



# DECISION

*Fair Work Act 2009*

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

**Federal Court of Australia**

(AG2024/940)

## **FEDERAL COURT OF AUSTRALIA ENTERPRISE AGREEMENT 2024-2027**

Commonwealth employment

COMMISSIONER PLATT

ADELAIDE, 22 APRIL 2024

*Application for approval of the Federal Court of Australia Enterprise Agreement 2024-2027*

[1] An application has been made for approval of an enterprise agreement known as the *Federal Court of Australia Enterprise Agreement 2024-2027* (the Agreement) pursuant to s.185 of the *Fair Work Act 2009* (the Act) by the Federal Court of Australia (the Applicant). The agreement is a single enterprise agreement.

[2] The matter was allocated to my Chambers on 8 April 2024.

[3] On 10 April 2024, I conducted a telephone conference with the parties to seek clarification about aspects of the Agreement and invited the Applicant to address these matters including through the provision of an undertaking.

[4] The Agreement contains a number of changes which when considered in isolation, are less advantageous than the Award. These include increased ordinary hours, an expanded spread of hours and some penalty rates. I note that the Agreement also confers benefits of universal application including paid leave between Christmas and New Year and increased Superannuation Contributions. I have not considered additional benefits which were conditional in their application and/or difficult to quantify in monetary terms. I find that the universal improvements offset the disadvantages referred to.

[5] The Applicant has submitted an undertaking in the required form dated 17 April 2024, a copy of which is attached to this Agreement. The undertaking deals with the following topics:

- Higher duties allowance will be paid to employees after half a day where they occupy a role at a classification level higher than their substantive classification level consistent with the *Australian Public Service Enterprise Award 2015*.

- Higher duties allowance will not be paid to employees above the salary barrier (Executive Level) for a period of less than a week, unless the Agency Head considers special circumstances exist.
- The requirement to prescribe the agreed part time hours of working including the start and finish times so as to determine when overtime is payable has been inserted, consistent with the *Australian Public Service Enterprise Award 2015*.
- A Part-time minimum engagement provision has been inserted, consistent with the *Australian Public Service Enterprise Award 2015*.
- Where TOIL has been agreed and has not been utilised within 4 weeks, payment of the original entitlement will be made.

[6] A copy of the undertaking has been provided to the bargaining representatives and I have sought their views in accordance with s.190(4) of the Act. The bargaining representatives did not express any view on the undertaking.

[7] The undertaking appears to meet the requirements of s.190(3) of the Act and I have accepted it. As a result, the undertakings are taken to be a term of the Agreement.

[8] 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) of the Act I note that the Agreement covers this organisation.

[9] I am satisfied that each of the requirements of ss.186, 187, 188 and 190 of the Act as are relevant to this application for approval have been met.

[10] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 7 days after the date of approval of the Agreement. The nominal expiry date is 28 February 2027.



COMMISSIONER

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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 this agreement.



**FEDERAL COURT  
OF AUSTRALIA**



# **Federal Court of Australia**

## **Enterprise Agreement 2024-2027**

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# Section 1: Technical matters

## Title

1. This agreement will be known as the Federal Court of Australia Enterprise Agreement 2024-2027.

## Parties to the agreement

2. This agreement covers:
  - 2.1 The Federal Court of Australia, for and on behalf of the Commonwealth of Australia as the employer;
  - 2.2 all employees in the Agency employed under the PS Act other than Senior Executive Service employees or equivalent; and
  - 2.3 subject to notice being given in accordance with section 183 of the FW Act, the following employee organisation/s which were a bargaining representative for this agreement:
    - 2.3.1 Community and Public Sector Union, and
    - 2.3.2 Authorised Employee Bargaining Representative/s.

## Operation of the agreement

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

## Delegations

5. The Agency Head may delegate to or authorise any person to perform any or all of the Agency Head's powers or functions under this agreement, including the power of delegation, and may do so subject to conditions.

## National Employment Standards (NES) precedence

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

## Closed comprehensive agreement

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

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

## **Principles and objectives**

10. This agreement provides a principles-based decision-making framework. The following principles underpin all provisions in this agreement:
  - 10.1. providing a safe, secure and fair environment;
  - 10.2. assisting employees to balance their work and personal commitments;
  - 10.3. the Agency being as flexible as it can, taking into account the employee's preferences and personal circumstances;
  - 10.4. fostering strong cooperative relationships between the Agency and its employees;
  - 10.5. safeguarding the health and wellbeing of employees;
  - 10.6. respecting and valuing diversity;
  - 10.7. preventing discrimination and harassment;
  - 10.8. treating employees fairly and impartially;
  - 10.9. making the most efficient use of resources, and
  - 10.10. supporting sustainable environmental management.

These principles will be supported by policies and guidelines as appropriate.

## **Individual flexibility arrangements**

11. The Agency and an employee covered by this agreement may agree to make an Individual Flexibility Arrangement (IFA) to vary the effect of terms of the agreement if:
  - 11.1 the agreement deals with one or more of the following matters:
    - 11.1.1 arrangements about when work is performed;
    - 11.1.2 overtime rates;
    - 11.1.3 penalty rates;
    - 11.1.4 allowances;
    - 11.1.5 remuneration; and
    - 11.1.6 leave and leave loading; and
  - 11.2 the arrangement meets the genuine needs of the Agency and employee in relation to one or more of the matters mentioned in clause 11.1, and
  - 11.3 the arrangement is genuinely agreed to by the Agency and employee.
12. The Agency must ensure that the terms of the Individual Flexibility Arrangement:
  - 12.1 are about permitted matters under section 172 of the FW Act;

- 12.2 are not unlawful terms under section 194 of the FW Act; and
  - 12.3 result in the employee being better off overall than the employee would be if no arrangement was made.
13. The Agency must ensure that the Individual Flexibility Arrangement:
- 13.1 is in writing;
  - 13.2 includes the name of the Agency and employee;
  - 13.3 is signed by the Agency and employee and, if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
  - 13.4 includes details of:
    - 13.4.1 the terms of this agreement that will be varied by the arrangement;
    - 13.4.2 how the arrangement will vary the effect of the terms;
    - 13.4.3 how the employee will be better off overall in relation to the terms and conditions of their employment as a result of the arrangement; and
    - 13.4.4 states the day on which the arrangement commences.
14. The Agency must give the employee a copy of the Individual Flexibility Arrangement within 14 days after it is agreed to.
15. The Agency or employee may terminate the Individual Flexibility Arrangement:
- 15.1 by giving no more than 28 days written notice to the other party to the arrangement; or
  - 15.2 if the Agency and employee agree in writing – at any time.
16. The Agency and employee are to review the Individual Flexibility Arrangement at least every 12 months.

## Definitions

17. The following definitions apply to this agreement:

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

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

**Agency** means the Federal Court of Australia entity being the responsible authority that engages employees under the PS Act to work in support of one or more of the following courts or Tribunal:

- Federal Court of Australia (**FCA**)
- Federal Circuit and Family Court of Australia (Division 1) and (Division 2) (**FCFCOA**), and
- National Native Title Tribunal (**NNTT**).

**Agency Head** means the Chief Executive Officer of the Federal Court of Australia or the Chief Executive Officer's delegate.

**Agreement** means the Federal Court of Australia Enterprise Agreement 2024-2027.

**APS** means the Australian Public Service.

**APS Award** means the *Australian Public Service Enterprise Award 2015* as amended from time to time.

**ATO** means the Australian Taxation Office.

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

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

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

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

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

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

**Child** means a biological child, adopted child, foster child, step child, or ward.

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

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

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

**Employee** means an employee of the Commonwealth engaged under section 22(2) of the PS Act who is covered by this agreement (whether full-time, part-time or casual, ongoing or non-ongoing), working in the Federal Court of Australia, the Federal Circuit and Family Court of Australia (Division 1 and Division 2), or the National Native Title Tribunal.

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

**Family** means:

- a. a spouse, former spouse, de facto partner or former de facto partner of the employee;
- b. a child, parent, grandparent, grandchild, or sibling of the employee;
- c. a child, parent, grandparent, grandchild, or sibling of a spouse, former spouse, de facto partner or former de facto partner of the employee;
- d. a member of the employee's household;
- e. a person with whom the employee has a relationship of traditional kinship where there is a relationship or obligation, under customs and traditions of the community or group to which the employee belongs; or
- f. or another person where the Agency Head is satisfied they have a strong affinity with the employee.

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

**Full-time employee** means an employee employed to 37 hours and 30 minutes per week in accordance with this agreement.

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

**HDA** means higher duties allowance.

**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 an employee's direct manager, and may include a person referred to as a supervisor.

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

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

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

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

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

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

**Partner** means a spouse (or former spouse) or de facto partner (or former de facto partner).

**Part-time employee** means an employee employed to work less than 37 hours and 30 minutes per week in accordance with this agreement.

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

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

**Relevant employee** means an affected employee.

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

**Settlement period** – means the 2 week period used for calculation of hours of attendance and payment of salary.

**TOIL** – means time off in lieu.

## Usual location of work

18. The employee's usual place of work will be the designated office location identified in the employee's letter of offer or other engagement documentation. If no designated office location was specified on engagement, the Agency Head may specify a designated office location by advising the employee in writing.
19. The Agency and employee may agree to vary the employee's designated office location on a temporary or permanent basis.

## Section 2: Remuneration

### Salary

21. Salary rates are as set out in Attachment A – Base salaries of this agreement.
22. The base salary rates in Attachment A include the following increases:
  - 22.1. 4.0 per cent from the first full pay period on or after 1 March 2024 (14 March 2024);
  - 22.2. 3.8 per cent from the first full pay period on or after 1 March 2025 (13 March 2025); and
  - 22.3. 3.4 per cent from the first full pay period on or after 1 March 2026 (12 March 2026).
23. In recognition of a common alignment date of the first full pay period on or after 1 March each year, the base salary rates in Attachment A – Base salaries were calculated based on base salary rates as at 31 August 2023.

### Payment of salary

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

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

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

### Salary setting

25. Where an employee is engaged, moves to or is promoted in the Agency, the employee's salary will be paid at the minimum of the salary range of the relevant classification, unless the Agency Head determines a higher salary within the relevant salary range under these salary setting clauses.
26. The Agency Head may determine the payment of salary at a higher value within the relevant salary range of the relevant classification and the date of effect at any time.
27. In determining a salary under these salary setting clauses, the Agency Head will have regard to a range of factors (as relevant) including the employee's experience, qualifications and skills.
28. Where an employee commences ongoing employment in the Agency immediately following a period of non-ongoing employment in the Agency, the Agency Head will determine the employee's salary within the relevant salary range of the relevant classification which recognises the employee's prior service as a non-ongoing employee in the Agency.
29. Where an employee commences ongoing employment in the Agency immediately following a period of casual employment in the Agency, the Agency Head will determine the employee's salary within the relevant salary range of the relevant classification which recognises the employee's prior service as a casual employee in the Agency.
30. Where an APS employee moves to the Agency at level from another APS agency, and their salary is above the maximum of the salary range for their classification, the Agency Head will maintain the employee's salary at that level, until it is absorbed into the salary range for that classification.

31. Where the Agency Head determines that an employee's salary has been incorrectly set, the Agency Head may determine the correct salary and the date of effect.

### **Salary on reduction**

32. The salary of an employee whose classification is reduced either temporarily or permanently will be determined by the Agency Head, taking into account the:
  - 32.1. experience, qualifications and skills of the employee
  - 32.2. salary payable to, and classification of the employee prior to the reduction, and
  - 32.3. new classification of the employee and the salary ordinarily payable to an employee of that classification.

### **Incremental advancement**

33. Employees (excluding casual 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:
  - 33.1. 6 months of aggregate eligible service in the agency at or above the relevant classification level during the most recent annual performance management cycle. If an employee has less than 6 months of aggregate eligible service, the Agency Head may exercise their discretion to determine a higher salary under clause 26 in the agency's agreement; and
  - 33.2. a satisfactory performance rating during the employee's most recent performance review.
34. Eligible service for salary progression will include:
  - 34.1. periods of paid leave and unpaid parental leave;
  - 34.2. periods of unpaid leave that count as service; and
  - 34.3. service while employed on a non-ongoing basis.
35. During a period of unpaid parental leave employees will be eligible to advance a maximum of one increment, regardless of the length of unpaid parental leave.
36. Employees who are acting at a higher classification, and satisfy eligibility criteria in clause 33, will be eligible for salary progression at both their substantive and acting classifications.
37. Casual employees will progress to the next salary point in the relevant salary range every two years, subject to, or as otherwise provided by, the following:
  - 37.1. 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.
  - 37.2. Casual 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.



## **Superannuation**

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

### **Method for calculating superannuation salary**

37. The Agency will provide an employer contribution of 15.4 per cent of the employee's Ordinary Time Earnings (OTE) for employees in the Public Sector Superannuation Accumulation Plan (PSSap) and employees in other accumulation funds.
38. Employer contributions will be made for all employees covered by this agreement.
39. Employer contributions will not be reduced by any other contributions made through salary sacrifice arrangements.

## **Overpayments**

40. An overpayment occurs if the Agency Head (or the Agency) provides an employee with an amount of money to which the employee was not entitled (including but not limited to salary, entitlements, allowances, travel payment and/or other amount payable under this agreement).
41. Where the Agency Head considers that an overpayment has occurred, the Agency Head will provide the employee with notice in writing. The notice will provide details of the overpayment.
42. If an employee disagrees that there has been an overpayment including the amount of the overpayment, they will advise the Agency Head in writing within 28 calendar days of receiving the notice. In this event, no further action will be taken until the employee's response has been reviewed.
43. If after considering the employee's response (if any), the Agency Head confirms that an overpayment has occurred, the overpayment will be treated as a debt to the Commonwealth that must be repaid to the Agency in full by the employee.
44. The Agency Head and the employee will discuss a suitable recovery arrangement. A recovery arrangement will take into account the nature and amount of the debt, the employee's circumstances and any potential hardship to the employee. The arrangement will be documented in writing.
45. The Agency and employee may agree to make a deduction from final monies where there is an outstanding payment upon cessation of employment.
46. Interest will not be charged on overpayments.
47. Nothing in clause 40 to 46 prevents:

- 47.1. the Agency from pursuing recovery of the debt in accordance with an Accountable Authority Instruction issued under the *Public Governance, Performance and Accountability Act 2013*;
- 47.2. the Agency from pursuing recovery of the debt through other available legal avenues; or
- 47.3. the employee or the Agency from seeking approval to waive the debt under the *Public Governance, Performance and Accountability Act 2013*.

### **Supported wage system**

48. An employee may be paid a percentage of the relevant pay rate for their classification in line with their assessed capacity to do the work if they:
  - 48.1. have a disability;
  - 48.2. meet the criteria for a Disability Support Pension; and
  - 48.3. are unable to perform duties to the capacity required.
49. Specific conditions relating to the supported wage system are detailed in Attachment C – Supported Wage System.

### **Salary packaging**

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

## Section 3: Allowances and reimbursements

### Higher duties allowance

53. Where a role needs to be filled for at least 5 working days, higher duties allowance will be paid for the entire period, to any employee temporarily occupying the role acting at a classification level higher than their substantive classification level.
54. Higher duties allowance will be equal to the difference between the employee's current salary and the salary that would be payable if they were promoted to the higher classification level, or higher amount determined by the Agency Head.
55. Where an employee is found to be eligible for salary progression at their acting classification level they will receive an appropriate increase in the rate of higher duties allowance. The employee's salary level will be retained for all future periods of acting regardless of elapsed time. The calculation of acting time in a higher classification will include all paid and unpaid periods of acting.
56. Where an employee is assigned only part of the higher duties, the Agency Head will determine the amount of allowance payable.
57. Higher duties allowance will be payable while an employee is acting at a higher classification level as part of a job sharing arrangement where the duration of the arrangement is at least 5 working days.
58. The Agency Head may shorten the qualifying period for higher duties allowance on a case-by-case basis.

### After hours restriction and on call allowance

59. An after hours restriction and on call allowance as per Attachment B – Allowances is payable to an employee who is directed to participate in after hours service or to be contactable outside standard hours and able to perform work as per clauses 60 and 61.
60. Excluding Admiralty Marshals, APS 1-6 employees who are required to work while on restricted hours will receive overtime penalties as per the Overtime clauses, in lieu of the after hours restriction and on call allowance for the period of time worked.
61. The after hours restriction and on call allowance applies on:
  - 61.1. Monday to Friday outside 8.30am to 5.00pm and weekends 24 hours per day (not on public holidays);
  - 61.2. Public holidays Monday to Friday within 8.30am to 5.00pm; and
  - 61.3. Public Holidays outside standard hours.
62. Reasonable costs for commuting directly to or from the Agency will be reimbursed to employees who may otherwise be out of pocket as a result of undertaking directed and authorised after hours work.
63. Where a mobile phone is not provided by the Agency, appropriate reimbursement of personal mobile phone costs will be provided for the after hours period. The reimbursement is a pro-rata of

the employees monthly mobile service charge, for each day that the employee is required for after hours restriction.

## Admiralty marshals

64. After hours restriction and on call allowance for admiralty marshals is to commence with the arrest of the vessel and cease on its release unless the relevant registrar and the marshal agree an earlier date is appropriate in the circumstances of a particular arrest.
65. Employees undertaking admiralty marshal work will be paid at the APS 6 classification (unless they would otherwise be paid at a higher level).

## Overtime meal allowance

66. 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:
  - 66.1. an unpaid meal break of at least 30 minutes is taken during the overtime, and
  - 66.2. the overtime extends over any of the following meal periods:
    - 66.2.1. 7:00am to 8:30am, noon to 2:00pm, 7:00pm to 7:30pm, and midnight to 1:00am.

## Workplace responsibility allowances

67. A workplace responsibility allowance will be paid where an employee who is appointed by the Agency or elected by eligible peers to one of the following roles:
  - 67.1. First Aid Officer;
  - 67.2. Health and Safety Representative;
  - 67.3. Emergency Warden;
  - 67.4. Harassment Contact Officer;
  - 67.5. Mental Health First Aid Officer.
68. An employee is not to receive more than one workplace responsibility allowance unless approved by the Agency Head due to operational requirements.
69. The rate (as per Attachment B – Allowances) in Table 1 below will be:

*Table 1: Workplace responsibility allowances*

Rate from commencement of the agreement	Rate from 13 March 2025	Rate from 12 March 2026
\$30.51 per fortnight	\$31.67 per fortnight	\$32.75 per fortnight

70. As a salary-related allowance, this value will continue to be increased in line with headline wage increases.
71. The full allowance is payable regardless of flexible work and part-time arrangements.
72. An employee's physical availability to undertake the role will be considered by the Agency when appointing and reappointing employees to these roles. This is noting that not all workplace

responsibility roles will necessarily require a physical presence in the workplace for the role to be successfully undertaken, such as Harassment Contact Officers, Mental First Aid Officers and Health and Safety Representatives depending on work group arrangements.

73. Casual employees who are eligible to receive a workplace responsibility allowance will be paid the full amount (noting the minimum rate), as varied from time to time, provided they engage in work during any given pay cycle, irrespective of the frequency and duration of the work undertaken.
74. Payment of Workplace Responsibility Allowance will cease for continuous absences of over 4 weeks. Payment of the allowance shall resume immediately upon the employee returning from their absence.
75. The \$35 per fortnight allowance rate will continue to apply for those employees who have continuously held one or more of the roles specified in clause 67, and who were previously covered by the *Federal Court of Australia Enterprise Agreement 2011-2014*.

### **Community language allowance**

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

*Table 2: Community language allowance rates*

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

78. The allowance is calculated annually and paid fortnightly.
79. The full allowance is payable regardless of flexible work and part-time arrangements.
80. The allowance is payable during periods of paid leave.

81. The allowance counts as salary for superannuation purposes and for calculating retirement and redundancy entitlements.

## Section 4: Classifications and broadbands

### Work Level Standards

82. The APS Work Level Standards continue to operate and describe the work at each of the classification levels in this agreement, consistent with the *Public Service Classification Rules 2000*, made in accordance with section 23 of the PS Act.

# Section 5: Working hours and arrangements

## Job security

### Commitment to ongoing employment and rebuilding APS capacity

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

### Reporting

84. The Agency will report to the National Consultative Committee (NCC) on an annual basis, or more frequently if agreed, on the number, duration, classification and location of ongoing, non-ongoing and casual employees engaged by the Agency.

### Pathways to permanency

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

## Casual (irregular or intermittent) employment

86. A casual (irregular or intermittent) employee is defined in the definitions section.
87. A decision to expand the use of casual employees is subject to Section 10: Consultation, representation and dispute resolution of this agreement.
88. The Agency will regularly review the working arrangements of casual employees to assess if they are genuinely performing irregular or intermittent duties, and report de-identified outcomes to the consultative committee, where one is in place.
89. Remuneration for casual employees is on an hourly basis. A casual employee will receive a 25 per cent loading on the base hourly rate of their classification as set out in this agreement.
90. The casual loading is paid in lieu of payment for public holidays not worked, notice of termination of employment, redundancy benefits and all paid leave entitlements, other than leave required by legislation including long service leave in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976* and leave for family and domestic violence support.
91. A casual employee will be engaged for a minimum of 4 hours per engagement or shall be paid for a minimum of 4 hours at the appropriate casual rate.
92. A casual employee who is eligible for a Workplace Responsibility Allowance will be paid the full amount.

## Non-ongoing employment

93. A non-ongoing employee is defined in the definitions section.



94. Non-ongoing employees will generally have the same terms and conditions of employment as ongoing employees under this agreement's terms, except:
  - 94.1. redundancy provisions at Section 11: Separation and retention, subject to clause 95;
  - 94.2. study assistance provisions at clause 353;
  - 94.3. professional membership provisions at clause 356.
95. If the non-ongoing employee's contract is not permitted by section 333E of the FW Act, then the redundancy provisions at Section 11: Separation and retention will apply.
96. If the redundancy provisions apply to an employee under clause 95, the Agency must adhere to the consultation requirements as defined in clauses 438 to 444 Consultation with excess employees.

## **Working hours**

### **Hours of duty**

97. The ordinary hours of duty for full-time employees are 75 hours per fortnight, or 7 hours 30 minutes per day.
98. The hours of duty for part-time employees are those agreed in their part-time work agreement or their terms of engagement.
99. A standard day for full-time employees is 8:30am to 5:00pm with a one hour lunch break.

### **Bandwidth and patterns of attendance**

100. Subject to operational requirements, patterns of attendance will be agreed by employees and their managers within the ordinary bandwidth hours 8:00am to 6:00pm Monday to Friday. Employees will not work without agreement between the employee and their manager:
  - 100.1. more than 10 hours ordinary time on any day, and
  - 100.2. more than 5 consecutive hours without a meal break of at least 30 minutes.

## **Flex for APS 1-6 classifications**

101. The Agency flextime scheme applies to full-time employees at APS Levels 1 to 6.
102. Flextime is a system of flexible work hours which enables employees and managers to vary working hours and attendance patterns within the Agency's bandwidth. Further information can be found in the applicable policy.
103. 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.
104. Judicial support staff are able to accumulate a maximum of 4 weeks (150 hours) flextime credit at the end of any settlement period. Judicial support staff may only carry a balance of more than 4 weeks with the agreement of their manager. Employees may be required to use flextime credits of up to 4 weeks in a block while their judge or registrar is on leave.
105. Employees are not to work excessive hours as a matter of course.

## **Executive level time off in lieu (EL TOIL)**

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

## **Overtime**

113. Employees may be directed or required to work reasonable overtime in accordance with this section and will be compensated in full for overtime hours worked. Overtime is payable only to employees below the levels of Executive Level 1 and equivalent Legal designations, and is payable at the rates of:
  - 113.1. Monday to Saturday: time and a half for the first 3 hours and double time thereafter
  - 113.2. Sunday: double time, and
  - 113.3. Public holidays: time and a half for hours within standard hours and double time and a half for hours outside standard hours.
114. Overtime is payable only for additional directed or required work performed:
  - 114.1. before 8:00am on normal working days
  - 114.2. on normal working days where that work is after 6:00pm and after at least 7 hours 30 minutes normal duty has been worked that day, and
  - 114.3. on Saturdays, Sundays and public holidays.
115. 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 4 hours.
116. For the avoidance of any doubt 'additional directed or required work' for which employees shall be paid overtime outside of the bandwidth hours, includes but is not limited to:

- 116.1. Any work an employee is directed or required to undertake outside of the bandwidth hours by any Judge or Registrar or Manager. This may include (but is not limited to) completing a judgment or completing work before a period of leave;
  - 116.2. Any occasion where an employee is required for any court duties before 8:00am or after 6:00pm;
  - 116.3. Assisting with the management of special events such as ceremonial sittings, court networking events and user forums.
117. Where the employee and the manager 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. 3 hours overtime at time and a half would equate to 4 and a half hours TOIL.
  118. An employee is not required to agree to TOIL instead of an overtime payment.
  119. Casual 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 casual loading.

## **Flexible working arrangements**

120. The Agency, employees and their union recognise:
  - 120.1. the importance of an appropriate balance between employees' personal and working lives, and the role flexible working arrangements can play in helping to achieve this balance;
  - 120.2. access to flexible work can support strategies to improve diversity in employment and leadership in the APS;
  - 120.3. access to flexible work supports APS capability, and can assist in attracting and retaining the employees needed to deliver for the Australian community, including employees located at a wider range of locations;
  - 120.4. that flexibility applies to all roles in the Agency, and different types of flexible working arrangements may be suitable for different types of roles or circumstances; and
  - 120.5. requests for flexible working arrangements are to be considered on a case-by-case basis, with a bias towards approving requests.
121. The Agency is committed to engaging with employees and their union to build a culture that supports flexible working arrangements across the Agency at all levels. This may include developing and implementing strategies through the Agency consultative committee.
122. Flexible working arrangements include, but are not limited to, changes in hours of work, changes in patterns of work and changes in location of work.

### **Requesting formal flexible working arrangements**

123. The following provisions do not diminish an employee's entitlement under the NES.
124. An employee may make a request for a formal flexible working arrangement.
125. The request must:

- 125.1. be in writing;
  - 125.2. set out details of the change sought (including the type of arrangement sought and the proposed period the arrangement will operate for); and
  - 125.3. set out the reasons for the change, noting the reasons for the change may relate to the circumstances set out at section 65(1A) of the FW Act.
126. The Agency Head must provide a written response to a request within 21 days of receiving the request.
127. The response must:
- 127.1. state that the Agency Head approves the request and provide the relevant detail in clause 128; or
  - 127.2. if following discussion between the Agency and the employee, the Agency and the employee agree to a change to the employee's working arrangements that differs from that set out in the request – set out the agreed change; or
  - 127.3. state that the Agency Head refuses the request and include the following matters:
    - 127.3.1. the reasons for the refusal; and
    - 127.3.2. the Agency's particular business grounds for refusing the request; and
    - 127.3.3. either:
      - 127.3.3.1. the changes (other than the requested change) in the employee's working arrangements that would accommodate, to any extent, the employee's circumstances outlined in the request and that the Agency would be willing to make; or
      - 127.3.3.2. that there are no such changes; and
      - 127.3.3.3. that a decision to refuse the request, or failure to provide a written response within 21 days is subject to the dispute resolution procedures of the enterprise agreement, and if the employee is an eligible employee under the FW Act, the dispute resolution procedures outlined in section 65B and 65C of the FW Act.
128. Where the Agency Head approves the request this will form an arrangement between the Agency and the employee. Each arrangement must be in writing and set out:
- 128.1. any security and work health and safety requirements;
  - 128.2. a review date (subject to clause 132); and
  - 128.3. the cost of establishment (if any).
129. The Agency Head may refuse to approve the request only if:
- 129.1. the Agency Head has discussed the request with the employee; and
  - 129.2. the Agency Head has genuinely tried to reach an agreement with the employee about making changes to the employee's working arrangements to accommodate the employee's circumstances (subject to any reasonable business grounds for refusal); and
  - 129.3. the Agency Head and the employee have not reached such an agreement; and

- 129.4. the Agency Head has had regard to the consequences of the refusal for the employee;  
and
  - 129.5. the refusal is on reasonable business grounds.
130. Reasonable business grounds include, but are not limited to:
- 130.1. the new working arrangements requested would be too costly for the Agency;
  - 130.2. there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested;
  - 130.3. it would be impractical to change the working arrangements of other employees, or to recruit new employees, to accommodate the new working arrangements requested;
  - 130.4. the new working arrangements requested would be likely to result in a significant loss in efficiency or productivity;
  - 130.5. the new working arrangements requested would be likely to have a significant negative impact on customer service; and
  - 130.6. it would not be possible to accommodate the working arrangements without significant changes to security requirements, or where work health and safety risks cannot be mitigated.
131. For First Nations employees, the Agency Head must consider connection to country and cultural obligations in responding to requests for altering the location of work.
132. Approved flexible working arrangements will be reviewed by the Agency Head and the employee after 12 months, or a shorter period, if agreed by the employee. This is to ensure the effectiveness of the arrangement.

*Varying, pausing or terminating flexible working arrangements*

133. An employee may request to vary an approved flexible working arrangement in accordance with clause 127. An employee may request to pause or terminate an approved flexible working arrangement.
134. The Agency Head may vary, pause or terminate an approved flexible working arrangement on reasonable business grounds, subject to clause 136.
135. The Agency Head must provide reasonable notice if varying, pausing or terminating a flexible working arrangement without the agreement of the employee, having regard to the circumstances of the employee. Exceptions to this requirement are urgent and critical operational circumstances or an employee's demonstrated and repeated failure to comply with the agreed arrangements.
136. Prior to the Agency Head varying, pausing or terminating the arrangement under clause 134, the Agency Head must have:
- 136.1. discussed with the employee their intention to vary, pause or terminate the arrangement with the employee;
  - 136.2. genuinely tried to reach an agreement with the employee about making changes to the employee's working arrangements to accommodate the employee's circumstances (subject to any reasonable business grounds for alteration);
  - 136.3. had regard to the consequences of the variation, pause or termination for the employee;

- 136.4. ensured the variation, pause or termination is on reasonable business grounds; and
- 136.5. informed the employee in writing of the variation, pause or termination to the approved flexible working arrangement, including details set out in clause 127.3.

#### *Working from home*

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

#### *Ad-hoc arrangements*

- 142. Employees may request ad-hoc flexible working arrangements. Ad-hoc arrangements are generally one-off or short term arrangements for circumstances that are not ongoing.
- 143. Employees should, where practicable, make the request in writing and provide as much notice as possible.
- 144. Requests for ad-hoc arrangements are not subject to the request and approval processes detailed in clauses 123 to 141 Requesting formal flexible working arrangements.
- 145. The Agency Head should consider ad-hoc requests on a case-by-case basis, with a bias to approving ad-hoc requests, having regard to the employee's circumstances and reasonable business grounds.
- 146. Where a regular pattern of requests for ad-hoc arrangements from an employee emerges, the Agency Head should consider whether it is appropriate to seek to formalise the arrangement with the employee.

#### *Altering bandwidth*

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

#### **Additional flexibility arrangements**

- 148. The Agency will accommodate the needs and circumstances of all its employees as far as practicable. Additional specific measures include, but are not limited to, the following:
  - 148.1. Where employees apply for annual leave during school holidays and it is declined due to reasonable business grounds, the Agency will subsidise childcare costs up to \$31 a day,

indexed by the relevant economic indicator, for each child attending school, subject to proof the expense occurred.

- 148.2. Where employees are required by the Agency to vary their hours and incur an expense as a result, the Agency Head will consider reimbursement subject to evidence of expenditure.

## **Part-time work**

149. Employees engaged on a full-time basis will not be compelled to convert to part-time employment.
150. Employees engaged on a part-time basis will not be compelled to convert to full-time employment.
151. A full-time employee may request to work on a part-time basis for a fixed period (Fixed Period), subject to review and extension.
152. 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.
153. Part-time hours can be varied on a short-term basis to facilitate access to training or other development opportunities.
154. Part-time employees are entitled to a minimum engagement of 3 hours as per clause 6.3 of the APS Award.
155. 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.
156. In rare circumstances, it may be necessary to direct part-time employee to work additional hours, as opposed to obtaining their agreement. For APS 1-6 employees, 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 the Overtime clauses. Alternatively, TOIL at the equivalent rate may be granted.
157. Part-time Child Court Experts who are required to give evidence in Court on a day other than, and in addition to, the working days they agreed under their part-time work arrangement (Normal Days), and do not wish, or are unable, to change their workdays for the purpose of giving evidence, will be paid at the rate of time and a half when they perform work on a day other than, and in addition to, a Normal Day (Additional Day), calculated against whichever of the following formulas produces the highest payment:
- 157.1. 3 hours; or
- 157.2. the total of the following:
- 157.2.1. time spent giving evidence in Court on an Additional Day; plus
- 157.2.2. reasonable time spent preparing to giving evidence in court (but only if the preparation is completed on an Additional Day and not on a Normal Day); plus

157.2.3. time spent waiting in Court (or elsewhere, if the CCE is giving evidence remotely) on an Additional Day, in circumstances where the CCE is not called to give evidence at the time they were advised, and the CCE is required to be available to give evidence later that day.

## **Christmas closedown**

### **Maintaining operations over the Christmas and New Year period**

158. Subject to the following provisions for maintaining registry operations over the Christmas and New Year period, employees will be provided with time off:
- 158.1. for the working days between Christmas and New Year's Day; and
  - 158.2. the 3 working days immediately following New Year's Day.
159. 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.
160. There will be no deduction from annual or personal leave credits for the closedown days.
161. The Agency will operate 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:
- 161.1. will be paid for each day worked as if it was a normal working day for the employee, and
  - 161.2. 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.

## **Public holidays**

162. Employees are entitled to the following holidays each year as observed at their normal work location in accordance with the FW Act:
- 162.1. 1 January (New Year's Day);
  - 162.2. 26 January (Australia Day);
  - 162.3. Good Friday and the following Monday;
  - 162.4. 25 April (Anzac Day);
  - 162.5. the King's birthday holiday (on the day on which it is celebrated in a State or Territory or a region of a State or Territory);
  - 162.6. 25 December (Christmas Day);
  - 162.7. 26 December (Boxing Day); and
  - 162.8. any other day, or part day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday, other than a day or part day, or a kind of day or part day, that is excluded by the *Fair Work Regulations 2009* from counting as a public holiday.



163. If a public holiday falls on a Saturday or Sunday, and if under a State or Territory law, a day or part day is substituted for one of the public holidays listed above, then the substituted day or part day is the public holiday.
164. The Agency Head 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.
165. The Agency Head and an employee may agree to substitute a cultural or religious day of significance to the employee for any day that is a prescribed holiday. If the employee cannot work on the prescribed holiday, the employee will be required to work make-up time at times to be agreed. This substitution does not impact or reduce an employee's entitlement to First Nations ceremonial leave, NAIDOC leave or cultural leave.
166. Where an employee substitutes a public holiday for another day, they will not be paid penalty rates for working their normal hours on the public holiday.
167. Where a public holiday falls during a period when an employee is absent on leave (other than annual leave, paid personal/carer's leave or defence service sick leave) there is no entitlement to receive payment as a public holiday. Payment for that day will be in accordance with the entitlement for that form of leave (e.g. if on long service leave on half pay, payment is at half pay.)
168. If under a law of a State or Territory every Sunday is declared or prescribed by or under that law to be a public holiday, there is no entitlement to receive payment as a public holiday if the employee would have worked, or does perform work, on that day. In these circumstances, payment will only be made at the public holiday rate if the employee performs work on that day, and the Sunday would otherwise be a public holiday under clause 162.1 to 162.8.
169. An employee, who is absent on a day or part day that is a public holiday in their normal work location, is entitled to be paid for the part or full day absence as if that day or part day was not a public holiday, except where that person would not normally have worked on that day.
170. Where a full-time employee, including but not limited to employees on compressed hours, has a regular planned day off which would fall on a public holiday, the Agency Head may allow the employee to change their planned day off so that it does not fall on a public holiday. If it is not possible to change their planned day off, the employee will be credited an equivalent amount of time to their regular hours for the day in flex credits or EL TOIL in recognition of their planned day off.
171. 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 in accordance with the Overtime sections.

## Section 6: Leave

### Annual leave

172. Employees (other than casual employees) are entitled to 4 weeks (20 days) paid annual leave per year of service, accruing daily, credited at least monthly. Annual leave for part-time employees accrues on a pro-rata basis.
173. Annual leave may be taken at half pay. However, unless approved by the Agency Head (or delegate), it may not be taken at half pay where the employee has an excessive leave balance.
174. Employees may request prepayment of a minimum of 10 days of their annual leave entitlement, provided that the request for pre-payment is made to P&C and payroll with at least 8 weeks' notice of the leave being taken.
175. Annual leave is cumulative and counts as service for all purposes.
176. 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).
177. Excess leave (being an annual leave balance in excess of 40 days) will be managed in accordance with this Agreement and policy.
178. Access to annual leave is encouraged as beneficial to an individual's health and wellbeing and hence performance. Following consultation, in consideration of an employee's welfare and in order to manage the Agency's accrued leave liability, the Agency may direct an employee with an excessive leave balance to take annual leave to reduce their excessive balance until they are no longer above the excess leave balance. The Agency may not request an employee reduce their leave balance to less than 20 days (or pro-rata for part-time employees).
179. Where annual leave is cancelled or the employee is recalled to duty, the employee will be reimbursed travel costs not recoverable from insurance or other sources. Evidence of costs may be required.
180. Employees will receive payment in lieu of any untaken annual leave upon separation from the APS, unless they move to an employer that recognises portability of leave from the APS.

### Annual leave cash out

181. Employees may apply to receive a payment in lieu of taking an amount of annual leave provided they have:
  - 181.1. taken at least 20 days annual leave in the 12 months preceding the application; and
  - 181.2. at least 20 days annual leave remaining after the application is processed
182. Each agreement to cash out annual leave must be a separate agreement in writing.
183. 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.

## **Purchased leave**

184. Employees may, subject to operational requirements, apply to purchase one, 2, 3 or 4 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 Agency recoverable from final monies.
185. Leave may not be purchased by an employee whose annual leave balance exceeds 40 days.

## **Personal/carer's leave**

186. Full-time employees are entitled to 18 days personal/carer's leave per year of service. Part-time employees are entitled to a pro-rata amount based on their agreed part-time hours.
187. Leave at half pay may be approved by the Agency Head.
188. Personal/carer's leave accrues daily, is credited monthly and counts as service for all purposes. Personal/carer's 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).
189. New ongoing employees are credited with 18 days personal/carer's leave on commencement (pro-rata for part-time employees) then leave accrues daily and is credited on a monthly basis 12 months from the employees' commencement date.
190. Non-ongoing employees are credited with 18 days personal/carer's leave on commencement with the agency (pro-rated on the employee's initial contract period and capped at 18 days). After the initial contract period or 12 months, whichever is shorter, or where the employee has an existing entitlement to personal/carer's leave, leave will accrue daily, credited at least monthly.
191. Employees may take personal/carer's leave for the following reasons:
  - 191.1. personal injury or illness;
  - 191.2. to attend appointments with a registered health practitioner;
  - 191.3. to manage a chronic condition;
  - 191.4. to provide care or support to an immediate family, a household member, or a person they have caring responsibilities for because of an illness, injury or unexpected emergency, affecting the person.
192. A person that an employee has caring responsibilities for may include a person who needs care because they:
  - 192.1. have a medical condition, including when they are in hospital
  - 192.2. have a mental illness;
  - 192.3. have a disability;
  - 192.4. are frail or aged; and/or
  - 192.5. are a child, not limited to a child of the employee.

193. Evidence may be requested after:
  - 193.1. more than three consecutive days in length, or
  - 193.2. in excess of eight occasions in each calendar year.
194. Acceptable evidence includes:
  - 194.1. a medical certificate from a registered health practitioner;
  - 194.2. a statutory declaration; or
  - 194.3. another form of evidence approved by the Agency Head.
195. A Certificate from a registered health practitioner may be used as evidence for a chronic condition for up to 12 months for both personal and carer's leave.
196. Personal/carer's 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).
197. Employees who have exhausted their entitlement to personal/carer's 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.
198. Casual employees with a personal/carer's 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.
199. Casual employees may be absent without pay when unfit for work due to personal illness or injury. A casual employee may access 2 days unpaid carer's leave per occasion, consistent with the NES.
200. In exceptional circumstances such as long periods of illness, the Agency Head may grant additional paid personal/carer's leave where existing entitlements have been exhausted.

## **Portability of leave**

201. Where an employee moves into the Agency from another APS agency where they were an ongoing employee, the employee's unused accrued annual leave and personal/carer's leave will be transferred, provided there is no break in continuity of service.
202. Where an employee is engaged in the Agency immediately following a period of ongoing employment in the Parliamentary Service or the ACT Government Service, the employee's unused accrued annual leave and personal/carer's leave will be recognised unless the employee received payment in lieu of those entitlements on cessation of employment.
203. Where an employee is engaged as an ongoing employee in the Agency, and immediately prior to the engagement the person was employed as a non-ongoing APS employee (whether in the Agency or another), at the employee's request, any unused accrued annual leave (excluding accrued leave paid out on separation) and personal/carer's leave will be recognised.
204. Where an employee is engaged as a non-ongoing APS employee, and immediately prior to the engagement the person was employed as a non-ongoing APS employee (whether in the Agency or another) at the employee's request, any unused accrued annual leave (excluding accrued leave paid out on termination of employment) and personal/carer's leave will be recognised.

205. Where a person is engaged as an ongoing employee in the Agency, and immediately prior to the engagement the person was employed by a Commonwealth Government employer (other than in the Parliamentary Services which are covered in clause 2), the Agency Head recognise any unused accrued personal/carer's leave at the employee's request. The Agency Head will advise the employee of their ability to make this request.
206. Where an employee is engaged as an ongoing employee in the Agency, and immediately prior to the engagement the person was employed by a State or Territory Government, the Agency Head may recognise any unused accrued personal/carer's leave, provided there is not a break in continuity of service.
207. For the purposes of clauses 201 to 206, an employee with a break in service of less than 2 months is considered to have continuity of service.

### **Leave without pay**

208. Leave without pay may be granted to an employee in appropriate circumstances for reasons not covered by other leave provisions and must be approved by the Agency Head.
209. Leave without pay in excess of 30 calendar days does not count as service for the purposes of annual and personal leave entitlements (and superannuation unless otherwise required).
210. Leave without pay requests for periods up to 12 months, will not be unreasonably refused by the Agency Head.
211. No form of paid leave will be approved during the time an employee is accessing leave without pay.
212. Further information can be found in the applicable policy.

### **Miscellaneous leave**

213. Miscellaneous leave is paid leave for all employees (including casuals for the purpose of providing for paid family and domestic violence leave and otherwise by Government directive) which must be approved by the Agency Head in appropriate circumstances not covered by other leave provisions.
214. Paid miscellaneous leave counts as service for all purposes.
215. Further information can be found in the applicable policy.

## Re-crediting of leave

216. When an employee is on:

- 216.1. annual leave;
- 216.2. purchased leave;
- 216.3. defence reservist leave;
- 216.4. First Nations ceremonial leave;
- 216.5. NAIDOC leave;
- 216.6. cultural leave; or
- 216.7. long service leave; and

becomes eligible for, under legislation or this agreement:

- 216.8. personal/carer's leave;
- 216.9. compassionate or bereavement leave;
- 216.10. jury duty;
- 216.11. emergency services leave;
- 216.12. leave to attend to family and domestic violence circumstances; or
- 216.13. parental leave, premature birth leave, stillbirth leave or pregnancy loss leave;

the affected period of leave will be re-credited.

217. When an employee is on personal/carer's leave and becomes eligible for parental leave, premature birth leave, stillbirth leave or pregnancy loss leave, the affected period of leave will be re-credited.
218. A Child Court Expert who is on any type of leave and is either put on notice that they may be required to appear in Court to give evidence, or are directed to attend Court to give evidence, will be compensated as per the applicable Professional Direction.
219. Re-crediting is subject to appropriate evidence of eligibility for the substituted leave.

## Long service leave

220. An employee is eligible for long service leave in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976*.

221. The minimum period for which long service leave will be granted is 7 calendar days (whether taken at full or half pay). Long service leave cannot be broken with other periods of leave, except as otherwise provided by legislation or provided for in the re-crediting of leave clause at Re-crediting of leave of this agreement.

## **Cultural, ceremonial and NAIDOC leave**

### **NAIDOC leave**

- 222. First Nations employees may access up to one day per annum, of paid leave, to participate in NAIDOC week activities.
- 223. NAIDOC leave can be taken in part days.

### **First Nations ceremonial leave**

- 224. First Nations employees may access up to 6 days of paid leave over 2 calendar years to participate in significant activities associated with their culture or to fulfil ceremonial obligations.
- 225. The Agency Head may approve additional leave for cultural or ceremonial purposes as miscellaneous leave or leave without pay.
- 226. First Nations ceremonial leave can be taken as part days.
- 227. First Nations ceremonial leave is in addition to compassionate and bereavement leave.

### **Cultural leave**

- 228. The Agency Head may grant up to 3 days of paid leave per calendar year for the purpose of attending significant religious or cultural obligations associated with the employees' particular faith or culture.
- 229. The Agency Head may approve additional leave for cultural purposes as miscellaneous leave or leave without pay.
- 230. Cultural leave can be taken as part days.
- 231. For the avoidance of doubt, this leave does not cover cultural purposes or obligations which are eligible for paid leave under the First Nations ceremonial leave clauses.

## **Parental leave**

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

**Payment during parental leave**

- 236. An employee is entitled to parental leave with pay as per clauses 238 and 239 below within the parental leave period. Any further parental leave during the parental leave period is without pay. Unused paid parental leave remaining at the end of the employee’s parental leave period will lapse. An employee may choose to use their accrued paid leave entitlements in accordance with usage and eligibility requirements in this agreement during the parental leave period that would otherwise be without pay.
- 237. Employees newly engaged in the Agency or who have moved to the Agency from another APS agency are eligible for the paid parental leave in clauses 238 and 239 where such paid leave had not already been provided by another APS agency or Commonwealth employer in the 24 months since the child’s date of birth or placement. If the paid leave used by the employee with the previous Commonwealth employer or APS agency is less than the limits specified in clauses 238 and 239, the balance is available to the employee.
- 238. An employee who is a primary caregiver is entitled to parental leave with pay during the parental leave period to a maximum of 18 weeks as provided in Table 3 below.

*Table 3: Primary caregivers - circumstances for paid parental leave*

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

- 239. An employee who is a secondary caregiver is entitled to parental leave with pay during the parental leave period as provided in Table 4 below.

*Table 4: Secondary caregivers - circumstances for paid parental leave*

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



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

#### **Adoption and long-term foster care**

243. An employee who is a primary caregiver or secondary caregiver is entitled to parental leave in accordance with this agreement for adoption or long-term foster care, provided that the child:
- 243.1. is under 16 as at the day (or expected day) of placement;
  - 243.2. has not lived continuously with the employee for a period of 6 months or more as at the day (or expected day) of placement; and
  - 243.3. is not (otherwise than because of the adoption) a child of the employee or the employee's spouse or de facto partner.
244. Documentary evidence of approval for adoption or enduring parental responsibilities under formal fostering arrangements must be submitted when applying for parental leave for adoption or long-term foster carer purposes.

#### **Stillbirth**

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

#### **Pregnancy loss leave**

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

### **Premature birth leave**

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

### **Transitional provisions**

250. Employees eligible for paid leave under the ML Act are required under legislation to use their paid maternity leave first. In this circumstance, the employee may postpone their paid premature birth leave otherwise payable under clause 249 until after the legislated paid maternity leave is used.

### **Compassionate leave**

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

### **Bereavement leave**

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

## **Emergency response leave**

259. In line with section 108 of the FW Act, an employee who engages in an eligible community service activity is entitled to emergency response leave to volunteer for emergency management duties for:
- 259.1. the time engaged in the activity;
  - 259.2. reasonable travelling time; and
  - 259.3. reasonable recovery time.
260. Full-time and part-time employees will be able to access 20 working days of paid emergency response leave at full pay per year if required. The Agency Head may provide additional emergency response leave with pay.
- 260.1. For the purposes of this clause, full rate of pay is to be as if the employee was at work.
261. Paid leave may be refused where the employee's role is essential to the Agency's response to the emergency.
262. An employee must provide evidence that the organisation requests their services. Employees can provide evidence before or as soon as practical after their emergency service activity.
263. The Agency Head may approve reasonable paid or unpaid leave for ceremonial duties and training.
264. Emergency response leave, with or without pay, will count as service.

## **Jury duty**

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

## **Defence reservist leave**

269. The Agency Head will give an employee leave with or without pay to undertake:
- 269.1. Australian Defence Force (ADF) Reserve and continuous full-time service (CFTS); and
  - 269.2. Australian Defence Force Cadet obligations.
270. An employee who is a Defence Reservist can take leave with pay for:
- 270.1. up to 4 weeks (20 days) in each financial year (pro-rata for part-time employees); and

- 270.2. an extra 2 weeks (10 days) in the first year of ADF Reserve service (pro-rata for part-time employees).
- 271. Leave can be built up and taken over 2 consecutive years. This includes the extra 2 weeks in the first year of service.
- 272. An employee who is an Australian Defence Force Cadet officer or instructor can get paid leave up to 3 weeks in each financial year to perform their duties. Australian Defence Force Cadets means:
  - 272.1. Australian Navy Cadets;
  - 272.2. Australian Army Cadets; and
  - 272.3. Australian Air Force Cadets.
- 273. In addition to the entitlement at clause 270, paid leave may be granted to an employee to attend an interview or medical examination in connection with the enlistment of the employee in a Reserve Force of the Defence Force.
- 274. Paid defence reservist leave counts for service.
- 275. Unpaid defence reservist leave counts as service for all purposes. This includes periods of CFTS.
- 276. Unpaid leave taken over 6 months counts as service, except for annual leave.
- 277. An employee will not need to pay their tax free ADF Reserve salary to their agency for any reason.
- 278. Employees may also apply for annual leave, long service leave, leave without pay, or they may use flextime or make up time for the purpose of fulfilling Defence reservist leave obligations.

## **Defence service sick leave**

- 279. An employee is eligible for defence service sick leave credits when the Department of Veterans Affairs (DVA) has certified that an employee's medical condition is as a result of either:
  - 279.1. war-like service; or
  - 279.2. non-war like service.
- 280. An eligible employee can get 2 types of credits:
  - 280.1. an initial credit of 9 weeks (45 days) defence service sick leave (pro-rata for part-time employees) will apply as at the following dates, whichever is later:
    - 280.1.1. they start employment with the APS; or
    - 280.1.2. DVA certifies the condition; and
  - 280.2. an annual credit of 3 weeks (15 days) defence service sick leave (pro-rata for part-time employees).
- 281. An employee can use their defence service sick leave when a recognised medical practitioner provides a certificate that says they were away due to their DVA certified medical condition.
- 282. Unused annual credits can be built up to 9 weeks.
- 283. An employee cannot use annual credits until the initial credit is exhausted.
- 284. Defence service sick leave is paid and counts as service for all purposes.

## **Leave to attend proceedings**

285. An employee giving evidence before a Court, Tribunal or Royal Commission on behalf of the Commonwealth or a Commonwealth party in the course of their duties, will be considered on duty.
286. An employee who is not covered under clause 285, and is required to give evidence to, appear before or attend to instruct a representative at a Court, Tribunal or Royal Commission in relation to their duties will be released from duty without loss of pay. This includes in proceedings relating to a dispute between the employee and the Agency.
287. An employee may otherwise be granted paid or unpaid miscellaneous leave by the Agency Head if required to give evidence to a Court, Tribunal or Royal Commission for any other reason. Where approval for unpaid leave is given, the employee may elect to use accrued annual leave, flex leave or time off in lieu.
288. The Agency Head may refuse to release an employee from duty having regard to business requirements and whether the employee's attendance is necessary for the Court, Tribunal or Royal Commission hearing.

## **Section 7: Employee support and workplace culture**

### **Blood donation**

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

### **Vaccinations**

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

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

- 293. Employees, their partners, and their dependants/children will have access to a confidential, professional counselling service to assist employees to manage personal and work issues. This service will be provided at no cost to employees by the Agency and will be accessible on paid time.
- 294. The EAP can be accessed by employees up to 5 times per episode.
- 295. The EAP offers counselling either face-to-face, over the phone or via the internet.
- 296. The EAP will provide critical incident counselling in relation to workplace incidents if the need arises. This will not count towards the 5 per episode limitation.

### **Safe workplaces**

#### **Illness and injury prevention**

- 297. The Agency and their employees are committed to measures that will:
  - 297.1. assist with preventing and managing illness and injury including psychological injuries
  - 297.2. as much as reasonably possible assist employees to avoid absences due to illness or injury, and
  - 297.3. assist absent employees to return to work as soon as reasonably practicable.
- 298. The measures that may be taken in individual cases include:
  - 298.1. consulting with the employee about their situation
  - 298.2. early support and intervention
  - 298.3. referral to the Employee Assistance Program
  - 298.4. referral to medical or other sources of advice, treatment, assistance and support

- 298.5. identifying and as much as possible addressing workplace and individual factors which have a significant adverse impact on the employee
- 298.6. the retention by the Agency of a rehabilitation provider
- 298.7. liaison as appropriate and where the employee consents, with the employee's treating medical practitioners and allied health providers
- 298.8. implementing a structured rehabilitation and return to work, or maintenance at work program, and
- 298.9. temporary or permanent reassignment of duties, where reasonably practicable.

### **Occupational health and safety**

- 299. The Agency is committed to ongoing arrangements in accordance with the *Work Health and Safety Act 2011* which enable effective cooperation between the Agency 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.

### **Vicarious trauma**

- 300. The Agency acknowledges the complex nature of work and the risks associated with employees being exposed to confronting or traumatic evidence in the course of their work. This is taken very seriously and the Agency commits to providing all employees with access to the Employee Assistance Program under clauses 293 to 296, induction and regular training covering a range of wellbeing issues including how to recognise and respond to vicarious trauma.

### **Safe commute home**

- 301. Costs for commuting directly home via taxi, from the employee's place of employment, will be reimbursed to employees who may otherwise be out of pocket as a result of undertaking directed or required work after 7pm.

## **Respect at work**

### **Principles**

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

### **Consultation**

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

## **Family and domestic violence support**

305. The Agency will provide support for employees affected by family and domestic violence, depending on the employee's circumstances.
306. The Agency recognises that a holistic approach should be taken to support the employee, appropriate for the employee's individual circumstances.
307. Family and domestic violence support provisions, including paid leave, are available to all employees covered by this agreement.
308. An employee experiencing family and domestic violence support is able to access paid miscellaneous leave. Reasons an employee experiencing family and domestic violence may access this leave include, but are not limited to:
  - 308.1. illness or injury affecting the employee resulting from family and domestic violence;
  - 308.2. providing care or support to a family member (including a household member) who is also experiencing family and domestic violence, and is ill or injured as a result of family and domestic violence;
  - 308.3. providing care or support to a family member (including a household member) who is also experiencing family and domestic violence, and is affected by an unexpected emergency as a result of family and domestic violence;
  - 308.4. making arrangements for the employee's safety, or the safety of a close relative;
  - 308.5. accessing alternative accommodation;
  - 308.6. accessing police services;
  - 308.7. attending court hearings;
  - 308.8. attending counselling; and
  - 308.9. attending appointments with medical, financial or legal professionals.
309. This entitlement exists in addition to an employee's existing leave entitlements and may be taken as consecutive days, single days or part days and will count as service for all purposes.
310. Given the emergency context in which leave may need to be accessed, employees can proceed to take the leave and seek approval at a later date, as soon as practicable.
311. These family and domestic violence support clauses do not reduce an employee's entitlement to family and domestic violence leave under the NES.
312. Paid miscellaneous leave available under this clause is paid for ongoing and non-ongoing employees at their full rate as if they were at work.
313. Paid leave for casual employees under this clause is paid at their full pay rate for the hours they were rostered to work in the period they took leave.
314. Evidence may be requested to support the Agency in approving leave. In most cases, this will not be required. Where it is required, this will be discussed with the employee and a statutory declaration is the only form of evidence the Agency will require, unless the employee chooses to provide another form of evidence.



315. An employee may also choose to provide other forms of evidence, including a medical certificate, or document issued by the Police Service, a Court, a Doctor, district Nurse, a Family Violence Support Service or Lawyer.
316. The Agency will take all reasonable measures to treat information relating to family and domestic violence confidentially. The Agency will adopt a 'needs to know' approach regarding communication of an employee's experience of family and domestic violence, subject to steps the Agency may need to take to ensure the safety of the employee, other employees or persons, or mandatory reporting requirements.
317. Where the Agency needs to disclose confidential information for purposes identified in clause 316, where it is possible the Agency will seek the employee's consent and take practical steps to minimise any associated safety risks for the employee and/or privacy breaches.
318. The Agency will not store or include information on the employee's payslip in relation to the employee's experience of family and domestic violence; any leave accessed for the purposes of family and domestic violence; or support(s) provided by the employer, unless otherwise required by legislation.
319. Other available support may include, but is not limited to, flexible working arrangements, additional access to EAP, changes to their span of hours or pattern of hours and/or shift patterns and/or location of work where reasonably practicable.
320. The Agency will acknowledge and take into account an employee's experience of family and domestic violence if an employee's attendance or performance at work is affected.
321. Further information about leave and other support available to employees affected by family and domestic violence may be found in policy.

## **Integrity in the APS**

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

## **First Nations**

### **Cultural competency training**

325. The Agency Head will take reasonable steps to ensure all substantive, ongoing EL2 employees employed at the commencement of this agreement or any new substantive, ongoing EL2

employees who commence within the first 6 months of this agreement will complete relevant First Nations cultural competency training within 12 months of the commencement of the agreement.

326. Any new substantive, ongoing EL2 employee who commences after 6 months of the commencement of this agreement will be required to complete a relevant First Nations cultural competency training course within 6 months of their engagement or promotion.

### **Employment**

327. The Agency will make all reasonable endeavours to increase First Nations employment. In consultation with employees and where they choose their representatives, the Agency will implement targeted strategies to improve the attraction and retention of First Nations employees.

### **Diversity**

328. The Agency and its employees agree:
- 328.1. to respect and value the diversity of the Agency's workforce, and
  - 328.2. to ensure that our behaviour and treatment of others is free from all forms of discrimination.

### **Lactation and breastfeeding support**

329. Reasonable paid time during work hours will be provided for lactation breaks for breastfeeding, expressing milk and other associated activities.
330. The Agency will provide access to appropriate facilities for the purpose of breastfeeding or expressing milk, subject to clause 331. In considering whether a space is appropriate, an agency should consider whether:
- 330.1. there is access to refrigeration;
  - 330.2. the space is lockable; and
  - 330.3. there are facilities needed for expressing such as appropriate seating.
331. Where it is not practicable for an agency site to have a designated space, a flexible approach will be taken so that the employee can access the support required.
332. The Agency will facilitate discussion between individual employees and their managers about accommodating the employee's lactation needs and practical arrangements to meet these needs.
333. The manager and employee shall discuss any flexible working arrangements that may be needed to support lactation. This may include consideration of arrangements such as working from home and/or remote working or varying work hours on an ad-hoc or regular basis. Wherever possible, requests by an employee will be accommodated, noting these needs may be changed over time.
334. Further information is available in policy.

## **Disaster support**

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

## **Loss or damage to clothing and personal effects**

338. The Agency may approve reimbursement to an employee for loss or damage to clothing or personal effects which occurs in the course of employment. In calculating the amount of reimbursement, an appropriate rate of depreciation, the circumstances of the loss or damage and the contribution of the employee to the loss or damage will be considered.

## Section 8: Performance and development

### Probation

340. Employees who are engaged on an ongoing, or non-ongoing basis from outside the APS will normally be required to undergo a period of 6 months' probation or 3 months for non-ongoing employees on a contract of 6 or less months. Employees engaged by the Agency on probation should be advised of the assessment criteria and method of assessment during the probation period.
341. 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.
342. Where appropriate, the manager will develop a plan to address any areas of performance deficiency with the employee.
343. Any recommendation for termination of employment at any stage of the probationary period will be forwarded to the Agency Head.
344. The employee may submit to the Agency Head, written comments upon any recommendation for termination of employment, within 14 days of receiving the advice referred to above.
345. Upon receipt of the recommendation of the manager, and taking into account any comments provided by the employee, the Agency Head may:
  - 345.1. advise the employee that the probationary period has been successfully completed
  - 345.2. extend the probationary period up to a maximum of 6 months of continuous employment, or
  - 345.3. terminate employment.

### Performance management

346. Performance management arrangements in the Agency apply to all employees. Simpler arrangements may be used for non-ongoing and casual employees. Performance appraisals will take place at least annually but may also occur more frequently.
347. The principles underpinning performance management in the Agency include:
  - 347.1. regular, objective feedback
  - 347.2. procedural fairness and natural justice including the opportunity to respond to feedback
  - 347.3. appropriate regard to individual circumstances e.g. medical condition
  - 347.4. a link between performance management and learning and development activities, and
  - 347.5. a supportive approach that aims to assist employees in addressing areas of underperformance in the first instance. Options include regular/structured feedback, appropriate training, coaching, etc.

348. 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 D – Managing underperformance.

## **Workloads**

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

## **Study assistance**

352. The Agency will support employees who wish to pursue studies that are assessed as relevant to the Agency's operations through its studies assistance program.
353. The program provides financial assistance for study costs of up to \$5,500 pa and access to flexible work arrangements for study purposes. Employees may access study leave of up to 6 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 Agency's Study Assistance Policy. Study assistance will generally only be approved for ongoing employees.

## **Professional memberships**

354. The Agency will reimburse relevant membership, accreditation and registration fees where:
- 354.1. membership of a professional association is required under State or Territory laws for an employee to undertake their responsibilities for the Agency, or
  - 354.2. membership of a professional association is relevant to the employee's job and the Agency Head has determined there is a demonstrable benefit to the Agency.
355. Renewal of membership for employees will be considered on a year by year basis.
356. Generally professional membership fees will only be paid for ongoing employees although consideration will also be given to requests from long term non-ongoing employees.

## Section 9: Travel and location-based conditions

### Travel

#### Domestic travel

357. Employees travelling on official business within Australia are entitled to economy class travel. The Agency Head may approve a higher class of travel where appropriate.
358. 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 Agency does not directly meet the cost of accommodation.
359. Employees who stay in non-commercial accommodation when travelling will be paid a non-commercial accommodation allowance of \$50 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 Agency provides the meal in question.
360. The normal method of payment of allowances for travel will be in advance via direct credit to the employee's nominated account.
361. Where an employee incurs additional out-of-pocket expenses during travel, the Agency Head may approve reimbursement. This includes same day travel where the employee incurs reasonable expenses they would otherwise not have to meet.
362. The Agency Head 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.
363. The Agency Head 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.
364. 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 \$50 for part-day travel will be payable to the employee through the salary system.
365. Where employees, who are the sole available carer of dependent children, are required by the Agency to be away from their home base overnight, or are required to work away from home outside normal hours, reimbursement of reasonable childcare 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.

#### Travel time

366. For employees at APS Levels 1 to 6, travel within the bandwidth of hours is recorded as hours worked under the flextime scheme. For travel outside the bandwidth of hours, overtime or TOIL in accordance with Overtime clauses 113 to 119 is applicable.
367. 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, unless another clause in this Agreement provides for a greater entitlement.

368. An APS Level 1-6 employee who is directed to work temporarily at a location other than their usual place of work (as described in clause 18 'Usual location of work'), and incurs excess travel fares and additional travelling time, will be entitled to compensation for the additional fares and time.
369. Where travel is taken on a work day, the time worked will be considered only where the additional travel time is at least 30 minutes total per day. E.g. travel in excess of 15 minutes each way.
370. Where an APS Level 1-6 employee travels on a non-work day, travel time will commence from the time of departure from home (or hotel) and end upon arrival at the hotel (or home) and is not subject to clause 369.
371. Payment for excess fares is not available where the employee is in receipt of travel allowance, excluding part day travel allowance, or have been notified in writing that they will be permanently relocated to that place of work.

#### **Motor vehicle allowance**

372. 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.
373. 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.

#### **Relocation assistance**

374. Where an existing employee is required to relocate at the request of the Agency (such as a promotion), the employee will be provided with financial relocation assistance. Employees who relocate on a temporary basis to take up higher duties are entitled to removal expenses if they relocate for a period of 13 weeks or more.
375. Where an employee is required to relocate on engagement with the Agency, the employee will be provided with financial relocation assistance.
376. Reasonable expenses associated with the relocation include:
  - 376.1. the cost of transport of the employee and their dependants by the most economical means;
  - 376.2. removal expenses, namely the reimbursement of reasonable incurred costs of the removal of furniture and household effects of the employee and their dependants;
  - 376.3. the reimbursement of the cost of the insurance premium based on a reasonable replacement value; and
  - 376.4. the reasonably incurred expenses in kennelling and transport of pets, up to the amount specified in the APS Award.
377. Additional relocation assistance may be considered at the Agency Head's discretion.

## Remote localities

### Working and camping in remote locations

378. 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.
379. Employees working in remote localities and on remote hearings will be entitled to:
- 379.1. A camping allowance of \$90 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.
  - 379.2. A hardship allowance of \$36 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.
  - 379.3. Where an employee works in a remote location for more than 7 but less than 14 days, they will be entitled to one day's leave for each 7 consecutive days worked. An employee must work for a minimum of 3 hours per day to qualify for leave under this provision, which is in addition to other TOIL or flextime entitlements.
  - 379.4. Where an employee is in a remote location for 14 or more days, they are entitled to one day's leave for each 7 consecutive days they are away from home under this provision, which is in addition to other TOIL or flextime entitlements.
  - 379.5. Higher duties allowance may be paid for single days for employees on remote hearings.
  - 379.6. 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.
  - 379.7. 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.
  - 379.8. After hours restriction and 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 After hours restriction and on call allowance provisions in this Agreement.
  - 379.9. 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.
380. 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 Agency.



## Regional jobs

381. The Agency recognise the elements attached to living and working in Darwin, the impact on people and how these elements and their impact have changed over time. These elements are:
- 381.1. isolation and distance from the nearest capital city climatic conditions, and
  - 381.2. living conditions such as accessibility to goods and services and utilities.
382. Eligible employees will have access to additional leave and fares reimbursement for travel associated with bereavement or compassionate reasons and District Allowance. District Allowance rates are determined by the Agency Head and may be varied from time to time.
383. If the spouse or partner of an employee also receives regional jobs assistance or an equivalent allowance from another employer, that person does not qualify as a dependant of the Agency employee in relation to regional jobs assistance.
384. Where employees relocate to the Darwin Registry, the Agency Head, in special circumstances, may agree to supplement conditions available in this agreement, including through the use of individual flexibility arrangements. These may also be made available to existing employees, who relocate to Darwin Registry, in appropriate circumstances. This clause will not be used to create new employment conditions.
385. Ongoing employees who 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 Agency in those locations on or before:
- 385.1. 10 June 1999 are entitled to:
    - 385.1.1. An Agency discounted economy airfare for themselves and their eligible dependants every two years for eligible employees in Cairns or Townsville, and every year for eligible employees in Darwin in accordance with the following conditions:
      - 385.1.1.1. Employees located in Darwin: the maximum value of this airfare is for a journey between Darwin and Adelaide and return.
      - 385.1.1.2. 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.
    - 385.1.2. Air travel is to be booked using the Agency'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 373 or the cost of the airfare that would have been incurred by the Agency, whichever is less.
    - 385.1.3. Additional annual leave at the following rates:
      - 385.1.3.1. Employees located in Darwin: 5 days.
      - 385.1.3.2. Employees located in Cairns or Townsville: two days.
  - 385.2. 7 August 2018 are entitled to:

385.2.1.1. Up to one airfare per annum for medical evacuation for themselves or their eligible dependants in the case of a medical emergency.

385.2.1.2. Up to one airfare per annum for themselves only, for compelling family reasons including bereavement. Approval will be given only for compelling family reasons.

385.2.1.3. two days travelling time per annum, i.e. one day either side of annual leave.

386. Employees and their dependents who were covered by the *Federal Court of Australia Enterprise Agreement 2011–2014* are located in Darwin and were engaged continuously by the Agency in that location before 7 August 2018 are entitled to:

386.1. one annual return air flight interstate for employees where there are compelling family reasons to do so;

386.2. return air flights interstate for medical emergencies where appropriate local treatment is not available in regard to an employee or an employee's immediate family;

386.3. return air flights interstate for bereavement involving immediate family of a employee or an employee's spouse/partner, and

386.4. additional paid leave to cover travel undertaken under the preceding points.

386.5. The Agency Head will approve local arrangements and, if necessary forms, for applying for these entitlements, where necessary clarifying concepts such as 'compelling reasons'.

# Section 10: Consultation, representation and dispute resolution

## Consultation

### Principles

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

### When consultation is required

390. Consultation is required in relation to:
- 390.1. changes to work practices which materially alter how an employee carries out their work;
  - 390.2. changes to or the introduction of policies or guidelines relevant to workplace matters (unless the changes are minor or procedural);
  - 390.3. major change to production, program, organisation, structure or technology, that is likely to have a significant effect on employees;

- 390.4. implementation of decisions that significantly affect employees;
  - 390.5. changes to employees' regular roster or ordinary hours of work (subject to any other relevant provisions in this agreement); and
  - 390.6. other workplace matters that are likely to significantly or materially impact employees.
391. The Agency, employees and the relevant union(s) recognise that consultation prior to a decision may not be practicable where a decision is made by Government or is required due to matters beyond the reasonable control of the agency. In these circumstances, consultation regarding the implementation of the decision will occur as early as is reasonably practicable.

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

392. This clause applies if the Agency:
- 392.1. proposes to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or
  - 392.2. proposes to introduce a change to the regular roster or ordinary hours of work of employees.

**Representation**

393. Employees may appoint a representative for the purposes of the procedures in this clause. A representative for the purpose of this clause may be a union representative.
394. The Agency must recognise the representative if:
- 394.1. a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
  - 394.2. the employee or employees advise the employer of the identity of the representative.

**Major change**

395. In this clause, a major change is likely to have a significant effect on employees if it results in, for example:
- 395.1. the termination of the employment of employees; or
  - 395.2. major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
  - 395.3. the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
  - 395.4. the alteration of hours of work; or
  - 395.5. the need to retrain employees; or
  - 395.6. the need to relocate employees to another workplace; or
  - 395.7. the restructuring of jobs.

396. The following additional consultation requirements in clause 397 to 402 apply to a proposal to introduce a major change referred to in clause 390.3.
397. Consultation with employees and the relevant union(s) and/or recognised representatives will occur prior to a decision being made, subject to clause 391.
398. Where practicable, an Agency change manager or a primary point of contact will be appointed and their details provided to employees and the relevant union(s) and/or their recognised representatives.
399. The Agency must notify employees and relevant union(s) and/or recognised representatives of the proposal to introduce the major change as soon as practicable.
400. As soon as practicable after proposing the change, or notifying of the change in circumstances described at clause 391, the Agency must:
- 400.1. discuss with affected employees and relevant union(s) and/or other recognised representatives:
- 400.1.1. the proposed change;
- 400.1.1.1. the effect the proposed change is likely to have on the employees; and
- 400.1.1.2. proposed measures to avert or mitigate the adverse effect of the proposed change on the employees; and
- 400.1.2. for the purposes of the discussion – provide, in writing, to employees and the relevant union(s) and/or other recognised representatives:
- 400.1.2.1. all relevant information about the proposed change, including the nature of the change proposed; and
- 400.1.2.2. information about the expected effects of the proposed change on the employees; and
- 400.1.2.3. any other matters likely to affect the employees.
401. The Agency must give prompt and genuine consideration to matters raised about the major change by employees and the relevant union(s) and/or other recognised representatives.
402. However, the Agency is not required to disclose confidential or commercially sensitive information to employees and the relevant union(s) and/or other recognised representatives.

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

403. The following additional consultation requirements in clause 404 to 408 apply to a proposal to introduce a change referred to in clause 390.5.
404. The Agency must notify affected employees and the relevant union(s) and/or other recognised representatives of the proposed change.
405. As soon as practicable after proposing to introduce the change, the Agency must:
- 405.1. discuss with employees and the relevant union(s) and/or other recognised representatives the proposed introduction of the change; and
- 405.2. for the purposes of the discussion – provide in writing to the employees and relevant union(s) and/or other recognised representatives:

- 405.2.1.all relevant information about the proposed change, including the nature of the proposed change; and
- 405.2.2.information about what the employer reasonably believes will be the effects of the proposed change on the employees; and
- 405.2.3.information about any other matters that the employer reasonably believes are likely to affect the employees; and
- 405.2.4.invite employees and the relevant union(s) and/or other recognised representatives to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).

- 406. However, the Agency is not required to disclose confidential or commercially sensitive information to the employees and the relevant union(s) and/or other recognised representatives.
- 407. The Agency must give prompt and genuine consideration to matters raised about the proposed change by the employees and the relevant union(s) and/or other recognised representatives.

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

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

#### **Agency consultative committee**

- 409. The Agency Head maintains an Agency consultative committee to discuss relevant workplace matters, known as the National Consultative Committee (NCC).
- 410. The Agency NCC will include consultation on matters relating to the implementation and operation of the Agreement and operate subject to an agreed terms of reference and structure for the term of the agreement. Representation on the committee will be in accordance with the terms of reference.
- 411. The NCC may convene Regional/ Local Consultative Committees (RCC/LCCs) as deemed appropriate.

#### **APS consultative committee**

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

#### **Dispute resolution**

- 413. If a dispute relates to:
  - 413.1. a matter arising under the agreement; or
  - 413.2. the National Employment Standards;
 this term sets out procedures to settle the dispute.

- 414. An employee or union who is covered by this agreement may initiate and/or be a party to a dispute under this term.
- 415. An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term. Representatives will be recognised and dealt with in good faith.
- 416. Parties to the dispute must attempt to resolve the dispute at the workplace level, by discussion between the employee or employees and relevant managers. Parties to the dispute will notify higher level managers to assist in the resolution of the dispute. Parties will give genuine consideration to proposals to resolve the dispute.
- 417. If a dispute about a matter arising under this agreement is unable to be resolved at the workplace level, and all appropriate steps under clause 416 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.
- 418. The Fair Work Commission may deal with the dispute in 2 stages:
  - 418.1. 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
  - 418.2. if the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:
    - 418.2.1. arbitrate the dispute; and
    - 418.2.2. 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 Act. Therefore, an appeal may be made against the decision.*

- 419. While the parties are attempting to resolve the dispute using the procedures in this term:
  - 419.1. an employee must continue to perform their work as they would normally in accordance with established custom and practice at the Agency that existed immediately prior to the dispute arising unless they have a reasonable concern about an imminent risk to their health or safety; and
  - 419.2. subject to clause 419.1 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:
    - 419.2.1. the work is not safe; or
    - 419.2.2. applicable work health and safety legislation would not permit the work to be performed; or
    - 419.2.3. the work is not appropriate for the employee to perform; or
    - 419.2.4. there are other reasonable grounds for the employee to refuse to comply with the direction.
- 420. The parties to the dispute agree to be bound by a decision made by the Fair Work Commission in accordance with this term.

421. Any disputes arising under the *Federal Court of Australia Enterprise Agreement 2018–2021* or the National Employment Standards that were formally notified under clause 66 of that agreement before the commencement of this agreement, that remain unresolved at the date of commencement of this agreement, will be progressed under the dispute resolution procedures in this agreement.

#### **Leave of absence to attend proceedings**

422. Where the provisions of clauses 413 to 417 have been complied with, and to assist in the resolution of the matter, the employee, and/or the union delegate or other employee representative referred to in clause 414, or employee required to provide evidence, will be granted paid time to attend dispute resolution processes and proceedings in the Fair Work Commission arising from referral of the matter in clause 417.

#### **Delegates' rights**

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

#### **Supporting the role of union delegates**

426. The Agency respects the role of union delegates to:
- 426.1. provide information, consult with and seek feedback from employees in the workplace on workplace matters;
  - 426.2. consult with other delegates and union officials, and get advice and assistance from union officials;
  - 426.3. represent the interests of members to the employer and industrial tribunals; and
  - 426.4. represent members at relevant union forums, consultative committees or bargaining.
427. The Agency and union delegates recognise that undertaking the role of a union delegate is not the primary purpose of an employee's engagement, and must work with and not unreasonably impact their regular duties. Honorary officials may request additional time and facilities from time to time.
428. Union delegates will be provided with reasonable paid time during their normal working hours to perform their union delegate role. The paid time provided should not result in disruption to critical services or operational requirements.
429. To support the role of union delegates, the Agency will, subject to legislative and operational requirements, including privacy and security requirements:
- 429.1. provide union delegates with reasonable access to agency facilities and resources, including for paid or unpaid meetings between employees and their unions and to communicate with union officials;



- 429.2. advise union delegates and other union officials of the agency facilities and resources available for their use, which may include telephone, photocopying, internet, and email;
  - 429.3. allow reasonable official union communication appropriate to the agency from union delegates with employees, including through email, intranet pages and notice boards. This may include providing a link to a union website for employees to access union information. Any assistance in facilitating email communications does not include an agency vetoing reasonable communications;
  - 429.4. provide access to new employees as part of induction; and
  - 429.5. provide reasonable access to union delegates to attend appropriate paid time training in workplace relations matters, during normal working hours.
430. Where APS employees are elected as officials of a trade union or professional association, they are not required to seek permission from the workplace or Agency before speaking publicly in that capacity, subject to the APS Code of Conduct and legislative requirements.

# Section 11: Separation and retention

## Resignation

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

## Payment on death of an employee

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

## Redeployment, retraining, redundancy

### Responding to changing circumstances

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

### Excess employees

- 436. 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 Agency will have regard to any APS policy, including arrangements for the redeployment of excess employees across agencies.
- 437. The Agency is committed to managing excess employees situations in a way that, as far as possible, takes the wishes and aspirations of affected employees into account. An excess employee is one who:
  - 437.1. 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 Agency
  - 437.2. cannot be effectively used because of technological or other changes in the work methods of the Agency or changes in the nature, extent or organisation of the functions of the Agency, or

- 437.3. 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 Agency Head has determined that the excess employee provisions of this Agreement apply to the affected employee.

#### **Consultation with excess employees**

438. The Agency Head 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.
439. 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.
440. During this period the Agency Head 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.
441. Following these discussions, the Agency Head will write to the employee, advising that they are potentially excess to requirement and may invite the employee to elect for voluntary retrenchment.
442. 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:
- 442.1. the amount of severance pay, pay in lieu of notice and unused leave credits
  - 442.2. the taxation rules applying to the various payments, and
  - 442.3. 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.
443. 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.
444. 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 442).

#### **Period of notice**

445. Where an employee agrees to an offer of voluntary retrenchment the Agency Head can approve the termination of that employee's employment under section 29 of the PS Act. The employee will be given a Notice of Termination of 4 weeks, or 5 weeks for employees over 45 with at least 2 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.
446. The employee or the Agency Head 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.

## Severance benefit on voluntary retrenchment

447. An employee who elects for retrenchment with a redundancy benefit and whose employment is terminated by the Agency Head under section 29 of the PS Act on the grounds that they are excess to the requirements of the Agency, is entitled to payment of a redundancy benefit of an amount equal to 2 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.
- 447.1. The minimum sum payable will be 4 weeks' salary and the maximum will be 48 weeks' salary.
- 447.2. The redundancy benefit will be calculated on a pro-rata basis for any period where an employee has worked part-time hours during their period of service and the employee has less than 24 years full-time service, subject to any minimum amount the employee is entitled to under the NES.
448. Service for severance pay purposes means, subject to the following clauses:
- 448.1. service in the Agency
- 448.2. Government service as defined in section 10 of the *Long Service Leave (Commonwealth Employees) Act 1976*
- 448.3. 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
- 448.4. service with the Australian Defence Forces
- 448.5. 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
- 448.6. 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.
449. For earlier periods of service to count there must be no breaks between the periods of service, except where:
- 449.1. the break in service is less than one month and occurs where an offer of employment with the Agency was made and accepted by the employee before ceasing employment with the preceding employer, or
- 449.2. 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*.
450. Any period of service which ceased:
- 450.1. through termination on the following grounds:
- 450.1.1. the employee lacks or has lost an essential qualification for performing their duties
- 450.1.2. non-performance or unsatisfactory performance of duties

450.1.3. inability to perform duties due to physical or mental incapacity

450.1.4. failure to complete an entry-level training course

450.1.5. failure to meet a condition imposed under sub-section 22(6) of the PS Act, or

450.1.6. a breach of the Code of Conduct; or

450.2. on a ground equivalent to those listed under clause 450 above under the repealed *Public Service Act 1922*: or

450.3. through voluntary retirement at or above the minimum retiring age applicable to the employee; or

450.4. 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.

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

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

452.1. the employee's salary

452.2. the salary of the higher position where the employee had been acting in a higher position for a continuous period of at least 12 months immediately preceding the date on which they were given the Notice of Retirement, and

452.3. other allowances in the nature of salary, including shift penalties.

### **Retention periods**

453. 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:

453.1. 56 weeks where the employee has 20 years or more service or is over 45 years of age, or

453.2. 30 weeks for all other employees.

454. If an employee is entitled to a redundancy payment under the NES, the retention period clause 453 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).

455. During the retention period, the Agency Head will take reasonable steps to find alternative employment for the employee. Excess employees who apply for transfer to vacancies within the Agency 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 employees of the Agency).

456. The Agency Head may, with 4 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.

457. 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.

458. Where the Agency Head is satisfied that there is insufficient productive work available for the employee within the Agency during the remainder of the retention period and that there is no reasonable redeployment prospects in the APS:
- 458.1. The Agency Head may, (in consultation with and as far as practicable in agreement with the employee) terminate the employee's employment under section 29 of the PS Act, and
- 458.2. upon termination, the employee will be paid a lump sum comprising:
- 458.2.1. the balance of the retention period (as shortened for the NES under clause 454 ) and this payment will be taken to include the payment in lieu of notice of termination of employment, plus
- 458.2.2. the employee's NES entitlement to redundancy pay.
459. An excess employee will not be terminated involuntarily:
- 459.1. if they have elected to accept an offer of voluntary retrenchment within the previous 12 months but the Agency Head has refused to approve it.
- 459.2. if there are employees undertaking the same work at that level in the location who wish to accept voluntary retrenchment.

### **Retaining mature age workers**

460. The Agency 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:
- 460.1. part-time work
- 460.2. flexible working hours
- 460.3. job sharing
- 460.4. flexible leave arrangements
- 460.5. providing advice and, where practicable, assistance on arrangements for a phased retirement.

# Attachment A – Base salaries

## Non-legal salary rates

Classification	Salary levels	As at 31 August 2023	From the later of commencement of the agreement or 14 March 2024	From 13 March 2025	From 12 March 2026
1	1	47,776	-	-	-
1	2	49,381	52,000	54,516	-
1	3	50,718	52,747	54,751	57,497
1	4	52,800	54,912	56,999	58,937
1	5	-	55,120	57,787	59,752
1	6	-	-	-	60,946
2	1	54,069	56,774	59,520	-
2	2	55,559	57,781	59,977	62,775
2	3	57,013	59,294	61,547	63,640
2	4	58,497	60,837	63,149	65,296
2	5	59,959	62,357	64,877	67,083
2	6	-	-	-	68,425
3	1	61,586	64,049	66,823	70,477
3	2	63,183	65,710	68,207	72,324
3	3	64,793	67,385	69,946	74,195
3	4	66,469	69,476	72,837	75,313
3	5	-	-	-	76,820
4	1	68,643	71,560	75,022	-
4	2	70,821	73,654	76,453	79,125
4	3	72,667	75,574	78,446	81,113
4	4	74,529	77,510	80,455	83,190
4	5	-	78,001	81,775	84,555

Classification	Salary levels	As at 31 August 2023	From the later of commencement of the agreement or 14 March 2024	From 13 March 2025	From 12 March 2026
4	6	-	-	-	86,246
5	1	76,560	80,341	84,228	-
5	2	78,958	82,116	85,236	88,834
5	3	81,179	84,426	87,634	90,614
5	4	-	87,572	90,900	93,991
5	5	-	-	91,809	96,829
6	1	82,689	-	-	-
6	2	84,745	90,199	-	-
6	3	87,066	90,549	94,563	99,734
6	4	91,444	95,102	98,716	102,072
6	5	94,985	98,784	102,538	106,024
6	6	-	101,022	104,861	108,426
6	7	-	-	105,910	111,701
EL1	1	105,834	110,115	115,443	-
EL1	2	109,012	113,372	117,680	121,755
EL1	3	114,298	118,870	123,387	127,582
EL1	4	-	120,025	125,832	130,110
EL1	5	-	-	-	132,713
EL2	1	122,007	127,226	133,382	140,675
EL2	2	128,729	133,878	138,965	143,690
EL2	3	138,356	143,890	149,358	154,436
EL2	4	142,988	148,708	154,359	159,607
ELA2*		139,242	144,812	150,315	155,426
		141,658	147,324	152,922	158,121
		145,276	151,087	156,828	162,160



\* Following a salary increase as defined in clause 22, an employee will automatically move to the next increment level within their classification should their increment no longer exist in the rates set out in Attachment A.

\*The ELA2 band will only apply to employees who prior to the commencement of this Agreement, were previously 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**

Classification	Salary levels	As at 31 August 2023	From the later of commencement of the agreement or 14 March 2024	From 13 March 2025	From 12 March 2026
Legal EL1	1	111,522	115,983	120,390	124,483
Legal EL1	2	119,986	124,785	129,527	133,931
Legal EL1	3	134,418	139,795	145,107	150,041
REGFL EL2*	1	142,029	147,710	153,323	158,536
REGFL EL2*	2	144,491	150,271	155,981	161,284
REGFL EL2*	3	148,180	154,107	159,963	165,402
Legal EL2	1	155,718	161,947	168,101	173,816
Legal EL2	2	161,822	168,295	174,690	180,629

\* Registrars will be paid either Legal EL1 or EL2 salary rates. Registrars engaged to perform work in the Federal Circuit and Family Court of Australia family law jurisdiction may also be paid the REGFL EL2 classification and salary levels in the table above.

# Attachment B – Allowances

## First aid officers, health and safety representatives, fire wardens and harassment contact officers allowance (clause 69)

Fortnightly Rate		
Rate from commencement of the agreement	Rate from 13 March 2025	Rate from 12 March 2026
\$30.51 per fortnight	\$31.67 per fortnight	\$32.75 per fortnight

## After hours restriction and on call allowance (clause 59)

	Hourly Rate		
	Rate from commencement of the agreement	Rate from 13 March 2025	Rate from 12 March 2026
Outside standard hours	3.86	4.01	4.14
Public holiday within standard hours	5.93	6.15	6.36
Public holiday outside standard hours	9.77	10.14	10.48

## Community Language Allowance

Table two from clause 77.

Rate	Standard	Rate from commencement of the agreement	Rate from 13 March 2025	Rate from 12 March 2026
1	An employee who has adequate language skills, as determined by an individual or body approved by the Agency Head, for simple communication.	\$1,435 per annum	\$1,490 per annum	\$1,541 per annum

Rate	Standard	Rate from commencement of the agreement	Rate from 13 March 2025	Rate from 12 March 2026
2	An employee who is certified by the National Accreditation Authority for Translators and Interpreters (NAATI) as a Translator or Interpreter at any level; or is assessed to be at the equivalent level by an individual or body approved by the Agency Head.	\$2,870 per annum	\$2,979 per annum	\$3,080 per annum

# Attachment C – Supported Wage System

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

## Definitions

2. In this schedule:

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

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

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

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

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

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

## Eligibility criteria

3. Employees covered by this schedule will be those who are unable to perform the range of duties to the competence level required within the class for which the employee is engaged under this agreement, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.
4. The schedule does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this agreement relating to the rehabilitation of employees who are injured in the course of their employment.

## Supported wage rates

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

**Table 1 Applicable percentage of relevant minimum wage paid to applicable employees**

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

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

**Assessment of capacity**

8. For the purposes of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the Supported Wage System by an approved assessor, having consulted the employer and the employee, and if the employee so desires, a union which the employee is eligible to join.
9. Assessment made under this schedule must be documented in a SWS wage assessment agreement, and retained by the employer as a time and wages record in accordance with the FW Act.

**Lodgement of SWS wage assessment agreement**

10. All SWS wage assessment agreements under the conditions of this schedule, including the appropriate percentage of the relevant minimum wage to be paid to the employee, must be lodged by the employer with the Fair Work Commission.
11. All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment. Where a union which has an interest in the agreement is not a party to the assessment, the assessment will be referred by the Fair Work Commission to the union by certified mail and the agreement will take effect unless an objection is notified to the Fair Work Commission within 10 working days.

**Review of assessment**

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

### **Other terms and conditions of employment**

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

### **Workplace adjustment**

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

### **Trial period**

15. In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a Trial Period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.
16. During that Trial Period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.
17. The minimum amount payable to the employee during the Trial Period must be no less than the current weekly rate, as determined by the Fair Work Commission.
18. Work trials should include induction or training as appropriate to the job being trialled.
19. Where the employer and employee wish to establish a continuing employment relationship following the completion of the Trial Period, a further contract of employment will be entered into based on the outcome of assessment under clause 8 and 9 Assessment of capacity.

# Attachment D – Managing underperformance

## 1. Performance improvement arrangements

- 1.1. Subject to this attachment, an employee's underperformance will be managed within the Agency'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 4 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 their 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 their 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 their 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 Agency Head, will make their 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 FW Act.

- 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 PS Act.



# Attachment E – Circuits and judicial support staff

## 1. Working arrangements associated with circuits

- 1.1. The Agency 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 3 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, Agency employees must travel together in the same vehicle and use that vehicle to convey circuit material to the circuit location.

## 2. Judicial Support Staff

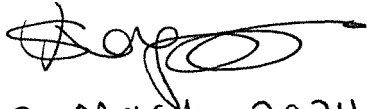
- 2.1. It will be the responsibility of individual judges and registrars to ensure that the hours of work of their judicial support staff are not so lengthy as to involve potential health risks and to manage the judicial support staff's accrued credits with that objective in mind.

# Formal Acceptance of Agreement and Signatories

Employer:

Signed for and on behalf of Federal Court of Australia

Signed:



Date: 20 March 2024

Sia Lagos

305 William Street, Melbourne VIC 3000

Chief Executive Officer and Principal Registrar

Bargaining Representative:

Signed for and on behalf of the Community and Public Sector Union

Signed:



Date: 21 March 2024

Brooke Muscat

Level 4/224 Bunda St, Canberra ACT 2601

National President, Community and Public Sector Union (PSU Group)

**THE FAIR WORK COMMISSION**

**FWC Matter No.:**

AG2024/940 - Federal Court of Australia Enterprise Agreement 2024-2027

**Applicant:**

Federal Court of Australia

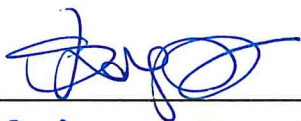
**Section 185 – Application for approval of a single enterprise agreement**

**Undertaking – Section 190**

I, Sia Lagos, Chief Executive Officer for the Federal Court of Australia give the following undertakings with respect to the Federal Court of Australia Enterprise Agreement 2024-2027 ("the Agreement"):

1. I have the authority given to me by the Federal Court of Australia to provide this undertaking in relation to the application before the Fair Work Commission.
2. For the purposes of clause 53 and 57 of the Agreement, higher duties allowance will be payable in accordance with the clause 10.8(a)(ii) and clause 10.8(a)(iii) of the Australian Public Service Enterprise Award 2015 which states, respectively:
  - a. An employee who is directed to perform continuous higher duties for at least a half day will be regarded as being on higher duties for that full day. The performance of higher duties for less than half a day will be disregarded for all purposes.
  - b. An employee who performs higher duties at a classification above the salary barrier (Executive Level), for a period of less than one week, will not be paid an allowance, and that period will not count as service at the higher classification unless the Agency Head considers special circumstances exist which justify payment of the allowance.
3. For the purposes of clauses 149-157 of the Agreement, the part-time work agreement setting out an employee's agreed part time hours will be issued before the part-time arrangement commences and will include:
  - a. the ordinary hours the employee will work each week; and
  - b. the pattern of hours to be worked, including starting and finishing times for employees other than shift workers, on each or any day of the week, within the bandwidth. The pattern of hours will provide for no less than three hours per day, or an alternative period agreed.
4. For the purposes of clause 117, where time off in lieu of a payment has been agreed, and the employee has not been granted that time off within four weeks, or another agreed period, due to operational requirements, payment of the original entitlement will be made.
5. 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 \_\_\_\_\_

17 April 2024.