



**Australian Government**

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**Department of Health**

# **ENTERPRISE AGREEMENT 2019-2022**

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## **PART A – SCOPE OF THE AGREEMENT**

### **Agreement title**

1) This enterprise agreement is made under section 172 of the *Fair Work Act 2009* (FW Act) and will be known as the 'Department of Health Enterprise Agreement 2019-2022' (the Agreement).

### **Coverage**

- 2) This Agreement covers:
- a) the Secretary of the Department of Health (the department), on behalf of the Commonwealth, and
  - b) all non-Senior Executive Service (SES) departmental employees.
- 3) Subject to a decision of the Fair Work Commission following notice in accordance with section 183 of the *FW Act*, the following employee organisations are covered:
- a) the Community and Public Sector Union (CPSU)
  - b) the Australian Salaried Medical Officers Federation (ASMOF)
  - c) the Australian Nursing and Midwifery Federation (ANMF)
  - d) the Media Entertainment and Arts Alliance (MEAA).

### **Commencement and Duration**

- 4) For the purposes of clauses 5, 6 and 11:
- a) Commencement Date means the date the Agreement commences operation;
  - b) Effective Date means the day which is 12 weeks after the date the Agreement was made in accordance with section 182 of the *FW Act*.
- 5) If the Commencement Date occurs after the Effective Date, then, in the first available pay period after the Commencement Date, the department will make a salary adjustment payment, applicable to salary only, calculated on the basis that the salary rates payable under the Agreement on the Commencement Date applied from the Effective Date; and
- 6) The Agreement will nominally expire three years after the Commencement Date.

### **Secretary's delegation**

7) The Secretary may in writing delegate to, or authorise any person to perform, any of the Secretary's powers or functions under the Agreement, including the power of delegation, and may do so subject to conditions.

### **Policies**

8) Any authorised policies or procedures referred to in the Agreement are not incorporated into, and do not form part of, the Agreement. If there is any inconsistency between the terms of the Agreement and the policies and procedures, the terms of the Agreement will prevail.

**National Employment Standards (NES)**

9) This Agreement will be read and interpreted in conjunction with the NES. Where there is inconsistency between this agreement and the NES, and the NES provides greater benefit, the NES provision will apply to the extent of the inconsistency.

## PART B – DEFINITIONS

10) In the Agreement, unless a contrary intention is clear, the following definitions apply:

<b>APS</b>	Means the Australian Public Service.
<b>APS Employee</b>	Has the same meaning as in the <i>Public Service Act 1999</i> .
<b>Dependant</b>	Means in relation to an employee: a) the employee's partner, or b) a child or parent of the employee, or of the partner of the employee, being a child or parent who ordinarily resides with the employee and who is wholly or substantially dependent upon the employee.
<b>Employee</b>	Means an employee engaged by the department in non-ongoing or ongoing classification under section 22 of the <i>PS Act</i> .
<b>Family</b>	Means a person who: a) is a spouse of the employee, b) is a child including an adult child, adopted child, stepchild, or foster child of the employee, c) is a parent, grandparent, grandchild or sibling of the employee, or the employee's spouse, d) the Secretary is satisfied has a strong affinity with the employee, e) is a member of the employee's household, or f) for Aboriginal and Torres Strait Islander employees, is a person related to the employee through traditional kinship.
<b>Foster child</b>	Means a child for whom the employee has assumed long-term responsibility arising from the placement of the child by a permanent or long-term (minimum 6 months) fostering arrangement: a) by a person or an organisation with statutory responsibility for the placement of the child, and b) where the child is expected to stay with the employee.
<b>HDA</b>	Means Higher Duties Allowance, the temporary payment of an allowance where an employee is temporarily assigned duties at a higher classification than their current classification.
<b>Health/Medical Practitioner</b>	Means a person registered or licensed as a Health/Medical Practitioner under Australian law.
<b>Manager</b>	Means an employee who has operational and/or supervisory responsibility for another employee or a team of employees.
<b>Movement or Move</b>	Means reassignment of duties of an employee, whether on a temporary/non-ongoing or ongoing basis, either within the department or from/to another agency. Previously referred to as 'transfer'.
<b>NSPF</b>	Means the National Staff Participation Forum.
<b>Parliamentary Service</b>	Refers to employment under the <i>Parliamentary Service Act 1999</i> .
<b>Part-time employee</b>	A part-time employee is one who regularly works less than full-time ordinary hours, by agreement.

<b>PDS</b>	Means the department's Performance Development Scheme. The PDS cycle is 1 July to 30 June.
<b>Place of work</b>	Means current department physical locations/addresses. This includes locations/addresses where the employee is undertaking official business on behalf of the department. This does not include working from home.
<b>Promotion</b>	Means the ongoing assignment of duties at a higher classification (excluding HDA) than the employee's current classification, as defined in the <i>Australian Public Service Commissioner's Directions 2016</i> .
<b>PS Act</b>	Means the <i>Public Service Act 1999</i> .
<b>Representative</b>	Means a person or organisation chosen by an employee, or a group of employees, to speak for and/or represent them.
<b>Salary advancement</b>	Means movement through increments within a salary range for a classification, subject to meeting any necessary requirements. These increases are salary for the purposes of superannuation.
<b>Salary increase</b>	Means a general increase to the base salary paid to an employee. These increases are salary for the purposes of determining salary for superannuation purposes.
<b>School-aged</b>	Means the age at which the child is required by the law of the State or Territory in which the child lives to attend school.
<b>Secretary</b>	Means the person who at the relevant time is performing the duties of the office of the Secretary of the department, and holding those powers provided to Agency Heads under the PS Act. A reference to the Secretary may also mean a reference to a person holding a delegation from the Secretary.
<b>Spouse</b>	Means in relation to an employee: a) is legally married to the employee, b) was formerly married to the employee, c) a person who is in a recognised de facto relationship with the employee, d) the former de facto of the employee, or e) the partner of the employee.
<b>Support person</b>	Means a person selected by the employee to provide support during a discussion the employee has with the employee's manager.
<b>Voluntary retrenchment</b>	Means voluntary termination of an excess employee's APS employment, also known as 'voluntary retirement' or 'voluntary redundancy'.
<b>Working from home</b>	Means working anywhere other than current department physical locations/addresses. Working from home does not include locations/addresses where the employee is undertaking official business on behalf of the department.

## PART C – REMUNERATION AND CLASSIFICATIONS

### Salary increases

- 11) Salary rates will increase with effect on:
- a) The Commencement Date or the Effective Date as defined in clause 4 (whichever is earlier) – increase of 2%
  - b) 12 months after date of commencement of the Agreement – increase of 2%
  - c) 24 months after date of commencement of the Agreement – increase of 2%

### Salary rates

- 12) Salary rates applying to employee designations as determined from time to time by the Secretary during the life of the Agreement are specified in Attachment A.

### Junior wage rates

- 13) Employees who are younger than 21 years of age and who are employed as an APS1 or Cadet (practical training) will be paid the following percentages of the minimum APS1 salary range:

- a) Under 18 years      60%
- b) At 18 years        70%
- c) At 19 years        81%
- d) At 20 years        91%

### Part-time employees

- 14) Remuneration for part-time employees will be calculated as a pro-rata of the appropriate salary table indicated at Attachment A, based on the proportion of hours worked in comparison to full-time hours.

### Non-ongoing employees – irregular or intermittent duties loading

- 15) A non-ongoing employee engaged for duties that are irregular or intermittent in nature will be paid for the actual hours worked, based on the appropriate salary rate as indicated at Attachment A plus a 20 per cent loading in lieu of all paid leave and accruals (excluding Long Service Leave) and public holidays on which they do not work.

### Supported wage system

- 16) Information on supported wage rates and related arrangements is at Attachment C of this Agreement.

### Payment related matters

- 17) Employees will be paid fortnightly in arrears, based on the following formula:

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

- 18) Payment will be made by electronic funds transfer (EFT) into a financial institution of the employee's choice.

- 19) Where an employee is overpaid an amount of salary or other benefits including allowances, the overpayment will be recovered in accordance with the provisions of the

department's Accountable Authority Instructions. These provisions do not operate to limit the right of the department to recover a debt from monies that are, or become, payable to an employee under this Agreement.

### **Salary advancement**

#### ***Within classifications***

20) Salary advancement within all classification levels will occur from the beginning of the first full pay period commencing on or after 1 August each year subject to the following:

- a) completing the requirements of the PDS unless there is reasonable cause not to have done so, and
- b) achieving a satisfactory performance or better at the end of the PDS cycle, and
- c) for ongoing employees, having performed duties within the department at their substantive level or above (i.e. higher duties), for an aggregate of three months or more within the PDS planning cycle, or
- d) for non-ongoing employees, other than employees employed for irregular/intermittent duties, having been engaged at the same classification to perform the same duties continuously for six months during the PDS planning cycle, and
- e) not being ineligible for salary advancement due to relevant administrative actions, including a sanction under section 15 of the *PS Act*, or
- f) any additional advancement provisions applying to specific groups of employees as outlined in this section.

#### ***Junior employees***

21) The provisions of clause 20 do not apply to employees who are under 21 years of age and employed at the APS 1 level. These employees are paid age-rate salaries and will be advanced to the next salary point on their birthday, except where they are paid the adult salary rate following automatic advancement upon successful completion of a course of study or training.

#### ***Legal 1 employees***

22) Legal 1 employees will have the following additional provisions for salary advancement.

- a) Receipt of a performance rating, as specified in column 1 of the table below, or in an alternative rating scale determined by the Secretary, will result in advancement by the corresponding number of increments specified in column 2.
- b) Advancement from the fifth to sixth pay point will not occur unless:
  - i. in the opinion of the Secretary, the level of work allocated for the position is classified as higher level work, and
  - ii. the employee has performed work at the higher level for a minimum period of six months, and attained a performance rating of 'fully effective', 'superior' or 'outstanding' shown in the table below, or in an alternative rating scale determined by the Secretary.
- c) Unless otherwise approved by the Secretary, Legal 1 employees will not advance beyond the sixth increment point until they have completed 12 months service at the sixth increment point.

Performance rating	Rate of advancement
Outstanding	Advancement by three increments
Superior	Advancement by two increments
Fully effective	Advancement by one increment
Partially effective	No advancement
Unsatisfactory	No advancement

### ***Research Scientists***

23) Research Scientist employees will have the following additional provisions for salary advancement: Receipt of a performance rating, as specified in column 1 of the table below (or in an alternative rating scale determined by the Secretary), will result in advancement by the corresponding number of increments specified in column 2.

Performance rating	Rate of advancement
Outstanding	Advancement by three increments
Superior – first year	Advancement by one increment
Superior – each successive year	Advancement by two increments
Fully effective	Advancement by one increment
Partially effective	No advancement
Unsatisfactory	No advancement

### ***Senior Principal Research Scientist***

24) The Secretary will determine the circumstances for salary advancement of an employee classified as a Senior Principal Research Scientist, which will be subject to achieving a satisfactory performance rating.

### **Salary payable on engagement, promotion and movement**

25) Unless otherwise determined by the Secretary (having regard to experience, qualifications and skills) where a person is:

- a) promoted or engaged, salary will be payable at the minimum increment point of the relevant salary range,
- b) moved at level on an ongoing or temporary movement basis from another APS agency, and:
  - i. the employee's salary is above the top increment point of the relevant range as stated at Attachment A, the Secretary may maintain that salary until it is absorbed by pay increases at that classification level, at which time the employee will move to the next increment point above their current salary, subject to a satisfactory or better rating, or
  - ii. the employee's salary is below the top increment point of the relevant range as stated at Attachment A, but not aligned with a increment point in the range, the employee's salary will be paid at the next highest increment point in that range.

### ***Salary on work placements***

26) Where the Secretary decides to provide work placements (for example, junior doctors through the Royal Australian College of General Practitioners (RACGP) training program), the Secretary will determine the appropriate rate of remuneration in accordance

with Attachment A for those employees. In addition to determining remuneration levels, the Secretary may also determine payment rates for additional costs including travel, living away from home allowance and other employment-related allowances.

### **Classifications and local titles**

27) Employees undertaking duties recognised by the Secretary as requiring possession of mandatory qualifications, specialist skills and/or professional registration will have specific titles recognised under the *Public Service Classification Rules 2000*, or local titles.

<b>Specific Classifications include</b>	<b>Local Titles include</b>
Graduate	Health Entry Level
Cadets	Legal
Trainees	Professional
Medical Officer	Public Affairs
	Research Scientist
	Technical
	Commonwealth Nursing Officer (CNO)

### **Broadbanding**

28) Employees with the following local titles are broadbanded across the APS classification structure as follows:

<b>Local title</b>	<b>Broadband</b>
Legal 1	APS4, 5, 6, Executive Level 1
Research Scientist	APS6, Executive Level 1
Professional 1	APS3, 4, 5
Public Affairs 1	APS4, 5
Health Entry Level	APS1, 2, 3, 4

### **Health Entry Level Broadband (HELB)**

29) The following are included in the Health Entry Level Broadband:

- a) Trainees (T);
- b) Indigenous Australian Government Development Program (IAGDP) participants (I);
- c) Indigenous Apprenticeship Programme (A);
- d) Graduates (G).

### **Entry to broadband**

30) Entry pay points will be assessed having specific regard to the participant's qualifications, work experience, skills and abilities and the programme the employee is undertaking.

### **Advancement within the broadband**

31) Health Entry Level employees are required to undertake a programme/course of training determined by the Secretary.



32) On satisfactory completion of the programme/course of training the employees will be advanced through the soft barriers within the Health Entry Level Broadband as set out in their Letter of Offer.

- 33) Advancement is not automatic and is subject to:
- a) sufficient work being available at the higher classification level; and
  - b) the employee having gained the necessary skill and proficiencies to perform the more complex work; and
  - c) Satisfactory performance.

During the life of this Agreement the Secretary may include other entry level local titles to this broadband.

***Legal 1 – Determination of salary***

34) On promotion, advancement, movement or engagement to a Legal 1, an employee will be paid at the minimum increment point unless:

- a) the Secretary determines otherwise, or
- b) on engagement the employee has been admitted as a practitioner of the High Court or the Supreme Court of a State or Territory, and
  - i. the employee has served under articles of clerkship for a period of not less than one year, or
  - ii. before being so admitted, the employee successfully completed a course of training in the Legal Workshop conducted by the Faculty of Law at the Australian National University or a comparable course in Australia, or
  - iii. the employee has gained experience which, in the opinion of the Secretary, is equivalent to the experience of a person who has satisfied (i) or (ii).

***Superannuation***

***Employer Superannuation Contributions***

35) An employee will receive compulsory employer superannuation contributions as required by the applicable legislation and fund requirements. The salary for superannuation purposes for PSSap members will be calculated based on the employee's ordinary time earnings (OTE).

***Superannuation choice***

36) Where an employee has chosen an accumulation superannuation fund, other than PSSap, the employer contribution will be 15.4% of the OTE. This will not be reduced by any other contributions made through salary sacrifice arrangements or during period of paid parental leave (however described). This clause does not apply where a superannuation fund cannot accept employer superannuation contributions (e.g. unable to accept contributions for people aged over 75).

37) For the purposes of this agreement, OTE is the salary paid for an employee's regular hours of work, not including overtime. It includes over-award payments, shift allowances, commissions and paid leave up to the maximum contributions base for the quarter. Where salary sacrifice arrangements are in place or the employee is on paid maternity, adoption or foster leave, employer contributions will be paid as if those arrangements had not been entered into.

38) Employer superannuation contributions will not be paid on behalf of employees during periods of unpaid leave not to count as service, unless otherwise required under legislation.

39) The Secretary may choose to limit superannuation choice to complying superannuation funds that allow an employee and/or employer contributions to be paid through fortnightly electronic funds transfer using a file generated by the department's payroll system.

**Treatment of allowances**

40) A table indicating the treatment of allowances for superannuation purposes is at Attachment B.

**Salary packaging**

41) Employees may access salary packaging, and may package up to one hundred per cent of salary. Where an employee takes up the option of salary packaging, the employee's salary for purposes of superannuation, severance and termination payments, and any other purposes, will be determined as if the salary packaging arrangement had not occurred.

42) Any fringe benefits tax incurred by individual employees as a result of salary packaging arrangements will be met by the individual employee on a salary sacrifice basis.

Further information on salary packaging is available in the Salary Packaging policy.

## **PART D – EMPLOYMENT CONDITIONS AND ALLOWANCES**

### **General**

43) Information on the recognition (for particular purposes) of allowances provided for in the Agreement is at Attachment B.

Further information on allowances is available in the Allowances policy.

### **Remote locality conditions**

44) An employee recruited locally to a designated remote locality after 7 April 1998 does not have automatic access to the remote locality provisions as determined by the Secretary in the Remote Locality policy. These employees and employees recruited from outside those localities after 7 April 1998 may have access to remote locality conditions as negotiated with the Secretary.

45) Employees working in those localities may request a review by the Secretary, seeking a new or amended remote locality package.

Further information on remote locality conditions is available in the Remote Locality policy.

### **Public transport scheme**

46) The Secretary will offer an interest free loan scheme for the purchasing of public transport passes for employees.

Further information on the public transport scheme and its operation is available in Public Transport Loan Scheme policy.

### **Influenza vaccinations**

47) The Secretary will, on an annual basis, make appropriate arrangements for the provision of influenza vaccinations to all employees at no cost.

### **Travel allowance**

48) The Secretary may adjust Travel Allowance (TA) annually up to the maximum non-acquittable amount required for taxation purposes.

49) The department will meet reasonable costs, as determined by the Secretary, for employees on official overnight travel including accommodation, meals and any incidental expenses.

50) Where this period exceeds three continuous weeks, the Secretary will determine a package of assistance to meet any additional costs incurred as a result of the employee being temporarily relocated.

51) The Secretary will, subject to the presentation of receipts, authorise an additional payment in circumstances where an employee has incurred reasonable costs, as determined by the Secretary, in excess of the allowance.

***Part-day travel***

52) An employee who is required to be absent from the employee's usual place of work on official business for a period of not less than 10 hours, but is not absent overnight, will be paid an allowance of \$48 for each absence.

***Illness while travelling***

53) Where an employee falls ill or is injured while travelling on official business and subsequently takes leave, the Secretary will approve payment of return journey costs to the employee.

***Recognition of travel time***

54) Where an employee classified as an APS 1-6 (and their equivalents) is required to undertake official travel, the time spent travelling within the bandwidth, excluding the usual time taken for the employee to travel to and from the employee's regular place of work, will be recorded as work hours.

55) Travel outside the bandwidth undertaken by APS 1-6 (and their equivalents) will be claimed as travel time in lieu at single time rates.

***Motor vehicle allowance***

56) Motor vehicle allowance (MVA) is payable where the Secretary approves an employee to use a private or personally-hired vehicle for official purposes.

57) Where an employee seeks, and is approved to use, a private vehicle instead of the most efficient means of travel as determined by the Secretary, the amount of MVA paid to the employee will not exceed the cost of the most efficient means of travel.

***Relocation assistance******Access for existing employees***

58) Where the department initiates a permanent relocation (including movement or promotion) of an employee, or the relocation is in the interest of the department, the Secretary will reimburse reasonable relocation costs for:

- a) transport and removal,
- b) costs associated with the sale and purchase of the employee's normal place of residence,
- c) costs incurred in avoiding serious disruption to the final two (2) years of the employee's child's secondary education (Years 11 and 12),
- d) temporary accommodation in the new location.

***Requested move***

59) Relocation or non-ongoing movement at the request of the employee will only attract relocation assistance at the discretion of the Secretary.

***Access for new employees***

60) Relocation assistance for reasonable costs may be negotiated on engagement, as agreed by the Secretary, for:

- a) transport and removal costs

- b) temporary accommodation in the new location.

### **Community language allowance**

61) An employee who is required to undertake translating or interpreting responsibilities may, with the Secretary's approval, receive payment of a community language allowance.

Further information is provided in the Allowances policy.

### **Restriction allowance**

62) Where the Secretary requires an employee to be contactable and available to work for a specified period outside the bandwidth of hours, the employee will be paid a restriction allowance as follows.

- a) An employee restricted for a period of seven calendar days will receive an allowance of \$307 per week.
- b) An employee restricted for a period of less than seven calendar days will receive a proportional rate based on the number of hours restricted outside the bandwidth.
- c) An employee restricted on a weekend roster arrangement will receive an allowance of \$53 for each day of the weekend they are restricted. Proportional rates will not apply for rostered weekend restriction periods.
- d) An employee restricted for any period that includes a public holiday will receive payment of \$53 in addition to salary for each public holiday the employee is restricted.
- e) An employee restricted on the three working days of annual closedown between Christmas Day and New Year's Day will receive payment of \$53, in addition to salary, for each day of annual closedown the employee is restricted.

### **Ineligible employees**

63) Executive Level employees (and their equivalents) and employees who are employed on an irregular/intermittent basis are generally ineligible to receive restriction allowance payments. In exceptional circumstances, the Secretary may approve restriction allowance payments for these employees.

### **Non-payment**

64) Payment of restriction allowance will not be made to an employee who does not remain contactable or at the required degree of readiness to perform overtime.

### **Overtime for restricted employees**

65) A restricted employee who is required to perform overtime may be required to work at the employee's usual workplace or at another designated place, including the employee's home.

66) Where an employee is restricted under the provisions of clause 62 and is required to perform overtime, but is not required to be recalled to a place of work, overtime payment will be a one-hour minimum payment.

67) Where an employee restricted under the provisions of clause 62 is recalled to duty at a place of work, overtime payment will be a three-hour minimum payment.

Overtime provisions are outlined in Part E.

#### **Departmental Liaison Officer (DLO) allowance**

68) An employee who performs the duties of Departmental Liaison Officer and attends for duty at the office of the Minister, will be paid a pro-rata allowance for that day at the annual rate of \$19,080.

#### **Overtime meal break allowance**

69) Where an employee is directed to work overtime for a continuous period of at least one hour outside the bandwidth which extends over a meal period, they will be paid a meal allowance of \$28.00 where a meal break is taken during a meal period. For the purposes of this clause a meal period is:

Monday to Friday:	6.30 am-7.00 am
	7.00 pm-7.30 pm
Saturday, Sunday and Public Holidays:	6.30 am-7.00 am
	12.30 pm-1.30 pm
	7.00 pm-7.30 pm

70) Where overtime is worked for long periods and does not coincide with designated meal periods, the Secretary has the discretion to authorise payment of a meal allowance.

#### **Loss of, or damage to, clothing or personal effects**

71) Where an employee incurs loss of, or damage to, clothing or personal effects, and the loss or damage can be reasonably associated with the employee's performance of the employee's duties, the Secretary may authorise reimbursement of costs for repairs or replacement of the personal effects.

Further information is available in the Loss of, or Damage to, Clothing or Personal Effects policy.

#### **Workplace responsibility allowance**

72) The Workplace Responsibility Allowance will be paid to an employee undertaking the designated Workplace Responsibility Roles of First Aid Officer, Emergency Warden, Harassment Contact Officer (HCO) and Health and Safety Representative (HSR). An employee will not undertake more than one Workplace Responsibility at a time unless approved to do so by the Secretary.

73) Payment of the Workplace Responsibility Allowance will be made to an employee who is elected or appointed to a Workplace Responsibility Role and has successfully undertaken relevant training or obtained any required qualification.

74) A weekly Workplace Responsibility Allowance of \$11.00 will be paid to an employee appointed by the Secretary to be an Emergency Warden or HCO, and to an employee elected as a HSR.

75) A weekly Workplace Responsibility Allowance of \$15.00 will be paid to an employee holding the minimum accreditation standard of the Senior First Aid Certificate (Level 2 or

equivalent) and has continuing expertise commensurate with that training, who is appointed by the Secretary to be a First Aid Officer.

### **Eyesight testing**

76) Eligible employees may request access to subsidised eyesight testing at two-yearly intervals, unless the employee provides medical evidence indicating that further testing is necessary. Eligible employees are those employees who, as an integral part of their duties, are required to:

- a) operate screen based equipment, and/or
- b) undertake specialised work tasks which require particular visual acuity not normally required for general tasks (e.g. microscopy).

77) The Secretary will reimburse (where not otherwise reimbursed under Medicare or private health insurance arrangements) the following amounts for eyewear prescribed specifically for use with screen-based equipment.

- a) Up to \$100 for single vision spectacles and
- b) Up to \$165 for bi-focal, multi-focal or tri-focal spectacles.

78) The Secretary may approve different testing requirements, intervals and reimbursement levels for employees undertaking tasks requiring particular visual acuity (other than screen-based work) (e.g. for microscopy work).

## **PART E – HOURS OF WORK AND FLEXIBILITY**

### **Hours of work**

79) All employees have a mutual responsibility for managing their working hours and patterns, including leave planning, flextime arrangements, breaks, and minimising additional hours where possible. The provisions below are designed to be sufficiently flexible for employees to meet business requirements and balance their personal needs.

80) An employee and their Manager will work together to manage hours of work and breaks to ensure that an employee is not working excessive hours without the opportunity to take time off either as flextime (for APS1-6 and their equivalents) or in the case of Executive Level employees (and their equivalents), as Executive Level time off.

81) All employees have access to flexible working hours. For APS1-6 (and their equivalents), these flexible working hours will be accessed through the flextime scheme.

82) For the purposes of calculating pay, attendance and flextime, ordinary hours of work for full-time employees is 150 hours over the four week settlement period commencing on a payday Thursday. This equates to an average of 7 hours 30 minutes per day.

Further information is available in the Hours of work and flexibility policy.

### ***Standard Day***

83) The Standard Day is used for the purposes of determining a full-time employee's hourly rate of pay, overtime entitlements, the accrual and deduction of leave and calculation of hours over the flextime period.

84) The Standard Day for full-time employees is 7 hours and 30 minutes worked from 8.30am to 12.30pm and 1.30pm to 5.00pm Monday to Friday.

85) An employee's attendance pattern will be a Standard Day where:

- a) essential operational requirements and the availability of work require that hours worked are temporarily varied, including reversion to a standard day, or
- b) an employee's attendance is unsatisfactory or that the employee is misusing flextime.

### ***Hours of work of part-time employees***

86) For part-time employees, ordinary hours are those agreed in the employee's part-time work agreement within the provisions of clauses 137 and 138.

### ***Working patterns***

87) The pattern of hours by which an employee meets their ordinary hours of duty will be determined in consultation with the employee, and with regard to the operational needs of the department. An employee will not normally be required to:

- a) work more than 10 hours ordinary time on any day, or
- b) commence work on any day without having at least 10 hours minimum break from the previous day's work, without specific approval from their manager.



88) Where this does occur, the overtime and time in lieu provisions at clauses 112 to 123 and/or meal allowance provisions at clauses 69 and 70 may apply.

89) Regardless of the bandwidth, APS employees are required to take an unpaid break of at least 30 minutes for every five hours of work.

***Insufficient work and flextime***

90) Working extended hours is subject to work availability and manager approval. Over a four week settlement period, a manager may require an employee not to work hours in excess of their ordinary hours where there is insufficient available productive work to warrant working the extended hours.

***Bandwidth***

91) The bandwidth of hours in which an employee will work their ordinary hours is 7.00 am to 7.00 pm, Monday to Friday.

***Work outside bandwidth***

92) Where an employee requests to work their ordinary hours outside the bandwidth e.g. on Saturday or Sunday, the employee may do so, subject to operational requirements, with the agreement of their manager. Any hours worked on this basis will be considered ordinary hours and will not attract overtime. Variation of the bandwidth hours can be on a regular, temporary or intermittent basis.

***After hours use of taxis***

93) A Manager may approve the use of taxis by an employee for after hours work, as part of their overall WHS responsibility.

***Recording attendance***

94) All employees are required to record their working hours.

Further information is available in the Hours of work and flexibility policy.

***Flextime scheme***

***APS1-6 (and their equivalents)***

95) APS1-6 employees (and their equivalents) accumulate flextime for duty performed in excess of their ordinary hours of work (over the settlement period), that does not attract overtime.

96) Subject to the agreement of their manager, an employee may:

- a) vary their pattern of attendance from time to time in order to meet personal needs,
- b) take flextime as a part or whole day absence.

***Excess flex credits***

97) Where an employee's flex credit exceeds 20 hours at the end of a settlement period, the employee and their manager will put a plan in place to reduce the flex credits.

***Cash out of credits exceeding 30 hours***

98) At the end of a settlement period, an employee's manager may approve flex credits exceeding 30 hours to be cashed out at ordinary time rates where, due to organisational requirements, the manager cannot envisage an opportunity for the employee to use those credits in the next settlement period.

***Cash out of credits exceeding 37.5 hours***

99) At the request of the employee, flex credits exceeding 37.5 hours can be cashed out.

***Flex debit balance***

100) Employees may carry over a maximum of 10 hours flex debit accumulated in any settlement period into the next settlement period. If the maximum debit is exceeded at the end of a settlement period and is not reduced to the maximum allowable (or lower) over the next settlement period, the amount by which the maximum is exceeded shall be treated as leave without pay and an appropriate deduction made from the employee's salary in accordance with the Accountable Authority Instructions.

***Flex balances at cessation***

101) Prior to cessation of employment, the employee's manager should provide opportunities to enable the employee to balance any flex credits or debits. Employees should also take all reasonable steps to balance their flex debit or credit. Where flex credits are outstanding at the cessation of employment with the department, the flex credit will be paid to the employee at ordinary time rates. Where flex debits are outstanding at the cessation, these will be recovered as part of the termination payment, in accordance with the Accountable Authority Instructions and the *FW Act*.

***Additional hours***

102) In accordance with the *FW Act*, an employee may refuse to work additional hours (extra hours or directed overtime) where such additional hours are unreasonable. Such refusal will not prejudice the employee's employment. For the purposes of this clause, additional hours are those in excess of:

- a) 37.5 hours per week for a full-time employee, or
- b) the agreed ordinary hours of work per week for a part-time employee.

***Executive Level time off***

103) The department recognises the focus on the achievement of outcomes by Executive Level employees (and their equivalents) as senior professionals of the department. The achievement of organisational outcomes may involve considerable work effort, variable work hours and on occasions a requirement to work over and above normal working hours. The department recognises these efforts and contributions.

104) Executive Level employees and their managers will work together to manage workloads and working hours, including making arrangements as to when any Executive Level time off will be taken.

105) Where operational needs require an Executive Level employee to work additional hours in excess of their ordinary hours for a sustained period, including a critical incident response, the employee and their manager will agree and document arrangements for time off to recognise the additional effort.

106) To minimise any negative impact on an employee's health and wellbeing, Executive Level time off should be taken as soon as practical, subject to operational requirements.

107) Time off for Executive Level employees is available on an hour for hour basis for official domestic travel only. All other Executive Level time off will not be on an hour for hour basis.

108) Regardless of the bandwidth, Executive Level employees are required to break for at least 30 minutes after five hours of continuous work.

***Time off for official travel***

109) Executive Level employees will only receive Executive Level time off on an hour-for-hour basis for time spent on official domestic travel outside of the Standard Day, excluding the usual time taken for the employee to travel to and from their regular place of work. Existing local travel arrangements for international travel will continue to apply.

110) To minimise any negative impact on an Executive Level employee's personal commitments, wherever possible the department encourages employees to travel within the bandwidth.

**National Incident Room (NIR)**

111) The Secretary will specify mandatory breaks for periods of extended duty by employees working in the NIR during an incident response. Mandated rest periods shall be provided as full days. NIR duties in excess of five continuous days of increased hours shall attract no less than two consecutive days, free of all duty, immediately following the Incident.

**Overtime**

***APS1-6 (and their equivalents)***

112) APS1-6 level employees (and their equivalents) are eligible for an overtime payment where they are required by the Secretary to:

- a) perform work outside the bandwidth (inclusive of weekends and public holidays),  
or
- b) work in excess of 9.5 hours on any one day (Monday to Friday inclusive),  
whichever occurs first.

***Part-time employees - APS1-6 (and their equivalents)***

113) In addition to clause 112, part-time employees at the APS1-6 level (and their equivalents) are eligible for overtime for work performed at the direction of the Secretary, which is:

- a) not continuous with the employee's agreed or specified hours of work, and/or
- b) beyond the total ordinary hours of work over the settlement period specified in the employee's part-time work agreement.

114) Subject to clause 113, a part-time employee will be eligible for overtime for work performed in excess of the agreed hours of duty over the settlement period, unless they elect to receive those additional hours as Time in Lieu under clause 117.

***Executive Level (and their equivalents)***

115) Executive Level employees (and their equivalents) are not generally entitled to payment for overtime. However, the Secretary may approve overtime for Executive Level employees in exceptional circumstances. Otherwise, the time off provisions in clauses 103 to 110 will apply.

***Travel not to count***

116) Time spent travelling to or from work will not count as part of an overtime attendance.

***Time in lieu (TIL)***

117) If an employee chooses, the Secretary may allow the employee to take TIL as a form of recompense for overtime as an alternative to overtime payment, subject to the provisions of this clause.

***Calculation***

118) Where overtime is worked, the rate of payment (or TIL, if the employee elects) is calculated at the following rates:

- a) Monday to Saturday: time-and-a-half
- b) Sunday: double-time.

***Public holidays***

119) An employee who is directed to work overtime on a public holiday which falls on a weekday, will be paid overtime at double-time for duty outside of a Standard Day (for full-time employees) or the agreed pattern of hours (for part-time employees). This rate also applies to Easter Saturday if it is not declared or prescribed as a public holiday. For duty within a Standard Day (or agreed pattern of hours for part-time employees), overtime will be paid at single-time as employees are already being paid for the public holiday.

120) Employees required to perform overtime during the annual closedown will be recompensed with overtime calculated at time-and-a-half.

***Non-continuous duty***

121) Where a period of overtime is not continuous with ordinary duty, the minimum overtime payment is four hours at the relevant rate. Where the period of overtime is greater than four hours, payment will be made for the actual period worked at the relevant rate.

***Continuous duty***

122) Overtime is considered to be continuous with ordinary duty when an employee does not have a break, other than a meal break, between the periods of ordinary duty and overtime.

**Multiple attendance**

123) Where more than one attendance is required, the minimum overtime payment provision will not operate to increase an employee's overtime payment beyond that which they would have received had they remained on duty from the commencing time of duty on one attendance, to the ceasing time of duty on a subsequent attendance.

Further information on overtime and TIL is available in the Hours of Work and Flexibility policy.

**Family care assistance**

124) Where an employee is required by the department to be away from home outside the employee's Standard Day, and the employee incurs reasonable additional costs for family care arrangements, the employee will be reimbursed those reasonable additional costs.

Further information is available in the Family care assistance policy.

**Public holidays**

125) Public holidays will be observed in accordance with the National Employment Standards (NES) and the *FW Act*.

126) The following days are public holidays under the NES:

- a) 1 January (New Year's Day)
- b) 26 January (Australia Day)
- c) Good Friday
- d) Easter Monday
- e) 25 April (Anzac Day)
- f) Queen's birthday holiday (the day on which it is celebrated in a State or Territory or a region of a State or Territory)
- g) 25 December (Christmas Day)
- h) 26 December (Boxing Day)
- 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.

127) The Secretary 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.

128) 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 the Employee would not normally have worked on that day.

129) 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).

#### **Annual closedown and early stand down**

130) The department will be closed for normal business and employees will not be required to perform normal duty on the working days between Christmas Day and New Year's Day. Eligible employees will be paid for closedown. Pay eligibility for annual closedown will be treated in the same manner as public holidays in determining the appropriate rate of salary payment to apply on those days.

131) Where an employee is absent on leave, payment for the Christmas closedown provision will be in accordance with the entitlement for that form of leave (e.g. if on long service leave half-pay, payment is at half-pay).

132) There will be no deduction from annual or personal/carers leave credits for the annual closedown days.

133) The department will be closed for normal business and employees will not be required to perform duty from 3.00 pm on the working day prior to Christmas and the working day prior to Good Friday. Eligible employees will be paid for their ordinary hours. Payment eligibility will be treated in the same manner as a normal working day.

#### **Flexible work arrangements**

134) Access to flexible work arrangements will be in accordance with the NES and the *FW Act*.

135) The Secretary will make every reasonable effort to accommodate requests for an employee's proposed part-time work hours when returning from maternity, adoption, fostering or parental leave for the period up until the child's second birthday, or in the case of adoption and eligible fostering, the second anniversary of the placement.

136) Reasons for non-approval of the employee's proposed part-time work hours must be provided in writing to the employee, including reasons relating to operational requirements.

#### **Part-time work**

##### ***Hours of work for part-time***

137) Payment and conditions for part-time employees will be calculated on a pro-rata basis, apart from expense related allowances, where a part-time employee will receive the same amount as a full-time employee.

##### ***Variation in hours for part-time***

138) A part-time employee may not vary their hours for a period of one week or less. Changes in hours for these periods should be accommodated using flextime or alternative arrangements as agreed with their manager. Details of the operation of the flextime provisions for part-time employees are provided at clauses 95 to 101.

Further information on part-time work provisions is available in the Hours of Work and Flexibility policy.

### **Working from home**

139) The Secretary may agree to a request by an employee to work from home on a regular, temporary or intermittent basis.

Further information is available in the Working from home policy.

### **Review of workloads**

140) Where an employee or group of employees believe their workload to be unmanageable, they may request that an independent workload review be undertaken by Human Resources.

Further information on workload review is available in the Workload Review policy.

### **Individual Flexibility Arrangements**

141) The Secretary and an employee covered by this enterprise agreement may agree to make an individual flexibility arrangement (IFA) to vary the effect of terms of the Agreement if:

- a) the IFA deals with one or more of the following matters:
  - i. when work is performed,
  - ii. overtime rates,
  - iii. penalty rates,
  - iv. allowances,
  - v. remuneration, and/or
  - vi. leave, and
- b) the IFA is genuinely agreed between the employee and the Secretary

142) The Secretary must ensure that the terms of the IFA:

- a) are about permitted matters under section 172 of the *FW Act*, and
- b) are not unlawful terms under section 194 of the *FW Act*, and
- c) result in the employee being better off overall than the employee would be if no arrangement was made.

143) The Secretary must ensure that the IFA:

- a) is in writing, and
- b) includes the name of the employer and employee, and
- c) is signed by the Secretary and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee, and
- d) includes details of:
  - i. the terms of IFA, and
  - ii. how the IFA will vary the effect of the terms, and
  - iii. how the employee will be better off overall in relation to the terms and conditions of their employment as a result of the IFA, and
- e) states the day on which the IFA commences and, where applicable, when the arrangement ceases.

144) The Secretary must give the employee a copy of the IFA within 14 days of the agreement being made.

- 145) The Secretary or employee may terminate the IFA:
- a) by giving no more than 28 days written notice to the other party to the IFA, or
  - b) if the Secretary and employee agree in writing at any time.



## **PART F – LEAVE**

### **General conditions**

146) All accrued leave entitlements will be expressed and deducted in hours and minutes, unless otherwise required by legislation.

### ***Use of personal/carers leave, compassionate/bereavement leave, community service leave and war service sick leave during other forms of leave***

147) An employee who meets the requirements for personal/carers leave, compassionate/bereavement leave, community service leave or war service sick leave while on annual leave or long service leave and who produce satisfactory evidence may apply for that leave. Annual leave and long service leave will be re-credited to the extent of the period of alternative leave granted.

### ***Public holidays during leave***

148) Payment for public holidays which fall during a period of leave will be paid in accordance with the NES and the *FW Act*.

### ***Donating blood***

149) The department recognises the importance of and supports employees in donating blood. Employees donating blood during working hours are not required to complete a leave application or to utilise flextime.

### ***Recall to duty***

150) Where an employee is recalled from approved leave or that approved leave is cancelled, the Secretary will approve reasonable reimbursement toward travel expenses which have been incurred, incidental expenses or family care costs not otherwise recoverable under insurance or from another source, provided that the employee took reasonable precautions, as determined by the Secretary, to avoid such expenses.

### ***School holiday family care subsidy***

151) Where an employee with school children has leave refused, has approved leave cancelled or is required to return from leave early because of departmental business requirements during school holidays, the Secretary will reimburse up to \$22 per child per day of the amount paid by the employee for each school child attending approved or registered care.

152) In the circumstances described above, where the employee can demonstrate that they would otherwise have taken personal responsibility for caring for other family members during school holidays, the Secretary may reimburse some, or all, of the amount paid by the employee for that family care.

153) The reimbursement will be net of any government subsidy available to the employee.

Further information on family care assistance and the school holiday family care subsidy is available in the Family Care Assistance policy.

### **Portability of leave**

154) Where an ongoing APS employee moves (including on promotion or for an agreed period) from another agency, the employee's unused accrued annual leave and personal/carers leave (however described) will be recognised, provided there is no break in continuity of service.

155) Where an employee is engaged as either an ongoing or non-ongoing APS employee immediately following a period of employment under the *Parliamentary Service Act 1999* or the ACT Government Service, the employee's unused accrued annual leave and personal/carers leave (however described) will be transferred.

### **Former non-ongoing employees**

156) 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 Secretary, at the employee's request, may 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 separation.

### **Annual leave**

#### **Entitlement**

157) Full-time employees are entitled to the equivalent of 4 weeks per year of service. Part-time employees accrue annual leave on a pro-rata basis for ordinary hours worked. Annual leave will accrue daily.

158) Employees working in a remote locality may have additional annual leave.

Further information is available in the Remote Locality policy.

### **Effect of leave without pay**

159) Where 'leave without pay not to count as service' has been granted, annual leave will be adjusted as follows:

- a) Where aggregated absences are for periods totalling 30 calendar days or less, the annual leave accrual is not affected.
- b) Where aggregated absences total more than 30 calendar days, the total period of leave without pay is deducted from the number of calendar days to count as service.
- c) Where leave without pay covers an entire calendar year, no annual leave credit accrues for that year.

### **Direction to take annual leave**

160) The Secretary may direct an employee who has more than two years annual leave credit to take annual leave. The employee must take annual leave if directed to do so. The employee may be directed to be on leave (and to be absent from the workplace) for 10 consecutive working days.

### **Deferring leave**

161) An employee may apply to the Secretary to defer taking the leave defined in clause 160 for up to one year from an agreed date.

- 162) An employee with an annual leave credit greater than two years on:
- a) commencing duty in the department, or
  - b) returning to work following a long term absence due to illness or injury, or
  - c) resuming duty following a graduated return to work,
- will have a period of 12 months to take sufficient leave to reduce the employee's credit down to the equivalent of two years or less.

***Annual leave at half-pay***

163) Employees may take annual leave at half-pay. The minimum absence of leave on half-pay is two working days, with further absences in multiples of two days. Where annual leave is taken at half-pay, credits will be deducted from the employee's annual leave balance on the basis that two days of annual leave at half-pay is equivalent to one day of annual leave at full-pay.

***Payment of annual leave on termination***

164) Any unused accrued annual leave will be subject to payment to the employee when the employee's APS employment is terminated. Payment will be calculated using the employee's final rate of salary, including allowances that would have been included in the employee's pay during a period of annual leave.

165) For employees in remote localities, district allowance will be included in the calculation only for the component of the annual leave credit that accrued in the remote locality.

***Voluntary cash out of annual leave***

166) The Secretary may approve an application by an employee to cash out a portion of the employee's accrued annual leave credits. To be eligible to cash out annual leave, employee's must:

- a) Have taken at least 15 days, or an equivalent pro rata amount for part-time employees, in the 12 months preceding the request to cash out leave; and
- b) Have a remaining balance of at least 4 weeks, or an equivalent pro rata amount for part-time employees, annual leave credit if the application is approved.

167) The employee will be paid the full amount that would have been paid had the employee taken the entitlement as leave.

168) Each cashing out of a particular amount of Annual Leave must be by a separate agreement in writing with the Secretary.

169) The maximum amount of annual leave that may be cashed out in a 12 month period is two weeks.

***Personal/carers leave***

170) On engagement, an ongoing employee will be credited with personal/carers leave of 18 days or the part-time equivalent. A further 18 days or the part-time equivalent will accrue on completion of each 12 month period of service thereafter, without limit.

***Accrual and credits - non-ongoing employees***

171) Full-time non-ongoing employees, other than irregular/intermittent employees, are entitled to 18 days personal/carers leave (135 hours) per year or the part-time equivalent, accruing daily.

***Deferral of accrual***

172) Where 'leave without pay not to count as service' has been granted in the accrual year, personal/carers leave accrual will be deferred as follows.

- a) Where aggregated full day absences total 30 calendar days or less, the accrual is not affected.
- b) Where aggregated full day absences total more than 30 calendar days, the accrual date will be deferred by one calendar month for each 30 calendar day period.

***Unpaid carers leave – irregular/intermittent employees***

173) Irregular/intermittent employees are entitled to two days unpaid personal leave for caring purposes for each permissible occasion, subject to notifying the employee's manager and providing satisfactory evidence.

***Advice to manager***

174) An employee, where practicable, must personally advise the employee's manager of the employee's absence or the employee's intention to be absent as soon as possible. Where the employee's manager is not contactable, advising another employee in the employee's work team will suffice.

***Use of personal/carers leave***

175) Personal/carers leave gives employees access to paid leave, subject to available credits, when they are absent for the following reasons:

- a) where the employee is not fit for work because of a personal illness or injury affecting the employee,
- b) to provide care or support to a member of the employee's family or the employee's household, who requires care or support because of a personal illness or personal injury, affecting the member,
- c) where a member of the employee's family or the employee's household is affected by an unexpected emergency,
- d) for compelling personal reasons of an unexpected, urgent and unpredictable nature, or
- e) to attend preventative health consultations for the employee and/or those in the employee's care.

Personal Leave must not be used for the purposes of d) and/or e) above if it would be detrimental to an employee in any respect, when compared to the National Employment Standards under the *FW Act*.

***Satisfactory evidence requirements***

176) For periods of personal/carers leave, employees should provide evidence to their manager that would satisfy a reasonable person that the leave was taken for a reason set out in clause 175.

177) An employee must provide satisfactory evidence to support applications for personal/carers leave for more than three consecutive days.

178) If an employee takes 10 days personal/carers leave without satisfactory evidence in a period of twelve months, then the employee must provide satisfactory evidence for any further applications for personal/carers leave of any duration for the balance of the period of 12 months, unless otherwise determined by the Secretary.

For the purpose of this clause, the 12 month period commences on the date determined to be the employee's anniversary for the purpose of accruing personal/carers leave.

179) Satisfactory evidence must be provided within 24 hours of the employee's return to work or another period that is reasonable in the circumstances.

***Conversion to half-pay***

180) The Secretary may approve the conversion of personal/carers leave to half-pay for an employee for a specified absence of not less than two days. Where personal/carers leave is taken at half-pay, credits will be deducted from the employee's personal/carers leave balance on the basis that two days of personal/carers leave at half-pay is equivalent to one day of personal/carers leave at full-pay. Converting personal/carers leave to half-pay does not increase the 10 days of personal/carers leave without satisfactory evidence requirement in clauses 176-179.

***Unpaid personal/carers leave***

181) Where paid personal/carers leave credits are exhausted, an employee may apply for personal/carers leave without pay. Unpaid personal leave to a total of 26 weeks in a 12 month period will count as service for all purposes. Any further periods of unpaid personal/carers leave will not count as service, unless otherwise required by legislation.

***Reappointment after invalidity retirement***

182) If an employee's APS employment is terminated on the grounds of invalidity, and the employee is subsequently re-engaged as a result of action taken under the relevant superannuation legislation, the employee is entitled to be credited with personal/carers leave equal to the balance of the employee's personal/carers leave at the time of termination.

183) An employee is unable to access personal/carers leave while on paid parental leave.

***Payment on termination***

184) Unused personal/carers leave will not be paid out on termination of employment.

Further information on personal/carers leave is available in the Personal/Carers Leave policy.

***Miscellaneous leave***

185) Miscellaneous leave may be granted by the Secretary, having regard to the operational needs of the department, including for purposes that the Secretary considers to be in the interests of the department.

- 186) Leave may be granted:
- a) for the period requested or for another period,
  - b) with or without pay, and
  - c) subject to conditions.

187) Where exceptional circumstances affect an employee, the Secretary will consider granting paid leave. These circumstances may include, but are not limited to, emergency situations such as bushfires, floods, cyclones and earthquakes.

Further information is available in the Miscellaneous Leave Policy.

#### ***Not to count as service***

- 188) Miscellaneous leave without pay will not count as service for any purpose, except as required by legislation, with the following exceptions:
- a) leave for personal and development training in the interests of the department,
  - b) leave for non-APS employment in the interests of the department.

For a) and b) to count as service, an employee must return to work in the APS at the completion of the miscellaneous leave without pay period.

Service for the purposes of Long Service Leave is provided for by the *Long Service Leave (Commonwealth Employees) Act 1976*.

- 189) Leave accrued while on Miscellaneous leave without pay to count as service will be offset by any relevant leave entitlements received in non-APS employment.

#### **Leave for Aboriginal and Torres Strait Islander employees**

- 190) The department recognises the obligations placed on Aboriginal and Torres Strait Islander employees to participate in ceremonial activities and other cultural obligations. To allow employees to meet obligations and participate in activities, the following leave provisions are provided:
- a) two days leave with pay each year to participate in cultural or ceremonial events, including NAIDOC Week activities, and
  - b) three months unpaid leave each year to fulfil cultural obligations. This leave will not count as service for any purpose.

#### **Unauthorised absences**

- 191) Periods of unauthorised absence do not count as service for any purpose. Where an employee is absent from duty without approval, all pay and other benefits provided under the Agreement (e.g. flextime) will cease to be available until the employee resumes duty or is granted leave. Where flextime no longer applies, the employee will revert to the Standard Day.

#### **War service sick leave**

- 192) Eligible employees will generally be granted war service sick leave while unfit for duty because of a war-caused condition. A war-caused condition means an injury or disease of an employee that has been accepted by the Department of Veterans' Affairs to be war-caused or Defence-caused within the meaning of relevant legislation. Eligible employees will

accrue a credit of nine weeks on commencement in the APS and an annual credit of three weeks for each year of APS service. Unused credits will accumulate to a maximum of nine weeks.

### **Compassionate leave**

193) Employees, other than irregular/intermittent employees, will be granted two days paid compassionate leave on each occasion that a member of the employee's family, or the employee's household:

- a) contracts or develops a personal illness that poses a serious threat to life, or
- b) sustains a personal injury that poses a serious threat to life, or
- c) dies.

194) The employee may take the period of leave as a single period of two days or any separate period on which the employee's manager and employee agree.

195) The employee's manager may require the employee to provide evidence in support of the request for leave.

196) An irregular / intermittent employee is entitled to unpaid compassionate leave of up to two days per occurrence and is not eligible for paid bereavement leave under clause 197.

Further information on compassionate leave is available in the Compassionate and Bereavement Leave policy.

### **Bereavement leave**

197) The employee's manager will grant three days leave with pay to an employee other than an irregular/intermittent employee on the occasion of the death of a member of the employee's family or household, close friend, partner or a person who was clearly dependent on the employee for care, support and attention. Any further periods of leave for this purpose may be granted by the Secretary as miscellaneous leave with pay on a case by case basis.

Further information on bereavement leave is available in the Compassionate and Bereavement Leave policy.

### **Purchased leave**

198) To assist employees in balancing work and life responsibilities, the department provides a scheme where additional leave may be purchased. Purchasing additional leave is not intended to be used to establish a different work pattern such as a regular reduction in weekly hours.

199) Where a manager agrees that an employee may participate in the purchased leave scheme, the employee may purchase from one to eight weeks purchased leave per year.

### ***To count as service***

200) Purchased leave will count as service for all purposes. The employee's salary for superannuation purposes continues to be their salary as if they had not purchased leave,

noting that no superannuation will be payable while the employee is taking purchased leave.

Further information is available in the Annual Leave, Long Service Leave, Purchased Leave and Extended Purchased Leave policy.

#### **Extended purchased leave**

201) When an employee has accrued a period of three years of continuous employment with the department, they may apply for access to extended purchased leave. A period of up to twelve months absence on extended purchased leave will be available following a further two years of continuous employment with the department (during which time the employee will accrue the leave).

#### ***Not to count as service***

202) Extended purchased leave will not count as service for any purpose.

Further information is available in the Annual Leave, Long Service Leave, Purchased Leave and Extended Purchased Leave policy.

#### **Leave for ADF Reserve and Continuous Full Time Service or Cadet Force obligations**

203) 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.

204) 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.

205) 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.

206) 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.

207) 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.

#### **Community service leave**

208) An eligible community service activity includes:

- a) jury service (including attendance for the purpose of jury selection) that is required by or under a law of the Commonwealth or a State or Territory, or
- b) carrying out a volunteer emergency management activity (within the meaning of section 109 (2) of the *FW Act*).



209) In relation to jury service, the Secretary will approve paid community service volunteer leave to enable an employee to attend court appearances as a juror. In this event, the employee will continue to receive their normal salary subject to any payments of a salary nature made to the employee by the court for jury service being signed over to the Department.

210) An employee who engages in an eligible community service activity is entitled to paid leave if:

- a) the period consists of one or more of the following:
  - i. time when the employee engages in the activity,
  - ii. reasonable travelling time associated with the activity,
  - iii. reasonable rest time immediately following the activity,
- b) where the activity is emergency management, the absence is due to:
  - i. regular training,
  - ii. all emergency service responses,
  - iii. reasonable rest time immediately following the activity, and
  - iv. attendance at ceremonial duties.
- c) unless the activity is jury service – the employee’s absence is reasonable in all the circumstances.

211) The Secretary may provide leave to an employee who is participating in a major international sporting event.

Further information on community service leave is available in the Community Service Leave policy.

### **Long service leave**

212) Long service leave (LSL) will accrue and be available to eligible employees in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976*. Absences must be taken for a minimum of seven consecutive calendar days at full-pay or 14 consecutive calendar days at half-pay. The granting of such leave is subject to operational requirements.

213) LSL cannot be broken with any other leave, including absences on flex leave, Christmas close down or public holidays except as provided for by the *Maternity Leave (Commonwealth Employees) Act 1973* and the personal/carers leave provisions of the Agreement.

### **Parental leave**

#### ***Maternity leave***

214) Eligible employees covered by this Agreement will be entitled to maternity leave under the terms of the *Maternity Leave (Commonwealth Employees) Act 1973*, including up to 12 weeks paid maternity leave for eligible employees.

215) At the employee’s request, the Secretary will approve spreading the payment for the period of absence over a maximum period of 24 continuous weeks at a rate no less than half normal pay. The additional period of paid leave beyond the first 12 weeks of maternity leave

as required by the *Maternity Leave (Commonwealth Employees) Act 1973* will not count as service for any purpose.

***Additional leave***

216) An eligible employee will also receive an additional two weeks paid leave to be taken immediately following the period of paid maternity leave provided for under the *Maternity Leave (Commonwealth Employees) Act 1973*. The Secretary will approve spreading the additional period over four weeks at a rate no less than half normal pay, however, leave that extends beyond two weeks does not count as service for any purpose.

***Additional unpaid parental leave***

217) An employee who has completed at least 12 months of continuous service with the APS immediately before making an application for twelve months unpaid parental leave (the first period) to care for a new born or newly adopted or foster child may request, at the completion of the first period, an additional period of unpaid parental leave of up to 12 months in accordance with the *FW Act*.

218) Taking unpaid parental leave does not prevent an eligible employee from accessing other types of paid leave (other than paid personal/carers leave, compassionate, bereavement leave, and community service leave) in accordance with the *FW Act*. If the employee does so, the taking of the other paid leave does not break the continuity of the period of unpaid parental leave.

219) Unpaid parental leave does not count as service for any purpose.

Further information on parental leave is available in the Parental Leave policy.

***Special maternity leave***

220) Where an employee who has at least 12 months continuous service with the APS experiences a pregnancy-related illness, or if the pregnancy ends within 28 weeks of the expected birth, the employee will be granted paid personal leave for any period of leave supported by a medical certificate. If personal leave credits are exhausted, the remainder of leave will be unpaid in accordance with section 80 of the *FW Act*. Unpaid special maternity leave will count as service for all purposes.

221) Special maternity leave will operate in conjunction with entitlements under the *Maternity Leave (Commonwealth Employees) Act 1973*.

***Parental (partner) leave***

222) Within 12 months of the birth, fostering or adoption of a child, an employee who is the child's non-primary care giver and stands in a domestic or household relationship with the child is entitled to be granted four weeks paid parental leave, and unpaid parental leave up to a total absence of 52 weeks.

223) The Secretary may approve leave for a non-primary care giver not residing with the child.

224) The Secretary may approve spreading the period of paid leave over a maximum period of eight continuous weeks at a rate no less than half normal pay. Leave that extends beyond four weeks does not count as service for any purpose.

***Return to work after parental leave***

225) On ending parental, maternity, adoption or foster leave, an employee is entitled to recommence the employee's previous duties in accordance with the relevant provisions of the *FW Act*.

***Adoption or foster leave***

226) Within 12 months of the adoption or fostering of a child by an employee with 12 months or more continuous service in the APS, who will be the primary care giver, is entitled to up to 14 weeks at full-pay for the purpose of adopting or a long-term and full-time foster care of a child up to the age of 16, and unpaid leave up to a total period of 52 weeks. The paid leave may commence up to two weeks prior to assuming responsibility for the child.

227) The adopted or foster child must not be a child or step-child of the employee or the employee's partner unless that child had not been in the custody and care of the employee or the employee's partner for a significant period.

228) An employee is not entitled to both adoption and fostering leave for the same child.

229) The Secretary may approve spreading the period of paid leave over a maximum period of 28 continuous weeks at a rate no less than half normal pay.

230) Where an employee elects to take paid adoption or fostering leave at half-pay, a maximum of 14 weeks counts as service for all purposes.

231) The provisions of clauses 222 to 230 also apply to a child who is subject to a permanent care order made by an Australian court or under Australian legislation.

232) For the purposes of this clause, 'continuous service' has the same meaning as eligible service recognised under the *Maternity Leave (Commonwealth Employees) Act 1973*.

***Pre-adoption leave***

233) Employees in the process of adopting or fostering of a child may take up to two days paid leave to attend any interviews or examinations required to obtain adoption or foster care approval.

***Family care rooms***

234) The Secretary will provide ad hoc access to family care facilities to provide a resource for employees to carry out aspects of their normal duties while caring for dependants, as an alternative to taking leave.

***Facilities for breastfeeding***

235) The Secretary will provide appropriate facilities for mothers to undertake breastfeeding, lactation and associated activities in the workplace.

Further information is available in the Lactation Breaks, Family Care Rooms and Breastfeeding Facilities policy.

### **Family and Domestic Violence**

236) The department is committed to supporting employees experiencing family and domestic violence. Employees are encouraged to discuss which avenues of support are available to them with their manager or Human Resources.

237) Leave is available to employees experiencing family and domestic violence, or to provide support to a member of their family who is experiencing family and domestic violence. For the purposes of clauses 236 to 241, family and domestic violence has the same meaning as 'family violence' in the *Family Law Act 1975*. Employees can apply for paid or unpaid miscellaneous leave or utilise personal/carers leave to cover absences for the purpose of, but not limited to:

- a) illness or injury resulting from family and domestic violence;
- b) providing care or support to a family or household member who is ill or injured as a result of family and domestic violence;
- c) providing care or support to a family or household member who is affected by an unexpected emergency as a result of family and domestic violence;
- d) attending appropriate medical and/or counselling appointments relating to family and domestic violence;
- e) obtaining legal advice relating to family and domestic violence;
- f) attending court hearings relating to family and domestic violence;
- g) attending police appointments relating to family and domestic violence;
- h) attending to urgent issues arising through property damage that is a consequence of family and domestic violence;
- i) accessing alternative accommodation as a consequence of family and domestic violence;
- j) attending to personal affairs such as arranging new bank accounts as a consequence of family and domestic violence;
- k) arranging alternative childcare or schooling for children as a consequence of family and domestic violence.

238) Non-ongoing employees with irregular or intermittent duties are entitled to access leave without pay for family and domestic violence purposes.

239) These provisions apply in addition to any entitlements available under the NES.

240) Where documentary evidence is required for absences related to family and domestic violence, the supervisor and employee will discuss and agree on options. This may include statements from the police, courts or a legal representative, or statutory declarations.

241) Where an employee experiencing family and domestic violence does not feel comfortable discussing their absence with their manager, they may contact Human Resources who can authorise the absence. A person acting on behalf of an employee may

also contact the employee's manager or Human Resources to advise them of an absence under this clause.

## **PART G – WORKFORCE PLANNING AND MANAGEMENT**

### **Reassignment of duties**

#### ***Salary on reduction***

242) Where an employee is temporarily reassigned duties at a lower work classification level, the employee will be paid at a level nominated by the Secretary, having regard to the experience, qualifications and skills of the employee. Where applicable, such a determination will specify the period for which the adjusted level will apply. This clause does not apply to decisions made by the Secretary in relation to breaches of the Code of Conduct or underperformance.

#### ***Higher duties allowance (HDA) recommendation***

243) To be recommended for payment of HDA, an employee must have at least achieved a satisfactory performance standard in the employee's substantive position or above, under the most recent PDS assessment (i.e. the mid or end-of-cycle review), or where the manager otherwise certifies that the employee should fill the position, including for developmental purposes.

244) Research Scientists and Legal Officers must have performed at greater than a satisfactory standard.

#### ***Period of HDA attracting payment***

245) Where an employee performs HDA for a continuous period of more than five working days, HDA is payable from the first day of the period of acting.

246) For the purpose of clause 245, 'continuous' means periods of HDA unbroken by working days at substantive level; or a broken pattern of higher duties consisting of more than 5 working days as approved by the Secretary.

#### ***Level of payment***

247) Where an employee is to be paid HDA, the employee will be paid at the increment point determined by the Secretary, recognising that there is an opportunity for the employee to be paid above the minimum increment point within the salary range of the higher position. The increment point attained through salary advancement in previous periods of HDA at that classification level will be at least maintained.

#### ***Payment for partial performance***

248) Where the full duties of the position are not being undertaken, the employee and the Secretary may agree to payment at a point in a classification below that of the higher duties position.

#### ***Public holidays or leave***

249) An employee on HDA who is granted paid leave or who observes a public holiday will continue to receive HDA payment, having regard to the provisions of this section, during the employee's absence. HDA will not be paid beyond the date on which the employee would have ceased the period of acting had the employee not been absent. Where the period of leave is paid at less than full-pay, payment of HDA will be made on a pro-rata basis.

Further information on temporary reassignment of duties and HDA is available in the Temporary Reassignment of Duties (Higher Duties and Temporary Transfer) policy.

***Right of review***

250) The sole and exhaustive rights and remedies of an employee in relation to termination of employment are those that the employee has under:

- l) Parts 3-1 and 3-2 of the *FW Act*,
- m) other Commonwealth laws, and
- n) common law.

251) Termination of, or a decision to terminate, employment cannot be reviewed under the review of actions framework or dispute resolution procedure outlined in this Agreement.

252) Nothing in the Agreement prevents the Secretary from terminating the employment of an employee for serious misconduct, without further notice or payment in lieu, in accordance with the *FW Act* subject to compliance with the procedures established by the Secretary for determining whether an employee has breached the Code of Conduct under section 13 of the *PS Act*.

***Separation from the Australian Public Service***

253) Where an employee resigns on a public holiday, they will be deemed to have resigned on the last working day prior to the public holiday.

***Death of an employee***

254) Where an employee dies whilst in employment, or the Secretary has directed that an employee is presumed to have died on a particular date whilst in employment, the Secretary will, subject to legal requirements, authorise the payment of the amount to which the former employee would have been entitled had they ceased employment by resignation or retirement. Long service leave credits will be paid out in accordance with the *Long Service Leave Act (Commonwealth Employees) 1976*.

## **PART H - REDEPLOYMENT, REDUCTION & RETRENCHMENT (RRR)**

### **Excess employees**

#### **Definition**

- 255) An employee is 'excess' when:
- a) they are included in a group of employees in the department, comprising a greater number than is necessary for the efficient and economical working of the department,
  - b) due to technological or other changes in the work methods of the department, or structural or other changes in the nature, extent or organisation of the functions of the department, the services of the employee cannot be effectively used, or
  - c) the duties usually performed by the employee are to be performed at a different locality and the employee is not willing to perform those duties at the new locality, and the Secretary has determined that the provisions of this clause may apply to that employee.

#### **Eligible employee**

- 256) The provisions of this Part do not apply to non-ongoing employees, employees who are on probation or employees who are still within the minimum employment period as defined in the *FW Act*.

#### **Secretary's powers**

- 257) The powers of the Secretary with regard to excess employees allow the Secretary to:
- a) reassign duties to an employee within the department and determine the place at which the duties are performed,
  - b) consider options for redeployment of the employee to another APS agency,
  - c) reduce the classification level of an employee on the grounds that the employee is excess to the requirements of the department at the higher classification level,
  - d) terminate the employment of an ongoing employee on the grounds that the employee is excess to the requirements of the department.

#### **Timely advice**

- 258) When the Secretary is aware that an employee is likely to become excess, the Secretary will advise the employee at the earliest practicable time.
- 259) The Secretary will hold discussions with the potentially excess employee to consider:
- a) redeployment opportunities for the employee concerned, and
  - b) whether voluntary retrenchment might be appropriate.

#### **Referral to employee - initial consultation**

- 260) Where an employee is identified as potentially excess, the Secretary will hold an initial consultation with the employee and/or the employee's representative.
- 261) During this initial consultation period of one month, unless the employee agrees to a lesser period, the Secretary will not:
- a) invite the employee to accept an offer of voluntary retrenchment, or
  - b) advise that employee in writing that they are excess.



262) The Secretary may, prior to the conclusion of these discussions, invite employees who are not potentially excess to express an interest in voluntary retrenchment, where those retrenchments would permit the redeployment of employees who are potentially excess. The Secretary will not advise an employee they are excess until the discussions referred to in clause 259 have occurred.

### **Voluntary retrenchment**

263) Where the Secretary invites an excess employee to elect to accept voluntary retrenchment, the employee will have one month to accept or reject the invitation. The Secretary will not give notice of termination under section 29 of the *PS Act* on the grounds that the employee is excess to requirements, before the end of that period or until such election is received (where the election is received before the end of that period).

### **Information to employee**

264) At the time of inviting the employee to make an election, the Secretary will provide the employee the following information:

- a) the amounts of severance pay, payment in lieu of notice, and likely payment in lieu of leave credits,
- b) the amount of accumulated superannuation contributions,
- c) the options open to the employee concerning superannuation, and
- d) the taxation rules applying to the various payments.

### **Financial assistance**

265) Employees considering voluntary retrenchment also have access to financial assistance up to a total maximum of \$477 (inclusive of GST) for financial counselling, and a further \$477 (inclusive of GST) for career counselling where such career counselling is not otherwise provided through the department's external Employee Assistance Program.

### **Period of notice**

266) Where an employee accepts an offer of voluntary retrenchment and the Secretary approves the employee's termination under section 29 of the *PS Act*, the Secretary will give the employee a period of notice of four weeks, or five weeks for an employee over 45 years of age with at least five years of continuous service.

### **Payment in lieu of notice**

267) Where an employee retires or is retrenched at the beginning of, or within, the notice period, they will receive payment in lieu of notice for the unexpired portion of the notice period.

### **Severance benefit**

268) Where an employee accepts an offer of voluntary retrenchment and the Secretary terminates the employee's employment under section 29 of the *PS Act*, the employee is entitled to be paid a severance benefit of a sum equal to two weeks' salary for each completed year of 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 *FW Act* and NES.

269) The minimum sum payable will be four weeks' salary and the maximum will be 48 weeks' salary.

270) The redundancy benefit will be calculated on a pro-rata basis for any period where an employee has worked part-time hours during the employee's 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.

***Earlier periods of service***

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

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

***Service for severance benefits purposes***

272) Having regard to clause 271, and subject to clauses 268 to 270 and clause 275, service for severance benefit purposes means:

- a) service in the department,
- 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 or a 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 under the then section 49 (as repealed in 1966) of the repealed *Public Service Act 1922*, if the service has not previously been recognised for redundancy pay purposes, and
- f) service in another organisation where an employee was transferred from the APS to that organisation with a transfer of function or an employee engaged by that organisation on work within a function is appointed as a result of the transfer of that function to the APS and such service is recognised for long service leave purposes.

***Service not to count***

273) Having regard to clause 272, any period of service which ceased:

- a) through termination on the following grounds, or on a ground equivalent to any of the following grounds:
  - i. the employee lacks, or has lost, an essential qualification for performing the employee's duties, or
  - ii. non-performance, or unsatisfactory performance, of duties, or
  - iii. inability to perform duties because of physical or mental incapacity, or
  - iv. failure to satisfactorily complete an entry level training course, or
  - v. failure to meet a condition imposed under subsection 22(6) of the *PS Act* or

- vi. a breach of the Code of Conduct, or
  - b) on a ground equivalent to a ground listed in subparagraph (a) above under the repealed *Public Service Act 1922*, or
  - c) through voluntary retrenchment 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 retirement benefit,
- will not count as service for severance benefit purposes.

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

***Part-time service***

275) The severance benefit will be calculated on a pro-rata basis for any period where an employee has worked part-time hours during the employee's period of service and the employee has less than 24 years full-time service.

***Severance benefit - rate of payment***

- 276) For the purpose of calculating any payment under this clause, salary will include:
- a) the employee's salary, or
  - b) the salary of the higher position, where the employee has performed duties at the higher level for a continuous period of at least 12 months immediately preceding the date on which the employee is given notice of retrenchment, and
  - c) other allowances in the nature of salary which are paid during periods of annual leave and on a regular basis, excluding allowances which are a reimbursement for expenses incurred, or a payment for disabilities associated with the performance of duty.

***Involuntary retrenchment***

***Retention periods***

277) Where an excess employee has not accepted an offer of voluntary retrenchment, unless they agree otherwise, the excess employee will not be involuntarily terminated by the Secretary under section 29 of the *PS Act* until the following retention periods have elapsed:

- a) 56 weeks where an employee has 20 or more years of service or is over 45 years of age, or
- b) 30 weeks for other employees.

278) If an employee is entitled to a redundancy payment under the NES, the retention period at clauses 277 a) and b) above, is reduced by a period equivalent to the employee's entitlement under the NES.

***Retention period commencement***

- 279) The retention period will commence on the earlier of the following:
- a) the day the employee is advised in writing by the Secretary that the employee is an excess employee or
  - b) one month after the day on which the Secretary invites the employee to elect to be voluntarily retrenched.

***Redeployment attempts***

280) During a retention period the Secretary will continue to provide appropriate training and take all reasonable steps to find alternative employment for the excess employee, including consideration of options such as redeployment and reduction of classification.

***Extension of retention period due to illness***

281) The retention period as provided for in this Agreement will be extended by periods of leave for personal illness or injury, where supported by satisfactory medical evidence.

***Travel expenses incurred***

282) The excess employee may request assistance in meeting reasonable travel and incidental expenses incurred in seeking alternative employment where these expenses are not met by a prospective employer.

***Retirement during retention period***

283) Where the Secretary believes there is insufficient productive work available for an excess employee during the retention period, the Secretary may terminate the employee's employment under section 29 of the *PS Act*, and pay a lump sum comprising:

- a) the balance of the retention period (as shortened for the NES) under clauses 277 and 278 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.

***Must receive offer of voluntary retrenchment***

284) An excess employee will not be retrenched involuntarily where the employee:

- a) has not been invited to elect to be voluntarily retrenched or
- b) has elected to be voluntarily retrenched but the Secretary has refused to approve it.

***Notice period***

285) An excess employee will be given four weeks' notice (or five weeks' notice for an employee over 45 years of age with at least five years of continuous service) where it is proposed that the employee will be involuntarily terminated under section 29 of the *PS Act*.

***Reduction in classification***

286) During a retention period, the Secretary:

- a) will continue to take reasonable steps to find alternative employment for the excess employee and/or
- b) may, with four weeks' notice, reduce the excess employee's classification as a means of securing alternative employment for the excess employee.

***Income maintenance as a result of reduction in classification***

287) Where an excess employee is reduced in classification before the end of the appropriate retention period, the employee will continue to be paid at the employee's previous level for the balance of the retention period with the exception of reductions in line with section 15 of the *PS Act*.

## **PART I – PEOPLE MANAGEMENT**

### **Performance management**

288) All employees are to participate in the department's PDS and have a formal annual PDS agreement in place. The agreement will outline specific key performance requirements, related performance indicators and required workplace behaviours.

289) The PDS provides the basis for individual salary advancement through salary ranges for the employee's current classification.

290) The principles of the PDS include:

- a) employees and managers have a joint responsibility to actively participate in, and contribute to, the PDS development and assessment process,
- b) all stages of the PDS process should be discussed and agreed by the employee and their manager,
- c) the PDS will operate in accordance with the department's workplace diversity programmes, and
- d) there should be no surprises for employees in regard to a manager's performance expectations or appraisal of their performance, with feedback regarding an employee's performance part of ongoing activities, including the opportunity for informal upwards feedback.

### ***Four week improvement period***

291) An employee will be provided a minimum of four weeks, prior to the end of cycle assessment, to improve the employee's performance where it is below the performance standards.

### ***Formal assessment points***

292) The PDS has two formal assessment points:

- a) one at the mid-cycle in February, and
- b) one at the end of the cycle in July.

Further information on the PDS is available in the Performance Development Scheme policy.

### **Managing underperformance**

#### ***Performance standards***

293) Employees are expected, as a minimum, to maintain a satisfactory performance standard under the PDS.

#### ***Principles***

294) In addressing underperformance the policy is designed to:

- a) be timely and effective,
- b) restore performance of the employee to the required standard,
- c) have regard to the individual circumstances of the employee, including any health issues,
- d) have regard to natural justice and procedural fairness,
- e) include learning and development as the focus for improving performance,

- f) have active performance management as an integral part of the workplace culture,
- g) require performance measures and standards to be clearly defined.

***Application of the Managing Underperformance policy***

- 295) The policy does not apply to:
- a) an employee during a period of probation, or
  - b) a non-ongoing employee.

Further information is available in the Managing Underperformance policy.

**Continuing professional development**

***Professional appointments with mandatory qualifications***

- 296) The department will provide to an employee who the department requires to hold mandatory qualifications:
- a) access to relevant training, or
  - b) on application, meet the reasonable costs of continuing professional development.

297) Where an employee has received a Professional Development Allowance (PDA), that PDA must be used entirely before an application under clause 296 b) is made.

***Commonwealth Nursing Officers (CNOs)***

298) To assist with maintaining professional registration standards and undertaking their professional roles, CNOs will receive a PDA of \$2226 per annum paid fortnightly. Treatment of this allowance for particular purposes is at Attachment B.

***Medical Officers – professional development***

- 299) Medical Officers are eligible to receive a PDA of \$5035 each financial year on a reimbursement basis, to assist in attaining and maintaining work-relevant agreed skills and knowledge.
- 300) Part-time Medical Officers will have access to the full amount of PDA. The allowance will be available pro-rata for Medical Officers commencing service part way through a financial year.
- 301) The allowance rate may be increased by the Secretary in circumstances where it is agreed that the standard amount is insufficient to meet relevant and approved professional development.
- 302) As part of the PDS process, Medical Officers will identify their learning and development needs as agreed with their manager. Where Medical Officers attend training or courses identified on their Individual Development Plan, they will be considered to be on duty and no leave application is required.
- 303) In addition, attendance at conferences and seminars may be granted by the Secretary where it is directly relevant to the Medical Officer's current role, and having regard to any necessary medical registration or medical college requirements and

operational requirements. In these circumstances, the absence will be treated the same as for attendance at approved training or courses.

***Right to medical practice through outside employment***

304) Where approved, Medical Officers may engage in outside medical practice to a maximum of half-a-day per week (averaged over a 12 month period) during normal working hours, with no adjustment to salary.

305) Medical Officers may access up to an additional four half-days per month during normal working hours for outside medical practice subject to operational requirements and the agreement of the manager and the Chief Medical Officer or Principal Medical Advisor of the Therapeutic Goods Authority (TGA) (as appropriate). This additional time will be taken as leave without pay or 'made up' at another time.

306) Access to outside medical practice will be pro-rata for part-time Medical Officers.

Further information about provisions for Medical Officers is available in the Medical Officer Policy.

***Studybank***

307) The Secretary may provide leave to an employee to undertake formal courses of study at tertiary and higher education institutions and other vocational education courses, where the study is agreed as part of an employee's PDS.

***Mature-aged employees financial assistance***

308) To assist with retirement planning, employees aged 54 years and over who are approaching or genuinely considering retirement, and who have not previously received this assistance from the department, may access financial assistance in the form of a one off reimbursement payment up to a total maximum of \$530 (inclusive of GST) to obtain financial advice from a registered financial advisor.

Further information regarding support for mature age employees is available in the Mature Age Employees Financial Assistance policy.

***Employee Assistance Program (EAP)***

309) The Secretary will provide employees and their families with access to confidential, professional counselling to assist with work or personal issues through provision of an external EAP.

## **PART J – CONSULTATION AND DISPUTE RESOLUTION**

### **Employee/workplace participation**

#### ***Employee representation***

310) Employees may be assisted, accompanied and represented by another person, including an employee representative, in processes relating to unsatisfactory performance, excess status, and in the dispute resolution procedures outlined below. The role of employee representatives, including union delegates and other non-union employee representatives, is to be respected and facilitated.

311) Employees will inform their immediate manager and/or relevant level of management prior to any discussions where they choose to be represented.

#### ***National Staff Participation Forum (NSPF)***

312) The NSPF will operate as the peak employee consultation body within the department, and includes representatives of the department's employee diversity networks. The terms of reference of the NSPF will be agreed in consultation with employees.

313) The department will consult with, and take into account the views of, the NSPF on issues relating to the implementation and operation of this Agreement, that is, issues affecting the employment conditions of employees. The department will allow a reasonable period for the NSPF to consider any such issues.

314) The department will consult with employees, through the NSPF, about proposed changes to workplace policies before a final decision is made.

315) The Secretary will provide relevant information to the employees or their representatives in a timely manner.

#### ***Consultation on major change***

316) This term applies if the Secretary:

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

317) For a major change referred to in clause 316:

- a) the Secretary must notify the relevant employees of the decision to introduce the major change, and
- b) clauses 318 to 324 apply.

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

319) If:

- a) relevant employees appoint a representative for the purposes of consultation, and



b) the employees advise the Secretary of the identity of the representative, the Secretary must recognise the representative.

320) As soon as practicable after making its decision, the Secretary 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 Secretary 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.

321) However, the Secretary is not required to disclose confidential or commercially-sensitive information to the relevant employees.

322) The Secretary must give prompt and genuine consideration to matters raised about the major change by the relevant employees.

323) If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the department, the requirements set out in clause 317 a) and clauses 318 and 320 are taken not to apply.

324) 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 department'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***

325) For a change referred to in clause 316 a):

- a) the Secretary must notify the relevant employees of the decision to introduce major change, and
- b) clauses 326 to 330 apply.

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

- 327) If:
- a) relevant employees appoint a representative for the purposes of consultation, and
  - b) the employees advise the Secretary of the identity of the representative,

the Secretary must recognise the representative.

- 328) As soon as practicable after proposing to introduce the change, the Secretary 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 Secretary reasonably believes will be the effects of the change on the employees, and
    - iii. information about any other matters that the Secretary 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).

329) However, the Secretary is not required to disclose confidential or commercially-sensitive information to the relevant employees.

330) The Secretary must give prompt and genuine consideration to matters raised about the change by the relevant employees.

331) In this term relevant employees means the employees who may be affected by a change referred to in clause 316.

### **Dispute Resolution Procedures**

- 332) If a dispute relates to:
- a) a matter arising under the agreement ,or
  - b) the NES,

this term sets out procedures to settle the dispute.

333) An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.

334) 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.

335) If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to Fair Work Commission.

336) The Fair Work Commission may deal with the dispute in two 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.

If Fair Work Commission arbitrates the dispute, it may also use the powers that are available to it under the *FW 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 *FW Act*. Therefore, an appeal may be made against the decision.

- 337) While the parties are trying to resolve the dispute using the procedures in this term:
- a) an employee must continue to perform their work as they would normally unless they have a reasonable concern about an imminent risk to their 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 work health and safety legislation would not permit the work to be performed, or
    - iii. the work is not appropriate for the employee to perform, or
    - iv. there are other reasonable grounds for the employee to refuse to comply with the direction.

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

## ATTACHMENT A – SALARY TABLES

### APS levels salary structure

Classification	Before lodgement	Commencement of Agreement	12 months after commencement	24 months after commencement
<b>Executive Level 2 (EL2)</b>	\$141,965	\$144,804	\$147,700	\$150,654
	\$135,150	\$137,853	\$140,610	\$143,422
	\$130,783	\$133,399	\$136,067	\$138,788
	\$119,908	\$122,306	\$124,752	\$127,247
<b>Executive Level 1 (EL1)</b>	\$114,624	\$116,916	\$119,255	\$121,640
	\$110,088	\$112,290	\$114,536	\$116,826
	\$104,876	\$106,974	\$109,113	\$111,295
	\$100,502	\$102,512	\$104,562	\$106,654
<b>APS6</b>	\$92,265	\$94,110	\$95,993	\$97,912
	\$90,244	\$92,049	\$93,890	\$95,768
	\$85,751	\$87,466	\$89,215	\$91,000
	\$81,784	\$83,420	\$85,088	\$86,790
<b>APS5</b>	\$79,008	\$80,588	\$82,200	\$83,844
	\$75,044	\$76,545	\$78,076	\$79,637
	\$73,057	\$74,518	\$76,009	\$77,529
<b>APS4</b>	\$72,019	\$73,459	\$74,929	\$76,427
	\$70,035	\$71,436	\$72,864	\$74,322
	\$68,160	\$69,523	\$70,914	\$72,332
<b>APS3</b>	\$66,683	\$68,017	\$69,377	\$70,765
	\$63,659	\$64,932	\$66,231	\$67,555
	\$61,864	\$63,101	\$64,363	\$65,651
	\$60,161	\$61,364	\$62,592	\$63,843
<b>APS2</b>	\$56,810	\$57,946	\$59,105	\$60,287
	\$55,231	\$56,336	\$57,462	\$58,612
	\$53,621	\$54,693	\$55,787	\$56,903
	\$52,059	\$53,100	\$54,162	\$55,245
<b>APS1 (adult)</b>	\$50,025	\$51,026	\$52,046	\$53,087
	\$47,698	\$48,652	\$49,625	\$50,617
	\$46,118	\$47,040	\$47,981	\$48,941
	\$44,543	\$45,434	\$46,343	\$47,269
<b>(at 20 years)</b>	\$40,535	\$41,346	\$42,173	\$43,016
<b>(at 19 years)</b>	\$36,081	\$36,803	\$37,539	\$38,289
<b>(at 18 years)</b>	\$31,180	\$31,804	\$32,440	\$33,088
<b>(under 18 years)</b>	\$26,727	\$27,262	\$27,807	\$28,363

## Health Entry Level Broadband

Local Title	Classification	Before lodgement	Commencement of Agreement	12 months after commencement	24 months after commencement
Health Entry Level (T, I, A, or G)	APS4	\$72,019	\$73,459	\$74,929	\$76,427
		\$70,035	\$71,436	\$72,864	\$74,322
		\$68,160	\$69,523	\$70,914	\$72,332
Soft barrier					
Health Entry Level (T, I, A, or G)	APS3	\$66,683	\$68,017	\$69,377	\$70,765
		\$63,659	\$64,932	\$66,231	\$67,555
		\$61,864	\$63,101	\$64,363	\$65,651
		\$60,161	\$61,364	\$62,592	\$63,843
Soft barrier					
Health Entry Level (T, I, A, or G)	APS2	\$56,810	\$57,946	\$59,105	\$60,287
		\$55,231	\$56,336	\$57,462	\$58,612
		\$53,621	\$54,693	\$55,787	\$56,903
		\$52,059	\$53,100	\$54,162	\$55,245
Soft barrier					
Health Entry Level (T, I, A, or G)	APS1 (adult)	\$50,025	\$51,026	\$52,046	\$53,087
		\$47,698	\$48,652	\$49,625	\$50,617
		\$46,118	\$47,040	\$47,981	\$48,941
		\$44,543	\$45,434	\$46,343	\$47,269
Health Entry Level (T, I, A, or G)	(at 20 years)	\$40,535	\$41,346	\$42,173	\$43,016
Health Entry Level (T, I, A, or G)	(at 19 years)	\$36,081	\$36,803	\$37,539	\$38,289
Health Entry Level (T, I, A, or G)	(at 18 years)	\$31,180	\$31,804	\$32,440	\$33,088
Health Entry Level (T, I, A, or G)	(under 18 years)	\$26,727	\$27,262	\$27,807	\$28,363

- Trainees = T
- Indigenous Australian Government Development Program (IAGDP) participants = (I)
- Indigenous Apprenticeship Programme = (A)
- Graduates = (G)

### Professional 1 salary structure

Local title	Classification	Before lodgement	Commencement of Agreement	12 months after commencement	24 months after commencement
Professional 1	APS5	\$79,008	\$80,588	\$82,200	\$83,844
	APS5	\$75,044	\$76,545	\$78,076	\$79,637
	APS4	\$70,036	\$71,437	\$72,865	\$74,323
	APS4 #	\$68,161	\$69,524	\$70,915	\$72,333
	APS3 ##	\$63,659	\$64,932	\$66,231	\$67,555
	APS3	\$61,864	\$63,101	\$64,363	\$65,651

# salary on commencement for a 4 year degree (or higher)

## salary on commencement for a 3 year degree

### Medical Officer salary structure

Classification	Before lodgement	Commencement of Agreement	12 months after commencement	24 months after commencement
Medical Officer Class 4	\$170,527	\$173,938	\$177,416	\$180,965
	\$160,960	\$164,179	\$167,463	\$170,812
	\$154,925	\$158,024	\$161,184	\$164,408
Medical Officer Class 3	\$148,744	\$151,719	\$154,753	\$157,848
	\$142,065	\$144,906	\$147,804	\$150,761
Medical Officer Class 2	\$133,871	\$136,548	\$139,279	\$142,065
	\$127,055	\$129,596	\$132,188	\$134,832
Medical Officer Class 1	\$116,107	\$118,429	\$120,798	\$123,214
	\$105,181	\$107,285	\$109,430	\$111,619
	\$97,730	\$99,685	\$101,678	\$103,712
	\$90,215	\$92,019	\$93,860	\$95,737

### Legal salary structure

Local title	Classification	Before lodgement	Commencement of Agreement	12 months after commencement	24 months after commencement
Legal 2	EL2	\$146,935	\$149,874	\$152,871	\$155,929
		\$140,557	\$143,368	\$146,236	\$149,160
		\$136,014	\$138,734	\$141,509	\$144,339
Legal 1	EL1	\$124,368	\$126,855	\$129,392	\$131,980
		\$114,492	\$116,782	\$119,117	\$121,500
		\$104,876	\$106,974	\$109,113	\$111,295
	APS6	\$90,244	\$92,049	\$93,890	\$95,768
		\$85,751	\$87,466	\$89,215	\$91,000
		\$81,784	\$83,420	\$85,088	\$86,790
	APS5	\$75,697	\$77,211	\$78,755	\$80,330
	APS4	\$70,965	\$72,384	\$73,832	\$75,309

### Public Affairs Officer salary structure

Local Title	Classification	Before lodgement	Commencement of Agreement	12 months after commencement	24 months after commencement
Senior Public Affairs 2	EL2	\$147,645	\$150,598	\$153,610	\$156,682
		\$141,906	\$144,744	\$147,639	\$150,592
Senior Public Affairs 1	EL2	\$135,150	\$137,853	\$140,610	\$143,422
Public Affairs 3	EL1	\$123,221	\$125,685	\$128,199	\$130,763
		\$117,244	\$119,589	\$121,981	\$124,420
		\$110,118	\$112,320	\$114,567	\$116,858
Public Affairs 2	APS6	\$92,360	\$94,207	\$96,091	\$98,013
		\$85,751	\$87,466	\$89,215	\$91,000
		\$81,784	\$83,420	\$85,088	\$86,790
Public Affairs 1	APS5	\$79,008	\$80,588	\$82,200	\$83,844
		\$75,044	\$76,545	\$78,076	\$79,637
	APS4 APS4*	\$72,019	\$73,459	\$74,929	\$76,427
		\$68,161	\$69,524	\$70,915	\$72,333

\*This level is generally reserved for employees with less than two years of experience.

### Research Scientist salary structure

Local Title	Classification	Before lodgement	Commencement of Agreement	12 months after commencement	24 months after commencement
Senior Principal Research Scientist	EL2	\$180,296	\$183,902	\$187,580	\$191,332
		\$162,183	\$165,427	\$168,735	\$172,110
Principal Research Scientist	EL2	\$159,001	\$162,181	\$165,425	\$168,733
		\$154,073	\$157,154	\$160,298	\$163,504
		\$147,785	\$150,741	\$153,756	\$156,831
		\$143,888	\$146,766	\$149,701	\$152,695
		\$138,552	\$141,323	\$144,150	\$147,032
Senior Research Scientist	EL2	\$144,379	\$147,267	\$150,212	\$153,216
		\$135,150	\$137,853	\$140,610	\$143,422
		\$130,783	\$133,399	\$136,067	\$138,788
		\$119,908	\$122,306	\$124,752	\$127,247
Research Scientist	EL1	\$107,997	\$110,157	\$112,360	\$114,607
		\$100,502	\$102,512	\$104,562	\$106,654
	APS6	\$85,909	\$87,627	\$89,380	\$91,167
		\$81,423	\$83,051	\$84,712	\$86,407
		\$79,209	\$80,793	\$82,409	\$84,057



## ATTACHMENT B – RECOGNITION OF ALLOWANCES FOR PARTICULAR PURPOSES

	Counts as salary for superannuation purposes (CSS and PSSdb only. Members of other superannuation funds refer to clauses 32 to 34)	Counts towards salary for calculation of overtime salary	Payable during long service leave	Payable during annual leave	Reduced pro-rata during period of half-pay leave (if payable during leave)	Included in income maintenance for excess employees	Included in salary for calculation of retrenchment severance	Included in salary for payment in lieu of notice of termination of employment	Payment in lieu of long service leave	Payment in lieu of recreation leave
Higher duties allowance	@	✓	*	*	✓	*	*	*	#	^
CNO Professional Development Allowance	✓	X	✓	✓	✓	✓	✓	✓	✓	✓
Medical Officer Professional Development Allowance	X	X	X	X	X	X	X	X	X	X
Workplace Responsibility Allowance	✓	X	✓	X	X	X	X	✓	✓	X
Restriction Allowance	@	X	X	X	X	*	X	*	X	X
Departmental Liaison Officer Allowance	@	X	*	*	✓	✓	✓	✓	#	^
District Allowance	X	X	*	*	✓	✓	✓	✓	^	*
Community Language Allowance	✓	X	*	*	✓	✓	✓	✓	*	X

#	Yes, if in receipt of allowance for a continuous period of greater than 12 months
✓	Yes
^	Yes, if in receipt of allowance on last day of service
X	No
@	Yes, subject to a qualifying period in accordance with the Superannuation (CSS/PSS) Salary Regulations 1978, unless indicated otherwise in this Agreement
*	Yes, subject to certain conditions

## ATTACHMENT C – SUPPORTED WAGE SYSTEM (SWS)

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

**C.2 In this schedule:**

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

**Assessment instrument** means the tool provided for under the SWS that records the assessment of the productive capacity of the person to be employed under the SWS.

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

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

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

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

### C.3 Eligibility criteria

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

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

### C.4 Supported wage rates

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

Assessed capacity	% of prescribed rate
10%	10%
20%	20%
30%	30%
40%	40%
50%	50%

60%	60%
70%	70%
80%	80%
90%	90%

C.4.2 Provided that the minimum amount payable must be not less than the rate set by the Fair Work Commission in its annual minimum wages orders.C.4.3 Where an employee's assessed capacity is 10 per cent; they must receive a high degree of assistance and support.

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

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

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

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

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

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

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

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

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

Where an assessment has been made, the applicable percentage will apply to the relevant wage rate only.

Employees covered by the provisions of the schedule will be entitled to the same terms and conditions of employment as all other workers covered by this agreement paid on a pro-rata basis.

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

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

## **C.10 Trial Period**

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

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

C.10.3 The minimum amount payable to the employee during the Trial Period must be no less than the rate set by the Fair Work Commission in its annual minimum wages orders.

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

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