



# DECISION

*Fair Work Act 2009*

s.185 - Application for approval of a single-enterprise agreement

**Commonwealth Of Australia Represented By The Australian Human Rights Commission T/A Australian Human Rights Commission**  
(AG2024/917)

## **AUSTRALIAN HUMAN RIGHTS COMMISSION ENTERPRISE AGREEMENT 2024-2027**

Commonwealth employment

DEPUTY PRESIDENT MASSON

MELBOURNE, 3 APRIL 2024

*Application for approval of the Australian Human Rights Commission Enterprise Agreement 2024-2027*

[1] An application has been made for approval of an enterprise agreement known as the *Australian Human Rights Commission Enterprise Agreement 2024-2027* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Commonwealth of Australia (represented by the Australian Human Rights Commission). The Agreement is a single enterprise agreement.

[2] The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) (Amending Act) made a number of changes to enterprise agreement approval processes in Part 2-4 of the *Fair Work Act*, that commenced operation on 6 June 2023. The notification time for the Agreement under s.173(2) was 27 February 2023 and the Agreement was made on 15 March 2024. Accordingly, both the genuine agreement and the better off overall test requirements are those applying on and from 6 June 2023.

[3] I am satisfied that each of the requirements of ss.186, 187 and 188 as are relevant to this application for approval have been met.

[4] The Community and Public Sector Union (CPSU), being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) I note that the Agreement covers the organisation.

**[5]** The Agreement is approved and, in accordance with s.54 of the Act, will operate from 10 April 2024. The nominal expiry date of the Agreement is 28 February 2027.



DEPUTY PRESIDENT

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Australian  
Human Rights  
Commission

# Australian Human Rights Commission **Enterprise** Agreement **2024-2027**





## Signatories

This agreement is made under Section 172 of the *Fair Work Act 2009*.

### Employer

Signed for the Australian Human Rights Commission



.....

**Emeritus Professor Rosalind Croucher AM**

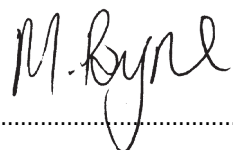
President

Australian Human Rights Commission

Level 5, 175 Pitt St, Sydney NSW 2000

### Bargaining representative: Community and Public Service Union (CPSU)

Signed for the Community and Public Service Union (CPSU)



.....

**Melissa Payne**

Assistant National Secretary

54-58 Foveaux St, Surry Hills NSW 2010

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# Section 1: Technical matters

## Title

1. This agreement will be known as the Australian Human Rights Commission Enterprise Agreement 2024-2027.

## Parties to the Agreement

2. This Agreement covers:
  - a) the President of the Australian Human Rights Commission (Commission), for and on behalf of the Commonwealth of Australia as the employer;
  - b) all employees in the Commission employed under the *Public Service Act 1999* (PS Act) other than:
    - i) Senior Executive Service employees or equivalent; and
  - c) subject to notice being given in accordance with section 183 of the FW Act, the following employee organisation/s which were bargaining representative for this agreement:
    - i) Community and Public Sector Union (CPSU).

## Operation of the Agreement

3. This Agreement will commence operation seven days after approval by the Fair Work Commission.
4. This Agreement will nominally expire on 28 February 2027.

## Delegations

5. The President may delegate to or authorise any person to perform any or all of the President's powers or 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.

## National Employment Standards (NES) precedence

6. The terms of this Agreement are intended to apply in a manner that does not derogate from the NES. The NES will continue to apply to the extent that any term of this Agreement is detrimental to an employee of the Commission in any respect when compared with the NES.

## Closed comprehensive agreement

7. This Agreement states the terms and conditions of employment of employees covered by this Agreement, other than terms and conditions applying under relevant Commonwealth laws.
8. This Agreement will be supported by policies and guidelines, as implemented and varied from time to time.

9. Policies and guidelines are not incorporated into and do not form part of this Agreement. To the extent that there is any inconsistency between policies and guidelines and the terms of this Agreement, the terms of this Agreement will prevail.

## Objectives and Principles

10. This Agreement is to assist the Commission in achieving its purpose, vision, and strategic goals as reflected in the Commission's Corporate Plan.
11. 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 *Section 10 - Consultation, representation and dispute resolution* of this Agreement.
12. The role of workplace representatives, including union delegates and employee representatives, will be respected and facilitated, in accordance with the FW Act.

## Code of Conduct and APS values

13. In implementing this Agreement and in undertaking their duties, an employee shall comply with Australian Public Service Values and APS Code 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.
14. The following actions are required standards of conduct, employees:
- a) who participate in a private capacity in public discussions must:
    - i) 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
    - ii) ensure that the public comment cannot be seen as compromising their ability to continue to carry out their official duties in an unbiased and apolitical manner; and
    - iii) 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.
  - b) 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.
  - c) 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.

## Individual flexibility arrangements

15. The Commission and an employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the Agreement if:
  - a) the Agreement deals with one or more of the following matters:
    - i) arrangements about when work is performed;
    - ii) overtime rates;
    - iii) penalty rates;
    - iv) allowances;
    - v) remuneration; and
    - vi) leave and leave loading; and
  - b) the arrangement meets the genuine needs of the Commission and employee in relation to one or more of the matters mentioned in clause 15a; and
  - c) the arrangement is genuinely agreed to by the Commission and employee.
16. The Commission must ensure that the terms of the individual flexibility arrangement:
  - a) are about permitted matters under section 172 of the FW Act;
  - b) are not unlawful terms under section 194 of the FW Act; and
  - c) result in the employee being better off overall than the employee would be if no arrangement was made.
17. The Commission must ensure that the individual flexibility arrangement:
  - a) is in writing;
  - b) includes the name of the Commission and employee;
  - c) is signed by the President of the Commission or the President's delegate and the employee and, if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
  - d) includes details of:
    - i) the terms of the enterprise agreement that will be varied by the arrangement;
    - ii) how the arrangement will vary the effect of the terms;
    - iii) how the employee will be better off overall in relation to the terms and conditions of their employment as a result of the arrangement; and
  - e) states the day on which the arrangement commences.
18. The Commission must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
19. The Commission or employee may terminate the individual flexibility arrangement:
  - a) by giving no more than 28 days written notice to the other party to the arrangement; or
  - b) if the Commission and employee agree in writing – at any time.
20. The Commission and employee are to review the individual flexibility arrangement at least every 12 months.

## Definitions

21. The following definitions apply to this Agreement:

**Agreement** means the Australian Human Rights Commission Enterprise Agreement 2024-2027.

**APS** means the Australian Public Service.

**APS agency** means an agency whose employees are employed under the PS Act, including an agency as defined in section 7 of the PS Act whose employees are employed under that Act.

**APS consultative committee** means the committee established by the APS Commissioner to consider matters pertaining to the (APS) employment relationship and of interest to the APS as a whole.

**Australian Defence Force Cadets** means the Australian Navy Cadets, Australian Army Cadets, or the Australian Air Force Cadets.

**Bandwidth** means the span of hours during which an employee can perform ordinary hours.

**Broadband** refers to the allocation of more than one approved classification by the President to a group of duties involving work value applying to more than one classification under sub-rule 9(4) of the *Public Service Classification Rules 2000*. A broadband encompasses the full range of work value of the classifications contained within it.

**Casual employee (irregular or intermittent employee)** means an employee engaged under section 22(2)(c) of the PS Act who:

- a) is a casual employee as defined by the FW Act; and
- b) works on an irregular or intermittent basis.

**Child** means a biological child, adopted child, foster child, stepchild, or ward, as defined under section 17(1) of the FW Act.

**Classification** or classification level means the approved classifications as set out in rule 5 of the *Public Service Classification Rules 2000*.

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

**De facto partner** means a person who, regardless of gender, is living in a common household with the employee in a bona fide, domestic, interdependent partnership, although not legally married to the employee. This includes a former de facto partner.

**Delegate** means someone to whom a power or function has been delegated.

**Dependant** means the employee's spouse or de facto partner, a child, parent or aged relative of the employee or the employee's spouse or de facto partner, who ordinarily lives with the employee and who is substantially dependent on the employee. Dependant also includes a child of the employee who does not ordinarily live with the employee but for whom the employee provides substantial financial support.

**Employee** means an employee of the Commonwealth engaged under section 22(2) of the PS Act who is covered by this Agreement (whether full-time, part time or casual, ongoing or non-ongoing).

**Employee representative** means a person (whether an employee or not) elected or chosen by an employee, or elected or chosen by a group of employees in a workplace, to represent the individual and/or collective views of those employees in relation to a matter under this Agreement.

**Family** means:

- a) a spouse, former spouse, de facto partner or former de facto partner of the employee;
- b) a child, parent, grandparent, grandchild, or sibling of the employee;
- c) a child, parent, grandparent, grandchild, or sibling of a spouse, former spouse, de facto partner or former de facto partner of the employee;

- d) a member of the employee's household; or
- e) a person with whom the employee has a relationship of traditional kinship where there is a relationship or obligation, under customs and traditions of the community or group to which the employee belongs.

Family and domestic violence has the same meaning as in section 106B(2) of the FW Act.

**Full-time employee** means an employee employed to work an average of 36 hours and 45 minutes per week in accordance with this Agreement.

**FW Act** means the *Fair Work Act 2009* as amended from time to time.

**Manager** means an employee's direct manager who is usually the person to whom an employee reports to on a day-to-day basis for work related matters, and may include a person referred to as a supervisor.

**ML Act** means the *Maternity Leave (Commonwealth Employees) Act 1973* as amended from time to time and any successor legislation.

**NES** means the National Employment Standards at Part 2-2 of the FW Act.

**Non-ongoing employee** means an employee engaged under section 22(2)(b) of the PS Act for a specified term or for the duration of a specified task, and consistent with the FW Act.

**Ongoing employee** means an employee engaged under section 22(2)(a) of the PS Act.

**Ordinary hours, duty or work** means an employee's usual hours worked in accordance with this Agreement and does not include additional hours.

**Parliamentary service** means employment under the *Parliamentary Service Act 1999*.

**Partner** means a spouse, former spouse, de facto partner or former de facto partner.

**Part-time employee** means an employee whose ordinary hours are less than 36 hours and 45 minutes per week in accordance with this Agreement.

**President** means the President of the Australian Human Rights Commission appointed under s 8A of the *Australian Human Rights Commission Act 1986*, or the President's delegate.

**Primary caregiver** for the purposes of the parental leave clause means a pregnant employee with an entitlement under the ML Act, or an employee other than a casual employee who has primary care responsibility for a child who is born to them or who is adopted or in long-term foster care as per the clauses on adoption and long-term foster care in this Agreement.

**PS Act** means the *Public Service Act 1999* as amended from time to time.

**Registered Health Practitioner** a person who is registered or licenced as a health practitioner (or a health practitioner of a particular type) under a law of a State or Territory. [Australian Health Practitioner Regulation Agency - Register of practitioners \(ahpra.gov.au\)](https://www.ahpra.gov.au).

**Relevant employee** means an affected employee.

**Salary** is the employee's rate of pay (in accordance with the salary/pay rates at *Attachment A - Base Salaries*) 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.

**Secondary caregiver** for the purposes of the parental leave clause means an employee, other than a pregnant employee or casual employee, who has secondary care responsibility for a child who is born to them, or for a child who is adopted or in long-term foster care as per the clauses on adoption and long-term foster care in this Agreement.

**SES** means Senior Executive Service.

## Section 2: Remuneration

### Salary

22. Salary rates will be as set out in *Attachment A - Base salaries* of this Agreement.
23. The base salary rates in *Attachment A - Base salaries* include the following increases:
  - a) 4.0 per cent from the first full pay period on or after 1 March 2024 (the 14 March 2024);
  - b) 3.8 per cent from the first full pay period on or after 1 March 2025 (the 13 March 2025); and
  - c) 3.4 per cent from the first full pay period on or after 1 March 2026 (the 12 March 2026).
24. In recognition of a common alignment date of the first full pay period on or after 1 March each year, the base salary rates in *Attachment A - Base salaries* were calculated based on base salary rates as at 31 August 2023.

### Payment of salary

25. Employees will be paid fortnightly in arrears by electronic funds transfer into a financial institution account of the employee's choice, based on their annual salary using the following formula:

$$\text{Fortnightly salary} = \frac{\text{Annual salary} \times 12}{313}$$

Note: This formula is designed to achieve a consistent fortnightly pay rate without significant variability year-to-year. It reflects that the calendar year is not neatly divisible into 26 fortnightly periods. There are 313 fortnightly pay cycles within a 12-year period.

### Salary setting

26. 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 in *Attachment A - Base Salaries*.
27. Where an employee is engaged, moves to, or is promoted in the Commission, the employee's salary will be paid at the minimum of the salary range of the relevant classification, unless the President determines a higher salary within the relevant salary range under these salary setting clauses.
28. The President may determine the payment of salary at a higher value within the relevant salary range of the relevant classification and the date of effect at any time. 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.
29. In determining a salary under these provisions, the President will have regard to a range of factors (as relevant) including the employee's experience, qualifications, skills, market considerations and equity with other employees.

30. Where an employee commences ongoing employment in the Commission immediately following a period of non-ongoing employment in the Commission, for a specified term or task, the President will determine the payment of the employee's salary within the relevant salary range of the relevant classification which recognises the employee's prior service as a non-ongoing employee in the Commission.
31. Where an employee commences ongoing employment in the Commission immediately following a period of casual employment in the Commission, the President will determine the payment of salary within the relevant salary range of the relevant classification which recognises the employee's prior service as a casual employee in the Commission.
32. Where an APS employee moves to the Commission at level from another APS agency, and their salary is above the maximum of the salary range for their classification, the President will maintain the employee's salary at that level, until it is absorbed into the salary range for that classification.
33. Where the President determines that an employee's salary has been incorrectly set at an incorrect salary point within the applicable salary range, the President may determine in writing the correct salary and the date of effect.
34. 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.

## **Incremental advancement**

35. 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.
36. Consistent eligibility rules for salary progression will include:
  - a) 6 months of aggregate eligible service in the Commission at or above the relevant classification level during the most recent annual performance management cycle. If an employee has less than 6 months of aggregate eligible service, the President may exercise their discretion to determine a higher salary under the salary setting clause in this Agreement.
37. Eligible service for salary progression will include:
  - a) periods of paid leave and unpaid parental leave;
  - b) periods of unpaid leave that count as service; and
  - c) service while employed on a non-ongoing basis.
38. During a period of unpaid parental leave employees will be eligible to advance a maximum of one increment, regardless of the length of unpaid parental leave.
39. Employees who are acting at a higher classification, and satisfy other eligibility criteria, will be eligible for salary progression at both their substantive and acting classifications.
40. Salary progression while acting at a higher classification, will be retained for future acting duties at, or promotion to, that classification regardless of elapsed time.
41. Casual employees will not usually be eligible for incremental advancement.



## Superannuation

42. The Commission will make compulsory employer contributions as required by the applicable legislation and fund requirements.
43. Employer superannuation contributions will be paid on behalf of employees during periods of paid leave that count as service.
44. The Commission will make employer superannuation contributions to any eligible superannuation fund, provided that it accepts payment by fortnightly electronic funds transfer (EFT) using a file generated by the Commission's payroll system.

### Method for calculating superannuation salary

45. The Commission will provide an employer contribution of 15.4 per cent of the employee's Fortnightly Contribution Salary (FCS) for employees in the Public Sector Superannuation Accumulation Plan (PSSap) and employees in other accumulation superannuation funds.
46. Employer contributions will be made for all employees covered by this Agreement.
47. Employer contributions will not be reduced by any other contributions made through salary sacrifice arrangements.

### Payment during unpaid parental leave

48. Employer contributions will be paid on periods of unpaid parental leave in accordance with the requirements of the PSSap fund where the employee is a member of the PSSap, and up to a maximum of 52 weeks where the employee is a member of an accumulation fund other than PSSap.

## Overpayments

49. An overpayment occurs if the President (or the Commission) provides an employee with an amount of money to which the employee was not entitled (including but not limited to salary, entitlements, allowances, travel payment and/or other amount payable under this Agreement).
50. Where the President considers that an overpayment has occurred, the President will provide the employee with notice in writing. The notice will provide details of the overpayment.
51. If an employee disagrees that there has been an overpayment including the amount of the overpayment, they will advise the President in writing within 28 calendar days of receiving the notice. In this event, no further action will be taken until the employee's response has been reviewed.
52. If after considering the employee's response (if any), the President confirms that an overpayment has occurred, the overpayment will be treated as a debt to the Commonwealth that must be repaid to the Commission in full by the employee.
53. The President and the employee will discuss a suitable recovery arrangement. A recovery arrangement will take into account the nature and amount of the debt, the employee's circumstances and any potential hardship to the employee. The arrangement will be documented in writing.
54. The Commission and employee may agree to make a deduction from final monies where there is an outstanding payment upon cessation of employment.
55. Interest will not be charged on overpayments.

56. Nothing in clauses 49 to 55 prevents:
- a) the Commission from pursuing recovery of the debt in accordance with an Accountable Authority Instruction issued under the *Public Governance, Performance and Accountability Act 2013*;
  - b) the Commission from pursuing recovery of the debt through other available legal avenues; or
  - c) the employee or the Commission from seeking approval to waive the debt under the *Public Governance, Performance and Accountability Act 2013*.

## Supported Wage System

57. An employee engaged by the Commission eligible for the Supported Wage System may be paid a percentage of the relevant pay rate for their classification in line with their assessed capacity to do the work if they:
- a) have a disability;
  - b) meet the criteria for a Disability Support Pension; and
  - c) are unable to perform duties to the capacity required.
58. Specific conditions relating to the supported wage system are detailed in *Attachment B - Supported Wage System*.

## Section 3: Allowances and reimbursements

### Higher duties allowance

59. Where a role needs to be filled for 1 or more working weeks, higher duties allowance (pro-rated for partial or part-time duties) will be paid to any employee temporarily occupying the role acting at a classification level higher than their substantive classification level.
60. The President may shorten the qualifying period for higher duties allowance on a case-by-case basis, having regard to the operational nature of the position and/or operational requirements of the section.
61. Higher duties allowance will be equal to the difference between the employee's current salary and the salary that would be payable if they were promoted to the higher classification level with the remuneration at the minimum rate applicable to the higher classification, or a higher amount determined by the President.
62. Where an employee is assigned only part of the higher duties, the President will determine the amount of allowance payable.
63. Higher duties allowance will be payable while an employee is acting at a higher classification level as part of a job-sharing arrangement where the duration of the arrangement is at least 1 working week.
64. Where an employee is found to be eligible for salary progression at their acting classification level they will receive an appropriate increase in the rate of higher duties allowance, subject to clause 39. The employee's salary level will be retained for all future periods of acting regardless of elapsed time.
65. An employee temporarily assigned duties at a higher classification level shall be entitled to receive the rate applicable for the higher classification position during a period of paid leave or public holidays provided that the employee would have received the rate applicable for the higher classification position if the employee had not been absent from the workplace for the period of the paid leave or the public holiday.
66. Where non-Senior Executive Service employees are acting in or temporarily assigned duties in Senior Executive Service roles, the allowance payable will be determined by the President.

## Workplace responsibility allowances

67. A workplace responsibility allowance will be paid where the Commission has appointed or elected an employee to one of the following roles:
- First Aid Officer;
  - Mental Health First Aid Officer;
  - Health and Safety Representative;
  - Fire and Emergency Warden; and
  - Wellbeing and Respect Officer.
68. An employee is not to receive more than one workplace responsibility allowance unless approved in writing by the President due to operational requirements.
69. As a salary-related allowance, this value will continue to be increased in line with headline wage increases. This will be applicable for the duration of this Agreement.
70. The full allowance is payable regardless of flexible work and part-time arrangements.
71. An employee's physical availability to undertake the role will be considered by agencies when appointing and reappointing employees to these roles. This is noting that not all workplace responsibility roles will necessarily require a physical presence in the workplace for the role to be successfully undertaken, such as Wellbeing and Respect Officers and Health and Safety Representatives depending on work group arrangements.
72. Payment of workplace responsibility allowances will be conditional on the employee obtaining the required certification, completion of nominated training courses as determined by the Commission and attendance at the meetings and activities in relation to the nominated workplace responsibility role.
73. The cost of obtaining and maintaining relevant training, accreditation and qualifications will be covered by the Commission. Participation in activities required for any of the appointed or elected roles will be considered work time.
74. Casual employees who are eligible to receive a workplace responsibility allowance will be paid the full amount (noting the minimum rate), as varied from time to time.
75. The rates will be:

Workplace Responsibility Allowance	Rate from commencement of the Agreement (\$ per fortnight)	Rate from 13 March 2025 (\$ per fortnight) (+3.8%)	Rate from 12 March 2026 (\$ per fortnight) (+3.4%)
First Aid Officer	\$45.47	\$47.20	\$48.80
Mental Health First Aid Officer	\$30.51	\$31.67	\$32.75
Health and Safety Representative	\$30.51	\$31.67	\$32.75
Fire and Emergency Warden	\$30.51	\$31.67	\$32.75
Wellbeing and Respect Officer	\$30.51	\$31.67	\$32.75

## Community language allowance

76. A community language allowance will be paid where the President determines that an employee is regularly required to use their ability to communicate in Braille or a language other than English (including First Nations languages and AUSLAN) in the course of their work, and the employee meets the required level of competency set by the President. Further information is included in policy.
77. The allowance is paid in accordance with the employee's level of competency:

**Table 1: Community language allowance rates**

Rate	Standard	Rate from commencement of the Agreement	Rate from 13 March 2025 (\$ per fortnight) (+3.8%)	Rate from 12 March 2026 (\$ per fortnight) (+3.4%)
1	An employee who has adequate language skills, as determined by an individual or body approved by the President, for simple communication.	\$1,435 per annum	\$1,490 per annum	\$1,541 per annum
2	An employee who is certified by the National Accreditation Authority for Translators and Interpreters (NAATI) as a Translator or Interpreter at any level; or is assessed to be at the equivalent level by an individual or body approved by the President.	\$2,870 per annum	\$2,979 per annum	\$3,080 per annum

78. The allowance is calculated annually and paid fortnightly.
79. The full allowance is payable regardless of flexible work and part-time arrangements.
80. The allowance is payable during periods of paid leave.
81. The allowance counts as salary for superannuation purposes and for calculating retirement and redundancy entitlements.

## Section 4: Classifications and broadbands

### Entry level programs/Graduates

82. The Commission may engage employees on entry-level programs such as the Graduate program or established APS wide programs, in accordance with the terms of the relevant program and as set out in the employment offer.
83. Graduates will be engaged by the President at an APS3/APS4 classification level, having regard to the participant's qualifications, work experience, skills and the program the employee is undertaking.
84. Entry level employees are required to undertake the program and course of training determined by the Commission and complete the specific requirements of the nominated entry level program.
85. On successful completion of the program, employees will be advanced through the nominated broadband as set out in the letter of offer.
86. Advancement will be subject to:
  - a) all training and program requirements have been satisfactorily met;
  - b) employee has the necessary skill and proficiency;
  - c) performance rating of 'effective' or above; and
  - d) sufficient work is available at the higher classification level.

### Broadband

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

### Work Level Standards

88. The APS Work Level Standards continue to operate and describe the work at each of the classification levels in this Agreement, consistent with the *Public Service Classification Rules 2000*, made in accordance with section 23 of the PS Act.
89. 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 in *Attachment A - Base Salaries*.

# Section 5: Working hours and arrangements

## Job security

### Commitment to ongoing employment and rebuilding APS capacity

90. The APS is a career-based public service. In its engagement decisions, the Commission recognises that the usual basis for engagement is as an ongoing APS employee.

### Reporting

91. Where a consultative committee is in place, the Commission will report to the Commission's consultative committee on an annual basis, or more frequently if agreed, on the number, duration, classification and location of ongoing, non-ongoing and casual employees engaged by the Commission.

### Pathways to permanency

92. The Commission and the APS will comply with the casual conversion provision(s) of the FW Act. In addition, the Commission recognises that a proactive approach, including regularly reviewing casual and non-ongoing arrangements, is both a fair and efficient approach to supporting ongoing employment as the usual form of employment.

## Casual (irregular or intermittent) employment

93. A casual (irregular or intermittent) employee is defined in the definitions section.
94. A decision to expand the use of casual employees is subject to *Section 10 – Consultation, representation and dispute resolution* of this Agreement.
95. The Commission will regularly review the working arrangements of casual employees to assess if they are genuinely performing irregular or intermittent duties, and report de-identified outcomes to the consultative committee, where one is in place.
96. Remuneration for casual employees is on an hourly basis. A casual employee will receive a 25 per cent loading on the base hourly rate of their classification as set out in this Agreement.
97. The casual loading is paid in lieu of payment for public holidays not worked, notice of termination of employment, redundancy benefits and all paid leave entitlements, other than leave required by legislation including long service leave in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976* and leave for family and domestic violence support.
98. A casual employee will be engaged for a minimum of 3 hours per engagement or shall be paid for a minimum of 3 hours at the appropriate casual rate.
99. A casual employee who is eligible for a Workplace Responsibility Allowance will be paid the full amount.

## Non-ongoing employment

100. A non-ongoing employee is defined in the definitions section.
101. Non-ongoing employees will generally have the same terms and conditions of employment as ongoing employees under this Agreement's terms, except:
  - a) personal/carer's leave accrual at clause 205;
  - b) redundancy provisions at clause 465, subject to clause 102; and
102. If the non-ongoing employee's contract is not permitted by section 333E of the FW Act, then the redundancy provisions at clause 465 will apply.
103. If the redundancy provisions apply to an employee under clause 102, the Commission must adhere to the consultation requirements in *Section 10 – Consultation, representation and dispute resolution* of this Agreement.

## Working hours

104. **Standard hours:** Standard hours of work shall be 147 hours in each four week settlement period.
105. **Standard hours and Bandwidth:** Standard hours shall be worked within the bandwidth of 7:00 am to 6:30 pm, Monday to Friday. A standard day is 8:30 am to 4:51 pm with an hour for lunch between 12:30 pm and 1:30 pm.
106. Notwithstanding clause 105, 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.
107. **Core hours:** Core hours will be 10:00 am to 12:00 pm and 2:00 pm to 4:00 pm unless varied by agreement by an employee and their manager based on operational needs and with the approval of the President. Employees shall ordinarily be present at work during core hours.
108. **Unpaid meal breaks:** An employee must not work for longer than 5 hours without an unpaid meal break of a minimum of thirty minutes and no longer than 2 hours.
109. **Start and finish times:** Start and finish times within the bandwidth are to be determined by the Commission, after consultation with the employee. To optimise effective client service, managers 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 8:30 am to 5:00 pm.
110. An employee will not be expected to respond to emails or any other form of communication outside of bandwidth hours or agreed working hours, except for the following situations:
  - a) cases of an emergency or exceptional circumstances that impact the Commission's operations,
  - b) when the employee is paid an on-call allowance, and;
  - c) when the communication is related to return from leave, WHS or employee welfare matters.
111. These working hours and arrangements 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 observed.



## Flex-time for APS 1–6 classifications

112. Employees classified as APS1–APS6 must record their attendance in the Commission’s timekeeping system for manager approval.
113. Employees classified as APS1–APS6 who work more or less than their ordinary hours within the standard hours and bandwidth will incur a one-for-one flex credit or debit. Flex-time credits will accrue only for time worked within the standard hours and bandwidth or where there is an agreement to work outside the bandwidth.
114. A maximum of 4 standard days can be carried over at the conclusion of any settlement period and a maximum of 10 hours of flex debit is permitted.
115. Managers are responsible for ensuring that employees do not accrue excessive flex-time and, carry over of flex-time balances beyond the settlement period will only be approved in exceptional circumstances. Further information can be found in the Commission’s *Attendance, Flex and Overtime Guidelines*.

## Executive Level Time Off in Lieu (EL TOIL)

116. Executive level (EL) employees are sometimes required to work reasonable additional hours. Consistent with the NES, employees may refuse to work unreasonable additional hours.
117. EL employees seeking to access time off in lieu (TOIL) are required to keep records of their working hours using a method determined by the Commission.
118. A manager is to grant TOIL in recognition of reasonable additional hours worked. TOIL granted to employees can be taken as whole or part days. Further information can be referred to in the Commission’s *TOIL Guidelines*.
119. The working arrangements for an EL employee should be agreed through discussion between the manager and the EL employee. The discussion should include consideration of the work requirements that will safely get the job done and reasonably allow the employee to balance their work and personal life.
120. An EL employee’s working arrangements and actual hours worked should be discussed on at least a quarterly basis between the EL employee and their manager.
121. The pattern of hours is to be flexible enough to accommodate short-term peaks and troughs in workload, and include expected reasonable additional hours. The agreed pattern of hours is to be recorded.
122. Requests from EL employees to access flexible time off which are consistent with their agreed working arrangements are to be supported, subject to operational requirements.

## Overtime and restriction

123. 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.
124. 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**

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

125. For the purpose of calculation the formula at clause 124 prescribed weekly hours before overtime is payable will be 36 <sup>3</sup>/<sub>4</sub>.
126. 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 APS6.
127. 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.
128. Overtime worked Monday to Saturday will be paid at time and a half for the first 3 hours each day and double time thereafter. Overtime worked on a Sunday will be paid at the rate of double time. 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 105.
129. An employee who works so much overtime that the employee has not had at least eight consecutive hours off duty plus reasonable travelling time:
- a) 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
  - b) 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 clause 130.
130. An employee who works so much overtime that the employee meets the conditions of clause 129 will:
- a) be allowed to leave work after such overtime for a period of eight consecutive hours off duty, plus reasonable traveling time, and will suffer no loss of pay for ordinary working time occurring during the employee's absence;

- b) provided that if an employee is required to resume or continue work on the specific written instruction of the Commission, without having had eight 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 eight consecutive hours off duty plus reasonable traveling time; and
  - c) suffer no loss of pay for ordinary working time occurring during the employee's absence.
131. 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.
132. 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.
133. 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.
134. Where an overtime attendance, not continuous with ordinary duty, involves duty both before and after midnight, the minimum payment provisions of this clause 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.
135. Where an employee is required to work overtime for periods of three or more hours a meal allowance shall be paid in accordance with the ATO Reasonable Allowances rates. Payment will be made through the Commission's 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.
136. 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.

## Flexible working arrangements and Work Life Balance

137. The Commission, employees and their union recognise:
- a) the importance of an appropriate balance between employees' personal and working lives, and the role flexible working arrangements can play in helping to achieve this balance;
  - b) access to flexible work can support strategies to improve diversity in employment and leadership in the APS;
  - c) access to flexible work supports APS capability, and can assist in attracting and retaining the employees needed to deliver for the Australian community, including employees located at a wider range of locations;
  - d) that flexibility applies to all roles in the Commission, and different types of flexible working arrangements may be suitable for different types of roles or circumstances; and
  - e) requests for flexible working arrangements are to be considered on a case-by-case basis, with a bias towards approving requests.

138. The Commission is committed to engaging with employees and their union to build a culture that supports flexible working arrangements across the Commission at all levels. This may include developing and implementing strategies through a Commission consultative committee.
139. Flexible working arrangements include, but are not limited to, changes in hours of work, changes in patterns of work and changes in location of work.

### Requesting formal flexible working arrangements

140. The following provisions do not diminish an employee's entitlement under the NES.
141. An employee may make a request for a formal flexible working arrangement.
142. The request must:
- a) be in writing;
  - b) set out details of the change sought (including the type of arrangement sought and the proposed period the arrangement will operate for); and
  - c) set out the reasons for the change, noting the reasons for the change may relate to the circumstances set out at section 65(1A) of the FW Act.
143. The President must provide a written response to a request within 21 days of receiving the request.
144. The response must:
- a) state that the President approves the request and provide the relevant detail in clause 145; or
  - b) if following discussion between the Commission and the employee, the Commission and the employee agree to a change to the employee's working arrangements that differs from that set out in the request – set out the agreed change; or
  - c) state that the President refuses the request and include the following matters:
    - i) details of the reasons for the refusal; and
    - ii) set out the Commission particular business grounds for refusing the request, explain how those grounds apply to the request; and
    - iii) either:
      - a) set out the changes (other than the requested change) in the employee's working arrangements that would accommodate, to any extent, the employee's circumstances outlined in the request and that the Commission would be willing to make; or
      - b) state that there are no such changes; and
    - iv) state that a decision to refuse the request, or failure to provide a written response within 21 days is subject to the dispute resolution procedures of this Agreement, and if the employee is an eligible employee under the FW Act, the dispute resolution procedures outlined in sections 65B and 65C of the FW Act.
145. Where the President approves the request this will form an arrangement between the Commission and the employee. Each arrangement must be in writing and set out:
- a) any security and work health and safety requirements;
  - b) a review date (subject to clause 149); and
  - c) the cost of establishment (if any).

146. The President may refuse to approve the request only if:
- a) the Commission has discussed the request with the employee; and
  - b) the Commission has genuinely tried to reach an agreement with the employee about making changes to the employee's working arrangements to accommodate the employee's circumstances (subject to any reasonable business grounds for refusal); and
  - c) the Commission and the employee have not reached such an agreement; and
  - d) the Commission has had regard to the consequences of the refusal for the employee; and
  - e) the refusal is on reasonable business grounds.
147. Reasonable business grounds include, but are not limited to:
- a) the new working arrangements requested would be too costly for the Commission;
  - b) there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested;
  - c) it would be impractical to change the working arrangements of other employees, or to recruit new employees, to accommodate the new working arrangements requested;
  - d) the new working arrangements requested would be likely to result in a significant loss in efficiency or productivity;
  - e) the new working arrangements requested would be likely to have a significant negative impact on customer service; and
  - f) it would not be possible to accommodate the working arrangements without significant changes to security requirements, or where work health and safety risks cannot be mitigated.
148. For First Nations employees, the Commission must consider connection to country and cultural obligations in responding to requests for altering the location of work.
149. Approved flexible working arrangements will be reviewed by the Commission and the employee after 12 months, or a shorter period, if agreed by the employee. This is to ensure the effectiveness of the arrangement.

### **Varying, pausing or terminating flexible working arrangements**

150. An employee may request to vary an approved flexible working arrangement in accordance with clause 145. An employee may request to pause or terminate an approved flexible working arrangement.
151. The President may vary, pause or terminate an approved flexible working arrangement on reasonable business grounds, subject to clause 153.
152. The Commission must provide reasonable notice if varying, pausing or terminating a flexible working arrangement without the agreement of the employee, having regard to the circumstances of the employee. Exceptions to this requirement are urgent and critical operational circumstances or an employee's demonstrated and repeated failure to comply with the agreed arrangements.
153. Prior to the President varying, pausing or terminating the arrangement under clause 151, the Commission must have:
- a) discussed with the employee their intention to vary, pause or terminate the arrangement with the employee;

- b) genuinely tried to reach an agreement with the employee about making changes to the employee's working arrangements to accommodate the employee's circumstances (subject to any reasonable business grounds for alteration);
- c) had regard to the consequences of the variation, pause or termination for the employee;
- d) ensured the variation, pause or termination is on reasonable business grounds; and
- e) informed the employee in writing of the variation, pause or termination to the approved flexible working arrangement, including details set out in clause 144c.

## Working from home

- 154. The Commission will not impose caps on groups of employees on the time that may be approved to work from home or remotely, with each request to be considered on its merits.
- 155. The Commission may provide equipment necessary for, or reimbursement, for all or part of the costs associated with establishing a working from home arrangement.
- 156. An employee working from home is covered by the same employment conditions as an employee working at an office site under this Agreement.
- 157. The Commission will provide employees with guidance on working from home safely.
- 158. Employees will not be required by the Commission to work from home unless it is lawful and reasonable to do so. This may include where circumstances prevent attendance at an office during a pandemic or natural disaster. In these situations, the Commission will consider the circumstances of the employees and options to achieve work outcomes safely.

## Ad-hoc arrangements

- 159. Employees may request ad-hoc flexible working arrangements. Ad-hoc arrangements are generally one-off or short-term arrangements for circumstances that are not ongoing.
- 160. Employees should, where practicable, make the request in writing and provide as much notice as possible.
- 161. Requests for ad-hoc arrangements are not subject to the request and approval processes detailed in clauses 140-149.
- 162. The Commission should consider ad-hoc requests on a case-by-case basis, with a bias to approving ad-hoc requests, having regard to the employee's circumstances and reasonable business grounds.
- 163. Where a regular pattern of requests for ad-hoc arrangements from an employee emerges, the Commission should consider whether it is appropriate to seek to formalise the arrangement with the employee.

## Altering span of hours

- 164. An employee may request to work an alternative regular span of hours (bandwidth hours). If approved by the President, hours worked on this basis will be treated as regular working hours and will not attract overtime payments. The Commission will not request or require that any employee alter their regular span of hours (bandwidth hours) under these provisions.

## Employees with caring responsibilities

165. 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 costs of additional family care arrangements on the production of receipts.
166. To assist employees balance their work and family/personal life responsibilities, workplace meetings will not be scheduled before 9 am and will conclude by 4.30 pm unless previously agreed. Where possible having regard for operational requirements, meetings will be generally scheduled after 10 am.

## Retirement transition

167. 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 and/or changes in work level or responsibilities by agreement.

## Range of locations of work

168. The Commission's office premises are in Sydney. Staff are employed across a number of states and territories based on individual arrangements, aligned to operational requirements of the Commission.

## Part-time work

169. All applications for part-time work must be in writing. All requests will be considered in line with the principles set out in the *Flexible work arrangements and Work Life Balance* section of this Agreement.
170. 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.
171. Proposals for part-time work may be initiated by managers, in consideration of an employee's health and wellbeing.
172. Employees engaged on a full-time basis will not be compelled to convert to part-time employment.
173. Employees engaged on a part-time basis will not be compelled to convert to full-time employment.

## Christmas closedown

174. 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.
175. 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 on half pay, payment is on half pay).
176. No deductions from annual or personal/carer's leave credits for the closedown period will be made.



## Public holidays

177. Employees are entitled to the following holidays each year as observed at their normal work location in accordance with the FW Act:
- a) 1 January (New Year's Day);
  - b) 26 January (Australia Day);
  - c) Good Friday and the following Monday (Easter Monday);
  - d) 25 April (Anzac Day);
  - e) the King's birthday holiday (on the day on which it is celebrated in a State or Territory or a region of a State or Territory);
  - f) 25 December (Christmas Day);
  - g) 26 December (Boxing Day); and
  - h) 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 2009* from counting as a public holiday.
178. If a public holiday falls on a Saturday or Sunday, and 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.
179. 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.
180. The President and an employee may agree to substitute a cultural or religious day of significance to the employee for any day that is a prescribed holiday. If the employee cannot work on the prescribed holiday, the employee will be required to work make-up time at times to be agreed. This substitution does not impact or reduce an employee's entitlement to First Nations ceremonial leave, NAIDOC leave or cultural leave.
181. Where an employee substitutes a public holiday for another day, they will not be paid penalty rates for working their normal hours on the public holiday.
182. Where a public holiday falls during a period when an employee is absent on leave (other than annual leave, paid personal/carer's leave or defence service sick leave) there is no entitlement to receive payment as a public holiday. Payment for that day will be in accordance with the entitlement for that form of leave (e.g. if on long service leave on half pay, payment is at half pay).
183. If under a law of a State or Territory every Sunday is declared or prescribed by or under that law to be a public holiday, there is no entitlement to receive payment as a public holiday if the employee would have worked, or does perform work, on that day. In these circumstances, payment will only be made at the public holiday rate if the employee performs work on that day, and the Sunday would otherwise be a public holiday under clause 177.
184. An employee who is absent on a day or part day that is a public holiday in their normal work location, 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.
185. Where a full-time employee, including but not limited to employees on compressed hours, has a regular planned day off which would fall on a public holiday, the President may allow the employee to change their planned day off so that it does not fall on a public holiday. If it is not possible to change their planned day off, the employee will be credited an equivalent amount of time to their regular hours for the day in flex credits or EL TOIL in recognition of their planned day off.



## Section 6: Leave

### Annual leave

186. Full-time employees (other than casual employees) are entitled to 4 weeks (20 days) paid annual leave per completed year of service, accruing daily and credited on a monthly basis. Annual leave for part-time employees accrues on a pro-rata basis.
187. A pro-rata accrual of annual leave may be accessed prior to the completion of a year of service (e.g. an employee with six months completed service may apply for and be granted 10 days of annual leave).
188. Annual leave may be taken at half pay. However, unless approved by the President (or delegate), it may not be taken at half pay where the employee has an excessive leave balance.
189. Annual leave shall be taken at such time or times and in such a period or periods as may be agreed between the employee and the employee's manager subject to operational requirements. Annual leave will not be prepaid.
190. Employees are encouraged to take their annual leave in the year of accrual and are expected to take at least two weeks per annum.
191. Employees with annual leave in excess of six weeks (pro-rata for part-time employees) may be directed to take leave until the excess credit is cleared.
192. Where annual leave is cancelled or the employee is recalled to duty, the employee will be reimbursed travel costs not recoverable from insurance or other sources. Evidence of costs may be required.
193. **Cash out of Annual 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 not cashed out if the cashing out would result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks;
  - b) each cashing out of an agreed amount of paid annual leave must be by a separate agreement in writing between the employee and the employee's manager; 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 not taken.
194. Employees will receive payment in lieu of any untaken annual leave upon separation from the APS.

### Purchased leave

195. An employee may, with the approval of the President, purchase from one to six additional weeks of leave from the Commission. Further information on application requirements can be referred to in the Commissions' *Purchased Leave Policy*.

## Personal/carer's leave

196. Personal/carer's leave may be taken:
- a) due to personal illness or injury;
  - b) to attend appointments with a Registered Health Practitioner;
  - c) to manage a chronic condition; and/or
  - d) to provide care or support for a family member (including a household member) or a person they have caring responsibilities for, because of:
    - i) a personal illness or injury affecting the person; or
    - ii) an unexpected emergency affecting the other person.
197. Carer's leave may be taken to care for a person that the employee has caring responsibilities for. A person that an employee has caring responsibilities for may include a person who needs care because they:
- a) have a medical condition, including when they are in hospital;
  - b) have a mental illness;
  - c) have a disability;
  - d) are frail or aged; and/or
  - e) are a child, not limited to a child of the employee.
198. An employee will be entitled to 18 days of paid personal/carer's leave per annum (pro-rata for part-time employees).
199. Personal/carer's leave at half pay may be approved by the President.
200. A casual employee may be absent without pay when not fit for work due to personal illness or injury. A casual employee may access 2 days unpaid carer's leave per occasion, consistent with the NES.
201. Absences from the workplace on account of illness for a period below one day may be taken as flex-time, where flex-time arrangements apply and credits are available.
202. 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.
203. Unused personal/carer's leave will accumulate from year to year but will not be paid out on separation.

## Accrual of personal/carer's leave from commencement of the agreement

204. An ongoing 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.
205. A non-ongoing employee shall accumulate paid personal/carer's leave progressively with 1.5 days accruing progressively, for each month of employment.
206. If a non-ongoing employee is then engaged on an ongoing basis, they shall be credited with a full entitlement to personal/carer's leave as if they had accrued from the date of their commencement in the Commission less any leave already taken.
207. 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.

### Accrual of personal/carer's leave post transitional arrangement

208. The Commission will implement accrual methods outlined in clauses 209 and 210 by 1 January 2026
209. For an ongoing employee, 18 days personal/carer's leave will be credited upon the employee's commencement with the APS. After 12 months, the employee's leave will accrue daily, credited at least monthly.
210. For a non-ongoing employee, the personal/carer's leave will be credited upon the employee's commencement with the Commission. This will be 18 days leave pro-rated based on the employee's initial contract period and is capped at 18 days. After the initial contract period or 12 months, whichever is shorter, or where the employee has an existing entitlement to personal/carer's leave, leave will accrue daily, credited at least monthly.

### Transitional arrangements

211. Where an employee:
- a) has, or cares for someone with, a chronic condition or other ongoing illness; or
  - b) is recovering from surgery; or
  - c) is pregnant; or
  - d) is returning from parental leave or has a child commencing day care;
- and, as a result of the transition to daily accrual of personal/carer's leave, does not have sufficient credit to cover an absence for which they would otherwise be able to take personal/carer's leave, the President will advance the employee's accrual up to the 12-month anniversary when their leave would otherwise be credited.

### Documentary Evidence

212. Evidence may be requested to accompany an application for personal/carer's leave for a period of more than three consecutive days. Acceptable evidence includes: a certificate from a Registered Health Practitioner, a statutory declaration made by the employee or any other form of evidence approved by the President.
213. There will be no requirement to produce a certificate to support an application for personal/carer's leave (less than four days) for the first 15 days taken in any accrual year. The President may request the employee to provide a certificate from a Registered Health Practitioner, a statutory declaration made by the employee or any other form of evidence approved by the President when any future absence on personal/carer's leave occurs.
214. A certificate from a Registered Health Practitioner may be used as evidence of a chronic condition for up to 12 months for both personal and carer's leave.

### Notification of personal/carer's leave

215. An employee absent from the workplace when intending to access personal/carer's leave shall take reasonable steps to inform (by an agreed method) their manager as soon as reasonably practicable.

### Invalidity

216. 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.

## Portability of leave

217. Where an employee moves into the Commission from another APS agency where they were an ongoing employee, the employee's unused accrued annual leave and personal/carer's leave will be transferred, provided there is no break in continuity of service.
218. Where an employee is engaged in the Commission immediately following a period of ongoing employment in the Parliamentary Service or the ACT Government Service, the employee's unused accrued annual leave and personal/carer's leave will be recognised unless the employee received payment in lieu of those entitlements on cessation of employment.
219. Where an employee is engaged as an ongoing employee in the Commission, and immediately prior to the engagement the person was employed as a non-ongoing APS employee (whether in the agency or another), at the employee's request, any unused accrued annual leave (excluding accrued leave paid out on separation) and personal/carer's leave will be recognised.
220. Where an employee is engaged as a non-ongoing APS employee, and immediately prior to the engagement the person was employed as a non-ongoing APS employee (whether in the agency or another) at the employee's request, any unused accrued annual leave (excluding accrued leave paid out on termination of employment) and personal/carer's leave will be recognised.
221. Where an employee is engaged as an ongoing employee in the Commission, and immediately prior to the engagement the person was employed by a Commonwealth employer (other than in the Parliamentary Service which are covered in clause 218), the President will recognise any unused accrued personal/carer's leave at the employee's request. The President will advise the employee of their ability to make this request.
222. Where an employee is engaged as an ongoing employee in the Commission, and immediately prior to the engagement the person was employed by a State or Territory Government, the President may recognise any unused accrued personal/carer's leave, provided there is not a break in continuity of service.
223. For the purposes of clauses 217 to 222, an employee with a break in service of less than 2 months is considered to have continuity of service.

## Re-crediting of leave

224. When an employee is on:
  - a) annual leave;
  - b) purchased leave;
  - c) defence reservist leave;
  - d) First Nations ceremonial leave;
  - e) NAIDOC leave;
  - f) cultural leave; or
  - g) long service leave; andbecomes eligible for, under legislation or this Agreement:
  - a) personal/carer's leave;
  - b) compassionate or bereavement leave;
  - c) jury duty;
  - d) emergency services leave;

- e) leave to attend to family and domestic violence circumstances; or
  - f) parental leave, premature birth leave, stillbirth leave or pregnancy loss leave;
- the affected period of leave will be re-credited.

225. When an employee is on personal/carer's leave and becomes eligible for parental leave, premature birth leave, stillbirth leave or pregnancy loss leave, the affected period of leave will be re-credited.
226. Re-crediting is subject to appropriate evidence of eligibility for the substituted leave.

## Long service leave

227. An employee is eligible for long service leave in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976*.
228. The minimum period for which long service leave will be granted is 7 calendar days (whether taken at full or half pay). Long service leave cannot be broken with other periods of leave, except as otherwise provided by legislation or provided for in the re-crediting of leave clause at 226 of this Agreement.

## Miscellaneous leave

229. Miscellaneous leave may be granted with or without pay for an appropriate purpose that is not provided for elsewhere in this Agreement. The President will consider requests in line with the supporting evidence provided by the employee. Further information can be found in the Commission's *Miscellaneous Leave Policy*.
230. Miscellaneous leave may be granted by the President for a number of purposes including but not limited to: management of a disability, gender affirmation, workplace relations training or where other leave entitlements are exhausted.
231. A casual employee may be provided with paid miscellaneous leave for the purposes of family and domestic violence support and otherwise by Government directive.
232. The President may refuse an employee's request for miscellaneous leave and will provide a response in writing within 21 days the reasons for any refusal of the request.

## Cultural, ceremonial and NAIDOC leave

### NAIDOC leave

233. First Nations employees may access up to one day of paid leave per calendar year to participate in NAIDOC week activities. The President may provide additional paid leave for this purpose.
234. NAIDOC leave can be taken in part days.

### First Nations ceremonial leave

235. First Nations employees may access up to 6 days of paid leave over 2 calendar years to participate in significant activities associated with their culture or to fulfil ceremonial obligations.
236. The President may approve additional leave for cultural or ceremonial purposes as miscellaneous leave, with or without pay.
237. First Nations ceremonial leave can be taken as part days.
238. First Nations ceremonial leave is in addition to compassionate and bereavement leave.

## Cultural leave

239. The President may grant up to 3 days of paid leave per calendar year for the purpose of attending significant religious or cultural obligations associated with the employees' particular faith or culture.
240. The President may approve additional leave for cultural purposes as miscellaneous leave, with or without pay.
241. Cultural leave can be taken as part days.
242. For the avoidance of doubt, this leave does not cover cultural purposes or obligations which are eligible for paid leave under clause 235.

## Parental leave

243. A primary caregiver, secondary caregiver and ML Act is defined in the definitions section.
244. An employee who is a **primary caregiver** or **secondary caregiver** is entitled to parental leave up until 24 months from the date of the child's birth or placement (**parental leave period**). For the avoidance of doubt, this is inclusive of all legislated leave entitlements. The parental leave period does not extend non-ongoing employment where the employment period remaining is less than 24 months. An employee is only eligible for parental leave with pay as either a primary caregiver or a secondary caregiver for the particular parental leave period, and cannot switch roles for the purpose of accessing additional paid leave.
245. For the pregnant employee, the parental leave period starts on commencement of maternity leave as per ML Act requirements, and ceases 24 months from the date of birth. Medical certification requirements for the pregnant employee will be as required by the ML Act.
246. Conditions in this Agreement will continue to apply in circumstances where successor legislation to the ML Act does not provide parental leave conditions included in this Agreement.

## Payment during parental leave

247. An employee is entitled to parental leave with pay as per clauses 249 and 250 within the parental leave period. Any further parental leave during the parental leave period is without pay. Unused paid parental leave remaining at the end of the employee's parental leave period will lapse. An employee may choose to use their accrued paid leave entitlements in accordance with usage and eligibility requirements in this Agreement during the parental leave period that would otherwise be without pay.
248. Employees newly engaged in the Commission or who have moved to the Commission from another APS agency are eligible for the paid parental leave in clauses 249 and 250 where such paid leave had not already been provided by another APS agency or Commonwealth employer in the 24 months since the child's date of birth or placement. If the paid leave used by the employee with the previous Commonwealth employer or APS agency is less than the limits specified in clauses 249 and 250, the balance is available to the employee.
249. An employee who is a primary caregiver is entitled to parental leave with pay during the parental leave period to a maximum of 18 weeks as provided in **Table 2** below.

**Table 2: Primary caregivers – circumstances for paid parental leave**

Paid leave entitlement under the ML Act	Additional parental leave with pay under this Agreement for the primary caregiver
12 weeks' paid maternity leave, including any reduced paid maternity leave period due to ML Act qualifying period rules	Paid leave to bring the total period of paid parental leave to 18 weeks.
No ML Act eligibility or coverage	18 weeks

250. An employee who is a secondary caregiver is entitled to parental leave with pay during the parental leave period as provided in **Table 3** below.

**Table 3: Secondary caregivers – circumstances for paid parental leave**

Period which coincides with the parental leave period for the secondary caregiver	Parental Leave with pay under this Agreement
Date of commencement of this Agreement to 28 February 2025	8 weeks, or top up to 8 weeks where a lesser period of parental leave has already been provided
1 March 2025 to 28 February 2026	11 weeks, or top up to 11 weeks where a lesser period of parental leave has already been provided
1 March 2026 to 27 February 2027	14 weeks, or top up to 14 weeks where a lesser period of parental leave has already been provided
On and from 28 February 2027	18 weeks, or top up to 18 weeks where a lesser period of parental leave has already been provided

251. **Flexibility:** Parental leave with pay, whether provided as maternity leave under the ML Act or under this Agreement, can be accessed flexibly during the parental leave period and does not have to be taken in a single block. For the avoidance of doubt, parental leave can be used to replicate a part time work arrangement, and can be taken concurrently with another parent in relation to the same child.
252. **Rate of payment** during paid parental leave is the same as for an absence on personal/carer's leave and based on the employee's weekly hours at the time of the absence.
253. **Half-pay option:** The payment of any paid parental leave may be spread over a maximum period of 36 weeks at the rate of, no less than, half the normal rate of salary. All paid parental leave counts as service for all purposes, where permitted by legislation.

### Adoption and long-term foster care

254. An employee who is a primary caregiver or secondary caregiver is entitled to parental leave in accordance with this Agreement for adoption or long-term foster care, provided that the child:
- is under 16 as at the day (or expected day) of placement;
  - has not lived continuously with the employee for a period of six months or more as at the day (or expected day) of placement; and
  - is not (otherwise than because of the adoption) a child of the employee or the employee's spouse or de facto partner.
255. 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 long-term foster carer purposes.



## Stillbirth

256. Parents of a stillborn child remain eligible for parental leave, except for paid leave for the secondary caregiver which is two weeks.
257. A stillborn child is a child:
- who weighs at least 400 g at delivery or whose period of gestation was 20 weeks or more; and
  - who has not breathed since delivery; and
  - whose heart has not beaten since delivery.

## Pregnancy loss leave

258. A pregnant employee who experiences, or an employee whose spouse or partner experiences, pregnancy loss is entitled to one weeks' paid leave. Pregnancy loss is a miscarriage or other loss of pregnancy that occurs between 12 and 20 weeks' gestation that is not a stillbirth.
259. Pregnancy loss leave is in addition to entitlements to compassionate leave for miscarriage provided under the FW Act and this Agreement.

## Premature birth leave

260. In circumstances of a live birth before 37 weeks' gestation a pregnant employee, or an employee whose spouse or partner has given birth prematurely, is entitled to paid premature birth leave from the date of the child's birth up to just before 37 weeks' gestation. Parental leave with pay is then available from what would have been 37 weeks' gestation in accordance with Parental leave in this Agreement, noting the parental leave period commences on the child's date of birth.

## Transitional provisions

261. Employees eligible for paid leave under the ML Act are required under legislation to use their paid maternity leave first. In this circumstance, the employee may postpone their paid premature birth leave otherwise payable under clause 260 until after the legislated paid maternity leave is used.

## Compassionate leave

262. Employees will be eligible for 3 days paid compassionate leave on each occasion when:
- a member of their family (including a member of their household) or someone they have a close personal relationship with contracts, develops or sustains a life-threatening illness or injury; or
  - the employee or their partner has a miscarriage.
263. An employee may be asked to provide evidence to support their absences on compassionate leave.
264. Compassionate leave for an occasion may be taken as 3 consecutive days or in separate periods totalling 3 days. This can include part days.
265. For casual employees, compassionate leave is unpaid.



## Bereavement leave

266. Employees will be eligible for 3 days paid bereavement leave on each occasion when:
- a) a member of their family (including a member of their household) or someone they had a close personal relationship with dies; or
  - b) a child is stillborn, where the child was a member of their family (including a member of their household).
267. An employee may be asked to provide evidence to support their absences on bereavement leave.
268. Bereavement leave for an occasion may be taken as 3 consecutive days or in separate periods totalling 3 days. This can include part days.
269. For casual employees, bereavement leave is unpaid.

## Elder and Disability Carer's leave

270. An employee with 12 months of continuous service may request unpaid discretionary leave of up to 12 months to provide care or support to:
- a) an elderly parent;
  - b) a child with disability;
  - c) a family member with high support needs, where there is a requirement for ongoing care or support.

## Moving house leave

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

## Sabbatical leave/Career break

272. Employees will be eligible to apply for a three-month unpaid sabbatical/career break leave after they have been employed for five years and for a further three months unpaid sabbatical/career break leave period for each subsequent 5 year period. The three-month period is in calendar days and will be non-cumulative.
273. The President may approve all periods of sabbatical/career break leave, subject to operational requirements and the negotiation of a mutually agreeable period of leave/absence.
274. Where the sabbatical/career break leave 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.

## Emergency response leave

275. In line with section 108 of the FW Act, an employee who engages in an eligible community service activity is entitled to emergency response leave to volunteer for emergency management duties for:
- a) the time engaged in the activity;
  - b) reasonable travelling time; and
  - c) reasonable recovery time.

276. Full-time and part-time employees will be able to access 20 working days of paid emergency response leave at their full rate of pay per year if required. The President may provide additional emergency response leave with pay.
- a) For the purpose of this clause, full rate of pay is to be as if the employee was at work.
277. Paid leave may be refused where the employee's role is essential to the Commission response to the emergency.
278. An employee must provide evidence that the organisation requests their services. Employees can provide evidence before or as soon as practical after their emergency service activity.
279. The President may approve reasonable paid or unpaid leave for ceremonial duties and training.
280. Emergency response leave, with or without pay, will count as service.

## **Jury duty**

281. Employees who are required by a court to attend either for jury selection, or to act as a juror, will be released from duty for the required period, without the need to apply for leave.
282. Full and part-time employees will be released from duty on their full rate of pay. Payment for casuals will be as per the relevant state legislation.
- a) For the purposes of this clause, full rate of pay is to be as if the employee was at work.
283. The employee is required to inform their manager before they are released from duty and provide evidence of the need to attend.
284. If the employee receives a payment from the court for attendance (which are not expense related such as allowances and reimbursements in relation to meals, accommodation, fares etc.), they must repay that amount to the Commission for the period of absence. This will be administered in accordance with the overpayments clause.

## **Community Volunteer leave**

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

## **Defence reservist leave**

288. The President will give an employee leave with or without pay to undertake:
- a) Australian Defence Force (ADF) Reserve and continuous full-time service (CFTS); and
- b) Australian Defence Force Cadet obligations.
289. An employee who is a Defence Reservist can take leave with pay for:
- a) up to 4 weeks (20 days) in each financial year (pro-rata for part-time employees); and
- b) an extra 2 weeks (10 days) in the first year of ADF Reserve service (pro-rata for part-time employees).

290. Leave can be built up and taken over 2 consecutive years. This includes the extra 2 weeks in the first year of service.
291. An employee who is an Australian Defence Force Cadet officer or instructor can get paid leave up to 3 weeks in each financial year to perform their duties. Australian Defence Force Cadets means:
- a) Australian Navy Cadets;
  - b) Australian Army Cadets; and
  - c) Australian Air Force Cadets.
292. In addition to the entitlement at clause 289, paid leave may be granted to an employee to attend an interview or medical examination in connection with the enlistment of the employee in a Reserve Force of the Defence Force.
293. Paid defence reservist leave counts for service.
294. Unpaid defence reservist leave for 6 months or less counts as service for all purposes. This includes periods of CFTS.
295. Unpaid leave taken over 6 months counts as service, except for annual leave.
296. An employee will not need to pay their tax free ADF Reserve salary to their agency for any reason.

## Defence service sick leave

297. An employee is eligible for defence service sick leave credits when the Department of Veterans Affairs (DVA) has certified that an employee's medical condition is as a result of either:
- a) warlike service; or
  - b) non-warlike service.
298. An eligible employee can get 2 types of credits:
- a) an initial credit of 9 weeks (45 days) defence service sick leave will apply as of the later below option:
    - i) they start employment with the APS; or
    - ii) DVA certifies the condition; and
  - b) an annual credit of 3 weeks (15 days) defence service sick leave.
299. An employee can use their defence service sick leave when a recognised medical practitioner provides a certificate that says they were away due to their DVA certified medical condition.
300. Unused annual credits can be built up to 9 weeks.
301. An employee cannot use annual credits until the initial credit is exhausted.
302. Defence service sick leave is paid and counts as service for all purposes.

## Leave to attend proceedings

303. An employee giving evidence before a Court, Tribunal or Royal Commission on behalf of the Commonwealth or a Commonwealth party in the course of their duties, will be considered on duty.
304. An employee who is not covered under clause 303, and is required to give evidence to, appear before or attend to instruct a representative at a Court, Tribunal or Royal Commission in relation to their duties will be released from duty without loss of pay. This includes in proceedings relating to a dispute between the employee and the Commission.
305. An employee may otherwise be granted paid or unpaid miscellaneous leave by the President if required to give evidence to a Court, Tribunal or Royal Commission for any other reason. Where approval for unpaid leave is given, the employee may elect to use accrued annual leave, flex leave or time off in lieu.
306. The President may refuse to release an employee from duty having regard to business requirements and whether the employee's attendance is necessary for the Court, Tribunal or Royal Commission hearing.

## Section 7: Employee support and workplace culture

### Blood donation

307. An employee can take reasonable time away from duty during their ordinary work hours to donate blood, plasma or platelets. It includes reasonable travel time and employers will consider employees on duty.
308. The employee must inform their manager in advance of when they will be away from work before donating blood, plasma or platelets.

### Vaccinations

309. The Commission will offer annual influenza vaccinations to all employees at no cost.
310. Where the Commission requires an employee performing a role to be vaccinated for a particular condition, this vaccination will be offered at no expense to the employee.

### Employee Assistance Program

311. Employees, their partners, their dependants/children and members of the employee's household will have access to a confidential, professional counselling service to assist employees to manage personal and work issues. This service will be provided at no cost to employees by the Commission and will be accessible on paid time.
312. On commencement employees will be advised of the availability of the employee assistance program (EAP).
313. 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.
314. Managers may access the service to support them in their roles and should encourage employees to use the service where appropriate.

### Healthy Lifestyle Allowance

315. The Commission encourages its employees to consider healthy lifestyle activities as a means to develop and maintain work and life balance. The Commission will reimburse up to \$275 per financial year for approved health and wellbeing activities. Further information can be found in the Commission's *Healthy Lifestyle Program Guidelines*.
316. The Healthy Lifestyle allowance will be payable to non-ongoing employees if their contract term is six months or greater.

### Work health and Safety (WHS)

317. The Commission and its employees will work collaboratively on WHS matters. Further information can be referred to in the Commission's *WHS, Rehabilitation and First Aid Policies*.

## Reasonable Adjustment

318. 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.

## Respect at work (Respect@Work)

### Principles

319. The Commission values a safe, respectful and inclusive workplace free from physical and psychological harm, harassment, discrimination and bullying. The Commission recognises that preventing sexual harassment, sex discrimination, sex-based harassment and victimisation in the workplace is a priority.
320. The Commission recognises that approaches to prevent sexual harassment, sex discrimination, sex-based harassment and victimisation in the workplace should be holistic and consistent with the Commission's guidance, including the *Good Practice Indicators Framework for Preventing and Responding to Workplace Sexual Harassment* and the Commission's *Respectful Behaviour and Unlawful Conduct Policy*.

### Consultation

321. The Commission will consult with employees and their unions in developing, reviewing and evaluating approaches to prevent sexual harassment, sex discrimination, sex-based harassment and victimisation in the workplace.

## Family and domestic violence support

322. The Commission will provide support for employees affected by family and domestic violence, depending on the employee's circumstances.
323. The Commission recognises that a holistic approach should be taken to support the employee, appropriate for the employee's individual circumstances.
324. Family and domestic violence support, including paid leave, are available to all employees covered by this Agreement.
325. An employee experiencing family and domestic violence is able to access paid miscellaneous leave. Reasons an employee experiencing family and domestic violence may access this leave include, but are not limited to:
- a) illness or injury affecting the employee resulting from family and domestic violence;
  - b) providing care or support to a family member (including a household member) who is also experiencing family and domestic violence, and is ill or injured as a result of family and domestic violence;
  - c) providing care or support to a family member (including a household member) who is also experiencing family and domestic violence, and is affected by an unexpected emergency as a result of family and domestic violence;
  - d) making arrangements for the employee's safety, or the safety of a close relative;
  - e) accessing alternative accommodation;
  - f) accessing police services;
  - g) attending court hearings;

- h) attending counselling; and
  - i) attending appointments with medical, financial or legal professionals.
326. This entitlement exists in addition to an employee's existing leave entitlements and may be taken as consecutive days, single days or part days and will count as service for all purposes.
  327. Given the emergency context in which leave may need to be accessed, employees can proceed to take the leave and seek approval at a later date, as soon as practicable.
  328. These family and domestic violence support clauses do not reduce an employee's entitlement to family and domestic violence leave under the NES.
  329. Paid miscellaneous leave available under this clause is paid for ongoing and non-ongoing employees at their full rate as if they were at work.
  330. Paid leave for casual employees under this clause is paid at their full pay rate for the hours they were rostered to work in the period they took leave.
  331. Evidence may be requested to support the Commission in approving leave. In most cases, this will not be required. Where it is required, this will be discussed with the employee and a statutory declaration is the only form of evidence the Commission will require, unless the employee chooses to provide another form of evidence.
  332. An employee may also choose to provide other forms of evidence, including a medical certificate, or document issued by the Police Service, a Court, a Doctor, district Nurse, a Family Violence Support Service or Lawyer.
  333. The Commission will take all reasonable measures to treat information relating to family and domestic violence confidentially. The Commission will adopt a 'needs to know' approach regarding communication of an employee's experience of family and domestic violence, subject to steps the Commission may need to take to ensure the safety of the employee, other employees or persons, or mandatory reporting requirements.
  334. Where the Commission needs to disclose confidential information for purposes identified in clause 333, where it is possible the Commission will seek the employee's consent and take practical steps to minimise any associated safety risks for the employee and/or privacy breaches.
  335. The Commission will not store or include information on the employee's payslip in relation to the employee's experience of family and domestic violence; any leave accessed for the purposes of family and domestic violence; or support(s) provided by the employer, unless otherwise required by legislation.
  336. Other available support may include, but is not limited to, flexible working arrangements, additional access to EAP, changes to their span of hours or pattern of hours and/or shift patterns and/or location of work where reasonably practicable.
  337. The Commission will acknowledge and take into account an employee's experience of family and domestic violence if an employee's attendance or performance at work is affected.
  338. Further information about leave and other support available to employees affected by family and domestic violence may be found in the Commission's *Domestic and Family Violence Policy*.

## Integrity in the APS

339. The Commission understands that procedural fairness is essential in building and maintaining trust with APS employees, and that it requires fair and impartial processes for employees affected by APS-wide or Commission decisions.
340. Employees are to give advice that is frank, honest, timely and based on the best available evidence. This includes scientific and engineering advice based on evidence-based facts guided by the best available science and data. Employees will not be disadvantaged or discriminated against because they have given advice in accordance with their expertise or professional qualifications and in accordance with the APS Code of Conduct in the PS Act.
341. Employees can, during their ordinary work hours, take time to:
- a) access an APS-wide ethics advisory service or another similar service provided by a professional association such as a law society or in the Commission; and
  - b) attend the Commission's mandated training about integrity.

## First Nations cultural competency training

342. The President will take reasonable steps to ensure all substantive, ongoing EL2 employees employed at the commencement of this Agreement or any new substantive, ongoing EL2 employees who commence within the first 6 months of this Agreement will complete relevant First Nations cultural competency training within 12 months of the commencement of the Agreement.
343. Any new substantive, ongoing EL2 employee who commences after 6 months of the commencement of this Agreement will be required to complete a relevant First Nations cultural competency training course within 6 months of their engagement or promotion.

## Diversity

344. 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/prejudice and sexual harassment as well as discrimination on the grounds of race, colour, descent, national or ethnic origin, national extraction, immigration status, sex, gender identity, intersex status and sexual orientation, marital or relationship status, breastfeeding, family responsibilities, pregnancy, potential pregnancy, age, disability, religion, political opinion, irrelevant criminal record, membership or non-membership of a trade union or social origin.
345. The Commission is committed to celebrating diversity, increasing employment opportunities and accessibility for all who experience employment disadvantage and/or marginalisation including but not limited to, people with disability, Aboriginal and Torres Strait Islander peoples, people from culturally and linguistically diverse (CALD) backgrounds, culturally and racially marginalised (CARM) workers and people with diverse identities and background eg. sexual orientation, gender identity and expression, and sex characteristics (SOGIESC).



## Lactation and breastfeeding support

346. Reasonable paid time during work hours will be provided for lactation breaks for breastfeeding, expressing milk and other associated activities.
347. The Commission will provide access to appropriate facilities for the purpose of breastfeeding or expressing milk, subject to clause 348. In considering whether a space is appropriate, the Commission should consider whether:
- a) there is access to refrigeration;
  - b) the space is lockable; and
  - c) there are facilities needed for expressing, such as appropriate seating.
348. Where it is not practicable for the Commission site to have a designated space, a flexible approach will be taken so that the employee can access the support required.
349. The Commission will facilitate discussion between individual employees and their managers about accommodating the employee's lactation needs and practical arrangements to meet these needs.
350. The manager and employee shall discuss any flexible working arrangements that may be needed to support lactation. This may include consideration of arrangements such as working from home and/or remote working or varying work hours on an ad-hoc or regular basis. Wherever possible, requests by an employee will be accommodated, noting these needs may be changed over time.

## Disaster support

351. Where an official disaster or emergency is declared and this prevents an employee from reasonably attending work, or where it impacts their household or home, the President will consider flexible working arrangements to assist the employee to perform their work.
352. Where flexible working arrangements are not appropriate, the President may grant paid miscellaneous leave to an employee with regard to the scale and nature of the emergency. This leave counts as service and may be approved retrospectively.
353. In considering what period of leave is appropriate, the President will take into account the safety of the employee, their family (including their household) and advice from local, State and Commonwealth authorities.

# Section 8: Performance and development

## Performance management

354. The purpose of the Commission's Performance Management Framework 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.
355. 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:
- when considering an employee for temporary reassignment of duties or promotion; or
  - as a basis to commence proceedings in relation to the unsatisfactory performance of duties or misconduct.
356. Employees and managers will develop a performance agreement and employees will have their work performance rated by their immediate manager 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 above. Employees rated 'not effective' will not be eligible for salary progression and may be subject to an underperformance process.
357. Employees who are not satisfied with their manager's assessment may request a review of the manager's assessment by escalating their concerns to the manager-one-removed/skip manager. The employee may also follow the APS guidelines on Review of Actions.

## Managing underperformance

358. There may be occasions when an employee's performance is consistently falling below the expected standard, even though the employee's manager has taken measures to overcome the problems as part of their 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 unsatisfactory performance can be found in the Commission's *Managing Underperformance Guidelines* and applies to all employees except for the following, who are dealt with/managed under the terms of their engagement:
- an ongoing employee who is on probation;
  - a non-ongoing employee who is employed for a specified term or for the duration of a specified task; and
  - a non-ongoing employee engaged on an irregular or intermittent basis.

359. The process will include written warnings and a structured performance improvement/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.
360. The underperformance process must have regard for the principles of procedural fairness and natural justice.
361. Where the delegate determines, on the basis of assessment, that the employee's performance remains unsatisfactory; action will be commenced to:
- a) assign the employee to other duties, or
  - b) reduce the employee's classification, or
  - c) take some other form of appropriate action, or
  - d) terminate the employment.

## Workloads

362. The Commission recognises the importance of employees balancing their work and personal life. While it is acknowledged that at times it may be necessary for some extra hours being worked by some employees, this should be regarded as the exception rather than the rule.
363. When determining workloads for an employee or group of employees, the Commission will consider the need for employees to strike a balance between their work and personal life.
364. Where an employee or group of employees raise that they have experienced significant workload pressures over a prolonged period of time, the Commission and employee/s together must review the employees' workloads and priorities and determine appropriate strategies to manage the impact on the employee or group of employees.

## Study leave and study assistance

365. Employees may be entitled to paid time off from work to engage in further study ('Study Leave') and/or financial assistance provided by the Commission ('Study Assistance').
366. Employees can apply for study leave and/or study assistance upon commencement at the Commission.
367. Approval for study assistance is not an automatic entitlement. The following factors will be considered in assessing a study leave and/or a study assistance application:
- a) relevance of the proposed study to the needs of the Commission;
  - b) operational priorities and resource capacity;
  - c) career development needs of the individual;
  - d) budgetary considerations of the section; and
  - e) equity with other employees of the Commission.
368. Non-ongoing staff may be eligible to apply provided the unit/subject undertaken commences after their commencement date at the Commission. If approved by the President, study leave will be available, and study assistance would be reimbursed to the employee on successful completion of the unit/subject provided the staff member is still employed at the Commission.
369. Approval for all applications will be assessed and determined by the President.
370. Study leave and study assistance will depend on the Commission's budget availability and operational requirements at the time of each request.

## Study Leave

371. Approved employees will be able to access study leave as outlined in clause 372 for study that aligns to their course requirements and as outlined in the Commission's *Studies Assistance Policy*.
372. Study leave up to 8 days per six-month period within a calendar year is available to attend classes, lectures or other course requirements that are scheduled during normal working hours (pro-rata for part-time staff). Study leave not utilised will not carry over the following period.
373. Examination leave up to 8 hours per six month period within a calendar year is available to attend examinations that are scheduled during working hours.
374. Aboriginal and Torres Strait Islander employees or employees with disability (where their disability impacts their ability to study) can apply to the President for consideration of additional study leave to meet the course and study requirements.
375. Assistance may be provided to staff enrolled in other research studies not requiring attendance during normal working hours at the discretion of the President, on a case-by-case basis and, having consideration for the requirements of the qualification and operational requirements.

## Study Assistance

376. Employees who have received approval for study assistance may apply for financial assistance to cover cost of the tuition fees up to \$1,000 per completed subject during a calendar year, with an annual maximum cap amount of \$4,000 per calendar year.
377. Employees undertaking relevant Vocational Education and Training Sector accredited qualifications are entitled to reimbursement for up to 50% of their entire qualification fees, up to a maximum of \$3,000 per certification on successful completion. This entitlement is not in addition to the entitlement provided for in clause 376. Approval considerations in clause 367 will apply.

## Learning and development

378. The Commission will provide employees with support to access learning and development activities that:
  - a) have a clear connection with the work of the Commission;
  - b) have a direct link to individuals' work responsibilities; and
  - c) assist ongoing career development.
379. Learning and development activities include on and off the job training, acting/higher duties/secondment opportunities, stretch projects and opportunities, formal study, attendance at courses/seminars/workshops, online learning (blended learning approach) and will be specified in annual performance agreements for each employee.
380. 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 their normal work location.

## Professional qualifications

381. The Commission may support (study leave and/or study assistance) the employee obtaining or maintaining a professional qualification and/or accreditation that is requirement for the role undertaken.
382. The President may consider other requests from employees for other support as needed, based on operational requirements.

## Section 9: Travel and location-based conditions

### Travel

383. A travelling allowance shall be payable to an employee who undertakes travel on official business and is required to be absent overnight.
384. Travelling allowances are in addition to the cost of conveyance.
385. 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.
386. An employee who is required to be absent overnight from the employee's usual place of work on official business, under clause 383 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.
387. Where commercial accommodation is not required the employee is not eligible to receive a payment under clause 386. 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.
388. 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 expended on accommodation, meals and incidentals, or an amount which the Commission considers to be reasonable in the circumstances.
389. 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.
390. Where proof is provided to the satisfaction of the Commission that the allowance payable to an employee under clauses 383, 386 and 389 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.
391. 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.
392. Where an employee is provided with either accommodation or adequate meals, or both, at Commonwealth expense:
- a) The employee will not be paid those components of the allowance under clause 383 in respect of any accommodation or meals provided; and
  - b) Payment will be made in respect of incidental expenses during the period as the Commission directs.

393. 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 clause 383.
394. Where an employee is required to travel for the purpose of official duty away from their usual place of work the employee will, subject to prior approval of the arrangements and the cost, be entitled to be re-imbursed for any additional costs associated with additional care arrangements.
395. Employees who are on flex-time under clauses 112 and 113 may claim domestic business related travel time during the additional bandwidth hours of 6:00 am and 7:30 pm as recognition of this additional travel time.

### Motor vehicle allowance

396. 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.
397. Motor vehicle allowance will be payable in accordance with the ATO Reasonable Allowance rates, as varied from time to time.

### Airline Lounge Membership

398. 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.

### Overseas Travel

399. 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 Tax Office rulings will be used as a basis determining reasonable expenses.
400. An employee will be required to comply with the conditions for overseas travel set out in the Commission's overseas diary and acquit any payments.
401. An employee is entitled to economy class where required to travel on official business within Australia.
402. An employee is entitled to business class where required to travel on official business overseas.

## Relocation assistance

403. Where an existing employee is required to relocate at the request of the Commission the employee will be provided with financial relocation assistance. Employees who relocate on a temporary basis to take up higher duties are entitled to removal expenses if they relocate for a period of 13 weeks or more.
404. Where an employee is required to relocate on engagement with the Commission, the employee will be provided with financial relocation assistance.
405. Reasonable expenses associated with the relocation include:
- a) the cost of transport of the employee, their dependents and partner by the most economical means;
  - b) removal expenses, namely the reimbursement of reasonable incurred costs of the removal of furniture and household effects of the employee, dependants and partner;
  - c) the reimbursement of the cost of the insurance premium based on a reasonable replacement value; and
  - d) the reasonably incurred expenses in kennelling and transport of pets, up to the amount specified in the APS Award.
406. Additional relocation assistance may be considered by President discretion.

## Loss, damage and indemnity

407. 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.



# Section 10: Consultation, representation and dispute resolution

## Consultation

### Principles

408. Genuine and effective consultation with employees and the relevant union(s), taking into account the diverse needs of employees, fosters a positive and inclusive workplace, enabling the views of employees to be considered.
409. The Commission recognises:
- the importance of inclusive and respectful consultative arrangements;
  - employees and the relevant union(s) should have a genuine opportunity to influence decisions;
  - the nature and extent of consultation will vary depending on the proposed change and the likely impact on employees. Consultation on Commission policies may occur over at least 2 weeks, whereas a major change is likely to require a more extensive consultation process;
  - consultation with employees and relevant unions(s) on workplace matters that significantly affect or materially impact them is sound management practice; and
  - the benefits of employee and union involvement and the right of employees to be represented by their union.
410. Genuine and effective consultation involves:
- providing employees and the relevant union(s) with a genuine opportunity to influence the decision prior to a decision being made;
  - providing all relevant information to employees and the relevant union(s) in a timely manner to support consideration of the issues;
  - considering feedback from employees and the relevant union(s) in the decision-making process; and
  - advising employees and the relevant union(s) of the outcome of the process, including how their feedback was considered in the decision-making process.

### When consultation is required

411. Consultation is required in relation to:
- changes to work practices which materially alter how an employee carries out their work;
  - changes to or the introduction of policies or guidelines relevant to workplace matters (unless the changes are minor or procedural);
  - major change that is likely to have a significant effect on employees;
  - implementation of decisions that significantly affect employees;
  - changes to employees' regular roster or ordinary hours of work (subject to any other relevant provisions in this Agreement); and
  - other workplace matters that are likely to significantly or materially impact employees.

412. The Commission, employees and the relevant union(s) recognise that consultation prior to a decision may not be practicable where a decision is made by Government or is required due to matters beyond the reasonable control of the Commission. In these circumstances, consultation regarding the implementation of the decision will occur as early as is reasonably practicable.

### **Provisions for consultation on major change and introduction of a change to regular roster or ordinary hours of work of employees**

413. This clause applies if the Commission:

- a) proposes 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.

### **Representation**

414. Employees may appoint a representative for the purposes of the procedures in this clause. A representative for the purpose of this clause may be a union representative.

415. The Commission must recognise the representative 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.

### **Major change**

416. In this clause, a major change is 'likely to have a significant effect on employees' if it results in, for example:

- 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.

417. The following additional consultation requirements in clauses 418 to 424 apply to a proposal to introduce a major change referred to in clause 411c).

418. Consultation with employees and the relevant union(s) and/or recognised representatives will occur prior to a decision being made, subject to clause 412.

419. Where practicable, a Commission change manager or a primary point of contact will be appointed and their details provided to employees and the relevant union(s) and/or their recognised representatives.

420. The Commission must notify employees and relevant union(s) and/or recognised representatives of the proposal to introduce the major change as soon as practicable.

421. As soon as practicable after proposing the change, or notifying of the change in circumstances described at clause 412, the Commission must:
- a) discuss with affected employees and relevant union(s) and/or other recognised representatives:
    - i) the proposed change;
    - ii) the effect the proposed change is likely to have on the employees; and
    - iii) proposed measures to avert or mitigate the adverse effect of the proposed change on the employees; and
  - b) for the purposes of the discussion – provide, in writing, to employees and the relevant union(s) and/or other recognised representatives:
    - i) all relevant information about the proposed change, including the nature of the change proposed; and
    - ii) information about the expected effects of the proposed change on the employees; and
    - iii) any other matters likely to affect the employees.
422. The Commission must give prompt and genuine consideration to matters raised about the major change by employees and the relevant union(s) and/or other recognised representatives.
423. However, the Commission is not required to disclose confidential or commercially sensitive information to employees and the relevant union(s) and/or other recognised representatives.
424. 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 Commission, the requirements set out in clauses 418 to 423 are taken not to apply.

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

425. The following additional consultation requirements in clauses 426 to 428 apply to a proposal to introduce a change referred to in clause 411e).
426. The Commission must notify affected employees and the relevant union(s) and/or other recognised representatives of the proposed change.
427. As soon as practicable after proposing to introduce the change, the Commission must:
- a) discuss with employees and the relevant union(s) and/or other recognised representatives:
    - i) the proposed introduction of the change; and
  - b) for the purposes of the discussion – provide to the employees and relevant union(s) and/or other recognised representatives:
    - i) all relevant information about the proposed change, including the nature of the proposed change; and
    - ii) information about what the employer reasonably believes will be the effects of the proposed 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 employees and the relevant union(s) and/or other recognised representatives to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities). However, the Commission is not required to disclose confidential or commercially sensitive information to the relevant employees and the relevant union(s) and/or other recognised representatives.

428. The Commission must give prompt and genuine consideration to matters raised about the proposed change by the employees and the relevant union(s) and/or other recognised representatives.

### **Interaction with emergency management activities**

429. Nothing in this term restricts or limits the ability of a designated emergency management body to undertake activities provided at section 195A(1) of the FW Act.

## **Commission consultative committee**

430. The President may establish a Commission consultative committee to discuss relevant workplace matters.

431. The Commission's consultative committee will operate subject to an agreed terms of reference and structure for the term of the Agreement. Representation on the committee will be in accordance with the terms of reference.

## **APS consultative committee**

432. The President will support the operation of the APS consultative committee to the extent possible. This includes providing information requested by the Australian Public Service Commission to support the operation of the APS consultative committee, subject to legislative requirements.

## **Dispute resolution**

433. If a dispute relates to:

- a) a matter arising under the Agreement; or
- b) the National Employment Standards;

this term sets out procedures to settle the dispute.

434. An employee or union who is covered by this Agreement may initiate and/or be a party to a dispute under this term.

435. An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term. Representatives will be recognised and dealt with in good faith.

436. Parties to the dispute must attempt to resolve the dispute at the workplace level, by discussion between the employee or employees and relevant managers. Parties to the dispute will notify higher level managers to assist in the resolution of the dispute. Parties will give genuine consideration to proposals to resolve the dispute.

437. If a dispute about a matter arising under this Agreement is unable to be resolved at the workplace level, and all appropriate steps under clause 436 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.

438. The Fair Work Commission may deal with the dispute in 2 stages:

- a) the Fair Work Commission will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
- b) if the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:

- i) arbitrate the dispute; and
- ii) make a determination that is binding on the parties.

*Note: If the Fair Work Commission arbitrates the dispute, it may also use the powers that are available to it under the FW Act. A decision that the Fair Work Commission makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5-1 of the FW Act. Therefore, an appeal may be made against the decision.*

439. While the parties are attempting to resolve the dispute using the procedures in this term:
- a) an employee must continue to perform their work as they would normally in accordance with established custom and practice at the Commission that existed immediately prior to the dispute arising unless they have a reasonable concern about an imminent risk to their health or safety; and
  - b) subject to clause 439.a), 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:
    - i) the work is not safe; or
    - ii) applicable work health and safety legislation would not permit the work to be performed; or
    - iii) the work is not appropriate for the employee to perform; or
    - iv) there are other reasonable grounds for the employee to refuse to comply with the direction.
440. The parties to the dispute agree to be bound by a decision made by the Fair Work Commission in accordance with this term.
441. Any disputes arising under the *Australian Human Rights Enterprise Agreement 2016-2019* or the National Employment Standards that were formally notified under clause 8 of that agreement before the commencement of this Agreement, that remain unresolved at the date of commencement of this Agreement, will be progressed under the dispute resolution procedures in this Agreement.

### Leave of absence to attend proceedings

442. Where the provisions of clauses 437 to 441 have been complied with, and to assist in the resolution of the matter, the employee, and/or the union delegate or other employee representative referred to in clause 434, or employee required to provide evidence, will be granted paid time to attend dispute resolution processes and proceedings in the Fair Work Commission arising from referral of the matter in clause 437.

## Delegates' rights

443. Union delegates play an important and legitimate role in the workplace. This includes representing their members and supporting employee access to union officials, and providing employee views to the Commission.
444. The role of union delegates is to be respected and supported.
445. The Commission and union delegates will work together respectfully and collaboratively.

### Supporting the role of union delegates

446. The Commission respects the role of union delegates to:
- a) provide information, consult with and seek feedback from employees in the workplace on workplace matters;
  - b) consult with other delegates and union officials, and get advice and assistance from union officials;
  - c) represent the interests of members to the employer and industrial tribunals; and
  - d) represent members at relevant union forums, consultative committees or bargaining.
447. The Commission and union delegates recognise that undertaking the role of a union delegate is not the primary purpose of an employee's engagement, and must work with and not unreasonably impact their regular duties. Union delegates may request additional time and facilities from time to time.
448. Union delegates will be provided with reasonable paid time during their normal working hours to perform their union delegate role. The paid time provided should not result in disruption to critical services or operational requirements.
449. To support the role of union delegates, the Commission will, subject to legislative and operational requirements, including privacy and security requirements:
- a) provide union delegates with reasonable access to Commission facilities and resources, including for paid or unpaid meetings between employees and their unions and to communicate with union officials;
  - b) advise union delegates and other union officials of the Commission facilities and resources available for their use, which may include telephone, photocopying, internet, and email;
  - c) allow reasonable official union communication appropriate to the Commission from union delegates with employees, including through email, intranet pages and notice boards. This may include providing a link to a union website for employees to access union information. Any assistance in facilitating email communications does not include the Commission vetoing reasonable communications;
  - d) provide access to new employees as part of induction; and
  - e) provide reasonable access to union delegates to attend appropriate paid time training in workplace relations matters, during normal working hours.
450. Where APS employees are elected as officials of a trade union or professional association, they are not required to seek permission from the workplace or Commission before speaking publicly in that capacity, subject to the APS Code of Conduct and legislative requirements.

# Section 11: Separation and retention

## Resignation

451. An employee may resign from their employment by giving the President at least 14 calendar days' notice.
452. At the instigation of the President, the resignation may take effect at an earlier date within the notice period. In such cases, the employee will receive paid compensation in lieu of the notice period which is not worked.
453. The President has the discretion to agree to a shorter period of notice or waive the requirement to give notice.

## Payment on death of an employee

454. When an employee dies, or the President has directed that an employee is presumed to have died on a particular date, subject to any legal requirements, the President must authorise payments to the partner, dependants or legal representative of the former employee, the amount to which the former employee would have been entitled had they ceased employment through resignation or retirement, or where legislation provides specifically for amounts calculated based on the death of the employee, those amounts. If payment has not been made within a year of the former employee's death, it should be made to their legal representative.

## Redeployment, retraining, redundancy

### Excess Employee

455. 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.
456. 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.

## Consultation process

457. 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:
- a) measures that could be taken to resolve the situation, including redeployment opportunities for the employee, at or below level, within or outside the Commission;
  - b) whether termination of employment (voluntary redundancy) might be appropriate;
  - c) where the employee chooses a representative, the President will hold the discussions with the employee's representative.

## Early Separation

458. 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.
459. This option provides for separation to occur within 14 days of the employee being advised that they are excess under clauses 455 and 456.
460. This option 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 465.
461. 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.

## Separation with consent

462. 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 PS Act, 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.
463. The President will not give an employee notice of termination of their employment under s 29 of the PS Act until the expiration of that one-month period (unless the employee requests an earlier termination of employment date within that one-month period).
464. Within that month, unless agreed otherwise, an employee consenting to termination of employment must be given all the relevant financial information, including:
- a) amount of redundancy pay, pay in lieu of notice and cashable leave credits;
  - b) amount of accumulated superannuation contributions;
  - c) options open to the employee concerning superannuation;
  - d) taxation rules applying to the various payments;
  - e) 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.



## Redundancy benefit

465. Where the provisions of this clause provide for less than the National Employment Standards (NES), the NES will prevail.
- a) 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 PS Act 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.
  - b) The minimum sum payable will be 4 weeks salary and the maximum will be 48 weeks salary.
  - c) 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.
  - d) For the purpose of calculating payment, salary will include:
    - i) the employee's salary;
    - ii) 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;
    - iii) 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.

## Period of notice

466. 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 PS Act. 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).
467. 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.

## Periods of service

468. 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*.

469. Subject to clause 470i) 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.
470. 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 their 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 PS Act, including probation;
  - f) a breach of the Code of Conduct;
  - g) for a reason equivalent to a reason listed above at (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.
471. Absences from work which do not count as service for long service leave purposes will not count as service for severance pay purposes.

## Redeployment

472. 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.
473. 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 PS Act.
474. 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.

475. 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).
476. The redeployment process commences from the date the employee is advised, in writing, that they are an excess employee.
477. Where the President is satisfied that there is insufficient productive work available for the employee within the Commission during the remainder of their redeployment period, the President may, with the agreement of the employee, terminate the employee's employment under s 29 of the PS Act and pay an agreed lump sum not greater than the salary which would be payable for the balance of the redeployment period.
478. 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 PS Act on the grounds the employee is excess to requirements they will be eligible to receive the full redundancy benefit.

### Salary Maintenance

479. Where the President reduces the classification of an employee under s 23 of the PS Act, 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.

### Involuntary termination of employment

480. If after 13 weeks from the date an employee has been identified as an excess employee:
- 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
  - 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 PS Act.
481. An excess employee cannot have their employment terminated involuntarily unless they have rejected the opportunity to provide their consent to their termination of employment.
482. 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).
483. 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 FW Act. If redeployment arrangements are subsequently made after the issue of the notice of termination, the notice will be withdrawn.
484. Employees whose employment has been terminated involuntarily by the President under s 29 of the PS Act 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.

485. 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 Period
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

### Absence without approval and abandonment of employment

486. Where an employee is absent from work without approval (except under reasonable circumstances) eg without the express approval of their manager, 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.

487. 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 PS Act, subject to Part 3-2 of the FW Act, on the ground of ‘non-performance of duties’.

# Attachment A – Base salaries

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Classification	Salary levels	As at 31 August 2023	From the later of commencement of the Agreement or 14 March 2024 (4% increase)	From 13 March 2025 (3.8% increase)	From 12 March 2026 (3.4% increase)
APS1	APS1.1	\$48,384	\$52,000	\$54,516	*
	APS1.2	\$51,455	\$53,513	\$55,546	\$57,497
	APS1.3	\$54,524	\$56,705	\$58,860	\$60,946
APS2	APS2.1	\$56,266	\$58,517	\$60,741	\$62,806
	APS2.2	\$59,090	\$61,454	\$63,789	\$65,958
	APS2.3	\$61,914	\$64,391	\$66,838	\$69,110
APS3	APS3.1	\$62,371	\$64,866	\$67,331	\$70,477
	APS3.2	\$65,504	\$68,124	\$70,713	\$73,117
	APS3.3	\$68,636	\$71,381	\$74,093	\$76,820
APS4	APS4.1	\$69,513	\$72,294	\$75,041	\$79,125
	APS4.2	\$73,233	\$76,162	\$79,056	\$81,744
	APS4.3	\$76,955	\$80,033	\$83,074	\$85,899
	APS4.4	**			\$86,246
APS5	APS5.1	\$77,533	\$80,634	\$84,228	\$88,834
	APS5.2	\$81,458	\$84,716	\$87,935	\$90,925
	APS5.3	\$85,383	\$88,798	\$92,172	\$96,829
APS6	APS6.1	\$85,826	\$90,199	\$94,563	\$99,734
	APS6.2	\$91,953	\$95,631	\$99,265	\$102,640
	APS6.3	\$98,079	\$102,002	\$105,910	\$109,478
	APS6.4	**			\$111,701
EL1	EL1.1	\$107,355	\$111,649	\$115,892	\$121,755
	EL1.2	\$113,696	\$118,244	\$122,737	\$126,910
	EL1.3	\$120,035	\$124,836	\$129,580	\$133,986
EL2	EL2.1	\$129,072	\$134,235	\$139,336	\$144,073
	EL2.2	\$143,204	\$148,932	\$154,591	\$159,847
	EL2.3	\$151,691	\$157,759	\$163,754	\$169,322

\* Uplifted by pay fragmentation

\*\* New pay point created by pay fragmentation

# Attachment B – Supported Wage System

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

## Definitions

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 Agreement 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 agreement 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 Social Services that records the employee's productive capacity and agreed wage rate.

## Eligibility criteria

3. 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 Agreement, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.
4. 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 Agreement relating to the rehabilitation of employees who are injured in the course of their employment.

## Supported wage rates

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

**Table 3: Applicable percentage of relevant minimum wage paid to applicable employees**

Assessed capacity	Percentage of agreement rate
10 per cent	10 per cent
20 per cent	20 per cent
30 per cent	30 per cent
40 per cent	40 per cent
50 per cent	50 per cent
60 per cent	60 per cent
70 per cent	70 per cent
80 per cent	80 per cent
90 per cent	90 per cent

6. Provided that the minimum amount payable to an employees to whom the SWS applies is not less than the amount prescribed in the National Minimum Wage Order. Note: The minimum amount payable is reviewed every year in July.
7. Where an employee's assessed capacity is 10 per cent, they must receive a high degree of assistance and support.

## Assessment of capacity

8. 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.
9. 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 FW Act.

## Lodgement of SWS wage assessment agreement

10. 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.
11. 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 agreement 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.

## Review of assessment

12. 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 supported wage system.

## Other terms and conditions of employment

13. 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 Agreement paid on a pro-rata basis.

## Workplace adjustment

14. 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.

## Trial period

15. 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 4 weeks) may be needed.
16. 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.
17. The minimum amount payable to the employee during the Trial Period must be no less than the current weekly rate, as determined by the Fair Work Commission.
18. Work trials should include induction or training as appropriate to the job being trialled.
19. 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 clauses 8 and 9.