

OFFICE OF THE
COMMONWEALTH OMBUDSMAN
ENTERPRISE AGREEMENT
2011–2014

DATE OF EFFECT –27 JULY 2011

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PART A - SCOPE OF THE AGREEMENT

1. TITLE

- 1.1 This Agreement shall be known as 'The Office of the Commonwealth Ombudsman Enterprise Agreement 2011–2014'.

2. PURPOSE OF AGREEMENT

- 2.1 The purpose of this Agreement is to support the Office of the Commonwealth Ombudsman (the Office) to meet its functions as set out in the Commonwealth Workplace Laws, which include promoting harmonious, productive and cooperative workplace relations and ensuring compliance with Commonwealth workplace laws.

3. COVERAGE OF THE AGREEMENT

- 3.1 In accordance with s 172 of the *Fair Work Act 2009*, the Agreement covers:
- a. the Ombudsman
 - b. all non-SES employees of the Office of the Commonwealth Ombudsman
 - c. an employee organisation that Fair Work Australia has noted in its decision to approve this agreement that the agreement covers the organisation.

4. LIMIT ON FURTHER CLAIMS

- 4.1 From the commencement of this Agreement, a party to the Agreement or an employee whose employment is subject to the Agreement shall not pursue further claims for terms or conditions of employment that would have effect during the period of operation of this Agreement, except where consistent with the terms of the Agreement.

5. DURATION

- 5.1 This Agreement will operate from the date of approval by Fair Work Australia and will nominally expire on 30 June 2014.

6. COMMITMENTS TO STAFF

- 6.1 The Ombudsman is committed to providing flexible working arrangements to assist employees in getting an appropriate balance between their work and personal life, and all parties to this Agreement recognise the need for this balance. All parties to this Agreement recognise the need to balance these flexibilities with the Office's obligation to perform its functions in the most efficient and effective manner.
- 6.2 Supervisors and employees will work to ensure the flexible working arrangements in this Agreement are used to achieve working patterns which provide a balance between work and

personal life, identify opportunities for improved productivity and minimise the need for employees, to work hours in excess of their usual hours.

- 6.3 The Ombudsman is committed to identifying and addressing the development needs of the Office and staff. This will be undertaken in conjunction with a new Performance Development System.
- 6.4 The Ombudsman respects and values the diversity of its workforce and provides support to prevent and eliminate harassment, bullying and unlawful discrimination.
- 6.5 The Office will create a workplace that actively supports the careers and cultural needs of all employees including Aboriginal and Torres Strait Islander employees.

7. OBJECTIVES

- 7.1 This Agreement sets out a framework of conditions of employment and a number of understandings, aimed at creating a workplace environment which:
 - a. recognises the valuable contribution made by all staff towards the objectives of the Office
 - b. encourages the development of a culture that continuously strives to improve the quality of service
 - c. seeks to maximise the productivity of the Office within the level of the resources available
 - d. recognises the need to balance work and personal life choices of staff
 - e. recognises the need to invest in learning and development opportunities to enable staff to contribute effectively to the strategic priorities of the Office
 - f. recognises the need to manage structures and processes to achieve savings and efficiencies
 - g. seeks to work together to reduce unplanned absences
 - h. seeks to work together to meet and achieve the purpose and vision of the current Strategic Plan as amended from time to time.

8. OPERATION OF THE AGREEMENT

- 8.1 Management guidelines to support the implementation of this Agreement will be developed and maintained. The Ombudsman will take all reasonable steps to explain the terms and the effect of those terms to employees, taking into account the particular needs of employees. This will include the provision of easy access to such information to all staff. Notwithstanding this undertaking, employees should inform themselves of the provisions of this Agreement and associated policies and guidelines.
- 8.2 There are policies and guidelines that support the operation of this Agreement. These documents may be varied from time to time following consultation between the parties to the

Agreement. If there is any inconsistency between these policies and guidelines and the Agreement, the express terms of the Agreement prevail.

- 8.3 The procedure for settling disputes, as set out in clause 112, applies to disputes relating to the application of any policy or guideline which supports the operation of this Agreement.
- 8.4 Parties acknowledge that employment by the Ombudsman is subject to the provisions of any applicable Commonwealth law.

9. RELATIONSHIP TO OTHER LEGISLATION

- 9.1 This Agreement operates in conjunction with a range of other Acts (including regulations, directions, rules or instruments made under those Acts) as in force from time to time, that may regulate terms and conditions of employment, including:
- a. *Public Service Act 1999*
 - b. *Fair Work Act 2009*
 - c. *Fair Work (Transitional and Consequential Amendments) Act 2007*
 - d. *Financial Management and Accountability Act 1997*
 - e. *Long Service Leave (Commonwealth Employees) Act 1976*
 - f. *Maternity Leave (Commonwealth Employees) Act 1973*
 - g. *Superannuation Act 1976*
 - h. *Superannuation Act 1990*
 - i. *Superannuation Act 2005*
 - j. *Superannuation (Productivity Benefit) Act 1988*
 - k. *Superannuation Benefits (Supervisory Mechanisms) Act 1990*
 - l. *Safety, Rehabilitation and Compensation Act 1988*
 - m. *Public Employment (Consequential and Transitional) Amendment Act 1999*
 - n. *Occupational Health and Safety Act 1991*
 - o. *Privacy Act 1998*
 - p. *Equal Employment Opportunity (Commonwealth Authorities) Act 1987.*

10. DELEGATION

- 10.1 The Ombudsman may, in writing, delegate to any person the ability to exercise any power or perform any function of the Ombudsman under this Agreement.
- 10.2 A person exercising delegated powers or functions under sub-clause 10.1 must comply with any directions of the Ombudsman. Where possible these directions will be in writing.

11. FREEDOM OF ASSOCIATION

11.1 The Ombudsman recognises that employees are free to choose to join or not join a union. Irrespective of that choice employees will not be disadvantaged or discriminated against in respect of their employment under this Agreement. Employees who choose to be members of a union have the right to participate in union activities and have their industrial interests represented by that union.

12. DEFINITIONS

Term Used	Definition
Office	Office of the Commonwealth Ombudsman.
Agreement	The Office of the Commonwealth Ombudsman Enterprise Agreement 2011–2014.
APS	The Australian Public Service.
Authorised Officer	An employee authorised to exercise powers or perform functions under this Agreement on behalf of the Commonwealth Ombudsman.
Bandwidth	Hours worked between 7am and 7pm Monday to Friday.
Break in continuity of service	For service to count there must be no break between the periods of service, except where the break in service is less than 1 month and occurs where an offer of employment with the new employer was made and accepted by the employee before ceasing employment with the preceding employer.
Dependant	A child or adult in relation to whom the employee has a substantial caring responsibility.

Term Used	Definition
Documentary Evidence	<p>For personal leave purposes:</p> <ul style="list-style-type: none"> • a medical certificate from a registered health practitioner • a statutory declaration made by the employee if a medical certificate is not available to the employee
De Facto partner	<p>Means a person who, although not legally married to the employee, lives with the employee in a relationship as a couple on a genuine domestic basis (whether the employee and the person are of the same sex or different sexes); and includes a former de Facto partner of the employee.</p>
Eligible dependant/ Eligible partner	<p>Is a dependant or partner who resides with the employee, and whose income, if any, is less than the National Minimum Wage as varied from time to time.</p>
Employee	<p>An APS employee employed in the Office of the Commonwealth Ombudsman and whose employment is covered by this Agreement.</p>
Employee representative	<p>A person(s) or organisation of employees bound by the Agreement, nominated by an employee to represent that employee's interests in matters relating to the Agreement.</p>
Family member	<p>Any person in a relationship of care or support with an employee covered by this Agreement. This includes relation by blood (parent, child, sibling, and grandparents), marriage (including de facto relationships), adoption, fostering or religious or traditional kinship. This is not</p>

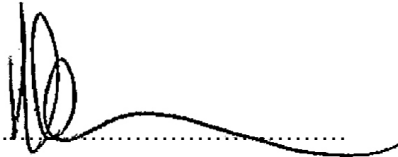
Term Used	Definition
	intended to be an exhaustive list. This term is applied without discrimination as to race, religion or sexual preference.
Foster child	A child for whom the employee has assumed primary responsibility for the long term care of the child who is, or will be, under 16 years of age and the child is not (otherwise than because of the fostering) a child of the employee or the employee's spouse or de facto partner.
Immediate family	A spouse or de facto partner of the employee; a child (including an adopted, foster or step child, or an ex-nuptial child); a parent, grandparent, grandchild or sibling of the employee or the employee's spouse or de facto partner; a member of the employee's household; and/or traditional kinship where there is a relationship or obligation under the traditions of the community or group to which the employee belongs.
Immediate household	Means the usual occupants of the dwelling in which the employee normally resides.
NAATI	National Accreditation Authority for Translators and Interpreters.
Non-ongoing employee	An APS employee employed in the Office of the Commonwealth Ombudsman on a temporary basis and whose employment is covered by this Agreement.
Normal Hours	150 hours over a four week period averaging 37.5 hours per week.
OH & S	Occupational Health and Safety.

Term Used	Definition
Ombudsman	The Ombudsman as appointed under the <i>Ombudsman Act 1976</i> or where powers are delegated to the authorised employee.
Partner	In relation to a person who is a member of a couple, the other member of the couple.
Part-time employee	An employee who works less than 37.5 hours per week.
Senior Assistant Ombudsman	A Senior Executive Service Officer in charge of a Branch within the Office.
Staff	Employees employed in the Office of the Commonwealth Ombudsman and whose employment is covered by this Agreement.
Standard hours	Seven hours 30 minutes per day to be worked 8:30am to 12:30pm and 1:30pm to 5:00pm, Monday to Friday.
Supervisor	The immediate supervisor of an employee as determined by the Commonwealth Ombudsman.
TOIL	Time Off In Lieu.

13. FORMAL ACCEPTANCE OF THE AGREEMENT

13.1 This Agreement is made and approved under s 172 of the *Fair Work Act 2009*. The persons below sign this Agreement in accordance with Regulation 2.06A of the *Fair Work Act 2009*.

Signed for the Community and Public Sector Union:

 RUPERT EVANS

Signature

Full Name of Signatory (Printed):

..... 10/440 COLLINS ST, MELBOURNE 3000

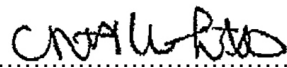
Address of Signatory

..... DEPUTY SECRETARY 14, 7, 2011

Position / Authority to sign

Date

Signed for the Media, Entertainment and Arts Alliance:

.....  Michael White

Signature

Full Name of Signatory (Printed):

..... Level 2, 40 Brisbane Ave Barton ACT 2600

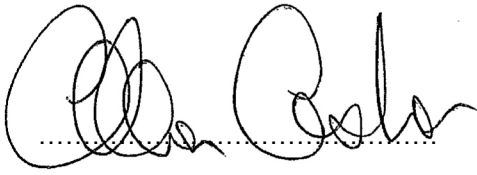
Address of Signatory

..... MEDIA ART BRANCH SECRETARY 7, 7, 2011

Position / Authority to sign

Date

Signed for the Office of the Commonwealth Ombudsman:



Signature

Allon Ashor

Full Name of Signatory (Printed):

LEVEL 2, 14 CHILDERS ST., CANBERRA ACT 2601

Address of Signatory

OMBUDSMAN

Position / Authority to sign

11.1.7.11

Date

PART B - OUR WORKPLACE

14. GENERAL PRINCIPLES

- 14.1 Both staff and supervisors have a mutual responsibility for managing their working hours and patterns, including leave planning, use of flexible arrangements, minimising excessive hours and accumulated recreational leave where possible. The provisions below are designed to be sufficiently flexible for employees to meet work requirements and balance their personal needs.
- 14.2 If in exceptional circumstances, employees are required to work in excess of their usual pattern of hours over a settlement period, supervisors will consult with the affected employees about:
- a. appropriate recompense (which may or may not be monetary and include TOIL or overtime)
 - b. how the additional workload might be shared between employees
 - c. the employees' responsibilities outside the workplace which may impact on the ability to change their usual pattern of work
 - d. the period over which the additional hours will be required to be worked.

15. STANDARD DAY

- 15.1 The standard day is defined as being working hours from 8.30am to 12.30pm and 1.30pm to 5.00pm (seven hours and 30 minutes).

16. BANDWIDTH

- 16.1 The bandwidth during which an employee may work is 7am to 7pm Monday to Friday.

17. PATTERN OF HOURS

- 17.1 Normal hours of work for full time employees are 150 hours over a four-week settlement period.
- 17.2 For part time employees, the hours of work are those agreed in the part time agreement or as designated for the particular job.
- 17.3 Unless varied by agreement between the Ombudsman and employees to suit local conditions, or circumstances, the Office of the Commonwealth Ombudsman will be open to the public between 9am and 5pm Monday to Friday.
- 17.4 The times of commencement and cessation of duty will be subject to agreement between the supervisor and the employee. This includes meal breaks.

- 17.5 Flexible working arrangements will be subject to the availability of work and the approval of the relevant supervisor.
- 17.6 The employee's hours shall not exceed 10 hours ordinary time on any one day.
- 17.7 An employee shall not work more than five consecutive hours without a meal break of at least 30 minutes.

18. FLEXIBLE WORKING ARRANGEMENTS

- 18.1 The Offices' flexible working arrangements will apply to all APS1 to APS 6 employees and provide those staff with flexibility in relation to hours worked on any particular day. This will enable the Office to make arrangements, which balance the employee's personal commitments and operational requirements, including arrangements for recording or averaging work hours.
- 18.2 The Office's Flexible Working Arrangements Scheme does not apply to Executive Level employees (and equivalents). Arrangements for Executive Level employees are covered under clause 23.
- 18.3 An employee may refuse to work extra duty outside bandwidth hours in circumstances where the working of such extra duty would result in the employee working hours which are unreasonable having regard to:
- a. any risk to employee health and safety
 - b. the employee's personal circumstances including any family responsibilities
 - c. the needs of the workplace
 - d. the notice (if any) given by the Office of the overtime and by the employee of his or her intention to refuse it.
- 18.4 The nature of the work performed by the Office usually provides sufficient capacity for work to be performed within bandwidth hours.
- 18.5 The working pattern of hours that employees will work is primarily a matter for agreement between employees and his or her supervisor.
- 18.6 An employee may, by agreement with his or her supervisor, carry over a balance of hours, not exceeding 37.5 hours into the next settlement period. Employees should not exceed 37.5 hours credit and any risk in doing so should be carefully monitored by their supervisor.
- 18.7 The Ombudsman may, where it is reasonable to do so because an employee has failed to comply with the provisions of flexible work arrangements, remove the employee from the arrangements for a specified period and that employee will revert to working standard hours. If there is disagreement between the employee and the supervisor about the reversion to standard hours, either the Ombudsman or the employee, and where they choose, their representative may seek to have the issue dealt with under clause 112 of this Agreement.
- 18.8 Access to the flexible work arrangements may be restored where the Ombudsman is satisfied that the employee's attendance and compliance with scheme requirements is satisfactory.

- 18.9 Where it has not been possible for an employee to reduce a flex balance to zero at time of separation any credits will be paid out at single time rates.

19. WORK OUTSIDE THE BANDWIDTH AND OVERTIME

- 19.1 While flexible working arrangements will generally be used to meet operational requirements within the bandwidth, there will be circumstances where employees may be directed by management to work outside the bandwidth, as well as employees seeking the agreement of management to work outside the bandwidth.

20. NON-DIRECTED WORK OUTSIDE THE BANDWIDTH

- 20.1 Where an employee requests to work outside bandwidth hours, he or she may do so with the agreement of the Ombudsman. This includes a Saturday, Sunday or Public Holidays. Any hours worked under this provision shall count towards hours of duty on a 1:1 basis; that is, one hour claimed for each hour worked outside the bandwidth.
- 20.2 There will be sufficient and reasonable breaks within and between periods of duty, to be agreed in advance by the Ombudsman and employees.
- 20.3 The Ombudsman will ensure that employees use the agreed additional hours within a reasonable timeframe from the date at which it accrues.
- 20.4 Arrangements for employees to take TOIL should take into account the nature of the occasion and level of inconvenience when additional hours were worked, e.g. excess time worked in exceptional circumstances, and time worked on a weekend, public holiday or extended travel.

21. OVERTIME AND TIME OFF IN LIEU (TOIL)

- 21.1 Clauses 21 and 22 of this Agreement apply only to APS 1 to APS 6 employees.
- 21.2 Where an employee is directed by the Ombudsman to return to duty outside the bandwidth, the recompense for time worked will attract an overtime payment; or may be taken as TOIL subject to mutual agreement between the parties in the following circumstances:
- a. for work performed on Monday to Friday before 7:00am and/or after 7:00pm
 - b. after an employee has worked seven hours 30 minutes on that day
 - c. for work performed on a Saturday, Sunday, Public Holiday or Christmas Close Down
 - d. for work performed beyond the agreed hours for part time employees.
- 21.3 Overtime and TOIL rates are as follows:
- a. **Monday to Saturday:** time and a half for the first three hours and double time thereafter
 - b. **Christmas Close Down:** time and a half
 - c. **Sunday:** double time

d. **Public Holidays:** double time and a half.

21.4 The hourly rate for overtime payment* will be ascertained by applying the following formulas:

a. **Time and a half rate:** $\text{annual Salary} / 313 \times 6/37.5 \times 3/2$

b. **Double time rate:** $\text{annual Salary} / 313 \times 6/37.5 \times 2/1$

c. **Double time and a half rate:** $\text{annual Salary} / 313 \times 6/37.5 \times 5/2$

*See also clause 80 for payment of meal allowance during periods of paid overtime.

21.5 An employee is entitled to a 10 hour break including travelling time before recommencing work without incurring a loss of pay. Where such a break is not possible the employee will be paid double time for the next period of work.

22. TRAVELLING TIME

22.1 Employees at APS 1 to 6 levels required to travel within Australia on official business outside standard hours may include the travel time as working hours on an hour for hour basis.

22.2 Travel time for air travel will commence one hour prior to flight departure and one hour after flight arrival.

22.3 Employees will travel on the day of business where a flight is available, unless otherwise agreed by the delegate. Request for non-same day travel must be submitted in writing for approval prior to the day of travel. Where such requests are approved, and flights are available on the day of travel, TOIL will not be available.

23. EXECUTIVE LEVELS

23.1 The Office recognises that the hours of duty of Executive Level employees (and equivalents) are not regular or easily categorised. While the Office Flexible Working Arrangements Scheme does not apply to Executive Level employees (and equivalents), supervisors have an obligation to allow these employees flexibility in their working arrangements, including hours of work and travel time, and have the authority to grant time off in recognition of additional hours worked, where it is considered such hours are in excess of agreed working arrangements. This means that supervisors should, as appropriate, agree to absences, including whole days. Such absences do not need to be covered by official leave and will not necessarily be granted on an hour to hour basis.

23.2 Where due to operational requirements the Executive Level employee has been required to work outside his or her agreed working arrangements on a regular basis, the Supervisor should grant reasonable time off as soon as possible after the hours have been worked.

24. PART-TIME WORK

24.1 Part time arrangements are available to employees, subject to the operational requirements and Ombudsman approval, as a means of balancing the competing demands of work, family and lifestyle. The Ombudsman is committed to providing a working environment that permits

the use of both these arrangements. Agreed part time arrangements will be specified in the part time work agreement.

- 24.2 Part-time employees are those whose regular hours of work are less than the standard hours. That is, less than 37 hours 30 minutes a week, or 150 hours in a four week settlement period.
- 24.3 It is acknowledged that, other than in exceptional circumstances to be determined by the Ombudsman, part-time staff will be required to work a minimum of three consecutive hours on any one day.
- 24.4 Remuneration and other benefits for part-time employees will be calculated on a pro-rata basis. For allowances of a reimbursement nature, part-time employees will receive the same amounts as full-time employees.
- 24.5 A part-time employee and his or her supervisor may agree to flexible working arrangements, consistent with the arrangements for full-time employees detailed in clause 18 and on the basis that the specified hours of attendance for the part-time employment form the standard hours for the purpose of flexible working arrangements.
- 24.6 The Ombudsman may approve the introduction or extension of part-time employment upon application, subject to operational requirements. Arrangements will be reviewed on a six monthly basis.
- 24.7 A full time employee will not be required to convert to part-time hours without his or her agreement.
- 24.8 Where a staff member converts from full time work to part-time work, the period of part time work is to be specified. The staff member will revert back to full time work at the completion of this period.
- 24.9 Where an employee's circumstances alter before the expiry of the agreed period, and the employee is personally available to return to full time work, the employee may apply to revert back to full time employment.
- 24.10 Where an employee who is engaged or assigned duties in a management initiated part time opportunity and wishes to convert to full time employment the employee will need to apply to the Ombudsman, stating reasons and benefits to the Office.
- 24.11 The Office will ensure that all employees returning from maternity, parental, adoption or foster parents leave will have access to part-time work.

25. JOB SHARING

- 25.1 The Ombudsman may approve job sharing arrangements between two or more employees subject to operational requirements and the basis of the employees' applications. The details of any job sharing arrangement will be agreed to in writing between the supervisor and the employees involved.

26. FLEXIBILITY ARRANGEMENTS

- 26.1 The Ombudsman and employees covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:

- a. the arrangement deals with 1 or more of the following matters:
 - arrangements about when work is performed
 - overtime rates
 - penalty rates
 - allowances
 - remuneration
 - leave.
 - b. the arrangement meets the genuine needs of the Office and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
 - c. the arrangement is genuinely agreed to by the Ombudsman and employee.
- 26.2 The Ombudsman must ensure that the terms of the individual flexibility arrangement:
- a. are about permitted matters under section 172 of the Fair Work Act 2009; and
 - b. are not unlawful terms under section 194 of the Fair Work Act 2009; and
 - c. result in the employee being better off overall than the employee would be if no arrangement was made.
- 26.3 The Ombudsman must ensure that the individual flexibility arrangement:
- a. is in writing; and
 - b. includes the name of the employer and employee; and
 - c. is signed by the Ombudsman and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
 - d. includes details of:
 - the terms of the enterprise agreement that will be varied by the arrangement; and
 - how the arrangement will vary the effect of the terms; and
 - how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
 - e. states the day on which the arrangement commences and, where applicable, when the arrangement ceases.
- 26.4 The Ombudsman must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- 26.5 The Ombudsman or employee may terminate the individual flexibility arrangement:
- a. by giving no more than 28 days written notice to the other party to the arrangement; or
 - b. if the Ombudsman and employee agree in writing — at any time.

27. WORKING FROM HOME

- 27.1 Employees may work from home, subject to approval, provided that the work to be performed is appropriate and that the primary concerns of the Office, including effective working arrangements, confidentiality, security and OH&S are properly addressed.
- 27.2 The Ombudsman may approve an employee working from home on a regular basis, subject to operational requirements, for periods up to six months. Approval will be reviewed at the end of each period, which may then be extended.
- 27.3 The Ombudsman may approve an employee working from home on an adhoc basis for periods up to three days, subject to operational requirements. In general, approval will only be given where there is reasonable surety that occupational health and safety requirements will be satisfied and the productivity of the person would not in any way be diminished as a result of the arrangement.
- 27.4 The arrangement may be varied or terminated as a result of:
- a. operational requirements
 - b. unsatisfactory performance of duties
 - c. ineffectiveness of the arrangement
 - d. failure of the employee to comply with office requirements.

28. FLEXIBLE WORKING ARRANGEMENTS FOR PARENTS

- 28.1 An employee who is a parent, or has responsibility for the care of a child under school age or a child under 18 who has a disability, may request flexible working arrangements, including part-time hours. The employee is not eligible to make this request unless they have completed at least 12 months of continuous qualifying service (unless otherwise agreed by the Ombudsman).
- 28.2 A casual employee engaged for irregular or intermittent duties may only request flexible work arrangements if the employee:
- a. is a long term casual employee immediately before making the request; and
 - b. has reasonable expectation of continuing employment on a regular and systematic basis.
- 28.3 A request in accordance with clause 28.1 must be in writing and set out details of the change sought and the reasons for the change. The Ombudsman will respond in writing to the request within 21 days and will only refuse on reasonable business grounds. Where the request is refused, the response will include reasons for the refusal.
- 28.4 For the purposes of this clause:
- a. 'qualifying service' means service that is recognised for redundancy pay purposes
 - b. 'casual' means an employee engaged on an irregular or intermittent basis.

29. CHILD AND DEPENDANT CARE POLICY

- 29.1 The Office is committed to supporting employees in accessing dependent care services and providing employees with current information about child and dependent care services.
- 29.2 In recognition of child and dependent care responsibilities, on prior approval the Ombudsman will authorise reimbursement of reasonable expenses arising from additional family arrangements made necessary where an employee is:
- a. required to travel away from his or her normal work location for business purposes
 - b. directed to work additional hours or attend a conference or training course outside the bandwidth or outside the employee's normal hours of work.

30. DISCRIMINATION FREE WORKPLACE

- 30.1 The Office and its employees jointly agree that:
- a. they will at all times uphold the objectives set out in paragraph 3(e) of the *Fair Work Act 2009*
 - b. they will respect and value the diversity of the workforce by assisting to prevent and eliminate discrimination in the workplace on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin
 - c. any dispute concerning discrimination will be dealt with in accordance with clause 112 of this Agreement.
- 30.2 Nothing in these provisions allows any treatment that would otherwise be prohibited by anti-discrimination provisions in applicable Commonwealth or State/Territory legislation.

31. WORKPLACE DIVERSITY

- 31.1 The Office and its employees are committed to ensure that Workplace Diversity principles are fully implemented into all office activities, management practices, policies and procedures.
- 31.2 The Office recognises equity in employment as a key strategy in developing and maintaining a diverse workforce. The Office and its employees will encourage Aboriginal and Torres Strait Islander people, people from non-English speaking backgrounds, people with disabilities and women not only to apply for ongoing vacancies and secondments from other departments and agencies but to progress through all levels.
- 31.3 The Office will develop strategies to target the employment and career pathways of people from such diverse backgrounds.
- 31.4 All employees are committed to a workplace free from harassment and bullying.

32. OCCUPATIONAL HEALTH AND SAFETY

- 32.1 The Office recognises that it has a legal and moral responsibility to provide a safe and healthy workplace.
- 32.2 The Ombudsman is committed to a policy that enables effective cooperation between supervisors and employees on OH&S matters which are to be facilitated by appropriate measures including an OH&S Policy and Agreement with employee representatives under sub-section 16(3)(c) of the *Occupational Health & Safety Act 1991*.
- 32.3 In meeting its obligations under OH&S legislation, the Office will:
- a. develop and maintain health, safety and welfare policies that are consistent with the OH&S Act and regulations and ensure that all supervisors implement the policies in a consistent way
 - b. maintain workplace Health and Safety Committees and support the activities of Health and Safety Representatives
 - c. where necessary, ensure that expert advice is available on OH&S matters affecting employees and other people operating in the workplace
 - d. where necessary ensure appropriate workplace safety inspections are carried out by a qualified person
 - e. where necessary provide appropriate OH&S training consistent with the *Occupational Health & Safety Act 1991*.
- 32.4 At work, staff must take all reasonably practical steps to ensure that they do not put their own, or their work colleagues' safety or health at risk, and will cooperate with the Ombudsman to the extent necessary to allow them to meet their responsibilities as employees.
- 32.5 In recognition of the responsibilities of OH&S representatives, Harassment Contact Officers and Emergency Control Wardens the Ombudsman will make a payment to employees who fulfil these roles as detailed in clause 74.
- 32.6 Any dispute concerning OH&S will be dealt with in accordance with clause 112 of this Agreement.

33. STAFF WELLBEING INITIATIVES

- 33.1 The Ombudsman acknowledges the importance of wellbeing in the workplace and is aiming to improve the overall health and wellbeing of all employees by offering the following initiatives:
- a. Flu vaccinations – the Office will fund and make arrangements for flu vaccinations to be made available to all employees; and
 - b. Health Programs – the Office will provide health programs to all staff aimed at providing staff access to health promotion activities including, but not limited to, quit smoking activities, low impact stretching (yoga/pilates).

- 33.2 The Ombudsman will consider staff ideas and where appropriate include those ideas as health and wellbeing initiatives.

34. EMPLOYEE ASSISTANCE SCHEME

- 34.1 A confidential counselling service (the Employee Assistance Scheme) will be made available to employees and their immediate families to help them resolve work related and personal problems. Counselling sessions will be provided at no cost to the employee, although employees who fail to attend a session may incur any resultant fee.

35. SUPPORT FOR MATURE AGED WORKERS

- 35.1 The Ombudsman values the skill, expertise and knowledge held by mature aged workers. In keeping the Ombudsman's commitment to work/life balance, flexible working arrangements such as part-time and the use of recreation and long service leave provisions can be suitable for use by mature age employees as a means to assist their transition to retirement.
- 35.2 Employees are encouraged to explore these flexibilities as a means of extending their working lives.
- 35.3 Subject to operational requirements, supervisors will favourably consider flexible working arrangements as a means to retaining mature age employees who might otherwise choose to leave the Office.

PART C - DEVELOPING OUR PEOPLE

36. GENERAL PRINCIPLES

- 36.1 The Office is committed to maintaining highly competent staff that are motivated to achieve corporate objectives. This Agreement recognises the need to invest in employees' skills and career development to increase their value in the Office and provide a more rewarding and challenging workplace for all employees.
- 36.2 The Office recognises that learning and personal development can enhance employees' potential to contribute to the achievement of the Office's goals and to meet their career aspirations.
- 36.3 All employees will have the opportunity to participate in personal and professional development related to improving his or her capacity to contribute to the work of the Office or to enhance his or her personal skill base in a way that will improve his or her longer-term career progression both within the Office and elsewhere in Australian Government employment.
- 36.4 The Office commits to reviewing the current core training modules in line with the new strategic priorities, and to enabling all employees the opportunity to participate in the core modules.

37. PROFESSIONAL DEVELOPMENT

- 37.1 The personal professional development needs of all employees will be described in Professional Development Plans that are to be developed by all employees and their supervisors, in accordance with the Performance Development Program detailed at clause 41.

38. INDUCTION PROGRAM

- 38.1 The Office will maintain a structured induction training program which ensures that orientation is given high priority and that timely induction sessions are conducted for all new employees regardless of tenure, proposed period of service or previous work background.

39. STUDY ASSISTANCE

- 39.1 The Ombudsman has a commitment to support employees undertaking formal studies that are relevant both to the employee's career and to the Office.
- 39.2 An employee's proposed course of study must be approved by the Ombudsman for the employee to have access to any form of studies assistance. The Ombudsman will consider the benefit of the proposed course of study to the Office and to the employee's career, and the capacity of the employee to balance the study commitments with his or her work responsibilities.

STUDY LEAVE

- 39.3 The Ombudsman may approve up to 60 hours of paid study leave per semester to attend formal lectures, seminars, presentations, tutorials, including on-line, residential or other events scheduled as part of an approved course of study and occurring during agreed standard hours.
- 39.4 Study leave is not automatic, and is always subject to the operational requirements of the work area. The Ombudsman considers it is good practice for an employee to discuss with their supervisor, at the beginning of each semester, course outlines and leave requirements.
- 39.5 The Ombudsman may approve other leave per semester, including full time study, for research, exam preparation and to sit exams, which may be paid or unpaid.

FINANCIAL ASSISTANCE

- 39.6 The Ombudsman may approve financial assistance to undertake an approved course of study. Financial assistance is in the form of a bursary that is paid on receipt of proof of successful completion of approved studies. The amounts are:
- a. **University students:** \$275 per unit (subject) to a maximum payment of \$1100 per academic year
 - b. **TAFE students:** \$275 per semester – total \$550 per academic year.
- 39.7 The bursary payment is not payable to employees on Leave Without Pay.
- 39.8 The Ombudsman may approve the cost of a training course of study in a tertiary institution where the course is approved as part of the employee's Professional Development Plan. The Ombudsman may approve reasonable time off to travel to and from the training.

OTHER MATTERS

- 39.9 Travel time of up 30 minutes each way will be granted to attend approved study activity within agreed standard hours.
- 39.10 Employees may have reasonable use of Ombudsman office equipment outside standard hours with approval of their supervisor.

40. CHANGING ROLE AND RESPONSIBILITIES

- 40.1 There will be occasions when it is desirable to require employees to change teams within the Office due to operational requirements, including changes in our role and priorities or because projects are completed. These circumstances will also occur where the Office takes on new responsibilities or projects.
- 40.2 In such circumstances, staff will be consulted in relation to any move and consideration given to personal and career progression requirements. While operational requirements will need to be met, where possible this will be consistent with staff preferences.
- 40.3 This Agreement and the *Public Service Act 1999* and Regulations provide an employee with the opportunity to seek review of certain actions that relate to his or her employment:
- a. the Agreement provides staff with an entitlement to request internal review of certain action that relates to his or her employment
 - b. section 33 of the Public Service Act provides: “An APS employee is entitled to review, in accordance with the regulations, of any APS action that relates to his or her APS employment”.

41. PERFORMANCE AND DEVELOPMENT

- 41.1 *Performance Development Guidelines* will provide the basis for the management and assessment of performance. This document will be revised within 3 months of certification of this EA in consultation with staff. The aim of that revision will be to ensure that the policy is fair and equitable and supports and encourages high performance and behaviour consistent with APS Values, and reflects the Office’s commitment to learning and development activities.
- 41.2 The Performance Development Program (PDP) is part of an overall framework which seeks to foster the highest levels of quality performance, leadership, behaviour and practices throughout the Office, together with tailored learning and development and career planning for employees.
- 41.3 The PDP framework applies to all staff who are employed for a period of 3 months or more.
- 41.4 The PDP provides the basis for identifying the development needs of staff and for salary advancement through the salary ranges.
- 41.5 The PDP operates over an annual cycle and seeks to foster high performance by:
- a. linking performance to the Office’s corporate goals and activities
 - b. linking performance and behaviour consistent with APS Values
 - c. recognising high performance
 - d. developing an agreed understanding of the employee’s job, work level standards appropriate to level, and taking into account all aspects of the employee’s job

- e. identifying and implementing agreed learning and development needs
 - f. providing both ongoing and structured two-way feedback between supervisors and employees
 - g. providing balance between work and personal life.
- 41.6 The PDP annual cycle commences on 1 July each year. Formal assessment will occur at:
- a. mid cycle by end December
 - b. end of cycle by 30 June.
- 41.7 Each staff member and their supervisor are jointly responsible for developing a PDP agreement and ensuring performance feedback is part of ongoing activities. This includes the opportunity for informal upwards feedback.
- 41.8 Each PDP cycle comprises the following elements:
- a. completion of individual work plans that are linked to the Ombudsman's strategic plan and business plan including the employee's major responsibilities, performance indicators and key values and behaviours
 - b. a minimum of an initial planning session between the employee and their supervisor, a mid-term review, and appraisal at the end of the performance cycle when they receive an assessment rating
 - c. each employee and their supervisor identifying the employee's learning and development needs and appropriate follow up action as part of the initial planning session and the mid-term review.

PERFORMANCE ASSESSMENT

- 41.9 Performance assessments are based on an assessment against work outputs specific to the individual's position, and behaviours. Assessment will be against the following four standards:
- a. Superior
 - b. Fully Effective
 - c. Requires Development
 - d. Not Acceptable.
- 41.10 A rating of Requires Development is a commitment by both the supervisor and the employee to identify and participate in relevant learning and development activities aimed at bringing the performance of the employee to a fully effective standard. It should not be provided more than once for performance in a specific position.
- 41.11 Incremental salary advancement will occur where a rating of Fully Effective or above is achieved.

- 41.12 Where a rating of Requires Development is provided, review of the performance assessment will be undertaken 3 months after the application of the initial rating. Should the rating be reviewed as being Fully Effective or above, incremental advancement will occur from the time of review. Should the review rating be Not Acceptable, the procedures for managing underperformance will be applied.
- 41.13 Supervisors will apply a 'no surprises' principle to the application of ratings and feedback, by ensuring staff are kept informed of their performance throughout the cycle. On this basis, no staff member should receive a rating of Requires Development or Not Acceptable without prior discussions having occurred.
- 41.14 Assessment of behaviour is not a substitute for managing breaches of the code of conduct in the appropriate manner, but may be a factor in considering the performance of an employee.

LEARNING AND DEVELOPMENT

- 41.15 The Office recognises the importance of a comprehensive learning and development framework for all staff and managers that:
- a. develops and supports technical expertise relevant to the officer's current role
 - b. develops and supports capabilities against the appropriate classification as articulated in the ILS
 - c. develops and promotes appropriate behaviours of staff
 - d. articulates organisational priorities and the range of internal and externally provided learning and development activities that will be made available to support staff to meet the priority capabilities, skills and knowledge identified in their PDP and for their level and work area.

42. MANAGING UNDER-PERFORMANCE

- 42.1 Management of under-performance is critical to the efficient and effective operation of the Office. Employees who have supervisory responsibility are responsible for the management of under-performance of subordinate staff in accordance with relevant Ombudsman guidelines.
- 42.2 The underperformance framework is designed to:
- a. have regard to individual circumstances of the staff member, including any relevant health issues
 - b. include learning and development as the focus for improving performance
 - c. have active performance development as an integral part of workplace culture
 - d. require performance measures and standards to be clearly articulated.
- 42.3 Procedures for managing under-performance apply to all ongoing employees and do not apply to:
- a. staff during a probation period

- b. contracted staff
 - c. staff being case managed due to an identified medical condition/injury.
- 42.4 Only those directly involved in an underperformance matter will have access to relevant information. All information provided in writing and orally must be handled in confidence to comply with the provisions of the *Privacy Act 1988*.

MANAGING UNDER-PERFORMANCE—INFORMAL PROCEDURES

- 42.5 Regular feedback will be the initial and primary channel for discussing any under-performance issues.
- 42.6 The relevant supervisor and employee will promptly and jointly develop and implement strategies to assist the employee to achieve an acceptable level of performance.
- 42.7 These strategies should be given no less than four weeks to take effect before formal procedures are initiated.

MANAGING UNDER-PERFORMANCE—FORMAL PROCEDURES

- 42.8 In circumstances where, despite genuine attempts to improve performance through informal procedures, performance consistently falls below the expected standard, the procedure set out below will apply.
- 42.9 An employee may choose to receive guidance, assistance or representation from a person of his or her choice at any stage of the procedure outlined in this clause.
- 42.10 An employee may have further rights of review under the *Public Service Act 1999* in respect of action taken other than termination of employment.
- 42.11 **First Step - Written Warning:**
- a. the supervisor will provide the employee with a written warning of the need for performance to improve
 - b. the warning will specify the acceptable standard of work, why the employee's work does not meet that standard and specify that performance will need to improve over the next two months
 - c. a copy of the written warning will also be provided to the employee's Senior Assistant Ombudsman and the Director responsible for human resources.
- 42.12 **Second Step - Progress Reports:**
- a. during the two month period, the supervisor will assess the employee's performance on a fortnightly basis and prepare a progress report on the employee's performance
 - b. the employee must be given the opportunity to provide comments on the supervisor's progress report
 - c. where the Ombudsman considers that it would be inappropriate for the supervisor to undertake the assessment of the employee's performance, he or she will appoint an

independent person from outside the employee's work area to undertake the assessment.

42.13 **Third Step – Assessment:** At the end of the two month period, the supervisor will forward to the employee's Senior Assistant Ombudsman and the Director responsible for human resources, an assessment of whether the employee has met the expected standard of performance, together with his or her progress reports and any other relevant documentation.

42.14 **Fourth Step – Show Cause:**

- a. if the employee has met the expected standard at the end of the two month period, no further action will be taken (unless performance subsequently deteriorates)
- b. if performance fails to meet the expected standard at the end of the two month period, the employee's Senior Assistant Ombudsman will write to the employee asking him or her to show cause within seven days as to why he or she should not have his or her salary regressed, reduced in classification, or employment terminated.

42.15 **Fifth Step – Recommendation and Decision:** The employee's Senior Assistant Ombudsman will decide whether to:

- a. recommend to the Ombudsman that the employee will have employment terminated, attaching all the relevant documentation for consideration by the Ombudsman who shall determine the matter
- b. recommend to the Ombudsman that action be taken, including reassignment of duties, regression in salary or reduction in classification.

43. REDUCTION IN CLASSIFICATION/SALARY

43.1 If an employee is reduced in classification or regressed in salary without consent, the employee may lodge an appeal with the Ombudsman within 14 days of the notice of reduction in classification or regression in salary, on the ground that he or she met the expected standard of performance and/or there was a serious defect in the application of the procedure outlined in clause 42.

43.2 A notice of reduction or regression takes effect after one month unless the employee lodges an appeal. Where an employee lodges an appeal, the reduction takes effect on the day the appeal is dismissed or withdrawn or one month after the notice is issued, whichever is the earlier.

43.3 The appeal will be finalised within four weeks from the date of lodgement.

43.4 An employee who appeals against reduction or regression must submit a statement in support of the appeal to the Ombudsman within 21 days of the issue of the notice of reduction. Where the employee, without due cause, fails to submit a statement within the time allowed or fails to appear at a scheduled hearing of the appeal the Ombudsman may dismiss the appeal.

43.5 The Ombudsman may deal with the matter or may appoint a person from outside the employee's work area to hear from relevant persons and provide a report in relation to the appeal. The Ombudsman shall decide to confirm or revoke the notice of reduction or regression.

- 43.6 If the appeal is successful, the notice of reduction is revoked without detriment to the employee.
- 43.7 If the appeal is unsuccessful and the employee applies under Public Service Regulation 5.24(1) to have the matter reviewed, the Ombudsman may choose to adopt the conduct and outcome of the appeal under these provisions for the purposes of any review under Public Service Regulation 5.27.

44. BREACH OF CODE OF CONDUCT

- 44.1 Breaches of the Code of Conduct will be dealt with under procedures established in accordance with s 15 of the *Public Service Act 1999*.

45. REVIEW OF DECISIONS TO TERMINATE EMPLOYMENT

- 45.1 The sole and exhaustive rights and remedies of an employee in relation to termination of employment are those that the employee enjoys under:
- a. the *Fair Work Act 2009*
 - b. other Commonwealth laws (including the Constitution)
 - c. at common law.
- 45.2 Termination of, or a decision to terminate employment, cannot be reviewed under the dispute prevention and settlement procedures/review of action procedures addressed in clause 112 or the provisions for review of certain employment actions addressed in clause 111.
- 45.3 Nothing in this Agreement prevents the Ombudsman from terminating the employment of an employee for serious misconduct, without further notice or payment in lieu, in accordance with the *Fair Work Act 2009*, subject to compliance with the procedures established by the Ombudsman for determining whether an employee has breached the APS Code of Conduct under s 15 of the *Public Service Act 1999*.

PART E - EXCESS EMPLOYEES

46. COVERAGE

46.1 The following redeployment, termination of employment and redundancy provisions will apply to ongoing employees covered by this Agreement who are not on probation.

47. DEFINITION OF EXCESS EMPLOYEES

- 47.1 An employee is an excess employee if:
- a. the employee is included in a class of employees employed in the Office that comprises a greater number of employees than is necessary for the efficient and economical operation of the Office
 - b. the services of the employee cannot be effectively used because of technological or other changes in the work methods of the Office or changes in the nature, extent or organisation of the functions of the Office
 - c. where the duties usually performed by the employee are to be performed at a different locality, the employee is not willing to perform duties at that locality and the Ombudsman, has determined that these provisions will apply to that employee.

48. CONSULTATION WITH POSSIBLE EXCESS EMPLOYEES

- 48.1 When the Ombudsman becomes aware that an employee is likely to become an excess employee, the Ombudsman will advise the employee of the situation in writing.
- 48.2 The Ombudsman will, as soon as possible, hold discussions with the employee(s), or the employee(s) and his or her nominated representative, to consider:
- a. actions that might be taken to reduce the likelihood of the employee becoming excess
 - b. redeployment opportunities for the employee within the Office of another APS Agency
 - c. the possibility of voluntary redundancy.
- 48.3 Consistent with the interests of the efficient management of the Office and where a suitable vacancy exists, the Ombudsman will take all reasonable steps to reassign duties to the excess employee within the Office and explore options to assist with career transition.
- 48.4 This consultation period will extend for at least a four week period, but may be reduced with the written agreement of the employee.
- 48.5 Where 15 or more employees are likely to become excess, the Ombudsman will comply with s 530 of the *Fair Work Act 2009*.

49. CONSIDERATION BY EXCESS EMPLOYEES

- 49.1 At the end of the notification period the Ombudsman may declare an employee excess, having regard to:
- a. the recommendation of the relevant manager
 - b. any statement made by the employee; and
 - c. the likelihood of the employee being able to be reassigned elsewhere within the Office.
- 49.2 The Ombudsman will advise, in writing, those employees who have been identified as excess employees that they are excess to the Office's requirements and make an offer of voluntary redundancy:
- a. once the consultation discussions under clause 48 have concluded
 - b. where the employee has declined to discuss the matter, and one month has passed since advice was given to the employee that he or she was likely become an excess employee.
- 49.3 The advice will include, if this has not already been provided to the employee during the consultation period:
- a. the amounts payable as redundancy pay, pay in lieu of notice and accrued annual and long service leave credits
 - b. the amount of accumulated superannuation contributions
 - c. information on superannuation options
 - d. taxation applying to the various entitlements.
- 49.4 An employee that has been advised that they are an excess employee, will be reimbursed up to a maximum of \$600 for professional financial advice for the purposes of making a decision in relation to their redundancy options.
- 49.5 The consideration period will normally be four weeks. For an employee over 45 with at least five years of continuous service, the notice period will be five weeks.

50. VOLUNTARY REDUNDANCY

- 50.1 The Ombudsman will make the offer of voluntary redundancy to an excess employee no earlier than one month and no later than two months after the decision that the employee is an excess employee.
- 50.2 Where the Ombudsman invites an excess employee to accept voluntary redundancy, the employee will have one month to accept that offer. Where the offer is accepted the Ombudsman will not give notice of termination of employment before the end of that period without the agreement of the employee.
- 50.3 The one month consideration period can be reduced by agreement between the employee and the Ombudsman. Where the period is reduced the employee will be paid the unexpired

period of the acceptance period as at the date of termination; and payment in lieu of the relevant period of notice provided for in clause 49.

- 50.4 Only one offer of voluntary redundancy will be made to an excess employee.
- 50.5 Where an excess employee agrees to redundancy, the Ombudsman may retrench the employee by giving the required notice of termination of employment under s 29 of the *Public Service Act 1999*.

51. SEVERANCE BENEFIT

- 51.1 An employee who elects for retrenchment with a redundancy benefit and whose employment is terminated by the Agency Head under s 29 of the *Public Service Act 1999* on the grounds that he /she is excess to the requirements of the agency, is entitled to payment of a redundancy benefit of an amount equal to two weeks' salary for each completed year of continuous service, plus a pro-rata payment for completed months of service since the last completed year of service, subject to any minimum amount the employee is entitled to under the National Employment Standards (NES).
- 51.2 The minimum sum payable will be 4 weeks' salary and the maximum will be 48 weeks' salary.
- 51.3 The redundancy benefit will be calculated on a pro rata basis for any period where an employee has worked part-time hours during his or her period of service and the employee has less than 24 years full-time service (refer 'rate of payment' sub-clause), subject to any minimum amount the employee is entitled to under the NES.

52. SERVICE FOR SEVERANCE BENEFITS (FOR PAY PURPOSES)

- 52.1 The types of service identified in sub-clauses 52.2 to 52.8 are counted in the calculation of service for the purposes of severance pay.
- 52.2 Service in the Office of the Commonwealth Ombudsman.
- 52.3 Government service as defined in s 10 of the *Long Service Leave Act 1976*.
- 52.4 Service within the Commonwealth, which is recognised for long service leave purposes, other than service with a Joint Commonwealth-State body corporate in which the Commonwealth has a controlling interest.
- 52.5 Service with the Australian Defence Forces.
- 52.6 APS service immediately preceding deemed resignation if service has not been recognised for severance pay purposes.
- 52.7 Service in another organisation where:
- a. an employee was transferred from the APS to that organisation with a transfer of function
 - b. an employee engaged by that organisation on work within a function is appointed as a result of the transfer of that function to the APS

- c. such function is recognised for long service leave purposes.
- 52.8 For earlier periods of service to count there must be no breaks between the periods of service, except where:
- a. the break in service is less than one month and occurs where an offer of employment with the new employer was made and accepted by the employee before ceasing employment with the preceding employer
 - b. the earlier period of service was with the APS and ceased because the employee was deemed to have resigned from the APS on marriage under the repealed s 49 of the *Public Service Act 1922*.
- 52.9 The periods of service identified in sub-clauses 52.10 to 52.11 will not count for the purpose of calculating service for severance pay.
- 52.10 Any period of service which ceased:
- a. by way of termination under s 29 of the *Public Service Act 1999*
 - b. by way of redundancy prior to the commencement of the *Public Service Act 1999*
 - c. by termination on grounds of invalidity
 - d. on the ground of unsatisfactory performance of duties or loss of qualifications
 - e. on the ground of forfeiture of office
 - f. by termination during probation for reasons of unsatisfactory service
 - g. voluntarily, where the employment occurred when the employee was older than the minimum retiring age applicable to the employee or where the employee became entitled to payment of an employer-financed benefit on account of the termination.
- 52.11 Absences from work that do not count as service for leave purposes will not count as service for severance pay purposes.

53. RATE OF PAYMENT FOR SEVERANCE BENEFIT

- 53.1 For the purposes of calculating any payment for severance benefit, salary will include:
- a. the employee's salary at the substantive work value level
 - b. the salary of the higher work value level, where the employee has been working at the higher level for a continuous period of at least 12 months immediately preceding the date on which the employee is given notice of termination of employment
 - c. other allowances in the nature of salary which are paid during periods of recreation leave and on a regular basis, excluding allowances which are a reimbursement for expenses or a payment for disabilities associated with the performance of duty.
- 53.2 Where an employee has worked part-time hours during his or her period of service and the employee has less than 24 years full-time service, the 2 weeks per year of service that relates to the part-time service will be paid on pro-rata basis as follows:

- a. current annual full-time equivalent salary (used for redundancy purposes), divided by full time hours, multiplied by the part-time hours for that part-time period worked.

54. RETENTION PERIOD

- 54.1 The purpose of the retention period is to allow an employee to continue to remain employed whilst attempting to secure alternative employment.
- 54.2 If an employee is offered, but has declined a voluntary redundancy, the retention period will commence on the earlier of the following:
 - b. the day the employee advises the Ombudsman in writing that they do not accept the offer of voluntary redundancy made under clause 50
 - c. one month after the day on which the Ombudsman offered the employee voluntary redundancy under clause 50.
- 54.3 If an employee is offered, but has declined a voluntary redundancy and unless the employee agrees otherwise, an excess employee will not have his or her employment terminated under s 29 of the *Public Service Act 1999* until the following retention period (less the period specified at sub-clause 54.4) has elapsed:
 - a. 56 weeks where an employee has 20 years or more service or is over 45 years of age
 - b. 30 weeks for all other classes of employees.
- 54.4 If an employee is entitled to a redundancy payment in accordance with the National Employment Standards, the relevant period in sub-clause 54.3 is reduced by the number of weeks redundancy pay that the employee will be entitled to under the National Employment Standards on termination calculated at the expiration of the retention period (as adjusted by this clause).
- 54.5 The retention period will be extended by any periods of personal leave supported by medical evidence taken during the retention period.
- 54.6 During the retention period the Ombudsman:
 - a. will continue to take reasonable steps to find alternative employment for the excess employee
 - b. may, with four weeks' notice, reassign duties at a lower APS classification to the excess employee (where this occurs before the end of an employee's retention period, the employee will receive income maintenance to maintain salary at the previous higher level for the balance of the retention period).
- 54.7 It is the excess employee's responsibility to take all reasonable steps to identify and apply for suitable vacancies at their substantive level.
- 54.8 The excess employee may request assistance in meeting reasonable travel and incidental expenses incurred in seeking alternative employment where these expenses are not met by the prospective employer.

- 54.9 An excess employee required to move the employee's household to a new locality as a result of a reduction in classification will be entitled to reasonable expenses where these expenses are not met by the prospective employer.
- 54.10 Where the Ombudsman is satisfied that there is insufficient productive work available for the employee within the Office during the remainder of the retention period and that there is no reasonable redeployment prospects in the APS:
- a. the Ombudsman may, with the agreement of the employee, terminate the employee's employment under s 29 of the *Public Service Act 1999* and
 - b. upon termination, the employee will be paid a lump sum comprising:
 - the balance of the retention period (as shortened for the National Employment Standards under sub-clause 54.4) and this payment will be taken to include the payment in lieu of notice of termination of employment
 - an additional redundancy payment equal to the amount the retention period was shortened by under sub-clause 54.4.

55. INVOLUNTARY TERMINATION OF EMPLOYMENT

- 55.1 The Ombudsman may involuntarily terminate the employment of an excess employee at the end of the retention period under s 29 of the *Public Service Act 1999*.
- 55.2 Where procedures outlined in this Agreement may lead to termination of employment on any of the allowable grounds under s 29 of the *Public Service Act 1999*, those procedures will be followed before an ongoing employee's employment may be terminated.
- 55.3 An excess employee's employment will not be involuntarily terminated if the employee has not been invited to accept an offer of voluntary redundancy or has elected to be terminated but the Ombudsman has refused to approve it.
- 55.4 An excess employee's employment will not be involuntarily terminated without being given four weeks' notice or five weeks' notice for an employee over 45 with at least five years of continuous service, or payment in lieu of notice.
- 55.5 The specified periods of notice will as far as practicable be concurrent with the retention periods.
- 55.6 During the retention period, the Office will pursue redeployment opportunities for the excess employee both internally and across the APS, and provide reasonable development opportunities to assist with redeployment.
- 55.7 Nothing in this Agreement prevents the Ombudsman from terminating the employment of an employee for serious misconduct, without further notice or payment in lieu, in accordance with paragraph 123(1) (b) of the *Fair Work Act 2009*. However, such termination will be subject to compliance with the procedures established by the Agency for determining whether an employee has breached the Code of Conduct under s 15 of the *Public Service Act 1999*.

PART F - REMUNERATION & STRUCTURE

56. SELECTION AND ADVANCEMENT

- 56.1 The Ombudsman may engage persons as employees for the purposes of the Office.
- 56.2 The engagement of an employee will be in accordance with the *Public Service Act 1999*.
- 56.3 The engagement of an employee may be subject to medical assessment for fitness for duty.
- 56.4 The maximum probationary period will be six months after which time, unless employment has been terminated, the employee will become an ongoing employee of the Office (subject to other requirements or processes).

57. SALARY

- 57.1 Salary rates are shown at ATTACHMENT A.
- 57.2 In recognition of the productivity gains which will flow from the operation of this Agreement the salary rates contained in Attachment A will increase by 5% upon commencement of the Agreement, and 2% on 1 July 2012 and 1 July 2013.
- 57.3 In recognition that the salary for EL2.1 is below the minimum threshold set by the APSC, an additional 1% will be paid upon commencement of the Agreement.
- 57.4 The 2nd and 3rd increment points of EL2 classification will receive an additional increase of 0.25% upon commencement of the Agreement, 0.40% on 1 July 2012, and 0.30% on 1 July 2013.

58. PAYMENT OF SALARY

- 58.1 Employees will be paid fortnightly in arrears and the fortnightly rate of pay will be based on the following formula:

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

- 58.2 Employees will have their fortnightly salary paid by electronic funds transfer into a financial institution of his or her choice.
- 58.3 Access to the financial institution must be available to the pay processing system used by the Office at the time.

59. SALARY PRINCIPLES

- 59.1 Where, at the time of engagement, an employee's salary is set at an incorrect salary point (in error) within the applicable salary scale, the Ombudsman may determine, in writing, that the employee will be paid salary at the more appropriate salary point.

- 59.2 Where an employee agrees, in writing, to temporarily perform work at a lower work value level, the Ombudsman may determine, in writing, that the employee shall be paid a rate of salary applicable to the lower work value level.

60. SALARY ON ENGAGEMENT

- 60.1 At the discretion of the Ombudsman, an employee moving to this office whose salary in their previous agency (current salary) exceeds the current rate the employee would otherwise be entitled to under this Agreement, the employee will be maintained on their current salary until such time as their salary is absorbed by the Office's pay increases, unless otherwise agreed at the time of commencement.
- 60.2 Where an employee is engaged (either on an ongoing or non-ongoing basis) or is promoted within or to the Office, salary will be payable at the minimum point of the salary range applicable to the classification of the job, unless the Ombudsman authorises payment of salary above that point having regard to the experience, qualifications or skills of the employee.
- 60.3 Where an employee commences in the Office at the same classification and is in receipt of a salary that does not have a direct translation point in the Office's salary scale, the salary payable will be the next highest point within the Office's salary range for that classification.
- 60.4 An employee to whom clause 60.2 applies may discuss salary with the Ombudsman before taking up the assigned duties.

61. SALARY ON TEMPORARY ASSIGNMENT TO THE OMBUDSMAN OFFICE FROM ANOTHER AGENCY AT A HIGHER CLASSIFICATION

- 61.1 Where an employee from another Agency (the other Agency) is temporarily assigned duties in the Office either in a higher classification or in a part of a broadband that has a higher equivalent APS classification than the duties performed by the employee in the other Agency, salary will be payable at the minimum point of the applicable office's salary range unless the Ombudsman authorises payment of salary above the minimum point in that salary range, having regard to the experience, qualifications and skills of the employee.

62. SALARY ON REDUCTION TO DUTIES WITH A LOWER CLASSIFICATION

- 62.1 Where the classification of an employee is reduced, on either a temporary or ongoing basis, salary will be determined by the Ombudsman having regard to the experience, qualifications and skills of the employee.
- 62.2 An employee's reduced salary will take effect from the first full pay day following the reduction.

63. NON-ONGOING EMPLOYEES ENGAGED FOR DUTIES THAT ARE IRREGULAR OR INTERMITTENT

63.1 Non-ongoing employees engaged for duties that are irregular or intermittent will receive a loading of 20 per cent of salary in lieu of public holidays and paid leave. Such employees will still accrue long service leave.

64. WORK LEVEL STANDARDS

64.1 The classification of jobs to be undertaken by office employees will be in accordance with the Australian Public Service Commission Work Level Standards.

65. BROADBANDING

65.1 The APS 4 and 5 level positions are 'broadbanded' as indicated in the Ombudsman Classification Structure at ATTACHMENT A and are implemented with the following provisions:

- a. advancement within a broadband is based on the performance of the employee and the needs of the Office
- b. an employee who is at the maximum level applicable at the classification and is rated fully effective in accordance with the Performance Management Program (PMP) may be advanced to the next classification level provided that:
 - they have been assessed as having the skill requirements for the available work at the next classification level
 - there is sufficient ongoing work required to be performed at the higher work level
- c. where more than one employee satisfies the performance and skills requirements, but there is insufficient ongoing work available for all such employees, a merit selection will be used to determine advancement
- d. where an employee is advanced within a broadband, they are automatically reclassified to the relevant APS classification.

65.2 Where an employee wishes to have the refusal of their claims for advancement reviewed, the Internal Review of Employment Actions set out in clause 111 apply.

65.3 Further broadbanding within the classification structure may be implemented if the Ombudsman determines, in consultation with the Workplace Relations Committee (WRC), that it would benefit the Office and relevant employees.

65.4 A merit selection process will be used to determine advancement between the broadbands.

66. ADVANCEMENT TO HIGHER PAY POINTS

66.1 An employee will advance by one pay point where he or she is assessed as being Fully Effective or Superior at his or her current level under the Performance Development Program

(PDP). An employee who is assessed as Requires Development or Not Acceptable will not advance a pay point.

- 66.2 Progress from a lower level to the higher level within the broadbanded positions will require:
- a. performance results that demonstrate the capacity to work at the higher level
 - b. the need for the higher level work is expected to continue in the long term
 - c. Subject to sub-clause 66.1 the date of effect for pay point advancement will be 12 months from either, and whichever is the later, of the date the employee:
 - commenced with the Office
 - last advanced in pay through either promotion or pay point advancement.

67. CLASSIFICATION STRUCTURE

- 67.1 The Office Classification Structure will contain eight levels as detailed in ATTACHMENT A.
- 67.2 The structure is aligned with the pay structure made under the *Public Service Act 1999* so that mobility throughout the APS is not restricted.

68. SALARY PACKAGING

- 68.1 Salary packaging, as detailed in the Office's Flexible Remuneration Packaging Guidelines, will be available to employees on a salary sacrifice basis.
- 68.2 In providing salary packaging there will be no additional cost to the Office and any fees charged for administrative costs or fringe benefits tax as a result of these arrangements will be payable by the employees concerned.
- 68.3 The Office will also offer a limited menu administered in house for employees.
- 68.4 Where flexible remuneration packaging is accessed under this clause, salary for all purposes will continue to be calculated as if the packaging arrangements had not been entered into.

69. SUPERANNUATION

- 69.1 The Ombudsman will ensure that all new employees are fully informed about superannuation arrangements and levels of employer contributions immediately on commencement or recommencement of employment.
- 69.2 The Ombudsman will make compulsory employer contributions as required by the applicable legislation and fund requirements.
- 69.3 Where employer contributions are to an accumulation superannuation fund the employer contribution will be 15.4% of the fortnightly superannuation contribution salary. This will not be reduced by any other contributions made through salary sacrifice arrangements. This clause does not apply where a superannuation fund cannot accept employer superannuation contributions (eg: unable to accept contributions for people aged over 75).

- 69.4 The Ombudsman may choose to limit superannuation choice to complying superannuation funds that allow employee and/or employer contributions to be paid through fortnightly electronic funds transfer using a file generated by the Office's payroll system.

70. PAYMENT ON DEATH

- 70.1 Where an employee dies, or the Ombudsman directs that the employee will be presumed to have died on a particular date, the Ombudsman may authorise the payment of the amount, which the former employee would have been entitled had he or she ceased employment on resignation or retirement. Long Service Leave credits will be paid out in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976*.
- 70.2 Payment may be made to dependants or the partner of the former employee or the employee's personal legal representative. If a payment has not been made within twelve months of the former employee's death it shall be paid to the employee's legal personal representative.

PART G - ALLOWANCES & REIMBURSEMENTS

71. GENERAL

71.1 Unless otherwise specified the payments of allowances and reimbursements covered in this Part will not count as salary for any purpose.

72. HIGHER DUTIES ALLOWANCE

72.1 Subject to this clause, where an employee is reassigned duties, which in the opinion of the Ombudsman are of higher value than his or her normal duties, he or she will become entitled to higher duties allowance. That allowance will be calculated in accordance with this clause and will be sufficient to take the employee's salary to the lowest pay point on the next level that exceeds his or her existing salary.

72.2 Where the duties are to be performed for a continuous period of at least one week and, in the opinion of the Ombudsman, involve management responsibilities, the employee will be entitled to the allowance for the entire period.

72.3 Where the duties are to be performed for a continuous period of at least a month, the employee will be entitled to the allowance for the entire period.

72.4 Where an employee does not qualify for a loading under either sub-clause 72.2 or 72.3, the employee may apply for the allowance where he or she has in a financial year performed duties of the higher value for a minimum of six non-consecutive weeks. The employee will be entitled on application within a reasonable period to the allowance in respect of any period in the financial year in excess of six weeks.

72.5 Where an employee is promoted in the course of a year, calculation of the six weeks referred to in sub-clause 72.4 will not take account of any period prior to the date of promotion.

72.6 Where temporary vacancies occur for periods under one month, employees may be invited, as part of their professional development and career planning, to undertake duties for this period. In this clause:

- a. reference to a "week" means a reference to any period of five consecutive working days
- b. reference to a "month" means a reference to any period of four consecutive weeks.

PAYMENT OF HIGHER DUTIES ALLOWANCE

72.7 The allowance will be based on the level and scope of work to be performed and the employee's capacity to effectively undertake the higher-level work.

72.8 The allowance will be calculated by increasing the employee's salary to an appropriate pay point within the higher level classification structure set out in ATTACHMENT A.

72.9 Where an employee, who is receiving the allowance, and is granted paid leave or observes a public holiday, the employee will continue to receive the allowance during that absence, however, the allowance will not be paid beyond the date for which the loading is granted.

- 72.10 An employee, who is undertaking higher level work and being paid the allowance, will remain at his or her substantive classification level and the allowance will not be recognised for any other purpose than specified in this clause.
- 72.11 Where an employee, immediately prior to termination of employment, has been in receipt of the allowance for a continuous period of 12 months or more, the loading will count as salary for all purposes.
- 72.12 The principles detailed in sub-clause 72.7 will apply where non SES employees are temporarily reassigned work in the Senior Executive Service jobs for periods of at least one week.

73. FIRST AID ALLOWANCE

- 73.1 Where the Ombudsman is satisfied that an employee possesses a current first aid certificate, a continuing ability commensurate with the qualification and the employee has been given first aid responsibilities, the employee will be paid an allowance of \$16.00 per week.
- 73.2 The rate of this allowance will be fixed for the life of the Agreement.

74. HEALTH AND SAFETY REPRESENTATIVES, HARASSMENT CONTACT OFFICERS & EMERGENCY CONTROL WARDENS ALLOWANCE

- 74.1 In recognition of the responsibilities of Health and Safety Representatives, Harassment Contact Officers and Emergency Control Wardens the Ombudsman will pay an allowance of \$16.00 per week to employees who fulfil each of these roles.
- 74.2 Generally, a Health and Safety Representative, Harassment Contact Officer or Emergency Control Warden may not undertake the role of First Aid Officer. However, it is acknowledged that there may be circumstances when the Ombudsman may approve an employee undertaking a number of roles and in such cases the employee will be paid the allowance for each role.

75. COMMUNITY LANGUAGE ALLOWANCE

- 75.1 The Ombudsman may approve the payment of Community Language Allowance to an employee where the following conditions are met:
- a. there is an identifiable and continuing need for the particular skills possessed by the employee in providing client or staff services
 - b. language skills are required for communication in languages other than English, including Aboriginal and Torres Strait Islander, AUSLAN or other deaf communication skills.
- 75.2 Community Language Allowance rate 1 (Language Aide) is payable to an employee who:
- a. passes the Language Aide Test conducted by the National Accreditation Authority for Translators and Interpreters (NAATI)
 - b. is recognised by NAATI to possess equivalent proficiency

- c. is assessed to be at the equivalent level by an individual or body approved by the Ombudsman
- d. is waiting to be assessed by means of assessment specified immediately above and whose supervisor certifies that the employee uses the language skills to meet operating requirements of the workplace, until such time as the assessment is completed.

75.3 Community Language Allowance rate 2 is payable to an employee who:

- a. is accredited or recognised by NAATI at the Paraprofessional Interpreter level or above
- b. is assessed to be at the equivalent levels by an individual or body approved by the Ombudsman.

75.4 The Community Language Allowance rates payable are:

- a. CLA rate 1 \$800 per annum
- b. CLA rate 2 \$1,600 per annum.

76. PROFESSIONAL PAYMENTS ASSISTANCE

76.1 The Office will pay for professional practice, memberships or other fees for those employees in positions where the Ombudsman has determined that those professional skills, qualifications and memberships are required in order to enhance the performance or the effectiveness of the Office in the performance of its functions.

77. RESTRICTION ALLOWANCE

77.1 An employee who needs to be contactable and available to work outside their ordinary hours of work may be placed under a restriction direction by the Ombudsman. A restricted employee may be required to work at their usual workplace or at another designated workplace, including their home.

77.2 A restriction allowance will not be paid to Executive Level employees or an employee who does not remain contactable or available to perform extra duty.

77.3 The restriction allowance payments for each hour restricted are:

- a. Monday to Friday – 7.5 per cent of the hourly rate of salary
- b. Saturday and Sunday – 10 per cent of hourly salary
- c. Public holidays – 15 per cent of hourly salary.

78. REMOTE LOCALITIES CONDITIONS

78.1 Employees permanently or temporarily located in Darwin will accrue five days recreation leave per year (for the period they are within these localities) in addition to the twenty working days paid recreation leave defined in sub-clause 90.1.

- 78.2 Employees, other than non-ongoing employees, working in the Ombudsman's Darwin office will be paid a Remote Localities Allowance on a fortnightly basis. Other elements of remote localities assistance available to employees, other than non-ongoing employees, working in the Darwin office are outlined in ATTACHMENT C.
- 78.3 The amount payable will be:
- a. employee with dependants \$4,060 pa
 - b. employee without dependants \$2,400 pa.
- 78.4 An employee with a spouse or partner who is also entitled to the payment of a Remote Localities Allowance or similar District Allowance as detailed above will be regarded as an employee without dependants for the calculation of Remote Localities Allowance.
- 78.5 Where an employee is required to perform field work in a remote geographic location for a period of three weeks or less he or she will be paid a Remote Localities Allowance of \$65 per day in addition to Travelling Allowance.

79. MOTOR VEHICLE ALLOWANCE

- 79.1 The Ombudsman may approve an employee's request to use a private vehicle at his or her own expense for work related travel. Where the Ombudsman's approval is obtained, the employee will be paid the lesser of:
- a. the transport costs which would otherwise have been paid by the Office, including any discounted fares that would have been available (these are GST exclusive)
 - b. Motor Vehicle Allowance, of 75 cents per kilometre.
- 79.2 A Motor Vehicle Allowance will only be paid where the employee has obtained prior approval and subject to any conditions that may be set by the Ombudsman.

80. MEAL ALLOWANCE

- 80.1 If an employee is directed to work overtime as detailed in clause 21 and it has been more than five hours since their last meal break, they will be required to take a meal break of a minimum of 30 minutes and maximum of 60 minutes. Provided the employee works beyond the meal period and takes a meal break they will be paid an allowance of \$25.00. Payment will be through the salary system.
- 80.2 The meal period means the following periods:
- a. 7.00am to 9.00am
 - b. 12 noon to 2.00pm
 - c. 6.00pm to 7.00pm
 - d. Midnight to 1.00am.

81. TRAVEL ALLOWANCES (TA)

DOMESTIC AIR TRAVEL

- 81.1 Economy class travel will be the general standard used where an employee is required to travel within Australia on official business.
- 81.2 Employees will travel on the same day as business where flights are available, unless prior approval from the delegate is received.

ELIGIBILITY FOR TRAVEL ALLOWANCE

- 81.3 Employees travelling between centres in Australia for official purposes which require an overnight absence will be entitled to an allowance in respect of meals, and incidental expenses.
- 81.4 The Office subscribes to an allowance subscription service and will adopt the rates as varied from time to time in line with the recommendations provided.
- 81.5 The principle behind the payment of travel assistance is that employees are not out of pocket for the costs of accommodation, meals and incidentals while travelling on official business.
- 81.6 An employee who is required to be absent overnight from his or her usual place of work on official business within Australia will be able to claim an advance for meal costs and incidentals in line with the relevant Ombudsman allowances rates.
- 81.7 Where the Ombudsman has made commercial accommodation arrangements (i.e. staying at hotel/motels), payment will be made directly to the provider by corporate credit card in order for the Ombudsman to recover the GST component.

ELIGIBILITY FOR PART DAY TRAVEL ALLOWANCE

- 81.8 An employee who travels away from the usual place of work on Ombudsman business for a period of not less than 10 hours, but is not absent overnight, will receive a reimbursement of costs, consisting of the lunch allowance rate and the incidental allowance in line with the relevant Ombudsman allowances rates. To be eligible for the payment, travel must be to a locality which would attract full payment of the travelling allowance if the employee were to stay overnight at that locality.

ADJUSTMENT TO TRAVEL ALLOWANCE PAYMENTS

- 81.9 Where an employee's travel arrangements have varied so as to affect the total amount payable as travel allowance, the employee must provide a statement of the travel actually undertaken and the expenses accrued for acquittal and any adjusting payment or repayment.
- 81.10 The Ombudsman may adjust the travel allowance where there is sufficient proof that a different travel allowance is needed to meet reasonable accommodation, meal and incidental costs incurred.

- 81.11 The Ombudsman may reimburse reasonable travel related expenses where costs have been incurred above the travel allowance rate, where there is sufficient proof that the expenses were incurred.

ADMINISTRATION OF TRAVELLING ALLOWANCE

- 81.12 The Parties to this Agreement note that the Ombudsman will continue to examine options to improve the efficiency of the administration of travel allowance. In introducing any changes the Ombudsman will ensure the current reasonable standards of accommodation, meals and incidentals will be maintained. Any guidelines for their use will be developed through the normal consultative process.

82. OVERSEAS TRAVEL

- 82.1 Business class travel may be used where an employee is required to travel overseas on official business
- 82.2 Where an employee travels overseas on official business, he or she will be provided with:
- a. a corporate credit card to meet expenses that cannot be direct billed to the Office, for example, accommodation costs and any unforeseen work related expenses
 - b. an Overseas Travelling Allowance for meals and incidental expenses to be calculated in accordance with the rates advised from time to time by the Australian Taxation Office, Taxation Ruling – Income Tax: reasonable allowances amounts as varied from time to time
 - c. a cash advance to cover projected expenses likely to be incurred in the course of his or her work. For example, Interpreter fees.
- 82.3 The Ombudsman may adjust the Overseas Travel Allowance where there is sufficient proof, such as receipts, that the Travel Allowance paid was insufficient to meet reasonable costs incurred.
- 82.4 The Ombudsman will meet the reasonable costs of medical or dental attention required by an employee as a result of an injury or disease that requires immediate attention while the employee is travelling overseas. An employee may use his or her corporate credit card to pay for any necessary medical, dental or hospital treatment.
- 82.5 Where the employee pays for any such treatment themselves, the Ombudsman will reimburse the employee the cost of the treatment.

83. TEMPORARY WORK IN A DIFFERENT GEOGRAPHIC LOCATION

- 83.1 An employee who is directed to temporarily work in another geographic location at his or her request may receive temporary assistance at the discretion of the Ombudsman.
- 83.2 Where an employee is required to work in a different geographic location for a period of three weeks or less, he or she will be paid a Travel Allowance as per clause 81.

- 83.3 Where an employee is required to work in a different geographic location for more than three weeks but less than 13 weeks, the Ombudsman and the employee will negotiate an agreed package of assistance. This will include reasonable temporary accommodation costs and payment for any reasonable and unavoidable continuing expenses incurred where the employee's usual residence is left unoccupied. This can include care-taking or maintenance costs. This allowance excludes payment for rates, land tax and insurance.
- 83.4 For periods of temporary location in excess of 13 weeks from the day on which the employee commenced work at the new location, the agreed package of assistance will include (where applicable):
- a. payment of reasonable temporary accommodation costs at the new location
 - b. payment of reasonable transport and removal costs to and from the new location
 - c. payment of costs to store household furniture
 - d. where an employee is not accompanied to the new location by his or her dependant(s) or partner, the employee will be eligible for payment of one reunion visit to his or her place of work for each 13 week period he or she is away from his or her usual residence
 - e. payment for any reasonable and unavoidable continuing expenses incurred where the employee's usual residence is left unoccupied (this can include care-taking or maintenance costs, but excludes payment for rates, land tax and insurance).

84. REMOVAL ASSISTANCE

- 84.1 Where an existing employee is directed to undertake duties on an ongoing basis in another location and as a result is required to relocate his or her domicile, the employee will be entitled to at least the following costs.
- a. moving of household furniture and effects to the new location
 - b. cost of transporting the employee and his or her family to the new location
 - c. up to four weeks temporary accommodation at the new location
 - d. a disturbance allowance of \$490 (employee without dependants or partner), \$997 (employee with one or more dependants or partner) and \$210 (full-time student dependent child)
 - e. where appropriate reasonable costs associated with sale of a home in the old locality and purchase of a home in the new locality or, where appropriate, termination of a lease
 - f. reasonable familiarisation and organisation travel ahead of the move
 - g. movement of pets, motor vehicles or costs associated with the move that is reasonable or unavoidable.
- 84.2 The Ombudsman may agree to the payment of some or all of the costs detailed in sub-clause 84.1 where an existing employee has:
- a. a partner who is also entitled to the payment of removal or similar expenses

- b. already received the some or all of the above expenses as part of a temporary relocation immediately preceding removal.

85. LOSS AND DAMAGE

- 85.1 The Ombudsman may approve payments to employees, such as reimbursement for loss or damage to clothing or personal effects that occurred in the course of the employee's duties.

86. EYEWEAR REIMBURSEMENT FOR SCREEN BASED WORK

- 86.1 Where an approved examiner has certified that eyewear is required to perform screen based work the employee will be reimbursed;
 - a. \$120 for single focus lenses eyewear
 - b. \$165 for bifocal lenses eyewear.
- 86.2 Reimbursement for approved eyewear will only be granted once every two years.
- 86.3 Non ongoing employees, employed for a period in excess of six months will be granted reimbursement for approved eyewear.

87. LIFESTYLE CONTRIBUTION

- 87.1 In recognition of the benefit to the Office of employees undertaking health and wellbeing initiatives of their own, each eligible ongoing employee may seek reimbursement of these expenses, up to a maximum of \$299 per annum (as a single payment). Payment of this Lifestyle Contribution is subject to Office guidelines.

PART H - LEAVE PROVISIONS

88. GENERAL PRINCIPLES

- 88.1 All employees will be entitled to leave as specified in this part.
- 88.2 The Ombudsman regards the taking of recreational and long service leave within a reasonable period of its accrual as an important to OH&S and balance between work and personal life and that leave planning should be integrated with the wider issues of work planning.
- 88.3 The Ombudsman will encourage employees to take at least three weeks recreation leave in any one calendar year.
- 88.4 Employees must complete an Application for Leave form for any form of leave and submit it to the Ombudsman in advance of the leave wherever possible.
- 88.5 Absences on approved leave should be recorded in the manner determined by the Ombudsman.
- 88.6 The taking of leave is subject to the approval of the Ombudsman.
- 88.7 An employee who is medically unfit for duty for one full day or longer while on leave and who produces satisfactory documentation may apply for personal leave. If the original type of leave is Recreation, Purchased, Compassionate/Bereavement or Long Service, then it will be reimbursed to the extent of the period of approved personal leave.
- 88.8 Where any public holiday occurs and the employee is entitled to payment during any period of recreation or personal leave, the period of the public holiday is not deducted from the employee's recreation or personal leave credit.
- 88.9 All paid leave will count as service, subject to sub-clause 104.6.

89. PORTABILITY OF LEAVE

- 89.1 Where an employee moves (including on promotion or for an agreed period) from another agency where they were an ongoing APS employee, the employee's unused accrued Recreation leave and Personal/Carer's leave (however described) will be recognised, provided there is no break in continuity of service.
- 89.2 Where an employee is engaged as either an ongoing or non-ongoing APS employee immediately following a period of ongoing employment in the Parliamentary Service or the ACT Government Service, the employee's unused accrued Recreation leave and Personal/Carers leave (however described) will be recognised.
- 89.3 Where a person is engaged as an ongoing employee, and immediately prior to the engagement the person was employed as a non-ongoing APS employee, the Ombudsman may, at the request of the employee, recognise any accrued Recreation leave and Personal/Carers leave (however described), provided there is no break in continuity of service. Any recognised Recreation leave excludes any accrued leave paid out on separation.

- 89.4 For the purpose of this clause:
- a. 'APS employee' has the same meaning as the *Public Service Act 1999*.
 - b. 'Parliamentary Service' refers to employment under the *Parliamentary Service Act 1999*.

90. RECREATION LEAVE

90.1 Recreation leave credits will accrue on a daily basis at the rate of twenty working days for each complete year of service.

90.2 Recreation leave credits for all eligible employees will be calculated fortnightly using the following formula:

$$\text{Fortnightly accrual (hours)} = \frac{A \times B}{C}$$

A= number of hours worked that count as service in a fortnight

B= per annum recreation leave credit (full-time equivalent) expressed in hours

C= full time working hours over a 12 month period (i.e. 1956.25 hours)

- 90.3 Each period of service that has different weekly hours is calculated separately. If separate credits are calculated, all credits are added and expressed as a total number of hours of leave available.
- 90.4 Employees will have access to recreation leave entitlements as they accrue.
- 90.5 Employees performing duty in Darwin (remote locality) accrue additional recreation leave of one week per annum or a pro rata amount based on length of service in remote locality.
- 90.6 Recreation leave will not accrue during periods not regarded as service for recreation leave purposes.
- 90.7 Recreation leave may be accessed for part day absences.
- 90.8 Where an employee has an existing recreation leave credit in excess of 40 days at the end of any month during the year or on the employee's commencement with the Office, the employee will continue to accrue recreation leave, but may be directed to reduce the outstanding balance to under 40 days within three months or longer. Such a direction must be reasonable and provided in writing.
- 90.9 In respect to sub-clause 90.8, where the outstanding leave balance is not reduced within 3 months, the Ombudsman may direct the employee, through a notice to the employee, to take leave for a period up to the amount of the excess leave balance.
- 90.10 Where an employee's leave is cancelled without reasonable notice at any time after it has been approved, or an employee is recalled to duty from leave, the employee will be entitled to be reimbursed reasonable travel costs and incidental expenses not otherwise recoverable under any insurance or from any other source.

- 90.11 Where an employee is recalled to duty from recreation leave, the period that the employee is recalled to duty will be re-credited to his or her recreation leave entitlement.
- 90.12 The employee will recommence leave after the period of duty, but may elect to defer the unused recreation leave to a time mutually agreed between the employee and the Ombudsman.
- 90.13 The Ombudsman may agree to an employee request to 'cash out' up to two weeks of Recreation Leave in each calendar year in conjunction with the taking of at least one week of Recreation Leave by paying the employee the value of the leave to be cashed out.
- 90.14 An employee may not 'cash out' Recreational Leave if doing so would leave the employee with a balance of less than 20 days Recreational Leave.
- 90.15 An employee will be entitled to payment in lieu of recreation leave on separation from the APS in respect of unused credits that have accrued to the date of separation.

91. COMPASSIONATE/BEREAVEMENT LEAVE

- 91.1 An employee will be entitled to up to three days of paid compassionate leave for each occasion where a member of the employee's immediate family or household contracts an illness, or sustains an injury, that poses a serious threat to his or her life, or dies.
- 91.2 Subject to the discretion of the Ombudsman, additional leave may be granted to employees from his or her personal leave entitlement.

92. MATERNITY LEAVE

- 92.1 Employees are entitled to 52 weeks Maternity Leave in accordance with the provisions of the *Maternity Leave (Commonwealth Employees) Act 1973*.
- 92.2 Employees may take 12 weeks paid Maternity Leave in accordance with the provisions of the *Maternity Leave (Commonwealth Employees) Act 1973*.
- 92.3 Employees may elect to take 12 weeks paid Maternity Leave at half pay over 24 weeks. If the employee takes Maternity Leave at half pay then only 12 weeks will count as service.
- 92.4 Where an employee is entitled to paid leave under the *Maternity Leave (Commonwealth Employees) Act 1973*, the employee is entitled to an additional two weeks paid leave, to be taken in conjunction with the paid Maternity Leave. The additional two weeks paid maternity leave may be taken at half pay, and will count as service for all purposes.
- 92.5 An employee is unable to access paid Personal Leave while on paid Maternity Leave.

93. PARENTAL SUPPORT LEAVE

- 93.1 Following the birth, adoption, or foster placement of a child an ongoing employee who is the partner and has parental responsibilities may access 10 days paid leave.
- 93.2 The partner may also access a further period of leave without pay up to a maximum period of 52 weeks over a 66 week period in total for parental support purposes, commencing on the

day of the birth of the child, or in the case of an adopted or foster child, on the day the employee assumes responsibility for the child.

94. RETURN TO WORK AFTER PARENTAL, MATERNITY, ADOPTION OR FOSTER PARENTS LEAVE

- 94.1 On ending parental or maternity leave, an employee is entitled to return to:
- a. the employee's pre-parental/maternity leave duties; or
 - b. if those duties no longer exist – an available position for which the employee is qualified and suited at the same classification and pay as applied pre-parental/maternity leave. Where this is not practical, other duties will be sought, with the redeployment, reduction and redundancy provisions applying to any placement.
- 94.2 For the purposes of this clause, duties means those performed:
- a. if the employee was moved to safe duties because of pregnancy – immediately before the move; or
 - b. if the employee began working part-time because of the pregnancy – immediately before the part-time employment began; or
 - c. otherwise – immediately before the employee commenced maternity or parental leave.

95. ADOPTION AND FOSTER PARENTS LEAVE

- 95.1 An employee, who is the primary carer, is entitled to paid adoption leave or paid foster parent leave of 14 weeks at full pay or 28 weeks at half pay for the purposes of adopting a child. Adoption leave may be taken in one block or as separate absences over a 12 month period at the discretion of the Ombudsman. The adopted/foster child must not be a child or step-child of the employee or the employee's partner unless that child had not been in the custody and care of the employee for a significant period.
- 95.2 An employee with less than 12 months continuous service in the APS is eligible for adoption/foster parent leave, but only two weeks will be paid.
- 95.3 Where an employee elects to take paid adoption/foster parent leave at half pay, a maximum of 14 weeks counts as service for all purposes.
- 95.4 Foster parents leave applies in relation in to child for whom the employee has assumed long term responsibility arising from the placement of the child by a permanent 'fostering' arrangement by a person/organisation with statutory responsibility for the placement of the child, and where the child is not expected to return to their family.

96. LONG SERVICE LEAVE

- 96.1 The entitlement to long service leave is provided for under *the Long Service Leave (Commonwealth Employees) Act 1976*.

- 96.2 The minimum period during which long service leave can be taken is seven calendar days (at full pay or half pay). Long service leave cannot be broken with other periods of leave, except as otherwise provided by legislation.

97. JURY LEAVE

- 97.1 An employee is entitled to leave to attend jury service. An employee will continue to be paid by the Office but will be required to pay to the Office the amount received for jury service.

98. PERSONAL LEAVE

- 98.1 Ongoing full time employees accrue 18 days full-pay personal leave for each completed year of paid service.
- 98.2 Ongoing Ombudsman employees new to the APS are credited with their full entitlement on commencement and thereafter annually on the anniversary of commencement.
- 98.3 Non-ongoing employees who are engaged for a period of 12 months or more will accrue personal leave in the same manner as an ongoing employee.
- 98.4 Non-ongoing employees who are engaged for periods of less than 12 months will accrue eight days personal leave after two months employment and one day per full month of employment after that.
- 98.5 Part-time employees will have his or her personal leave calculated on a pro rata basis.
- 98.6 Paid personal leave, taken from existing or anticipated leave credits (see sub-clause 98.15), shall be available to an employee when he or she is absent due to any of the following reasons:
- a. personal illness or injury
 - b. attending medical or health related appointments
 - c. to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because of:
 - a personal illness, or personal injury, affecting the member
 - an unexpected emergency affecting the member.
 - d. attending to legal matters of an immediate nature
 - e. urgent personal matters of an immediate nature
 - f. accompanying family with health and legal matters
 - g. urgent household matters or repairs
 - h. work relocation in relation to clause 83
 - i. extraordinary circumstances.

- 98.7 Employees are encouraged to minimise the use of part day personal leave and are encouraged to utilise flexible working arrangements.
- 98.8 There is no cap on the amount of personal leave that employees may access within the employee's credit in any one year.
- 98.9 Employee may not use more than three consecutive days of personal leave in respect to matters under sub-clauses 98.6 d-i.
- 98.10 Unless otherwise authorised by the Ombudsman, an employee cannot take more than three consecutive days personal leave for personal illness or injury without satisfactory medical opinion. In the case of caring responsibilities, a personal declaration will be required.
- 98.11 Where the absence is for more than three consecutive days or the employee has taken 10 days or more of personal leave without documentary evidence in the previous 12 months of paid service the employee must provide documentary evidence.
- 98.12 The Ombudsman may request that an employee provide a satisfactory medical certificate or other documentary evidence for any period of personal leave.
- 98.13 Certificates from Comcare or from medical service providers recognised by a registered health fund will be accepted for personal leave due to personal illness or injury.
- 98.14 Personal leave will not be debited where an employee is medically unfit for duty on a public holiday that the employee would otherwise observe.
- 98.15 Where an ongoing employee has exhausted all of his or her Personal leave credits, he or she may anticipate up to 18 days of Personal leave credits from his or her next year's credits. Employees must make the nomination in writing. If separation occurs prior to credit accruing, final salary will be adjusted to recover any anticipation.
- 98.16 If personal leave credits are exhausted, personal leave due to personal illness or injury may be granted without pay.
- 98.17 Employees have the choice of using flexible work practice arrangements in lieu of personal leave.
- 98.18 The Ombudsman may seek further medical evidence when an employee is on personal leave due to illness or injury:
- a. for a period of more than four weeks
 - b. for a period of a total of 13 weeks in any 26 week period
 - c. the employee presents a doctor's report stating that they are unfit for duty and the prognosis is for an extended absence.
- 98.19 The Office will be responsible for costs incurred in seeking further medical evidence.
- 98.20 An employee will not, without his or her consent, be terminated on invalidity grounds before his or her personal leave credits have been exhausted.
- 98.21 Personal leave credits will not accrue or be granted to an employee after the date of the employee's termination of employment.

- 98.22 An employee who has been terminated from the APS on the grounds of invalidity, and is subsequently re-appointed as a result of action taken under s 75 of the *Superannuation Act 1976*, can be credited with personal leave equal to the balance of personal leave in credit at the time of termination.
- 98.23 An employee in receipt of workers' compensation payments for more than 45 weeks will, on return to work, accrue personal leave on the basis of actual hours worked.
- 98.24 Personal leave credits accrued, however, are not paid out on separation.

99. PURCHASED LEAVE

- 99.1 Ongoing employees may apply to the Ombudsman to purchase one, two, three or four weeks Purchased leave credits each year. Credits must be purchased in one week blocks.
- 99.2 Purchased leave must be used within 12 months of the commencement of salary deductions.
- 99.3 Where the Ombudsman or delegate approves the application for Purchased leave credits, the employee will have an amount deducted from his or her fortnightly salary over a 12 month period or at a lesser period at the request of the employee according to the following formula

Gross fortnightly salary X number of weeks of Purchased Leave credits

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- 99.4 Purchased leave counts as service for all purposes.
- 99.5 Purchased leave credits will be allocated to the employee following the commencement of salary deductions.
- 99.6 Approval of Purchased leave does not affect the employee's continuity of service or salary for superannuation purposes.

100. RELIGIOUS, CULTURAL AND CEREMONIAL LEAVE

- 100.1 Employees may be granted reasonable miscellaneous leave to take part in activities associated with their culture or ethnicity.
- 100.2 The Ombudsman may grant miscellaneous leave without pay to Indigenous Australian employees for ceremonial purposes arising under Aboriginal or Torres Strait Islander law. This leave does not count as service.

101. WAR SERVICE SICK LEAVE

- 101.1 Employees with certain Defence Force Service prescribed by the *Veterans' Entitlement Act 1986* are eligible for additional sick leave in relation to war-caused medical conditions.
- 101.2 Eligible employees may accrue two separate credits, a special credit of nine weeks on commencement in the APS and an annual credit of three weeks for each year of APS service. Unused credits will accumulate to a maximum of nine weeks.

102. SUPPORT FOR DEFENCE RESERVISTS

- 102.1 An employee may be granted leave (with or without pay) to enable the employee to fulfil Australian Defence Force (ADF) Reserve and Continuous Full Time Service (CFTS) or Cadet Force obligations.
- 102.2 An employee is entitled to ADF Reserve leave with pay, for up to four weeks during each financial year for the purpose of fulfilling service in the ADF Reserve. These purposes include training and operational duty as required.
- a. During the employee's first year of ADF Reserve service, a further two weeks paid leave may be granted to facilitate participation in additional ADF Reserve training, including induction requirements.
 - b. With the exception of the additional two weeks in the first year of service, leave can be accumulated and taken over a period of two years, to enable the employee to undertake training as a member of the ADF Reserves.
 - c. Employees are not required to pay their tax free ADF Reserve salary to the Agency in any circumstances.
- 102.3 An employee who is an officer or instructor of cadets in a Cadet Force may be granted paid leave of up to three weeks each financial year to perform duties as an officer or instructor of Cadets. For these purposes 'Cadet Force' means the Australian Navy Cadets, Australian Army Cadets, or the Australian Air Force Cadets.
- 102.4 Defence Reserve leave counts as service for all purposes, except for unpaid leave to undertake Continuous Full Time Service (CFTS). Unpaid leave for the purpose of CFTS counts for all purposes except Annual leave.
- 102.5 Eligible employees may also apply for recreation leave, long service leave, leave without pay, top-up pay or they may use flextime or make up time for the purpose of fulfilling ADF Reserve, CFTS or Cadet Force obligations.
- 102.6 Employees are to notify supervisors at the earliest opportunity once the dates for ADF Reserve, CFTS or Cadet Force activities are known and/or changed.

103. COMMUNITY SERVICE LEAVE

- 103.1 Employees who are members of recognised community service organisations have access to reasonable periods of paid leave for:
- a. emergency services responses
 - b. reasonable travel and recovery time.
- 103.2 Employees who are members of recognised community service organisations have access to reasonable periods of non-paid leave for:
- a. regular training
 - b. ceremonial duties.

104. OTHER LEAVE

- 104.1 In approving additional leave the Ombudsman will have regard to the operational needs of the Office.
- 104.2 The Ombudsman may approve paid or unpaid Other Leave, which may count as service or not count as service, for any reason considered by the Ombudsman to be appropriate and subject to any conditions which may be set by the Ombudsman.
- 104.3 Where possible accrued paid leave should be accessed prior to the taking of unpaid leave.
- 104.4 The Ombudsman will respond to applications for Other Leave in a timely manner and will advise an employee of reasons, where his or her application has been rejected.
- 104.5 Other Leave for a part day will be approved where no viable alternative exists.
- 104.6 Where an employee does not resume duty in the APS at the end of a period of Other Leave, whether paid or unpaid, the leave will not count as service for any purpose.
- 104.7 An example of reasons that may be appropriate for paid Other Leave is study or training with other organisations.
- 104.8 Examples of reasons that may be appropriate for approval of unpaid Other Leave are:
- a. full time study commitments
 - b. accompanying a partner on a Commonwealth Government posting
 - c. non-APS employment in the interests of the Commonwealth;
 - d. for personal illness or injury where the employee is not able to apply for Personal Leave
 - e. to enable an employee to fulfil a role with a community, humanitarian or relief organisation
 - f. to undertake short term care for a foster child
 - g. to care for a member of the employee's immediate family where the employee is not able to apply for Personal Leave.
- 104.9 The Ombudsman, where it is considered that an employee's circumstances so warrant, has the discretion to approve additional leave for other reasons not covered by leave arrangements provided in the above clauses.

105. CHRISTMAS CLOSE DOWN

- 105.1 The Office will close its normal operations from midday on the last working day before Christmas, with business resuming on the first working day after New Year's Day.
- 105.2 Employees will be provided with time off for the working days between Christmas and New Year's Day and will be paid in accordance with their ordinary hours of work. Where an employee is absent on leave, payment for the Christmas closedown provision will be in

accordance with the entitlement for that form of leave, (e.g. if on long service leave half pay, payment is on half pay).

105.3 There will be no deduction from Recreation or Personal leave credits for the closedown days.

106. PUBLIC HOLIDAYS

106.1 Employees will be entitled to the following public holidays:

- a. New Year's Day (1 January)
- b. Australia Day (26 January)
- c. Good Friday
- d. Easter Monday
- e. Anzac Day (25 April)
- f. The Queen's birthday holiday (on the day on which it is celebrated in a State or Territory or a region of a State or Territory)
- g. Christmas Day (25 December)
- h. Boxing Day (26 December)
- i. Any other day, or part-day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday, other than a day or part-day, or a kind of day or part-day, that is excluded by the Fair Work regulations from counting as a public holiday.

106.2 If under a state or territory law, a day or part day is substituted for one of the public holidays listed above, then the substituted day or part day is the public holiday.

106.3 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.

106.4 An employee, who is absent on a day or part-day that is a public holiday in the place where the employee is based for work purposes, is entitled to be paid for the part or full day absence as if that day or part-day was not a public holiday, except where that person would not normally have worked on that day.

106.5 Where a public holiday falls during a period when an employee is absent on leave (other than Recreation or paid Personal/carers leave) there is no entitlement to receive payment as a public holiday. Payment for that day would be in accordance with the entitlement for that form of leave (e.g. if on long service leave on half pay, payment is on half pay).

107. UNAUTHORISED ABSENCE

107.1 Where an employee is absent from duty without approval for one day or more, then, subject to this clause, all pay and other benefits provided under this Agreement will cease to be available until the employee resumes duty or is granted leave for the period.

107.2 Unauthorised absence of less than a day will be without pay and will for all purposes count as service.

PART I - CONSULTATION, REVIEW PROCESSES & PREVENTION AND SETTLEMENT OF DISPUTES

108. GENERAL

- 108.1 The Ombudsman will continue to promote a work culture that uses open and honest two-way communication between management and employees as a means of encouraging employees to involve themselves in all issues that can affect the way they perform their work.
- 108.2 Communication and consultation focused at the workplace level are particularly effective and is intended to have the following mutual benefits:
- a. increased productivity and improved organisational effectiveness and efficiency
 - b. continuing positive and cooperative relations between the parties to this Agreement
 - c. increased job satisfaction and fulfilment through employee participation
 - d. quality decision making about work issues and commitment to those decisions.
- 108.3 In making decisions that affect employees, the Ombudsman commits to consulting with employees and their representatives. This means providing employees and their representatives with relevant information and a bona fide opportunity to influence the decision maker and contribute to the decision making process not only in appearance but in fact, before a decision is made.
- 108.4 The provisions in this clause relating to consultation are in addition to, and not intended to affect the operation of the consultation provisions in Clause 109 of this Agreement.

109. CONSULTATION ON MAJOR CHANGES

- 109.1 This clause applies where a decision is made to introduce major changes in a work area that are likely to have significant effects on employees, other than where provision is already made elsewhere in this enterprise agreement regarding a specific major change.
- 109.2 Where a definite decision is made to introduce major changes in program, organisation, structure or technology that are likely to have significant effects on employees, the Agency Head must notify the employees who are likely to be affected by the proposed changes and their representatives, if any.
- 109.3 Employees have the right to be represented in consultative processes, including by a union, and that the Office will deal with that representative in good faith.
- 109.4 Significant effects include:
- a. termination of employment
 - b. major changes in the composition, operation or size of the Agency's workforce or in the skills required
 - c. the elimination or diminution of job opportunities, promotion opportunities or job tenure

- d. significant alteration in hours of work
- e. the need to retrain employees
- f. the need to relocate employees to another workplace
- g. the major restructuring of jobs.

AGENCY HEAD TO DISCUSS MAJOR CHANGES

- 109.5 The Ombudsman must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 109.2, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.
- 109.6 The discussions must commence as early as practicable after a definite decision has been made to make the changes referred to in clause 109.2.
- 109.7 For the purposes of such discussion, the employees concerned and their representatives, if any, are to be provided in writing all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees. The Agency Head is not required to disclose confidential or commercially sensitive information to the employees.
- 109.8 The Ombudsman continues to recognise the legitimate role of unions to represent those employees who choose to be members of a union. The Ombudsman and the union will develop consultative arrangements to facilitate this representation.
- 109.9 The Ombudsman will continue to provide means by which employees who choose not to be represented by a union are included in consultation.
- 109.10 The Ombudsman will adhere to the principles outlined at Attachment D in relation to work place delegates.

110. WORKPLACE RELATIONS COMMITTEE

- 110.1 It is agreed that a Workplace Relations Committee will continue to be the forum for regular exchange on change and workplace issues.
- 110.2 The Committee will be chaired by the Deputy Ombudsman or representative and a Staff representative on a rotational basis and representatives nominated or elected by:
 - a. employees (two representatives)
 - b. the unions covered by this Agreement (two representatives per union)
 - c. the Executive (three representatives).
- 110.3 Where practicable at least one representative, staff or union will come from a state office.

- 110.4 The term of the appointment to the Committee shall be for the life of this Agreement.
- 110.5 The Committee will be involved in monitoring the implementation of this Agreement.
- 110.6 The Committee will have the capacity to make recommendations to the Ombudsman.

111. INTERNAL REVIEW OF EMPLOYMENT ACTIONS

- 111.1 An employee dissatisfied with an employment related action will discuss the issue with his or her Senior Assistant Ombudsman (or if the subject matter of the complaint cannot be resolved or is inappropriate to discuss with the applicant's Senior Assistant Ombudsman, the Deputy Ombudsman).
- 111.2 An employee may also apply for review of certain employment related actions under Part 5 of the Public Service Regulations.
- 111.3 The following principles will guide the consideration of internal reviews of actions requested by employees under Public Service Regulation 5.24(1). Where such an application is received, the Ombudsman will:
- a. treat the matter in confidence
 - b. discuss the matter with the employee and, if the matter cannot be resolved, assess and agree on the appropriate course of action to be followed and the limits of the case
 - c. appoint a suitably qualified and unbiased person to resolve the matter by conciliation or mediation
 - d. where conciliation or mediation is not successful or appropriate, appoint a suitably qualified and unbiased person to inquire into the complaint and report to the Ombudsman in an appropriate form (the employee will also receive a copy of any written report)
 - e. determine the outcome of the complaint having regard to the content of the report.
- 111.4 The following principles will apply to the handling of a request for internal review made by an employee under sub-clause 111.2:
- a. the case will be dealt with as expeditiously as possible
 - b. the onus will be on the applicant to establish a case
 - c. the applicant should specify the outcome(s) sought
 - d. each party to the internal review has the right to be supported where they choose by a person or organisation of his or her choice (who may be, for example, an employee, an employee representative on the Workplace Relations Committee or a union official)
 - e. procedural fairness will apply to all parties to the review
 - f. there will be a fair hearing by an unbiased person
 - g. parties to the review will have the right to know the case against them

- h. parties to the review will have the opportunity to comment on material which may result in findings adverse to them
- i. the standard of proof to apply will be the balance of probabilities
- j. full investigation of alleged incidents, statements and events will only be conducted if preliminary consideration shows this would achieve some useful purpose
- k. as far as possible confidentiality and privacy will be observed, noting that information on relevant files may be subject to applications for disclosure under the *Freedom of Information Act 1982*.

111.5 If this process fails to resolve the complaint, the employee may seek further review by the Merit Protection Commissioner under the *Public Service Regulations*.

111.6 The provisions within the clause are subject to any consultation requirements within clause 109 and do not abrogate dispute resolution procedures at clause 112.

112. DISPUTE RESOLUTION PROCEDURE

112.1 If a dispute relates to:

- a. a matter arising under this Agreement
- b. the National Employment Standards
- c. this clause sets out procedures to settle the dispute.

112.2 The parties to the dispute must first attempt to resolve the matter at the workplace level by discussions between the employee or employees concerned and the relevant supervisor/manager.

112.3 If a resolution to the dispute has not been achieved after discussions have been held in accordance with clause 112.1, the parties to the dispute will endeavour to resolve the dispute in a timely manner either through discussions with more senior levels of management where appropriate or through alternative dispute resolution methods.

112.4 If discussions at the workplace level do not resolve the dispute, and all appropriate steps have been taken in accordance with clauses 112.1 and 112.2, a party to the dispute may refer the matter to Fair Work Australia.

112.5 Fair Work Australia may deal with the dispute in 2 stages:

- a. Fair Work Australia will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
- b. if Fair Work Australia is unable to resolve the dispute at the first stage, Fair Work Australia may then:
 - arbitrate the dispute; and
 - make a determination that is binding on the parties.

- 112.6 The agency or an employee who is a party to the dispute may appoint another person, organisation or association to accompany and/or represent them for the purposes of this term.
- 112.7 Resolution of disputes is to occur in good faith by following the same principles as the good faith bargaining requirements at section 228 of the *Fair Work Act 2009*.
- 112.8 While the parties are trying to resolve the dispute using the procedures in this term:
- a. an employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and
 - b. an employee must comply with a direction given by the Agency Head to perform other available work at the same workplace, or at another workplace, unless:
 - the work is not safe; or
 - applicable occupational health and safety legislation would not permit the work to be performed; or
 - the work is not appropriate for the employee to perform; or
 - there are other reasonable grounds for the employee to refuse to comply with the direction.
- 112.9 The parties to the dispute agree to be bound by a decision made by Fair Work Australia in accordance with this term.

113. NO EXTRA CLAIMS

- 113.1 From the commencement of this Agreement, a person or organisation covered by the Agreement will not pursue further claims for terms and conditions of employment that would have effect during the period of operation of this Agreement, except where consistent with the terms of this Agreement.

ATTACHMENT A - CLASSIFICATION STRUCTURE & SALARY RATES

Ombudsman Band	Current APS Structure	Current Salary	Salary Effective from Commencement of Agreement	Salary effective 12 months from certification	Salary effective 24 months from certification
OMB 1	APS level 1				
	1	\$39,621	\$41,602	\$42,434	\$43,283
	2	\$40,952	\$43,000	\$43,860	\$44,737
	3	\$42,063	\$44,166	\$45,049	\$45,950
	4	\$43,794	\$45,984	\$46,903	\$47,841
OMB 2	APS level 2				
	1	\$44,841	\$47,083	\$48,025	\$48,985
	2	\$46,077	\$48,381	\$49,348	\$50,335
	3	\$47,289	\$49,693	\$50,647	\$51,659
	4	\$48,516	\$50,942	\$51,961	\$53,000
	5	\$49,725	\$52,211	\$53,255	\$54,321
OMB 3	APS level 3				
	1	\$51,076	\$53,630	\$54,702	\$55,796
	2	\$52,403	\$55,023	\$56,124	\$57,246
	3	\$53,734	\$56,421	\$57,549	\$58,700
	4	\$55,127	\$57,883	\$59,041	\$60,222
OMB 4	APS level 4				
	1	\$56,925	\$59,771	\$60,967	\$62,186
	2	\$58,736	\$61,673	\$62,906	\$64,164
	3	\$60,263	\$63,276	\$64,542	\$65,833
	4	\$61,806	\$64,896	\$66,194	\$67,518
	APS level 5				
	1	\$63,491	\$66,666	\$67,999	\$69,359
2	\$65,483	\$68,757	\$70,132	\$71,535	
	3	\$67,325	\$70,691	\$72,105	\$73,547

Ombudsman Band	Current APS Structure	Current Salary	Salary Effective from Commencement of Agreement	Salary effective 12 months from certification	Salary effective 24 months from certification
OMB 5	APS level 6				
	1	\$68,576	\$72,005	\$73,445	\$74,914
	2	\$70,283	\$73,797	\$75,273	\$76,779
	3	\$72,206	\$75,816	\$77,333	\$78,879
	4	\$75,835	\$79,627	\$81,219	\$82,844
	5	\$78,773	\$82,712	\$84,366	\$86,053
OMB 6	Executive level 1				
	1	\$87,910	\$92,306	\$94,152	\$96,035
	2	\$94,929	\$99,675	\$101,669	\$103,702
OMB 7	Executive level 2				
	1	\$101,394	\$107,478	\$109,627	\$111,820
	2	\$106,968	\$112,583	\$115,284	\$117,936
	3	\$114,954	\$120,989	\$123,893	\$126,743

ATTACHMENT B - SUPPORTED WAGE SYSTEM

B1. EMPLOYEES ELIGIBLE FOR A SUPPORTED WAGE

B1.1 This Attachment defines the conditions that will apply to employees who because of the effects of a disability are eligible for a supported wage. In the context of this Attachment, the following definitions will apply:

'Supported Wage System'	means the Commonwealth Government system to promote employment for people who cannot work at full salary because of a disability, as documented in 'Supported Wage System: Guidelines and Assessment Process;
'Accredited Assessor'	means a person accredited by the managing unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System;
'Disability Support Pension'	means the Commonwealth pension scheme to provide income security for persons with a disability as provided for under the <i>Social Security Act 1991</i> , as amended from time to time, or any successor to that scheme;
'Assessment Instrument'	means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

B2. ELIGIBILITY CRITERIA

B2.1 Employees covered by this Attachment will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged, because of the effects of a disability on his or her productive capacity and who meet the impairment criteria test for a Disability Support Pension.

B2.2 This Attachment does not apply to any existing employee who has a claim against the employer that 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 his or her employment.

B3. SUPPORTED WAGE RATES

B3.1 Employees to whom this clause applies shall be paid the applicable percentage of the relevant salary rates under this Agreement, according to the following schedule provided that the minimum payment should not be less than \$72 per week or the minimum payment under the supported wage system, whichever is the greater.

Assessed Capacity	% of Relevant Salary Rate
10%	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

B4. ASSESSMENT OF CAPACITY

B4.1 For the purpose of establishing the percentage of the relevant salary rate to be paid to an employee under this Agreement, the productive capacity of the employee will be assessed in accordance with the Supported Wage System and documented in an assessment instrument.

B5. LODGEMENT OF ASSESSMENT INSTRUMENT

B5.1 All assessment instruments under the conditions of this Attachment, including the appropriate percentage of the relevant salary rate to be paid to the employee, shall be lodged by the employer with the Registrar of the Industrial Relations Commission.

B5.2 All assessment instruments shall be agreed and signed by the parties to the assessment.

B6. REVIEW OF ASSESSMENT

B6.1 The assessment of the applicable percentage should be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the Supported Wage System.

B7. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

B7.1 Where an assessment has been made, the applicable percentage shall apply to the salary rate only. Employees covered by the provisions of this Attachment will be entitled to the same terms and conditions of employment as all other employees covered by this Agreement paid on a pro rata basis.

B8. WORKPLACE ADJUSTMENT

- B8.1 The Ombudsman shall take all 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 employees in the area.

B9. TRIAL PERIOD

- B9.1 In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this Attachment for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- B9.2 During that trial period the assessment of capacity shall be undertaken and the proposed salary rate for a continuing employment relationship shall be determined.
- B9.3 The minimum amount payable to the employee during the trial period shall be no less than \$72 per week per week or the minimum payment under the supported wage system, whichever is the greater.
- B9.4 Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under clause [B4](#).

ATTACHMENT C – REMOTE LOCALITIES ASSISTANCE

C1. OTHER ELEMENTS

- C1.1 These provisions should be read in conjunction with clause 78. Where they provide for an entitlement of a broadly similar kind, these conditions apply to the exclusion of the conditions set out in clause 83 in relation to temporary work in a different location. For example, an employee temporarily working in Darwin who has a school age child is entitled only to fares under this ATTACHMENT and not to reunion travel under paragraph (d) of sub-clause 83.4.

C2. LEAVE FARES ASSISTANCE

- C2.1 An employee, other than a non-ongoing employee, working in the Agency's Darwin Office is entitled to the cost of an economy class return airfare to Adelaide for leave of absence once each year for himself or herself and each eligible dependant or eligible partner. The benefit will accrue on the employee's date of commencement with the Darwin Office and each anniversary of that date thereafter.
- C2.2 The leave fare benefit can be accessed at any time after accrual in conjunction with a period of leave of absence.

C3. LAPSING OF LEAVE FARES ASSISTANCE

- C3.1 Where an employee who has not utilised all or part of two previously accrued leave fare benefits becomes entitled to a third fare benefit under clause C1, the first entitlement, or any remaining part thereof, will lapse.

C4. TRAVEL OTHER THAN BY AIR

- C4.1 Where the Ombudsman authorises travel other than by air by the employee or an eligible dependant of the employee, the employee will receive:
- a. where travel is by private motor vehicle, payment of Motor vehicle allowance as per clause 79; and
 - b. where travel is other than by private motor vehicle, the lesser of reimbursement of costs reasonably incurred or the amount the employee would have received had he or she travelled by air.

C5. EMERGENCY OR COMPASSIONATE FARES ASSISTANCE

- C5.1 Where a close relative of an employee, other than non-ongoing employees, working in the Agency's Darwin Office or a close relative of the employee's spouse dies or becomes critically or dangerously ill and the employee or his or her spouse travels to either attend the close relative's funeral or to visit the critically or dangerously ill close relative, the Ombudsman may authorise reimbursement of the employee for the cost of an economy return airfare in respect of the travel within Australia. Travel costs for travel undertaken outside Australia will not be reimbursed.

- C5.2 The Ombudsman will not authorise reimbursement unless the employee submits a statement from a registered medical practitioner who has been or is treating the close relative stating that the close relative is at the time the statement was provided or was, for a period specified in the statement, critically or dangerously ill.
- C5.3 Where the Ombudsman has authorised the employee or the employee's spouse to travel to attend the close relative's funeral or to visit the critically or dangerously ill close relative by motor vehicle, the employee will receive payment of Motor vehicle allowance as per sub-clause 79.

C6. REIMBURSEMENT OF TRANSPORT COSTS FOR SPECIALIST MEDICAL TREATMENT

- C6.1 Where an employee, other than non-ongoing employees, working in the Ombudsman's Darwin Office, or a dependant of the employee who resides with the employee, is required to travel for specialist medical treatment, the Ombudsman will authorise the reimbursement of the cost of return transport to the nearest place where the required specialist medical treatment is available. Where circumstances prevent the employee or dependant from returning home on the same day, the employee will also be reimbursed for any reasonable cost incurred for accommodation.
- C6.2 The Ombudsman will only authorise reimbursement where the employee submits a statement from a registered medical practitioner stating the nature of the medical problem and certifying that the travel for specialist medical treatment was necessary.

C7. REIMBURSEMENT OF FARE OF CHILDREN ATTENDING SCHOOL AWAY FROM THE EMPLOYEE'S LOCALITY

- C7.1 Where a child of an employee, other than non-ongoing employees, working in the Agency's Darwin Office is receiving his or her primary or secondary schooling in a locality outside Darwin, the Ombudsman will reimburse the employee the cost of fares reasonably incurred for return travel by the child from the place where he or she attends school to the employee's locality (i.e. for reunion visits). To be eligible, the child would need to ordinarily reside with the employee but for attending school elsewhere.
- C7.2 Reimbursement is based on student travel concession rates, where available, and is limited to fares for two reunion visits each full school year or, where the child does not attend a school outside Darwin for the full year, one fare in any six month period. In addition, the Ombudsman may approve reimbursement of an additional fare in special circumstances, e.g. where he or she is satisfied that severe detriment to the continued well-being of the child will be done in the absence of an additional reunion visit.

ATTACHMENT D – PRINCIPLES FOR WORK PLACE DELEGATES

- D.1 The role of union workplace delegates is to be respected and facilitated.
- D.2 The employer and workplace delegates must deal with each other in good faith.
- D.3 The rights of union workplace delegates and recognised representatives include but are not limited to:
- a. the right to be treated fairly and to perform their role as workplace delegates without any discrimination in their employment
 - b. recognition by the agency that endorsed workplace delegates speak on behalf of their members in the workplace
 - c. the right to participate in collective bargaining on behalf of those who they represent, as per the Fair Work Act
 - d. the right to reasonable paid time to provide information to and seek feedback from employees in the workplace
 - e. reasonable paid time off to represent union members in the agency at relevant union forums
 - f. reasonable access to agency facilities for the purpose of carrying out work as a delegate and consulting with workplace colleagues and the union, subject to agency policies and protocols
 - g. reasonable paid time during normal working hours to consult with colleagues in the workplace
 - h. reasonable access to appropriate training in workplace relations matters including training provided by a union
 - i. the right to consultation, and access to relevant information about the workplace and the agency
 - j. the right to reasonable paid time to represent the interests of members to the employer and industrial tribunals.
- D.4 The employer will seek to facilitate official union communication with employees by means that may include:
- a. the use of the intranet as a means of communicating with employees and other means of information sharing, including written materials, electronic billboards and access to websites
 - b. group or individual meetings between employees and their representatives.
- D.5 In exercising their rights, workplace delegates and unions will consider operational issues, departmental policies and guidelines and the likely affect on the efficient operation of the agency and the provision of services by the Commonwealth.