



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Federal Court of Australia
(AG2018/2509)

FEDERAL COURT OF AUSTRALIA ENTERPRISE AGREEMENT 2018-2021

Commonwealth employment

DEPUTY PRESIDENT KOVACIC

CANBERRA, 31 JULY 2018

Application for approval of the Federal Court of Australia Enterprise Agreement 2018-2021.

[1] An application has been made for approval of an enterprise agreement known as the *Federal Court of Australia Enterprise Agreement 2018-2021* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Federal Court of Australia. The Agreement is a single enterprise agreement.

[2] Subject to concerns that have been addressed by way of undertakings, I am satisfied that each of the requirements of ss.186, 187 and 188 of the Act as are relevant to this application for approval have been met.

[3] As noted, pursuant to s.190(3), I have accepted undertakings from the employer. In accordance with s.191(1) of the Act the undertakings are taken to be a term of the Agreement. A copy of the undertakings are attached to this decision.

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

[5] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 7 August 2018. The nominal expiry date of the Agreement is 31 August 2021.



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Annexure A

IN THE FAIR WORK COMMISSION

FWC Matter No.:

AG2018/2509 – Federal Court of Australia Enterprise Agreement 2018-2021

Applicant:

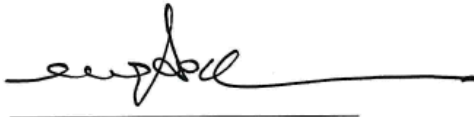
Federal Court of Australia

Section 185 – Application for approval of a single enterprise agreement

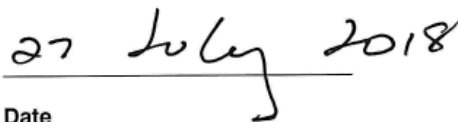
Undertaking- Section 190

I, Warwick Soden, Chief Executive Officer for Federal Court of Australia give the following undertakings with respect to the Federal Court of Australia Enterprise Agreement 2018-2021 ("the Agreement"):

1. I have the authority given to me by Federal Court of Australia to provide this undertaking in relation to the application before the Fair Work Commission.
2. Part time employees are entitled under this agreement to a minimum engagement of 3 hours as per cl 6.4(f) of the *Public Service Enterprise Award 2015*.
3. These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.



Signature



Date



**FEDERAL COURT
OF AUSTRALIA**



Federal Court of Australia

Enterprise Agreement 2018–2021

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

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DEFINITIONS AND INTERPRETATIONS

Wherever the following terms appear in this Agreement, they mean:

Agreement – means the *Federal Court of Australia Enterprise Agreement 2018–2021*.

APS – means the Australian Public Service.

ATO – means the Australian Taxation Office.

Court – means the Federal Court of Australia.

Eligible dependant for remote localities assistance (clause 52) – means a spouse, de facto partner, or a child of the employee or their spouse or de facto partner who ordinarily lives with the employee and who is totally or substantially dependent on the employee, having an income of less than \$15,000 per annum.

Employee – means a person employed in the Federal Court of Australia working in the Federal Court of Australia, the Family Court of Australia, the Federal Circuit Court of Australia or the National Native Title Tribunal, under and within the meaning of the *Public Service Act 1999*.

Family (clause 19) – Family means a person who is related by blood, by adoption, by fostering or by marriage (including a former spouse under an earlier marriage and a genuine de facto relationship without discrimination as to sexual preference), a child, adopted child or foster child of a person to whom the employee is so married, or another person where the CEO or their delegate is satisfied they have a strong affinity with the employee.

The de facto partner of an employee:

- a) means a person who, although not legally married to the employee lives with the employee in a relationship as a couple on a genuine domestic basis (whether the employee and the person are of the same sex or different sexes); and
- b) includes a former de facto partner of the employee.

HDA – means higher duties allowance.

Immediate family EAP (clause 54) – means a spouse, de facto partner or a dependent child.

Irregular or intermittent employee – means a person employed in the Federal Court of Australia, the Family Court of Australia, the Federal Circuit Court of Australia or the National Native Title Tribunal, under *sub-section 22(2)(c) of the Public Service Act 1999*, for duties that are irregular or intermittent.

Judge – means a judge of a court including the Chief Justice and Chief Judge.

Judicial support staff – means a judge's executive assistant, associate, judicial associate, legal associate, deputy associate, research associate, research assistant, judicial services team leader.

Manager – means the immediate supervisor or team leader of an employee.

Member of employee's immediate family or household for personal leave (clause 37) and compassionate and bereavement leave (clause 40) – means a spouse, de facto partner, former spouse, former de facto partner, child, parent, grand parent, grand child, sibling; or child, parent, grand parent, grand child, sibling of the employee's spouse or de facto partner; or any person who lives with the employee.

Settlement period – means the two week period used for calculation of hours of attendance and payment of salary.

TOIL – means time off in lieu.

PRINCIPLES AND OBJECTIVES

1. Principles and objectives

1.1. This Agreement provides a principles-based decision-making framework. The following principles underpin all provisions in this Agreement:

- a) providing a safe, secure and fair environment;
- b) assisting employees to balance their work and personal commitments;
- c) the Court being as flexible as it can, taking into account the employee's preferences and personal circumstances;
- d) fostering strong cooperative relationships between the Court and its employees;
- e) safeguarding the health and wellbeing of employees;
- f) respecting and valuing diversity;
- g) preventing discrimination and harassment;
- h) treating employees fairly and impartially;
- i) making the most efficient use of resources, and
- j) supporting sustainable environmental management.

They will be supported by policies and guidelines as appropriate.

1.2. The Agreement supports significant improvements in the courts' operations to be produced through a range of corporate efficiency/productivity measures. The corporate efficiency/productivity agenda is designed to cover all functions and levels of the courts, with reviews to deliver savings in areas including:

- improved training processes to improve the skills base of the workforce for improved efficiency, and
- development of new technological processes to streamline court processes and as a consequence improve output. For example evolution of the courts' eFiling processes.

AGREEMENT TITLE, SCOPE AND DECISION MAKING

2. Title

- 2.1. This Agreement will be known as the Federal Court of Australia Enterprise Agreement 2018–2021.
- 2.2. This Agreement is made under section 172 of the *Fair Work Act 2009*.

3. Duration

- 3.1. This Agreement commences seven days after the date it is approved by the Fair Work Commission and has a nominal expiry date of three years and 24 days after the commencement date.

4. Parties covered by the Agreement

- 4.1. This Agreement covers the Commonwealth (acting through the CEO or delegate) and employees (other than SES employees) engaged under the *Public Service Act 1999* in the Federal Court of Australia.
- 4.2. Employees engaged in the Federal Court of Australia may work for the Federal Court of Australia, the Family Court of Australia, the Federal Circuit Court of Australia or the National Native Title Tribunal.

5. Flexibility agreements

- 5.1. The CEO or delegate and an employee covered by this Agreement may agree to make an individual flexibility agreement to vary the effect of terms of this Agreement if:
 - a) the individual flexibility arrangement deals with one or more of the following matters:
 - i) arrangements about when work is performed;
 - ii) overtime rates;
 - iii) penalty rates;
 - iv) allowances;
 - v) leave ;
 - vi) remuneration, and
 - vii) any other permitted matter that is a term of this Agreement.
 - b) the arrangement meets the genuine needs of the employer and employee in relation to one or more of the matters mentioned in clause 5.1.a), and
 - c) the arrangement is genuinely agreed by the employer and employee.
- 5.2. The CEO or delegate must ensure that the terms of the individual flexibility agreement:
 - a) are about permitted matters under section 172 of the *Fair Work Act 2009*, and
 - b) are not unlawful terms under section 194 of the *Fair Work Act 2009*, and
 - c) result in the employee being better off overall than the employee would be if no arrangement was made.

- 5.3. The CEO or delegate must ensure that the terms of the individual flexibility agreement:
- a) are in writing, and
 - b) includes the name of the employer and employee, and
 - c) are signed by the employer 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 the enterprise agreement that will be varied by the individual flexibility agreement, and
 - ii) how the arrangement 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 his or her employment as a result of the arrangement, and
 - e) states the day on which the arrangement commences and where applicable where the arrangement ceases.
- 5.4. The CEO or delegate must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- 5.5. The CEO or delegate or employee may terminate the individual flexibility arrangement:
- a) by giving no more than 28 days' notice to the other party, or
 - b) if the employer and employee agree in writing – at any time.

6. Guidelines, policies and procedures supporting this Agreement

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

7. Delegation of powers under this Agreement

- 7.1. The CEO or delegate may delegate any of their powers under this Agreement by written instrument including any conditions applying to the use of those powers.

EMPLOYMENT CONDITIONS

Remuneration

8. Payment of salary

- 8.1. Employees will have their salary paid fortnightly in arrears by electronic funds transfer to an approved financial institution account of their choice.

9. Salary increases

- 9.1. Employees, who immediately prior to the commencement of this Agreement were covered by the terms and conditions of the *Federal Magistrates Court of Australia and Family Court of Australia Enterprise Agreement 2011–2014*, will be aligned to the salary rates in Attachment A of this Agreement. The salary increases referred to in clause 9.2 will be applied to the aligned salary.
- 9.2. All employees will receive a salary increase of 3% on commencement of this Agreement, 2% 12 months after commencement of this Agreement, and 0.5% 18 months after commencement of this Agreement as per Attachment B.

10. Salary rates

- 10.1. The salary rates payable to Court employees through this Agreement are set out in Attachment B.
- 10.2. Supported salary rates and conditions of employment as set out in Attachment D will apply to an employee with a disability who is eligible for consideration under the supported wage system.

11. Salary on engagement, transfer or promotion

- 11.1. Employees commencing with the Court and existing employees who are promoted within the Court, will commence at the base rate for the relevant classification unless a higher rate is authorised by the CEO or delegate on the basis of qualifications, skills and experience.
- 11.2. At the discretion of the CEO or delegate, an employee transferring to the Court whose salary in their previous agency (current salary) exceeds the rate to which the employee would be entitled under this Agreement, may be maintained on their current salary until such time as the employee is entitled to a higher rate under this Agreement.

12. Salary on reduction

- 12.1. The salary of an employee whose classification is reduced either temporarily or permanently will be determined by the Court taking into account the:
- a) experience, qualifications and skills of the employee
 - b) salary payable to, and classification of the employee prior to the reduction, and
 - c) new classification of the employee and the salary ordinarily payable to an employee of that classification.

13. Irregular or intermittent employees

- 13.1. Operational requirements determine the basis for engagement. Where the nature of the role or the work warrants, a position can be filled:
- on a non-ongoing basis for either a specified term or task, or
 - on an irregular or intermittent basis.
- 13.2. Irregular or intermittent employees will receive a 20% loading on their pay in lieu of access to annual leave, paid personal and other paid leave except Long Service Leave as provided for in this Agreement, and public holidays on which the employee is not rostered to work.
- 13.3. Irregular or intermittent employees are entitled to a minimum payment of four hours when called in for duty.
- 13.4. Non-ongoing employees will be provided with at least two weeks' notice where their contract is due to expire and will not be renewed in circumstances where there may be a reasonable expectation that the contract may be renewed.

14. Salary progression for ongoing and non-ongoing employees

- 14.1. Employees (excluding irregular or intermittent employees) who are not at the top of their salary range for the relevant classification, will progress to the next salary point in that range on 1 July each year subject to:
- a) having performed duties at a salary point in that classification level for a minimum of six months, and
 - b) having participated in the Court's performance management and development system and achieved a rating of 'satisfactory/meets expectations or meeting requirements' or better in their most recent performance appraisal.

15. Salary progression for irregular or intermittent employees

- 15.1. Irregular or intermittent employees will progress to the next salary point in the relevant salary range every two years, subject to, or as otherwise provided by, the provisions at clauses 15.2 and 15.3.
- 15.2. Progress to the next salary point, where the employee is eligible, is to take place when the employee's contract is renewed. As renewal of contract is subject to satisfactory performance, progress is performance based.
- 15.3. Irregular or intermittent employees who have worked the equivalent of 12 months or more full-time in less than two years will progress to the next salary point subject to satisfactory work performance. Given the administrative difficulties in routinely monitoring the cumulative hours worked by irregular or intermittent employees, it is the responsibility of the employee to initiate progression via this mechanism.

16. Employer superannuation contributions

- 16.1. The Court will make compulsory employer superannuation contributions as required by the applicable legislation and fund.
- 16.2. The default super fund for employees who are not members of the Commonwealth Superannuation Scheme (CSS) or the Public Sector Superannuation Scheme (PSS) will be the Public Sector Superannuation Accumulation Plan (PSSap).
- 16.3. Where employer superannuation contributions are to an accumulation superannuation fund the employer contribution will be 15.4% of the employee's ordinary time earnings. This will not be reduced by any other contributions made through salary sacrifice arrangements. This clause does not apply where a superannuation fund cannot accept employer superannuation contributions (e.g. unable to accept contributions for people aged over 75).
- 16.4. Employer superannuation contributions will not be paid on behalf of employees during periods of unpaid leave, unless otherwise required under legislation.
- 16.5. The Court may choose to limit superannuation choice to complying superannuation funds that allow employer and/or employee contributions to be paid through Superstream.

17. Salary packaging

- 17.1. Employees may sacrifice salary in accordance with relevant taxation legislation. Further information is contained in the appropriate salary packaging policy.
- 17.2. Any costs incurred (including Fringe Benefit Tax and administrative costs) will be met by the employee.
- 17.3. Participation in salary sacrifice arrangements will not affect salary for any purpose unless specifically authorised or specified.

18. Resignation and notice

- 18.1. Employees will provide at least two weeks written notice of resignation; with a pro-rata deduction from final monies unless a shorter notice period is requested and agreed to by the Court.

Working arrangements and flexibilities

19. Balancing work and private lives

- 19.1. The Court acknowledges that employees need to balance their working life with other commitments including family and community obligations.
- 19.2. The Court will accommodate the needs and circumstances of all its employees as far as practicable. Specific measures include, but are not limited to, the following:
- Where employees apply for recreation leave during school holidays to have it declined for operational reasons, the Court will subsidise child care costs up to \$25 a day for each child attending school, subject to proof the expense occurred.
 - Where staff are required to vary their hours and incur an expense as a result, the CEO or delegate or equivalent will consider reimbursement subject to evidence of expenditure.
 - Providing advice and, where practicable, assistance on arrangements for a phased retirement (also see clause 68).
- 19.3. The CEO or delegate may agree to extend conditions relating to family members to a person with whom a staff member claims a strong affinity where the staff member provides appropriate evidence of the relationship.

20. Hours of duty

- 20.1. The ordinary hours of duty for full-time employees are 75 hours per fortnight, or seven hours 30 minutes per day.
- 20.2. The hours of duty for part-time employees are those agreed in their part-time work agreement or their terms of engagement.
- 20.3. A standard day for full-time employees is 8:30am to 5:00pm with a one hour lunch break.

21. Bandwidth and patterns of attendance

- 21.1. Subject to operational requirements, patterns of attendance will be agreed by employees and their managers within the ordinary bandwidth of hours 8:00am to 6:00pm Monday to Friday. Employees will not work without agreement between the employee and their manager:
- more than 10 hours ordinary time on any day, and
 - more than five consecutive hours without a meal break of at least 30 minutes.

22. Part-time work

- 22.1. A part-time employee is one whose regular hours of work over the two week settlement period are less than ordinary hours of duty as specified in this Agreement and who is approved to be a part-time employee on an ongoing basis or for a fixed period (each fixed period not to exceed two years) which is subject to review.
- 22.2. A full-time employee may request to work on a part-time basis for a fixed period, subject to review and extension. Part-time work agreements will be reviewed after two years.

- 22.3. A fixed period part-time employee who was previously full-time may seek to revert to full-time employment before the expiry of the fixed period of part-time employment, by request in writing. Where a request of this kind is declined, the employee will have the right to revert to full-time hours as soon as otherwise practicable and no later than the expiry of the period for which part-time work was approved.
- 22.4. Part-time hours can be varied on a short-term basis to facilitate access to training or other development opportunities.
- 22.5. Ongoing employees who are engaged to undertake part-time duties will not be required to convert from part-time work to full-time work, or vary their hours, but may agree to do so.
- 22.6. Remuneration and other entitlements for part-time employees will be those applying to full-time employees at the appropriate pro-rata rate. Expense-related allowances and reimbursements will be the same as those applying to full-time employees.
- 22.7. In rare circumstances it may be necessary to direct a part-time employee to work additional hours, as opposed to obtaining their agreement. In this case, overtime at a rate of time and a half will be paid for any additional hours worked between 8:00am – 6:00pm Monday to Friday. Hours worked after 6:00pm will attract payment of overtime in accordance with the provisions of clause 25. Alternatively, TOIL at the equivalent rate may be granted.

23. Flextime scheme

- 23.1. The Court's flextime scheme applies to full-time employees at APS Levels 1 to 6.
- 23.2. Flextime is a system of flexible work hours which enables employees and managers to vary working hours and attendance patterns within the Court's bandwidth. Further information can be found in the applicable policy.
- 23.3. Employees other than judicial support staff are able to accumulate a maximum of one week (37 hours 30 minutes) flextime credit at the end of any settlement period.
- 23.4. Judicial support staff are able to accumulate a maximum of four weeks (150 hours) flextime credit at the end of any settlement period. Judicial support staff may only carry a balance of more than four weeks with the agreement of their manager. Employees may be required to use flextime credits of up to four weeks in a block while their judge or registrar is on leave.
- 23.5. Employees are not to work excessive hours as a matter of course.

24. Time off in lieu for executive level employees

- 24.1. Employees at Executive Levels 1 and 2 in the absence of access to the flextime scheme may negotiate flexible working and attendance arrangements with their manager, subject to operational requirements.
- 24.2. The scheme is not a replacement for flextime but will provide flexibility in work patterns and time off. Time off in lieu may be approved when an employee is required to work hours which are substantially in excess of the hours which would reasonably be expected.

25. Overtime

25.1. Employees may be directed to work reasonable overtime. Overtime is payable only to employees below the levels of Executive Level 1 and equivalent Legal designations, and is payable at the rates of:

- Monday to Saturday: time and a half for the first three hours and double time thereafter
- Sunday: double time, and
- Public holidays: time and a half for hours within standard hours and double time and a half for hours outside standard hours.

25.2. Overtime is payable only for additional directed work performed:

- before 8:00am on normal working days
- on normal working days where that work is after 6:00pm and after at least seven hours 30 minutes normal duty has been worked that day, and
- on Saturdays, Sundays and public holidays.

25.3. For overtime which is not continuous with normal duty, except for a meal break, the minimum time period for which payment at the relevant rate will be made is four hours.

25.4. TOIL of overtime payment. Where the employee and the Supervisor agree, TOIL of the overtime payment may be granted. TOIL is calculated on the basis of the payment the person would have received for overtime, e.g. three hours overtime at time and a half would equate to four and a half hours TOIL.

25.5. Irregular or intermittent employees will be entitled to payment at the applicable overtime rate as specified in this clause for any directed hours worked outside 8:00am to 6:00pm Monday to Friday, calculated on the basis of base salary plus irregular/intermittent loading.

26. Working from home

26.1. Where consistent with operational requirements, employees may apply to work from home. Further information can be found in the applicable policy.

Allowances

27. Higher duties allowance

- 27.1. Employees required to work at a higher level than their classification for at least five days, will be eligible for payment at the base rate of that higher classification for the entire period.
- 27.2. Employees are entitled to salary advancement to the next salary point in the higher classification, subject to a rating of 'satisfactory/meets expectations or meeting requirements' or better in their most recent performance appraisal, when they act at that higher classification for the equivalent of 12 months over a maximum period of 24 months. The calculation of acting time in a higher classification will include all paid and unpaid periods of acting.

28. Overtime meal allowance

- 28.1. Employees required to work paid overtime for a continuous period of at least one hour are entitled to an overtime meal allowance in accordance with ATO rates if:
- a) an unpaid meal break of at least 30 minutes is taken during the overtime, and
 - b) the overtime extends over any of the following meal periods:
 - 7:00am to 8:30am, noon to 2:00pm, 7:00pm to 7:30pm, and midnight to 1:00am.

29. First aid officers, health and safety representatives, fire wardens and harassment contact officers allowance

- 29.1. An allowance as per Attachment C is payable to an employee designated by the Court to undertake one or more of the following roles:
- First Aid Officer
 - Health and Safety Representative
 - Fire Warden, and
 - Harassment Contact Officer.
- 29.2. Employees who undertake more than one role are only eligible for the payment of a single allowance.
- 29.3. Payment of the allowance will cease for continuous absences of over four weeks.
- 29.4. \$35 per fortnight allowance rate for those Federal Court employees currently being paid the allowance at that rate is to be grandfathered for those employees until their current term/appointment expires or, if not appointed for a specified term, when the employee ceases to perform the role.

30. Senior Family Consultant Allowance

- 30.1. An APS employee in the Court who is classified at Executive Level 1, who is paid the salary which this Agreement prescribes for that classification, and who performs duty as a Senior Family Consultant, is to be paid a Senior Family Consultant allowance at an annual rate calculated in accordance with the tables at Attachment C.
- 30.2. In spite of clause 30.1, where an APS employee in the Court who performs duty as a Senior Family Consultant and whose salary exceeds a salary prescribed by this Agreement for the Executive Level 1 classification, the amount of Senior Family Consultant allowance that in such a case would be payable to that person, will be such that the person's total remuneration (salary plus allowance) does not exceed the total remuneration payable if he or she received the maximum salary payable under that clause together with the relevant rate of allowance.

31. Language allowance

- 31.1. The Court may approve the payment of community language allowance to an employee where it considers that there is an identifiable and continuing need for language skills in a language other than English, including Aboriginal and Torres Strait Islander languages and AUSLAN or other deaf communication skills, and if the employee has the required level of competency and provides client or employee services in the language.
- 31.2. This allowance will count as salary for superannuation purposes.
- 31.3. The Court may review eligibility for allowance payments from time to time to ensure that the employee uses the expertise or skill in question in accordance with clause 31.1.

32. After hours service allowance

- 32.1. An allowance as per Attachment C is payable to an employee who is directed to participate in the Family Court or Federal Circuit Court's After Hours Service (AHS), to be contactable and available outside standard hours, during the hours directed.
- a) Monday to Friday outside AHS rostered time of 5.00pm to 8.30am and weekends 24 hours per day (not on public holidays)
 - b) Public holidays Monday to Friday within 8.30am to 5.00pm.
 - c) Public Holidays outside Monday to Friday AHS rostered time of 5.00pm to 8.30am and weekends 24 hours per day.

33. On call allowance

33.1. Being on call for the purpose of this clause means that the employee is directed to be contactable outside standard work hours and available to report to the relevant workplace within a reasonable period. Employees receiving an allowance who are on leave and not required to be contactable are not eligible for payment where the period exceeds one week.

33.2. Where an employee is directed to be on call the following applies:

- a) For ongoing periods of two or more weeks, the employee is to be provided with a mobile phone if required and will receive an on call allowance of \$100 per fortnight.
- b) Where the on call period is two or more days, the employee will receive a pro-rata allowance based on 1/10th of the fortnightly rate for each day on call.
- c) Where a mobile phone is not provided, appropriate reimbursement of home telephone or personal mobile phone costs will be provided for the on call period including the cost of all work-related calls.
- d) Where an employee is required to attend for out of hours duty at the Court or other required workplace, payment will be at the appropriate overtime rate subject to a one hour minimum payment.
- e) Cabcharge or cash advances will be provided to employees who may otherwise be out of pocket as a result of undertaking court work outside standard work hours.

33.3. Employees receiving on call allowance will retain a record of out of hours telephone contact and call-ins to work to be provided to management for review on request.

34. Admiralty marshals

34.1. On call allowance for admiralty marshals is to commence with the arrest of the vessel and cease on its release unless the relevant district registrar and the marshal agree an earlier date is appropriate in the circumstances of a particular arrest.

34.2. Employees undertaking admiralty marshal work will be paid at the APS/FCS Level 6 (unless they would otherwise be paid at a higher level).

35. Relocation assistance

35.1. The CEO or delegate may provide assistance with some or all of the costs incurred by employees who permanently relocate to a different location to undertake work for the Court, including on engagement or movement from another APS agency.

Leave and public holidays

36. Annual leave

- 36.1. Full-time employees are entitled to 20 days annual leave per year of service. Part-time employees are entitled to a pro-rata amount based on their agreed part-time hours.
- 36.2. Annual leave accrues daily, is cumulative and counts as service for all purposes. Annual leave does not accrue for any period that does not count as service (unpaid leave in excess of 30 calendar days in an accrual year).
- 36.3. Access to annual leave is encouraged as beneficial to an individual's health and wellbeing and hence performance. In consideration of an employee's welfare and in order to manage the Court's accrued leave liability, the Court may direct an employee with a balance in excess of 40 annual leave days to take annual leave to reduce their excessive balance.
- 36.4. Employees may apply to receive a payment in lieu of an amount of annual leave provided they:
- a) have taken at least 20 days annual leave in the 12 months preceding the application
 - b) have at least 20 days annual leave remaining after the application is processed
 - c) each agreement to cash out annual leave must be a separate agreement in writing, and
 - d) cashed out annual leave will be paid to the employee at the rate that would have been payable to the employee had they taken the leave at the time the cash out agreement is made.
- 36.5. Annual leave credits will be paid to an employee on separation from the APS unless they move to an employer that recognises portability of leave from the APS.

37. Personal leave

- 37.1. Full-time employees are entitled to 18 days personal leave per year of service. Part-time employees are entitled to a pro-rata amount based on their agreed part-time hours.
- 37.2. Personal leave accrues progressively, is credited monthly and counts as service for all purposes. Personal leave does not accrue for any period that does not count as service (unpaid leave in excess of 30 calendar days in an accrual year).
- 37.3. New employees are credited with six days personal leave on commencement (pro-rata for part-time employees) then leave accrues on a monthly basis four months from the employees commencement date.
- 37.4. Employees who immediately prior to the commencement of this Agreement were covered by the terms and conditions of the *Federal Court of Australia Enterprise Agreement 2011–2014*, will accrue personal leave progressively, credited monthly at the end of the first month following their next anniversary date.

37.5. Employees may take personal leave, with the Court's approval, for the following reasons:

- a) personal injury or illness, or
- b) to provide care or support to an immediate family or household member because of an illness, injury or unexpected emergency, affecting that family or household member.

37.6. Employees must provide medical evidence for personal leave absences:

- a) of more than three consecutive days in length, or
- b) in excess of five occasions in each accrual year where medical evidence has not been provided.

Medical evidence means a medical certificate obtained during the absence from a medical practitioner, a publicly registered allied health provider, or an allied health provider whose services attract health fund benefits operating in their area of expertise. A statutory declaration may be provided in circumstances where it is not practicable for an employee to obtain a medical certificate.

37.7. A manager who considers that an employee has taken significant personal leave without medical consultation, may require the employee to undergo a medical examination and provide the report of the examination to the Court. In the case of carer's leave, a manager may require the employee to provide a report from the treating practitioner of the person for whom the employee cares, as to the reasonableness of the leave and likely future leave requirements.

37.8. Employees who have exhausted their entitlement to personal leave may take up to two days unpaid carer's leave on each occasion that a member of the employee's immediate family or household requires care or support because of illness or injury or an unexpected emergency.

37.9. Employees who are entitled to paid personal leave who, while on annual leave or long service leave, produce a medical certificate may apply for personal leave. Annual leave or long service leave will be re-credited for the period of personal leave granted.

37.10. Irregular or intermittent employees with a personal leave credit at the date of commencement of this Agreement are entitled to use that credit for future absence under this clause until that credit is exhausted.

37.11. In exceptional circumstances such as long periods of illness, the CEO or delegate may grant additional paid personal leave where existing credits have expired.

38. Long service leave

38.1. Employees are entitled to long service leave in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976*.

38.2. Long Service Leave must be taken in periods of at least seven calendar days at full pay or 14 calendar days at half pay and cannot be broken by other forms of leave, unless required by legislation.

39. Purchased leave

- 39.1. Employees may, subject to operational requirements, apply to purchase one, two, three or four weeks' additional leave per year. The recovery of salary for this leave will be through fortnightly pre-tax deductions, with any balance owing on cessation from the Court recoverable from final monies.
- 39.2. Leave may not be purchased by an employee whose annual leave balance exceeds 40 days.

40. Compassionate and bereavement leave

- 40.1. The Court will grant paid bereavement and compassionate leave of three days per occasion:
- a) to spend time with a member of the employee's immediate family or household who has contracted or developed a personal illness, or sustained a personal injury, as referred to in section 104 of the *Fair Work Act 2009*
 - b) after the death of a member of the employee's immediate family or household as referred to in section 104 of the *Fair Work Act 2009*.
- 40.2. This can be taken by employees in separate periods, or a continuous period, in accordance with the Fair Work Act.
- 40.3. Irregular or intermittent employees will be granted unpaid compassionate/bereavement leave on the same basis.

41. Maternity, adoption, fostering and parental leave

- 41.1. Employees are entitled to Maternity Leave in accordance with the *Maternity Leave (Commonwealth Employees) Act 1973*. Employees, who are eligible for paid maternity leave under the Act, may elect to spread the payment over 24 weeks at half pay, however only 12 weeks will count as service.
- 41.2. Employees who are entitled to paid maternity leave under the *Maternity Leave (Commonwealth Employees) Act 1973* will receive an additional two weeks paid leave to be taken immediately following the period of paid leave provided by the Act. This leave may be taken at half pay, however only two weeks will count as service.
- 41.3. Employees who adopt or foster a child less than 16 years of age are entitled to leave on the same basis as the *Maternity Leave (Commonwealth Employees) Act 1973* and clauses 41.1 and 41.2. To be eligible for paid leave, the employee must be the primary carer of the adopted or fostered child and must satisfy the same qualifying service requirements that apply to an employee to receive paid maternity leave under the *Maternity Leave (Commonwealth Employees) Act 1973*.
- 41.4. On ending maternity, adoption or fostering leave, an employee has a return to work guarantee equivalent to the NES provision in section 84 of the Fair Work Act.

- 41.5. An employee who is a parent, or has responsibility for the care of a child who is of school age or younger, may request flexible working arrangements, including part-time hours. Employees are not eligible to make this request unless they have completed at least 12 months of continuous qualifying service. A request must be in writing and set out details of the change sought and the reasons for the change. The CEO or delegate will respond in writing to the request within 21 days and will only refuse on reasonable business grounds. Where the request is refused, the response will include reasons for the refusal.
- 41.6. Supporting carers and other employees with no entitlement to paid maternity leave are entitled to 10 days paid parental leave associated with birth, adoption or fostering arrangements. They are also entitled to up to 50 weeks unpaid parental leave.

42. Leave for ADF reserve and continuous full-time service or cadet force obligations

- 42.1. Employees 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.
- 42.2. Employees are entitled to ADF Reserve leave with pay, for up to four weeks during each financial year for the purpose of fulfilling service in the ADF Reserve. These purposes include training and operational duty as required.
- During the employee's first year of ADF Reserve service, a further two weeks paid leave may be granted to facilitate participation in additional ADF Reserve training, including induction requirements.
 - With the exception of the additional two weeks in the first year of service, leave can be accumulated and taken over a period of two years, to enable the employee to undertake training as a member of the ADF Reserves.
 - Employees are not required to pay their tax free ADF Reserve salary to the Court in any circumstances.
- 42.3. An employee who is an officer or instructor of cadets in a Cadet Force may be granted paid leave of up to three weeks each financial year to perform duties as an officer or instructor of Cadets. For these purposes 'Cadet Force' means the Australian Navy Cadets, Australian Army Cadets, or the Australian Air Force Cadets.
- 42.4. Defence Reserve leave counts as service for all purposes, except for unpaid leave to undertake CFTS. Unpaid leave for the purpose of CFTS counts for all purposes except annual leave.
- 42.5. Eligible employees may also apply for annual leave, long service leave, unpaid miscellaneous leave, or they may use flextime or make up time for the purpose of fulfilling ADF Reserve, CFTS or Cadet Force obligations.
- 42.6. Employees are to notify supervisors at the earliest opportunity once the dates for ADF Reserve, CFTS or Cadet Force activities are known and/or changed.

43. War service leave

43.1. Approval of war service sick leave is subject to the Department of Veterans' Affairs accepting the medical condition is a war or defence caused condition within the meaning of all relevant legislation. Eligible employees are entitled to additional personal leave and may accrue two separate credits:

- a) a one-off credit of nine weeks on commencement in the APS, and
- b) an annual credit of three weeks for each year of APS service with unused credits accumulating to a maximum of nine weeks.

44. Miscellaneous leave

44.1. To provide flexibility to managers and employees, the CEO or delegate may grant leave of absence to an employee in appropriate circumstances for reasons not covered by other leave provisions.

44.2. Miscellaneous leave may be approved for reasons not covered by other leave provisions. It can be made available with or without pay for a variety of purposes.

44.3. Unpaid miscellaneous leave will not be unreasonably refused by the Court.

44.4. Paid miscellaneous leave counts as service for all purposes. Unpaid miscellaneous leave in excess of 30 calendar days in a calendar year does not count as service for the purposes of annual and personal leave accruals (and superannuation unless otherwise required by fund rules).

44.5. No form of paid leave will be approved during the time an employee is on unpaid miscellaneous leave.

44.6. Further information can be found in the applicable policy.

45. Community service leave

45.1. The Court will grant paid leave for activities including participation in emergency service activities, regular training, all emergency services responses, reasonable travel and recovery time and ceremonial duties.

46. Cultural, ceremonial and NAIDOC leave

46.1. The CEO or delegate may grant paid or unpaid cultural, ceremonial and NAIDOC leave to eligible employees.

47. Portability of accrued annual and personal leave entitlements

- 47.1. Where an employee moves (including on promotion) from another agency where they were an ongoing APS employee, the employee's unused accrued annual leave and personal leave (however described) will be transferred, provided there is no break in continuity of service.
- 47.2. Where an employee is engaged as either an ongoing or non-ongoing APS employee immediately following a period of ongoing employment in the Parliamentary Service or the ACT Government Service, the employee's unused accrued annual leave (excluding any accrued leave paid out on separation) and personal leave (however described) will be recognised.
- 47.3. For the purposes of this clause:
- 'APS employee' has the same meaning as in the *Public Service Act 1999*, and
 - 'Parliamentary Service' refers to employment under the *Parliamentary Service Act 1999*.

48. Public holidays

- 48.1. Employees will be entitled to the following public holidays:
- New Year's Day (1 January);
 - Australia Day (26 January);
 - Good Friday;
 - Easter Monday;
 - Anzac Day (25 April);
 - The Queen's birthday holiday (on the day on which it is celebrated in a State or Territory or a region of a State or Territory);
 - Christmas Day (25 December);
 - Boxing Day (26 December), and
 - Any other day, or part-day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday, other than a day or part-day, or a kind of day or part-day, that is excluded by the Fair Work regulations from counting as a public holiday.
- 48.2. If under a State or Territory law, a day or part-day is substituted for one of the public holidays listed above, then the substituted day or part-day is the public holiday.
- 48.3. The CEO or delegate 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.
- 48.4. An employee, who is absent on a day or part-day that is a public holiday in the place where the employee is based for work purposes, is entitled to be paid for the part or full day absence as if that day or part-day was not a public holiday, except where that person would not normally have worked on that day.

- 48.5. Where a public holiday falls during a period when an employee is absent on leave (other than Annual or paid Personal/Carer's 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.
- 48.6. Where a public holiday falls on the weekend and a substitute day is gazetted, employees who are required to work on either day will be entitled to the relevant overtime rate payable under clause 25 of this Agreement. Similarly, where an employee is required to work on Easter Saturday, payment will be at the overtime rate applicable to public holidays.
- 48.7. Where a public holiday falls on a day that is not regularly worked by a part-time employee, that employee will not be entitled to payment for that day.
- 48.8. Where there is prior agreement between an employee and the CEO or delegate, a cultural or religious day of significance to the employee may be taken with pay and the time made up as agreed with the manager, without entitlement to payment for the additional duty.
- 48.9. Employees required to work interstate when there is a public holiday in their home state are entitled to TOIL or payment at the normal overtime rate, calculated on the basis of hours worked.

Maintaining operations over the Christmas and New Year period

- 48.10. Subject to the following provisions for maintaining registry operations over the Christmas and New Year period, employees will be provided with time off for the working days between Christmas and New Year's Day. Employees will also be provided with time off for the three working days immediately following New Year's Day. Employees will be paid in accordance with their ordinary hours of work for these days. Where an employee is absent on leave, payment for the Christmas/New Year closedown period will be in accordance with the entitlement for that form of leave.
- 48.11. There will be no deduction from annual or personal leave credits for the closedown days.
- 48.12. The Court will staff operations during the closedown period on a voluntary basis wherever possible but may require employees to work for one or more days to maintain its operations. Employees required to work for one or more days:
- a) will be paid for each day worked as if it was a normal working day for the employee, and
 - b) are entitled to take TOIL for the hours worked at a time convenient to the employee and their manager but no later than the following 30 June.

Travel

49. Travel arrangements

- 49.1. Employees travelling on official business within Australia are entitled to economy class travel. The CEO or delegate may approve a higher class of travel where appropriate.
- 49.2. Employees whose travel includes overnight absence are entitled to an allowance for meals and incidentals. Employees travelling overnight are entitled to an allowance for accommodation when the Court does not directly meet the cost of accommodation. Employees who stay in non-commercial accommodation when travelling will be paid a non-commercial accommodation allowance of \$40 for each night. The amount of meal, incidental and accommodation allowances is based on, and updated in accordance with ATO rates. Meal allowances are not paid when the Court provides the meal in question.
- 49.3. The normal method of payment of allowances for travel will be in advance via direct credit to the employee's nominated account.
- 49.4. Where an employee incurs additional out-of-pocket expenses during travel, the CEO or delegate may approve reimbursement. This includes same day travel where the employee incurs reasonable expenses they would otherwise not have to meet.
- 49.5. The CEO or delegate will determine and may approve the reimbursement of additional fares personally incurred whilst performing duty at a place other than their usual place of work.
- 49.6. The CEO or delegate or equivalent may approve a return flight home after extended work-related absences. Normally this would be after 10 working days although shorter periods may be considered.
- 49.7. Where an employee is required to travel for official purposes for a period of 10 hours or more but no overnight stay is required, an allowance of \$40 for part-day travel will be payable to the employee through the salary system.
- 49.8. Where employees, who are the sole available carer of dependent children, are required by the Court to be away from their home base overnight, or are required to work away from home outside normal hours, reimbursement of reasonable child care costs that would otherwise not have been incurred, will be considered. Application for consideration, including an estimate of the cost involved, will be made prior to the finalisation of travel arrangements if possible. Evidence of expenditure and any other necessary details must accompany any claim for reimbursement.
- 49.9. For employees at APS Levels 1 to 6 travel within the applicable bandwidth is recorded as hours worked under the flextime scheme. For travel outside the bandwidth, overtime or TOIL in accordance with this Agreement is payable.
- 49.10. Where employees travel on domestic flights, their time worked will be taken to have commenced one hour prior to the scheduled departure time of their flight and end one hour after the flight's arrival.

50. Motor vehicle allowance

- 50.1. Employees may be authorised to use a private motor vehicle for official travel where it is considered that it will result in greater efficiency and involve less expense to do so.
- 50.2. Employees using a private motor vehicle for official purposes will be paid a motor vehicle allowance in accordance with ATO rates. This allowance will not exceed the cost of transport by other means.

51. Working and camping in remote localities

- 51.1. Remote locality work may include but is not restricted to 'on country' hearings and work in remote locations that may involve the preservation of evidence, videotaping trips, consent determinations, judgments and reconnaissance trips.
- 51.2. Employees working in remote localities and on remote hearings will be entitled to:
 - a) A camping allowance of \$75 per day. This recognises the discomfort, irregular hours and work demands employees may face when required to camp. It is not payable to an employee receiving an accommodation allowance.
 - b) A hardship allowance of \$30 per day where the employee is not entitled to receive camping allowance but is still subject to circumstances which may include discomfort, climatic extremes and extended travel. It may be payable where employee stays in tourist-style accommodation that, while having the minimum facilities, is not deemed entirely suitable.
 - c) Where an employee works in a remote location for more than seven but less than 14 days, they will be entitled to one day's leave for each seven consecutive days worked. An employee must work for a minimum of three hours per day to qualify for leave under this provision, which is in addition to other TOIL or flextime entitlements. Where an employee is in a remote location for 14 or more days, they are entitled to one day's leave for each seven consecutive days they are away from home under this provision, which is in addition to other TOIL or flextime entitlements.
 - d) Higher duties allowance may be paid for single days for staff on remote hearings.
 - e) Clothing and other expenses for personal items that are required for camping and work in remote localities may be reimbursed. Further information can be found in the applicable policy.
 - f) All employees undertaking native title work in a remote locality, other than judges' associates and research assistants, are entitled to be paid at a minimum of the APS 6 level.
 - g) On call allowance is payable to employees undertaking the role of On Country Coordinator while 'on country', on a pro-rata basis, consistent with the 'on call' provisions in this Agreement.
 - h) Employees working in remote locations that possess a current senior first aid certificate or higher will receive a first aid allowance for the relevant period if they are not already receiving the allowance.
- 51.3. Where employees working in remote locations require emergency assistance that requires them to travel at short notice from the remote location, all reasonable assistance will be provided by the Court.

WORKING ENVIRONMENT

52. Remote localities assistance

Note: Under ATO guidelines, Remote Localities Assistance is subject to Fringe Benefits Tax (FBT).

52.1. Ongoing employees who, immediately prior to the commencement of this Agreement, were covered by the terms and conditions of the *Federal Magistrates Court of Australia and Family Court of Australia Enterprise Agreement 2011–2014*, are located in Darwin, Cairns or Townsville and were engaged continuously by the Court in those locations on or before 10 June 1999, are entitled to a court discounted economy airfare for themselves and their eligible dependants in accordance with the following conditions:

- Employees located in Darwin: the maximum value of this airfare is for a journey between Darwin and Adelaide and return.
- Employees located in Cairns or Townsville: the maximum value of this airfare is for a journey between the employee's locality and Brisbane and return.

52.2. This entitlement will be available every two years for eligible employees in Cairns or Townsville, and every year for eligible employees in Darwin.

52.3. Air travel is to be booked using the Court's regular travel booking arrangements and the cashed out equivalent will not be available. The employee's manager may authorise travel other than by air by the employee or an eligible dependant. In this case the employee will receive motor vehicle allowance in accordance with clause 00 or the cost of the airfare that would have been incurred by the Court, whichever is less.

52.4. Ongoing employees who, immediately prior to the commencement of this Agreement, were covered by the terms and conditions of the *Federal Magistrates Court of Australia and Family Court of Australia Enterprise Agreement 2011–2014* are located in Darwin, Cairns or Townsville and were engaged continuously by the Court in those locations on or before 10 June 1999, will be entitled to additional annual leave at the following rates:

- Employees located in Darwin: five days.
- Employees located in Cairns or Townsville: two days.

- 52.5. Ongoing employees who, immediately prior to the commencement of this Agreement, were covered by the terms and conditions of the *Federal Magistrates Court of Australia and Family Court of Australia Enterprise Agreement 2011–2014*, are located in Darwin, Cairns or Townsville and were engaged continuously by the Court in those locations on or before the commencement of this Agreement and who are not entitled to receive remote localities assistance in accordance with clause 52.1 are entitled to:
- Up to one airfare per annum for medical evacuation for themselves or their eligible dependants in the case of a medical emergency.
 - Up to one airfare per annum for themselves only, for compelling family reasons including bereavement. Approval will be given only for compelling family reasons involving the following family members: spouse or de facto partner, children, siblings, parents, parents-in-law, grandparents and grandparents in-law.
- 52.6. Eligible employees will have access to additional leave and fares for travel associated with bereavement or compassionate reasons and District Allowance. District Allowance rates are determined by CEO or delegate and may be varied from time to time.
- 52.7. If the spouse or partner of an employee also receives remote localities assistance or an equivalent allowance from another employer, that person does not qualify as a dependant of the Court employee in relation to remote localities assistance.
- 52.8. Ongoing employees who, immediately prior to the commencement of this Agreement, were covered by the terms and conditions of the *Federal Magistrates Court of Australia and Family Court of Australia Enterprise Agreement 2011–2014* are located in Darwin, Cairns or Townsville and were engaged continuously by the Court in those locations on or before the commencement of this Agreement and who are not entitled to receive remote localities assistance in accordance with clause 52.1, are entitled to two days travelling time per annum, i.e. one day either side of annual leave.
- 52.9. Remote localities conditions recognise the elements attached to living and working in remote localities, their impact on people and how these elements and their impact have changed over time. These elements are:
- isolation and distance from the nearest capital city
 - climatic conditions, and
 - living conditions such as accessibility to goods and services and utilities.
- 52.10. Employees who immediately prior to the commencement of this Agreement, were covered by the *Federal Court of Australia Enterprise Agreement 2011–2014* continuously by the Court on or before the commencement of this Agreement the Court will provide the following conditions to staff and their dependents in Darwin:
- a) one annual return air flight interstate for staff members where there are compelling family reasons to do so;
 - b) return air flights interstate for medical emergencies where appropriate local treatment is not available in regard to a staff member or a staff member's immediate family;

- c) return air flights interstate for bereavement involving immediate family of a staff member or a staff member's spouse/partner, and
- d) additional paid leave to cover travel undertaken under the preceding points.

The CEO or delegate will approve local arrangements and, if necessary forms, for applying for these entitlements, where necessary clarifying concepts such as 'compelling reasons'.

52.11. Where staff relocate to the Darwin Registry, the CEO or delegate or their nominee may, in special circumstances, agree to supplement conditions available in this Agreement. These may also be made available to existing staff, who relocate to Darwin Registry, in appropriate circumstances. This sub-clause will not be used to create new employment conditions. Flexibility Agreements under clause 5 of this Agreement will be used to formalise any arrangements made under this sub-clause.

53. Illness and injury prevention

53.1. The Court and their employees are committed to measures that will:

- a) assist with preventing and managing illness and injury including psychological injuries
- b) as much as reasonably possible assist staff to avoid absences due to illness or injury, and
- c) assist absent staff to return to work as soon as reasonably practicable.

53.2. The measures that may be taken in individual cases include:

- a) consulting with the employee about his or her situation
- b) early support and intervention
- c) referral to the Employee Assistance Program
- d) referral to medical or other sources of advice, treatment, assistance and support
- e) identifying and as much as possible addressing workplace and individual factors which have a significant adverse impact on the employee
- f) the retention by the Court of a rehabilitation provider
- g) liaison as appropriate and where the employee consents, with the employee's treating medical practitioners and allied health providers
- h) implementing a structured rehabilitation and return to work, or maintenance at work program, and
- i) temporary or permanent reassignment of duties, where reasonably practicable.

54. Employee assistance program

54.1. The Court will provide access to an Employee Assistance Program (EAP) to employees and members of their immediate family for personal and work-related purposes. The EAP can be accessed by employees up to three times per episode.

54.2. The EAP offers counselling either face-to-face, over the phone or via the internet.

54.3. The EAP will provide critical incident counselling in relation to workplace incidents if the need arises. This will not be subject to the three visit limitation.

55. Influenza vaccinations

55.1. The Court will offer annual influenza shots to all employees, subject to vaccines being available.

56. Diversity in the workplace

56.1. The Court and its employees agree:

- a) to respect and value the diversity of the Court's workforce, and
- b) to ensure that our behaviour and treatment of others is free from all forms of discrimination.

57. Occupational health and safety

57.1. The Court is committed to ongoing arrangements in accordance with the *Work Health and Safety Act 2011* which enable effective cooperation between the Court and its employees, and where they choose their representatives, on occupational health and safety matters, and create and maintain a safe and healthy working environment.

PERFORMANCE MANAGEMENT

58. Performance management

- 58.1. Performance management arrangements in the Court apply to all employees. Simpler arrangements may be used for non-ongoing and irregular or intermittent employees. Performance appraisals will take place at least annually but may also occur more frequently.
- 58.2. The principles underpinning performance management in the Court include:
- a) regular, objective feedback
 - b) procedural fairness and natural justice including the opportunity to respond to feedback
 - c) appropriate regard to individual circumstances e.g. medical condition
 - d) a link between performance management and learning and development activities, and
 - e) a supportive approach that aims to assist staff in addressing areas of underperformance in the first instance. Options include regular/structured feedback, appropriate training, coaching, etc.
- 58.3. Formal action for underperformance under this Agreement would typically only follow attempts to assist the employee improve their work performance to a satisfactory level. The process for managing underperformance is detailed in Attachment E.

59. Probation

- 59.1. Employees who are engaged on an ongoing, or non-ongoing basis from outside the APS will normally be required to undergo a period of six months' probation or three months for non-ongoing staff on a contract of six or less months. Employees engaged by the Court on probation should be advised of the assessment criteria and method of assessment during the probation period.
- 59.2. Review of probation should occur no later than the midpoint of the probation period. After the informal feedback and counselling period, the manager must notify the employee in writing of any performance related concerns including any relevant evidence.
- 59.3. Where appropriate, the manager will develop a plan to address any areas of performance deficiency with the employee.

- 59.4. Any recommendation for termination of employment at any stage of the probationary period will be forwarded to the CEO or delegate.
- 59.5. The employee may submit to the CEO or delegate, written comments upon any recommendation for termination of employment, within 14 days of receiving the advice referred to above.
- 59.6. Upon receipt of the recommendation of the manager, and taking into account any comments provided by the employee, the CEO or delegate may:
- a) advise the employee that the probationary period has been successfully completed
 - b) extend the probationary period up to a maximum of six months of continuous employment, or
 - c) terminate employment.

60. Studies assistance and professional memberships

- 60.1. The Court will support employees who wish to pursue studies that are assessed as relevant to the Court's operations through its studies assistance program.
- 60.2. The program provides financial assistance for study costs of up to \$4,500 pa and access to flexible work arrangements for study purposes. Employees may access study leave of up to six hours per week to cover travel and study. Leave may also be provided for exam attendance and thesis preparation/ presentation. Further information is available in the Court's Study Assistance Policy. Study assistance will generally only be approved for ongoing employees.
- 60.3. The Court will reimburse relevant membership, accreditation and registration fees where:
- a) membership of a professional association is required under State or Territory laws for an employee to undertake their responsibilities for the Court, or
 - b) membership of a professional association is relevant to the employee's job and the CEO or delegate has determined there is a demonstrable benefit to the Court.
- 60.4. Renewal of membership for employees will be considered on a year by year basis
- 60.5. Generally professional membership fees will only be paid for ongoing staff although consideration will also be given to requests from long term non-ongoing staff.

CONSULTATION AND DISPUTE RESOLUTION

61. Effective communication and consultative committees

- 61.1. Prior to developing a new policy or guideline that relates to the provisions of this Agreement, or changing an existing policy or guideline that relates to the provisions of this Agreement, where that change is significant or substantial; the Court will consult with employees and their representatives for a reasonable period which should be at least two weeks. The Court will consider any comments or feedback prior to finalising the policy or guideline.
- 61.2. The parties covered by this Agreement agree to maintain the National Consultative Committee (NCC) and Regional/ Local Consultative Committees (RCC/LCCs). The role of the NCC and RCC/LCCs will include consultation on matters relating to the implementation and operation of the Agreement. The NCC will operate in accordance with the agreed NCC Operational Guidelines.

62. Representation and corporate support roles

- 62.1. The Court recognises that an employee may, in matters concerning their employment, choose to have a representative of their choice to support or represent them. A representative requested by an employee to act in this capacity may include an elected representative, a union workplace delegate, or a colleague. The Court and the employee's nominated representative will deal with each other in good faith.
- 62.2. Employees who undertake corporate support roles, or represent other employees, play an important role in maintaining a positive workplace culture. The Court recognises that employees perform these roles in addition to their usual job description. The Court, at its discretion, will provide support to employees where they are required to perform these duties.

Where an employee receives an allowance for the performance of an additional role, they will be provided with appropriate time and training to enable them to perform these roles effectively. The Court may approve other training to support employees where this is appropriate.

63. Consultation on major changes

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

64. Major change

- 64.1. For a major change referred to in clause 63.1.a):
- a) the employer must notify the relevant employees of the decision to introduce the major change, and

- b) sub-clauses 64.2– 0 apply.
- 64.2. The relevant employees may appoint a representative for the purposes of the procedures in this term.
- 64.3. If:
- a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation, and
 - b) the employee or employees advise the employer of the identity of the representative, the employer must recognise the representative.
- 64.4. As soon as practicable after making its decision, the employer must:
- a) discuss with the relevant employees:
 - i) the introduction of the change, and
 - ii) the effect the change is likely to have on the employees, and
 - iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees, and
 - b) for the purposes of the discussion-provide, in writing, to the relevant employees:
 - i) all relevant information about the change including the nature of the change proposed, and
 - ii) information about the expected effects of the change on the employees, and
 - iii) any other matters likely to affect the employees.
- 64.5. However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 64.6. The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- 64.7. If a term in this Agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in clause 63.1.a) and 64.2 and 0 are taken not to apply.

In this term:

a major change is likely to have a significant effect on employees if it results in:

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

65. Change to regular roster or ordinary hours of work

65.1. For a change referred to in clause 63.1.b):

- a) the employer must notify the relevant employees of the proposed change, and
- b) clauses 65.2 to 65.7 apply.

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

65.3. If:

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

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

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

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

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

65.7. In this term:

‘relevant employees’ means the employees who may be affected by a change referred to in sub-clause 63.1.

66. Resolution of agreement disputes

66.1. If a dispute relates to:

- a) a matter arising under this Agreement, or
- b) the national employment standards,

this term sets out the procedures to settle the dispute.

66.2. The Court or an employee who is a party to the dispute may appoint another person, organisation or association to accompany and/or represent them for the purposes of the procedures in this term.

66.3. In the first instance, parties to the dispute must attempt to resolve the matter at the workplace level by discussions between the employee or employees concerned and the relevant supervisor/manager/s.

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

66.5. 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.

Note: If the Fair Work Commission arbitrates the dispute, it may also use the powers that are available to it under the Act. A decision that the Fair Work Commission makes when arbitrating a dispute is a decision for the purpose of Div. 3 of Part 5.1 of the *Fair Work Act 2009*. Therefore, an appeal may be made against the decision.

66.6. While the parties are trying to resolve the dispute using the procedures in this term:

- a) an employee must continue to work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety, and
- b) an employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace, unless:
 - i) the work is not safe, or
 - ii) applicable 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.

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

PLANNING THE WORKFORCE

67. Aboriginal and Torres Strait Islander employment

67.1. The Court will make all reasonable endeavours to increase Aboriginal and Torres Strait Islander employment in the Court. In consultation with employees and where they choose their representatives, the Court will implement targeted strategies to improve the attraction and retention of Aboriginal and Torres Strait Islander employees.

68. Retaining mature age workers

68.1. The Court values the skills, experience, expertise and knowledge of their older workers. In keeping with the provisions of this Agreement relating to the balance between work and home life, measures to assist their transition to retirement can be explored by mature aged workers and their managers, including the following:

- a) part-time work
- b) flexible working hours
- c) job sharing, and
- d) flexible leave arrangements.

69. Responding to changing circumstances

69.1. Employees and the Court recognise the need for ongoing review of each court's organisational structures to respond to changing responsibilities and circumstances, including funding, government initiatives and strategic priorities.

70. Excess employees

70.1. The provisions of this clause apply to all employees, with the exception of employees on probation and non-ongoing employees. In applying the provisions relating to excess employees, the Court will have regard to any APS policy, including arrangements for the redeployment of excess employees across agencies.

70.2. The Court is committed to managing excess staff situations in a way that, as far as possible, takes the wishes and aspirations of affected staff into account. An excess employee is one who:

- a) is substantively classified at a level where there is a greater number of employees than is necessary for the efficient and economical working of the Court
- b) cannot be effectively used because of technological or other changes in the work methods of the Court or changes in the nature, extent or organisation of the functions of the Court, or
- c) in situations where the duties usually performed by the employee at their locality are to be performed at a different locality and the employee is not willing to perform duties at the different locality, the CEO or delegate has determined that the excess staff provisions of this Agreement apply to the affected employee.

71. Consultation with excess employees

- 71.1. The CEO or delegate will advise employees as soon as practicable where it is likely that they may become excess and the reasons they are likely to become excess.
- 71.2. Discussions will be held with the employee to consider possible redeployment opportunities or whether voluntary retrenchment may be appropriate. The maximum period for these discussions is one month.
- 71.3. During this period the CEO or delegate may also invite employees who are not excess to requirements to express an interest in voluntary retrenchment where this would allow potentially excess employees to be redeployed. Any swaps would be subject to the excess employee's ability to undertake the alternative duties effectively within a reasonable time.
- 71.4. Following these discussions, the CEO or delegate will write to the employee, advising that they are potentially excess to requirement and may invite the employee to elect for voluntary retrenchment.
- 71.5. Potentially excess employees who are invited to elect for voluntary retrenchment will be given one month to consider (the consideration period) the offer of voluntary retrenchment and will be provided with the following details to assist with their decision:
 - a) the amount of severance pay, pay in lieu of notice and unused leave credits
 - b) the taxation rules applying to the various payments, and
 - c) financial assistance (e.g. via reimbursement or direct payment to the service provider) up to a maximum of \$800 for financial advice and a maximum of \$1,200 for career counselling for resume preparation, interview coaching or an outplacement service.
- 71.6. Employees who decline an offer of voluntary retrenchment or do not respond to the offer may be identified as excess to requirements at the end of the consideration period. Only one offer of voluntary retrenchment will be made to an excess employee.
- 71.7. Employees may elect to accept an offer of voluntary retrenchment prior to the expiration of the consideration period. This will attract payment for the unexpired period of the consideration period in addition to any payment in lieu of notice (see clause 71.5).

72. Period of notice

- 72.1. Where an employee agrees to an offer of voluntary retrenchment the CEO or delegate can approve the termination of that employee's employment under section 29 of the *Public Service Act 1999*. The employee will be given a Notice of Termination of four weeks, or five weeks for employees over 45 with at least five years continuous service. This period of notice will also apply to employees who are involuntarily terminated with the periods of notice being, as far as practicable, concurrent with the retention periods.
- 72.2. The employee or the CEO or delegate may initiate an earlier termination date within the notice period. This will attract payment in lieu of notice for the unexpired portion of the notice period.

73. Severance Benefit on Voluntary Retrenchment

73.1. An employee who elects for retrenchment with a redundancy benefit and whose employment is terminated by the CEO or delegate under section 29 of the *Public Service Act 1999* on the grounds that he /she is excess to the requirements of the Court, is entitled to payment of a redundancy benefit of an amount equal to two weeks' salary for each completed year of continuous service, plus a pro-rata payment for completed months of service since the last completed year of service, subject to any minimum amount the employee is entitled to under the NES.

- a) The minimum sum payable will be four weeks' salary and the maximum will be 48 weeks' salary.
- b) The redundancy benefit will be calculated on a pro-rata basis for any period where an employee has worked part-time hours during his or her period of service and the employee has less than 24 years full-time service, subject to any minimum amount the employee is entitled to under the NES.

73.2. Service for severance pay purposes means, subject to the following sub-clauses:

- a) service in the Court
- b) Government service as defined in section 10 of the Long Service Leave (Commonwealth Employees) Act 1976
- c) service with the Commonwealth (other than with a joint Commonwealth-State body corporate in which the Commonwealth does not have a controlling interest) which is recognised for long service leave purposes
- d) service with the Australian Defence Forces
- e) APS service immediately preceding deemed resignation under the repealed section 49 of the *Public Service Act 1922* if the service has not been previously recognised for severance pay purposes, and
- f) service in another organisation where the employee was transferred from the APS to that organisation with a transfer of function or the 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.

73.3. 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 Court 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 repealed section 49 of the *Public Service Act 1922*.

73.4. Any period of service which ceased:

- a) through termination on the following grounds:
 - i) the employee lacks or has lost an essential qualification for performing his or her duties
 - ii) non-performance or unsatisfactory performance of duties
 - iii) inability to perform duties due to physical or mental incapacity
 - iv) failure to complete an entry-level training course
 - v) failure to meet a condition imposed under sub-section 22(6) of the *Public Service Act 1999*. or
 - vi) a breach of the Code of Conduct; or
- b) on a ground equivalent to those listed under clause 73.4.a) above under the repealed *Public Service Act 1922*: or
- c) through voluntary retirement at or above the minimum retiring age applicable to the employee; or
- d) with the payment of a redundancy benefit or similar payment or an employer-financed retirement benefit

will not count as service for severance pay purposes.

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

73.6. Salary for the calculation of the severance benefit will be determined by:

- a) the employee's salary
- b) the salary of the higher position where the employee had been acting in a higher position for a continuous period of at least twelve months immediately preceding the date on which they were given the Notice of Retirement, and
- c) other allowances in the nature of salary, including shift penalties.

74. Retention periods

74.1. An excess employee who does not agree to be retrenched with the payment of a redundancy benefit will be entitled to the following period of retention:

- 56 weeks where the employee has 20 years or more service or is over 45 years of age, or
- 30 weeks for all other employees.

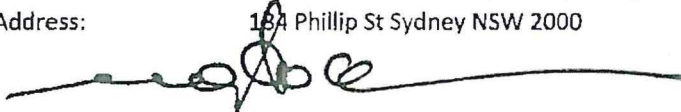
74.2. If an employee is entitled to a redundancy payment under the NES, the retention period at sub-clause 74.1 will be reduced by the employee's redundancy pay entitlement under the NES on termination, calculated as at the expiration of the retention period (as adjusted by this clause).

- 74.3. During the retention period, the CEO or delegate will take reasonable steps to find alternative employment for the employee. Excess employees who apply for transfer to vacancies within the Court will be assessed in terms of their capacity to undertake the position effectively within a reasonable period, rather than in merit competition with other applicants, (unless there are other applicants for transfer who are excess staff of the Court).
- 74.4. The CEO or delegate may, with four weeks' notice, reduce the excess employee's classification as a means of securing alternative employment for an excess employee. Where an excess employee is reduced in classification before the end of the appropriate retention period, the employee will continue to be paid at their previous level for the balance of the retention period.
- 74.5. During the retention period, the employee will take reasonable steps to find alternative employment, and actively participate in learning and development activities, trial placements or other arrangements aimed at obtaining a permanent placement. The excess employee may be provided with assistance in meeting reasonable travel and incidental expenses incurred seeking alternative employment, as well as reasonable paid leave.
- 74.6. Where the CEO or delegate is satisfied that there is insufficient productive work available for the employee within the Court during the remainder of the retention period and that there is no reasonable redeployment prospects in the APS:
- the CEO or delegate may, (in consultation with and as far as practicable in agreement with the employee) terminate the employee's employment under section 29 of the *Public Service Act 1999*, and
 - upon termination, the employee will be paid a lump sum comprising:
 - the balance of the retention period (as shortened for the NES under sub-clause 74.2) and this payment will be taken to include the payment in lieu of notice of termination of employment, plus
 - the employee's NES entitlement to redundancy pay.
- 74.7. An excess employee will not be terminated involuntarily:
- a) if they have elected to accept an offer of voluntary retrenchment within the previous 12 months but the CEO or delegate has refused to approve it.
 - b) if there are employees undertaking the same work at that level in the location who wish to accept voluntary retrenchment.

ACCEPTANCE OF AGREEMENT

a) Signatures of employer and bargaining representatives

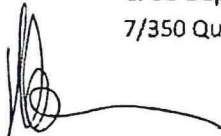
Full Name: Warwick Soden
Title: Chief Executive Officer/ Principal Registrar
Address: 184 Phillip St Sydney NSW 2000



Signed for and on behalf of the Commonwealth as employer

Date: 7/6/18

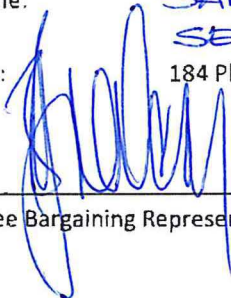
Full Name: Rupert Evans
Title: CPSU Deputy National President
Address: 7/350 Queen Street, Melbourne VIC 3000



Signed for and on behalf of the Community and Public Sector Union as a
Bargaining Representative

Date: 7/6/18

Full Name: BARBARA GRAHAM
Title: SENIOR CLIENT SERVICE OFFICER
Address: 184 Phillip St Sydney NSW 2000



Employee Bargaining Representative

Date: 26/7/18

ATTACHMENT A

Salary rate alignment

Alignment of salary rates for employees who immediately prior to the commencement of this Agreement were covered by the terms and conditions of the *Federal Magistrates Court of Australia and Family Court of Australia Enterprise Agreement 2011–2014*.

| Current Salary | | Aligned Salary | |
|-----------------|---------|----------------|---------|
| 1.1 | 44,063 | 1.2 | 44,556 |
| 1.2 | 45,256 | 1.3 | 45,763 |
| 1.3 | 47,118 | 1.4 | 47,641 |
| 2.1 | 48,247 | 2.1 | 48,786 |
| 2.2 | 50,877 | 2.3 | 51,443 |
| 2.3 | 53,504 | 2.5 | 54,100 |
| 3.1 | 56,383 | 3.2 | 57,010 |
| 3.2 | 57,813 | 3.3 | 58,463 |
| 3.3 | 59,310 | 3.4 | 59,975 |
| 4.1 | 63,197 | 4.2 | 63,902 |
| 4.2 | 64,839 | 4.3 | 65,567 |
| 4.3 | 66,499 | 4.4 | 67,247 |
| 5.1 | 68,315 | 5.1 | 69,080 |
| 5.2 | 70,457 | 5.2 | 71,243 |
| 5.3 | 72,440 | 5.3 | 73,248 |
| 6.1 | 74,198 | 6.1 | 74,610 |
| 6.2 | 78,144 | 6.3 | 78,559 |
| 6.3 | 84,754 | 6.5 | 85,705 |
| EL1.1 | 94,586 | EL1.1 | 95,493 |
| EL1.2 | 98,362 | EL1.2 | 98,362 |
| EL1.3 | 102,136 | EL1.3 | 103,131 |
| EL2.1 | 111,677 | EL2.2 | 116,153 |
| EL2.2 | 115,089 | EL2.2 | 116,153 |
| EL2.3 | 123,684 | EL2.3 | 124,838 |
| ELA2 | 125,639 | | 125,639 |
| | 127,818 | | 127,818 |
| | 131,082 | | 131,082 |
| Registrars Only | | | |
| | 128,152 | REGFL EL2.1 | 128,152 |
| | 130,374 | REGFL EL2.2 | 130,374 |
| | 133,702 | REGFL EL2.3 | 133,702 |

ATTACHMENT B

Salary rates

Non-legal salary rates

| | Current salary | On commencement 3% increase | 12 months from commencement 2% increase | 18 months from commencement 0.5% increase |
|-------|----------------|--------------------------------|---|---|
| 1.1 | 43,108 | 44,401 | 45,289 | 45,516 |
| 1.2 | 44,556 | 45,893 | 46,811 | 47,045 |
| 1.3 | 45,763 | 47,136 | 48,079 | 48,319 |
| 1.4 | 47,641 | 49,070 | 50,052 | 50,302 |
| 2.1 | 48,786 | 50,250 | 51,255 | 51,511 |
| 2.2 | 50,130 | 51,634 | 52,667 | 52,930 |
| 2.3 | 51,443 | 52,986 | 54,046 | 54,316 |
| 2.4 | 52,782 | 54,365 | 55,453 | 55,730 |
| 2.5 | 54,100 | 55,723 | 56,837 | 57,122 |
| 3.1 | 55,568 | 57,235 | 58,380 | 58,672 |
| 3.2 | 57,010 | 58,720 | 59,895 | 60,194 |
| 3.3 | 58,463 | 60,217 | 61,421 | 61,728 |
| 3.4 | 59,975 | 61,774 | 63,010 | 63,325 |
| 4.1 | 61,936 | 63,794 | 65,070 | 65,395 |
| 4.2 | 63,902 | 65,819 | 67,135 | 67,471 |
| 4.3 | 65,567 | 67,534 | 68,885 | 69,229 |
| 4.4 | 67,247 | 69,264 | 70,650 | 71,003 |
| 5.1 | 69,080 | 71,152 | 72,575 | 72,938 |
| 5.2 | 71,243 | 73,380 | 74,848 | 75,222 |
| 5.3 | 73,248 | 75,445 | 76,954 | 77,339 |
| 6.1 | 74,610 | 76,848 | 78,385 | 78,777 |
| 6.2 | 76,465 | 78,759 | 80,334 | 80,736 |
| 6.3 | 78,559 | 80,916 | 82,534 | 82,947 |
| 6.4 | 82,510 | 84,985 | 86,685 | 87,118 |
| 6.5 | 85,705 | 88,276 | 90,042 | 90,492 |
| EL1.1 | 95,493 | 98,358 | 100,325 | 100,827 |
| EL1.2 | 98,362 | 101,313 | 103,339 | 103,856 |
| EL1.3 | 103,131 | 106,225 | 108,349 | 108,891 |
| EL2.1 | 110,087 | 113,390 | 115,657 | 116,236 |
| EL2.2 | 116,153 | 119,638 | 122,030 | 122,640 |
| EL2.3 | 124,838 | 128,583 | 131,155 | 131,811 |
| EL2.4 | 129,018 | 132,889 | 135,546 | 136,224 |
| | | | | |
| ELA2* | 125,639 | 129,408 | 131,996 | 132,656 |
| | 127,818 | 131,653 | 134,286 | 134,957 |
| | 131,082 | 135,014 | 137,715 | 138,403 |

*The ELA2 band will only apply to employees who immediately prior to the commencement of this Agreement, were covered by the terms and conditions of the *Federal Magistrates Court of Australia and Family Court of Australia Enterprise Agreement 2011-2014*.

Legal salary rates

| | Current salary | On commencement 3% increase | 12 months from commencement 2% increase | 18 months from commencement 0.5% increase |
|--------------|----------------|--------------------------------|--|--|
| Legal EL1.1 | 100,626 | 103,645 | 105,718 | 106,246 |
| Legal EL1.2 | 108,263 | 111,511 | 113,741 | 114,310 |
| Legal EL1.3 | 121,285 | 124,924 | 127,422 | 128,059 |
| REGFL EL2.1* | 128,152 | 131,997 | 134,636 | 135,310 |
| REGFL EL2.2* | 130,374 | 134,285 | 136,971 | 137,656 |
| REGFL EL2.3* | 133,702 | 137,713 | 140,467 | 141,170 |
| Legal EL2.1 | 140,503 | 144,718 | 147,612 | 148,351 |
| Legal EL2.2 | 146,011 | 150,391 | 153,399 | 154,166 |

*The REGFL EL2.1, EL2.2 and EL2.3 will only apply to Registrars engaged to work as a Registrar for the Family Court of Australia or the Federal Circuit Court of Australia. Registrars engaged to work for the Federal Court will continue to be paid either Legal EL1 or EL2.

ATTACHMENT C

Allowances

First aid officers, health and safety representatives, fire wardens and harassment contact officers allowance (clause 29)

| Fortnightly Rate | | |
|-----------------------------|---|---|
| On commencement 3% increase | 12 months from commencement 2% increase | 18 months from commencement 0.5% increase |
| 23.00 | 23.46 | 23.58 |

After hours service allowance (clause 32)

| | Hourly Rate | | | |
|---------------------------------------|--------------|-----------------------------|---|---|
| | Current rate | On commencement 3% increase | 12 months from commencement 2% increase | 18 months from commencement 0.5% increase |
| Outside standard hours | 3.34 | 3.44 | 3.51 | 3.53 |
| Public holiday within standard hours | 5.14 | 5.29 | 5.40 | 5.43 |
| Public holiday outside standard hours | 8.47 | 8.72 | 8.90 | 8.94 |

Community Language Allowance (clause 31)

| | Annual rate | | | |
|---------|--------------|-----------------------------|---|---|
| | Current rate | On commencement 3% increase | 12 months from commencement 2% increase | 18 months from commencement 0.5% increase |
| Rate #1 | 781 | 804.43 | 820.52 | 824.62 |
| Rate #2 | 1560 | 1606.80 | 1638.94 | 1647.13 |

Senior Family Consultant Allowance (clause 30)

| | Annual rate | | | |
|--|--------------|-----------------------------|---|---|
| | Current rate | On commencement 3% increase | 12 months from commencement 2% increase | 18 months from commencement 0.5% increase |
| Supervising 3 or less Family Consultants | 5000 | 5150.00 | 5253.00 | 5279.27 |
| Supervising more than 3 and less than 7 Family Consultants | 8000 | 8240.00 | 8404.80 | 8446.82 |
| Supervising 7 or more Family Consultants | 10,000 | 10,300.00 | 10,506.00 | 10,558.53 |

ATTACHMENT D

Supported wage payments for employees with a disability

1. Employment at lower than specified salary levels

- 1.1. Consistent with the social justice objectives of the APS, employees who have a disability to the extent that they meet the impairment criteria for the disability support pension may be employed under this Agreement and be paid a supported salary, appropriate to the APS classification in which employed, at a rate below the salary levels prescribed in this Agreement.

2. Definitions

- 2.1. In this attachment, the following definitions will apply:
 - a) 'Supported Wage System' means the Commonwealth Government system to promote employment for people who cannot work at full wages because of a disability.
 - b) 'Accredited Assessor' means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual's productive capacity within the supported wage system.
 - c) 'Disability Support Pension' means the Commonwealth pension scheme to provide income security for persons with a disability as provided for under the *Social Security Act 1991*, as amended from time to time, or any successor to that scheme.
 - d) 'Assessment instrument' means the form provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system.

3. Eligibility criteria

- 3.1. Subject to the following two clauses, employees covered by these provisions will be those who are unable to perform the range of duties to the standard required at the work value level 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.
- 3.2. The provisions in this attachment do not apply to:
 - a) any existing employee who has a claim against the Commonwealth which is subject to the provisions of workers' compensation legislation relating to the rehabilitation of employees who are injured in the course of their current employment, or
 - b) an employee in respect of whom funding has been provided under the *Disability Services Act 1986* for the dual role of service provider and sheltered employer.

4. Supported salary rates

- 4.1. Employees to whom the provisions in this attachment apply will be paid the applicable percentage of the relevant salary rate prescribed below for the work value they are performing. These employees will be paid no less than \$84 per week (supported salary rates percentages).

| Accessed capacity | % of prescribed salary rate |
|--------------------------|------------------------------------|
| 10% | 10% |
| 20% | 20% |
| 30% | 30% |
| 40% | 40% |
| 50% | 50% |
| 60% | 60% |
| 70% | 70% |
| 80% | 80% |
| 90% | 90% |

5. Assessment of capacity

- 5.1. For the purpose of establishing the percentage of the salary rate to be paid to an employee under the provisions of this attachment, the productive capacity of the employee will be assessed in accordance with the supported wage system and documented in an assessment instrument, by either:
- a) the CEO or delegate in consultation with the employee; or, if desired by any of these, or
 - b) the CEO or delegate and an accredited assessor from a panel agreed by the employee.

Note: Where a person's assessed capacity is 10%, the employee will receive a high degree of assistance and support.

6. Lodgment of assessment instrument

- 6.1. All assessment instruments, including the assessment of the percentage of the salary rate to be paid to the employee, will be lodged by the CEO or delegate with Fair Work Australia.
- 6.2. All assessment instruments will be agreed and signed by the employee and the CEO or delegate.

7. Review of assessment

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

8. Other terms and conditions of employment

- 8.1. Where an assessment has been made, the applicable percentage will apply to the salary rate only. Employees covered by the provisions of this attachment will be entitled to the same terms and conditions of employment as all other employees covered by this Agreement paid on a pro-rata basis.

9. Workplace adjustment

- 9.1. Where the CEO or delegate employs a person under the provisions of this attachment, reasonable steps to make changes in the workplace will be taken to enhance the employee's capacity to do the job. Changes may involve re design of job duties, working arrangements and work organisation in consultation with other employees in the team.

10. Trial period

- 10.1. In order for an adequate assessment of the employee's capacity to be made, the CEO or delegate may employ a person under the provisions of this attachment for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- 10.2. During that trial period the assessment of capacity will be undertaken and the proposed salary rate for a continuing employment relationship will be determined.
- 10.3. The amount payable to the employee during the trial period will be as determined by the CEO or delegate. In exercising this power of determination, the CEO or delegate must take into account the Centrelink income test free area for earnings.
- 10.4. Work trials should include induction or training as appropriate to the job being trialled.
- 10.5. Where the CEO or delegate and the employee wish to establish a continuing employment relationship following the completion of the trial period, further employment arrangements will be based on the assessment outcome.

ATTACHMENT E

Managing underperformance

1. Performance improvement arrangements

- 1.1. Subject to this attachment, an employee's underperformance will be managed within the Court's Performance Management and Development Policy.
- 1.2. A manager may meet with an employee at any time to discuss concerns that the employee is not meeting the required standard of work. This will involve informal feedback and counselling, allowing a period of informal assessment of at least four weeks. The employee is to be advised in advance of any such meeting.
- 1.3. After the informal feedback and counselling period, the manager must notify the employee in writing if the manager wishes to embark upon formal assessment. The notification is to state the nature of the performance issue and the evidence this is based on. Relevant material that includes evidence of the performance issues and details of any action to be taken, which must include performance counselling.

2. Performance assessment

- 2.1. At the start of the assessment period, as part of performance counselling, the manager must develop an improvement plan in consultation with the employee. This plan will set out steps to be taken to improve the employees' performance to meet and maintain the required standard of work. It is the basis of the assessment process.
- 2.2. The manager must provide the employee with a written record of the counselling and of the improvement plan. The employee is to be given an opportunity to respond to matters documented or discussed during the development of the plan.
- 2.3. During the assessment period the employee may be asked to undertake a variety of tasks within the scope of his or her assigned duties.
- 2.4. Over the assessment period, the manager must review the employee's performance and the improvement plan regularly and provide feedback to the employee on his or her progress. Feedback is to be documented in writing. The employee may respond in writing to feedback received. The assessment period will be no less than two months.

3. Outcomes of the performance assessment

- 3.1. If at the end of the assessment the employee has substantially met and maintained the required standard of work, the manager may determine no further action will be taken.
- 3.2. If at the end of the assessment the employee has not substantially met and maintained the required standard of work, the manager may take appropriate action. The manager will provide a report to the decision maker at the end of the two month period. Where the decision maker finds that the employee has not met the required standard, they will advise the employee in writing of the finding including a copy of the assessment report and the action proposed, which may include:
 - a) nevertheless treat the assessment as ended

- b) continue the assessment for up to one more month
- c) reduce the employee's salary within the same classification
- d) reduce the employee's classification and determine his or her salary within the new classification, or
- e) terminate the employee's employment.

3.3. The employee will be given at least 14 days to respond to this proposal and the performance report. The CEO or Delegate, will make his or her decision taking into account the work assessment report, any response by the employee and any other relevant issues and advise the employee in writing of their decision.

4. Appeals

Note: An employee whose employment is terminated may seek redress for the termination under the *Fair Work Act 2009*.

4.1. An employee dissatisfied with action under clause 3 except clause 3.2 (e) may seek redress under the dispute and avoidance provisions of the agreement and or the relevant provisions in the *Public Service Act 1999*.

ATTACHMENT F

Circuits and judicial support staff

1. Working arrangements associated with circuits

- 1.1. The Court provides services to clients who live in locations remote from their registries. They normally provide the service by sending employees to these locations for periods from one day to three weeks. These arrangements are called 'circuits'.
- 1.2. Where possible, employees will be able to choose to accept circuit work. If insufficient numbers of employees choose to do so, the registry manager has the authority to require employees to undertake circuit work to ensure client service is maintained.
- 1.3. An employee will not be required to undertake more than 13 weeks of circuit work in a year, but may agree to do so.
- 1.4. Where employees are travelling to and from circuits by car, a registry vehicle should be used or the registry may hire a suitable vehicle. Alternative travel arrangements can be approved with the registry manager prior to travel.
- 1.5. Wherever possible, court employees must travel together in the same vehicle and use that vehicle to convey circuit material to the circuit location.

2. Judicial Support Staff

- 2.1. It will be the responsibility of individual judges and registrars to ensure that the hours of work of their judicial support staff are not so lengthy as to involve potential health risks and to manage the judicial support staff's accrued credits with that objective in mind.

IN THE FAIR WORK COMMISSION

FWC Matter No.:

AG2018/2509 – Federal Court of Australia Enterprise Agreement 2018-2021

Applicant:

Federal Court of Australia

Section 185 – Application for approval of a single enterprise agreement

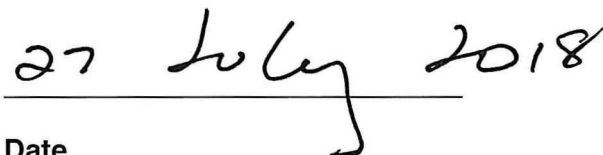
Undertaking- Section 190

I, Warwick Soden, Chief Executive Officer for Federal Court of Australia give the following undertakings with respect to the Federal Court of Australia Enterprise Agreement 2018-2021 ("the Agreement"):

1. I have the authority given to me by Federal Court of Australia to provide this undertaking in relation to the application before the Fair Work Commission.
2. Part time employees are entitled under this agreement to a minimum engagement of 3 hours as per cl 6.4(f) of the *Public Service Enterprise Award 2015*.
3. These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.



Signature



Date