevant minimum wage according to the following schedule:

<b>Assessed capacity [sub-clause (d)]</b>	<b>% of prescribed award rate</b>
10%	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

C.4.2 Provided that the minimum amount payable must be not less than \$82 per week.

C.4.3 Where an employee's assessed capacity is 10%; they must receive a high degree of assistance and support.

### **C.5 Assessment of capacity**

C.5.1 For the purposes of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the Supported Wage System by an approved assessor, having consulted the employer and the employee, and if the employee so desires, a union which the employee is eligible to join.

C.5.2 Assessment made under this schedule must be documented in a SWS wage assessment agreement, and retained by the employer as a time and wages record in accordance with the Act.

### **C.6 Lodgement of SWS wage assessment agreement**

C.6.1 All SWS wage assessment agreements under the conditions of this schedule, including the appropriate percentage of the relevant minimum wage to be paid to the employee, must be lodged by the employer with the Fair Work Commission.

C.6.2 All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment. Where a union which has an interest in the award is not a party to the assessment, the assessment will be referred by the Fair Work Commission to the union by certified mail and the agreement will take effect unless an objection is notified to the Fair Work Commission within 10 working days.

### **C.7 Review of assessment**

The assessment of the applicable percentage should be subject to annual review or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the support wage system.

### **C.8 Other terms and conditions of employment**

Where an assessment has been made, the applicable percentage will apply to the relevant wage rate only. Employees covered by the provisions of the schedule will

be entitled to the same terms and conditions of employment as all other workers covered by this award paid on a pro rata basis.

### **C.9 Workplace adjustment**

An employer wishing to employ a person under the provisions of this schedule must take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve redesign of job duties, working time arrangements and work organisation in consultation with other workers in the area.

### **C.10 Trial Period**

C.10.1 In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a Trial Period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.

C.10.2 During that Trial Period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.

C.10.3 The minimum amount payable to the employee during the Trial Period must be no less than \$82 per week.

C.10.4 Work trials should include induction or training as appropriate to the job being trialled.

C.10.5 Where the employer and employee wish to establish a continuing employment relationship following the completion of the Trial Period, a further contract of employment will be entered into based on the outcome of assessment under clause C.5.

Formal acceptance of Agreement and signatories

Employer

Signed for, and on behalf of, the Commonwealth by the President, Australian Human Rights Commission.

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Gillian Triggs  
President  
Level 5, 175 Pitt Street  
Sydney

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Date

.....

Bargaining Representative: Community and Public Sector Union      Date

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