



## DIGITAL TRANSFORMATION OFFICE

### ***Public Service Act 1999***

### ***DTO Determination 2015/01 (Non-SES employees) pursuant to Section 24(1)***

I, Paul Shetler, Chief Executive Officer of the Digital Transformation Office (DTO), make the following determination under section 24(1) of the Public Service Act 1999.

#### **General**

This determination may be cited as DTO Determination 2015/01 (Non-SES employees).

#### **Application**

This determination provides terms and conditions of employment for non-SES employees of the DTO (Employees).

#### **Period of operation**

This determination applies to Employees on and from 1 July 2015.

This determination will cease to apply to an Employee if:

- a) it is revoked;
- b) it is replaced by another determination that applies to the Employee; or
- c) an enterprise agreement that covers the Employee commences operation.

#### **Terms and conditions**

**Attachment A** to this determination sets out the terms and conditions of employment that will apply to the Employees' employment with the DTO by force of this determination.

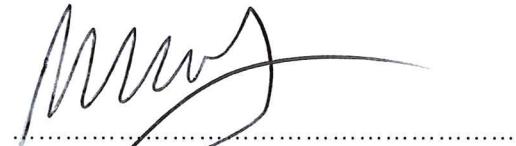
The terms and conditions of employment provided in this determination supplement the terms and conditions of employment which apply under the National Employment Standards (NES). This determination is of no effect to the extent that it reduces the benefit to an Employee of any individual term or condition applicable to the Employee under the NES.

The terms and conditions of employment provided in this determination supplement the terms and conditions of employment which apply under the Australian Public Service Enterprise Award 2015 (APS Award). This determination is of no effect to the extent that it reduces the benefit to an Employee of any individual term or condition applicable to the Employee under the APS Award.



## **Delegation**

The Chief Executive Officer may delegate any of the Chief Executive Officer's powers and functions under this determination.



Paul Shetler  
Chief Executive Officer  
Digital Transformation Office



15.10.2015



**DTO Determination 2015/01 (Non-SES employees)**

**Attachment A**

**Terms and Conditions**

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# Performance Management

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1. Performance Management  
Employees must have a performance agreement, consistent with the requirements in the Australian Public Service Commissioner's Directions 2013.
2. Employees must have a current performance agreement in place to be considered for any salary advancement.
3. Employees' performance will be assessed and managed in accordance with the DTO Performance Framework.

## Classification and Remuneration

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4. Classification and Salary Structure Employees covered by this Determination will be paid in accordance with the applicable classification and salary structure set out in Appendix A.
5. Salary Payment An employee's salary and salary related allowances will be paid fortnightly by electronic funds transfer into a financial institution account of their choice.  
The fortnightly base salary will be calculated by applying the following formula:  
$$\frac{\text{Annual base salary} \times 12}{313} = \text{Fortnightly base salary}$$
6. Salary on Engagement or Promotion Upon engagement or promotion, an employee's salary will be determined by the CEO. The CEO may determine the employee's salary at a rate higher than the maximum salary for the employee's classification set out in Appendix A.
7. Notwithstanding clause 6, where an employee moves to the DTO from another Commonwealth Agency without a change in classification, the employee's salary will be either:
- a) the nearest highest pay point in Appendix A to the employee's current salary or another higher pay point as determined by the CEO which may be higher than the maximum salary for the employee's classification set out in Appendix A; or
  - b) if the employee's salary is higher than that paid for the highest pay point for the employee's classification in Appendix A, the employee's salary prior to commencement with DTO or a higher salary as determined by the CEO.
8. Where, at the time of engagement, an employee's salary is set at an incorrect salary point within the applicable salary scale the CEO will authorise the payment of the employee's salary at the correct salary point from the date it was incorrectly paid. If an overpayment has occurred, the amount of overpayment will be recovered from the employee in accordance with the AAI's.

9.	Salary Advancement	<p>The CEO may approve the advancement of an employee to a higher pay point within the employee's classification subject to the employee:</p>
		<ul style="list-style-type: none"> <li>a) consistently demonstrating a high level of performance; and</li> <li>b) having completed at least 6 months continuous duty in the DTO at their current classification.</li> </ul>
10.	Salary on Temporary Reassignment of Duties at Higher Classification at Non-SES Level	<p>The additional remuneration for employees acting at a higher classification level will be equivalent to the difference between the employee's actual annual base salary and:</p>
		<ul style="list-style-type: none"> <li>a) the base salary at the higher classification; or</li> <li>b) a pay point above the base salary at the higher classification as determined by the CEO. The CEO may determine the employee's salary at a rate higher than the maximum salary for the employee's classification set out in Appendix A.</li> </ul>
11.		<p>Additional remuneration will be paid for public holidays where temporary reassignment of duties is worked on both sides of the public holiday and during leave where the CEO determines that the employee would have continued on temporary reassignment of duties but for the leave.</p>
12.	Salary on Temporary Reassignment of Duties at the SES Level	<p>Where a non-SES employee is temporarily reassigned duties at the SES level they will be paid additional remuneration and receive additional SES benefits as determined by the CEO. The CEO may determine the employee's salary at a rate higher than the maximum salary for the employee's classification set out in Appendix A.</p>
13.	Salary on Reduction	<p>Where an employee agrees, in writing, to temporarily perform duties at a lower classification level, the CEO may determine in writing that the employee be paid at a rate applicable to the lower classification level for the period of the temporary reassignment of duties.</p>
14.		<p>Where an employee's classification is reduced, in determining salary within the lower classification, the CEO will take into account the salary point achieved at the higher level in determining the salary point at the lower classification level.</p>
15.	Irregular or Intermittent Employees— Loading in Lieu of Leave Entitlements	<p>An employee who is engaged to perform duties that are irregular or intermittent under s 22(2)(c) of the PS Act will receive a loading of 25% in lieu of paid leave entitlements (other than long service leave) and payment for public holidays on which the employee is not rostered to work.</p>

16. Entry Level APS Employees The CEO may establish Entry Level Programs as required. Any advancement to an higher level within an entry level broadband following successful completion will be subject to:
- a) sufficient work being available at the higher level; and
  - b) the employee having gained the necessary skills and experience; and
  - c) the employee demonstrating at least a satisfactory level of performance.
17. Salary Packaging Employees may choose to sacrifice up to 100% of their base salary from a menu of non-cash benefits. Before accessing these arrangements, employees are encouraged to seek financial advice at their own expense.
18. To the extent that the employee chooses to sacrifice their salary, their pre-sacrifice salary will be salary for all purposes including superannuation purposes. Any fringe benefits tax and administration costs incurred as a result of the employee's Salary Packaging arrangement will be met by the employee.
19. No external Salary Packaging provider may be used other than any provider nominated by the DTO.
20. Superannuation The DTO will make compulsory employer contributions as required by the applicable legislation and fund requirements.
21. Where an employee has chosen an accumulation superannuation fund other than the PSS Accumulation Plan (PSSap), the employer contribution will be the same percentage of the fortnightly superannuation contribution salary as that required for employees who are members of the PSSap (currently 15.4%). This will not be reduced by any other contributions made through salary sacrifice arrangements. This clause does not apply where a superannuation fund cannot accept employer superannuation contributions.
- Employer superannuation contributions will not be paid on behalf of employees during periods of unpaid leave that does not count as service, unless otherwise required under legislation.
22. The CEO may choose to limit superannuation choice to complying superannuation funds that allow employee and/or employer contributions to be paid through fortnightly electronic funds transfer using a file generated by DTO's payroll system.
23. Employee Assistance Program The DTO will provide employees and their immediate family members with access to a free, confidential and professional counselling service to assist with work, personal and family issues through the DTO's Employee Assistance Program.

## Allowances/Reimbursements and Subsidies

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24. Corporate Citizen Allowances An allowance of \$24.52 will be paid to employees on a fortnightly basis for undertaking each of the following corporate citizen roles:
- a) First Aid Officer
  - b) Emergency Warden
  - c) Health and Safety Representative
  - d) Workplace Diversity and Harassment Contact Officer.
- Part-time employees will be entitled to pro-rata payment based on their approved weekly hours of duty.
25. Language Proficiency Allowance Where the CEO determines that there is an identifiable and continuing need for the utilisation of particular language skills in the course of the DTO's business the CEO may authorise payment of Language Proficiency Allowance to an employee required to utilise such language skills.
- Where approved by the CEO the employee will be paid an allowance at the annual rate of \$1,592.10. Where a higher rate is provided in the APS Award, that higher rate shall apply.
26. DTO Liaison Officer Allowance An employee who performs the duties of DTO Liaison Officer (DLO), will be paid an allowance at the annual rate of \$17,433.17 in recognition of the additional hours of work usually performed by DLOs and in lieu of overtime payments.
27. The allowance is payable during periods of paid leave taken whilst performing the duties of DLO. Where an employee ceases performing the duties of DLO, any annual leave credits accrued but not taken during the period that the employee was performing the role of DLO will be paid at the DLO rate, provided that this leave is taken immediately after their placement in the DLO role ceases, unless otherwise agreed.
28. Recall to Duty — Emergency Duties Employees at or below the APS 6 classification recalled to duty without prior notice to meet an emergency outside standard hours will be paid:
- a) at double time on any day that they are so recalled; and
  - b) for the actual period of attendance at work plus reasonable travelling time to and from work, or a total period of two hours, whichever is the greater.

29. Required to Return to Duty — Duties to Be Performed Outside Standard Hours
- Employees at or below the APS 6 classification who are required to return to duty to perform duties outside standard hours, where those duties cannot be performed within standard hours will be paid at the rates set out in clause 49; and for the actual period of attendance at work plus reasonable travelling time to and from work, or a total period of two hours, whichever is the greater.
30. Recall and Return to Duty for Executive Level Employees
- Except where the CEO considers that exceptional circumstances warrant payment, employees at the Executive Level 1 or above are not eligible to receive payment for Recall to Duty or Return to Duty allowances.
31. Overtime Meal Allowance
- Where an employee is required to work for a continuous period of at least one hour outside the bandwidth for a continuous period extending over a meal period, they will be eligible for a meal allowance of \$24.52.
32. Travel
- The DTO will pay approved expenses associated with an employee's official business travel.  
The DTO may provide a corporate travel card to be used for official travel.
33. Relocation Assistance
- The level of relocation assistance will be determined by the CEO, after consultation with an employee prior to relocation.
34. Child and Dependant Care
- In exceptional circumstances (eg. when required to travel with 24 hours or less notification) and where employees are required by the DTO to be away from home outside bandwidth hours, the CEO will reimburse reasonable costs in relation to additional family care arrangements.
35. Loss or Damage to Clothing and Personal Effects
- Where approved by the CEO, an employee will be reimbursed for loss of, or damage to, clothing and personal effects that occurred during the course of the employee's duties.

## Working Arrangements

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36. Hours of Duty  
The ordinary hours of duty for full time employees are 36 hours and 45 minutes per week.  
  
In return for being paid the salary rates in Appendix A, and being provided with the additional leave during the Christmas closedown in clause 92, full time employees will be required to work an additional 45 minutes per week. This additional 45 minutes per week will be treated as ordinary hours for the purpose of this Determination.  
  
For full-time employees, the standard hours for performing ordinary hours are 8.30 am to 12.30 pm and 1.30 pm to 5.00 pm. This equates to 7 hours and 30 minutes ordinary hours per day.  
  
For part-time employees, ordinary hours of duty are as agreed in their part time work agreement or contract of employment.  
  
Standard hours will be used for the purpose of calculating overtime.
37. Bandwidth  
The bandwidth for the working of ordinary hours is 7.00 am to 7.00 pm Monday to Friday.
38.  
Employees will not be required to work for more than 10 hours of ordinary time on any one day.
39.  
Employees will not be required to work for more than five hours continuously without a meal break of at least 30 minutes.
40. Executive Level Employees  
Arrangements about when work is performed for EL1 and 2 employees will be determined by the CEO. Where possible the CEO will take into account the individual needs of the employee.  
  
The manager will provide reasonable time off in lieu where an employee is required to work long hours consistently.
41. Flextime  
Flextime applies to employees at or below the APS 6 level.
42.  
Flextime will accumulate during periods of official domestic travel. Travel outside the bandwidth will be recorded as flextime equal to the actual hours involved.
43. Working Flexibly  
All ongoing, non-ongoing and long term irregular or intermittent employees may request flexible work arrangements in accordance with section 65 of the Fair Work Act.

44. Part-time Work A part-time employee is one whose ordinary hours of work are less than the ordinary hours of full time employees in clause 36.
45. A full-time employee may submit a request to work part time hours consistent with the provisions of this Determination.
46. Job Sharing The CEO may approve requests from employees to job share.
47. Overtime and Time Off in Lieu Arrangements Overtime will be payable to employees at or below the APS 6 level for work performed at the request of the CEO:
- a) if the employee is a full-time employee, to work outside the bandwidth, inside the bandwidth but in excess of the length of time the employee is ordinarily required to work on the day, or on a weekend or public holiday;
  - b) if the employee is a part-time employee, to perform work which is not continuous with the employee's ordinary hours of work, which is continuous with the employee's ordinary hours of work but is outside the bandwidth, or which exceeds the employee's prescribed weekly hours or on a weekend or public holiday; or
  - c) if the employee is an irregular or intermittent employee, to work outside the bandwidth, or in excess of the ordinary hours of full time employees in clause 36.
48. Except where the CEO considers that exceptional circumstances warrant payment, employees at the Executive Level 1 or above are not eligible to receive payment for overtime.
49. Where overtime is authorised, payment will be made on the following basis for each hour worked:
- a) Monday to Saturday: time and one half;
  - b) Sunday: double time;
  - c) Public Holidays outside standard hours: double time; or
  - d) Public Holidays inside standard hours: double time.
50. Overtime will be recognised by overtime payments unless prior agreement has been reached between the CEO and the employee for time off in lieu to apply.
- Where prior agreement for time off in lieu of overtime has been reached with an employee at the APS 1-6 classification, the time of in lieu will be calculated at overtime rates, in accordance with clause 49. If the employee is unable to take the time off in lieu

- within four weeks of working the overtime, the period will be paid as overtime unless otherwise agreed.
51. Minimum Payment for Overtime and Period for Time off in Lieu
- Where overtime is authorised by the CEO, the minimum payment of one hour will apply in relation to any period of overtime performed. Overtime worked in excess of one hour will be rounded up to the nearest 15 minute increment.
- Where time off in lieu is agreed by the CEO, a minimum period of one hour will apply in relation to any period of overtime performed.
- Where the total period of overtime exceeds one hour, time off in lieu is based on the time actually worked.
52. Nine Hour Break After Overtime
- Where an employee works overtime he or she will be entitled to a nine hour break (including travelling time) before recommencing work, without incurring any loss of pay.
- Where a break is not possible due to operational reasons, the employee will be paid double time for the next period of work until a nine hour break is taken.
53. Duty During Christmas Close
- Where an employee is required to work during the period of the Christmas close down, (clause 92) payment will be made on the following basis:
- a) outside standard hours: double time; or
  - b) inside standard hours: double time.
- Payments will be made inclusive of the standard time payment for that day.

## Leave

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54. Absence Not Counting as Service Unless the CEO determines otherwise, any continuous period of leave without pay greater than 30 calendar days will not count as service for Annual and Personal/Carer's Leave purposes except as provided for by legislation.
55. Approval required Any absence from the workplace must be approved by the CEO or otherwise authorised or permitted in accordance with the leave arrangements applying in this Determination.  
  
An absence not approved will be regarded as an unauthorised absence.  
  
Where an absence is unauthorised, all pay and benefits under this Determination cease to be available until the employee resumes work, is granted leave, or ceases employment.
56. Portability of Leave Where an employee moves (including on promotion or for an agreed period) from another agency where they were an ongoing APS employee, the employee's unused accrued annual leave and personal/carers' leave (however described) will be transferred, provided there is no break in continuity of service.  
  
Where an employee is engaged as either an ongoing or non-ongoing APS employee 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/carers' leave (however described) will be recognised unless the employee received payment in lieu of those entitlements on termination of employment.  
  
For the purposes of this clause:  
a) 'APS employee' has the same meaning as the Public Service Act 1999.  
b) 'Parliamentary Service' refers to employment under the Parliamentary Service Act 1999.
57. Where a person is engaged as an ongoing employee and, immediately prior to the engagement, the person was employed as a non-ongoing APS employee, the CEO may, at the employee's request, recognise any accrued annual leave and personal/carers' leave (however described), provided there is no break in continuity of service. Any recognised annual leave excludes any accrued leave paid out on termination.
58. Annual Leave Employees will be entitled to four weeks of paid annual leave for each full year of service, pro rata for part-time employees.

59.		Annual leave will accrue daily and be credited monthly, be granted at full or half pay and count as service for all purposes.
60.	Annual Leave Approval Requirements	The taking of annual leave is subject to the prior approval of the CEO.
61.	Cancellation of Annual Leave and Recall to Duty	Where annual leave is cancelled or an employee is recalled to duty from annual leave, the employee will have their annual leave re-credited to the extent of the period that they were recalled and reimbursed reasonable travel costs and incidental expenses not otherwise recoverable from insurance, refund or any other source.
62.	Purchased Leave	With the agreement of the CEO, an employee may elect to purchase between one and eight full weeks' additional leave per year.
63.		Once an election has been made, the employee's salary payment will be deducted over a 12 month period to ensure a standard payment is received each fortnight.
64.		Purchased leave will not affect entitlements for other forms of leave, an employee's continuity of service or, subject to clause 21, an employee's salary for superannuation.
65.	Personal/Carer's Leave	In addition to the 15 days of paid personal/carer's leave provided by the APS Award 2015, employees will be entitled to 3 working days paid personal/carer's leave for each full year of service, pro-rated for part-time employees. This additional personal/carer's leave will accrue daily and be credited monthly, be granted at full or half pay and count as service for all purposes.
66.		Personal/carer's leave accumulates from year to year.
67.		Where employment ceases, an employee is not entitled to payment in lieu of accrued personal/carer's leave.
68.	Personal/Carer's Leave Approval Requirements	The taking of personal/carer's leave is subject to the giving of notice to the relevant manager.
69.	Use of Leave	Personal/carer's leave will be available for employees in relation to: <ul style="list-style-type: none"> <li>a) personal illness or injury;</li> <li>b) providing care and support required because of illness or injury of an immediate family member or household</li> </ul>

- member or for other personal emergencies involving an immediate family member or household member; and
- c) other special circumstances, where the CEO considers that approval of personal/carer's leave is justified.
70. The CEO may approve the taking of personal/carer's leave at half-pay for an employee for a specified absence, e.g. long-term illness.
71. Provision of Medical Certificates or Other Evidence Provision of medical certificates from registered health practitioners will be accepted for the purpose of personal illness, injury or caring responsibilities. Where it is not reasonably practicable to provide a medical certificate a statutory declaration made by the employee may be accepted.
72. The CEO may approve personal/carer's leave, subject to available credits, without production of evidence as prescribed in clause 71 of no more than three consecutive days and up to 5 days in a year (accrual year).
73. Use of Leave Prior to Invalidity Retirement An employee will not be retired on invalidity grounds before all of their personal/carer's leave credits have been exhausted, without their consent.
74. Bereavement and Compassionate Leave An employee is entitled to three days' paid bereavement leave per occurrence where a member of the employee's immediate family or a member of the employee's household dies. An employee is also entitled to three days' paid compassionate leave per occurrence where a member of the employee's immediate family or a member of their household contracts an illness or sustains an injury that poses a serious threat to his/her life. This leave is provided in satisfaction of, rather than in addition to, compassionate leave provided under the APS Award 2015.
75. The CEO may approve leave of this nature consistent with clause 71. Bereavement Leave and Compassionate Leave will count as service for all purposes.
76. Parental Leave For the purposes of this clause, Parental Leave entitlements operate in conjunction with and inclusive of all leave entitlements derived from the Maternity Leave (Commonwealth Employees) Act 1973 and the National Employment Standards Parental Leave provisions of the Fair Work Act 2009. Where not already specified in this Determination, long term foster arrangement is to be read consistent with the adoption provisions contained in the Fair Work Act 2009.
77. All employees with at least 12 months continuous service in the APS are eligible for Parental Leave. This includes irregular or intermittent employees, but only if:

- a) they have been employed in the DTO on a regular and systematic basis for a sequence of periods over at least 12 months; and
- b) had it not been for the birth (or expected birth) or adoption (or expected adoption) of a child, they would have a reasonable expectation of continuing employment in the DTO on a regular and systematic basis.

78.

Parental Leave is available to an employee who is the birth mother of a child and employees who have or will have responsibility for the care of a child. The leave must be associated with:

- a) the birth of a child to the employee, the employee's spouse, or the employee's de facto partner; or
- b) the placement of a child under the age of 16 with the employee for adoption consistent with the provisions of the Fair Work Act 2009; or
- c) the placement of a child under a permanent or long term fostering arrangement by a person or organisation with statutory responsibility for the placement of the child where the child is under the age of 16 and who is not already a child of the employee or the employee's spouse or defacto partner and the child is not expected to return to their family; and
- d) the employee has not previously fostered the child and was granted parental leave for that period.

Unless specifically stated otherwise parental leave is without pay.

79. Maternity Leave

Where an employee is entitled to paid maternity leave under the Maternity Leave (Commonwealth Employees) Act 1973 (ML Act 1973), the employee will be entitled to an additional six weeks paid leave to be taken without any break immediately following the initial period of Maternity Leave. This additional leave will count as service for all purposes.

80.

The payment of any paid maternity leave available under the ML Act 1973 or under this Determination may be spread over a period of up to 36 weeks at a rate of half normal base salary. Such an administrative arrangement will not extend the period of paid leave beyond the equivalent of 18 weeks on full pay for any purpose.

An employee with at least 12 months continuous service with the APS and who is entitled to Parental Leave in accordance with the National Employment Standards will have access to Other Parental Leave in accordance with the provisions of this Determination.

81. Other Parental Leave On application and provision of appropriate supporting evidence, an employee who has responsibility for the care of their child and is not entitled to Maternity Leave, is entitled to Parental Leave up until the first anniversary of commencing Parental Leave or the date of birth or adoption/ foster placement of their child (whichever is the earlier), for the purpose of providing care for their child.
82. All eligible employees may request a further period of unpaid Parental Leave up to the second anniversary of the birth or placement of the child.
83. The employee will be entitled up to 18 weeks approved Parental Leave period to be with pay, commencing on the date of birth or placement of the child. This payment may be spread over a period of up to 36 weeks half normal pay.
84. Where an employee is entitled to paid Parental Leave in accordance with this clause, the first 18 weeks of leave, or the actual period of leave taken, whichever is the lesser, will count as service for all purposes.
85. Supporting Partner Leave An employee whose partner has given birth or adopted/ fostered a child (supporting partner) who:
- a) has at least 12 months continuous service with the APS at the time the period of leave is taken; and
  - b) has not received payment for a period of Parental Leave or Maternity Leave relating to the birth or adoption of the child,
- will receive payment on full pay for the first four weeks of leave where that leave is taken in the first six months from the date of birth, adoption or fostering placement of the child.
- Where applicable this period of leave forms part of, and is not additional to, any period of concurrent Parental Leave provided for in clause 86.
86. Concurrent Periods of Parental Leave Where an employee or their partner has given birth or assumed responsibility for an adopted or foster child (as described in this clause), both parents (primary and supporting) may take a period of concurrent Parental Leave up to a maximum of 8 weeks at any time (to be taken in periods of no less than 2 week blocks) up until the 52 week anniversary of the date of birth or date of adoption/ foster placement.
87. Return to Work On ending maternity or parental leave, employees have the return to work guarantee and the right to request flexible working arrangements that are provided by the FW Act. An employee returning to duty from maternity leave will, on application by the employee, be given access to part-time employment.

88. Aboriginal and Torres Strait Islander ceremonial leave
- Aboriginal and Torres Strait Islander ceremonial leave may be granted to an employee of Aboriginal or Torres Strait Islander descent for ceremonial purposes:
- a) connected with the death of a member of the employee's immediate family or extended family;
  - b) for other ceremonial obligations under Aboriginal or Torres Strait Islander law; or
  - c) to participate in relevant NAIDOC week activities.
- An employee may be granted a maximum of 10 days of ceremonial leave in any two year period. The CEO may approve up to two days of this leave being paid leave.
- Aboriginal and Torres Strait Islander ceremonial leave granted is in addition to compassionate leave granted.
89. Other Leave
- The CEO, having regard to the operational needs of the DTO, may grant other leave. Other leave may be granted, with or without pay, for the period applied for or for another period and may be subject to certain conditions (e.g. time limits) as determined by the CEO.
90. Leave for Eligible Community Service Activity
- The CEO will grant leave with or without pay to an employee to participate in an eligible community service activity as per s109 of the FW Act. The employee may also be granted leave with or without pay to participate in regular training and ceremonial duties associated with emergency service duties, for reasonable travelling time associated with the activity and reasonable rest time following the activity.
91. Leave for ADF Reserve and Continuous Full Time Service or Cadet Force Obligations
- An employee may be granted leave (with or without pay) to enable the employee to fulfil Australian Defence Force (ADF) Reserve and Continuous Full Time Services (CFTS) or Cadet Force obligations.
- An employee is entitled to ADF Reserve leave with pay, for up to four weeks during each financial year for the purpose of fulfilling service in the ADF Reserve. These purposes include training and operational duty as required.
- During the employee's first year of ADF reserve service, a further two weeks' paid leave may be granted to facilitate participation in additional ADF Reserve training, including induction requirements.
- With the exception of the additional two weeks in the first year of service, leave can be accumulated and taken over a period of two years.
- Defence Reserve leave counts as service for all purposes, except for unpaid leave to undertake Continuous Full Time Service (CFTS). Unpaid leave for the purpose of CFTS counts for all purposes except Annual leave.

92. Christmas  
The DTO will close its normal operations from the close of business on the last working day before Christmas Day, with business resuming on the first working day after New Year's Day.  
Employees will be provided with time off for the working days between Christmas Day and New Year's Day and will be paid in accordance with their ordinary hours of work. Irregular or intermittent employees will not receive payment on these days unless hours are worked.  
There will be no deduction from Annual or Personal/carer's leave credits for the closedown days.
93. Long Service Leave  
An employee is eligible for long service leave in accordance with the Long Service Leave (Commonwealth Employees) Act 1976.
94.  
The minimum period during which long service leave will be granted is seven calendar days at full pay (or 14 days at half pay). Long service leave cannot be broken with other periods of paid leave, except as otherwise provided by legislation.
95. Public Holidays  
An employee is entitled to Public Holidays in accordance with section 115 of the Fair Work Act.
96.  
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.
97.  
The CEO 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.  
An employee, who is absent on a day or part-day that is a public holiday in the place where the employee is based for work purposes, will 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.  
Where a public holiday falls during a period when an employee is absent on a prevailing type of leave (such as leave without pay, maternity leave or long service leave) there is no entitlement to receive payment as a public holiday.

# Redeployment, Redundancy, Termination, Resignation and Retirement

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98. Application The following redeployment and redundancy provisions will apply to employees of the DTO, other than non-ongoing employees and those employees on probation.
99. Excess Employee An employee is excess to the requirements of the DTO if the CEO determines:
- a) the staff member is included in a class of employee/s' in the DTO, which class comprises a greater number of employees than are necessary for the efficient and economical working of the DTO;
  - b) the services of the employee cannot be effectively used because of technological or other changes in the work methods of the DTO or structural or other changes in the nature, scope or organisation of the functions of the DTO (other than for reasons set out in s29(3)(b)-(h) of the PS Act); 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 CEO has determined that the provisions of this Determination apply to that employee.
100. Potentially Excess Employees When the CEO is aware that an employee is likely to become excess to the requirements of the DTO, the CEO will at the earliest practicable time, advise the employee and where they choose, their representatives, in writing of the situation. The DTO will provide reasonable assistance to staff who are declared potentially excess.
101. Discussion Period The CEO will meet with a potentially excess employee and, where they choose, their representatives, at the earliest practicable time and within one month following advice under clause 100 (the 'discussion period'), to discuss: redeployment opportunities for the employee(s) concerned; possible referral to a service provider; and voluntary redundancy.
102. Where the employee declines or refuses to meet with the CEO for the purposes of clause 101 the CEO may advise the employee immediately that they are excess where a period of at least one month after the CEO has advised the employee under clause 100 has lapsed.
103. The CEO may, at any time, invite employees who are not excess employees to elect for voluntary redundancy, where the

- termination of those employees' employment would permit the redeployment of employees who would otherwise remain or become excess.
104. If at the end of the discussion period, the CEO determines that an employee is excess, the CEO will immediately advise in writing the employee that the employee is excess.
105. Voluntary Redundancy  
The CEO may invite an excess employee to elect for voluntary redundancy, within two months of that employee being declared excess.  
If an excess employee is not invited to elect for voluntary redundancy within two months of being declared excess, the employee must be invited to elect for voluntary redundancy immediately following the end of the two month period, if the employee has not been redeployed.  
Where an election for voluntary redundancy is made by an employee, the CEO may decide whether to accept that election.
106. Consideration Period  
Where an employee has been invited to elect for voluntary redundancy, the employee will have one month in which to make such an election in writing ('the consideration period').  
The CEO will not give notice of termination of the employee's employment before the end of the consideration period, without the agreement of the employee.
107. Information on Entitlements  
Within the consideration period the employee must be given information on:  
  - a) the amount of his or her severance benefit;
  - b) pay in lieu of notice;
  - c) the value of outstanding annual and long service leave credits;
  - d) the amount of his or her accumulated superannuation contributions;
  - e) estimates provided by ComSuper concerning his or her superannuation;
  - f) the taxation rules applying to the various payments; and
  - g) the level of assistance for financial advice, up to a maximum of \$400.
108. The information is provided for guidance purposes only, and is not an offer capable of forming a binding contract.
109. Only one invitation to elect for voluntary redundancy will be made to an excess employee.
110. An excess employee may elect for redeployment at any time unless they have elected for a voluntary redundancy.

111. Where an employee resigns or their employment is terminated during the notice period, they will receive payment in lieu of notice for the unexpired portion of the notice period.
- The employee will be provided with notice of termination, or payment in lieu. The period of notice will be 4 weeks, or 5 weeks for an employee over 45 years of age with at least 5 years continuous service.
112. Severance Benefit — Voluntary Redundancy
- Where the CEO accepts an employee's election for voluntary redundancy, and the employee's employment is terminated on the grounds that they are excess to the DTO's requirements, the employee 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.
- For two or more periods of service to count as a period of continuous service there must be no breaks between the periods of service, except:
- a) where the break is less than one month and occurred where an offer of employment in relation to the second period of service was made and accepted before the end of the first period of service (whether or not the period of service are with the same employer or agency); 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 s 49 of the repealed Public Service Act 1922 (Cth).
113. Subject to any minimum entitlements the employee would be entitled to under the National Employment Standards (NES), the minimum sum payable will be four weeks salary and the maximum will be 48 weeks' salary.
114. The severance benefit will be calculated on a pro rata basis for any period of service where an employee has worked part-time hours. However, where an employee has both full-time and part-time service, the full-time service is used first in the calculation.
115. Service for Severance Pay Purposes
- Subject to clauses 112 and 116, service for severance pay purposes means:
- a) service in the DTO;
  - b) Government service as defined in section 10 of the Long Service Leave (Commonwealth Employees) Act 1976;
  - c) service with the Commonwealth (other than service with a Joint Commonwealth/State body corporate in which the Commonwealth does not have 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, if 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 an employee of an organisation is engaged as an APS employee as a result of an administrative re-arrangement; and such service is recognised for long service leave purposes.

116. Service Not to Count for Severance Pay Purposes

Any periods of service which ceased:

- a) because of a termination of employment on the following grounds:
  - i. the employee lacks, or has lost, an essential qualification for performing his or her duties;
  - ii. non-performance, or unsatisfactory performance, of duties;
  - iii. inability to perform duties because of physical or mental incapacity;
  - iv. failure to satisfactorily complete an entry level training course;
  - v. failure to meet a condition imposed under subsection 22(6) of the PS Act; or
  - vi. a breach of the Code of Conduct;
- b) because of a termination of employment on a ground equivalent to a ground listed in subclause a) under the repealed Public Service Act 1922; or
- c) because of voluntary retirement at or above the minimum retiring age applicable to the employee; or
- d) with the payment of a redundancy benefit or similar payment or an employer-financed termination benefit;

will not count as service for severance pay purposes.

117.

Absences from work which do not count as service for any purpose will not count as service for severance pay purposes.

118. Rate of Payment — Severance Benefit

For the purpose of calculating any payment under clause 114, salary will include:

- a) the employee's base salary; or
- b) the salary of the higher classification level, where the employee has been paid for performing duties at the higher classification for a continuous period of at least 12 months immediately preceding the date on which she or he is given notice of termination; or
- c) shift penalties, or the weekend allowance payable in accordance with Appendix C, where the employee has undertaken shift work and is entitled to shift penalties or the weekend allowance for 50% or more of the pay

- periods in the 12 months preceding being given notice of termination. A weekly average of penalties due over the 12 months will be included in the salary; and
- d) other allowances in the nature of salary which are paid during periods of annual leave and on a regular basis, excluding other allowances which are a reimbursement for expenses incurred, or a payment for disabilities associated with the performance of duty.

119. Retention Periods

Where an excess employee is unable to be redeployed, and does not elect for voluntary redundancy, the employee's employment will not be made involuntarily terminated on the ground that they are excess until the following retention periods have elapsed:

- a) 13 months where an employee has 20 years of service or is over 45 years of age; or
- b) seven months for other employees.

120.

The retention period in clause 119 will be reduced by the period equivalent to the employee's NES redundancy entitlement. For example, where an employee's retention period is seven months and their NES redundancy entitlement is equivalent to twelve weeks' salary on termination of employment, the employee's actual retention period will be seven months minus twelve weeks.

121.

The retention period will be extended by periods of personal/carer's leave for illness purposes taken during the retention period, up to a maximum of eight weeks, and subject to satisfactory medical evidence being provided.

Where an absence for illness purposes exceeds eight weeks the CEO may determine, on a case by case basis, whether the retention period should be further extended.

122.

During the retention period the CEO:

- a) will continue to take reasonable steps to redeploy the excess employee; and/or
- b) may with four weeks' notice, in consultation with the employee, reduce the excess employee's classification as a means of redeploying the excess employee. Where an excess employee is reduced in classification before the end of the appropriate retention period, she or he will continue to be paid at their previous be classification for the balance of the retention period.

123.

During the retention period the employee:

- a) will take reasonable steps to find alternative employment; and

- b) actively participate in learning and development activities, trial placements or other arrangements agreed to, to assist in obtaining a permanent placement.
124. An employee will be entitled to reasonable leave with full pay to attend necessary employment interviews from the date the employee is advised in writing that they are an excess employee or advised in writing that the CEO has accepted an election by the employee for voluntary redundancy under clauses 105 and 106 (during the retention period).
125. The CEO may approve assistance for an excess employee in meeting reasonable travel and incidental expenses incurred in relation to the employee seeking alternative employment.
126. An excess employee required to move the employee's household to a new locality as a result of redeployment will be entitled to reasonable relocation costs.
127. Where:
- a) the CEO is satisfied that there is insufficient productive work available within the DTO for an excess employee for the remainder of their retention period; or
  - b) the excess employee has been receiving redeployment assistance from a provider for two months and has not elected for voluntary redundancy under clause 105 and the provider certifies that there is no reasonable prospect of redeployment in the APS;
  - c) the CEO may, after consultation with the employee, terminate the employee's employment on the grounds that they are excess to the DTO's requirements, and pay the balance of the retention period.
128. Involuntary Redundancy The CEO may involuntarily terminate the employment of an excess employee at the end of the retention period on the grounds that they are excess to the DTO's requirements.
129. An excess employee will not have their employment involuntarily terminated if the employee has not been invited to elect for voluntary redundancy, or has elected for voluntary redundancy but the CEO has not accepted the election
130. An excess employee will not have their employment involuntarily terminated without being given four weeks notice (or five weeks notice for an employee over 45 years of age with at least five years of continuous service) of termination of employment, or payment in lieu of notice. A period of notice may run concurrently with the retention periods.

131. Nothing in these provisions will prevent the reduction in classification of an employee as a result of applying the provisions of the PS Act.
132. Notice of Resignation or Retirement An employee must give the CEO at least 10 working days' written notice of resignation (including retirement), unless the CEO agrees otherwise.

## Review and Settlement Procedures

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133. Resolution of Disputes If a dispute relates to a matter arising under this Determination, or the NES this term sets out the procedures to settle the dispute.
134. An employee who is party to the dispute may appoint a representative for the purpose of the procedures in this term.
135. In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the employee or employees and relevant supervisors and/or management.
136. If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to the Fair Work Commission.
137. 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 parties.
- Note: If the Fair Work Commission arbitrates the dispute, it may also use the powers that are available to it under the 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 Act. Therefore, an appeal may be made against the decision.
138. While the parties are trying to resolve the dispute using the procedures in this term:  
a) an employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her safety; and  
b) 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 occupational 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.
139. The parties to the dispute agree to be bound by a decision made by the Fair Work Commission in accordance with this term.

## Appendix A — Base Salary Structure

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**Table 1: APS and Executive Level — Base Salary Structure**

Classification	Salary
	138369
	135465
	131327
	122733
EL 2	116729
	111542
	108173
EL 1	100620
	91291
	87093
	84804
	81642
APS 6	77731
	76813
	74436
	72478
APS 5	70492
	68335
	66539
	64873
APS 4	63229
	60946
	59343
	57845
APS 3	56411
	54978
	53531
	52227
	50905
APS 2	49602
	48415
	47142
	45280
APS 1	44088

## Definitions

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APS — means the Australian Public Service.

Base Salary — means the salary assigned to the classification level of the employee's nominal occupancy. Base salary does not include temporary reassignment of duties or any other allowance.

Bandwidth— means 7 am to 7 pm, Monday to Friday.

Commonwealth Agency — means an Agency as defined in the PS Act.

Determination — means the DTO Determination 2015/01 (Non-SES employees)

DTO — means the Commonwealth of Australia as represented by the Digital Transformation Office.

Employee — unless otherwise stated, means an APS employee employed in the DTO under the PS Act, but excludes SES employees (other than a non-SES employee on temporary reassignment at the SES level), irregular or intermittent employees and statutory office holders.

Entry level program – a structured program of experience and training to prepare recruits for operational roles within the DTO.

FW Act — means the Fair Work Act 2009.

Immediate Family Member — for the purposes of accessing the Employee Assistance Program, personal/carer's leave for caring purposes, unpaid carer's leave, bereavement or compassionate leave or compassionate travel an immediate family member is a relation by:

- blood;
- marriage (in law);
- de facto partner (including same sex partner);
- adoption;
- fostering or traditional kinship; or
- a parent, child, grandparent, grandchild or sibling of the employee's spouse or de facto partner.

Immediate family member also includes a former de facto partner and a former spouse.

Long term irregular or intermittent employee - means an irregular or intermittent employee employed by the employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months.

NES – National Employment Standards.

DTO Performance Framework — means the DTO's performance management system and policy which establishes individual performance expectations and requires ongoing and regular feedback through discussions between managers and employees.

PS Act — means the Public Service Act 1999.

Registered Health Practitioner — means a health practitioner registered, or licensed, as a health practitioner (or as a health practitioner of a particular type) under a law of a State or Territory that provides for the registration or licensing of health practitioners (or health practitioner of that type).

CEO — means the Agency Head of the DTO as defined under the PS Act or where the Agency Head has delegated his or her powers, that person.

Transfer Salary — means the confirmed base salary of an employee in another APS agency immediately prior to commencement in the DTO.

