

OFFICE OF THE COMMONWEALTH OMBUDSMAN ENTERPRISE AGREEMENT 2024– 2027



Approved from 4 April 2024
Nominal expiry date: 28 February 2027



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Formal acceptance of agreement and signatories

Employer

Signed for, and on behalf of, the Commonwealth by the Commonwealth Ombudsman:

Signed: 

Full Name: Iain Anderson


Title: Commonwealth Ombudsman

Date: 19 March 2024

Address: Level 5, Childers Square, 14 Childers Street, Canberra City, Canberra 2601

Bargaining Representative - Community and Public Sector Union

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

Signed: 

Full Name: Melissa Payne

Title: Assistant National Secretary

Date: 19 March 2024

Address: L3 54-58 Foveaux St, Surry Hills NSW 2010

Decision

[2024] FWCA 1118

Fair Work Act 2009

s.185—Enterprise agreement



Office of the Commonwealth Ombudsman

(AG2024/836)

OFFICE OF THE COMMONWEALTH OMBUDSMAN ENTERPRISE AGREEMENT 2024–2027

Commonwealth employment

DEPUTY PRESIDENT DEAN

CANBERRA, 28 MARCH 2024

*Application for approval of the Office of the Commonwealth Ombudsman
Enterprise Agreement 2024–2027.*

[1] An application has been made for approval of an enterprise agreement known as the *Office of the Commonwealth Ombudsman Enterprise Agreement 2024–2027* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Office of the Commonwealth Ombudsman. The Agreement is a single enterprise agreement.

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

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

[4] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 4 April 2024. The nominal expiry date of the Agreement is 28 February 2027.

DEPUTY PRESIDENT

Printed by authority of the Commonwealth Government Printer

Section 1: Technical matters

Title

1. This agreement will be known as the Office of the Commonwealth Ombudsman Enterprise Agreement 2024–2027.

Parties to the agreement

2. This agreement covers:

- 2.1. the Ombudsman, for and on behalf of the Commonwealth of Australia as the employer;

- 2.2. all employees in the Office employed under the PS Act other than:

- 2.2.1. Senior Executive Service employees or equivalent; and

- 2.3. subject to notice being given in accordance with section 183 of the FW Act, the following employee organisation/s which were a bargaining representative for this agreement:

- 2.3.1. the Community and Public Sector Union.

Operation of the agreement

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

Delegations

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

National Employment Standards (NES) precedence

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

Closed comprehensive agreement

7. This agreement states the terms and conditions of employment of employees covered by this agreement, other than terms and conditions applying under relevant Commonwealth laws.
8. This agreement will be supported by policies and guidelines, as implemented and varied from time to time.
9. Policies and guidelines are not incorporated into and do not form part of this agreement. To the extent that there is any inconsistency between policies and guidelines and the terms of this agreement, the terms of this agreement will prevail.

Individual flexibility arrangements

10. The Office and an employee covered by this agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
 - 10.1. the agreement deals with one or more of the following matters:

10.1.1. arrangements about when work is performed;

10.1.2. overtime rates;

10.1.3. penalty rates;

10.1.4. allowances;

10.1.5. remuneration; and

10.1.6. leave and leave loading; and

10.2. the arrangement meets the genuine needs of the Office and employee in relation to one or more of the matters mentioned in clause 10.1; and

10.3. the arrangement is genuinely agreed to by the Office and employee.

11. The agency must ensure that the terms of the individual flexibility arrangement:

11.1. are about permitted matters under section 172 of the FW Act;

11.2. are not unlawful terms under section 194 of the FW Act; and

11.3. result in the employee being better off overall than the employee would be if no arrangement was made.

12. The Office must ensure that the individual flexibility arrangement:

12.1. is in writing;

12.2. includes the name of the Office and employee;

12.3. is signed by the Office and employee and, if the employee is under 18 years of age, signed by a parent or guardian of the employee; and

12.4. includes details of:

12.4.1. the terms of the enterprise agreement that will be varied by the arrangement;

12.4.2. how the arrangement will vary the effect of the terms;

12.4.3. how the employee will be better off overall in relation to the terms and conditions of their employment as a result of the arrangement; and

12.5. states the day on which the arrangement commences.

13. The Office must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.

14. The Office or employee may terminate the individual flexibility arrangement:

14.1. by giving no more than 28 days written notice to the other party to the arrangement; or

14.2. if the Office and employee agree in writing – at any time.

15. The Office and employee are to review the individual flexibility arrangement at least every 12 months.

Definitions

16. The following definitions apply to this agreement:

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

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

Ombudsman means the Ombudsman of the Office of the Commonwealth Ombudsman or the Ombudsman's delegate.

Agreement means the Office of the Commonwealth Ombudsman Enterprise Agreement 2024-2027.

APS means the Australian Public Service.

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

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

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

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

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

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

Child means a biological child, adopted child, foster child, stepchild, or ward.

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

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

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

Employee means an employee of the Commonwealth engaged under section 22(2) of the PS Act who is covered by this agreement (whether full-time, part time or casual, ongoing or non-ongoing).

Employee representative means a person (whether an employee or not) elected or chosen by an employee, or elected or chosen by a group of employees in a workplace,

to represent the individual and/or collective views of those employees in relation to a matter under this agreement.

Family means:

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

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

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

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

Manager means an employee's direct manager who is usually the person to whom an employee reports to on a day-to-day basis for work related matters, and may include a person referred to as a supervisor.

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

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

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

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

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

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

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

Part-time employee means an employee whose ordinary hours are less than 37 hours and 30 minutes per week in accordance with this agreement.

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

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

Relevant employee means an affected employee.

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

Settlement period means the four week period of time recorded for the purposes of managing hours of attendance.

Section 2: Remuneration

Salary

17. Salary rates will be as set out in **Attachment A – Base salaries** of this agreement.
18. The base salary rates in **Attachment A – Base Salaries** include the following increases:
- 18.1. 4.0 per cent from the first full pay period on or after 1 March 2024 (the 14 March 2024);
 - 18.2. 3.8 per cent from the first full pay period on or after 1 March 2025 (the 13 March 2025); and
 - 18.3. 3.4 per cent from the first full pay period on or after 1 March 2026 (the 12 March 2026).
19. In recognition of a common alignment date of the first full pay period on or after 1 March each year, the base salary rates in **Attachment A – Base Salaries** were calculated based on base salary rates as at 31 August 2023.

Payment of salary

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

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

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

Salary setting

21. Where an employee is engaged, moves to or is promoted in the Office, the employee's salary will be paid at the minimum of the salary range of the relevant classification, unless the Ombudsman determines a higher salary within the relevant salary range under these salary setting clauses.
22. The Ombudsman may determine the payment of salary at a higher value within the relevant salary range of the relevant classification and the date of effect at any time.
23. In determining a salary under these provisions, the Ombudsman will have regard to relevant factors including the employee's experience, qualifications and skills.
24. Where an employee commences ongoing employment in the Office immediately following a period of non-ongoing employment in the Office for a specified term or task, the Ombudsman will determine the employee's salary within the relevant salary range of the relevant classification which recognises the employee's prior service as a non-ongoing employee in the Office.
25. Where an employee commences ongoing employment in the agency immediately following a period of casual employment in the Office, the Ombudsman will determine the employee's salary within the relevant salary range of the relevant classification which recognises the employee's prior service as a casual employee in the Office.
26. Where an APS employee moves to the Office at level from another APS agency, and their salary is above the maximum of the salary range for their classification, the Ombudsman will maintain the employee's salary at that level, until it is absorbed into the salary range for that classification.
27. Where the Ombudsman determines that an employee's salary has been incorrectly set, the Ombudsman may determine the correct salary and the date of effect.

Incremental advancement

28. The performance cycle period will run from 1 September each year to 31 August in the following year.
29. Employees who are not on the top point of their salary range at the end of the performance cycle will be eligible for salary advancement of one increment, subject to:
- 29.1. having a current performance development agreement in place for the relevant year's cycle; and
 - 29.2. being assessed as performing to a satisfactory standard for at least 6 months of aggregate service at or above at their current level under the Performance Management Program (PMP). If an employee has less than 6 months of aggregate service, the Ombudsman may exercise their discretion to determine a higher salary under the salary setting clause in the agency's agreement.
30. Eligible service for salary progression will include:
- a. periods of paid leave and unpaid parental leave;
 - b. periods of unpaid leave that count as service; and
 - c. service while employed on a non-ongoing basis.
31. During a period of unpaid parental leave employees will be eligible to advance a maximum of one increment, regardless of the length of unpaid parental leave.
32. The requirements of clause 29 will also apply to progression from a lower classification to the higher classification within the broadbanded classifications.
33. Employees who are acting at a higher classification, and satisfy the eligibility criteria in clause 29, will be eligible for salary progression at both their substantive and acting classifications.
34. Salary progression while acting at a higher classification will be retained for future acting duties at, or promotion to, that classification regardless of elapsed time.
35. Subject to clause 29, the date of effect for pay point advancement will be 1 October.

36. Casuals will not be eligible for incremental advancement

Transition arrangements for incremental advancement

37. These transition arrangements will apply only to staff previously eligible for incremental advancement under Clause 40 of the *Office of the Commonwealth Ombudsman Enterprise Agreement 2017-2020* (the 2020 EA).

38. Eligible employees will be paid a one-off lump sum to compensate them for deferral of their increment advancement date to a common date of 1 October 2024.

39. Employees must meet the requirements of clause 40.1 of the 2020 EA to be eligible for payment of the lump sum.

40. The amount of the lump sum will represent a pro-rata amount of the employee's next salary increment, based upon the number of days the increment has been deferred, as per the following formula:

$$(\text{Amount of increment}/365) \times \text{number of days deferred}$$

41. Payment of the lump sum will occur after the outcomes of the 2023-24 performance cycle are completed, after 1 October 2024.

Superannuation

42. The Office will make compulsory employer contributions as required by the applicable legislation and fund requirements.

43. Employer superannuation contributions will be paid on behalf of employees during periods of paid leave that count as service.

44. The Office will make employer superannuation contributions to any eligible superannuation fund, provided that it accepts payment by fortnightly electronic funds transfer (EFT) using a file generated by the Office's payroll system.

Method for calculating superannuation salary

45. The Office will provide an employer contribution of 15.4 per cent of the employee's Fortnightly Contribution Salary (FCS) for employees in the Public Sector Superannuation Accumulation Plan (PSSap) and employees in other accumulation superannuation funds.
46. Employer contributions will be made for all employees covered by this agreement.
47. Employer contributions will not be reduced by any other contributions made through salary sacrifice arrangements.

Payment during unpaid parental leave

48. Employer contributions will be paid on periods of unpaid parental leave in accordance with the requirements of the PSSap fund where the employee is a member of the PSSap, and up to a maximum of 52 weeks where the employee is a member of an accumulation fund other than PSSap.

Overpayments

49. An overpayment occurs if the Ombudsman (or the Office) provides an employee with an amount of money to which the employee was not entitled (including but not limited to salary, entitlements, allowances, travel payment and/or other amount payable under this agreement).
50. Where the Ombudsman considers that an overpayment has occurred, the Ombudsman will provide the employee with notice in writing. The notice will provide details of the overpayment.
51. If an employee disagrees that there has been an overpayment including the amount of the overpayment, they will advise the Ombudsman in writing within 28 calendar days of receiving the notice. In this event, no further action will be taken until the employee's response has been reviewed.

52. If after considering the employee's response (if any), the Agency Head confirms that an overpayment has occurred, the overpayment will be treated as a debt to the Commonwealth that must be repaid to the agency in full by the employee.
53. The Ombudsman and the employee will discuss a suitable recovery arrangement. A recovery arrangement will take into account the nature and amount of the debt, the employee's circumstances and any potential hardship to the employee. The arrangement will be documented in writing.
54. The Office and employee may agree to make a deduction from final monies where there is an outstanding payment upon cessation of employment.
55. Interest will not be charged on overpayments.
56. Nothing in clauses 49 to 55 prevents:
- 56.1. the Office from pursuing recovery of the debt in accordance with an Accountable Authority Instruction issued under the *Public Governance, Performance and Accountability Act 2013*;
 - 56.2. the Office from pursuing recovery of the debt through other available legal avenues; or
 - 56.3. the employee or the Office from seeking approval to waive the debt under the *Public Governance, Performance and Accountability Act 2013*.

Supported wage system

57. An employee can get a percentage of the relevant pay rate for their classification in line with their assessed capacity to do the work if they:
- 57.1. have a disability;
 - 57.2. meet the criteria for a Disability Support Pension; and
 - 57.3. are unable to perform duties to the capacity required.
58. Specific conditions relating to the supported wage system are detailed in **Attachment B** – Supported Wage System.

Section 3: Allowances and reimbursements

Higher duties allowance

59. Where a role needs to be filled for 2 or more working weeks, higher duties allowance will be paid to any employee temporarily occupying the role acting at a classification level higher than their substantive classification level except where:
- 59.1. the role involves management responsibilities, the qualifying period is shortened to a continuous period of at least one week.
60. Higher duties allowance will be equal to the difference between the employee's current salary and the salary that would be payable if they were promoted to the higher classification level, or a higher amount determined by the Ombudsman.
61. Where an employee is found to be eligible for salary progression at their acting classification level they will receive an appropriate increase in the rate of higher duties allowance. The employee's salary level will be retained for all future periods of acting regardless of elapsed time.
62. Where an employee is assigned only part of the higher duties, the Ombudsman will determine the amount of allowance payable.
63. Where an employee does not qualify for an allowance under sub-clause 59.1, 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.
64. Where an employee who is receiving the allowance 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 allowance is granted.

65. 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 allowance will count as salary for all purposes.
66. Higher duties allowance will be payable while an employee is acting at a higher classification level as part of a job sharing arrangement where the duties do not involve management responsibilities and the duration of the arrangement is at least 2 working weeks.
67. Higher duties allowance will be payable while an employee is acting at a higher classification level as part of a job sharing arrangement and the duration of the arrangement is at least 2 working weeks, except in situations where the role involves management responsibilities, the qualifying period is shortened to a continuous period of at least one week.
68. The Ombudsman may shorten the qualifying period for higher duties allowance on a case-by-case basis.

Remote locality payment

69. Where an employee is required to perform field work in a remote geographic location for a period of three weeks or less and the employee does not have access to accommodation, but instead is required to 'camp', the Ombudsman will approve a remote localities payment of \$65 per day in addition to Travelling Allowance.

Motor vehicle allowance

70. 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:
- 70.1. 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); or
- 70.2. a Motor Vehicle Allowance paid in accordance with the rates set by the *Tax Assessment Regulations 1997*.

71. 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 including providing evidence that the vehicle is covered by comprehensive insurance.

Meal allowance

72. If an employee is directed to work overtime as detailed in clause 136 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 a meal allowance. The amount of the meal allowance will be the amount published from time to time by the Australian Taxation Commissioner as the reasonable amount for overtime meal expenses in the Commissioner's ruling on reasonable travel and meal allowance expense amounts. Payment will be through the salary system.

73. The meal period means the following periods:

73.1. 7.00am to 9.00am

73.2. 12 noon to 2.00pm

73.3. 6.00pm to 7.00pm

73.4. Midnight to 1.00am.

Loss and damage to clothing or personal effects

74. The Ombudsman may approve reimbursement for loss or damage to an employee's clothing or personal effects that occurred in the course of the employee's duties.

Eyewear reimbursement for screen based work

75. Where an approved examiner has certified that eyewear is required to perform screen based work the Ombudsman will approve reimbursement of:

75.1. \$120 for single focus lenses eyewear

75.2. \$165 for bifocal lenses eyewear

76. Reimbursement for approved eyewear will only be granted once every two years.

77. Non ongoing employees, employed for a period in excess of six months will be granted reimbursement for approved eyewear.

Lifestyle contribution allowance

78. 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). Further information is available in the Lifestyle Contribution guidelines.

Workplace responsibility allowances

79. A workplace responsibility allowance will be paid where an employee who is appointed by the Office or elected by eligible peers to one of the following roles:

79.1. First Aid Officer;

79.2. Health and Safety Representative;

79.3. Emergency Warden;

79.4. Harassment Contact Officer; and

79.5. Mental Health First Aid Officer.



80. An employee is not to receive more than one workplace responsibility allowance unless approved by the Ombudsman due to operational requirements.

81. The fortnightly rate of payment for these allowances are detailed in the following table:

| Current Rate | Rate from commencement of the agreement | Rate from 13 March 2025 | Rate from 12 March 2026 |
|--------------|---|-------------------------|-------------------------|
| \$36.03 | \$37.47 | \$38.89 | \$40.21 |

82. The full allowance is payable regardless of flexible work and part-time arrangements. As such, an employee’s physical availability to undertake the role will be considered by the Office when appointing and reappointing employees to these roles. This is noting that not all workplace responsibility roles will necessarily require a physical presence in the workplace for the role to be successfully undertaken, such as Harassment Contact Officers, Mental First Aid Officers and Health and Safety Representatives depending on work group arrangements.

83. Casual employees who are eligible to receive a workplace responsibility allowance will be paid the full amount (noting the minimum rate), as varied from time to time provided they engage in work during any given pay cycle, irrespective of the frequency and duration of the work undertaken.

Community language allowance

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

85. The allowance is paid in accordance with the employee’s level of competency:

Table 1: Community language allowance rates

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

86. The allowance is calculated annually and paid fortnightly.

87. The full allowance is payable regardless of flexible work and part-time arrangements.
88. The allowance is payable during periods of paid leave.
89. The allowance counts as salary for superannuation purposes and for calculating retirement and redundancy entitlements.

Section 4: Classifications and broadbands

Graduates

90. Ombudsman Graduates will be engaged at the APS 3 classification level within the Office's Training Broadband. The salary will be the base point of the APS3 classification level unless the Ombudsman approves payment of a higher salary having regard to the experience, qualifications, skills and previous salary of the employee.
91. On successful completion of the Graduate Programme, Ombudsman Graduates will, subject to Ombudsman approval, be advanced to the APS 4 classification level within the Training Broadband.
92. The employee will then be integrated into the relevant Ombudsman Band in the classification structure at **Attachment A**.

Office Trainees

93. Trainee employees will be engaged within the Office's Training Broadband and undertake a course of training and/or development determined by the Ombudsman.
94. When the Ombudsman is satisfied that the course of training and/or development has been successfully completed, he/she will advance the employee to a classification that will be not less than the APS 3 classification level and determine salary. The employee will then be integrated into the relevant Ombudsman Band in the classification structure at **Attachment A**.

Broadbands

95. The Office employs a broadband between the APS4 and APS5 classifications, known as the Ombudsman Band 4 broadband.
96. The provisions relating to advancement within the Ombudsman Band 4 broadband are as follows:
- 96.1. advancement within a broadband is based on the performance of the employee and the needs of the Office;
- 96.2. an employee who meets the requirements of clause 29.1 and 29.2 may be advanced to the next classification level within the broadband provided that:
- 96.2.1. there is sufficient ongoing work required to be performed at the higher work level; and
- 96.2.2. they have been assessed as having the skill requirements to perform the available work at the higher work level.
- 96.2.3. 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; and
- 96.2.4. Where an employee is advanced within a broadband, they are automatically reclassified to the relevant APS classification.

Work Level Standards

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

Section 5: Working hours and arrangements

Job security

Commitment to ongoing employment and rebuilding APS capacity

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

Reporting

99. Where a consultative committee is in place, the Office will report to the Office consultative committee on an annual basis, or more frequently if agreed, on the number, duration, classification and location of ongoing, non-ongoing and casual employees engaged by the Office.

Pathways to permanency

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

Casual (irregular or intermittent) employment

101. A casual (irregular or intermittent) employee is defined in the definitions section.

102. A decision to expand the use of casual employees is subject to Section 10 of this agreement.
103. The Office will regularly review the working arrangements of casual employees to assess if they are genuinely performing irregular or intermittent duties, and report de-identified outcomes to the consultative committee, where one is in place.
104. Remuneration for casual employees is on an hourly basis. A casual employee will receive a 25 per cent loading on the base hourly rate of their classification as set out in this agreement.
105. The casual loading is paid in lieu of payment for public holidays not worked, notice of termination of employment, redundancy benefits and all paid leave entitlements, other than leave required by legislation including long service leave in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976* and leave for family and domestic violence support.
106. A casual employee will be engaged for a minimum of 3 hours per engagement or shall be paid for a minimum of 3 hours at the appropriate casual rate.
107. A casual employee who is eligible for a Workplace Responsibility Allowance will be paid the full amount.

Non-ongoing employment

108. A non-ongoing employee is defined in the definitions section.
109. Non-ongoing employees will generally have the same terms and conditions of employment as ongoing employees under this agreement's terms, except:
- 109.1. personal/carer's leave accrual at clauses 211-214;
 - 109.2. redundancy provisions at clause 448-487, subject to clause 110; and
110. If the non-ongoing employee's contract is not permitted by section 333E of the FW Act, then the redundancy provisions at clause 448-487 will apply.

111. If the redundancy provisions apply to an employee under clause 110, the agency must adhere to the consultation requirements at section 10 and where applicable, clauses 450–454.

Working hours

112. The ordinary hours of work for full-time employees are 150 hours over a four week settlement period. This equates to a standard working week of 37 hours and 30 minutes and a standard working day of 7 hours and 30 minutes.

113. For part time employees, the ordinary hours of work are those agreed in the part time work agreement or as designated for the particular job.

114. The standard day for full-time employees is defined as being working hours from 8.30am to 12.30pm and 1.30pm to 5.00pm (seven hours and 30 minutes) or the agreed hours for part time employees.

115. The bandwidth hours during which an employee may work their ordinary hours is 7am to 7pm Monday to Friday.

116. Unless there is a business need to vary hours 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.

117. The times of commencement and cessation of duty outside of standard hours specified at clause 114 will be subject to agreement between the Ombudsman and the employee. This includes meal breaks.

118. An employee will not be expected to work more than:

- 10 hours ordinary time on any one day; and
- five consecutive hours without a meal break of at least 30 minutes.

119. Both employees and supervisors have a mutual responsibility for managing their working hours and patterns. 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 and have regard to the requirements of section 62 of the *Fair Work Act 2009*.

120. All APS1-6 (and their equivalent) employees are required to record their hours worked each day in a manner determined by the Ombudsman.

Flex for APS 1-6 classifications

121. Employees up to and including APS6 and equivalent classification levels can work flextime and accrue a flextime credit (including part time employees). Flextime does not apply to Executive Level (and their equivalent) employees. Arrangements for Executive Level employees are covered under clauses 128-134.

122. Flextime allows eligible employees to accrue a flextime credit for duty performed in excess (which does not attract overtime) of their ordinary hours of work over the settlement period. Employees with a flextime credit are, with the agreement of their supervisor, able to take time off work in respect of the additional hours worked, without deduction from leave credits.

123. An employee may, by agreement with his or her supervisor, carry over a balance of hours, not exceeding 37 hours and thirty minutes into the next settlement period. Employees should not exceed 37 hours and thirty minutes credit.

124. The Ombudsman may, where it is reasonable to do so because an employee has failed to comply with the flextime provisions, remove the employee from the arrangements for a specified period and that employee will revert to working standard hours.

125. Access to flextime may be restored where the Ombudsman is satisfied that the employee's attendance and compliance with the provisions is satisfactory.

126. 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.

Non-directed work outside the bandwidth

127. Where an employee requests to work outside bandwidth hours, they 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.

Executive Level Time Off in Lieu (EL TOIL)

128. Executive level (EL) employees are sometimes required to work reasonable additional hours. Consistent with the NES, employees may refuse to work unreasonable additional hours.

129. EL employees seeking to access time off in lieu (TOIL) are required to keep records of their working hours using a method determined by the Office.

130. A manager is to grant TOIL in recognition of reasonable additional hours worked. TOIL granted to employees can be taken as whole or part days.

131. The working arrangements for an EL employee should be agreed through discussion between the manager and the EL employee. The discussion should include consideration of the work requirements that will safely get the job done and reasonably allow the employee to balance their work and personal life.

132. An EL employee's working arrangements and actual hours worked should be discussed on at least a quarterly basis between the EL employee and their manager.

133. The pattern of hours is to be flexible enough to accommodate short-term peaks and troughs in workload, and include expected reasonable additional hours. The agreed pattern of hours is to be recorded.

134. Requests from EL employees to access flexible time off which are consistent with their agreed working arrangements are to be supported, subject to operational requirements.

Overtime and restriction

Overtime

135. Clauses 135–139 of this Agreement apply only to APS 1 to APS 6 employees.

136. Where an employee is directed by the Ombudsman to perform work in addition to their ordinary hours of work the employee will be eligible for payment of overtime, or time off in lieu (TOIL) subject to mutual agreement between the parties.

137. An employee's personal circumstances will be considered when overtime is being requested and an employee may refuse to work overtime if the additional hours are unreasonable, in accordance with the FW Act.

138. 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

*See also clause 72 for payment of meal allowance during periods of paid overtime.

139. 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 due to operational requirements, the Ombudsman will approve payment at double time for the next period of work.

Restriction

140. 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.

141. 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.

142. The restriction allowance payments for each hour restricted are:

142.1. Monday to Friday – 7.5 per cent of the hourly rate of salary

142.2. Saturday and Sunday – 10 per cent of hourly salary

142.3. Public holidays – 15 per cent of hourly salary

143. Where an employee on restriction is recalled to duty and receives an overtime payment, the employee will not be entitled to receive the Restriction Allowance for the period for which overtime is payable.

Flexible working arrangements

144. The Office, employees and their union recognise:

144.1. the importance of an appropriate balance between employees' personal and working lives, and the role flexible working arrangements can play in helping to achieve this balance;

144.2. access to flexible work can support strategies to improve diversity in employment and leadership in the APS;

144.3. access to flexible work supports APS capability, and can assist in attracting and retaining the employees needed to deliver for the Australian community, including employees located at a wider range of locations;

144.4. that flexibility applies to all roles in the Office, and different types of flexible working arrangements may be suitable for different types of roles or circumstances; and

144.5. requests for flexible working arrangements are to be considered on a case-by-case basis, with a bias towards approving requests.

145. The Office is committed to engaging with employees and their union to build a culture that supports flexible working arrangements across the Office at all levels. This may include developing and implementing strategies through an Office consultative committee.

146. Flexible working arrangements include, but are not limited to, changes in hours of work, changes in patterns of work and changes in location of work.

Requesting formal flexible working arrangements

147. The following provisions do not diminish an employee's entitlement under the NES.

148. An employee may make a request for a formal flexible working arrangement.

149. The request must:

149.1. be in writing;

149.2. set out details of the change sought (including the type of arrangement sought and the proposed period the arrangement will operate for); and

149.3. set out the reasons for the change, noting the reasons for the change may relate to the circumstances set out at section 65(1A) of the FW Act.

150. The Ombudsman must provide a written response to a request within 21 days of receiving the request.

151. The response must:

151.1. state that the Ombudsman approves the request and provide the relevant detail in clause 152; or

151.2. if following discussion between the Office and the employee, the agency and the employee agree to a change to the employee's working arrangements that differs from that set out in the request – set out the agreed change; or

151.3. state that the Ombudsman refuses the request and include the following matters:

151.3.1. details of the reasons for the refusal; and

151.3.2. set out the Office's particular business grounds for refusing the request, explain how those grounds apply to the request; and

151.3.3. either:

151.3.3.1. set out the changes (other than the requested change) in the employee's working arrangements that would accommodate, to any extent, the employee's circumstances outlined in the request and that the agency would be willing to make; or

151.3.3.2. state that there are no such changes; and

151.3.4. state that a decision to refuse the request, or failure to provide a written response within 21 days is subject to the dispute resolution procedures of the enterprise agreement, and if the employee is an eligible employee under the FW Act, the dispute resolution procedures outlined in sections 65B and 65C of the FW Act.

152. Where the Ombudsman approves the request this will form an arrangement between the agency and the employee. Each arrangement must be in writing and set out:

152.1. any security and work health and safety requirements;

152.2. a review date (subject to clause 156); and

152.3. the cost of establishment (if any).

153. The Ombudsman may refuse to approve the request only if:

153.1. the Office has discussed the request with the employee; and

153.2. the Office has genuinely tried to reach an agreement with the employee about making changes to the employee's working arrangements to accommodate the employee's circumstances (subject to any reasonable business grounds for refusal); and

153.3. the Office and the employee have not reached such an agreement; and



153.4. the Office has had regard to the consequences of the refusal for the employee; and

153.5. the refusal is on reasonable business grounds.

154. Reasonable business grounds include, but are not limited to:

154.1. the new working arrangements requested would be too costly for the Office;

154.2. there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested;

154.3. it would be impractical to change the working arrangements of other employees, or to recruit new employees, to accommodate the new working arrangements requested;

154.4. the new working arrangements requested would be likely to result in a significant loss in efficiency or productivity;

154.5. the new working arrangements requested would be likely to have a significant negative impact on customer service; and

154.6. it would not be possible to accommodate the working arrangements without significant changes to security requirements, or where work health and safety risks cannot be mitigated.

155. For First Nations employees, the Office must consider connection to country and cultural obligations in responding to requests for altering the location of work.

156. Approved flexible working arrangements will be reviewed by the Office and the employee after 12 months, or a shorter period, if agreed by the employee. This is to ensure the effectiveness of the arrangement.

Varying, pausing or terminating flexible working arrangements

157. An employee may request to vary an approved flexible working arrangement in accordance with clause 149. An employee may request to pause or terminate an approved flexible working arrangement.

158. The Ombudsman may vary, pause or terminate an approved flexible working arrangement on reasonable business grounds, subject to clause 160.

159. The agency must provide reasonable notice if varying, pausing or terminating a flexible working arrangement without the agreement of the employee, having regard to the circumstances of the employee. Exceptions to this requirement are urgent and critical operational circumstances or an employee's demonstrated and repeated failure to comply with the agreed arrangements.

160. Prior to the Ombudsman varying, pausing or terminating the arrangement under clause 158, the Office must have:

160.1. discussed with the employee their intention to vary, pause or terminate the arrangement with the employee;

160.2. genuinely tried to reach an agreement with the employee about making changes to the employee's working arrangements to accommodate the employee's circumstances (subject to any reasonable business grounds for alteration);

160.3. had regard to the consequences of the variation, pause or termination for the employee;

160.4. ensured the variation, pause or termination is on reasonable business grounds; and

160.5. informed the employee in writing of the variation, pause or termination to the approved flexible working arrangement, including details set out in clause 151.3.

Working from home

161. The Office will not impose caps on groups of employees on the time that may be approved to work from home or remotely, with each request to be considered on its merits.

162. The Office may provide equipment necessary for, or reimbursement of, all or part of the costs associated with establishing a working from home arrangement.

163. An employee working from home is covered by the same employment conditions as an employee working at an office site under this agreement.

164. The Office will provide employees with guidance on working from home safely.

165. Employees will not be required by the Office to work from home unless it is lawful and reasonable to do so. This may include where circumstances prevent attendance at an office during a pandemic or natural disaster. In these situations, the Office will consider the circumstances of the employees and options to achieve work outcomes safely.

Ad-hoc arrangements

166. Employees may request ad-hoc flexible working arrangements. Ad-hoc arrangements are generally one-off or short-term arrangements for circumstances that are not ongoing.

167. Employees should, where practicable, make the request in writing and provide as much notice as possible.

168. Requests for ad-hoc arrangements are not subject to the request and approval processes detailed in clauses 147 to 156.

169. The Office should consider ad-hoc requests on a case-by-case basis, with a bias to approving ad-hoc requests, having regard to the employee's circumstances and reasonable business grounds.

170. Where a regular pattern of requests for ad-hoc arrangements from an employee emerges, the Office should consider whether it is appropriate to seek to formalise the arrangement with the employee.

Altering span of hours

171. An employee may request to work an alternative regular span of hours (bandwidth hours). If approved by the Ombudsman, hours worked on this basis will be treated as regular working hours and will not attract overtime payments. The Office will not request or require that any employee alter their regular span of hours (bandwidth hours) under these provisions.

Employees with caring responsibilities

172. In recognition of child and dependant care responsibilities, on prior approval the Ombudsman will approve reimbursement of reasonable expenses (on receipt of satisfactory evidence) arising from additional family arrangements made necessary where an employee is:

172.1. required to travel away from his or her normal work location for business purposes; or

172.2. directed to work additional hours or attend a conference or training course outside the bandwidth or outside the employee's ordinary hours of work.

Part-time work

173. Employees engaged on a full-time basis will not be compelled to convert to part-time employment.

174. Employees engaged on a part-time basis will not be compelled to convert to full-time employment.

175. Part-time work arrangements will not be for less than three hours per day.

Christmas Closedown

176. 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.

177. 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).



178. There will be no deduction from annual or personal leave credits for the closedown days.

Public holidays

179. Employees are entitled to the following holidays each year as observed at their normal work location in accordance with the FW Act:

179.1. 1 January (New Year's Day);

179.2. 26 January (Australia Day);

179.3. Good Friday and the following Monday;

179.4. 25 April (Anzac Day);

179.5. the King's birthday holiday (on the day on which it is celebrated in a State or Territory or a region of a State or Territory);

179.6. 25 December (Christmas Day);

179.7. 26 December (Boxing Day); and

179.8. any other day, or part day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday, other than a day or part day, or a kind of day or part day, that is excluded by the *Fair Work Regulations 2009* from counting as a public holiday.

180. If a public holiday falls on a Saturday or Sunday, and if under a State or Territory law, a day or part day is substituted for one of the public holidays listed above, then the substituted day or part day is the public holiday.

181. The Ombudsman 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.

182. The Ombudsman and an employee may agree to substitute a cultural or religious day of significance to the employee for any day that is a prescribed holiday. If the

employee cannot work on the prescribed holiday, the employee will be required to work make-up time at times to be agreed. This substitution does not impact or reduce an employee's entitlement to First Nations ceremonial leave, NAIDOC leave or cultural leave.

183. Where an employee substitutes a public holiday for another day, they will not be paid penalty rates for working their normal hours on the public holiday.
184. Where a public holiday falls during a period when an employee is absent on leave (other than annual leave, paid personal/carer's leave or defence service sick leave) there is no entitlement to receive payment as a public holiday. Payment for that day will be in accordance with the entitlement for that form of leave (e.g. if on long service leave on half pay, payment is at half pay.)
185. If under a law of a State or Territory every Sunday is declared or prescribed by or under that law to be a public holiday, there is no entitlement to receive payment as a public holiday if the employee would have worked, or does perform work, on that day. In these circumstances, payment will only be made at the public holiday rate if the employee performs work on that day, and the Sunday would otherwise be a public holiday under clause 179.1 to 179.8.
186. An employee, who is absent on a day or part day that is a public holiday in their normal work location, is entitled to be paid for the part or full day absence as if that day or part day was not a public holiday, except where that person would not normally have worked on that day.
187. Where a full-time employee, including but not limited to employees on compressed hours, has a regular planned day off which would fall on a public holiday, the Ombudsman may allow the employee to change their planned day off so that it does not fall on a public holiday. If it is not possible to change their planned day off, the employee will be credited an equivalent amount of time to their regular hours for the day in flex credits or EL TOIL in recognition of their planned day off.

Section 6: Leave

Annual leave

188. Annual leave credits will accrue on a daily basis at the rate of twenty working days (4 weeks) for each completed year of service. Part time employees will accrue annual leave on a pro-rata basis.
189. Employees will have access to annual leave entitlements as they accrue, subject to Ombudsman approval.
190. Annual leave will not accrue during periods not regarded as service for annual leave purposes.
191. Annual leave may be accessed for part day absences.
192. Where an employee has an existing annual leave credit in excess of 40 days (or a pro-rata amount for part time employees) at the end of any month during the year or on the employee's commencement with the Office, the employee will continue to accrue annual leave, but may be directed, in writing, to take a period of leave, of not more than one quarter of their total leave credit, within a 3 month period.
193. Annual leave may be granted at half-pay to an employee on the basis that one day of Annual leave at full pay is equivalent to two days of Annual leave at half pay. Employees with excess Annual leave credits will not be granted Annual leave at half-pay, unless authorised by the Ombudsman.
194. 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 travel costs and reasonable incidental expenses not otherwise recoverable under any insurance or from any other source.
195. The Ombudsman may approve other types of leave during a period of annual leave if satisfactory evidence is provided. Annual leave will be re-credited to the extent of any other leave granted.

196. Where an employee is recalled to duty from annual leave, the period that the employee is recalled to duty will be re-credited to his or her annual leave entitlement.

197. An employee will be entitled to payment in lieu of annual leave on separation from the APS in respect of unused credits that have accrued to the date of separation.

Voluntary cash out of annual leave

198. The Ombudsman may agree to an employee's request to 'cash out' up to two weeks of their accrued annual leave entitlement. The cash out is subject to:

198.1. the employee retaining a balance of annual leave credits of at least 20 days after the cash-out;

198.2. the employee providing a written election to forgo the amount of annual leave to be cashed out; and

198.3. only one application being made in a calendar year.

199. When an employee cashes out leave he/she must be paid at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.

Purchased leave

200. Ongoing employees may, subject to Ombudsman approval, purchase one, two, three or four weeks purchased leave credits each year. Credits must be purchased in one week blocks.

201. Only one election can be made to purchase this leave in a calendar year. The Ombudsman may agree to vary an election in exceptional circumstances.

202. The minimum period of purchased leave that can be taken at any one time will be one week and purchased leave cannot be taken at half pay.

203. An employee may not enter into a new purchased leave arrangement until an existing purchased leave arrangement is paid for in full.

204. Purchased leave must be used within 12 months of the commencement of salary deductions.

205. Where the Ombudsman 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:

$$\frac{\text{Gross fortnightly salary} \times \text{number of weeks of Purchased Leave credits}}{52}$$

52

206. Purchased leave counts as service for all purposes.

207. Purchased leave credits will be allocated to the employee following the commencement of salary deductions.

208. Approval of purchased leave does not affect the employee's continuity of service or salary for superannuation purposes.

209. Where, due to exceptional circumstances, an employee requests cancellation of purchased leave before the leave has been taken and the Ombudsman agrees to the request, a refund of the salary deductions made will be paid.

210. Where an employee leaves Office employment, final payments will be adjusted to take account of deductions not yet made or for deductions made and leave not taken.

Personal/carer's leave

Accrual

211. Ongoing Ombudsman employees new to the APS are credited with 18 days full-pay personal leave upon commencement.

212. Ongoing employees accrue progressively 18 days full-pay personal leave for each completed year of service. Personal leave credits accrue and are credited daily.

213. Non-ongoing employees are credited with 18 days full-pay personal leave upon commencement, for the initial 12 months of service. This allowance is provided on a pro-rata basis, based upon the duration of the employee's contract. After the initial contract period or 12 months, whichever is shorter, or where the employee has an existing entitlement to personal/carer's leave, leave will accrue and be credited daily at the rate of 18 days full-pay personal leave for each completed year of service.
214. Part time employees will have their personal leave calculated on a pro rata basis. Personal leave credits accrue and are credited daily.

Approval of personal leave

215. The Ombudsman will, subject to available credits, approve personal leave with pay for an employee who is absent in the following circumstances:
- 215.1. personal illness or injury;
 - 215.2. to attend appointments with a registered health practitioner;
 - 215.3. to manage a chronic condition;
 - 215.4. to provide care or support for a family or household member or a person they have caring responsibilities for; because of:
 - 215.4.1. a personal illness, or personal injury, affecting the member; or
 - 215.4.2. an unexpected emergency affecting the member
 - 215.5. attending to legal matters of an immediate nature;
 - 215.6. urgent personal matters of an immediate nature;
 - 215.7. accompanying family with health and legal matters;
 - 215.8. urgent household matters or repairs;
 - 215.9. work relocation in relation to clause 393; and
 - 215.10. extraordinary circumstances.

216. Personal/Carer's leave may be granted at half-pay to an employee on the basis that one days Personal/Carer's leave at full pay is equivalent to two days Personal/Carer's leave at half pay.
217. If requested by an employee, leave at half pay may be approved by the Ombudsman.
218. Leave must not be used for the purposes of clauses 215.5 to 215.10 if it would be detrimental to an employee in any respect, when compared to the National Employment Standards under the *Fair Work Act 2009*. Leave for the purposes of clauses 215.5 to 215.10 is limited to three consecutive days of personal leave at a time.
219. 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.
220. If personal leave credits are exhausted, personal leave due to personal illness or injury may be granted without pay.

Carers

221. A person who an employee has caring responsibilities for may include a person who needs care because they:
- 221.1. have a medical condition, including when they are in hospital;
 - 221.2. have a mental illness;
 - 221.3. have a disability;
 - 221.4. are frail or aged; and
 - 221.5. are a child (not limited to a child of the employee)

Evidence

222. The Ombudsman may request that an employee provide documentary evidence for any period of personal leave in circumstances where the leave:
- 222.1. is for more than three consecutive days; or

222.2. the employee has taken more than 10 days of personal leave without documentary evidence in a calendar year.

223. Acceptable evidence includes:

223.1. a certificate from a registered health practitioner; or

223.2. a statutory declaration; or

223.3. another form of evidence approved by the Ombudsman.

224. A certificate from a registered health practitioner may be used as evidence of a chronic condition for up to 12 months for both personal and carer's leave.

Casual employees

225. Casual employees are entitled to two days unpaid personal leave for personal illness, injury or caring purposes for each permissible occasion, subject to notifying the employee's supervisor and providing satisfactory evidence.

Notifying absences

226. An employee must give their supervisor, via a telephone call, unless otherwise agreed or not practicable, notice of taking the leave as soon as practicable and must also advise their supervisor of the period or expected period of leave. If the employee's supervisor cannot be contacted by telephone then the employee must notify an appropriate alternative supervisor.

227. Where an employee has been absent on personal leave for illness or injury purposes for a continuous period of more than two weeks, the employee's supervisor should contact the HR Team, which will assess whether support or rehabilitation intervention is necessary.

Public holidays during leave

228. Personal leave will not be debited where an employee is medically unfit for duty on a public holiday that the employee would otherwise observe.

Interaction with other leave types

229. An employee on personal leave who has exhausted their paid personal leave credits may, subject to Ombudsman approval, be granted annual leave or long service leave. Any grant of long service leave for this purpose is subject to the requirements of clause 246. Any such application must be supported by a medical certificate.

230. An employee on annual, compassionate, long service or purchased leave can, on production of a medical certificate, apply to take personal leave and have the annual, compassionate, long service or purchased leave recredited. Further information is available in the re-crediting of leave clause 242.

Termination of employment – invalidity retirement

231. An employee will not, without their consent, be terminated on invalidity grounds before his or her personal leave credits have been exhausted, unless provided by legislation.

232. 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.

Employee returning to work after receiving compensation payments for more than 45 weeks

233. 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.

Payment on separation

234. Unused personal leave credits will not be paid out on separation.

Portability of leave

235. Where an employee moves to the Office from another APS agency where they were an ongoing employee, the employee's unused accrued annual leave and personal/carer's leave will be transferred, provided there is no break in continuity of service.

236. Where an employee is engaged by the Office immediately following a period of ongoing employment in the Parliamentary Service or the ACT Government Service, the employee's unused accrued annual leave and personal/carer's leave will be recognised unless the employee received payment in lieu of those entitlements on cessation of employment.

237. Where an employee is engaged as an ongoing employee in the Office, and immediately prior to the engagement the person was employed as a non-ongoing APS employee (whether in the agency or another), at the employee's request, any unused accrued annual leave (excluding accrued leave paid out on separation) and personal/carer's leave will be recognised.

238. Where an employee is engaged as a non-ongoing APS employee, and immediately prior to the engagement the person was employed as a non-ongoing APS employee (whether in the agency or another) at the employee's request, any unused accrued annual leave (excluding accrued leave paid out on termination of employment) and personal/carer's leave will be recognised.

239. Where an employee is engaged as an ongoing employee in the Office, and immediately prior to the engagement the person was employed by a Commonwealth employer (other than in the Parliamentary Services which are covered in clause 236), the Ombudsman will recognise any unused accrued personal/carer's leave at the employee's request. The Ombudsman will advise the employee of their ability to make this request.

240. Where an employee is engaged as an ongoing employee in the Office, and immediately prior to the engagement the person was employed by a State or Territory Government, the Ombudsman may recognise any unused accrued personal/carer's leave, provided there is not a break in continuity of service.

241. For the purposes of clauses 235 to 241, an employee with a break in service of less than 2 months is considered to have continuity of service.

Re-crediting of leave

242. When an employee is on:

242.1. annual leave;

242.2. purchased leave;

242.3. defence reservist leave;

242.4. First Nations ceremonial leave;

242.5. NAIDOC leave;

242.6. cultural leave; or

242.7. long service leave; and

becomes eligible for, under legislation or this agreement:

242.8. personal/carer's leave;

242.9. compassionate or bereavement leave;

242.10. jury duty;

242.11. emergency services leave;

242.12. leave to attend to family and domestic violence circumstances; or

242.13. parental leave, premature birth leave, stillbirth leave or pregnancy loss leave; the affected period of leave will be re-credited.

243. When an employee is on personal/carer's leave and becomes eligible for parental leave, premature birth leave, stillbirth leave or pregnancy loss leave, the affected period of leave will be re-credited.

244. Re-crediting is subject to appropriate evidence of eligibility for the substituted leave.

Long service leave

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

246. The minimum period for which long service leave will be granted is 7 calendar days (whether taken at full or half pay). Long service leave cannot be broken with other periods of leave, except as otherwise provided by legislation or provided for in the re-crediting of leave clause at clause 242 of this agreement.

Miscellaneous leave

247. The Ombudsman may approve paid or unpaid miscellaneous 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.

248. Where possible, accrued paid leave should be accessed prior to the taking of unpaid leave.

249. Casual employees may be provided with paid miscellaneous leave for the purposes of family and domestic violence support and otherwise by Government directive.

250. Miscellaneous leave for a part day may be approved where no viable alternative exists.

251. Where an employee does not resume duty in the APS at the end of a period of miscellaneous leave, whether paid or unpaid, the leave will not count as service for any purpose, unless required by legislation.

Cultural, ceremonial and NAIDOC leave

252. The Ombudsman may grant employees reasonable paid and unpaid miscellaneous leave to take part in activities associated with their culture or ethnicity, including participation in NAIDOC week activities. Any leave without pay granted under this clause will not count as service for any purpose, unless required by legislation.

NAIDOC leave

253. First Nations employees may access up to one day of paid leave per calendar year to participate in NAIDOC week activities.

254. NAIDOC leave can be taken in part days.

First Nations ceremonial leave

255. First Nations employees may access up to 6 days of paid leave over 2 calendar years to participate in significant activities associated with their culture or to fulfil ceremonial obligations.

256. The Ombudsman may approve additional leave for cultural or ceremonial purposes as miscellaneous leave, with or without pay.

257. First Nations ceremonial Leave can be taken as part days.

258. First Nations ceremonial leave is in addition to compassionate and bereavement leave.

Cultural leave

259. The Ombudsman may grant up to 3 days of paid leave per calendar year for the purpose of attending significant religious or cultural obligations associated with the employees' particular faith or culture.

260. The Ombudsman may approve additional leave for cultural purposes as miscellaneous leave, with or without pay.

261. Cultural leave can be taken as part days.

262. For the avoidance of doubt, this leave does not cover cultural purposes or obligations which are eligible for paid leave under clause 255.

Parental leave

263. A primary caregiver, secondary caregiver and ML Act is defined in the definitions section.

264. An employee who is a **primary caregiver** or **secondary caregiver** is entitled to parental leave up until 24 months from the date of the child's birth or placement (**parental leave period**). For the avoidance of doubt, this is inclusive of all legislated leave entitlements. The parental leave period does not extend non-ongoing employment where the employment period remaining is less than 24 months. An employee is only eligible for parental leave with pay as either a primary caregiver or a secondary caregiver for the particular parental leave period, and cannot switch roles for the purpose of accessing additional paid leave.

265. For the pregnant employee, the parental leave period starts on commencement of maternity leave as per ML Act requirements, and ceases 24 months from the date of birth. Medical certification requirements for the pregnant employee will be as required by the ML Act.

266. Conditions in this agreement will continue to apply in circumstances where successor legislation to the ML Act does not provide parental leave conditions included in this agreement.

Payment during parental leave

267. An employee is entitled to parental leave with pay as per clauses 264 and 265 within the parental leave period. Any further parental leave during the parental leave period is without pay. Unused paid parental leave remaining at the end of the employee's parental leave period will lapse. An employee may choose to use their

accrued paid leave entitlements in accordance with usage and eligibility requirements in this agreement during the parental leave period that would otherwise be without pay.

268. Employees newly engaged in the agency or who have moved to the Office from another APS agency are eligible for the paid parental leave in clauses 264 and 265 where such paid leave had not already been provided by another APS agency or Commonwealth employer in the 24 months since the child’s date of birth or placement. If the paid leave used by the employee with the previous Commonwealth employer or APS agency is less than the limits specified in clauses 264 and 265, the balance is available to the employee.

269. An employee who is a primary caregiver is entitled to parental leave with pay during the parental leave period to a maximum of 18 weeks as provided in **Table 1** below.

Table 1: Primary caregivers – circumstances for paid parental leave

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

270. An employee who is a secondary caregiver is entitled to parental leave with pay during the parental leave period as provided in **Table 2** below.

Table 2: Secondary caregivers – circumstances for paid parental leave

| Period which coincides with the parental leave period for the secondary caregiver | Parental Leave with pay under this agreement |
|---|---|
| Date of commencement of this agreement to 28 February 2025 | 8 weeks, or top up to 8 weeks where a lesser period of parental leave has already been provided |

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

271. **Flexibility:** Parental leave with pay, whether provided as maternity leave under the ML Act or under this agreement, can be accessed flexibly during the parental leave period and does not have to be taken in a single block. For the avoidance of doubt, parental leave can be used to replicate a part time work arrangement, and can be taken concurrently with another parent in relation to the same child.

272. **Rate of payment** during paid parental leave is the same as for an absence on personal/carer’s leave and based on the employee’s weekly hours at the time of the absence.

273. **Half-pay option:** The payment of any paid parental leave may be spread over a maximum period of 36 weeks at the rate of, no less than, half the normal rate of salary. All paid parental leave counts as service for all purposes, where permitted by legislation.

Adoption and long-term foster care

274. An employee who is a primary caregiver or secondary caregiver is entitled to parental leave in accordance with this agreement for adoption or long-term foster care, provided that the child:

274.1. is under 16 as at the day (or expected day) of placement;

274.2. has not lived continuously with the employee for a period of six months or more as at the day (or expected day) of placement; and

274.3. is not (otherwise than because of the adoption) a child of the employee or the employee's spouse or de facto partner.

275. Documentary evidence of approval for adoption or enduring parental responsibilities under formal fostering arrangements must be submitted when applying for parental leave for adoption or long-term foster carer purposes.

Stillbirth

276. Parents of a stillborn child remain eligible for parental leave, except for paid leave for the secondary caregiver which is two weeks.

277. A stillborn child is a child:

277.1. who weighs at least 400 g at delivery or whose period of gestation was 20 weeks or more; and

277.2. who has not breathed since delivery; and

277.3. whose heart has not beaten since delivery.

Pregnancy loss leave

278. A pregnant employee who experiences, or an employee whose spouse or partner experiences, pregnancy loss is entitled to one weeks' paid leave. Pregnancy loss is a miscarriage or other loss of pregnancy that occurs between 12 and 20 weeks' gestation that is not a stillbirth.

279. Pregnancy loss leave is in addition to entitlements to compassionate leave for miscarriage provided under the FW Act and this agreement.

Premature birth leave

280. In circumstances of a live birth before 37 weeks' gestation a pregnant employee, or an employee whose spouse or partner has given birth prematurely, is entitled to

paid premature birth leave from the date of the child's birth up to just before 37 weeks' gestation. Parental leave with pay is then available from what would have been 37 weeks' gestation in accordance with Parental leave in this agreement, noting the parental leave period commences on the child's date of birth.

Transitional provisions

281. Employees eligible for paid leave under the ML Act are required under legislation to use their paid maternity leave first. In this circumstance, the employee may postpone their paid premature birth leave otherwise payable under clause 280 until after the legislated paid maternity leave is used.

Compassionate leave

282. Employees will be eligible for 3 days paid compassionate leave on each occasion when:

282.1. a member of their family (including a member of their household) or someone they have a close personal relationship with contracts, develops or sustains a life-threatening illness or injury; or

282.2. the employee or their partner has a miscarriage.

283. An employee may be asked to provide evidence to support their absences on compassionate leave.

284. Compassionate leave for an occasion may be taken as 3 consecutive days or in separate periods totalling 3 days. This can include part days.

285. For casual employees, compassionate leave is unpaid.

Bereavement leave

286. Employees will be eligible for 3 days paid bereavement leave on each occasion when:

286.1. a member of their family (including a member of their household) or someone they had a close personal relationship with dies; or

286.2. a child is stillborn, where the child was a member of their family (including a member of their household).

287. An employee may be asked to provide evidence to support their absences on bereavement leave.

288. Bereavement leave for an occasion may be taken as 3 consecutive days or in separate periods totalling 3 days. This can include part days.

289. For casual employees, bereavement leave is unpaid.

Emergency response leave

290. In line with section 108 of the FW Act, an employee who engages in an eligible community service activity is entitled to emergency response leave to volunteer for emergency management duties for:

290.1. the time engaged in the activity;

290.2. reasonable travelling time; and

290.3. reasonable recovery time.

291. Full-time and part-time employees will be able to access 20 working days of paid emergency response leave at their full rate of pay per year if required. The Ombudsman may provide additional emergency response leave with pay.

291.1. For the purposes of this clause, full rate of pay is to be as if the employee was at work.

292. Paid leave may be refused where the employee's role is essential to the Office's response to the emergency.

293. An employee must provide evidence that the organisation requests their services. Employees can provide evidence before or as soon as practical after their emergency service activity.

294. The Ombudsman may approve reasonable paid or unpaid leave for ceremonial duties and training.

295. Emergency response leave, with or without pay, will count as service.

Jury duty

296. Employees who are required by a court to attend either for jury selection, or to act as a juror, will be released from duty for the required period, without the need to apply for leave.

297. Full and part-time employees will be released from duty on their full rate of pay. Payment for casuals will be as per the relevant state legislation.

297.1. For the purposes of this clause, full rate of pay is to be as if the employee was at work.

298. The employee is required to inform their manager before they are released from duty and provide evidence of the need to attend.

299. If the employee receives a payment from the court for attendance (which are not expense related such as allowances and reimbursements), they must repay that amount to the Office for the period of absence. This will be administered in accordance with the overpayments clause.

Defence reservist leave

300. The Ombudsman will give an employee leave with or without pay to undertake:

300.1. Australian Defence Force (ADF) Reserve and continuous full-time service (CFTS); and

300.2. Australian Defence Force Cadet obligations.

301. An employee who is a Defence Reservist can take leave with pay for:

301.1. up to 4 weeks (20 days) in each financial year (pro-rata for part-time employees); and

301.2. an extra 2 weeks (10 days) in the first year of ADF Reserve service (pro-rata for part-time employees).

302. Leave can be built up and taken over 2 consecutive years. This includes the extra 2 weeks in the first year of service.

303. An employee who is an Australian Defence Force Cadet officer or instructor can get paid leave up to 3 weeks in each financial year to perform their duties.

Australian Defence Force Cadets means:

303.1. Australian Navy Cadets;

303.2. Australian Army Cadets; and

303.3. Australian Air Force Cadets.

304. In addition to the entitlement at clause 301, paid leave may be granted to an employee to attend an interview or medical examination in connection with the enlistment of the employee in a Reserve Force of the Defence Force.

305. Paid defence reservist leave counts for service.

306. Unpaid defence reservist leave for 6 months or less counts as service for all purposes. This includes periods of CFTS.

307. Unpaid leave taken over 6 months counts as service, except for annual leave.

308. An employee will not need to pay their tax free ADF Reserve salary to their agency for any reason.

Defence service sick leave

309. An employee is eligible for defence service sick leave credits when the Department of Veterans Affairs (DVA) has certified that an employee's medical condition is as a result of either:

309.1. warlike service; or

309.2. non-warlike service.

310. An eligible employee can get 2 types of credits:

310.1. an initial credit of 9 weeks (45 days) defence service sick leave will apply as of the later below option:

310.1.1. they start employment with the APS; or

310.1.2. DVA certifies the condition; and

310.2. an annual credit of 3 weeks (15 days) defence service sick leave.

311. An employee can use their defence service sick leave when a recognised medical practitioner provides a certificate that says they were away due to their DVA certified medical condition.

312. Unused annual credits can be built up to 9 weeks.

313. An employee cannot use annual credits until the initial credit is exhausted.

314. Defence service sick leave is paid and counts as service for all purposes.

Leave to attend proceedings

315. An employee giving evidence before a Court, Tribunal or Royal Commission on behalf of the Commonwealth or a Commonwealth party in the course of their duties, will be considered on duty.

316. An employee who is not covered under clause 315, and is required to give evidence to, appear before or attend to instruct a representative at a Court, Tribunal or Royal Commission in relation to their duties will be released from duty without loss of pay. This includes in proceedings relating to a dispute between the employee and the Office.

317. An employee may otherwise be granted paid or unpaid miscellaneous leave by the Ombudsman if required to give evidence to a Court, Tribunal or Royal Commission for any other reason. Where approval for unpaid leave is given, the employee may elect to use accrued annual leave, flex leave or time off in lieu.

318. The Ombudsman may refuse to release an employee from duty having regard to business requirements and whether the employee's attendance is necessary for the Court, Tribunal or Royal Commission hearing.

Section 7: Employee support and workplace culture

Blood donation

319. An employee can take reasonable time away from duty during their ordinary work hours to donate blood, plasma or platelets. It includes reasonable travel time and employers will consider employees on duty.

320. The employee must inform their manager in advance of when they will be away from work before donating blood, plasma or platelets.

Vaccinations

321. The Office will offer annual influenza vaccinations to all employees at no cost.

322. Where the Office requires an employee performing a role to be vaccinated for a particular condition, this vaccination will be offered at no expense to the employee.

Employee Assistance Program

323. Employees, their partners, and their dependants/children will have access to a confidential, professional counselling service to assist employees to manage personal and work issues. This service will be provided at no cost to employees by the Office and will be accessible on paid time.

Respect at work

Principles

324. The Office values a safe, respectful and inclusive workplace free from physical and psychological harm, harassment, discrimination and bullying. The Office recognises

that preventing sexual harassment, sex discrimination, sex-based harassment and victimisation in the workplace is a priority.

325. The Office recognises that approaches to prevent sexual harassment, sex discrimination, sex-based harassment and victimisation in the workplace should be holistic and consistent with the Australian Human Rights Commission's guidance, including the *Good Practice Indicators Framework for Preventing and Responding to Workplace Sexual Harassment*.

Consultation

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

Family and domestic violence support

327. The Office will provide support for employees affected by family and domestic violence, depending on the employee's circumstances.

328. The Office recognises that a holistic approach should be taken to support the employee, appropriate for the employee's individual circumstances.

329. Family and domestic violence support, including paid leave, are available to all employees covered by this agreement.

330. An employee experiencing family and domestic violence is able to access paid miscellaneous leave. Reasons an employee experiencing family and domestic violence may access this leave include, but are not limited to:

330.1. illness or injury affecting the employee resulting from family and domestic violence;

330.2. providing care or support to a family member (including a household member) who is also experiencing family and domestic violence, and is ill or injured as a result of family and domestic violence;

330.3. providing care or support to a family member (including a household member) who is also experiencing family and domestic violence, and is affected by an unexpected emergency as a result of family and domestic violence;

330.4. making arrangements for the employee's safety, or the safety of a close relative;

330.5. accessing alternative accommodation;

330.6. accessing police services;

330.7. attending court hearings;

330.8. attending counselling; and

330.9. attending appointments with medical, financial or legal professionals.

331. This entitlement exists in addition to an employee's existing leave entitlements and may be taken as consecutive days, single days or part days and will count as service for all purposes.

332. Given the emergency context in which leave may need to be accessed, employees can proceed to take the leave and seek approval at a later date, as soon as practicable.

333. These family and domestic violence support clauses do not reduce an employee's entitlement to family and domestic violence leave under the NES.

334. Paid miscellaneous leave available under this clause is paid for ongoing and non-ongoing employees at their full rate as if they were at work.

335. Paid leave for casual employees under this clause is paid at their full pay rate for the hours they were rostered to work in the period they took leave.

336. Evidence may be requested to support the Office in approving leave. In most cases, this will not be required. Where it is required, this will be discussed with the employee and a statutory declaration is the only form of evidence the Office will require, unless the employee chooses to provide another form of evidence.
337. An employee may also choose to provide other forms of evidence, including a medical certificate, or document issued by the Police Service, a Court, a Doctor, district Nurse, a Family Violence Support Service or Lawyer.
338. The Office will take all reasonable measures to treat information relating to family and domestic violence confidentially. The Office will adopt a 'needs to know' approach regarding communication of an employee's experience of family and domestic violence, subject to steps the Office may need to take to ensure the safety of the employee, other employees or persons, or mandatory reporting requirements.
339. Where the Office needs to disclose confidential information for purposes identified in clause 338, where it is possible the Office will seek the employee's consent and take practical steps to minimise any associated safety risks for the employee and/or privacy breaches.
340. The Office will not store or include information on the employee's payslip in relation to the employee's experience of family and domestic violence; any leave accessed for the purposes of family and domestic violence; or support(s) provided by the employer, unless otherwise required by legislation.
341. Other available support may include, but is not limited to, flexible working arrangements, additional access to EAP, changes to their span of hours or pattern of hours and/or shift patterns and/or location of work where reasonably practicable.
342. The Office will acknowledge and take into account an employee's experience of family and domestic violence if an employee's attendance or performance at work is affected.
343. Further information about leave and other support available to employees affected by family and domestic violence may be found in policy.

Integrity in the APS

344. The Office understands that procedural fairness is essential in building and maintaining trust with APS employees, and that it requires fair and impartial processes for employees affected by APS-wide or Office decisions.

345. Employees are to give advice that is frank, honest, timely and based on the best available evidence. This includes scientific and engineering advice based on evidence-based facts guided by the best available science and data. Employees will not be disadvantaged or discriminated against because they have given advice in accordance with their expertise or professional qualifications and in accordance with the APS Code of Conduct in the PS Act.

346. Employees can, during their ordinary work hours, take time to:

346.1. access an APS-wide ethics advisory service or another similar service provided by a professional association such as a law society or in the agency; and

346.2. attend Office mandated training about integrity.

First Nations cultural competency training

347. The Ombudsman will take reasonable steps to ensure all substantive, ongoing EL2 employees employed at the commencement of this agreement or any new substantive, ongoing EL2 employees who commence within the first 6 months of this agreement will complete relevant First Nations cultural competency training within 12 months of the commencement of the agreement.

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

Lactation and breastfeeding support

349. Reasonable paid time during work hours will be provided for lactation breaks for breastfeeding, expressing milk and other associated activities.

350. The Office will provide access to appropriate facilities for the purpose of breastfeeding or expressing milk, subject to clause 351. In considering whether a space is appropriate, an agency should consider whether:

350.1. there is access to refrigeration;

350.2. the space is lockable; and

350.3. there are facilities needed for expressing, such as appropriate seating.

351. Where it is not practicable for an Office site to have a designated space, a flexible approach will be taken so that the employee can access the support required.

352. The Office will facilitate discussion between individual employees and their managers about accommodating the employee's lactation needs and practical arrangements to meet these needs.

353. The manager and employee shall discuss any flexible working arrangements that may be needed to support lactation. This may include consideration of arrangements such as working from home and/or remote working or varying work hours on an ad-hoc or regular basis. Wherever possible, requests by an employee will be accommodated, noting these needs may be changed over time.

354. Further information is available in policy.

Disaster support

355. Where an official disaster or emergency is declared and this prevents an employee from reasonably attending work, or where it impacts their household or home, the Ombudsman will consider flexible working arrangements to assist the employee to perform their work.

356. Where flexible working arrangements are not appropriate, the Ombudsman may grant paid miscellaneous leave to an employee with regard to the scale and nature of the emergency. This leave counts as service and may be approved retrospectively.

357. In considering what period of leave is appropriate, the Ombudsman will take into account the safety of the employee, their family (including their household) and advice from local, State and Commonwealth authorities.

Section 8: Performance and development

Performance management

358. The Performance Management Framework (PMF) is the framework for guiding and handling performance management, performance assessment, performance/career development and managing underperformance within the Office.

359. The aim of the PMF is to ensure:

359.1. that performance expectations are clearly articulated and managed;

359.2. role and goal clarity are clearly established;

359.3. there is a clear link between the employee's individual/team performance and the achievement of the Office's Strategic objectives;

359.4. regular communication/feedback and constructive assessment in relation to employee performance and behaviour is facilitated and promoted;

359.5. employee learning and development needs are identified and addressed;

359.6. high performance is recognised; and

359.7. a structured process for managing underperformance is in place.

360. The two key elements of the PMF are the Performance Management Program (PMP) Guidelines and Managing Underperformance Guidelines. The PMP Guidelines and Managing Underperformance Guidelines, as varied from time to time, outline the detailed processes and requirements in relation to these two elements.

361. The PMF applies to all Office employees, with the following exceptions:

361.1. employees on probation;

361.2. non-ongoing employees are excluded from certain requirements under the PMP; and

361.3. the provisions contained in the Managing Underperformance Guidelines do not apply to non-ongoing employees.

362. In addressing issues where employees are not performing to the required standard, the PMF is designed to:

362.1. have regard to the principles of procedural fairness;

362.2. ensure processes are timely and effective;

362.3. restore performance of the employee to the required standard; and

362.4. have regard to the individual circumstances of the employee, including any health issues.

363. Salary advancement through a classification and/or broadband is subject to employees' performance being assessed as at least fully effective under the PMP and the employee meeting the requirements of clause 29.1 and 29.2.

Workloads

364. The Office recognises the importance of employees balancing their work and personal life. While it is acknowledged that at times it may be necessary for some extra hours being worked by some employees, this should be regarded as the exception rather than the rule.

365. When determining workloads for an employee or group of employees, the Office will consider the need for employees to strike a balance between their work and personal life.

366. Where an employee or group of employees raise that they have experienced significant workload pressures over a prolonged period of time, the Office and employee/s together must review the employees' workloads and priorities, and determine appropriate strategies to manage the impact on the employee or group of employees.

Study assistance

367. The Ombudsman is committed to supporting employees undertaking formal studies that are relevant both to the employee's career and to the Office.

368. 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 operational requirements, 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

369. 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 ordinary hours.

370. The Ombudsman may approve miscellaneous leave per semester, including full time study, for research, exam preparation and to sit exams, which may be paid or unpaid. This leave will not count towards the 60 hours paid study leave covered under clause 369.

Financial assistance

371. 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 costs incurred and successful completion of approved studies. The amounts are:

371.1. University students: \$292 per unit (subject) to a maximum payment of \$1166 per academic year

371.2. TAFE students: \$292 per semester – total \$583 per academic year.

372. The bursary payment is not payable to employees on leave without pay.



373. 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

374. Travel time of up 30 minutes each way will be granted to attend approved study activity within agreed ordinary hours.

375. Employees may have reasonable use of Ombudsman office equipment, for purposes connected with their approved course of study, outside standard hours with approval of their supervisor.

Professional qualifications

376. The Office will reimburse professional association membership costs and/or accreditation or registration fees where these are required for the performance of an employee's duties (up to \$1,000 per annum in all but exceptional circumstances). This reimbursement is subject to the employee providing suitable evidence of the expense and prior approval.

Section 9: Travel and location-based conditions

Travel

Eligibility for travel allowance

377. Employees travelling between centres in Australia for official purposes which require an overnight absence will be entitled to an allowance in respect of accommodation, meals, and incidental expenses.

378. The Office will adopt the rates contained in the applicable Australian Taxation Office Determination as varied from time to time.

379. 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.

380. 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.

Travelling time

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

382. Travel time for air travel will commence one hour prior to flight departure (2 hours for international flights) and one hour after flight arrival.

383. Employees will travel on the day of business where a flight is available, unless otherwise agreed by the Ombudsman. 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, travel time cannot be claimed.

Eligibility for part day travel allowance

384. An employee who travels away from the usual place of work on Office 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 Office 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

385. 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.

386. 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.

387. 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.

Overseas travel

388. Business class travel may be used where an employee is required to travel overseas on official business.

389. Where an employee travels overseas on official business, subject to Ombudsman approval, he or she will be provided with:

389.1. 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;

389.2. 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; and

389.3. a cash advance to cover projected expenses likely to be incurred in the course of his or her work. For example, interpreter fees.

390. 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.

391. The Ombudsman will agree to 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.

392. Where the employee pays for any such treatment themselves, the Ombudsman will reimburse the employee the cost of the treatment.

Relocation assistance

Temporary relocation assistance for periods of greater than 3 weeks

393. Where an employee is required to work in a different geographic location for more than three weeks the Ombudsman, in consultation with the employee, will approve an agreed package of assistance – from the day on which the employee commences work in the temporary locality. 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 caretaking or maintenance costs. Any assistance will exclude payment for rates, land tax and insurance.

Temporary relocation in excess of 13 weeks

394. Where an employee is required to work, on a temporary basis, in a different geographic location for more than 13 weeks, in addition to the package of assistance agreed under clause 393 the Ombudsman will also agree to one or more of the following (where applicable):

394.1. payment of reasonable transport and removal costs to and from the new location;

394.2. payment of costs to store household furniture; and/or

394.3. 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.

395. An employee who requests to temporarily work in another geographic location may receive temporary assistance at the discretion of the Ombudsman.

Permanent relocation assistance

396. Where an APS employee is required to relocate at the request of the Office (such as a promotion), the employee will be provided with financial relocation assistance.

397. Where an employee is required to relocate on engagement with an Office, the employee will be provided with financial relocation assistance.

398. Reasonable expenses associated with the relocation include:

398.1. moving of household furniture and effects to the new location;

398.2. cost of transporting the employee and his or her family to the new location;

398.3. up to four weeks temporary accommodation at the new location;

398.4. payment of a disturbance allowance of \$512 (employee without dependants or partner), \$1042 (employee with one or more dependants or partner) and \$219 (full-time student dependant child);

398.5. 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;

398.6. reasonable familiarisation and organisation travel ahead of the move

398.7. the reimbursement of the cost of the insurance premium based on a reasonable replacement value; and

398.8. movement of pets, motor vehicles or costs associated with the move that is reasonable or unavoidable.

399. The Ombudsman may agree to the payment of some or all of the costs detailed in clause 398 where an existing employee has:

399.1. a partner who is also entitled to the payment of removal or similar expenses;
or

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

400. Additional relocation assistance may be considered by Ombudsman discretion.

Section 10: Consultation, representation and dispute resolution

Consultation

Principles

401. Genuine and effective consultation with employees and the relevant union(s), taking into account the diverse needs of employees, fosters a positive and inclusive workplace, enabling the views of employees to be considered.

402. The Office recognises:

402.1. the importance of inclusive and respectful consultative arrangements;

402.2. employees and the relevant union(s) should have a genuine opportunity to influence decisions;

402.3. the nature and extent of consultation will vary depending on the proposed change and the likely impact on employees. Consultation on agency policies may occur over at least 2 weeks, whereas a major change is likely to require a more extensive consultation process;

402.4. consultation with employees and relevant unions(s) on workplace matters that significantly affect or materially impact them is sound management practice; and

402.5. the benefits of employee and union involvement and the right of employees to be represented by their union.

403. Genuine and effective consultation involves:



- 403.1. providing employees and the relevant union(s) with a genuine opportunity to influence the decision prior to a decision being made;
- 403.2. providing all relevant information to employees and the relevant union(s) in a timely manner to support consideration of the issues;
- 403.3. considering feedback from employees and the relevant union(s) in the decision-making process; and
- 403.4. advising employees and the relevant union(s) of the outcome of the process, including how their feedback was considered in the decision-making process.

When consultation is required

404. Consultation is required in relation to:

- 404.1. changes to work practices which materially alter how an employee carries out their work;
- 404.2. changes to or the introduction of policies or guidelines relevant to workplace matters (unless the changes are minor or procedural);
- 404.3. major change that is likely to have a significant effect on employees;
- 404.4. implementation of decisions that significantly affect employees;
- 404.5. changes to employees' regular roster or ordinary hours of work (subject to any other relevant provisions in this agreement); and
- 404.6. other workplace matters that are likely to significantly or materially impact employees.

405. The Office, employees and the relevant union(s) recognise that consultation prior to a decision may not be practicable where a decision is made by Government or is required due to matters beyond the reasonable control of the agency. In these circumstances, consultation regarding the implementation of the decision will occur as early as is reasonably practicable.

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

406. Clauses 404-417 apply if the Office:

406.1. proposes to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or

406.2. proposes to introduce a change to the regular roster or ordinary hours of work of employees.

Representation

407. Employees may appoint a representative for the purposes of the procedures in this clause. A representative for the purpose of this clause may be a union representative.

408. The Office must recognise the representative if:

408.1. a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and

408.2. the employee or employees advise the employer of the identity of the representative.

Major change

409. In this clause, a major change is **likely to have a significant effect on employees** if it results in, for example:

409.1. the termination of the employment of employees; or

409.2. major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or

409.3. the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or

409.4. the alteration of hours of work; or

409.5. the need to retrain employees; or

409.6. the need to relocate employees to another workplace; or

409.7. the restructuring of jobs.

410. The following additional consultation requirements in clause 411 to 417 apply to a proposal to introduce a major change referred to in clause 404.3.

411. Consultation with employees and the relevant union(s) and/or recognised representatives will occur prior to a decision being made, subject to clause 405.

412. Where practicable, an Office change manager or a primary point of contact will be appointed and their details provided to employees and the relevant union(s) and/or their recognised representatives.

413. The Office must notify employees and relevant union(s) and/or recognised representatives of the proposal to introduce the major change as soon as practicable.

414. As soon as practicable after proposing the change, or notifying of the change in circumstances described at clause 405, the Office must:

414.1. discuss with affected employees and relevant union(s) and/or other recognised representatives:

414.1.1. the proposed change:

414.1.2. the effect the proposed change is likely to have on the employees; and

414.1.3. proposed measures to avert or mitigate the adverse effect of the proposed change on the employees; and

414.2. for the purposes of the discussion – provide, in writing, to employees and the relevant union(s) and/or other recognised representatives:

414.2.1. all relevant information about the proposed change, including the nature of the change proposed; and

414.2.2. information about the expected effects of the proposed change on the employees; and

414.2.3. any other matters likely to affect the employees.

415. The Office must give prompt and genuine consideration to matters raised about the major change by employees and the relevant union(s) and/or other recognised representatives.

416. However, the Office is not required to disclose confidential or commercially sensitive information to employees and the relevant union(s) and/or other recognised representatives.

417. If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the Office, the requirements set out in clauses 411 to 416 are taken not to apply.

Change to regular roster or ordinary hours of work

418. The following additional consultation requirements in clause 419 to 421 apply to a proposal to introduce a change referred to in clause 404.5.

419. The Office must notify affected employees and the relevant union(s) and/or other recognised representatives of the proposed change.

420. As soon as practicable after proposing to introduce the change, the Office must:

420.1. discuss with employees and the relevant union(s) and/or other recognised representatives:

420.1.1. the proposed introduction of the change; and

420.2. for the purposes of the discussion – provide to the employees and relevant union(s) and/or other recognised representatives:

420.2.1. all relevant information about the proposed change, including the nature of the proposed change; and

420.2.2. information about what the employer reasonably believes will be the effects of the proposed change on the employees; and

420.2.3. information about any other matters that the employer reasonably believes are likely to affect the employees; and

420.3. invite employees and the relevant union(s) and/or other recognised representatives to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities). However, the Office is not required to disclose confidential or commercially sensitive information to the relevant employees and the relevant union(s) and/or other recognised representatives.

421. The Office must give prompt and genuine consideration to matters raised about the proposed change by the employees and the relevant union(s) and/or other recognised representatives.

Interaction with emergency management activities

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

Agency consultative committee

423. The Ombudsman may establish an agency consultative committee to discuss relevant workplace matters.

424. Office consultative committees will operate subject to an agreed terms of reference and structure for the term of the agreement. Representation on the committee will be in accordance with the terms of reference.

APS consultative committee

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

Dispute resolution

426. If a dispute relates to:

426.1. a matter arising under the agreement; or

426.2. the National Employment Standards;

this term sets out procedures to settle the dispute.

427. An employee or union who is covered by this agreement may initiate and/or be a party to a dispute under this term.

428. An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term. Representatives will be recognised and dealt with in good faith.

429. Parties to the dispute must attempt to resolve the dispute at the workplace level, by discussion between the employee or employees and relevant managers. Parties to the dispute will notify higher level managers to assist in the resolution of the dispute. Parties will give genuine consideration to proposals to resolve the dispute.

430. If a dispute about a matter arising under this agreement is unable to be resolved at the workplace level, and all appropriate steps under clause 429 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.

431. The Fair Work Commission may deal with the dispute in 2 stages:

431.1. the Fair Work Commission will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and

431.2. if the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:

431.2.1. arbitrate the dispute; and

431.2.2. make a determination that is binding on the parties.

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

432. While the parties are attempting to resolve the dispute using the procedures in this term:

432.1. an employee must continue to perform their work as they would normally in accordance with established custom and practice at the Office that existed immediately prior to the dispute arising unless they have a reasonable concern about an imminent risk to their health or safety; and

432.2. subject to 432.1, an employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace, unless:

432.2.1. the work is not safe; or

432.2.2. applicable work health and safety legislation would not permit the work to be performed; or

432.2.3. the work is not appropriate for the employee to perform; or

432.2.4. there are other reasonable grounds for the employee to refuse to comply with the direction.

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

434. Any disputes arising under the Office of the Commonwealth Ombudsman Enterprise Agreement 2017–2020 as maintained by Determination 2022/01 or the National Employment Standards that were formally notified under clause 84.1 of the

Office of the Commonwealth Ombudsman Enterprise Agreement 2017–2020 before the commencement of this agreement, that remain unresolved at the date of commencement of this agreement, will be progressed under the dispute resolution procedures in this agreement.

Leave of absence to attend proceedings

435. Where the provisions of clauses 426 to 430 have been complied with, and to assist in the resolution of the matter, the employee, and/or the union delegate or other employee representative referred to in clause 428, or employee required to provide evidence, will be granted paid time to attend dispute resolution processes and proceedings in the Fair Work Commission arising from referral of the matter in clause 430.

Delegates' rights

436. Union delegates play an important and legitimate role in the workplace. This includes representing their members and supporting employee access to union officials, and providing employee views to the agency.

437. The role of union delegates is to be respected and supported.

438. The Office and union delegates will work together respectfully and collaboratively.

Supporting the role of union delegates

439. The Office respects the role of union delegates to:

439.1. provide information, consult with and seek feedback from employees in the workplace on workplace matters;

439.2. consult with other delegates and union officials, and get advice and assistance from union officials;

439.3. represent the interests of members to the employer and industrial tribunals;
and

439.4. represent members at relevant union forums, consultative committees or bargaining.

440. The Office and union delegates recognise that undertaking the role of a union delegate is not the primary purpose of an employee's engagement, and must work with and not unreasonably impact their regular duties. Honorary officials may request additional time and facilities from time to time.

441. Union delegates will be provided with reasonable paid time during their normal working hours to perform their union delegate role. The paid time provided should not result in disruption to critical services or operational requirements.

442. To support the role of union delegates, the Office will, subject to legislative and operational requirements, including privacy and security requirements:

442.1. provide union delegates with reasonable access to agency facilities and resources, including for paid or unpaid meetings between employees and their unions and to communicate with union officials;

442.2. advise union delegates and other union officials of the agency facilities and resources available for their use, which may include telephone, photocopying, internet, and email;

442.3. allow reasonable official union communication appropriate to the agency from union delegates with employees, including through email, intranet pages and notice boards. This may include providing a link to a union website for employees to access union information. Any assistance in facilitating email communications does not include an agency vetoing reasonable communications;

442.4. provide access to new employees as part of induction; and

442.5. provide reasonable access to union delegates to attend appropriate paid time training in workplace relations matters, during normal working hours.

443. Where APS employees are elected as officials of a trade union or professional association, they are not required to seek permission from the workplace or Office before speaking publicly in that capacity, subject to the APS Code of Conduct and legislative requirements.

Section 11: Separation and retention

Resignation

444. An employee may resign from their employment by giving the Ombudsman at least 14 calendar days' notice.

445. At the instigation of the Ombudsman, the resignation may take effect at an earlier date within the notice period. In such cases, the employee will receive paid compensation in lieu of the notice period which is not worked.

446. The Ombudsman has the discretion to agree to a shorter period of notice or waive the requirement to give notice.

Payment on death of an employee

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

Redeployment, retraining, redundancy

Coverage

448. This Part only applies to ongoing employees covered by this Agreement who are not on probation.

Definition of excess employees

449. An employee is an excess employee if:

449.1. 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;

449.2. 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; or

449.3. 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.

Consultation with potentially excess employees

450. When the Ombudsman becomes aware that an employee is likely to become an excess employee (i.e. potentially excess), the Ombudsman will advise the employee of the situation in writing.

451. The Ombudsman will, as soon as possible, hold discussions with the employee or, where they choose, his or her nominated representative, to consider:

451.1. actions that might be taken to reduce the likelihood of the employee becoming excess;



451.2. redeployment opportunities for the employee within the Office or another APS Agency; and

451.3. the possibility of voluntary redundancy.

452. 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.

453. This consultation period will extend for at least a one month period, but may be reduced with the written agreement of the employee.

454. Where 15 or more employees are likely to become excess, the Ombudsman will comply with Division 2, Part 3-6 of the *Fair Work Act 2009*.

Voluntary redundancy

455. At the end of the consultation period (unless the employee agrees to a shorter period) referred to under clause 450 to 454 the Ombudsman may advise, in writing, the employee who has been identified as potentially excess that they are excess to the Office's requirements and make an offer of voluntary redundancy.

456. The advice provided to the employee under clause 455 will include, if this has not already been provided to the employee during the consultation period:

456.1. the amounts payable as redundancy pay, pay in lieu of notice and accrued annual and long service leave credits;

456.2. information in relation to the amount of accumulated superannuation contributions and superannuation options, or where this is not practicable, advice on how the employee can ascertain this information; and

456.3. any taxation applying to the various redundancy payments.

457. Where the Ombudsman invites an excess employee to accept voluntary redundancy, the employee will have one month to accept that offer (the consideration period). 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.

458. Only one offer of voluntary redundancy will be made to an excess employee.

459. 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.

460. Where an excess employee agrees to redundancy, the Ombudsman may terminate the employee's employment, by giving the required notice of termination of employment, under s.29 of the *Public Service Act 1999*. The period of notice will be 4 weeks (or 5 weeks for an employee over 45 and with at least 5 years of continuous service).

461. Where an employee's employment is terminated at the beginning of, or within, the notice period, the employee will receive payment in lieu of notice as set out in the *Fair Work Act 2009* for the unexpired portion of the notice period.

462. Employees not accepting an offer of voluntary redundancy will be covered by clauses 472-480.

Redundancy pay

463. An employee who accepts an offer of voluntary redundancy and whose employment is terminated by the Ombudsman under s.29 of the *Public Service Act 1999* on the grounds that he/she is excess to the requirements of the Office, 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).

464. The minimum sum payable will be 4 weeks' salary and the maximum will be 48 weeks' salary.

465. 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 to clause 471), subject to any minimum amount the employee is entitled to under the NES.

Service for redundancy pay

466. The following types of service are counted in the calculation of service for the purposes of redundancy pay:

466.1. Service in the Office of the Commonwealth Ombudsman.

466.2. Government service as defined in s.10 of the *Long Service Leave Act 1976*.

466.3. 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.

466.4. Service with the Australian Defence Forces.

466.5. APS service immediately preceding deemed resignation under repealed s.49 of the *Public Service Act 1922*, if service has not been recognised for redundancy pay purposes.

466.6. Service in another organisation where:

466.6.1. an employee was transferred from the APS to that organisation with a transfer of function; or

466.6.2. an employee engaged by that organisation on work within a function is engaged in the APS as a result of the transfer of that function to the APS; and

466.6.3. such service is recognised for long service leave purposes.

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

467.1. the break in service is less than one month and occurs where an offer of employment with the new employer was made and accepted by the employee before ceasing employment with the preceding employer; or

467.2. the earlier period of service was with the APS and ceased because the employee was deemed to have resigned from the APS on marriage under the repealed s.49 of the *Public Service Act 1922*.

468. Any period of service which ceased for the following reasons will not count as service for redundancy pay purposes.

468.1. by way of termination under s.29 of the *Public Service Act 1999*;

468.2. on a ground equivalent to any ground listed in this clause;

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

468.4. with payment of a redundancy benefit or similar payment or an employer financed retirement benefit.

469. Absences from work that do not count as service for leave purposes will not count as service for severance pay purposes.

Rate of payment for redundancy benefit

470. For the purposes of calculating any payment for the redundancy benefit, salary will include:

470.1. the employee's salary at the substantive work value level; or

470.2. 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; and

470.3. other allowances in the nature of salary which are paid during periods of annual leave and on a regular basis, excluding allowances which are a reimbursement for expenses or a payment for disabilities associated with the performance of duty.

471. 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:

471.1. 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.

Involuntary redundancy provisions

Retention periods

472. The purpose of the retention period is to allow an employee to continue to remain employed whilst attempting to secure alternative employment.

473. An excess employee who has declined a voluntary redundancy will be entitled to the following periods of retention:

473.1. 56 weeks where an employee has 20 years or more service or is over 45 years of age; or

473.2. 30 weeks for all other employees.

474. If an employee is entitled to a redundancy payment in accordance with the National Employment Standards, the relevant period in clause 473 will be 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).

475. The retention period will not be extended by any periods of personal leave supported by medical evidence taken by the excess employee during the retention period unless, after considering the circumstances of the individual case, the Ombudsman deems an extension as a result of the period of leave taken to be reasonable.

476. The retention period will commence on the earlier of the following:

476.1. the day the employee advises the Ombudsman in writing that they do not accept the offer of voluntary redundancy made under clause 455; or

476.2. one month after the day on which the Ombudsman offered the employee voluntary redundancy under clause 455.

477. During the retention period the Ombudsman:

477.1. will continue to try and redeploy the excess employee to suitable vacancies that arise within the Office; and/or

477.2. 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).

478. It is the excess employee's responsibility to take all reasonable steps to identify and apply for suitable vacancies at their substantive level.

479. 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.

480. Where an excess employee is required to move the employee's household to a new locality as a result of a reduction in classification under clause 477.2 the Ombudsman will approve reasonable expenses where these expenses are not met by the prospective employer.

Insufficient productive work available during retention period

481. 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 are no reasonable redeployment prospects in the APS:

481.1. the Ombudsman may, with the agreement of the employee, terminate the employee's employment under s.29 of the *Public Service Act 1999*; and

481.2. upon termination, the employee will be paid a lump sum comprising:

481.2.1. the balance of the retention period (as shortened for the National Employment Standards under clause 473) and this payment will be taken to include the payment in lieu of notice of termination of employment; and

481.2.2. an additional redundancy payment equal to the amount the retention period was shortened by under clause 473.

Involuntary termination of employment

482. 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*.

483. 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.

484. 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.

485. 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.

486. The specified periods of notice will as far as practicable be concurrent with the retention periods.

487. During the retention period, the Office will provide reasonable development opportunities to assist the excess employee with redeployment.

Attachment A – Base salaries

| Classification | As at 31 August 2023 | From the latter of commencement of the agreement or 14 March 2024 | From 13 March 2025 | From 12 March 2026 |
|-------------------------------|----------------------|---|--------------------|--------------------|
| APS 1.1 | \$49,228 | \$52,000 | \$54,516 | * |
| APS 1.2 | \$50,882 | \$52,917 | \$54,928 | \$57,497 |
| APS 1.3 | \$52,261 | \$54,351 | \$56,416 | \$58,334 |
| APS 1.4 | \$54,412 | \$56,588 | \$58,738 | \$60,946 |
| APS 2.1 | \$55,714 | \$57,943 | \$60,145 | \$62,775 |
| APS 2.2 | \$57,248 | \$59,538 | \$61,800 | \$63,901 |
| APS 2.3 | \$58,754 | \$61,104 | \$63,426 | \$65,582 |
| APS 2.4 | \$60,278 | \$62,689 | \$65,071 | \$67,283 |
| APS 2.5 | \$61,782 | \$64,253 | \$66,695 | \$68,963 |
| APS 3.1 | \$63,459 | \$65,997 | \$68,505 | \$70,834 |
| APS 3.2 | \$65,109 | \$67,713 | \$70,286 | \$72,676 |
| APS 3.3 | \$66,762 | \$69,432 | \$72,070 | \$74,520 |
| APS 3.4 | \$68,492 | \$71,232 | \$73,939 | \$76,820 |
| APS 4.1 | \$70,727 | \$73,556 | \$76,351 | \$78,947 |
| APS 4.2 | \$72,977 | \$75,896 | \$78,780 | \$81,459 |
| APS 4.3 | \$74,874 | \$77,869 | \$80,828 | \$83,576 |
| APS 4.4 | \$76,791 | \$79,863 | \$82,898 | \$86,246 |
| APS 5.1 | \$78,883 | \$82,038 | \$85,155 | \$88,834 |
| APS 5.2 | \$81,360 | \$84,614 | \$87,829 | \$90,815 |
| APS 5.3 | \$83,648 | \$86,994 | \$90,300 | \$93,370 |
| APS 5.4 | ** | \$87,572 | \$91,809 | \$94,931 |
| APS 5.5 | ** | | | \$96,829 |
| APS 6.1 | \$85,204 | \$90,199 | * | * |
| APS 6.2 | \$87,323 | \$90,816 | \$94,563 | \$99,734 |
| APS 6.3 | \$89,711 | \$93,299 | \$96,844 | \$100,137 |
| APS 6.4 | \$94,221 | \$97,990 | \$101,714 | \$105,172 |
| APS 6.5 | \$97,871 | \$101,786 | \$105,910 | \$109,511 |
| APS 6.6 | ** | | | \$111,701 |
| EL 1.1 | \$109,223 | \$113,592 | \$117,908 | \$121,917 |
| EL 1.2 | \$117,945 | \$122,663 | \$127,324 | \$131,653 |
| EL 2.1 | \$127,176 | \$132,263 | \$137,289 | \$141,957 |
| EL 2.2 | \$134,133 | \$139,498 | \$144,799 | \$149,722 |
| EL 2.3 | \$144,148 | \$149,914 | \$155,611 | \$160,902 |
| * Lifted by pay fragmentation | | Blue = Increased by pay fragmentation | | |

Attachment B – Supported Wage System

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

Definitions

489. In this schedule:

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

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

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

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

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

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

Eligibility criteria

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

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

Supported wage rates

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

Table 2 Applicable percentage of relevant minimum wage paid to applicable employees

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

493. Provided that the minimum amount payable to an employee to whom the SWS applies is not less than the amount prescribed in the National Minimum Wage Order.
Note: The minimum amount payable is reviewed every year in July.

494. Where an employee's assessed capacity is 10 per cent, they must receive a high degree of assistance and support.

Assessment of capacity

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

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

Lodgement of SWS wage assessment agreement

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

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

Review of assessment

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

Other terms and conditions of employment

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

Workplace adjustment

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

Trial period

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

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

504. The minimum amount payable to the employee during the Trial Period must be no less than the current weekly rate, as determined by the Fair Work Commission.

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

506. Where the employer and employee wish to establish a continuing employment relationship following the completion of the Trial Period, a further contract of employment will be entered into based on the outcome of assessment under clause 495 and 496.