

Productivity Commission

Enterprise Agreement 2017—2020

Note - this agreement is to be read together with an undertaking given by the employer. The undertaking is taken to be a term of the agreement. A copy of it can be found at the end of the agreement.

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1 Technical and General

1.1 Title

This Agreement will be known as the *Productivity Commission Enterprise Agreement 2017 – 2020*.

1.2 Definitions and Abbreviations

- a) 'Agreement' means the *Productivity Commission Enterprise Agreement 2017 – 2020*
- b) 'APS' means the Australian Public Service
- c) 'the Act' or 'FW Act' means the *Fair Work Act 2009*
- d) 'Chairman' means the Chairman of the Productivity Commission, who holds the same powers as those of a Secretary of an Australian Government department
- e) 'Classification' means a classification within the 'Public Service Classification Rules'
- f) 'Commission' means the Productivity Commission
- g) 'HDA' means higher duties allowance
- h) 'immediate family', as defined in s. 12 of the Act, means a spouse (including a former spouse), de facto partner, child (including an adopted child or step-child), parent, grandparent, grandchild or sibling of an employee; or a child, parent, grandparent, grandchild or sibling of an employee's spouse or de facto partner
- i) 'on-going employee' means a person defined in s. 7 of the *Public Service Act 1999*
- j) 'NES' means the National Employment Standards under the Act
- k) 'Manager' means, for Inquiry, Research and Modelling Groups, the relevant Senior Executive Service (SES) manager and, for Corporate and Government Performance Reporting and Analysis Groups, the relevant Senior Executive Service (SES) manager or relevant Executive Level 2 section head.

1.3 Parties Covered by this Enterprise Agreement

- 1.3.1 This Agreement is made under s.172 of the *Fair Work Act 2009 (the Act)*, between the Chairman of the Productivity Commission and employees (as defined in sub-clause 1.3.2) of the Productivity Commission.
- 1.3.2 Employees whose employment will be subject to this Agreement are those non-Senior Executive Service (SES) staff employed under the *Public Service Act 1999*.

1.4 Delegation

In exercising his/her responsibility for managing the Commission within the terms of this Agreement, the Chairman may delegate any or all of his/her powers and functions under this Agreement, excluding this power to delegate, and may do so subject to conditions. Such delegation shall not prevent the personal exercise by the Chairman of a power or function so delegated.

1.5 Duration of Agreement

The Agreement will come into effect seven days after approval by the Fair Work Commission and the nominal expiry date will be three years from date of effect.

1.6 Individual Flexibility Arrangements

- 1.6.1 The Chairman and an employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of any of the terms of this Agreement, where the arrangement meets the genuine needs of the employee and agency.
- 1.6.2 The Chairman must ensure that a flexibility arrangement agreed to under this clause:
- a) is about permitted matters under s. 172 of the FW Act;
 - b) does not include unlawful terms under s. 194 of FW Act;
 - c) results in the employee being better off overall than if no arrangement was agreed to;
 - d) is in writing;
 - e) is signed by both the employee and the Chairman, and, if the employee is under 18, is signed by their parent or guardian;

- f) is able to be terminated by either the employee or the Chairman giving not more than 28 days written notice, or at any time by agreement between the employee and Chairman in writing; and
 - g) is given to the employee within 14 days after it is agreed to.
- 1.6.3 A flexibility arrangement must be genuinely agreed between the employee and the Chairman.

1.7 Dispute Avoidance and Settlement Procedures

- 1.7.1 If a dispute relates to:
 - a) a matter arising under the agreement; or
 - b) the National Employment Standardsthis term sets out procedures to settle the dispute.
- 1.7.2 An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.
- 1.7.3 In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the employee or employees and relevant supervisors and/or management.
- 1.7.4 If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to Fair Work Commission.
- 1.7.5 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 Act.

A decision that 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.

1.7.6 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 health or 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.

1.7.7 The parties to the dispute agree to be bound by a decision made by the Fair Work Commission in accordance with this term.

1.8 Consultative Committee

1.8.1 Employees have the opportunity to be consulted and participate in matters affecting their employment through the Productivity Commission Consultative Committee (PCCC), which will also monitor the implementation of this agreement.

1.8.2 The Commission will consult with, and take into genuine consideration the views of, the PCCC on issues surrounding implementation and operation of this agreement, including Commission policies about the operation of the agreement, as these affect the employment conditions of employees. The Commission will allow a reasonable period for the PCCC to consider issues.

1.8.3 The PCCC will be governed by a Terms of Reference. Where required, amendments to the Terms of Reference will be agreed by the Committee.

1.9 Consultation

1.9.1 This term applies if the Commission:

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

Major Change

1.9.2 For a major change referred to in paragraph 1.9.1(a):

- a) the Commission must notify the relevant employees of the decision to introduce the major change; and
- b) subclauses 1.9.3 to 1.9.9 apply.

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

1.9.4 If:

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

the Commission must recognise the representative.

1.9.5 As soon as practicable after making its decision, the Commission must:

- a) discuss with the relevant employees:
 - i. the introduction of the change; and
 - ii. the effect the change is likely to have on the employees; and
 - iii. measures the Commission is taking to avert or mitigate the adverse effect of the change on the employees; and
- b) for the purposes of the discussion, provide, in writing, to the relevant employees:
 - i. all relevant information about the change including the nature of the change proposed; and
 - ii. information about the expected effects of the change on the employees; and
 - iii. any other matters likely to affect the employees.

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

1.9.7 The Commission must give prompt and genuine consideration to matters raised about the major change by the relevant employees.

1.9.8 If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the

Commission, the requirements set out in paragraph 1.9.2(a) and subclauses 1.9.3 and 1.9.5 are taken not to apply.

1.9.9 In this term, a major change is likely to have a significant effect on employees if it results in:

- a) the termination of the employment of employees; or
- b) major change to the composition, operation or size of the Commission's workforce or to the skills required of employees; or
- c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
- d) the alteration of hours of work; or
- e) the need to retrain employees; or
- f) the need to relocate employees to another workplace; or
- g) the restructuring of jobs.

Change to Regular Roster or Ordinary Hours of Work

1.9.10 For a change to regular roster or ordinary hours of work referred to in paragraph 1.9.1(b):

- a) the Commission must notify the relevant employees of the proposed change; and
- b) subclauses 1.9.11 to 1.9.15 apply.

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

1.9.12 If:

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

the Commission must recognise the representative.

1.9.13 As soon as practicable after proposing to introduce the change, the Commission must:

- a) discuss with the relevant employees the introduction of the change; and
- b) for the purposes of the discussion, provide to the relevant employees:

- i. all relevant information about the change, including the nature of the change; and
 - ii. information about what the Commission reasonably believes will be the effects of the change on the employees; and
 - iii. information about any other matters that the Commission reasonably believes are likely to affect the employees; and
- c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).

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

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

1.9.16 In this term: 'relevant employees' means the employees who may be affected by a change referred to in subclause 1.9.1.

1.10 Policy and Guidelines

Any guidelines, policies and procedures referred to in this agreement are not incorporated into, and do not form part of, this agreement. A term of this agreement prevails to the extent of any inconsistency with a guideline, policy or procedure.

1.11 Employee representation

The Commission recognises that an employee may, in matters concerning their employment, choose to have a representative of their choice to support or represent them. A representative requested by an employee to act in this capacity may include an elected representative, a union workplace delegate, or a work colleague. The Commission and the employee's nominated representative will deal with each other in good faith.

2 Duties, Classification, Performance and Remuneration

2.1 Classification and Broadband Structure

- 2.1.1 The Commission's five-level broadband structure and local designations are set out below. While the broadband structure will operate within the Commission, employees will retain a related classification in the APS 8-level structure.

APS Classification	Broadband structure	Commission's local designations
APS 1 & 2	Staff Level 1A	Student Economist Relief Administrator
APS 3 & 4	Staff Level 1	Assistant Research Economist Administrative coordinator
APS 5 & 6	Staff Level 2	Research Economist Administrator
Executive Level 1	Staff Level 3	Senior Research Economist/ Senior Administrator/ Assistant Director/Manager
Executive Level 2	Staff Level 4	Director/Manager

- 2.1.2 The minimum and maximum salaries for each of the bands in the broadband structure, as well as for the related classifications in the APS 8-level structure, are set out in Appendix A.
- 2.1.3 The Chairman has the discretion to set an employee's salary, including on transfer, promotion, advancement in classification, by a process of salary review, or if there has been an administrative or similar error.
- 2.1.4 Advancement between broadbands may only occur after a merit selection process.
- 2.1.5 Advancement between classifications within a broadband may only occur if:
- sufficient work is available at the higher classification level
 - the employee has gained the necessary skills and proficiencies to perform duties in accordance with the work level standards for that classification
 - the employee's performance has been 'fully effective' in the previous 12 months.

2.2 Performance

- 2.2.1 All employees covered by this Agreement will participate in the Commission's performance management scheme as described in the Commission's Performance Management Policy.
- 2.2.2 Performance management in the Commission will be based on the principles of transparency, equity and fairness.
- 2.2.3 Performance management will be reviewable, linked to training needs, cognisant of required remedial action and linked to remuneration. It will be clearly linked to the performance of the individual, the skills and responsibilities of the role and the Commission's work level standards appropriate to the classification of the employee's duties during the assessment period.
- 2.2.4 Formal performance appraisal will occur biannually. The final outcome of such appraisal includes the determination of a performance rating for each employee.
- 2.2.5 Employees will be assessed against the following performance standards:
- 'fully effective' – *Performance meets all the work value standards for the employee's classification level.* This requires ratings of satisfactory or higher in all key result areas.
 - 'needs improvement' – *Performance does not fully meet all the work value standards for the employee's classification level.* This indicates a rating of unsatisfactory in at least one key result area.
- 2.2.6 If an employee in two consecutive appraisal outcomes achieved a rating of 'needs improvement', it would normally be expected that the underperformance process, as set out in appendix B, would be implemented, but this does not preclude the process at an earlier stage.
- 2.2.7 Further information on individual performance assessment processes is contained in the Performance Management Policy.

2.3 Remuneration Increases

- 2.3.1 Employees with a salary that falls within the salary range for their classification (including employees in the former EL2 'discretionary' range), and who have been rated 'Fully Effective' in the relevant 12 month performance assessment period, will receive increases in base salary of 3.0 per cent from the date of effect of this agreement, 2.0 per cent 12 months after the date of this agreement, and 1.0 per cent 18 months after the date of this agreement. The discretionary range is included at Appendix A for grandfathering arrangements only.

- 2.3.2 These increases do not apply to any employees being paid above the top of the range for their classification. These employees, subject to being rated 'Fully Effective' in the relevant 12 month performance assessment period, will receive increases in base salary of 1.0 per cent from the date of effect of this agreement, 1.0 per cent 12 months after the date of this agreement, and 1.0 per cent 18 months after the date of this agreement.
- 2.3.3 In addition to the amounts payable under clause 2.3.1, employees who are below the top of the salary range for their classification and who have been rated 'Fully Effective' in the relevant 12 month performance assessment period will have their salary advanced by an annual increment of 2.5 per cent, with effect from the beginning of the first pay period in the financial year, until they reach the top of the salary range for their classification. Staff whose salaries are less than 2.5 per cent from the top of the range will receive a salary advancement to the top of the range.
- 2.3.4 Employees rated 'needs improvement' in either of the six monthly performance assessments immediately prior to the increase becoming due, shall receive half of the relevant increase in base salary. Employees assessed as 'needs improvement' in both appraisal periods are not eligible for any increase.

2.4 Superannuation

- 2.4.1 The Commission will make compulsory employer contributions as required by the applicable legislation and fund requirements.
- 2.4.2 Where employer contributions are to an accumulation superannuation fund, the employer contribution will be 15.4% of the fortnightly superannuation contribution salary [or ordinary time earnings]. 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 non-mandated employer superannuation contributions.
- 2.4.3 Employer superannuation contributions will not be paid on behalf of employees during periods of unpaid leave that does not count as service, unless otherwise required under legislation.
- 2.4.4 The Chairman 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.

2.5 Frequency and Method of Salary Payment

- 2.5.1 For the purposes of calculating pay both for full-time and part-time employees, the daily standard working hours will be 7 hours and 30 minutes.
- 2.5.2 Salary payments under this Agreement will be paid fortnightly in arrears and made by electronic funds transfer to a bank, building society or credit union account nominated by the employee and to a salary-packaging administrator on the employee's behalf (if required).
- 2.5.3 The Commission will arrange additional fixed deductions to other institutions at the request of the employee.
- 2.5.4 Fortnightly salary will be calculated by the formula:

$$\text{Annual Salary} \times \frac{12}{313}$$

2.6 Higher Duties

- 2.6.1 The eligibility for higher duties allowance (HDA) will be different for APS Level staff and Executive Level staff:
- a) For employees substantively at APS Levels, HDA will be payable for periods of two weeks or more.
 - b) For employees substantively at Executive Levels, HDA will be payable for periods of eight weeks or more.
- 2.6.2 Where full duties are performed, HDA will be calculated as the difference between the employee's existing remuneration and the remuneration the employee would receive if promoted to the higher classification. Where the employee is assigned only part of the duties of the higher position, the amount of HDA will be determined by the Chairman.

2.7 Employees on Supported Wage

- 2.7.1 Supported salary rates and conditions of employment will apply to an employee with a disability who is eligible for consideration under the Supported Wage System (SWS). Details are set out in Appendix C.

2.8 Casual Employees

- 2.8.1 A non-ongoing employee who is engaged to do work that is intermittent or irregular in nature (commonly referred to as a 'casual' employee) will receive a 20 per cent loading in addition to the hourly rate of salary relevant to the work value of the duties to be performed, in recognition of the irregular nature of such work. An employee in receipt of this loading does not accrue annual leave or personal leave, cannot purchase leave, and is not entitled to any payment for compassionate, miscellaneous, adoptive, maternity or parental leave or payment for public holidays on which the employee is not rostered to work.

2.9 Salary packaging

- 2.9.1 Employees have access to salary packaging arrangements. Further information is available in the Commission's Flexible Remuneration Guidelines.
- 2.9.2 Where an employee takes up the option of salary packaging on a 'salary sacrifice' basis, the employee's salary for purposes of superannuation, severance and termination payments (and any other purpose) will be determined as if the salary sacrifice arrangement had not been entered into.

3 Employee Benefits and Allowances

3.1 First Aid Allowance

- 3.1.1 An employee will be paid a fortnightly allowance of \$22.66 if he or she holds a current first aid certificate and the Chairman has authorised the employee to perform incidental First Aid Officer duties. This allowance will be adjusted at 12 and 18 months from commencement of this agreement, in line with the general wage increases included at clause 2.3.1.
- 3.1.2 Part-time employees will be entitled to pro-rata payment based on their approved weekly hours of duty.

3.2 Travel

- 3.2.1 The Commission will meet reasonable expenses (in relation to accommodation, meals, incidentals and transportation), as determined by the Chairman. Further information is available in the travel policy.
- 3.2.2 Rates of allowance may be varied in accordance with ATO advice.

3.3 Additional caring costs

Employees, who have child care responsibilities, and are directed to undertake overnight travel away from their home locality, may apply for reimbursement of additional costs for commercial child caring services where the normal child caring arrangements are not available. Such arrangements are subject to pre-approval by the delegate approving the directed travel.

3.4 Relocation

Reasonable relocation and accommodation expenses, as determined by the Chairman, will be paid. Further information is available in the Commission's policy on relocation conditions.

4 Hours and Organisation of Work

4.1 Support for flexible work arrangements

- 4.1.1 Flexible work arrangements allow employees to balance professional and personal commitments, while providing the Commission with the flexibility needed to meet corporate objectives.
- 4.1.2 Employees and their manager will work together to manage workloads and working hours. Managers will take into account employee preferences regarding hours of attendance, subject to operational needs.
- 4.1.3 All employees, including Executive Level employees, are able to work flexible hours. Subject to agreement with their manager, they may choose start, finish and break times, and may vary hours of attendance to manage personal commitments. Variations in attendance times and short-term absences may be agreed without the need for a leave application.
- 4.1.4 The Commission will make all reasonable attempts to accommodate requests to work flexibly, although arrangements must suit the type of work performed and operational requirements. Requests will only be refused on reasonable business grounds and provided to the employee in writing.

4.2 Standard Hours of Work

- 4.2.1 The hours for a full-time employee are 150 hours over a four-week settlement period.
- 4.2.2 The standard day is defined as 7 hours and 30 minutes (37 hours and 30 minutes per week) between the bandwidth times of 8.00am to 6.00pm, Monday to Friday, which includes nine minutes per day in recognition of the Christmas Closedown at clause 5.14.
- 4.2.3 The standard core hours for attendance are 9.30am to 12.00pm and 2.00pm to 4.00pm.

4.3 Attendance Arrangements

- 4.3.1 Attendance arrangements may be agreed between managers and employees having regard to the following:

- a) the need for adequate staffing of all areas of the Commission to meet operational requirements during the standard day;
- b) employees' personal and family commitments;
- c) employees may not work more than 10 hours in any one day (unless the period in excess of 10 hours is overtime, or 'time off in lieu' accrual), nor more than five hours without a meal break of a minimum of 30 minutes;
- d) the need to ensure that employees are productively employed and effectively supervised where appropriate; and
- e) any physical limitations (such as access to buildings and associated costs of occupation, health and safety, and security considerations). In this regard, employees should provide managers with prior advice of their intentions to work before 6.00am or after 9.00pm Monday to Friday, or at any times on weekends or public holidays.

The attendance arrangements for part-time employees will be agreed between the employee and the manager on an individual basis.

- 4.3.2 Managers can require employees to attend and work the standard day within the bandwidth hours. The timing of meetings, training sessions and the like will be scheduled during and around core hours as far as operationally practicable.
- 4.3.3 A manager may request an employee to work reasonable additional hours. An employee may refuse to work additional hours if they are unreasonable. In determining whether additional hours are reasonable or unreasonable, managers and employees must take account of factors outlined in s. 62(3) of the Act.
- 4.3.4 All employees are required to record their times of attendance in a manner determined by the Chairman.

4.4 Flextime

- 4.4.1 APS Level 1–6 staff may participate in the flextime scheme. This scheme allows hours worked in excess of 37 hours and 30 minutes per week to be banked as credit on a 1-for-1 basis for time off at a later stage.
- 4.4.2 The maximum flextime carry over credit is 37 hours and 30 minutes (five days), and the maximum flextime carry over debit is not to exceed 15 hours (two days), unless:
 - a) the employee has brought a potential excess flextime accumulation to the attention of their manager prior to the end of the settlement period; and

- b) the manager and the employee have put in place a strategy to reduce the accumulated amount to the maximum accumulation by the end of the next settlement period.

For part-time employees, the maximum credit carry-over will equate to the agreed weekly hours of work. For part-time employees, the maximum debit carry-over will equate to 40 per cent of the maximum credit carry-over.

- 4.4.3 Absence from duty on flextime is subject to prior approval by the employee's manager and the Commission's operational requirements. Excluding other forms of approved leave, absences under agreed flextime attendance arrangements must not exceed five days during a four-week settlement period.

- 4.4.4 Credits accumulated cannot be cashed out.

4.5 Reversion to Standard Day

- 4.5.1 The Chairman may revert an employee to a 7 hour and 30 minutes standard day for a period where:
 - a) it is necessary to meet essential work requirements; or
 - b) it is reasonable because an employee has failed to comply with the agreed attendance arrangements.

4.6 Executive level hours and time off in-lieu

- 4.6.1 The Commission recognises the focus on achievement of outcomes for executive level (EL) employees. The achievement of organisational outcomes may require variable and additional working hours to achieve these outcomes. These efforts and contributions are recognised by the Commission through 'time off in lieu' (TOIL).
- 4.6.2 Where an EL employee works in excess of their ordinary hours, the manager will, in consultation with the employee, determine reasonable TOIL to recognise the additional effort. These arrangements are intended to provide EL employees with fair and reasonable access to time off, though not intended to compensate on an hour for hour basis. Recognising the importance of work-life balance, time off in-lieu arrangements will generally apply to additional hours worked on weekends and public holidays and those on worked outside bandwidth hours (between 8.00am to 6.00pm, Monday to Friday).
- 4.6.3 Further information regarding TOIL can be obtained from the flexible working arrangements guidelines.

4.7 Overtime

- 4.7.1 With opportunities for flexible working hours by all employees, the parties to this agreement will endeavour to minimise the need for overtime.
- 4.7.2 Overtime is to be worked by the prior direction of the Chairman, or where circumstances do not permit prior direction, subsequently approved in writing by the Chairman.
- 4.7.3 Employees can be directed to attend outside agreed attendance arrangements when necessary for operational requirements. Any such directed duty outside 8.00am to 6.00pm (excluding public holidays) or in excess of 7 hours 30 minutes on a day (pro rata for part time employees), will be considered as overtime, except for directed duty where it is agreed that TOIL will apply.
- 4.7.4 The rate of payment for all overtime will be time-and-a-half of the employee's current salary plus any allowances in the nature of salary.
- 4.7.5 As an alternative to paid overtime, an employee may choose time-off-in-lieu at the rate of one and one-half hours for each hour of directed overtime worked.

4.8 Part-time employment

- 4.8.1 Part-time employment is defined as a person regularly working less than 150 hours per four-week settlement period by prior arrangement. Requests for part-time work will be considered by management with a view to reaching an outcome that meets both the Commission's operational needs and the employee's personal needs as far as is practicable.
- 4.8.2 Part-time work may be requested by any employee who has completed at least 12 months of continuous qualifying service, other than casual employees. The Chairman may waive this requirement in exceptional circumstances.
- 4.8.3 The Chairman may engage employees on a part-time basis where the duties to be performed do not justify full-time employment or where there are difficulties attracting full-time staff to perform the required duties. Existing employees will not be required to convert to part-time hours without their agreement.
- 4.8.4 A request for part-time work may be for a finite period. A part-time employee who was previously full-time may revert to full-time before the expiry of the finite period by request in writing to the Chairman.

- 4.8.5 Unless agreed otherwise between the employee and the Chairman in writing, or otherwise described in this agreement, remuneration and other non-expense related benefits for part-time employees will be calculated on a pro-rata basis.

4.9 Home-Based Work

- 4.9.1 The Chairman may approve an employee to work away from the office, subject to operational requirements. Further information regarding home-based work can be obtained from the flexible working arrangements guidelines.

5 Leave

5.1 Portability of Leave

- 5.1.1 Where an employee moves into the agency (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.
- 5.1.2 Where an employee is engaged 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.
- 5.1.3 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*
- 5.1.4 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 (whether in the agency or another) the Chairman may, at the employee's request, recognise any accrued annual leave (excluding accrued annual leave paid out on termination of employment) and personal/carers leave (however described), provided there is no break in continuity of service.
- 5.1.5 Provisions for the recognition of prior service for long service leave purposes are set out in the *Long Service Leave (Commonwealth Employees) Act 1976*.

5.2 Annual Leave

- 5.2.1 Full-time employees will be credited progressively with 20 days annual leave throughout each year. Credits will not accrue for 'periods of leave without pay not to count as service' where the aggregate of these periods exceeds 30 calendar days in the year of accrual. Pro rata adjustments will be made for part-time employees.
- 5.2.2 Annual leave is subject to prior approval by the employee's manager.

- 5.2.3 On application, employees may be granted annual leave at half pay to a maximum of 16 weeks of absence in any one calendar year — such leave counts as service for all purposes. When an employee takes leave at half pay, the leave credits deducted will be half that of the total leave period taken.
- 5.2.4 An employee may make a written agreement with their manager to cash out a particular amount of annual leave, provided that after cash out the employee's remaining entitlement to annual leave is 20 days or more. The employee will be paid the full amount that would have been payable had the employee taken the leave that has been foregone. Further information on cash out of annual leave is available in the leave guidelines.
- 5.2.5 If an employee has been credited more than 60 days of annual leave, the employee is to reach an agreement with their manager on a reasonable time period for taking up to a quarter of the credited annual leave.
- 5.2.6 On separation from the APS, annual leave credits will be paid out at the employee's final rate of salary, including any allowances that would have been payable during annual leave.
- 5.2.7 Where an employee dies, or is presumed to have died on a particular date, the Chairman may authorise payment to be made to dependants, the partner of the former employee or the former employee's legal representative of all leave entitlements otherwise payable on resignation or retirement.
- 5.2.8 An employee who is medically unfit for duty, has carers responsibilities or is eligible for compassionate leave while on annual leave or Long Service Leave and who produces satisfactory evidence may apply for this alternate form of leave. Annual leave or Long Service Leave will be re-credited to the extent of the period of other leave granted.

5.3 Purchased Leave

- 5.3.1 The Chairman may approve an application from an employee to purchase additional leave of up to four weeks per year, to count as service.
- 5.3.2 Leave is purchased at the rate of the employee's ongoing salary and allowances at the date that the purchase is approved. Higher duties allowance is not included in the purchase cost and will not be paid to the employee during periods of purchased leave. Deductions are taken from fortnightly salary in equal instalments over the course of a year or a lesser period if requested by the employee.

- 5.3.3 Where an employee ceases employment with the Commission and, at the date of cessation, they have paid for purchased leave that has not been used, the outstanding balance will be reimbursed at the rate at which the leave was purchased.
- 5.3.4 Applications for purchased leave should address the requirements outlined in the leave policy.

5.4 Long Service Leave

- 5.4.1 An employee is eligible for long service leave in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976*.
- 5.4.2 The minimum period during which long service leave can be taken is seven calendar days (or 14 calendar days at half pay). Long service leave cannot be broken with other periods of leave, except as otherwise provided by legislation.

5.5 Personal Leave

- 5.5.1 Employees are entitled to 18 days paid personal leave credits per year of service (pro rata for part-time employees) which may be used for either:
- a) personal illness or injury (including attendance at medical appointments); or
 - b) to provide care or support to an immediate family or household member (or a person for whom the employee has caring responsibility) who has a personal illness or injury or unexpected emergency; or
 - c) other approved purposes, up to a maximum three days per year.

Personal leave must not be used where it would adversely affect the employee's entitlement under the NES. Further information is available in the Commission's leave policy.

- 5.5.2 Personal leave is credited as follows:
- a) for employees new to the APS, credited upon commencement and for each completed year of service thereafter
 - b) for existing APS employees transferring to the Commission:
 - i. where a single annual credit has previously occurred, 18 days is credited upon the anniversary of the previous annual credit and thereafter;
 - ii. where credits have been progressively accrued, the balance of the remaining credits to a total of 18 days for that year will be awarded at the next date a credit would have fallen due, and this date shall be the anniversary date thereafter.

- c) annual crediting dates are deferred by any leave taken in the accrual year that exceeds 30 days and does not count for service.

Unused personal leave credits will accumulate.

- 5.5.3 Employees are required to notify their manager of any absences, for personal leave, in advance or as soon as possible after the absence commences, advising the reason for the absence.
- 5.5.4 An employee will provide a medical certificate or, where it is not practical to provide a medical certificate, a statutory declaration or other supporting evidence acceptable to his/her manager in the following circumstances:
 - a) personal leave for three or more consecutive working days, unless the manager informs the employee that such evidence will not be required
 - b) once the employee has accessed five occasions of personal leave (of at least a single day duration) without such suitable evidence, within the previous 12 months, unless the manager informs the employee that such evidence will not be required
 - c) if the manager has reason to believe that the employee's absence is not consistent with the appropriate use of personal leave.
- 5.5.5 An employee will not be entitled to paid personal leave while also entitled to paid Maternity, Adoption or Foster Care Leave except as otherwise provided by legislation.
- 5.5.6 Employees in receipt of workers compensation for more than 45 weeks will accrue personal leave on the basis of hours actually worked.
- 5.5.7 An employee will not, without the employee's consent, be retired on invalidity grounds before the employee's personal leave credit has been utilised, unless otherwise provided by legislation.
- 5.5.8 Accrued personal leave credits will not be paid out on separation from the Commission.

5.6 Compassionate Leave

Compassionate leave (bereavement)

- 5.6.1 In the event of the death of a person who is a member of the employee's immediate family, or a member of the employee's household, an employee is entitled to at least two days, and the Chairman may grant an employee three days, compassionate leave (bereavement) on full pay.
- 5.6.2 In the event of the death of a person of a sufficiently close relationship, as determined by the Chairman, an employee may be granted compassionate leave (bereavement) on full pay to attend the funeral. Further details of how to apply for this leave are in the leave policy.

Compassionate leave (life threatening illness or injury)

- 5.6.3 An employee is entitled to two days of paid compassionate leave for each occasion when a member of the employee's immediate family, or a member of the employee's household, contracts or develops a personal illness or sustains a personal injury that poses a serious threat to his or her life.

Compassionate leave (casual employees)

- 5.6.4 A casual employee is entitled to two days unpaid compassionate leave in the event of a death of a person who is a member of the employee's immediate family or household, or on each occasion when a member of the employee's immediate family or household contracts or develops a personal illness or sustains a personal injury that poses a serious threat to his or her life.

5.7 Paid Parental Leave

- 5.7.1 Employees who are pregnant, or give birth, are covered by the provisions of the *Maternity Leave (Commonwealth Employees) Act 1973* (ML Act).
- 5.7.2 Employees with an entitlement to paid leave under the ML Act are provided with an additional four weeks of paid leave, to be taken continuous with a period of paid maternity leave provided by the ML Act.
- 5.7.3 Employees who adopt or permanently foster a child and who have, or will have, a responsibility for the care of that child, are entitled to up to 52 weeks of parental leave commencing from the time of placement of the child. Where the employee is the primary care giver to the child and they satisfy the same qualifying requirements as those required to receive paid leave in accordance with the ML Act, up to 16 weeks of that leave will be paid leave.
- 5.7.4 Employees who are eligible for paid leave under clauses 5.7.1 to 5.7.3 may elect to have the payment spread over a maximum 32 weeks at a rate of no less than

half of normal salary. Where payment is spread over a longer period, a maximum of 16 weeks will count as service.

- 5.7.5 An employee who is not entitled to paid maternity leave or paid adoption / fostering leave is entitled to two weeks of paid partner leave on the occasion of their spouse or de-facto partner giving birth, or upon the occasion of their adopting or permanently fostering a child.

5.8 Unpaid Parental Leave

- 5.8.1 Ongoing employees are entitled to leave of absence without pay for a maximum of 52 weeks to care for their new child.
- 5.8.2 Unpaid maternity or parental leave will not count as service for any purpose except for any unpaid leave taken during the first 12 weeks.
- 5.8.3 An employee may request his or her employer to agree to an extension of unpaid parental leave for the employee for a further period of up to 12 months immediately following the end of the available parental leave period.

5.9 Returning from any type of parental leave

- 5.9.1 Employees returning to work after a period of parental leave will be assigned to the duties previously performed where available.
- 5.9.2 An employee returning to duty from parental leave will have the right to access part time work in accordance with the part time provisions of this Agreement.

5.10 Defence Reservist Leave

- 5.10.1 An employee may be granted leave (with or without pay) to enable the employee to fulfil Australian Defence Force (ADF) Reserve and Continuous Full Time Service (CFTS) or Cadet Force obligations.
- 5.10.2 An employee is entitled to leave with pay, of up to four weeks during each financial year and an additional two weeks paid leave in the first year of ADF Reserve Service, for the purpose of fulfilling service in the ADF Reserve. 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.
- 5.10.3 An employee who is an officer or instructor of cadets in a Cadet Force may be granted paid leave of up to three weeks each financial year to perform duties as an officer or instructor of Cadets. For these purposes 'Cadet Force' means the

Australian Navy Cadets, Australian Army Cadets, or the Australian Air Force Cadets.

- 5.10.4 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 as service for all purposes except annual leave accrual.

5.11 Community Service (Emergency Management) Leave

- 5.11.1 In accordance with s. 108 of the Act, leave for participation in voluntary emergency management duties, including training, emergency service responses, reasonable recovery time, and ceremonial duties, will be approved. The Chairman may determine whether any or all of leave taken for participation in voluntary emergency management activities will be with pay.

5.12 Miscellaneous Leave

- 5.12.1 The Chairman may grant leave not provided for elsewhere to an employee, either with pay (full or part) or without for a purpose that the Chairman considers to be in the interest of the Commission and having regard to operational requirements. Guidelines are available in the leave policy.

5.13 Public Holidays

- 5.13.1 Employees are entitled to the following public holidays:
- a) New Year's Day (1 January);
 - b) Australia Day (26 January);
 - c) Good Friday;
 - d) Easter Monday;
 - e) Anzac Day (25 April);
 - f) The Queen's birthday holiday (on the day on which it is celebrated in a State or Territory or a region of a State or Territory);
 - g) Christmas Day (25 December);
 - h) Boxing Day (26 December);

- i) Any other day, or part-day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday, other than a day or part-day, or a kind of day or part-day, that is excluded by the Fair Work regulations from counting as a public holiday.
- 5.13.2 If under a state or territory law, a day or part day is substituted for one of the public holidays listed above, then the substituted day or part day is the public holiday.
- 5.13.3 The Chairman 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.
- 5.13.4 An employee, who is absent on a day or part-day that is a public holiday in the place where the employee is based for work purposes, is entitled to be paid for the part or full day absence as if that day or part-day was not a public holiday, except where that person would not normally have worked on that day.
- 5.13.5 Where a public holiday falls during a period when an employee is absent on leave (other than Annual or paid Personal/carers leave) there is no entitlement to receive payment as a public holiday. Payment for that day would be in accordance with the entitlement for that form of leave (e.g. if on long service leave on half pay, payment is on half pay).
- 5.13.6 Public holidays, during annual leave or personal leave, are not deducted from annual leave credits or personal leave credits.
- 5.13.7 No payment is made for public holidays occurring during leave without pay.
- 5.13.8 Part-time employees will observe only those public holidays which fall on their designated days of work.

5.14 Christmas Closedown

- 5.14.1 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 ('Christmas Closedown').
- 5.14.2 Employees will be provided with time off work for the working days in the Christmas Closedown and will be paid in accordance with their ordinary hours of work. There will be no requirement to take Annual Leave or use accrued Flextime over this period.

- 5.14.3 However, where an employee would otherwise be absent on leave on that day, the rate of payment will be in accordance with the payment for that leave entitlement, e.g. if the employee is absent on long service leave at half pay, payment for the day will also be at half pay.

5.15 Unauthorised Absence

- 5.15.1 Where an employee is absent from work without approval, e.g. without the express approval of their supervisor, or not in accordance with a term of this agreement, the absence will be treated as an 'unauthorised absence' and will not count as service for any purpose under this agreement, including remuneration and leave accrual.

6 Studies Assistance

- 6.1.1 The Chairman may provide studies assistance to eligible employees. Further information is available in the overseas development award, post-graduate study awards and studies assistance policy documents.

7 Redeployment, Retirement and Redundancy Provisions

7.1 Application

- 7.1.1 The following redeployment, retirement and redundancy provisions will apply to employees of the Commission who are excess, other than non-ongoing employees and those employees on probation.

7.2 Definition of ‘Excess’

- 7.2.1 An employee is excess if:
- a) the employee is included in a class of employees employed in the Commission, which class comprises a greater number of employees than is necessary for the efficient and economical working of 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 Chairman has determined that these provisions will apply to that employee.

7.3 Process

- 7.3.1 Where the Chairman has determined the Commission to be in an excess staffing situation, the Chairman may identify an employee as excess. In this situation, the Chairman will inform the employee and hold discussions with the employee and any representative nominated by the employee. The following options may be explored:
- a) Redeployment at the employee’s current classification level within the Productivity Commission or the APS. The Commission may use the services of an external placement organisation to assist in the process of redeployment and the provision of retraining services.
 - b) Reduction on redeployment pursuant to clause 7.8 of this Agreement.

- c) Transfer of another employee to the position occupied by the excess employee (a 'swap') and the former employee immediately accepting voluntary retrenchment in accordance with clause 7.4. This clause is subject to the Chairman being satisfied that the excess employee can, with reasonable training, effectively replace the employee accepting voluntary retrenchment.
- d) An offer of voluntary redundancy in accordance with clause 7.4.

7.4 Voluntary Redundancy Benefit

- 7.4.1 The Act (s. 119) sets out the circumstances where an employee is entitled to be paid redundancy pay. Where the Chairman has determined the Commission to be in an excess staffing situation that will create employee redundancies, the Chairman may make an offer of voluntary redundancy.
- 7.4.2 The employee will have one month in which to advise the Chairman of their acceptance of the offer. Only one offer of voluntary redundancy will be made.
- 7.4.3 To enable an excess employee to make an informed decision, the employee will have access to information on:
 - a) the sums of money that would be payable by way of severance pay, pay-in-lieu of notice and leave credits;
 - b) the amount of accumulated superannuation contributions;
 - c) the options open to the employee concerning superannuation; and
 - d) the taxation treatment of the various payments.
- 7.4.4 Excess employees will be provided with financial assistance of up to \$850 for the purpose of seeking financial information.
- 7.4.5 The period of notice of termination will be four weeks, except for excess employees over 45 years of age with at least five years continuous service, when the notice period will be five weeks.
- 7.4.6 The redundancy benefit will be an amount 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 National Employment Standards (NES).
- 7.4.7 The minimum sum payable will be 4 weeks' salary and the maximum will be 48 weeks' salary.

- 7.4.8 The redundancy benefit will be calculated on a pro rata basis for any period where an employee has worked part-time hours during his or her period of service and the employee has less than 24 years full-time service, subject to any minimum amount the employee is entitled to under the NES.

7.5 Involuntary Redundancy

- 7.5.1 An excess employee whose excess situation is not resolved under clause 7.4 is entitled to the following period of retention:
- a) 56 weeks where the employee has 20 years or more service or is over 45 years of age; or
 - b) 30 weeks for all other employees.
- 7.5.2 If an employee is entitled to a redundancy payment under the NES, the retention period at clause 7.5.1 will be reduced by the employee's redundancy pay entitlement under the NES on termination, calculated as at the expiration of the retention period (as adjusted by this clause).
- 7.5.3 During the retention period, every effort will continue to be made to find alternative employment for the excess employee. Upon request, the employee will be referred to a commercial outplacement service provider with a \$1,700 limit on costs.
- 7.5.4 Where the Chairman is satisfied that there is insufficient productive work available for the employee within the Commission during the remainder of the retention period and that there is no reasonable redeployment prospects in the APS, the Chairman may terminate the employment under s.29 of the PS Act and upon termination, the employee will be paid a lump sum comprising:
- a) the balance of the retention period (as shortened for the National Employment Standards) and this payment will be taken to include the payment in lieu of notice of termination of employment, plus
 - b) the employee's NES entitlement to redundancy pay.
- 7.5.5 The notice periods for involuntary termination of employment are the same as those specified in clause 7.4, and will be, as far as practicable, concurrent with the retention period.
- 7.5.6 The Chairman may terminate the employment of an excess employee at the end of the retention period.

7.6 Salary

7.6.1 For the purpose of calculating a termination payment, salary will be the excess employee's:

- a) current salary including allowances paid in the nature of salary, other than higher duties allowance; or
- b) if the excess employee has been receiving higher duties allowance for a period of more than 12 months, that current salary including any other allowance paid in the nature of salary.

7.7 Service for severance pay purposes

7.7.1 Service for severance pay purposes means:

- a) service in the Commission;
- b) Government service as defined in s. 10 of the *Long Service Leave (Commonwealth Employees) Act 1976*;
- c) service with a Commonwealth body (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 repealed s. 49 of the *Public Service Act 1922*, if the service has not previously been recognised for severance pay purposes; and
- f) service in another organisation where:
 - i. an employee moved from the APS to that organisation with a transfer of function; or
 - ii. an employee engaged by that organisation on work within a function is engaged in the APS as a result of the transfer of that function to the APS; and
 - iii. such service is recognised for long service leave purposes.

7.8 Income Maintenance

7.8.1 Where an excess employee is reduced in classification, the employee will be eligible for income maintenance payments for the balance of the applicable retention period set out in clause 7.5.

- 7.8.2 Income maintenance payments are the amounts payable to maintain the level of salary and allowances being paid to the excess employee on the date the employee is notified as an excess employee or the date immediately prior to being reduced in classification, whichever is the later.

7.9 Non-Reviewable under this Agreement

- 7.9.1 Termination of, or a decision to terminate employment, cannot be reviewed under the dispute prevention and settlement procedures in clause 1.7 of this Agreement.
- 7.9.2 Nothing in this Agreement prevents the Chairman from terminating the employment of an employee for serious misconduct subject to compliance with the procedures established by the Chairman for determining whether an employee has breached the Code of Conduct under section 15 of the *Public Service Act 1999*.

APPENDICES

A Salary Table

Commission broadband structure	APS classifications	Salary ranges pre-lodgement	3% increase <i>from commencement</i>	2% increase <i>12 months after commencement</i>	1% increase <i>18 months after commencement</i>
SL1A	APS 1 min		42,427	43,276	43,709
	APS 1 max		47,235	48,180	48,662
	APS 2 min	47,094	48,507	49,477	49,972
	APS 2 max	54,437	56,070	57,191	57,763
SL1	APS 3 min	53,650	55,260	56,365	56,929
	APS 3 max	65,830	67,805	69,161	69,853
	APS 4 min	60,766	62,589	63,841	64,479
	APS 4 max	74,185	76,411	77,939	78,718
SL2	APS 5 min	68,089	70,132	71,535	72,250
	APS 5 max	79,123	81,497	83,127	83,958
	APS 6 min	74,191	76,417	77,945	78,724
	APS 6 max	90,515	93,230	95,095	96,046
SL3	EL 1 min	93,968	96,787	98,723	99,710
	EL 1 max	118,999	122,569	125,020	126,270
SL4	EL 2 min	113,936	117,354	119,701	120,898
	EL 2 max	142,929	147,217	150,161	151,663
	discretionary	150,648	155,167	158,270	159,853

B Underperformance

1. After a reasonable period of counselling and coaching, an employee whose performance appears to be unsatisfactory will be issued with a formal warning. The formal warning will set out:
 - a) details of the required standards for the duties the employee has been assigned and how the employee has failed to meet those standards
 - b) details of how the employee's performance will be assessed
 - c) the possible consequences if the employee has not attained and sustained the required standards by the end of the assessment period.
2. A person nominated by the Chairman will then conduct a fair and impartial assessment of the employee's work performance over a reasonable period of time (this should normally be not less than one month and not longer than three months), which is determined at the outset of the assessment period. The employee will be provided with feedback on his or her performance during the assessment period.
3. At the end of the assessment period, if the employee's work performance is assessed as meeting the required standard, the assessor will report this finding to the decision-maker. If the decision-maker agrees with the finding, the employee will be advised of this and no further action need be taken under these provisions.
4. If the employee is assessed as not having met the required standard, the assessor will report this finding to the decision-maker. The decision-maker will advise the employee of the finding and of the action that he or she proposes to take, which may include one or more of the following:
 - a) termination of employment
 - b) reduction in classification and remuneration
 - c) reassignment of duties
 - d) some other appropriate action.
5. The employee will be given seven days from the receipt of the advice to respond to the findings and the action proposed by the decision-maker.
6. The decision-maker, having taken into account the assessor's findings and the employee's response, will advise the employee in writing of his or her decision and the action to be taken.
7. If an employee is dissatisfied with the decision or action to be taken, they may seek a review of action under s. 33 of the *Public Service Act 1999*. Employees may also seek to resolve the matter under the dispute resolution and settlement procedures at clause 1.7 of this agreement. Termination of, or a decision to terminate, employment

cannot be reviewed under these dispute resolution and settlement procedures (as noted at clause 7.9.1) or under the review of actions provisions.

8. These procedures are not to be used in cases of misconduct, which will be dealt with under the provisions of the *Public Service Act* and/or the *Fair Work Act*, or in cases of invalidity, which will be handled under the *Safety Rehabilitation and Compensation Act* and/or the terms of the relevant superannuation legislation.

C SWS Schedule C in Modern Awards

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

2 In this schedule:

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

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

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

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

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

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

3 Eligibility criteria

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

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

4 Supported wage rates

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

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

4.2 Provided that the minimum amount payable must be not less than \$84 per week.

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

5 Assessment of capacity

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

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

6 Lodgement of SWS wage assessment agreement

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

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

7 Review of assessment

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

8 Other terms and conditions of employment

Where an assessment has been made, the applicable percentage will apply to the relevant wage rate only. Employees covered by the provisions of the schedule will be entitled to the same terms and conditions of employment as all other workers covered by this award paid on a pro rata basis.

9 Workplace adjustment

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

10 Trial Period

- 10.1 In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a Trial Period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- 10.2 During that Trial Period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.
- 10.3 The minimum amount payable to the employee during the Trial Period must be no less than \$84 per week.
- 10.4 Work trials should include induction or training as appropriate to the job being trialled.
- 10.5 Where the employer and employee wish to establish a continuing employment relationship following the completion of the Trial Period, a further contract of employment will be entered into based on the outcome of assessment under clause 5.

Signature page

The Productivity Commission Enterprise Agreement 2017–2020 is made and approved under s. 185 of the *Fair Work Act 2009*.

The persons below sign this agreement in accordance with Regulation 2.06A of the *Fair Work Regulations 2009*.

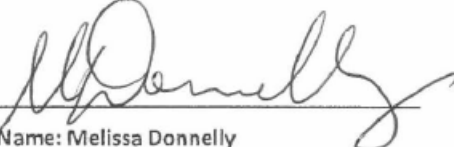
Employer



Name: Peter Harris

Chairman, Productivity Commission
Level 12, 530 Collins Street, MELBOURNE VIC 3000
Date: 27 July 2017

Bargaining Representatives



Name: Melissa Donnelly

Deputy Secretary, Community and Public Sector Union
191-199 Thomas Street, HAYMARKET NSW 2000

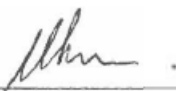
Date: July 2017



Name: Meredith Baker

Employee, Bargaining Representative, Productivity Commission
4 National Circuit, BARTON ACT 2600

Date: 27 July 2017



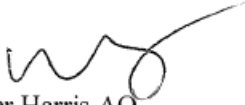
Name: Vanessa Kershaw

Employee, Bargaining Representative, Productivity Commission
4 National Circuit, BARTON ACT 2600

Date: 27 July 2017

UNDERTAKING FOR ATTACHMENT TO
PRODUCTIVITY COMMISSION ENTERPRISE AGREEMENT 2017-2020

The Productivity Commission will undertake that notwithstanding clause 5.5 of the Productivity Commission Enterprise Agreement 2017-2020, employees will be entitled to unpaid carer's leave as per s.102 and s.103 of the *Fair Work Act 2009*.



Peter Harris AO
Chairman
Productivity Commission

28 August 2017