



# DECISION

*Fair Work Act 2009*

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

## **National Mental Health Commission**

(AG2024/979)

### **NATIONAL MENTAL HEALTH COMMISSION ENTERPRISE**

Agreement 2024-2027

Commonwealth employment

COMMISSIONER PLATT

ADELAIDE, 11 APRIL 2024

*Application for approval of the National Mental Health Commission Enterprise Agreement 2024 -2027*

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

[2] The matter was allocated to my Chambers on 3 April 2024.

[3] On 4 April 2024, I provided the parties with a table of issues to seek clarification about aspects of the Agreement and invited the Applicant to address these matters including through the provision of an undertaking.

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

[5] The Applicant has submitted an undertaking in the required form dated 9 April 2024, a copy of which is attached to this Agreement. The undertaking deals with the following topics:

- The definition of a shift worker has been inserted and will also be for the purposes of the National Employment Standards (NES).
- A Part-time minimum engagement has been inserted, consistent with the *Australian Public Service Enterprise Award 2015*.

- The requirement to prescribe the agreed part time hours of working including the start and finish times so as to determine when overtime is payable has been inserted, consistent with the *Australian Public Service Enterprise Award 2015*.
- Higher duties allowance will be paid to employees (APS1 – APS6) after half a day where they occupy a role at a classification level higher than their substantive classification level consistent with the *Australian Public Service Enterprise Award 2015*.
- Higher duties allowance will be paid to (EL1 or above) after one week where they occupy a role at a classification level higher than their substantive classification level.

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

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

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

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

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



COMMISSIONER

Printed by authority of the Commonwealth Government Printer

<AE524187 PR773406>

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



**Australian Government**

National Mental Health Commission

# **National Mental Health Commission Enterprise Agreement 2024-2027**

# Contents



## Australian Government

National Mental Health Commission

National Mental Health Commission	1
<b>National Mental Health Commission Enterprise Agreement 2024-2027</b>	<b>1</b>
<b>Section 1: Technical matters</b>	<b>7</b>
Title	7
Parties to the agreement	7
Operation of the agreement	7
Delegations	7
National Employment Standards (NES) precedence	7
Closed comprehensive agreement	7
Individual flexibility arrangements	8
Definitions	9
<b>Section 2: Remuneration</b>	<b>13</b>
Salary	13
Payment of salary	13
Salary setting	13
Incremental advancement	14
Salary packaging	15
Superannuation	15
Method for calculating superannuation salary	15
Salary on reduction	15
Overpayments	16
Supported wage system	16
<b>Section 3: Allowances and reimbursements</b>	<b>18</b>
Higher duties allowance	18
Motor vehicle allowance	18
Loss of, or damage to, clothing or personal effects	18
Retirement financial assistance	18
Restriction Allowance	19
Workplace responsibility allowances	19
Community language allowance	20

<b>Section 4: Classifications and broadbands</b> .....	<b>22</b>
Graduates.....	22
Trainee APS employees.....	22
Work Level Standards .....	22
<b>Section 5: Working hours and arrangements</b> .....	<b>23</b>
Job security .....	23
Commitment to ongoing employment and rebuilding APS capacity.....	23
Reporting.....	23
Pathways to permanency .....	23
Casual (irregular or intermittent) employment.....	23
Non-ongoing employment.....	23
Working hours.....	24
Flex for APS 1-6 classifications.....	25
Executive Level Time Off in Lieu (EL TOIL) .....	26
Overtime .....	26
Flexible working arrangements.....	27
Requesting formal flexible working arrangements.....	27
Varying, pausing or terminating flexible working arrangements .....	29
Working from home.....	30
Ad-hoc arrangements .....	30
Altering span of hours.....	30
Part-time work .....	30
Part-time employment and job sharing.....	31
Employees with caring responsibilities.....	31
Support for carers .....	31
Christmas Shutdown.....	31
Public holidays .....	31
<b>Section 6: Leave</b> .....	<b>33</b>
Annual leave.....	33
Purchased leave .....	34
Extended purchased leave.....	34
Recall to duty .....	34
Personal/carer’s leave .....	35
Transitional arrangements.....	35

Personal/carer's leave.....	35
Portability of leave .....	37
Re-crediting of leave .....	38
Long service leave .....	38
Miscellaneous leave.....	38
Unauthorised absence .....	39
Cultural, ceremonial and NAIDOC leave .....	39
NAIDOC leave .....	39
First Nations ceremonial leave.....	39
Cultural leave .....	40
Parental leave .....	40
Payment during parental leave.....	40
Adoption and long-term foster care .....	42
Stillbirth.....	42
Pregnancy loss leave .....	42
Premature birth leave .....	42
Transitional provisions.....	42
Compassionate leave .....	43
Bereavement leave .....	43
Emergency response leave .....	43
Jury duty.....	44
Defence reservist leave.....	44
Defence service sick leave .....	45
Leave to attend proceedings .....	45
<b>Section 7: Employee support and workplace culture .....</b>	<b>47</b>
Workplace Culture .....	47
Blood donation.....	47
Vaccinations.....	47
Employee Assistance Program.....	47
Respect at work .....	47
Principles.....	47
Consultation .....	48
Family and domestic violence support .....	48
Integrity in the APS .....	49

First Nations cultural competency training.....	50
Lactation and breastfeeding support.....	50
Disaster support.....	51
<b>Section 8: Performance and development .....</b>	<b>52</b>
Performance management .....	52
Workloads .....	52
Learning and development .....	53
Capability development .....	53
Study assistance .....	53
Professional membership/accreditation allowance .....	54
<b>Section 9: Travel and location-based conditions.....</b>	<b>55</b>
Travel .....	55
Relocation assistance.....	55
Car Parking .....	55
<b>Section 10: Consultation, representation and dispute resolution.....</b>	<b>56</b>
Consultation.....	56
Principles.....	56
General staff consultation.....	56
When consultation is required .....	57
Provisions for consultation on major change and introduction of a change to regular roster or ordinary hours of work of employees.....	57
Representation.....	57
Major change .....	57
Change to regular roster or ordinary hours of work.....	59
Interaction with emergency management activities .....	59
Agency consultative committee .....	60
APS consultative committee .....	60
Dispute resolution.....	60
Leave of absence to attend proceedings .....	61
Delegates' rights .....	61
Supporting the role of union delegates .....	62
<b>Section 11: Separation and retention.....</b>	<b>63</b>
Resignation .....	63
Termination of employment by NMHC .....	63
Redeployment, retraining, redundancy.....	63

Application .....	63
Workplace support .....	63
Consultation process.....	64
Invitation to express interest in voluntary redundancy .....	64
Redeployment and re-assignment of duties.....	64
<b>VOLUNTARY REDUNDANCY .....</b>	<b>65</b>
Consideration period .....	65
Period of notice.....	65
Accelerated separation .....	65
Where an offer of Voluntary Redundancy has been accepted.....	66
Severance Benefit – Recognition of Service .....	66
Severance benefit – rate of payment .....	67
<b>COMMENCEMENT OF RETENTION PERIOD .....</b>	<b>68</b>
Retention period .....	68
<b>INVOLUNTARY REDUNDANCY.....</b>	<b>69</b>
<b>Attachment A – Base salaries .....</b>	<b>70</b>
<b>Attachment B – Supported Wage System.....</b>	<b>71</b>
Definitions.....	71
Eligibility criteria.....	71
Supported wage rates .....	71
Assessment of capacity .....	72
Lodgement of SWS wage assessment agreement .....	72
Review of assessment .....	73
Other terms and conditions of employment .....	73
Workplace adjustment.....	73
Trial period .....	73



# Section 1: Technical matters

## Title

1. This agreement will be known as the National Mental Health Commission Enterprise Agreement 2024-2027.

## Parties to the agreement

2. This agreement covers:
  - 2.1 the Chief Executive Officer (CEO), for and on behalf of the Commonwealth of Australia as the employer;
  - 2.2 all employees in the Commission employed under the PS Act other than:
    - 2.2.1 Senior Executive Service employees or equivalent
  - 2.3 subject to notice being given in accordance with section 183 of the FW Act, the following employee organisation/s which were a bargaining representative for this agreement:
    - 2.3.1 Community and Public Sector Union.

## 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 CEO may delegate to or authorise any person to perform any or all of the CEO'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 Commission 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 Commission 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 Commission and employee in relation to one or more of the matters mentioned in clause 10; and
- 10.3 the arrangement is genuinely agreed to by the Commission and employee.

11. The Commission 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 Commission must ensure that the individual flexibility arrangement:

- 12.1. is in writing;
- 12.2. includes the name of the Commission and employee;
- 12.3. is signed by the Commission 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 Commission must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
14. The Commission 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 Commission and employee agree in writing – at any time.
15. The Commission 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.

**APS employee** refers to an employee employed under the Public Service Act 1999 and has the same meaning as that contained within the Public Service Act 1999.

**Agency Head** means the Chief Executive Officer of the National Mental Health Commission or the Chief Executive Officer's delegate.

**Agreement** means the National Mental Health Commission 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 (7.00 am to 7.00 pm).

**Base rate of pay** means the rate of pay payable to the employee for their ordinary hours of work, but not including any of the following:

- incentive-based payments and bonuses;
- loadings;
- monetary allowances;
- overtime or penalty rates; and

any other separately identifiable amounts.

**Broadband** refers to the allocation of more than one approved classification by the Chief Executive Officer 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.

**Commission** means the National Mental Health Commission

**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.

**Excess employee** is an employee who is excess to the requirements of the Commission if the CEO determines:

- the employee is included in a class of employees employed by the Commission, and there are more employees in the class than is necessary for the efficient and economical working of the Commission;
- the services of the employee cannot be effectively used because of technological or other changes in the work methods, or changes in the nature, extent or organisation of the functions of the Commission; or
- the duties usually performed by the employee are to be performed by the employee at a different locality, and the employee is not willing to perform duties at that locality.

**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.

**Foster Child** means a child for whom the employee has assumed primary responsibility for the long term care of the child who is, or will be, under 16 years of age and the child is not (otherwise than because of fostering) a child of the employee or the employee's spouse or de facto partner.

**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.

**Permanent care order** is a court order which grants custody and guardianship of a child (up to the age of 18) to the person or persons named in the order (not being the child's parent).

**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.

**Salary** is the employee's annual rate of pay under this Agreement set in accordance with Attachment 1 of this Agreement or an individual's rate of pay in accordance with clause 17 of this Agreement.

**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.

**SES** is a Senior Executive Service employee under section 34 of the *Public Service Act 1999*

**Substantive** is an employee's permanent classification level.

**Work Level Standards (WLS)** describes the work of a particular employment group and the various work levels (classifications) within that group.

**Usual location of work** means a Commission office location for an employee as identified in the employee's letter of offer or other engagement documentation or otherwise as specified by the CEO to the employee in writing, or as agreed by the Commission and employee in writing.

## 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 (14 March 2024);
  - 18.2 3.8 per cent from the first full pay period on or after 1 March 2025 (13 March 2025);  
and
  - 18.3 3.4 per cent from the first full pay period on or after 1 March 2026 (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 Commission, the employee's salary will be paid at the minimum of the salary range of the relevant classification, unless the CEO determines a higher salary within the relevant salary range under these salary setting clauses.
22. The CEO 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 CEO will have regard to a range of factors (as relevant) including the employee's experience, qualifications and skills.
24. Where an employee commences ongoing employment in the Commission immediately following a period of non-ongoing employment in the Commission, the CEO 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 Commission.
25. Where an employee commences ongoing employment in the agency immediately following a period of casual employment in the Commission, the CEO 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 Commission.

26. Where an APS employee moves to the Commission at level from another APS agency, and their salary is above the maximum of the salary range for their classification, the CEO will maintain the employee's salary at that level, until it is absorbed into the salary range for that classification.
27. Where the CEO determines that an employee's salary has been incorrectly set, the CEO may determine the correct salary and the date of effect.

## **Incremental advancement**

28. Salary advancement to the next available pay point for ongoing and non-ongoing employees (excluding casuals) within all classification levels will occur from the beginning of the first full pay period commencing on or after 1 July each year subject to the following:
  - 28.1 completing the requirements of the Performance Development Scheme (PDS) unless there is reasonable cause not to have done so; and
  - 28.2 being assessed as achieving effective performance or better at the end of the PDS cycle; and
  - 28.3 having eligible service with the Commission at their substantive level or above (i.e. higher duties), for an aggregate of three months or more within the PDS planning cycle; and
  - 28.4 not being ineligible for salary advancement due to relevant administrative actions, including a sanction under section 15 of the PS Act; and
  - 28.5 any additional advancement provisions applying to specific groups of employees as outlined in this section.
29. Eligible service for salary advancement 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.
30. During a period of unpaid parental leave, employees will be eligible to advance a maximum of one pay point, regardless of the length of unpaid parental leave.
31. Employees may advance two or more pay points subject to agreement by the CEO and linked to performance outcomes where the employee receives a rating greater than three (3) (fully effective).
32. Where an employee's performance is outstanding the CEO can approve an employee moving from a pay point in a classification to an amount within the Zone of Discretion for that classification.



## **Salary packaging**

33. Employees may choose to sacrifice part of their salary for a range of non-cash benefits in accordance with legislation and government policy.
34. Employees may access salary packaging and may package up to 100% of salary. Where an employee takes up the option of salary packaging, the employee's salary for purposes of superannuation, severance and termination payments, and any other purposes, will be determined as if the salary packaging arrangement had not occurred.
35. Any fringe benefits tax incurred by individual employees as a result of salary packaging arrangements will be met by the individual employee on a salary sacrifice basis.

## **Superannuation**

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

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

39. The Commission 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.
40. Employer contributions will be made for all employees covered by this agreement.
41. Employer contributions will not be reduced by any other contributions made through salary sacrifice arrangements.

### **Payment during unpaid parental leave.**

42. 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.

## **Salary on reduction**

43. An employee's classification may be reduced at the employee's request or if the CEO directs.
44. Reduction by the CEO may occur in accordance with the PS Act.
45. If an employee requests in writing or is directed to perform work at a lower classification level temporarily or permanently, the CEO will determine the salary rate at the lower classification

level. The determination will reflect the employee's experience, qualifications and skills and the circumstances under which the reduction occurred.

## **Overpayments**

46. An overpayment occurs if the CEO (or the Commission) 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).
47. Where the CEO considers that an overpayment has occurred, the CEO will provide the employee with notice in writing. The notice will provide details of the overpayment.
48. If an employee disagrees that there has been an overpayment including the amount of the overpayment, they will advise the CEO 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.
49. If after considering the employee's response (if any), the CEO 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.
50. The CEO 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.
51. The Commission and employee may agree to make a deduction from final monies where there is an outstanding payment upon cessation of employment.
52. Interest will not be charged on overpayments.
53. Nothing in clauses 46 to 52 prevents:
  - 53.1 the Commission from pursuing recovery of the debt in accordance with an Accountable Authority Instruction issued under the Public Governance, Performance and Accountability Act 2013;
  - 53.2 the Commission from pursuing recovery of the debt through other available legal avenues; or
  - 53.3 the employee or the Commission from seeking approval to waive the debt under the Public Governance, Performance and Accountability Act 2013.

## **Supported wage system**

54. An employee may be paid a percentage of the relevant pay rate for their classification in line with their assessed capacity to do the work if they:
  - 54.1 have a disability;
  - 54.2 meet the criteria for a Disability Support Pension; and

- 54.3 are unable to perform duties to the capacity required.
55. Specific conditions relating to the supported wage system are detailed in Attachment B – Supported Wage System.

## Section 3: Allowances and reimbursements

### Higher duties allowance

56. 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.
57. 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 CEO.
58. 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.
59. Where an employee is assigned only part of the higher duties, the CEO will determine the amount of allowance payable.
60. Higher duties allowance will be payable while an employee is acting at a higher classification level as part of a job sharing arrangement where the duration of the arrangement is at least 2 working weeks.
61. The CEO may shorten the qualifying period for higher duties allowance on a case-by-case basis.
62. An employee who is reassigned duties at a higher level in an SES position for a period of ten (10) consecutive working days or more will be remunerated at a salary level determined by the CEO.

### Motor vehicle allowance

63. Motor Vehicle Allowance is payable where the CEO authorises an employee to use a private vehicle for official purposes. The use of a private vehicle for official purposes must result in greater efficiency or less expense for the Commission.

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

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

### Retirement financial assistance

65. An employee who is aged 54 years or over may receive a one-off reimbursement of up to \$567 (inclusive of GST) towards the cost of financial retirement advice.

## Restriction Allowance

66. The CEO may approve the provision of a restriction allowance payment to an individual or group of employees who has been directed to be contactable and available to be called out to perform extra duties outside their agreed bandwidth each week the employee is directed to be on call.
67. The weekly restriction allowance will be \$350 per week.
68. For any period of restriction allowance of less than one week in total, the employee will be paid 1/7 of the restriction allowance for each 24 hour period.
69. If an employee is on restriction allowance and is recalled to duty at a place of work, the employee will be paid overtime at the applicable rate of pay:
70. The minimum payment for recall to duty will be two (2) hours at the applicable overtime rate or the actual hours of overtime worked, whichever is the greater (including travel time).
71. If the employee is not recalled to the place of work the minimum payment will be one (1) hour or the actual hours of overtime worked whichever is the greater.
72. Executive level employees may, in certain circumstances, be eligible for payment of a restriction allowance as determined by the CEO.
73. If an executive level employee is recalled to work they will receive access to TOIL or in exceptional circumstances may receive overtime payment.

## Workplace responsibility allowances

74. A workplace responsibility allowance will be paid where an employee who is appointed by the Commission or elected to one of the following roles:
  - 74.1 First Aid Officer;
  - 74.2 Health and Safety Representative;
  - 74.3 Emergency Warden;
  - 74.4 Harassment Contact Officer; and
  - 74.5 Mental Health First Aid Officer.
75. An employee is not to receive more than one workplace responsibility allowance unless approved by the CEO due to operational requirements.
76. The rate will be:

Rate from commencement of the agreement	Rate from 13 March 2025	Rate from 12 March 2026
\$35.47 per fortnight	\$36.82 per fortnight	\$38.07 per fortnight

- 77. As a salary-related allowance, this value will continue to be increased in line with headline wage increases.
- 78. The full allowance is payable regardless of flexible work and part-time arrangements. A casual employee will also be paid the full amount.
- 79. An employee’s physical availability to undertake the role will be considered by the Commission 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 Health First Aid Officers and Health and Safety Representatives depending on work group arrangements.
- 80. 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

- 81. A community language allowance will be paid where the CEO 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 CEO. Further information is included in policy.
- 82. 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 CEO, 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 CEO.	\$2,870 per annum	\$2,979 per annum	\$3,080 per annum

- 83. The allowance is calculated annually and paid fortnightly.

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

## Section 4: Classifications and broadbands

### Graduates

87. The CEO can engage a person as a 'Commission Graduate' to participate in an approved appropriate training program.
88. An employee engaged as a Commission Graduate will be engaged as an ongoing employee at the minimum pay point of the Commission's APS Level 3 classification.
89. After six (6) months service, Commission Graduates who have received a rating of 3 (fully effective) or more in performance appraisals up to that date will advance to the maximum pay point of the APS Level 3.
90. On completion of their training program Commission Graduates will be assessed for advancement within the Commission's APS classification Level 3 – 5 broadband.
91. Commission Graduates will not be eligible for higher duties allowance during the course of the training program.
92. Advancement may only occur if:
  - a. sufficient work is available at the higher classification level;
  - b. the employee has gained the necessary skill and proficiencies to perform duties in accordance with the work level standards for that classification;
  - c. the employee is rated as performing at a rating of three (3) (fully effective) or more.

### Trainee APS employees

93. The CEO can engage a person as a 'Commission Trainee'.
94. A Commission Trainee employee will undertake a course of training determined by the CEO and be paid a percentage of the rate of pay applying to the minimum pay point of the APS 1 classification level, having regard to the average proportion of time spent in approved training.
95. Upon successful completion of their training requirements a Commission Trainee will be paid at the minimum APS 1 pay point.

### Work Level Standards

96. 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

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

#### Reporting

98. Where a consultative committee is in place, the Commission will report to the Commission 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 Commission.

#### Pathways to permanency

99. The Commission and the APS will comply with the casual conversion provision(s) of the FW Act. In addition, the Commission 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

100. A casual (irregular or intermittent) employee is defined in the definitions section.
101. A decision to expand the use of casual employees is subject to Consultation of this agreement.
102. The Commission 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.
103. 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.
104. 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.
105. 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.
106. A casual employee who is eligible for a Workplace Responsibility Allowance will be paid the full amount.

#### Non-ongoing employment

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

108. Non-ongoing employees will generally have the same terms and conditions of employment as ongoing employees under this agreement's terms, except:
- 108.1 personal/carer's leave accrual at clause 205; and
  - 108.2 redundancy provisions at clause 423 – 461, subject to clause 109.
109. If the non-ongoing employee's contract is not permitted by section 333E of the FW Act, then the redundancy provisions at clause 423 – 461 will apply.
110. If the redundancy provisions apply to an employee under clause 109, the agency must adhere to the consultation requirements at clause 371 – 394.

## Working hours

111. The Commission recognises that employees need to balance work and private lives and managers are committed to ensuring that their employees are able to access employment terms and conditions (including the utilisation of flextime credits, access to time off in lieu (TOIL) and payment for overtime), where eligible. It is the responsibility of individual employees to consult their managers in accessing these terms and conditions and to be aware that operational requirements may limit access to some conditions at certain times.
112. Managers and employees recognise and accept their mutual responsibility to integrate the management of working hours and leave planning, including flexible working arrangements, into the overall approach of business and workforce planning.
113. Ordinary hours of work for full-time employees are 150 hours per settlement period (four-week period). This equates to a standard day of 7 hours and 30 minutes. An employee's ordinary hours of work will be averaged over a twelve (12) month averaging period. This means that an employee's average ordinary hours of work will be calculated at any particular time by calculating the average during the twelve (12) month period immediately preceding that time.
114. The bandwidth of hours during which an employee may work their ordinary hours is 7.00am to 7.00pm Monday to Friday.
115. The pattern of hours by which an employee will work their ordinary hours should be agreed with his or her supervisor.
116. An employee at or below the APS 6 level must record their attendance.
117. Employees will not normally be required to work for more than 10 hours on any one day and should not work more than five (5) consecutive hours without taking a break of at least 30 minutes.
118. Standard attendance hours are 7 hours and 30 minutes from 8.30am to 12.30pm and 1.30pm to 5.00pm Monday to Friday. Standard attendance hours will apply:
- (i) if an employee and their supervisor cannot agree on a pattern of hours; or
  - (ii) if an employee's supervisor considers that the employee's attendance is unsatisfactory or that the employee is misusing flextime.

119. Where an employee is required to work at the Commission's offices more than ten (10) hours on any one day with limited notice, the employee will be provided with a meal at the Commission's expense.

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

120. Flextime is available to all APS level employees, including part-time employees.
121. Employees accumulate flextime within the Bandwidth.
122. The Commission's flextime arrangements include the following features:
- a) When an employee works more than their standard hours they will accumulate a flextime credit, and
  - b) when an employee works less than their standard hours they will incur a flextime debit;
  - c) flextime will be credited or debited on a one-for-one basis (i.e. one hour worked will result in one hour of flextime credit);
  - d) an employee may reduce their flextime credit (or incur a flextime debit) by taking a flextime absence, which is an absence from the workplace during standard working hours requested in advance by the employee and approved by the employee's supervisor;
  - e) a flextime absence may be taken in part or full days up to a maximum of five (5) consecutive days, subject to approval by the manager and operational requirements;
  - f) an employee may ordinarily carry over a maximum of 37.5 hours as a flextime credit, or up to 7 hours 30 minutes flextime debit, into the next settlement period;
  - g) by reaching an explicit agreement with the CEO, an employee can carry forward a flextime credit greater than 37.5 hours but must reduce the excess credit to 37.5 hours within four (4) weeks;
  - h) where excess flex credits are not reduced below 37.5 hours within four (4) weeks and no agreement has been reached in accordance with subclause 122 (g), the employee will be directed by the CEO to access flextime until the balance is below 37.5 hours;
  - i) a settlement period is a four (4) week period;
  - j) where an employee maintains a flextime debit balance in excess of 7 hours 30 minutes for four (4) weeks, the employee will be required to take any additional debits as leave without pay until the debit balance is reduced to 7 hours 30 minutes;
  - k) an employee with a flextime credit will where possible be allowed to use all of their accrued flextime credits before ceasing their employment, subject to approval by the manager and operational requirements.

## **Executive Level Time Off in Lieu (EL TOIL)**

123. Executive level (EL) employees are sometimes required to work reasonable additional hours. Consistent with the NES, employees may refuse to work unreasonable additional hours.
124. 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 Commission.
125. 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.
126. 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.
127. 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.
128. 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.
129. 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**

130. An APS level employee who is required by the CEO to work outside the bandwidth or on a public holiday is eligible to receive extra duty payment (overtime) or where agreed, time off in lieu of overtime payment.
131. Where an employee is directed to work outside the bandwidth, the employee will be entitled to an eight (8) hour break plus reasonable travelling time before commencing work again, and the employee's manager should direct the employee to take a break of eight (8) hours. If the break occurs during standard working hours, then the employee will receive their normal salary during that period.
132. Clause 130 does not apply to an employee who is directed to work outside the bandwidth for a period of two (2) hours or less and the period of work commences no earlier than two (2) hours before the beginning of the bandwidth.
133. Where a break as described in Clause 131 above is not possible due to operational requirements, the employee will be paid for subsequent periods of work at the applicable overtime rate until the employee has taken an eight (8) hour break.
134. An employee cannot claim flex and also receive an extra duty payment in respect of the same hours. An employee should have a break of at least eight (8) hours between finishing the extra duty and commencing work again.

135. Where overtime is worked, the rate of payment (or time off in lieu if the employee elects) is calculated at the following rates:
- a) Monday to Saturday: time-and-a-half;
  - b) Sunday: double-time; and
  - c) Public holidays: double-time and a half.

## **Flexible working arrangements**

136. The Commission, employees and their union recognise:
- 136.1 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;
  - 136.2 access to flexible work can support strategies to improve diversity in employment and leadership in the APS;
  - 136.3 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;
  - 136.4 that flexibility applies to all roles in the Commission, and different types of flexible working arrangements may be suitable for different types of roles or circumstances; and
  - 136.5 requests for flexible working arrangements are to be considered on a case-by-case basis, with a bias towards approving requests.
137. The Commission is committed to engaging with employees and their union to build a culture that supports flexible working arrangements across the Commission at all levels. This may include developing and implementing strategies through a Commission consultative committee.
138. 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**

139. The following provisions do not diminish an employee's entitlement under the NES.
140. An employee may make a request for a formal flexible working arrangement.
141. The request must:
- 141.1 be in writing;
  - 141.2 set out details of the change sought (including the type of arrangement sought and the proposed period the arrangement will operate for); and
  - 141.3 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.
142. The Commission must provide a written response to a request within 21 days of receiving the request.

143. The response must:
- 143.1 state that the Commission approves the request and provide the relevant detail in clause 143; or
  - 143.2 if following discussion between the Commission 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
  - 143.3 state that the CEO refuses the request and include the following matters:
    - 143.3.1 details of the reasons for the refusal; and
    - 143.3.2 set out the Commission particular business grounds for refusing the request, explain how those grounds apply to the request; and
    - 143.3.3 either:
      - 143.3.3.1 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
      - 143.3.3.2 state that there are no such changes; and
    - 143.3.4 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.
144. Where the CEO approves the request this will form an arrangement between the agency and the employee. Each arrangement must be in writing and set out:
- 144.1 any security and work health and safety requirements;
  - 144.2 a review date (subject to clause 148; and
  - 144.3 the cost of establishment (if any).
145. The CEO may refuse to approve the request only if:
- 145.1 the Commission has discussed the request with the employee; and
  - 145.2 the Commission 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
  - 145.3 the Commission and the employee have not reached such an agreement; and
  - 145.4 the Commission has had regard to the consequences of the refusal for the employee; and
  - 145.5 the refusal is on reasonable business grounds.
146. Reasonable business grounds include, but are not limited to:

- 146.1 the new working arrangements requested would be too costly for the Commission;
  - 146.2 there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested;
  - 146.3 it would be impractical to change the working arrangements of other employees, or to recruit new employees, to accommodate the new working arrangements requested;
  - 146.4 the new working arrangements requested would be likely to result in a significant loss in efficiency or productivity;
  - 146.5 the new working arrangements requested would be likely to have a significant negative impact on customer service; and
  - 146.6 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.
147. For First Nations employees, the Commission must consider connection to country and cultural obligations in responding to requests for altering the location of work.
148. Approved flexible working arrangements will be reviewed by the Commission 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**

149. An employee may request to vary an approved flexible working arrangement in accordance with clause 141. An employee may request to pause or terminate an approved flexible working arrangement.
150. The CEO may vary, pause or terminate an approved flexible working arrangement on reasonable business grounds, subject to clause 152.
151. 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.
152. Prior to the CEO varying, pausing or terminating the arrangement under clause 150, the Commission must have:
- 152.1 discussed with the employee their intention to vary, pause or terminate the arrangement with the employee;
  - 152.2 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);
  - 152.3 had regard to the consequences of the variation, pause or termination for the employee;
  - 152.4 ensured the variation, pause or termination is on reasonable business grounds; and

- 152.5 informed the employee in writing of the variation, pause or termination to the approved flexible working arrangement, including details set out in clause 143.3.

### **Working from home**

153. The Commission 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.
154. The Commission may provide equipment necessary for, or reimbursement, for all or part of the costs associated with establishing a working from home arrangement.
155. An employee working from home is covered by the same employment conditions as an employee working at an office site under this agreement.
156. The Commission will provide employees with guidance on working from home safely.
157. Employees will not be required by the Commission 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 Commission will consider the circumstances of the employees and options to achieve work outcomes safely.

### **Ad-hoc arrangements**

158. 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.
159. Employees should, where practicable, make the request in writing and provide as much notice as possible.
160. Requests for ad-hoc arrangements are not subject to the request and approval processes detailed in clauses 139 to 148.
161. The Commission 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.
162. Where a regular pattern of requests for ad-hoc arrangements from an employee emerges, the Commission should consider whether it is appropriate to seek to formalise the arrangement with the employee.

### **Altering span of hours**

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

### **Part-time work**

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



## **Part-time employment and job sharing**

166. A part-time employee is one whose ordinary hours of work are less than 150 hours over the settlement period. Employees who job share will be classed as part-time. All part-time and job sharing work arrangements will be subject to agreement in writing. Whilst there is no prescribed limit on the duration, in this Agreement, there will be a formal review on an annual basis between the employee and the CEO subject to the requirements of clause 135 to 162, where applicable to ensure the flexible working arrangement provisions take precedence where they apply. Remuneration and other employment conditions, except for long service leave are calculated on a pro-rata basis. For expense related allowances and reimbursements part-time employees receive the same amount as full-time employees.
167. Requests for part time working arrangements will be considered by the CEO on a case-by-case basis and in light of operational requirements.

## **Employees with caring responsibilities**

### **Support for carers**

168. The CEO may approve reimbursement of reasonable, unavoidable, additional costs associated with the care of a family member or dependant where an employee is required to travel away from their normal work location for business purposes or is directed to work outside the employee's normal pattern of hours. The employee must advise their supervisor in advance that costs may be incurred.

## **Christmas Shutdown**

169. The Commission ceases normal business from the close of business on the last working day before Christmas, with business resuming on the first working day after New Year's Day.
170. 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.
171. An APS level employee who is required to work during the close down period will receive an extra duty payment. An executive level employee will receive an equivalent period of time off in lieu.

## **Public holidays**

172. Employees are entitled to the following holidays each year as observed at their normal work location in accordance with the FW Act:
- 172.1 1 January (New Year's Day);
  - 172.2 26 January (Australia Day);
  - 172.3 Good Friday and the following Monday;
  - 172.4 25 April (Anzac Day);

- 172.5 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);
  - 172.6 25 December (Christmas Day);
  - 172.7 26 December (Boxing Day); and
  - 172.8 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.
- 173. 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.
  - 174. The CEO 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.
  - 175. The CEO 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.
  - 176. 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.
  - 177. Where a public holiday falls during a period when an employee is absent on leave (other than annual leave, paid personal/carer's leave, defence service sick leave or purchased 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.)
  - 178. 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 172.
  - 179. 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 of 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.
  - 180. 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 CEO 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

181. A full-time employee is entitled to twenty (20) days (150 hours) (4 weeks) paid annual leave per completed year of service. Annual leave will accrue daily and will be credited on the first day of each month.
182. Annual leave accrues on a pro-rata basis for part-time employees. Annual leave counts as service for all purposes. Where 'leave without pay not to count as service' has been granted, annual leave will be adjusted as follows:
  - a) where aggregated absences total more than 30 calendar days, the total period of leave without pay is deducted from the number of calendar days to count as service; and
  - b) where leave without pay covers an entire calendar year, no annual leave credit accrues for that year.
183. Employees may take annual leave at half pay. Leave taken at half pay will result in annual leave credits being deducted at half the duration. The minimum absence of leave on half-pay is two working days, with further absences in multiples of two days. Where annual leave is taken at half-pay, credits will be deducted from the employee's annual leave balance on the basis that two days of annual leave at half-pay is equivalent to one day of annual leave at full-pay.
184. The CEO may direct an employee who has more than the equivalent of two years of annual leave credit (40 days or 300 hours for a full time employee) to take annual leave. The employee and the employee's supervisor will seek to agree on a leave management strategy to reduce the amount of accrued annual leave. Unless approved by the CEO an employee may not take leave at half pay where the employee is directed to take annual leave due to an excessive balance.
185. Employees are strongly encouraged to take 5 days annual leave per calendar year in order to maintain a healthy work life balance.
186. Any unused accrued annual leave will be paid out to the employee when the employee's APS employment ceases. Payment will be calculated using the employee's final rate of salary, including allowances that would have been paid during a period of annual leave.
187. The CEO may approve an application by an employee to cash out a portion of the employee's accrued annual leave credits. To be eligible to cash out annual leave, employees must:
  - a) have taken at least 15 days, or an equivalent pro rata amount for part-time employees, in the 12 months preceding the request to cash out annual leave; and
  - b) have a remaining balance of at least four weeks, or an equivalent pro rata amount for part-time employees, annual leave credit if the application is approved.

188. The employee will be paid the full amount that would have been paid had the employee taken the entitlement as leave.
189. Each cashing out of a particular amount of annual leave must be by a separate agreement in writing with the CEO.
190. The maximum amount of annual leave that may be cashed out in a 12-month period by an employee is 10 days (or an equivalent pro rata amount for part-time employees).

## **Purchased leave**

191. To assist employees in balancing work and life responsibilities, the Commission provides a scheme where additional leave may be purchased. Purchasing additional leave is not intended to be used to establish a different work pattern such as a regular reduction in weekly hours.
192. Where a manager agrees that an employee may participate in the purchased leave scheme, the employee may purchase from one to eight weeks (40 days) of purchased leave every 12 months.
193. Purchased leave will count as service for all purposes. The employee's salary for superannuation purposes continues to be their salary as if they had not purchased leave.

## **Extended purchased leave**

194. When an employee has accrued a period of three years of continuous employment with the Commission, they may apply for access to extended purchased leave. A period of up to 12 months absence on extended purchased leave will be available following a further two years of continuous employment with the Commission (during which time the employee will accrue the leave).
195. Extended purchased leave will not count as service for any purpose.

## **Recall to duty**

196. Where an employee is recalled to duty from approved leave or that approved leave is cancelled, the employee will be re-credited with the amount of annual leave cancelled or recalled and reimbursed for travel expenses.
197. The Commission will reimburse other reasonable costs, including family care costs, where determined by the CEO.
198. Reimbursement of costs under clause 196 or 197 will only be provided where the costs are not recoverable under insurance or from another source and, if required by the CEO, the employee has provided evidence of the costs incurred.

199. If during a period of annual leave, an employee becomes eligible for prevailing leave that is required by legislation or this Agreement to be granted, the employee will be taken not to be on annual leave for the affected period. This is subject to the employee producing satisfactory evidence. Annual leave will be re-credited to the extent of other leave granted.
200. An example of such prevalent leave includes but may not be limited to personal/carer's leave, compassionate leave, maternity leave and community service leave.

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

### **Transitional arrangements**

201. Ongoing employees who, immediately prior to the commencement of this Agreement, were covered by the National Mental Health Commission Enterprise Agreement 2017-2020, will continue to accrue 18 days personal/carers leave, or the part-time equivalent, on completion of each 12-month period of service.
202. Employees covered by clause 201 will transition to the personal/carers leave accrual and crediting provisions specified in clause 204 by 1 January 2026.
203. Where an employee:
- a) has, or cares for someone with, a chronic condition or other ongoing illness;
  - b) is recovering from surgery;
  - c) is pregnant; or
  - d) is returning from parental leave or has a child commencing day care;

and, as a result of the transition to daily accrual of personal/carers leave, does not have sufficient credit to cover an absence for which they would otherwise be able to take personal/carers leave, the CEO will advance the employee's accrual up to the 12-month anniversary when their leave would otherwise be credited.

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

204. Subject to clause 201 on commencement with the APS an ongoing employee will have a personal/carer's leave entitlement of eighteen 18 days (135 hours) or the part time equivalent credited. In subsequent years a further 18 days (135 hours) or the part time equivalent will accrue daily and be credited monthly on the first day of each month thereafter, without limit.
205. For a non-ongoing employee, the personal/carers leave will be credited upon the employee's commencement with the Commission. This will be 18 days (135 hours) leave or the part time equivalent, pro rata based on the employee's initial contract period, and is capped at 18 days (135 hours), or the part time equivalent. After the initial contract period or 12 months, whichever is shorter, or where the employee has an existing entitlement to personal/carers leave, leave will accrue daily and be credited monthly.
206. A casual employee may be absent without pay when not fit for work due to personal illness or injury. A casual employee may access two days unpaid carer's leave per occasion, consistent

with the NES, subject to notifying the employee's manager and providing satisfactory evidence.

207. If an employee is unexpectedly unable to attend work the employee or their representative should make a reasonable effort to notify the relevant supervisor before 9:30am.
208. Personal/carers leave gives employees access to paid leave, subject to available credits, when they are absent due to:
- a) personal illness or injury;
  - b) attending appointments with a registered health practitioner;
  - c) managing a chronic condition;
  - d) providing care or support for a family or household member or a person they have caring responsibilities for, because:
    - i. of a personal illness or injury affecting the other person; or
    - ii. of an unexpected emergency affecting the other person.
209. A person that an employee has caring responsibilities for may include a family member who:
- a) has a medical condition, including when they are in hospital;
  - b) has a mental illness;
  - c) has a disability;
  - d) is frail or aged; and/or
  - e) is a child, not limited to a child of the employee.
210. For periods of personal/carers leave, employees should provide evidence to their manager that would satisfy a reasonable person that the leave was taken for a reason set out in clauses 208 and 209. Where an employee is requested to provide evidence for personal/carers leave, acceptable forms of evidence include:
- a) a certificate from a registered health practitioner;
  - b) a statutory declaration; and/or
  - c) another form for evidence approved by the CEO.
211. 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 carers leave.
212. The CEO or their delegate may request supporting evidence of their reason for taking personal/carers where the employee is or will be absent on personal/carers leave for three (3) or more consecutive working days.
213. An employee who takes large or frequent periods of personal leave may be directed to attend a medical examination on fitness for continued duty, to determine whether continued personal leave is justified.
214. In exceptional situations, and at the CEO's discretion, the CEO may grant an employee who has used all their personal/carer's leave credits additional personal/carer's leave on half pay. The employee must provide supporting evidence.

215. An employee who is unfit for duty due to a war-caused or defence-caused condition formally accepted by the Department of Veterans' Affairs as determined under relevant legislation is entitled to war service personal leave. The CEO will determine the amount of leave to be granted.
216. Employees (including casual employees) are entitled to two (2) days unpaid carer's leave for each occasion when a member of the employee's immediate family, or a member of the employee's household, requires care or support because of:
- a) a personal illness, or personal injury, affecting the member; or
  - b) an unexpected emergency affecting the member.
217. An employee cannot take unpaid carer's leave if the employee could instead take paid personal/carer's leave.

## **Portability of leave**

218. Where an employee moves into the Commission 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.
219. Where an employee is engaged in the Commission 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.
220. Where an employee is engaged as an ongoing employee in the Commission, 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.
221. 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.
222. Where a person is engaged as an ongoing employee in the Commission, 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 219), the CEO will offer to recognise any unused accrued personal/carer's leave at the employee's request.
223. Where an employee is engaged as an ongoing employee in the Commission and immediately prior to the engagement the person was employed by a State or Territory Government, the CEO may recognise any unused accrued personal/carer's leave, provided there is not a break in continuity of service.
224. For the purposes of clauses 218 to 223, an employee with a break in service of less than 2 months is considered to have continuity of service.

## Re-crediting of leave

225. When an employee is on:
- 225.1 annual leave;
  - 225.2 purchased leave;
  - 225.3 defence reservist leave;
  - 225.4 First Nations ceremonial leave;
  - 225.5 NAIDOC leave;
  - 225.6 cultural leave; or
  - 225.7 long service leave; and
- becomes eligible for, under legislation or this agreement:
- 225.8 personal/carer's leave;
  - 225.9 compassionate or bereavement leave;
  - 225.10 jury duty;
  - 225.11 emergency services leave;
  - 225.12 leave to attend to family and domestic violence circumstances; or
  - 225.13 parental leave, premature birth leave, stillbirth leave or pregnancy loss leave;
- the affected period of leave will be re-credited.
226. 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.
227. Re-crediting is subject to appropriate evidence of eligibility for the substituted leave.

## Long service leave

228. An employee is eligible for long service leave in accordance with the Long Service Leave (Commonwealth Employees) Act 1976.
229. 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 clauses 225 to 227 of this agreement.

## Miscellaneous leave

230. The CEO can approve applications for miscellaneous leave for all Commission employees. Miscellaneous leave will only be granted to casual employees to provide for paid family and domestic violence leave, or as otherwise permitted or required by Government directive.



231. Miscellaneous leave provides employees with flexibility to access leave for reasons that are in the interests of the Commission, the Commonwealth, the community in general or the employee. Miscellaneous leave may also be available for personal situations not covered under other forms of leave.
232. Where exceptional circumstances affect an employee, the CEO will consider granting paid leave. These circumstances may include, but are not limited to, emergency situations such as bushfires, floods, cyclones and earthquakes. The CEO may also provide leave to an employee for:
- a) Aboriginal and/or Torres Strait Islander employees' ceremonial and cultural activities at clause 240;
  - b) family and domestic violence support at clauses 315;
  - c) attendance at Fair Work Commission proceedings arising from industrial disputation at clause 408; and
  - d) attendance at industrial and/or legal proceedings when summoned as a witness at clauses 301.
233. Miscellaneous leave may be granted with or without pay and to count as service or not to count as service, for a purpose not provided for elsewhere in this Agreement, except as required by legislation.
234. There is no automatic entitlement to miscellaneous leave. Applications are considered subject to the operational requirements on a case-by-case basis. Appropriate supporting evidence, relevant to the request, is to be provided with the application.
235. Miscellaneous leave will not be granted where another form of leave is more appropriate, or to allow an employee to try another career.

## **Unauthorised absence**

236. If an employee is absent from work without approval, all pay and other benefits provided under this Agreement will cease to be available until the employee resumes duty or is granted leave. A period of unauthorised absence does not count as service for any purpose.

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

### **NAIDOC leave**

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

### **First Nations ceremonial leave**

239. 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.
240. The Commission may approve additional leave for cultural or ceremonial purposes as miscellaneous leave, with or without pay.

- 241. First Nations ceremonial Leave can be taken as part days.
- 242. First Nations ceremonial leave is in addition to compassionate and bereavement leave.

### **Cultural leave**

- 243. The Commission 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.
- 244. The Commission may approve additional leave for cultural purposes as miscellaneous leave, with or without pay.
- 245. Cultural leave can be taken as part days.
- 246. For the avoidance of doubt, this leave does not cover cultural purposes or obligations which are eligible for paid leave under clause 239.

### **Parental leave**

- 247. A primary caregiver, secondary caregiver and ML Act is defined in the definitions section.
- 248. 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.
- 249. 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.
- 250. 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**

- 251. An employee is entitled to parental leave with pay as per clauses 353 and 354 below within the parental leave period. Any further parental leave during the parental leave period is without pay. Unused paid parental leave remaining at the end of the employee's parental leave period will lapse. An employee may choose to use their accrued paid leave entitlements in accordance with usage and eligibility requirements in this agreement during the parental leave period that would otherwise be without pay.
- 252. Employees newly engaged in the agency or who have moved to Commission from another APS agency are eligible for the paid parental leave in clauses 353 and 354 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 353 and 354 the balance is available to the employee.

253. 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*

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

254. 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*

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

255. **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.
256. **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.
257. **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**

258. 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:
- 258.1 is under 16 as at the day (or expected day) of placement;
  - 258.2 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
  - 258.3 is not (otherwise than because of the adoption) a child of the employee or the employee's spouse or de facto partner.
259. 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**

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

### **Pregnancy loss leave**

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

### **Premature birth leave**

264. 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**

265. 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 264 until after the legislated paid maternity leave is used.

### **Compassionate leave**

266. Employees will be eligible for 3 days paid compassionate leave on each occasion when:
- 266.1 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
  - 266.2 the employee or their partner has a miscarriage.
267. An employee may be asked to provide evidence to support their absences on compassionate leave.
268. Compassionate leave for an occasion may be taken as 3 consecutive days or in separate periods totalling 3 days. This can include part days.
269. For casual employees, compassionate leave is unpaid.

### **Bereavement leave**

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

### **Emergency response leave**

274. 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:
- 274.1 the time engaged in the activity;
  - 274.2 reasonable travelling time; and
  - 274.3 reasonable recovery time.
275. Full-time and part-time employees will be able to access 20 working days of paid emergency response leave at full pay per year if required. The CEO may provide additional emergency response leave with pay.
276. Paid leave may be refused where the employee's role is essential to the Commissions response to the emergency.

- 277. 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.
- 278. The CEO may approve reasonable paid or unpaid leave for ceremonial duties and training.
- 279. Emergency response leave, with or without pay, will count as service.

### **Jury duty**

- 280. 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.
- 281. 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.
  - 281.1 For the purposes of this clause, full rate of pay is to be as if the employee was at work.
- 282. The employee is required to inform their manager before they are released from duty and provide evidence of the need to attend.
- 283. 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 Commission for the period of absence. This will be administered in accordance with the overpayments clause.

### **Defence reservist leave**

- 284. The Commission will give an employee leave with or without pay to undertake:
  - 284.1 Australian Defence Force (ADF) Reserve and continuous full-time service (CFTS); and
  - 284.2 Australian Defence Force Cadet obligations.
- 285. An employee who is a Defence Reservist can take leave with pay for:
  - 285.1 up to 4 weeks (20 days) in each financial year (pro-rata for part-time employees); and
  - 285.2 an extra 2 weeks (10 days) in the first year of ADF Reserve service (pro-rata for part-time employees).
- 286. Leave can be built up and taken over 2 consecutive years. This includes the extra 2 weeks in the first year of service.
- 287. 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:
  - 287.1 Australian Navy Cadets;
  - 287.2 Australian Army Cadets; and
  - 287.3 Australian Air Force Cadets.

- 288. In addition to the entitlement at clause 285, 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.
- 289. Paid defence reservist leave counts for service.
- 290. Unpaid defence reservist leave for 6 months or less counts as service for all purposes. This includes periods of CFTS.
- 291. Unpaid leave taken over 6 months counts as service, except for annual leave.
- 292. An employee will not need to pay their tax free ADF Reserve salary to their agency for any reason.

### **Defence service sick leave**

- 293. 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:
  - 293.1 warlike service; or
  - 293.2 non-warlike service.
- 294. An eligible employee can get 2 types of credits:
  - 294.1 an initial credit of 9 weeks (45 days) defence service sick leave will apply as of the later below option:
    - 294.1.1 they start employment with the APS; or
    - 294.1.2 DVA certifies the condition; and
  - 294.2 an annual credit of 3 weeks (15 days) defence service sick leave.
- 295. 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.
- 296. Unused annual credits can be built up to 9 weeks.
- 297. An employee cannot use annual credits until the initial credit is exhausted.
- 298. Defence service sick leave is paid and counts as service for all purposes.

### **Leave to attend proceedings**

- 299. 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.
- 300. An employee who is not covered under clause 299, 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 Commission.

301. An employee may otherwise be granted paid or unpaid miscellaneous leave by the CEO 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.
302. The CEO 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

### Workplace Culture

303. The Commission upholds the APS Values, Employment Principles and Code of Conduct. It is committed to fairness, equity and diversity and a workplace free from bullying and harassment.

### Blood donation

304. 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.
305. The employee must inform their manager in advance of when they will be away from work before donating blood, plasma or platelets.

### Vaccinations

306. The Commission will offer annual influenza vaccinations to all employees at no cost.
307. Where the Commission 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

308. 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 Commission and will be accessible on paid time.

### Respect at work

#### Principles

309. The Commission values a safe, respectful and inclusive workplace free from physical and psychological harm, harassment, discrimination and bullying. The Commission recognises that preventing sexual harassment, sex discrimination, sex-based harassment and victimisation in the workplace is a priority.
310. The Commission 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

311. 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

312. The Commission will provide support for employees affected by family and domestic violence, depending on the employee's circumstances.
313. The Commission recognises that a holistic approach should be taken to support the employee, appropriate for the employee's individual circumstances.
314. Family and domestic violence support, including paid leave, are available to all employees covered by this agreement.
315. 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:
- 315.1 illness or injury affecting the employee resulting from family and domestic violence;
  - 315.2 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;
  - 315.3 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;
  - 315.4 making arrangements for the employee's safety, or the safety of a close relative;
  - 315.5 accessing alternative accommodation;
  - 315.6 accessing police services;
  - 315.7 attending court hearings;
  - 315.8 attending counselling; and
  - 315.9 attending appointments with medical, financial or legal professionals.
316. 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.
317. 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.
318. These family and domestic violence support clauses do not reduce an employee's entitlement to family and domestic violence leave under the NES.
319. 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.

- 320. 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.
- 321. Evidence may be requested to support the Commission 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 Commission will require, unless the employee chooses to provide another form of evidence.
- 322. 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.
- 323. The Commission will take all reasonable measures to treat information relating to family and domestic violence confidentially. The Commission will adopt a 'needs to know' approach regarding communication of an employee's experience of family and domestic violence, subject to steps the Commission may need to take to ensure the safety of the employee, other employees or persons, or mandatory reporting requirements.
- 324. Where the Commission needs to disclose confidential information for purposes identified in clause 323, where it is possible the Commission will seek the employee's consent and take practical steps to minimise any associated safety risks for the employee and/or privacy breaches.
- 325. The Commission 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.
- 326. 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.
- 327. The Commission 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.
- 328. 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**

- 329. The Commission 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 Commission decisions.
- 330. 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.
- 331. Employees can, during their ordinary work hours, take time to:

- 331.1 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
- 331.2 attend Commission mandated training about integrity.

### **First Nations cultural competency training**

- 332. The CEO 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.
- 333. 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**

- 334. Reasonable paid time during work hours will be provided for lactation breaks for breastfeeding, expressing milk and other associated activities.
- 335. The Commission will provide access to appropriate facilities for the purpose of breastfeeding or expressing milk, subject to clause 336. In considering whether a space is appropriate, an agency should consider whether:
  - 335.1 there is access to refrigeration;
  - 335.2 the space is lockable; and
  - 335.3 there are facilities needed for expressing, such as appropriate seating.
- 336. Where it is not practicable for a Commission site to have a designated space, a flexible approach will be taken so that the employee can access the support required.
- 337. The Commission will facilitate discussion between individual employees and their managers about accommodating the employee's lactation needs and practical arrangements to meet these needs.
- 338. 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.
- 339. Further information is available in policy.

## **Disaster support**

- 340. 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 CEO will consider flexible working arrangements to assist the employee to perform their work.
- 341. Where flexible working arrangements are not appropriate, the CEO 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.
- 342. In considering what period of leave is appropriate, the CEO 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

343. All employees are required to have a current performance agreement, except non-ongoing employees engaged for less than six (6) months.
344. All employees are required to participate in the Performance Development Scheme (PDS). An employee and their manager will work together to establish an annual Performance and Development Agreement (PDA) outlining specific key performance requirements, related performance indicators and required workplace behaviours.
345. The PDS cycle is 1 July to 30 June of each year and provides the basis for an employee's salary advancement through salary ranges for the employee's current classification.
346. The PDS has two formal assessment points at:
- a) mid-cycle in February; and
  - b) end of the cycle in July.
347. The principles of the PDS include:
- a) employees and managers have a shared responsibility to constructively participate in, and contribute to, development of the PDA and assessment process;
  - b) all stages of the PDS process should be discussed and agreed by the employee and their manager; and
  - c) there should be no surprises for employees in regard to a manager's performance expectations or appraisal of their performance, with feedback regarding an employee's performance part of ongoing activities, including the opportunity for informal upwards feedback.
348. Employees are expected, as a minimum, to maintain an effective performance standard under the PDS.
349. Where underperformance is identified, the Commission will work with affected employees and their managers to attain and sustain the standards required. An employee will be provided a minimum of four weeks, prior to the PDS end of cycle assessment, to improve the employee's performance where it is below the effective performance standards.
350. If the employee's performance remains unsatisfactory possible actions include reduction in classification, reassignment of duties or termination of employment.

### Workloads

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

353. Where an employee or group of employees raise that they have experienced significant workload pressures over a prolonged period of time, the Commission 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.

## Learning and development

### Capability development

354. The Commission is committed to maintaining a learning organisation, and supports learning and development opportunities for employees by providing a framework for all staff and managers that:
- a) develops and supports professional and technical expertise;
  - b) supports a range of learning and development mechanisms including virtual training to support staff working flexibly from all work locations; learning in the workplace; internal or external mentoring, seminars and conferences; and participation in professional networking groups.
  - c) recognises the role of relevant external studies and provides support for approved tertiary studies through the Commissions Study Assistance scheme; and
  - d) develops the skills and capabilities of managers to support their teams and deliver business outcomes.
355. Employee needs will be balanced against organisational requirements and availability of opportunities.

### Study assistance

356. The Commission is committed to uplifting organisational capability by supporting employees to develop for their current and future roles.
357. The Study Assistance program supports employees to undertake formal courses of study at tertiary and higher education institutions and other vocational education courses, training providers and industry qualifications, where the study is agreed as part of an employee's Performance Development Conversations.
358. Study Assistance support may be provided in the form of financial reimbursement up to agreed levels for approved study expenses, and/or paid time work release for study purposes.
359. The CEO may approve financial assistance up to 100% of costs. The amount of assistance provided is considered on a case by case basis.
360. The CEO may approve study leave for up to 7.5 hours per week for all employees.
- a) Aboriginal and Torres Strait Islander employees, employees from a non-English speaking background and/or employees with disability may seek approval for up to an additional 12 hours per week.
361. Study Assistance financial assistance and leave is not pro-rated for part-time employees.
362. Training to enable employees to gain a specific skill including single units, short courses, seminars, conferences and Australian Public Service Commission (APSC) programs are external

to the study assistance arrangements and may be covered under the Commission's learning and development arrangements.

**Professional membership/accreditation allowance**

363. The Commission will reimburse membership fees and accreditation fees of up to \$500 per annum where a membership or accreditation from a professional association is an essential requirement for an employee to undertake their responsibilities for the Commission, or as agreed by the CEO.



## Section 9: Travel and location-based conditions

### Travel

- 364. An employee undertaking official travel may use a travel charge card or other Government credit card to pay for reasonable accommodation, meals and incidental expenses (having regard to the Commission's Travel policy and ATO determination) subject to approval by their supervisor.
- 365. Where an employee does not have access to a travel charge card or other Government credit card they will be reimbursed reasonable expenses. This is subject to provision of evidence of expenditure and approval by their delegate.

### Relocation assistance

- 366. Where an employee is required to relocate at the request of the Commission (such as a promotion), the employee will be provided with financial relocation assistance. Employees who relocate on a temporary basis to take up higher duties are entitled to removal expenses if they relocate for a period of 13 weeks or more.
- 367. Where an employee is required to relocate on engagement with the Commission, the employee will be provided with financial relocation assistance.
- 368. Reasonable expenses associated with the relocation include:
  - 368.1 the cost of transport of the employee, partner and their dependents by the most economical means;
  - 368.2 removal expenses, namely the reimbursement of reasonable incurred costs of the removal of furniture and household effects of the employee, dependants and partner;
  - 368.3 the reimbursement of the cost of the insurance premium based on a reasonable replacement value; and
  - 368.4 the reasonably incurred expenses in kennelling and transport of pets, up to the amount specified in the APS Award.
- 369. Additional relocation assistance may be considered by CEO discretion.

### Car Parking

- 370. If during the life of this Agreement, the Commission incurs a Fringe Benefit Taxation (FBT) liability due to the introduction of paid car parking, the Commission will recover, on a 'user pays' basis, the total FBT costs incurred in respect of employees covered by this Agreement who secure under building car parks.

# Section 10: Consultation, representation and dispute resolution

## Consultation

### Principles

371. 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.
372. The Commission recognises:
- 372.1 the importance of inclusive and respectful consultative arrangements;
  - 372.2 employees and the relevant union(s) should have a genuine opportunity to influence decisions;
  - 372.3 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;
  - 372.4 consultation with employees and relevant unions(s) on workplace matters that significantly affect or materially impact them is sound management practice; and
  - 372.5 the benefits of employee and union involvement and the right of employees to be represented by their union.
373. Genuine and effective consultation involves:
- 373.1 providing employees and the relevant union(s) with a genuine opportunity to influence the decision prior to a decision being made;
  - 373.2 providing all relevant information to employees and the relevant union(s) in a timely manner to support consideration of the issues;
  - 373.3 considering feedback from employees and the relevant union(s) in the decision-making process; and
  - 373.4 advising employees and the relevant union(s) of the outcome of the process, including how their feedback was considered in the decision-making process.

### General staff consultation

374. The Commission commits to consult with employees on matters relating to the operation of the Agreement.
375. The key mechanisms for this consultation are:
- a). regular staff meetings;
  - b). direct discussions with staff and

c). electronic communications.

### **When consultation is required**

376. Consultation is required in relation to:

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

377. The Commission, 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**

378. Clauses 377 to 392 apply if the Commission:

- 378.1 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
- 378.2 proposes to introduce a change to the regular roster or ordinary hours of work of employees.

### **Representation**

379. 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.

380. The Commission must recognise the representative if:

- 380.1 a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
- 380.2 the employee or employees advise the employer of the identity of the representative.

### **Major change**

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

- 381.1 the termination of the employment of employees; or
  - 381.2 major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
  - 381.3 the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
  - 381.4 the alteration of hours of work; or
  - 381.5 the need to retrain employees; or
  - 381.6 the need to relocate employees to another workplace; or
  - 381.7 the restructuring of jobs.
382. The following additional consultation requirements in clause 383 to 389 apply to a proposal to introduce a major change referred to in clause 376.3.
383. Consultation with employees and the relevant union(s) and/or recognised representatives will occur prior to a decision being made, subject to clause 377.
384. Where practicable, a Commission 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.
385. The Commission must notify employees and relevant union(s) and/or recognised representatives of the proposal to introduce the major change as soon as practicable.
386. As soon as practicable after proposing the change, or notifying of the change in circumstances described at clause 377, the Commission must:
- 386.1 discuss with affected employees and relevant union(s) and/or other recognised representatives:
    - 386.1.1 the proposed change:
      - 386.1.1.1 the effect the proposed change is likely to have on the employees; and
      - 386.1.1.2 proposed measures to avert or mitigate the adverse effect of the proposed change on the employees; and
    - 386.1.2 for the purposes of the discussion – provide, in writing, to employees and the relevant union(s) and/or other recognised representatives:
      - 386.1.2.1 all relevant information about the proposed change, including the nature of the change proposed; and
      - 386.1.2.2 information about the expected effects of the proposed change on the employees; and
      - 386.1.2.3 any other matters likely to affect the employees.
387. The Commission 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.

388. However, the Commission is not required to disclose confidential or commercially sensitive information to employees and the relevant union(s) and/or other recognised representatives.
389. 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 Commission, the requirements set out in clauses 383 to 387 are taken not to apply.

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

390. The following additional consultation requirements in clause 391 to 393 apply to a proposal to introduce a change referred to in clause 376.3.
391. The Commission must notify affected employees and the relevant union(s) and/or other recognised representatives of the proposed change.
392. As soon as practicable after proposing to introduce the change, the Commission must:
- 392.1 discuss with employees and the relevant union(s) and/or other recognised representatives:
  - 392.2 the proposed introduction of the change; and
  - 392.3 for the purposes of the discussion – provide to the employees and relevant union(s) and/or other recognised representatives:
    - 392.3.1 all relevant information about the proposed change, including the nature of the proposed change; and
    - 392.3.2 information about what the employer reasonably believes will be the effects of the proposed change on the employees; and
    - 392.3.3 information about any other matters that the employer reasonably believes are likely to affect the employees; and
  - 392.4 invite employees and the relevant union(s) and/or other recognised representatives to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
393. However, the Commission is not required to disclose confidential or commercially sensitive information to the relevant employees and the relevant union(s) and/or other recognised representatives.
394. The Commission 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**

395. 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**

- 396. The Commission may establish an agency consultative committee to discuss relevant workplace matters.
- 397. Commission 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**

- 398. The Commission 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**

- 399. If a dispute relates to:
  - 399.1 a matter arising under the agreement; or
  - 399.2 the National Employment Standards;this term sets out procedures to settle the dispute.
- 400. An employee or union who is covered by this agreement may initiate and/or be a party to a dispute under this term.
- 401. 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.
- 402. 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.
- 403. 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 402 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.
- 404. The Fair Work Commission may deal with the dispute in 2 stages:
  - 404.1 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
  - 404.2 if the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:
    - 404.2.1 arbitrate the dispute; and
    - 404.2.2 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.

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

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

405.2 subject to clause 405.1 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:

405.2.1 the work is not safe; or

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

405.2.3 the work is not appropriate for the employee to perform; or

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

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

407. Any disputes arising under the *National Mental Health Enterprise Agreement 2017-2020* or the National Employment Standards that were formally notified under clause 11 to 11.8 of that agreement before the commencement of this agreement, that remain unresolved at the date of commencement of this agreement, will be progressed under the dispute resolution procedures in this agreement.

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

408. Where the provisions of clauses 399 to 403 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 400, 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 403.

#### **Delegates' rights**

409. 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.

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

411. The Commission and union delegates will work together respectfully and collaboratively.

## Supporting the role of union delegates

412. The Commission respects the role of union delegates to:
  - 412.1 provide information, consult with and seek feedback from employees in the workplace on workplace matters;
  - 412.2 consult with other delegates and union officials, and get advice and assistance from union officials;
  - 412.3 represent the interests of members to the employer and industrial tribunals; and
  - 412.4 represent members at relevant union forums, consultative committees or bargaining.
413. The Commission 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.
414. 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.
415. To support the role of union delegates, the Commission
416. will, subject to legislative and operational requirements, including privacy and security requirements:
  - 416.1 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;
  - 416.2 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;
  - 416.3 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;
  - 416.4 provide access to new employees as part of induction; and
  - 416.5 provide reasonable access to union delegates to attend appropriate paid time training in workplace relations matters, during normal working hours.
417. 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 Commission before speaking publicly in that capacity, subject to the APS Code of Conduct and legislative requirements.



## **Section 11: Separation and retention**

### **Resignation**

- 418. An employee may resign from their employment by giving the Commission at least 14 calendar days' notice.
- 419. At the instigation of the Commission, 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.
- 420. The Commission has the discretion to agree to a shorter period of notice or waive the requirement to give notice.
- 421. When an employee dies, or the Commission has directed that an employee is presumed to have died on a particular date, subject to any legal requirements, the Commission 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.

### **Termination of employment by NMHC**

- 422. Nothing in this Agreement prevents the CEO from terminating the employment of an employee for serious misconduct, without further notice or payment in lieu, in accordance with sub-section 123(1)(b) of the Fair Work Act 2009, subject to compliance with the procedures established by the CEO for determining whether an employee has breached the APS Code of Conduct under Public Service Act 1999.

### **Redeployment, retraining, redundancy**

#### **Application**

- 423. The following provisions will apply to any employee who is excess and covered by this Agreement, other than non-ongoing employees or employees on probation.

#### **Workplace support**

- 424. An excess employee may request assistance in meeting reasonable travel and incidental expenses incurred in seeking alternative employment where these are not met by the prospective employer and will be entitled to reasonable leave with full pay to attend necessary employment interviews.
- 425. The Commission will observe the APS Wide Redeployment Policy.

## **Consultation process**

426. Where the CEO becomes aware that an employee is likely to become excess or has become excess, the CEO will advise the employee in writing as soon as practicable of the reasons for this decision.
427. Within 30 calendar days of notification, the CEO will hold discussions with the employee, and the employee's nominated representative (if applicable), to consider:
- any measures that could be taken to remove or reduce the incidence of an employee becoming excess;
  - redeployment opportunities;
  - referral to a redeployment program; and
  - whether voluntary redundancy, redeployment or re-assignment of duties may be appropriate.
428. Where an employee has been notified they are potentially excess and the employee or their nominated representative has declined to participate in a discussion, the CEO may immediately identify the employee as excess to the requirements of the Commission.
429. Where an employee does not express a preference for redeployment or voluntary redundancy, the CEO may identify the employee as excess to the requirements of the Commission 30 calendar days after the employee was notified that they are potentially excess.

## **Invitation to express interest in voluntary redundancy**

430. The CEO may, prior to the conclusion of these discussions, invite employees who are not potentially excess to express interest in voluntary redundancy, where this would permit the redeployment of employees who are potentially excess.

## **Redeployment and re-assignment of duties**

431. Within a reasonable timeframe, the CEO will take all reasonable steps, consistent with the interests of the efficient administration of the Commission, including merit based selection, to re-assign the duties of an excess employee at the same level, within the Commission, or to assist in the movement of an employee to another APS agency.
432. The Commission will consider an excess employee in isolation from and not in competition with other applicants for an advertised job within the Commission at or below the employee's classification level for which the employee has applied.
433. If necessary, employees seeking redeployment may be referred to a redeployment program, if redeployment is not readily available in the Commission. The Commission will meet any costs associated with this referral.
434. An excess employee who declines an offer of voluntary redundancy or does not accept the offer within the 30 day period will be immediately referred to a redeployment program,

unless the employee was referred prior to receiving the offer, and a retention period will commence in accordance with clause 451.

435. An employee who has been referred to a redeployment program and who has not already been made an offer of voluntary redundancy will be made an offer of voluntary redundancy two months after the referral if the employee cannot be placed within the Commission and redeployment is not successful.

### **Voluntary redundancy**

#### **Consideration period**

436. An employee who has been advised that they are excess and who is not seeking redeployment will be made only one offer of voluntary redundancy in respect of any single redundancy situation, and will be given 30 days in which to consider the offer commencing on the day after the offer is made.

#### **Period of notice**

437. Where an offer of voluntary redundancy is accepted by the employee, the CEO can terminate the employee's employment under section 29 of the *Public Service Act 1999* and give the required notice of termination of four (4) weeks (or five (5) weeks for an employee over 45 years of age with at least five (5) years of continuous service). The period of notice will commence the day after the employee is notified of their termination of employment.

#### **Accelerated separation**

438. The CEO may provide employees likely to be subject to the redundancy provisions of this Agreement with an accelerated separation option. In addition to the severance benefit, this option provides employees who have been identified as eligible to be made an offer of voluntary redundancy and whose employment is terminated by the CEO under section 29 of the *Public Service Act 1999* on the grounds that they are excess to requirements within fourteen (14) days of receiving it, an amount of ten (10) weeks' salary (or eleven (11) weeks' salary for an employee 45 years of age with a least five (5) years continuous service). The payments made under this clause are inclusive of the period of consideration and any statutory entitlement to payment in lieu of notice.
439. This option is available to employees who exit from the Commission prior to the commencement of any formal consultation with employees and their nominated representatives, noting that at any time, the employee may nominate a representative they wish to be involved in this matter, in which case the CEO will hold discussions with the employee and their representative.
440. Where an employee has elected not to accept an offer under this option, the redundancy provisions of this Agreement will then apply.
441. Where an employee requests or where the CEO directs an earlier termination date within the notice period, the employee's employment will be terminated under section 29 of the *Public Service Act 1999* on that date. 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 for the unexpired portion of the notice period on the basis of:

- the employee's current ordinary hours of work;
- the amounts payable to the employee in respect of those hours, e.g. allowances and skills and responsibilities loading; and
- any other payments under the employee's contract of employment except for accruals that would have occurred had the person remained as an employee during the relevant notice period.

### **Where an offer of Voluntary Redundancy has been accepted**

442. When an employee is invited to accept voluntary redundancy, or has been notified in writing that they are potentially excess, they will be given information on the:

- amount of severance pay, pay in lieu of notice and the balance of any annual leave and long service leave credits;
- amount of accumulated superannuation contributions;
- options available to the employee concerning superannuation;
- taxation rules applying to the various payments;
- access to career advisory services; and
- availability of assistance up to a maximum amount of \$500 for financial advice.

### **Severance Benefit – Recognition of Service**

443. An employee who accepts voluntary redundancy and whose employment is terminated by the CEO under section 29 of the *Public Service Act 1999* on the grounds that they are excess to requirements is entitled to two (2) weeks' salary for each completed year of continuous service, plus a pro-rata payment for completed months of service since the last completed year of service.

444. The minimum amount payable will be four (4) weeks' salary and the maximum will be 48 weeks salary subject to any minimum amount the employee is entitled to under the National Employment Standard.

445. Severance payments involving part-time employees will be calculated on a pro-rata basis for any period where they have worked part-time hours during their period of service and where they have less than the equivalent of 24 years full-time service.

446. Service for severance pay purposes means:

- service in the Commission;
- Government service as defined in section 10 of the *Long Service Leave (Commonwealth Employees) Act 1976*;

- service with the Commonwealth (other than service with a joint Commonwealth-State body corporate in which the Commonwealth does not have a controlling interest) which is recognised for long service leave purposes;
- service with the Australian Defence Forces;
- APS service immediately preceding deemed resignation under the repealed Section 49 of the repealed *Public Service Act 1922* if the service has not previously been recognised for severance pay purposes; and
- service in another organisation where the employee was moved from the APS to give effect to an administrative re-arrangement; or an employee of that organisation is engaged as an APS employee as a result of an administrative re-arrangement, and such service is recognised for long service leave purposes.

447. Service that will not count as service for severance pay purposes is any period of service which ceased through termination on any ground set out in section 29 of the *Public Service Act 1999*.

448. For earlier periods of service to count as severance pay, there must be no breaks between periods of service, except where:

- the break in service is less than one (1) month and occurs where an offer of employment with the new employer was made and accepted by the employee before ceasing employment with the preceding employer; or
- the earlier period of service was with the APS and ceased because the employee was deemed to have resigned from the APS on marriage under the repealed section 49 of the *Public Service Act 1922*.

449. Absences from work which do not count as service for long service leave purposes will not count as service for severance pay purposes.

### **Severance benefit – rate of payment**

450. Salary for severance pay purposes will include:

- the employee's substantive salary adjusted on a pro-rata basis for periods of part-time service;
- temporary performance allowance for performance of duties at a higher classification level where the employee has been performing duties at the higher classification level for a continuous period of at least twelve (12) months immediately prior to the date on which the employee was given notice of termination of employment; and
- other allowances in the nature of salary which have been paid to the employee on a regular basis and have continued to be paid during periods of annual leave, excluding allowances which are a reimbursement for expenses incurred.

## Commencement of retention period

451. A retention period will commence in relation to an employee who has sought redeployment, has declined an offer of voluntary redundancy and has been referred to a redeployment program prior to the offer being made.

## Retention period

452. If an excess employee does not accept voluntary redundancy, unless the employee agrees, the employee will not be involuntarily terminated by the CEO under section 29 of the *Public Service Act 1999* until the seven (7) months retention period has lapsed.
453. If an employee is entitled to a redundancy payment in accordance with the National Employment Standards (NES) the relevant period in clause 452 is reduced by the number of weeks redundancy pay that the employee will be entitled to under the NES on termination of employment, as at the expiration of the retention period (as adjusted by this clause).
454. The retention period will commence on the earlier of the following:
- the day the employee is advised in writing by the CEO that he or she is an excess employee; or
  - 30 days after the day on which the CEO invites the employee to accept voluntary redundancy.
455. The retention period and the notice period may be extended by any periods of paid personal/carer's leave not exceeding 6 months, which is supported by medical evidence, taken in these periods.
456. During the retention period, the CEO:
- will continue to take reasonable steps to find alternative suitable employment for the excess employee; and/or
  - may after giving four (4) weeks' notice to the employee; reduce their classification as a means of securing alternative employment for the excess employee.
457. If an employee's classification is reduced during the retention period, the employee will continue to be paid at their previous level of salary for the balance of the retention period.
458. Where the CEO (delegate) believes there is insufficient productive work available for the excess employee during the retention period, the CEO (delegate) may, with the agreement of the excess employee, terminate the employee's employment under section 29 of the *Public Service Act 1999* on the grounds that he/she is excess to requirements and pay the balance of the retention period as a lump sum amount. The lump sum payment will be taken to include payment in lieu of notice of termination.
459. Upon termination the employee will be paid a lump sum comprising:
- a) The balance of the retention period (as shortened for the NES under clause 453 above) and this payment will be taken to include the payment in lieu of notice of termination of employment; and

- b) An additional redundancy payment equal to the amount the retention period was shortened by under clause 453 above (i.e. the NES component).

### **Involuntary redundancy**

460. At the end of the retention period, the CEO, subject to redeployment, may involuntarily retrench the excess employee under section 29 of the *Public Service Act 1999*.
461. An excess employee will not be retrenched involuntarily where:
- the employee has not been invited to accept an offer of voluntary redundancy; or
  - the employee has elected to be redundant, but the CEO (delegate) has refused approval; or
  - the employee has not been given four (4) weeks' notice of termination of employment (or five (5) weeks' notice for an employee over 45 years of age with at least five (5) years continuous service), or payment in lieu of notice; or
  - there remain employees who have elected voluntary redundancy, been refused, and still wish voluntary redundancy in the situation where a redundancy situation affects a number of employees engaged in the same work at the same level and location and the employees have been invited to retire; or
  - the employee has not consented and a vacancy exists in the Commission that would permit the retention in employment of the employee (in such cases the employee would have preference in employment before an employee who is not engaged by the Commission).

## Attachment A – Base salaries

Classification	Pay points	As at 31 August 2023	From 14 March 2024 or commencement of the agreement, whichever is later	From 13 March 2025	From 12 March 2026
EL2	<b>Zone of discretion</b>	<b>\$172,552</b>	<b>\$179,454</b>	<b>\$186,273</b>	<b>\$192,606</b>
	EL 2.4	\$162,939	\$169,457	\$175,896	\$181,876
	EL 2.3	\$154,262	\$160,432	\$166,528	\$172,190
	EL 2.2	\$145,582	\$151,405	\$157,158	\$162,501
	EL 2.1	\$136,905	\$142,381	\$147,791	\$152,816
EL1	<b>Zone of discretion</b>	<b>\$143,372</b>	<b>\$149,107</b>	<b>\$154,773</b>	<b>\$160,035</b>
	EL 1.4	\$134,058	\$139,420	\$144,718	\$149,638
	EL 1.3	\$128,579	\$133,722	\$138,803	\$143,522
	EL 1.2	\$123,100	\$128,024	\$132,889	\$137,407
	EL 1.1	\$117,623	\$122,328	\$126,976	\$131,293
APS6	<b>Zone of discretion</b>	<b>\$112,675</b>	<b>\$117,182</b>	<b>\$121,635</b>	<b>\$125,771</b>
	APS 6.4	\$102,859	\$106,973	\$111,038	\$114,813
	APS 6.3	\$99,686	\$103,673	\$107,613	\$111,272
	APS 6.2	\$96,063	\$99,906	\$103,702	\$107,228
	APS 6.1	\$91,529	\$95,190	\$98,807	\$102,166
APS5 NMHC Graduate Broadband APS 5	APS 5.4	\$87,000	\$90,480	\$93,918	\$97,111
	APS 5.3	\$85,186	\$88,593	\$91,960	\$95,087
	APS 5.2	\$82,921	\$86,238	\$89,515	\$92,559
	APS 5.1	\$80,202	\$83,410	\$86,580	\$89,524
APS4 NMHC Graduate Broadband APS 4	APS 4.4	\$78,387	\$81,522	\$84,620	\$87,497
	APS 4.3	\$76,123	\$79,168	\$82,176	\$84,970
	APS 4.2	\$74,312	\$77,284	\$80,221	\$82,949
	APS 4.1	\$72,047	\$74,929	\$77,776	\$80,420
APS3 NMHC Graduate Broadband APS 3	APS 3.4	\$69,779	\$72,570	\$75,328	\$77,889
	APS 3.3	\$67,970	\$70,689	\$73,375	\$75,870
	APS 3.2	\$66,154	\$68,800	\$71,414	\$73,842
	APS 3.1	\$64,797	\$67,389	\$69,950	\$72,328
APS2	APS 2.4	\$62,980	\$65,499	\$67,988	\$70,300
	APS 2.3	\$61,173	\$63,620	\$66,038	\$68,283
	APS 2.2	\$58,450	\$60,788	\$63,098	\$65,243
	APS 2.1	\$56,639	\$58,905	\$61,143	\$63,222
APS1	APS 1.4	\$55,279	\$57,490	\$59,675	\$61,704
	APS 1.3	\$53,013	\$55,134	\$57,229	\$59,175
	APS 1.2	\$51,655	\$53,721	\$55,762	\$57,658
	APS 1.1	\$50,297	\$52,309	\$54,516	\$57,497



## Attachment B – Supported Wage System

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

### Definitions

2. In this schedule:

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

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

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

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

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

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

### Eligibility criteria

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

### Supported wage rates

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

**Table 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

6. 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.
7. Where an employee's assessed capacity is 10 per cent, they must receive a high degree of assistance and support.

#### **Assessment of capacity**

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

#### **Lodgement of SWS wage assessment agreement**

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

### **Review of assessment**

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

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

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

### **Workplace adjustment**

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

### **Trial period**

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

## Signatories – National Mental Health Commission Enterprise Agreement 2024-2027

The National Mental Health Commission Enterprise Agreement 2024-2027 is made under section 172 of the *Fair Work Act 2009*

### Employer

Signed for, and on behalf of, the Commonwealth by the Acting Chief Executive Officer, National Mental Health Commission



Signed

Full name: Paul McCormack

Position: Acting Chief Executive Officer, National Mental Health Commission

Date: 27 March 2024

Address: Ground Floor, 55 Blackall Street, BARTON ACT 2600

### Bargaining representatives

Lucy Morgan

Signed as an authorised employee bargaining representative



Signed

Position: Individual bargaining representative – National Mental Health Commission

Date: 25 March 2024

Address: Level 12, 570 George Street, SYDNEY NSW 2000

Emily Arthur

Signed as an authorised employee bargaining representative



Signed

Position: Individual bargaining representative – National Mental Health Commission

Date: 25 March 2024

Address: Level 12, 570 George Street, SYDNEY NSW 2000

Tegan Cotterill

Signed as an authorised employee bargaining representative



Signed

Position: Individual bargaining representative – National Mental Health Commission

Date: 25 March 2024

Address: Level 12, 570 George Street, SYDNEY. NSW 2000

Carina Hart

Signed as an authorised employee bargaining representative



Signed

Position: Individual bargaining representative – National Mental Health Commission

Date: 26 March 2024

Address: Level 12, 570 George Street, SYDNEY NSW 2000

Community and Public Sector Union

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



Signed

Full name: Sam McCrone

Position: Lead Organiser

Date: 22 March 2024

Address: CPSU-PSU Group, Level 2, 54-58 Foveaux Street, SURRY HILLS NSW 2010

THE FAIR WORK COMMISSION

FWC Matter No.: AG2024/979

Applicant: Commonwealth of Australia as represented by the National Mental Health Commission

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

## Undertaking – Section 190

I, Paul McCormack, acting Chief Executive Officer for the National Mental Health Commission, have the authority to give the following undertakings with respect to the *National Mental Health Commission Enterprise Agreement 2024-2027* ("the Agreement"):

1. For the purposes of the NES, a shiftworker is defined as an employee who is rostered to perform ordinary hours of work outside the bandwidth period of 7.00am - 7.00pm Monday to Friday, and/or on Saturdays, Sundays or Public Holidays for an ongoing or fixed period.
2. Shiftworkers will be entitled to an additional half a day paid annual leave for each Sunday rostered, up to a maximum of 5 days per year in accordance with the *Australian Public Service Enterprise Award 2015*. A rostered overtime shift of three hours or more which commences or ceases on a Sunday will count in the calculation.
3. For the purposes of clauses 164 to 167 of the Agreement provide a written part-time work agreement setting out an employee's agreed part time hours before the part time arrangement commences and will include:
  - a) the ordinary hours the employee will work each week; and
  - b) the pattern of hours to be worked including starting and finishing times for employees other than shift workers, on each or any day of the week, within the bandwidth. The pattern of hours will provide for no less than three hours per day or an alternative period agreed.
4. For the purpose of clause 56, Higher duties allowance of the Agreement:
  - a) an employee who is directed to perform higher duties at the APS 1 – 6 classification level for at least a half day will be paid a higher duties allowance as at clause 57 or clause 59 as applicable. Where an employee is directed to perform higher duties at the APS 1 – 6 classification level for a period of a half a day, they will be paid for the full day.
  - b) an employee who is directed to perform higher duties at the Executive Level 1 classification level or above for a period of one week or more will be paid higher duties allowance in accordance with clause 57 or clause 59 as applicable.

These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.

Signature 

Date 9 April 2024