



FAIR WORK  
AUSTRALIA

## DECISION

*Fair Work Act 2009*

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

### Office of the Fair Work Ombudsman

(AG2011/11638)

### FAIR WORK OMBUDSMAN ENTERPRISE AGREEMENT 2011-2014

Commonwealth employment

COMMISSIONER DEEGAN

CANBERRA, 24 AUGUST 2011

*Application for approval of the Fair Work Ombudsman Enterprise Agreement 2011 - 2014.*

[1] An application has been made for approval of an enterprise agreement known as the Fair Work Ombudsman Enterprise Agreement 2011 - 2014 (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). The Agreement is a single-enterprise agreement.

[2] An undertaking under s.190 of the Act concerning the operation of clause 176 of the Agreement was filed by the employer with the application documentation. Pursuant to s.191 of the Act the undertaking is taken to be a term of the Agreement. A copy of the undertaking is attached to this decision at **Annexure A**.

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

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

[5] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 31 August 2011. The nominal expiry date of the Agreement is 30 June 2014.



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## ANNEXURE A



Australian Government

### Fair Work OMBUDSMAN

GPO Box 9887 Melbourne VIC 3001 | 414 LaTrobe Street Melbourne VIC 3000  
P: (03) 9954 2611 F: (02) 6264 5367 E: [nicholas.wilson@fwo.gov.au](mailto:nicholas.wilson@fwo.gov.au)

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#### UNDERTAKING

The Fair Work Ombudsman gives the following undertaking under section 190 of the *Fair Work Act 2009* in relation to the Fair Work Ombudsman Enterprise Agreement 2011-2014 (**Agreement**):

*The FWO will not for the duration of the Agreement rely on clause 176 of the Agreement for the taking of personal/carer's leave during annual leave and will rely on clause 156 of the Agreement.*

#### EXPLANATION

On the face of it, clause 176 would require a medical certificate to be produced for such leave which, if relied upon, would be inconsistent with clause 156 which allows for the leave to be taken without the production of a medical certificate.

The effect of this undertaking will not cause financial detriment to any employee or result in substantial changes to the Agreement.

On behalf of the Minister for Tertiary Education, Skills, Jobs and Workplace Relations

Signed:

Nicholas Wilson  
**FAIR WORK OMBUDSMAN**  
18th August 2011



Australian Government

**Fair Work**  
OMBUDSMAN



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.

# **Fair Work Ombudsman**

## **Enterprise Agreement 2011-2014**

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## **PART A – SCOPE OF THE AGREEMENT**

### **Agreement title**

1. This agreement is to be referred to as the Fair Work Ombudsman Enterprise Agreement 2011 – 2014 (the agreement).

### **Purpose**

2. The purpose of this agreement is to provide terms and conditions of employment to employees covered by the agreement and to support the Fair Work Ombudsman (the Agency) to meet its functions, which include promoting harmonious, productive and cooperative workplace relations and ensuring compliance with national workplace laws.
3. This agreement directly supports ongoing changes made in the work, organisation and performance of the Agency. This agreement also recognises the range of functions and operations performed by the Agency.

### **Commitments to staff**

4. The Agency is committed to providing flexible working arrangements to assist employees in getting an appropriate balance between their work and personal lives. All parties to this agreement recognise the need to balance these flexibilities with the Agency's aim to perform its functions in the most efficient and effective manner.
5. Managers and employees will work to ensure that the flexible working arrangements in this agreement are used to achieve working patterns which provide a balance between work and personal lives, identify opportunities for improved productivity and minimise the need for employees, including Executive Level employees, to work hours in excess of their usual hours.
6. The Agency maintains a safe and healthy work environment for all employees, consistent with its legal obligations.
7. The Agency respects and values the diversity of its workforce, provides support to prevent and eliminate harassment, bullying and discrimination on the basis of race, colour, sex, sexual preference, age, disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
8. The Agency will create a workplace that actively supports the careers and cultural needs of all employees. Initiatives that encourage increased representation of Aboriginal and Torres Strait Islander employees in the Agency will be pursued.

### **Coverage of the agreement**

9. This agreement covers the Agency and all its non-SES employees.

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### **Commencement date**

10. This agreement will commence to operate 7 days after it is approved by Fair Work Australia (FWA) (the commencement date).

### **Nominal expiry date**

11. This agreement shall nominally expire on 30 June 2014.

### **No extra claims**

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

### **Relationship to other legislation**

13. This agreement operates in conjunction with a range of other Acts (including regulations, directions, rules or instruments made under those Acts) as in force from time to time, that may regulate terms and conditions of employment, including, but not limited to, the:
  - a. *Public Service Act 1999*;
  - b. *Fair Work Act 2009*;
  - c. *Fair Work (Transitional and Consequential Amendments) Act 2009*;
  - d. *Financial Management and Accountability Act 1997*;
  - e. *Long Service Leave (Commonwealth Employees) Act 1976*;
  - f. *Maternity Leave (Commonwealth Employees) Act 1973*;
  - g. *Superannuation Act 1976*;
  - h. *Superannuation Act 1990*;
  - i. *Superannuation Act 2005*;
  - j. *Superannuation (Productivity Benefit) Act 1988*;
  - k. *Superannuation Benefits (Supervisory Mechanisms) Act 1990*;
  - l. *Safety, Rehabilitation and Compensation Act 1988*;
  - m. *Public Employment (Consequential and Transitional) Amendment Act 1999*;
  - n. *Occupational Health and Safety Act 1991*;
  - o. *Privacy Act 1998*;
  - p. *Equal Employment Opportunity (Commonwealth Authorities) Act 1987*;
  - q. *Paid Parental Leave Act 2010*;
  - r. *Defence Reserve Service (Protection) Act 2001*.

### **Supporting policies, procedures, guides and guidelines**

14. The operation of this agreement is supported by those Agency policies, procedures, guides and guidelines which are incorporated by reference in this agreement.
15. In accordance with section 257 of the *Fair Work Act 2009* (FW Act), where this agreement incorporates such policies, procedures, guides or guidelines, these policies, procedures, guides and guidelines are incorporated as in force from time to time.

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16. If there is any inconsistency between the policies, procedures, guides and guidelines and the terms of this agreement, the express terms of this agreement will prevail.
  17. The Agency agrees to follow the consultation procedures contained in this agreement before any changes are made to:
    - a. these policies, procedures, guides and guidelines incorporated by reference; and
    - b. policies, procedures, guides and guidelines which are developed to support the operation of this agreement in relation to matters affecting entitlements or conditions of employment.

### **Delegation**

18. Where the agreement implies that approval is necessary or specifies that payment will be made or leave will be granted, but a head of power is not specified, the agreement should be read as meaning the approval of the Fair Work Ombudsman will be obtained prior to the action occurring.
19. The Fair Work Ombudsman may delegate any or all of his or her powers or functions under this agreement, including this power of delegation, and may do so subject to conditions.

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## **PART B – FORMS OF EMPLOYMENT**

### **Forms of employment**

20. Employees under this agreement will be employed as:
- a full-time employee (ongoing or non-ongoing);
  - a part-time employee (ongoing or non-ongoing); or
  - a casual employee (non-ongoing employees engaged for duties that are irregular or intermittent).

### **Full-time employees**

21. Full-time employees will be engaged on the basis that their ordinary hours of work will be equivalent to 150 hours per 4 week period.
22. Full-time employees will be paid fortnightly, in arrears, based on the following formula:

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

### **Part-time employees**

23. Part-time employees will be engaged on the basis that their ordinary hours of work are less than 150 hours per 4 week period.
24. The ordinary hours of work of a part-time employee will be agreed in a part-time work agreement.
25. Where the hours of a part-time employee are to be varied for a short, non continuing period, these changes can be accommodated in a variety of ways. If the change is for a period of 1 week or less, flextime or other flexible arrangements as agreed between the employee and their manager are to be used. Where the changes are for a period of more than 1 week, flexible arrangements may be used or, a new part-time work agreement can be entered into.
26. Part-time employees will be paid fortnightly, in arrears, based on the following formula:

$$\text{Fortnightly pay} = \frac{\text{annual salary} \times 12}{313} \times \frac{\text{Part-time ordinary hours of work}}{\text{Full-time ordinary hours of work}}$$

27. Leave and other entitlements of part-time employees will be calculated on a pro rata basis, based on the proportion of hours worked in comparison to full-time hours.
28. Paragraph 26 does not apply to allowances of a reimbursement nature. In such instances, the part-time employee will receive the same allowance amount as a full-time employee.

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## Casual employees

29. Casual employees are employees who are engaged under paragraph 22(2)(c) of the *Public Service Act 1999* (PS Act).
30. Casual employees will be paid fortnightly, in arrears, based on the following formula:

$$\text{Fortnightly pay} = \frac{\text{annual salary} \times 12}{313 \div 75} \times \frac{\text{Actual hours worked in fortnight}}{\text{in fortnight}} \times 1.2$$

31. The formula in paragraph 30 includes a 20 per cent casual loading. This loading is paid in lieu of public holidays and paid leave, with the exception of long service leave (as per the *Long Service Leave (Commonwealth Employees) Act 1976*).
32. Unless specified elsewhere in this agreement, casual employees are not entitled to paid leave.

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## **PART C- REMUNERATION**

### **Classifications and salary rates**

33. The classifications and salary rates applicable during the term of this agreement are provided at Table 1, Attachment A.

The salary rates will increase:

On commencement of the agreement:	4.00%
1 July 2012:	3.00%
1 July 2013:	2.00%

### **Supported salary rates for employees with a disability**

34. An employee with a disability who is eligible for a supported salary will be paid the applicable percentage of the relevant salary rate for the work value they are performing.

### **Fortnightly pay**

35. Employees will be paid fortnightly, in arrears.
36. Payment will be made by electronic funds transfer (EFT) into a financial institution account of the employee's choice.

### **Salary on commencement of this agreement**

37. On commencement of this agreement, the Agency will pay all non-SES employees a one off productivity improvement payment of 0.75% of an employee's substantive salary on commencement, with a minimum payment of \$500.
38. On commencement of this agreement, where an existing employee's current salary exceeds the maximum salary for their APS classification, the employee's salary will be maintained until such time as it is exceeded by the maximum salary for their APS classification.

### **Salary on engagement, promotion, movement**

39. Where an employee commences in or is promoted to a higher classification in the Agency, the Fair Work Ombudsman will determine their salary, having regard to the experience, qualifications and skills of the employee. Normally, this would be at the minimum pay point of the relevant salary range.
40. When an employee moves at level from another APS Agency and their salary is:
- above the top pay point of the relevant range as stated at Table 1, Attachment A, they will be paid at the top pay point unless a higher salary is agreed to by the Fair Work Ombudsman; or
  - below the top pay point of the relevant range as stated at Table 1, Attachment A, but not aligned with a pay point in the range, their salary will be paid at the next highest pay point in that range.

## Salary advancement

41. Salary advancement will occur for eligible employees from 1 July each year. The actual payment of salary advancement will generally occur from the beginning of the first full pay period commencing on or after 1 August each year, back paid to 1 July. To be eligible for salary advancement, an employee must:
- a. complete the requirements of the Performance and Development Framework (PDF), with the exception of employees with reasonable cause; and
  - b. achieve a satisfactory rating or better on the PDF rating scale at the end of the PDF cycle; and
  - c. perform duties at the employee's substantive level or above, within the Agency, for an aggregate of 3 months or more within the PDF cycle ended 30 June; and
  - d. where relevant, meet the following additional advancement provisions applying to specific groups of employees:
    - i. Salary advancement for probationary employees will commence on the date they satisfactorily complete their probation period, provided they commenced in the Agency prior to 1 April.
    - ii. Non-ongoing employees will be eligible for salary advancement where they have been engaged at the same classification to perform the same duties continuously for 6 months during the PDF cycle.
    - iii. When an ongoing employee has been temporarily reassigned to duties at a higher classification for a period aggregating 3 months or longer during the PDF cycle and is performing duties of this higher classification on 1 July, then the employee will be eligible for salary advancement at this higher classification for the period of Temporary Performance Loading (TPL).
42. For the purposes of paragraph 41(a), 'reasonable cause' refers to employees absent from duty due to the following circumstances:
- a. long term or frequent absence due to illness or injury (including affecting the employee or a member of their immediate family or household); or
  - b. long service leave; or
  - c. compensation leave; or
  - d. maternity/adoption leave; or
  - e. as otherwise determined by the Fair Work Ombudsman.
43. Employees who commence in the Agency after 1 April or who are not eligible for salary advancement in accordance with paragraph 41 will not be able to progress to another pay point within the classification salary range until salary advancement occurs in the following year. The relevant guide is the *Performance and Development Framework*.

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## **Re-assignment to a lower classification**

44. Where an employee temporarily or permanently reduces to a lower classification level at their own request, by consent or at the direction of the Fair Work Ombudsman, the Fair Work Ombudsman will determine a salary within the lower classification salary range, having regard to the experience, qualifications and skills of the employee, and the circumstances under which the reduction occurred. Normally, this would be at the top of the salary range of the lower classification. Such determination will specify the period for which the lower salary will apply.
45. Paragraph 44 does not apply to decisions made by the Fair Work Ombudsman in relation to breaches of the Code of Conduct or underperformance.

## **Salary packaging**

46. Employees may choose to sacrifice part of their salary from a selection of non-cash benefits in accordance with the applicable guide. Participation in salary packaging will not affect salary for superannuation purposes or any other purpose.

## **Overpayment of entitlements**

47. Where an employee is overpaid an amount of salary or other remuneration, the employee authorises the Fair Work Ombudsman to deduct the amount of the overpayment from the next salary instalment unless other arrangements are agreed. If the deduction exceeds 25% of the total salary instalment payable, the Fair Work Ombudsman and the employee may agree, in writing, on deduction by instalment to recover the overpayment.

## **Superannuation**

48. The Agency will provide employees with general information (but not financial advice) about superannuation arrangements promptly following initial commencement or recommencement of employment.
49. The default fund for the Agency is the Public Sector Superannuation Accumulation Plan (PSSap).
50. The salary for superannuation purposes for PSSap members or those who choose another fund will be calculated based on the employee's Ordinary Time Earnings (OTE) within the meaning of the *Superannuation Guarantee (Administration) Act 1992*.
51. Employer contributions to the PSSap will be 15.4% of the employee's fortnightly contribution salary (or OTE). Employer contributions for employees in other accumulation schemes will be at the same rate as for employees in PSSap. Employer contributions will not be reduced by any other contributions made through salary sacrifice arrangements. This clause does not apply where a superannuation fund cannot accept employer superannuation contributions (e.g. unable to accept contributions for people aged over 75).

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52. An employee may choose any approved superannuation fund as long as the fund can accept employer contributions by Electronic Funds Transfer (EFT). Any fees associated with EFT will be borne by the Agency.
  53. Existing Public Sector Superannuation (PSS) and Commonwealth Superannuation Scheme (CSS) arrangements will continue in accordance with the relevant legislation and requirements.
  54. For employees who take paid or unpaid parental leave (which includes maternity, adoption, supporting partner, primary caregiver and foster care leave), employer contributions (based on the employer contribution amount in the full pay period immediately prior to commencing parental leave) will be made for a period equal to a maximum of 52 weeks, in accordance with the rules of the appropriate superannuation scheme. For employees in PSSap, the rules permit employer contributions to be made.

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## **PART D – ALLOWANCES AND ASSISTANCE**

55. The Agency provides eligible employees with allowances or payments that recognise:
- a. particular skills; or
  - b. additional costs borne by the employee in the course of their employment.
56. These allowances or payments include:
- a. corporate citizen allowance;
  - b. community language allowance;
  - c. professional payments assistance;
  - d. additional costs assistance;
  - e. motor vehicle allowance;
  - f. healthy lifestyle assistance; and
  - g. transition to retirement assistance.
57. Additional costs assistance, healthy lifestyle assistance and transition to retirement assistance will be paid on a reimbursement basis.

### **Corporate citizen allowance**

58. An allowance of \$27 will be paid to employees on a fortnightly basis for undertaking the following corporate citizen roles:
- a. First Aid Officers;
  - b. Chief Fire, Floor and Area Wardens;
  - c. Health and Safety Representatives; and
  - d. Harassment and Diversity Contact Officers.
59. Employees who are authorised by the Agency to undertake more than one of the above corporate citizen roles will only receive one payment of the allowance per fortnight.
60. To be eligible for payment of the corporate citizen allowance on the basis of undertaking the role of First Aid Officer, an employee must:
- a. possess the required qualifications for first aid at the minimum accreditation standard of Senior First Aid Certificate (Level 2 or equivalent);
  - b. have continuing expertise commensurate with that training; and
  - c. be appointed as a First Aid Officer by the Agency.
61. To be eligible for payment of the corporate citizen allowance on the basis of undertaking the role of Fire Warden, an employee must:
- a. be appointed as a Fire Warden by the Agency; and
  - b. have successfully undertaken relevant fire warden training.
62. To be eligible for payment of the corporate citizen allowance on the basis of undertaking the role of Harassment and Diversity Contact Officer, an employee must be appointed as an Harassment and Diversity Officer by the Agency.

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### **Community language allowance**

63. The Agency may approve payment of a community language allowance of \$700 per annum, paid on a fortnightly basis to an employee with the required level of competency, as determined by the Agency, where there is an identifiable and continuing need for particular skills in a language other than English.

### **Professional payments assistance**

64. The Agency will pay for professional practice, membership or other fees for those employees in positions where the Fair Work Ombudsman has determined that those professional skills, qualifications and memberships are required.

### **Motor vehicle allowance**

65. When a manager authorises an employee to use a private motor vehicle for official purposes, the employee will receive a motor vehicle allowance of 76 cents per kilometre.

### **Additional costs assistance**

66. The Fair Work Ombudsman may provide assistance for additional costs including, but not limited to, travel, living away from home allowance, additional child care costs arising from operational requirements, and other costs borne by the employee in the course of their employment.

### **Healthy lifestyle assistance**

67. Healthy lifestyle assistance may be claimed by an ongoing employee as reimbursement for costs spent on healthy lifestyle initiatives up to the maximum amounts specified below:

From commencement of agreement – 30 June 2012:	\$200
1 July 2012 – 30 June 2013:	\$300
1 July 2013 – 30 June 2014:	\$400

68. This allowance does not accumulate and claims are only to be for costs incurred within the relevant period.

### **Study assistance**

69. The Agency supports ongoing employees undertaking formal study and encourages eligible employees to apply for study assistance.

### **Work related travel**

70. The following principles apply in relation to employees undertaking travel (as defined in the relevant guide or policy) on official business:
- employees will not be out of pocket for the reasonable costs of accommodation, meals, incidentals and other expenses incurred;
  - in organising and approving business travel, managers shall be flexible in accommodating the needs of individuals and should take into account family responsibilities, personal circumstances and other relevant factors that may affect an employee's ability to travel.

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- c. travel, where possible, should be undertaken during the normal bandwidth, and time recorded according to the flextime (APS 1-6) or Time Off in Lieu (Executive Level 1-2) arrangements.
71. If the manager and employee agree that the travel is to be undertaken outside the normal bandwidth, TOIL will be granted to the employee at ordinary time rates. If the employee is directed to undertake travel outside the normal bandwidth, TOIL will be granted to the employee at overtime rates. For Executive Level 1- 2 this will be in accordance with TOIL arrangements for Executive Level 1-2 at paragraphs 116-119.
72. Where an employee is required to undertake travel for less than 1 day, but commences before 7am or concludes after 7pm in the State where they work, they:
- a. will be eligible for non-aquittable cash payment of \$20 per day; or
  - b. may use their travel card to purchase the meals (breakfast, lunch or dinner) for which the employee is away from the home locality to the value of those specified in the relevant policy or guide. The purchase of the meal must be accompanied by a receipt or Statutory Declaration and the expenditure must be acquitted.

#### **Transition to retirement**

73. To assist employees with retirement planning, employees aged 54 years and over who are approaching or genuinely considering retirement, may access financial assistance in the form of a one-off reimbursement payment up to a total maximum of \$500 (inclusive of GST) to obtain financial advice from a registered financial advisor.
74. In addition, employees aged 54 and over who are approaching retirement may elect to work on a part-time basis until retirement.

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## **PART E – FLEXIBLE WORKING ARRANGEMENTS**

75. The Agency is committed to providing flexible working arrangements to assist employees in getting an appropriate balance between their work and personal lives.
76. Managers and employees will work to ensure that the flexible working arrangements in this agreement are used to achieve working patterns which provide a balance between work and personal lives, identify opportunities for improved productivity, and minimise the need for employees, including Executive Level employees, to work hours in excess of their usual hours.
77. Flexible working arrangements include:
- a. part-time work (paragraphs 23 - 28);
  - b. flexible work arrangements for parents/carers (paragraphs 79-82);
  - c. working from home arrangements (paragraph 83);
  - d. job sharing (paragraph 84);
  - e. use of individual flexibility arrangements (paragraphs 85 to 90);
  - f. flextime arrangements (paragraphs 99 to 109); and
  - g. use of leave provisions (Part G).
78. If an employee applies to access any of the flexible working arrangement provisions of this agreement and the request is denied, the manager must provide the employee with a reason for the decision in writing and consider and discuss with the employee any alternatives available under this agreement that may address the employee's work life balance or carer responsibilities.

### **Flexible working arrangements for parents/carers**

79. An employee who is a parent, or has the responsibility for the care of a child under school age or a child under 18 who has a disability, may request flexible working arrangements, including part-time hours. The employee is not eligible to make this request unless they have completed at least 12 months of continuous qualifying service (the Fair Work Ombudsman may waive this requirement in exceptional circumstances).
80. A casual employee engaged for irregular or intermittent duties may only request flexible work arrangements if the employee:
- a. is a long term casual employee immediately before making the request; and
  - b. has reasonable expectation of continuing employment on a regular and systematic basis.

Note: 'long term casual employee' is defined at section 12 of the FW Act.

81. A request made in accordance with paragraph 79 must be in writing and set out details of the change sought and the reasons for the change. The Fair Work Ombudsman will respond in writing to the request within 21 days and will only refuse on reasonable business grounds. Where the request is refused, the response will include reasons for the refusal.

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82. For the purpose of this clause:
- a. 'qualifying service' means service that is recognised for redundancy pay purposes;
  - b. 'casual' means an employee engaged on an irregular or intermittent basis.

**Working from home**

83. An employee and manager may agree to the employee working from home on either a regular, temporary or intermittent basis.

**Job sharing**

84. A manager may approve job sharing arrangements between 2 or more employees subject to operational requirements and the basis of the employees' applications. The details of any job sharing arrangement will be agreed in writing between the manager and the employees involved.

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## Flexibility term

85. The Fair Work Ombudsman may use the flexibility term in paragraphs 86 to 90 for the purpose of recognising outstanding performance in exceptional circumstances.
86. The Agency and an employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
- (a) the agreement deals with 1 or more of the following matters:
    - (i) arrangements about when work is performed;
    - (ii) overtime rates;
    - (iii) penalty rates;
    - (iv) allowances;
    - (v) remuneration; and/or
    - (vi) leave; and
  - (b) the arrangement meets the genuine needs of the Agency and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
  - (c) the arrangement is genuinely agreed to by the Agency and employee.
87. The Agency must ensure that the terms of the individual flexibility arrangement:
- (a) are about permitted matters under section 172 of the *Fair Work Act 2009*; and
  - (b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
  - (c) result in the employee being better off overall than the employee would be if no arrangement was made.
88. The Agency must ensure that the individual flexibility arrangement:
- (a) is in writing; and
  - (b) includes the name of the Agency (the Fair Work Ombudsman) and employee; and
  - (c) is signed by the Fair Work Ombudsman and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
  - (d) includes details of:
    - (i) the terms of the enterprise agreement that will be varied by the arrangement; and
    - (ii) how the arrangement will vary the effect of the terms; and
    - (iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
  - (e) states the day on which the arrangement commences and ceases.
89. The Agency must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.

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90. The Agency or employee may terminate the individual flexibility arrangement:
- (a) by giving no more than 28 days written notice to the other party to the arrangement; or
  - (b) if the Agency and employee agree in writing — at any time.

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## **PART F – WORKING HOURS**

91. Managers, team leaders, supervisors and employees have a mutual responsibility for managing their working hours and patterns, including leave planning, flextime arrangements and minimising excessive hours where possible. The provisions below are designed to be sufficiently flexible for employees to meet business requirements and balance their personal needs.
92. If, in exceptional circumstances, employees are required to work in excess of their usual pattern of hours over a settlement period, managers will consult with the affected employees about:
  - a. appropriate recompense (which may or may not be monetary and may include agreement by managers to compensatory time off for employees who do not have access to overtime), subject to paragraphs 116-119;
  - b. how the additional workload might be shared between employees;
  - c. the employee's responsibilities outside the workplace which may impact on their ability to change their usual pattern of work; and
  - d. the period over which additional hours will be required to be worked.

### **The standard day**

93. The standard day is defined as being worked from 8.30am to 12.30pm and 1.30pm to 5pm (7 hours 30 minutes per day).

### **Bandwidth**

94. The bandwidth of hours in which an employee may work their ordinary hours are 7am to 7pm Monday to Friday, or as otherwise agreed on an individual basis between the relevant manager and employee.

### **Pattern of hours**

95. The pattern of hours by which employees meet their ordinary hours of duty is a matter for agreement between the manager and the employee.
96. An employee will not normally be expected to work more than:
  - a. 10 hours ordinary time on any day; or
  - b. 5 consecutive hours without a meal break of at least 30 minutes.
97. Where this does occur, overtime and Time Off in Lieu (TOIL) provisions at paragraphs 113 to 125 and meal allowance provisions at paragraph 131 may apply.
98. In discussing working patterns, other issues on which managers and employees may reach agreement include:
  - a. in what, if any, exceptional circumstances flex credits in excess of 37.5 hours may be cashed out at ordinary time rates;
  - b. the period of time in which all employees are required to attend, if any, for the team or work area; and
  - c. any other relevant issues for the team or work area.

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### **Flextime scheme**

99. Flextime is a system of flexible working arrangements that enables employees and managers to vary working hours, patterns and arrangements to provide maximum organisational flexibility with benefit to employees, clients and the Agency. A business unit may decide to implement the flextime entitlement by means of a scheduled accumulated day off.
100. All employees covered by this agreement are required to record their working hours.
101. APS 1-6 employees (and their equivalents) are eligible to accrue flextime for duties performed in excess of their ordinary hours of work (over the settlement period), but which does not attract overtime.

### **Flex credit balance**

102. Employees may carry over a maximum credit of 37.5 hours of flextime accumulated in any settlement period into the next settlement period.

### **Cash out of credits exceeding 37.5 hours**

103. At the end of a settlement period, flex credits exceeding 37.5 hours may be cashed out at ordinary time rates where, due to organisational requirements, the manager cannot envisage an opportunity for the employee to use these credits in the following settlement period.

### **Flex debit balance**

104. Employees may carry over a maximum debit of 10 hours of flextime accumulated in any settlement period into the next settlement period.
105. In circumstances where the maximum debit is exceeded at the end of a settlement period, the employee will endeavour to reduce the debit to the maximum allowable (or lower) over the next settlement period.

### **Deduction of flex debit from salary**

106. Should this not occur, the amount by which the maximum is exceeded shall be treated as leave without pay and an appropriate deduction will be made from the employee's salary. Alternatively, with approval, an employee may use annual leave to offset any flex debit.

### **Flex balances at cessation**

107. Prior to cessation of employment, managers should provide opportunities to enable employees to balance any flex credits or debits. Employees should also take all reasonable steps to balance their flex debit or credit. Where any flex credits are outstanding at cessation of employment with the Agency, these should be paid to the employee at ordinary rates. Where any flex debits are outstanding at cessation, these will be recovered from any termination payment.

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### **Reversion to standard day**

108. When an employee has failed to comply with the provisions of flextime, a manager may remove access to flextime provisions for that employee for a specified period and the employee will revert to working the standard day. Access to flextime will be restored where the manager is satisfied that the employee will maintain satisfactory attendance patterns.

### **Insufficient work**

109. The relevant manager may require an employee not to work hours in addition to ordinary hours where there is insufficient work. That is, a manager may require that an employee not accrue flextime where such accrual cannot be justified by the employee's workload.

### **Unauthorised absences**

110. When an employee is absent from work without approval, reasonable efforts will be made to contact the employee and to establish the reason for the unauthorised absence.
111. When an employee is absent from work without approval, all salary and other benefits provided under this agreement will cease to be available until the employee resumes work or is granted leave.
112. When the employee is absent from work without approval for 3 consecutive working days, action on the grounds of non-performance of duties may commence which may result in the employee's employment being terminated.

### **Overtime and Time Off in Lieu (TOIL)**

#### **APS 1-6 (and equivalents)**

113. Upon provision of reasonable notice, employees may be directed to work overtime. APS 1-6 level employees (and their equivalents) will be entitled to payment of overtime in accordance with paragraphs 121 and 122 where they are directed by their manager to perform work:
- a. outside the bandwidth (except when travelling, refer to paragraph 71);
  - b. on a public holiday;
  - c. in excess of 10 hours on any 1 day; or
  - d. outside a part-time employee's ordinary hours of work.
114. In special circumstances, where an employee is directed to work overtime, the manager may approve access to overtime for all work performed outside the ordinary hours (plus any additional hours, if relevant) on any 1 day.
115. An employee may elect to take TOIL at the appropriate rate instead of payment of overtime.

#### **Executive Level (and equivalents)**

116. Executive Level employees often have extra, irregular and non-ongoing demands placed upon them, including working beyond ordinary hours. Their remuneration recognises the additional demands which may be placed upon them.

117. Managers of Executive Level employees will work with them to determine working arrangements and plan work to ensure that they do not work substantially in excess of ordinary hours or more than occasionally commence and finish outside the bandwidth.
118. Where an Executive Level employee has been required to work substantially in excess of ordinary hours, the employee's manager, in exceptional circumstances, can negotiate with the employee to provide reasonable time off in lieu for hours worked. This will not normally be on an hour-for-hour basis.
119. Executive Level employees (and their equivalents) are not generally entitled to overtime. However, the Fair Work Ombudsman may approve overtime payments for excess hours worked in exceptional circumstances.

### **Part-time employees**

120. A part-time employee directed to perform work in excess of the agreed hours of duty over the settlement period and who has not elected to receive flextime for such will be eligible for overtime in accordance with paragraphs 113 to 119.

### **Calculation**

121. When overtime is worked, overtime and TOIL are calculated at the following rates:

Monday to Saturday	Time and 1 half for the first 3 hours each day, and double time thereafter
Sunday	Double time
Public Holidays	Double time and a half

122. In calculating the overtime entitlement, a divisor of 37.5 hours is to be used.

### **Payment for overtime**

123. Payment of authorised overtime will be calculated using the rates set out in paragraphs 121 and 122.

### **Non-continuous duty**

124. Where a period of overtime is not continuous with ordinary duty, the minimum overtime payment is 4 hours at the relevant rate. Where the period of overtime is greater than 4 hours, payment will be made for the actual period worked at the relevant rate.

### **Continuous duty**

125. Overtime is considered to be continuous with ordinary duty when an employee does not have a break, other than a meal break, between the periods of ordinary duty and overtime.

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### **Call in allowance**

126. An employee not in receipt of restriction allowance, up to and including an Executive Level 1 employee, who is called to work to meet an emergency outside the ordinary (or agreed) bandwidth will be paid at double time for the period of work and any time necessarily spent in travelling to and from the work site. The minimum payment for such work will be 2 hours at double time.

### **Restriction allowance**

127. A restriction allowance will be paid where a manager requires that an employee be contactable and available to work for a specified period outside the standard bandwidth.
128. The employee will be paid 10% of their hourly salary for each hour restricted, provided they remain contactable and ready to perform extra work.
129. Restriction allowance is payable whether or not the restricted employee is required to work. Where an employee who has been restricted is required to work, they will be paid overtime subject to:
- a. a minimum 1 hour payment when work is performed without the necessity to travel to the workplace;
  - b. a minimum 3 hour payment including travel time if work is required to be performed at the workplace;
  - c. restriction allowance will not be paid while on overtime.
130. Payment of restriction allowance will not be made to an employee who does not remain contactable or at the required degree of readiness to perform duties.

### **Meal allowance**

131. Where an employee is required to work overtime for a continuous period to the completion of or beyond a meal period, he or she will be paid a meal allowance of \$22.05. An employee who performs overtime at home is not eligible for a meal allowance.

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## **Public holidays**

### **Recognised public holidays**

132. Employees, other than casuals, will be entitled to the following public holidays without loss of pay:
- a. New Year's Day (1 January)
  - b. Australia Day (26 January)
  - c. Good Friday
  - d. Easter Monday
  - e. Anzac Day (25 April)
  - f. The Queen's birthday holiday (on the day on which it is celebrated in a State or Territory or a region of a State or Territory)
  - g. Christmas Day (25 December)
  - h. Boxing Day (26 December)
  - i. any other day, or part-day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday, other than a day or part-day, or a kind of day or part-day, that is excluded by the Fair Work Regulations from counting as a public holiday.
133. 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.
134. The Agency 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.
135. In accordance with section 116 of the FW Act, where an employee, other than a casual, is absent from his or her normal employment on a day, or part-day, that is a public holiday, they will be paid at the employee's normal rate of pay for the employee's ordinary hours of work on the day or part-day.
136. Where an employee works on a public holiday, the employee will be entitled to overtime or TOIL, which will be calculated at double time and a half in accordance with paragraphs 113 to 125.
137. Where a public holiday occurs in a period of annual or personal leave, the public holiday will not be deducted from the employee's annual or personal leave credits respectively.
138. Where an employee is on a period of leave without pay and a public holiday occurs, the employee will not be entitled to payment for the public holiday.

### **Make up time for substituted day**

139. Where an employee cannot work on the day for which a substituted holiday has been granted, he or she will make up that time through mutual agreement with their manager, without entitlement to payment for overtime.

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## **Annual closedown and early stand down**

### **Annual closedown**

140. The Agency is minimally staffed over the Christmas/New Year period. Employees will be provided paid time off from 12.30pm on the working day immediately prior to Christmas Day and for the days between Christmas and New Year's Day which would otherwise be working days. If an employee agrees to work following a call for volunteers over this period, for days other than public holidays, they will be provided with TOIL to be taken at an alternative time convenient to the employee and agreed with their manager. If an employee is directed to work, overtime will apply in accordance with paragraphs 113 to 125.
141. If an employee elects to work on the next normal working day after the Boxing Day holiday (previously known as the public service holiday), an employee may elect to receive TOIL or payment of overtime in accordance with paragraphs 113 to 125.

### **Part-time employees**

142. Part-time employees normally not working on the days of the week on which the annual closedown occurs will not be entitled to alternative time off duty.

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## **PART G – LEAVE**

143. This part details a range of leave options available to employees covered by this agreement, including:
- a. Annual leave;
  - b. Personal/carer's leave;
  - c. Compassionate leave;
  - d. Long service leave;
  - e. Parental leave;
  - f. Purchased leave;
  - g. Sabbatical leave;
  - h. Other leave;
  - i. War service sick leave; and
  - j. Defence reserve leave.

### **Annual leave**

144. The purpose of annual leave is to provide employees with the opportunity for a reasonable break from work. It is also important for the health and wellbeing of employees that leave is taken within a reasonable period of its accrual and that planning for leave is incorporated into workload management.
145. Full-time employees are entitled to 4 weeks of paid annual leave per year.
146. Part-time employees are entitled to paid annual leave on a pro rata basis.
147. Casual employees are not entitled to paid annual leave.
148. Annual leave will be as provided for in the National Employment Standards (NES).
149. Annual leave accumulates from year to year.
150. Managers are to ensure that in any 12 month period, employees are given the opportunity to use annual leave. An employee must obtain their manager's approval prior to taking any annual leave.
151. The Agency must not unreasonably refuse to agree to a request by the employee to take paid annual leave.
152. Employees should seek to use paid annual leave within 12 months of its accrual. Where an employee accrues in excess of 8 weeks (40 days) paid annual leave, the Fair Work Ombudsman may, after providing at least 4 weeks notice, direct the employee to take up to 2 weeks of paid annual leave.
153. The Fair Work Ombudsman will not direct an employee to take leave where the employee is able to demonstrate that particular circumstances exist and the employee agrees to appropriate arrangements to reduce the leave balance within an agreed timeframe.

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154. Employees may take annual leave at either full or half pay. The minimum absence of leave on half pay is 2 working days, with further absences in multiples of 2 days.
  155. If the period during which an employee takes paid annual leave includes a day or part-day that is a public holiday in the place where the employee is based for work purposes, the employee is taken not to be on paid annual leave on that public holiday.
  156. If the period during which an employee takes paid annual leave includes a period of any other leave (other than unpaid parental leave), or a period of absence from employment under Division 8 of Part 2-2 of the FW Act (which deals with community service leave), the employee is taken not to be on paid annual leave for the period of that other leave or absence.
  157. If, in accordance with Division 6 of Part 2-2 of the FW Act, an employee takes a period of paid annual leave, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.
  158. If, when the employment of an employee ends, the employee has a period of untaken paid annual leave, the employer must pay the employee the amount that would have been payable to the employee had the employee taken that period of leave.

#### **Annual leave cash out**

159. An employee may cash out accrued paid annual leave subject to the following conditions:
  - a. the employee may not cash out paid annual leave if the cashing out would result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks; and
  - b. in order to cash out paid annual leave, the Fair Work Ombudsman and the employee must make a separate agreement in writing for each cashing out of a particular amount of paid annual leave.
160. Where an employee cashes out accrued paid annual leave they must be paid at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has foregone.

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

161. An employee may access paid personal/carer's leave in the following circumstances:
  - a. where the employee is not fit for work due to personal illness or injury affecting the employee;
  - b. to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because of:
    - i. a personal illness, or personal injury affecting the member; or
    - ii. an unexpected emergency affecting the member.

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162. Employees (excluding those engaged on an irregular and intermittent basis) will be entitled to 18 days personal leave for every 12 months of service. Personal/carer's leave will accrue and be granted on a monthly basis.
  163. Subject to approval, employees who are newly engaged in the Australian Public Service can anticipate up to 4 days (pro rata for part-time employees) of personal/carer's leave in the first 3 months of their employment. Any anticipated leave will be offset against future accruals.
  164. The Fair Work Ombudsman may approve additional anticipated personal/carer's leave in exceptional circumstances and where current personal/carer's leave credit has been exhausted. Any additional anticipated leave is to be offset by future leave accruals.
  165. An employee who has received an annual grant of personal/carer's leave on the anniversary date of their employment during the 12 months prior to the commencement date of this agreement, will transition to a monthly accrual at the next anniversary date after commencement of this agreement.
  166. Part-time employees are entitled to paid personal/carer's leave on a pro rata basis.
  167. Casual employees are not entitled to paid personal/carer's leave.
  168. Personal/carer's leave accumulates from year to year.
  169. Unused personal/carer's leave will not be paid out on termination of employment.
  170. Where the employment of an ongoing employee terminates and the employee has taken leave in advance of such leave accruing, the value of the leave that has been taken but not accrued by the employee will be treated as an overpayment of entitlements.

#### **Taking personal/carer's leave**

171. Employees must advise their manager as soon as possible of their absence or their intention to be absent.
172. An employee's personal/carer's leave will not be debited where an employee is medically unfit for duty or required to undertake carer's responsibilities on a public holiday which the employee would otherwise have observed.
173. Unless otherwise agreed by the Fair Work Ombudsman, no more than 3 consecutive days of personal leave may be taken without satisfactory medical or other evidence. However, a manager may, at any time with reason, request that an employee provide medical or other evidence for any future period of leave.
174. Medical certificates from registered health practitioners will be accepted for the purpose of personal illness or injury. Where it is not practicable to provide a medical certificate, a Statutory Declaration made by the employee will be accepted.

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## **Reappointment after invalidity retirement**

175. An employee who has their APS employment terminated on the grounds of invalidity, and is subsequently re-engaged as a result of action taken under section 75 of the *Superannuation Act 1976*, the *Superannuation Act 1990* and the *Superannuation Act 2005*, is entitled to be credited with personal/carer's leave equal to the balance of personal/carer's leave at the time of termination.

## **Use of personal/carer's leave during other forms of leave**

176. Employees who are medically unfit for more than 1 day while on annual or long service leave and who produce satisfactory medical evidence may apply for personal/carer's leave. Annual and long service leave will be re-credited to the extent of the period of personal/carer's leave granted.
177. An employee is unable to access personal/carer's leave while on paid supporting partner/paternity leave.

## **Unpaid carer's leave**

178. An employee is entitled to 2 days of unpaid carer's leave for each occasion (a permissible 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.
179. An employee may take unpaid carer's leave for a particular permissible occasion as a single continuous period of up to 2 days or any separate periods to which the employee and the Fair Work Ombudsman agree.
180. An employee cannot take unpaid carer's leave during a particular period if the employee could instead take paid personal/carer's leave.
181. Medical certificates from registered health practitioners will be accepted for the purpose of personal illness or injury. Where it is not practicable to provide a medical certificate, a Statutory Declaration made by the employee will be accepted.

## **Compassionate leave**

182. A full-time or part-time employee may take 3 days paid compassionate leave on each occasion that a member of their family, or household:
- a. contracts or develops a personal illness that poses a serious threat to his or her life; or
  - b. sustains a personal injury that poses a serious threat to his or her life; or
  - c. dies.
183. The employee may take the period of leave as a single period of 3 days, 3 separate periods of 1 day each or any separate periods to which the Fair Work Ombudsman and employee agree.
184. The Fair Work Ombudsman may require the employee to provide evidence of the illness, injury or death in support of the request for leave.

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185. A casual employee may also access compassionate leave. Such leave will be unpaid leave.

### **Long service leave**

186. Long service leave will accrue and be available to eligible employees in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976*.
187. An employee taking long service leave must do so for a minimum of 7 consecutive calendar days with the granting of such leave subject to operational requirements.
188. Periods of long service leave cannot be broken with any other leave including absences on flextime leave (except as provided for by the *Maternity Leave (Commonwealth Employees) Act 1973* and the personal/carer's leave provisions of this agreement).

### **Parental leave**

189. The provisions regarding parental leave are in addition to entitlements under the *Paid Parental Leave Act 2010*.

### **Maternity leave**

190. Employees covered by this agreement may be entitled to maternity leave in accordance with the *Maternity Leave (Commonwealth Employees) Act 1973*.
191. The Fair Work Ombudsman will approve spreading the payment for the period of absence over a maximum period of 24 continuous weeks at a rate no less than half normal pay. Where the payment is spread over a period greater than 12 weeks, the additional period of paid leave beyond the mandatory absence of 12 weeks specified in the *Maternity Leave (Commonwealth Employees) Act 1973* will not count as service for any purpose.

### **Additional paid maternity leave**

192. Full-time and part-time employees are entitled to take an additional 4 weeks paid leave to be taken immediately following the mandatory period of maternity leave provided for under the *Maternity Leave (Commonwealth Employees) Act 1973*.
193. The additional 4 weeks paid maternity leave will count as service for all purposes.
194. The Fair Work Ombudsman may approve an employee's request to take the additional paid maternity leave over an 8 week period, with payment at a rate no less than half normal pay.
195. Where additional paid maternity leave is taken at half pay, only 4 weeks of the leave period will count as service.

### **Special maternity leave**

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196. Where a full-time or part-time employee who is an expectant mother experiences a pregnancy related illness, or if her pregnancy ends within 28 weeks of expected birth, she will be granted paid personal leave for the period of leave as set out in the medical certificate. If personal leave credits are exhausted, the remainder of leave will be unpaid.
  197. Special maternity leave will operate in conjunction with entitlements under the *Maternity Leave (Commonwealth Employees) Act 1973*.

### **Primary caregiver's leave**

198. Primary caregiver means an ongoing employee with at least 12 months continuous service who:
  - a. is the partner of a parent who has given birth; and
  - b. has the sole responsibility for providing care to a newborn baby within the family home during normal business hours.
199. The intention of primary caregiver's leave is to enable the partner of a parent who has given birth to access an entitlement equivalent to paid maternity/parental leave, where:
  - a. the partner is the primary caregiver of the newborn baby; and
  - b. the partner of the primary caregiver (regardless of whether or how much employer-provided maternity/parental leave is granted), returns to employment within 16 weeks of the child's date of birth.
200. A primary caregiver is entitled to up to 16 weeks paid primary caregiver's leave.
201. Primary caregiver's leave may be taken at half pay.
202. Primary caregiver's leave is available for a maximum period of 16 weeks commencing from the date of birth of the child (or 32 weeks, if taken at half pay).
203. Where paid primary caregiver's leave is taken at half pay, only half of the total weeks of the leave period will count as service (e.g. 16 weeks if 32 weeks are taken at half pay). The other weeks that do not count as service do not break the employees' continuous service with the Agency.
204. Where a primary caregiver's partner has accessed, or intends to access, employer-provided maternity or parental leave, the primary caregiver may only access paid primary caregiver's leave on a non-concurrent basis (i.e. not whilst the parent who has given birth is accessing employer-provided maternity/parental leave) so that the combined period of maternity/parental and primary caregiver's leave does not exceed 16 weeks (or 32 weeks at half pay).
205. Applications for primary caregiver's leave must be supported by a signed Statutory Declaration which must include:
  - a. a statement to the effect that the employee concerned is the primary caregiver for a child and the duration of the caring arrangements; and
  - b. a statement that primary caregiver's leave for the employee concerned will only be accessed on a non-concurrent basis with any employer-

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provided maternity/parental leave entitlements taken by the employee's partner.

206. References to "employer provided maternity/parental leave" refer to both paid and unpaid leave.

#### **Paid supporting partner/paternity leave**

207. A full-time or part-time employee is entitled to take 4 weeks paid leave within 6 months of the birth of the employee's child or the employee's partner's child (where the employee is not entitled to paid maternity leave under the *Maternity Leave (Commonwealth Employees) Act 1973* or primary caregiver's leave).
208. This leave with pay counts as service for all purposes.

#### **Unpaid parental leave**

209. To enable an employee to care for a newborn or newly adopted child under 16 years of age, all employees are entitled to up to 52 weeks of unpaid parental leave. An employee who takes unpaid parental leave may request the Agency to agree to an extension of unpaid parental leave for a further period of up to 12 months immediately following the end of the available parental leave period (in accordance with section 76 of the FW Act).
210. This provision does not apply to employees covered by the *Maternity Leave (Commonwealth Employees) Act 1973* to the extent that that Act is more beneficial.
211. The 52 weeks unpaid parental leave can be taken over a 68 week period, with the 68 week period commencing 6 weeks before the expected date of birth of the child or, in the case of an adopted child, on the day the employee assumes responsibility for the child.
212. Unpaid parental leave does not count as service for any other purpose except as provided in the *Maternity Leave (Commonwealth Employees) Act 1973* as amended from time to time.

#### **Adoption leave**

213. Full-time or part-time employees are entitled to up to 16 weeks paid adoption leave where:
- a. the employee has at least 12 months continuous service in the APS;
  - and
  - b. is the primary caregiver for the adopted child under 16 years of age.
214. Adoption leave is available from 1 week prior to the date of placement of a child and must be taken within 8 weeks of the child being adopted. Adoption leave with pay counts as service for all purposes.

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### **Pre adoption leave**

215. Full-time or part-time employees in the process of adopting a child may take up to 2 days leave without pay to attend any interviews or examinations required to obtain approval for the adoption.

### **Return to work from parental or adoption leave**

216. An employee returning to work from parental or adoption leave and who is the primary caregiver of the child may elect to work on a part-time basis until the child has reached school age in accordance with paragraphs 79-82.
217. An employee returning to work from maternity leave will also be supported through the provision of paid lactation breaks.

### **Foster care leave**

218. The provisions of paragraph 213 will also apply to long term (more than 12 months) formal fostering arrangements.

### **Purchased leave**

219. Once in any 12 month period, an employee may elect to purchase from 1 to 8 weeks leave.
220. Purchased leave will count for service for all purposes.
221. The employee's salary for superannuation purposes continues to be their salary as if they had not purchased leave.
222. A reconciliation of purchased leave deductions will be undertaken at the conclusion of the purchased leave period.

### **Sabbatical leave**

223. The Agency may approve an application from an ongoing employee to work for a 4 year period followed by a 1 year sabbatical leave period.
224. An employee whose sabbatical leave application is approved will receive 1 year's sabbatical leave by agreeing to forgo 20% of their eligible salary on each payday in each of the 4 years immediately prior to going on 1 year's sabbatical leave.
225. During the sabbatical year, employees will be paid an amount equivalent to the total amount forgone from salary for the previous 4 years, in equal fortnightly instalments.
226. Should an employee cease employment with the Agency or otherwise leave the scheme, the Agency will pay the employee the balance of any amount forgone during the 4 year period.
227. Sabbatical leave does not count as service for any purpose.
228. Sabbatical leave does not break the continuity of service.

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## Other leave

229. The Agency may provide a range of other forms of leave to support employees, including but not limited to leave:
- a. for short term caring purposes of an occasional and non-enduring nature, including:
    - i. caring for a child on pupil-free school days (excluding school holidays);
    - ii. essential requirements associated with birth, adoption or fostering.
  - b. as a result of special or exceptional circumstances, including:
    - iii. emergencies/unplanned events;
    - iv. moving house (a maximum of 2 days per year);
    - v. attendance at a child's school or educational facility, where this is required or encouraged by the school or educational facility;
    - vi. graduation.
  - c. to provide support to a member of their family, including:
    - vii. accompanying a family member to a legal, medical or dental appointment;
    - viii. provision of emergency interpreting for a family member;
    - ix. attending a ceremony of religious or cultural significance which involves a family member;
    - x. accompanying a family member to court.
  - d. to observe religious or culturally significant days/events;
  - e. to undertake external studies;
  - f. to accompany a partner on a posting;
  - g. to undertake non-APS employment in the interests of the Commonwealth;
  - h. to engage in work or employment for humanitarian purposes;
  - i. to undertake jury service;
  - j. to participate in major international sporting events;
  - k. to participate in State Emergency Service activities;
  - l. to attend industrial proceedings when summonsed as a witness;
  - m. to perform short term community service or volunteer functions; and
  - n. to participate in NAIDOC Week activities or other cultural or ceremonial events.
230. There is discretion for additional bereavement leave to be granted if necessary on the occasion of the death of a member of an employee's family or household. Discretion also exists for the Fair Work Ombudsman to approve applications for other leave with pay in circumstances where an employee has, because of his or her cultural traditions or religious beliefs, an obligation to fulfil responsibilities before and after the death.
231. The intention of other leave is to provide flexibility to the Agency and employees by providing leave that may be made available either with or without pay.
232. Other leave may be granted by the Agency, having regard to the operational needs of the Agency, including for purposes that the Fair Work Ombudsman considers to be in the interests of the Agency.
233. Other leave may be granted:

- a. for the period requested or for another period;
- b. with or without pay; and
- c. subject to conditions.

234. In order for absence on other leave without pay to count as service for personal/carer's and long service leave, the employee must resume duty with the Agency at or before the expiration of the leave.

#### **War service sick leave**

235. Employees who qualify for benefits under the *Veterans' Entitlements Act 1986* will accrue a credit of 9 weeks war service sick leave on commencement in the APS and an annual credit of 3 weeks for each year of APS service.

236. Unused credits will accumulate to a maximum of 9 weeks.

237. Employees may be granted war service sick leave only when unfit for duty due to a war-caused condition.

238. A war-caused condition means an injury or disease that has been determined under the *Veterans' Entitlements Act 1986* to be war-caused or defence-caused to the particular employee.

#### **Defence Reserve leave**

239. The entitlement to leave for Defence Reserve service is prescribed under the *Defence Reserve Service (Protection) Act 2001*. All full-time and part-time employees are entitled to 20 days paid leave each year for Defence Reserves personnel undertaking defence service. An additional 2 weeks paid leave will be granted to allow for an employee to attend recruit or initial-employment training.

240. It is generally expected that Defence Reserve leave will be granted to Reserves when appropriate notice is received from the Australian Defence Force, detailing the period of attendance required of the employee.

241. Further information on Defence Reserve leave is available in the *Other Leave Policy*.

#### **Return to duty**

242. On return to duty from leave without pay which counts as service, leave credits (except for personal/carer's leave) will be calculated and applied in accordance with this agreement. In the case of personal/carer's leave, the employee will accrue 18 days per year for the period of absence.

243. Further information on leave is available in the Agency's *Leave, Other Leave, and Study Assistance Policies*.

#### **Portability of leave**

244. Where an employee joins the Agency from an employer staffed under the PS Act, the *Parliamentary Service Act 1999*, or from the ACT Government Service, accrued annual leave and personal/carer's leave (however described) will be transferred provided there is no break in continuity of

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service. Future leave entitlements will accrue at the rate applying in the Agency.

245. Where a non-ongoing employee of the Agency becomes an ongoing employee, the employee's accrued annual and personal/carer's leave will be recognised, provided there is no break in continuity of service.

#### **Recognition of prior service**

246. Prior service with organisations where the employee was previously employed under the PS Act, the *Parliamentary Service Act 1999*, or from the ACT Government Service, where there has been a break in service, for reasons other than redundancy, may be recognised for personal/carer's leave purposes if the break in service is not more than 2 calendar months. Prior service will be recognised for long service leave purposes in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976* if the break in service is not more than 12 months.

#### **Exceptional circumstances**

247. The Agency may, in exceptional circumstances, recognise a period of service for personal/carer's leave purposes that is not recognised under the *Long Service Leave (Commonwealth Employees) Act 1976*.

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## **PART H – PERFORMANCE MANAGEMENT**

### **The Performance and Development Framework**

248. The Performance and Development Framework (PDF) is part of an overall framework to ensure the highest quality performance, leadership standards and practices throughout the Agency, together with tailored learning, development and career planning for all employees.
249. The PDF aims to:
- a. foster a culture that supports active performance management and high performance;
  - b. ensure that employees and managers are aware of what is expected of them individually and within teams with a balanced focus on achieving both key outcomes and demonstration of key Agency behaviours;
  - c. provide a fair and transparent process for managing any identified underperformance;
  - d. ensure that there is a common basis for performance management across the Agency, which is linked to business and workforce planning activities, key Agency behaviours and Work Level Standards;
  - e. provide a mechanism for regular two-way feedback on performance;
  - f. contribute to the ongoing development of employees and recognise that opportunities for learning and career development are a matter of joint responsibility between the employee and manager; and
  - g. demonstrate how employee's individual work contributes to the Agency's objectives.
250. All employees will be required to have a current performance agreement, except non-ongoing employees engaged for a period of less than 3 continuous months.
251. All employees will receive a performance rating at the end of the performance cycle which will reflect their performance for key outcomes and observable behaviours.
252. The relevant guide is the *Agency's Performance and Development Framework*.

### **Fairness in managing underperformance**

253. Where underperformance is identified, the Agency will work with the affected employee/s and their manager/s to attain and sustain the standards required.
254. Underperformance is identified when a manager makes an assessment that an employee's performance is unsatisfactory, and this is notified to the employee.
255. The Agency shall have regard to the following during any underperformance process:
- a. streamlined and efficient processes;
  - b. working with the employee to restore performance of the employee to an acceptable level;

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- c. natural justice and procedural fairness;
  - d. learning and development assistance for improving performance;
  - e. active performance management as an integral part of the workplace culture; and
  - f. performance measures and standards to be clearly defined.

256. Any decision by the Fair Work Ombudsman on action arising as a result of underperformance will not be made until the employee has been advised in writing of the proposed action and has had a reasonable opportunity to respond.

257. The employee may be supported by a person of their choice during the process and for any meetings that are relevant to the process.

258. The relevant guide is the *Managing Underperformance Guide*.

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## **PART I – WORKFORCE MANAGEMENT AND PLANNING**

### **Broadbanding**

259. Broadbanding describes the action of combining 2 or more classification levels into a single broadband. A broadband encompasses the full range of work value of the APS classification levels it reflects. Broadbanding supports and encourages career progression between levels within the Agency and assists in streamlining the filling of core positions.
260. The Agency has established a broadband for the APS classifications 3, 4 and 5, known as the Fair Work Ombudsman (FWO) General Broadband. At the commencement of this agreement, all employees will retain their existing APS classification.
261. Movement through the Fair Work Ombudsman General Broadband will only be available to ongoing employees whose performance has been assessed as “satisfactory” or higher under the Performance and Development Framework.
262. Movement through the Fair Work Ombudsman General Broadband is not automatic and can only occur when:
- a. there is ongoing work available at the higher level; and
  - b. there has been an assessment of the employee's work related qualities, including the necessary qualifications, skills and experience to undertake the higher level work; or
  - c. an employee is successful in an open merit selection process consistent with paragraph 10(1)(b) of the PS Act.
263. The Fair Work Ombudsman General Broadband can also be used for employees required to undertake a mandatory training or development program and whose progression is subject to assessment against that program's outcomes.
264. Generally movement through the Fair Work Ombudsman General Broadband would be the first option considered. A decision as to whether to implement movement through the Fair Work Ombudsman General Broadband or go to an open merit selection exercise remains at the discretion of the Fair Work Ombudsman.
265. During the first 3 months of this agreement, a working party will be established to review the implementation of broadbanding within the Agency.

### **Temporary reassignment of duties (Temporary Performance Loading and temporary transfer “at level”)**

#### **Reassignment of duties**

266. Having regard to individual circumstances, the Fair Work Ombudsman may temporarily reassign an employee to other duties, including duties at a higher or lower classification, providing such duties are:
- a. within the limits of his or her training, skill and capability;

- b. consistent with the PS Act and *Public Service Classification Rules 2000*; and
- c. not designed to promote de-skilling.

### **Temporary vacancy considerations**

267. The Fair Work Ombudsman will consider whether:
- a. it is essential that the duties of the position be performed for the period of the vacancy;
  - b. it is reasonable for other employees to share the duties of the position for the period of the vacancy, provided the duties are within the training, skill and competence of employees;
  - c. there are delegations or statutory powers held by the position that cannot reasonably be exercised by another employee who holds those powers; and
  - d. the position is involved in public contact and has to be staffed to comply with client service standards.

### **Temporary Performance Loading (TPL) recommendation**

268. To be recommended for payment of TPL, an employee must have been rated as "satisfactory" on the PDF rating scale (or better) in their substantive position or above, under the most recent PDF assessment (i.e. the mid or end of cycle review), or where the manager otherwise certifies that the employee should fill the position, including for developmental purposes.

### **Period of TPL attracting payment**

269. TPL is payable where an employee is engaged in and performs the duties at a higher classification for an approved period of temporary re-assignment.

### **Level of payment**

270. Where an employee is to be paid TPL, the employee will be paid at the pay point nominated by the manager, in consultation with the relevant employee. Normally, this would be at the minimum pay point of the relevant salary range. However, there is an opportunity for the employee to be paid above the minimum pay point within the salary range of the higher position in exceptional circumstances.
271. The pay point attained through salary advancement in previous periods of TPL at that classification level will be at least maintained.

### **Payment for partial performance**

272. Where the full duties of the position at a higher classification are not being undertaken by the employee, the Fair Work Ombudsman may agree to payment at a point in a classification below that of the higher position.

### **Short term temporary performance and the PDF**

273. Where an employee has been temporarily assigned duties of a higher classification, including for short periods, the performance of those duties will be taken into account in an employee's annual PDF assessment.

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### **Employees on TPL for 12 months or more**

274. The Agency recognises the importance of filling vacant positions on a permanent basis. Where an employee has performed the duties in an ongoing vacant position for a continuous period of 12 months or more, the relevant manager will endeavour to nominally fill the position as soon as practicable.

### **Public holidays or leave**

275. An employee on TPL who is granted paid leave or who observes a public holiday will continue to receive TPL, having regard to the provisions of this section, during their absence. TPL will not be paid beyond the date on which the employee would have ceased the period of temporary reassignment had they not been absent. Where the period of leave is paid at less than full pay, payment of TPL will be made on a pro rata basis.

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## **PART J - MANAGEMENT OF EXCESS EMPLOYEES**

276. The following redeployment and redundancy provisions only apply to ongoing employees who are not on probation.

### **Definition of “excess”**

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

### **Notification of potentially excess status**

278. Employees who are likely to become excess will be advised in writing by the Fair Work Ombudsman at the earliest practicable time.
279. Where 15 or more employees are likely to become excess, the Fair Work Ombudsman will comply with the relevant provisions of sections 530 and 531 of the FW Act.

### **Consultation period**

280. The Agency is committed to assisting employees in pursuing redeployment opportunities within the Agency or other APS Agencies.
281. A period of consultation of up to 4 weeks will occur with the employee and if requested by the employee, their representative, to consider:
- a. actions that might be taken to reduce the likelihood of the employee becoming excess;
  - b. redeployment opportunities for the employee within the Agency or another APS Agency; and
  - c. the availability of job swaps within the Agency or another APS Agency.
282. This consultation period may be foreshortened, with the written agreement of the employee.
283. As close to the beginning of this consultation period as possible, and at the latest by the commencement of the consideration period, the employee will also be given information on:
- a. the amounts payable as redundancy pay, pay in lieu of notice and accrued annual and long service leave credits;
  - b. the amount of accumulated superannuation contributions;
  - c. superannuation options;

- d. the taxation rules applicable to the various payments made by the Agency; and
- e. that financial advice, career counselling or training relevant to the employee's career prospects are available for the employee. The total maximum amount payable will be \$5000. This payment is subject to the employee providing receipts or invoices from the provider(s) to demonstrate that the service(s) have been provided.

The information is provided for guidance purposes only, and is not an offer capable of forming a binding contract.

### **Voluntary redundancy**

284. Only 1 offer of voluntary redundancy will be made to an employee in an excess or potentially excess situation.

### **Consideration period**

285. Where the Fair Work Ombudsman offers an employee a voluntary redundancy, the employee will have a 4 week consideration period within which to accept or reject the offer. An employee and the Fair Work Ombudsman can agree to reduce this 4 week consideration period if the employee has received the information outlined in paragraph 283.
286. Unless the employee agrees to reduce the consideration period, the Fair Work Ombudsman will not issue a notice of termination under section 29 of the PS Act before the end of the consideration period.

### **Redundancy payments**

287. An excess employee who agrees to be voluntarily retrenched and whose employment is terminated by the Fair Work Ombudsman under section 29 of the PS Act on the grounds the he/she is excess to the requirements of the Agency, is entitled to be paid redundancy pay as follows:
- a. the sum equal to 2 weeks salary for each completed year of continuous service; plus
  - b. a pro rata payment for completed months of service since the last completed year of service.

This is subject to a minimum payment of 4 weeks and a maximum of 48 weeks salary and also subject to any minimum amount the employee is entitled to under the NES.

288. In addition, where the consideration period is reduced, the employee will be paid:
- a. the unexpired portion of the consideration period as at the date of termination;
  - b. any leave credits which would have accrued had the employee worked for the entire consideration period.
289. If the employee accepts the offer, the Fair Work Ombudsman will give the employee the required notice of termination of 4 weeks (or 5 weeks for an employee over 45 years of age) or a lesser period agreed with the employee. If the employee ceases employment at the commencement of or within the

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notice period, the employee will be paid for the unexpired portion of the notice period.

290. Redundancy payments will be calculated on:
- a. the employee's salary on the date of termination; and
  - b. Temporary Performance Loading where the employee has received the loading for a continuous period of at least 12 months immediately preceding the date on which the employee is given notice of termination of employment; and
  - c. allowances in the nature of salary which are paid during periods of annual leave and on a regular basis, excluding allowances which are a reimbursement for expenses incurred, or a payment for disabilities associated with the performance of duty.
291. The redundancy payment will be calculated on a pro rata basis for any period where an employee has worked part-time hours during their period of service and the employee has less than 24 years full-time service, subject to any minimum amount the employee is entitled to under the NES.

### **Calculating service for redundancy pay purposes**

292. Subject to paragraphs 293 and 294, service for the purposes of calculating redundancy payments means:
- a. service in the Agency;
  - b. Government service as defined in section 10 of the *Long Service Leave (Commonwealth Employees) Act 1976*;
  - c. 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;
  - d. service with the Australian Defence Force;
  - e. APS service immediately preceding deemed resignation under the repealed section 49 of the *Public Service Act 1922*, if the service has not previously been recognised for redundancy pay purposes; and
  - f. service in another organisation where an employee was transferred from the APS to that organisation with a transfer of function, or an employee engaged by that organisation on work within a function is appointed as a result of the transfer of that function to the APS and such service is recognised for long service leave purposes.
293. For earlier periods of service to count there must be no breaks between the periods of service, except where the break in service is less than **1 month** and occurs where an offer of employment in relation to the second period of service was made and accepted by the employee before the first period of service ended (whether or not the 2 periods of service are with the same employer or Agency). Absences from work which do not count as service for any purpose will not count as service for redundancy pay purposes.
294. Periods of service that **will not** count as service for redundancy pay purposes are periods of service that ceased by way of:
- a. termination under section 29 of the PS Act; or

- b. prior to the commencement of the PS Act, by way of redundancy; retirement on the grounds of invalidity, inefficiency or loss of qualifications; forfeiture of office; dismissal or termination of probationary appointment for reasons of unsatisfactory service; or
- c. voluntary retirement at or above the minimum retiring age applicable to the employee; or
- d. payment of a redundancy benefit or similar payment or with the payment of an employer financed retirement.

### **Relocation assistance following offer of voluntary redundancy**

295. Where an ongoing employee has been relocated to a remote locality at the initiative of the Agency and is subsequently offered and accepts an offer of voluntary redundancy, the Fair Work Ombudsman shall approve payment or reimbursement of reasonable costs incurred in the employee's return to their previous location.

### **Retention period**

296. The purpose of the retention period is to allow an employee to continue to remain employed whilst attempting to secure alternative employment.
297. The Fair Work Ombudsman will take all reasonable steps, consistent with efficient operational requirements, to avoid involuntary redundancy or compulsory redeployment. It is also the employee's responsibility to take all reasonable steps to identify and apply for suitable vacancies at their substantive level.
298. If an employee decides not to accept the offer of voluntary redundancy as per paragraph 284, the retention period commences on the day after the expiry of the consideration period. If the consideration period is reduced as per paragraph 285, this earlier date will be regarded as being the expiry of the consideration period. The retention period will be:
- a. 13 months for employees over 45 years of age or employees with over 20 years of service;
  - b. 7 months for other employees.
299. If an employee is entitled to a redundancy payment in accordance with the NES, the relevant period in clause 298 above is reduced by the number of weeks redundancy pay that the employee will be entitled to under the NES on termination, as at the expiration of the retention period (as adjusted by this clause).

### **Redeployment during the retention period**

300. During the retention period the employee:
- a. will be assisted with attempts to find alternative employment; and/or
  - b. may, on request, be provided with assistance in meeting reasonable travel costs and incidental expenses incurred in seeking alternative employment where these expenses are not met by the prospective employer;
  - c. may, after being given 4 weeks notice, be reduced in classification as a means of securing alternative employment. If this occurs, the employee

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will be paid their salary at the higher classification level for the remainder of the retention period.

301. Employees over 45 years of age and employees in regional and remote areas may be eligible for additional outplacement assistance (up to the value of \$3075) during the retention period.
302. Where the Fair Work Ombudsman is satisfied that there is insufficient productive work available for the employee during the remainder of their retention period and that there are no reasonable redeployment prospects in the APS, the Fair Work Ombudsman may (with the agreement of the employee), terminate their employment under section 29 of the PS Act. Upon termination the employee will be paid a lump sum comprising:
  - a. the balance of the retention period (as shortened for the NES under paragraph 299) and this payment will be taken to include the payment in lieu of notice of termination of employment; and
  - b. an amount of redundancy pay as per the NES.

#### **Extension of the retention period due to absence from work**

303. A retention period will only be extended by leave where the Fair Work Ombudsman is satisfied that an employee is substantially incapacitated and unfit for work, based on the opinion of a registered health practitioner nominated by the Agency. Unless exceptional circumstances exist, a retention period will not be extended on these grounds beyond an additional 8 weeks.

#### **Termination of employment**

304. Employees will not have their employment terminated involuntarily if they have not been invited to elect for voluntary retrenchment or if their election to be made redundant voluntarily has been refused.
305. An excess employee's employment will be terminated under section 29 of the PS Act at the end of their retention period.
306. Where the employee is to be terminated involuntarily, the Agency will give 4 weeks notice of termination under section 29 of the PS Act, or 5 weeks for an employee over 45 years of age or a lesser period agreed with the employee. As far as practicable, the period of notice will be served concurrently with the retention period.

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## **PART K – SEPARATION**

### **Termination at the Agency's initiative**

307. Notice of termination will be as provided for under the NES (section 117).
308. Where an ongoing employee is to have their employment terminated, the provisions of section 29 of the PS Act will apply.
309. Where procedures outlined in this agreement may lead to termination of employment on any of the allowable grounds under section 29 of the PS Act, those procedures must be followed before an ongoing employee's employment may be terminated.
310. Nothing in this agreement prevents the Agency from terminating the employment of an employee for serious misconduct, without further notice or payment in lieu, in accordance with section 123(1)(b) of the FW Act. However, such termination will be subject to compliance with the procedures established by the Agency for determining whether an employee has breached the Code of Conduct under section 15 of the PS Act.

### **Right of review**

311. The sole and exhaustive rights and remedies in relation to termination of employment are under:
- a. Part 3-1 and Part 3-2 of the FW Act;
  - b. other Commonwealth laws (including the Constitution); and
  - c. common law.
312. To avoid doubt, this agreement does not provide the employee with any rights or remedies in relation to the termination of, or a decision to terminate, their employment. Termination of employment, or a decision to terminate employment, cannot be reviewed under the dispute resolution procedure contained in this agreement or under the review of employment related action procedures.

### **Termination at employee's initiative**

313. Where an employee terminates their employment, the notice of termination required to be given by an employee is the same as that required of an employer, except that there is no requirement on the employee to give additional notice based on the age of the employee concerned. The minimum period of notice is set out below:

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<b>Period</b>	
<b>Employee's period of continuous service with the employer at the end of the day the notice is given</b>	<b>Period</b>
1 Not more than 1 year	1 week
2 More than 1 year but not more than 3 years	2 weeks
3 More than 3 years but not more than 5 years	3 weeks
4 More than 5 years	4 weeks

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314. The obligation to provide notice by an employee may be waived by the Fair Work Ombudsman.

315. Where an employee resigns on a public holiday, they will be deemed to have resigned on the last working day prior to the public holiday.

#### **Payments on death**

316. Where an employee dies, or is presumed to have died on a particular date, the Fair Work Ombudsman may authorise a payment, to be made to the dependants or partner or the legal representative of the employee of the amount which the former employee would have been entitled had he or she ceased employment on resignation or retirement. Long service leave credits will be paid out in accordance with the *Long Service Leave Act (Commonwealth Employees) 1976*.

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## **PART L – WORKING TOGETHER – CONSULTATION AND DISPUTE RESOLUTION**

### **Model consultation term (regulation 2.09)**

317. This term applies if:
- a. the Agency has made a definite decision to introduce a major change to production, program, organisation, structure, or technology in relation to its enterprise; and
  - b. the change is likely to have a significant effect on employees of the enterprise.
318. The Agency must notify the relevant employees of the decision to introduce the major change.
319. The relevant employees may appoint a representative for the purposes of the procedures in this term.
320. If:
- a. a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
  - b. the employee or employees advise the Agency of the identity of the representative;
  - c. the Agency must recognise the representative.
321. As soon as practicable after making its decision, the Agency must:
- a. discuss with the relevant employees:
    - i. the introduction of the change; and
    - ii. the effect the change is likely to have on the employees; and
    - iii. measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and
  - b. for the purposes of the discussion — provide, in writing, to the relevant employees:
    - i. all relevant information about the change including the nature of the change proposed; and
    - ii. information about the expected effects of the change on the employees; and
    - iii. any other matters likely to affect the employees.
322. However, the Agency is not required to disclose confidential or commercially sensitive information to the relevant employees.
323. The Agency must give prompt and genuine consideration to matters raised about the major change by the relevant employees and advise them of the outcome of the consultation process, including providing a response to feedback.
324. If a term in the agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of

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the Agency, the requirements set out in subparagraphs (318), (319) and (321) are taken not to apply.

325. In this term, a major change is **likely to have a significant effect on employees** if it results in:
- a. the termination of the employment of employees; or
  - b. major change to the composition, operation or size of the Agency's workforce or to the skills required of employees; or
  - c. the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
  - d. the alteration of hours of work; or
  - e. the need to retrain employees; or
  - f. the need to relocate employees to another workplace; or
  - g. the restructuring of jobs.
326. In this term, **relevant employees** means the employees who may be affected by the major change.

### **Consulting on workplace issues**

327. The Agency is committed to consulting directly with employees and, where employees choose, their representatives on issues relating to the implementation and operation of this agreement and all issues affecting their entitlements and conditions of employment, including policies, procedures, guides and guidelines.
328. The Agency uses a variety of mechanisms to communicate and consult with employees to ensure that they are kept informed of issues in the workplace. The 3 key mechanisms for communication and consultation are:
- a. Branch, State/Territory, and Team level meetings;
  - b. the Intranet for direct communication with all employees and for employee feedback, with a minimum period of 10 working days for consultation; and
  - c. an Agency Consultative Forum (ACF), consisting of:
    - i. management representatives as appointed by the Fair Work Ombudsman; and
    - ii. employees of the Agency, including 2 who are appointed to represent the Community and Public Sector Union.
    - iii. The final numbers will be determined by the Fair Work Ombudsman, provided there are equal or greater number of employee representatives than management representatives.
    - iv. Any employee representative can invite a chosen representative to attend a meeting for relevant agenda item(s) with prior notice.
329. To ensure effective consultation:
- a. workplace related concerns will be discussed in a spirit of cooperation and trust;
  - b. employees will be provided with relevant information (but not "employee records" as defined in the *Privacy Act 1988* except with the consent of the employee) on workplace matters that affect them where possible and have the opportunity to provide input prior to a final decision; and

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- c. employees and, where employees choose, their representatives may raise workplace matters directly with the Agency management.
330. The ACF shall determine its own terms of reference, in agreement with the Fair Work Ombudsman.
331. It is acknowledged that there may be circumstances where the Fair Work Ombudsman is not able to consult with employees.
332. An individual employee's choice to be represented will be respected by all parties in the workplace.
333. The role of union and other workplace delegates will be respected and facilitated in accordance with the principles outlined in the Agency's *Principles and Guidelines for Unions and Workplace Delegates*.
334. The Agency and workplace delegates will deal with each other in good faith.

**Model term for dealing with disputes for enterprise agreements (regulation 6.01)**

335. If a dispute relates to:
- a. a matter arising under the agreement; or
  - b. the NES;
- this term sets out procedures to settle the dispute.
336. An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.
337. In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the employee or employees and relevant supervisors and/or management.
338. If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to Fair Work Australia.
339. Fair Work Australia may deal with the dispute in 2 stages:
- a. Fair Work Australia will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
  - b. if Fair Work Australia is unable to resolve the dispute at the first stage, Fair Work Australia may then:
    - i. arbitrate the dispute; and
    - ii. make a determination that is binding on the parties.
- Note* If Fair Work Australia arbitrates the dispute, it may also use the powers that are available to it under the Act. A decision that Fair Work Australia 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.
340. While the parties are trying to resolve the dispute using the procedures in this term:

- 
- a. an employee must continue to perform his or her work as he or she would normally in accordance with established custom and practice in their substantive role that existed prior to the dispute arising unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and
  - b. an employee must comply with a direction given by the Agency to perform other available work at the same workplace, or at another workplace, unless:
    - i. the work is not safe; or
    - ii. applicable occupational health and safety legislation would not permit the work to be performed; or
    - iii. the work is not appropriate for the employee to perform; or
    - iv. there are other reasonable grounds for the employee to refuse to comply with the direction.

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

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## **PART M – REMOTE LOCALITIES**

342. Remote localities assistance shall be provided on the basis of the following principles:
- a. ongoing employees in the agreed remote localities offices will be paid a remote localities allowance on a fortnightly basis, at either the without dependents or with dependents rate;
  - b. the annual rate of remote localities allowance shall be not less than the rate applying on the day prior to the lodgement of this agreement;
  - c. no office shall be removed from the list of remote locality offices; and
  - d. an employee may make a representation to demonstrate disadvantage as a result of the implementation of remote locality assistance and the Fair Work Ombudsman may approve an additional payment.
343. An ongoing employee at a remote locality office may apply to the Fair Work Ombudsman for transfer and, in considering the application, the employee's personal circumstances shall be taken into account.
344. Where the Fair Work Ombudsman opens a new office in a locality considered to be remote by the Fair Work Ombudsman, paragraph 343 shall apply and the rate of remote localities assistance shall be calculated consistent with the existing principles.
345. The relevant guide is the *Remote Localities Guide*.

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## **PART N – RELOCATION**

### **Relocation assistance**

#### **Assistance for temporary relocation**

346. An employee, who temporarily relocates as opposed to undertaking travel on official business, at the request or direction of the Agency, may enter into discussions with their manager about a package of assistance which must cover reasonable costs incurred in the course of that temporary relocation. Any such package is subject to approval by the Fair Work Ombudsman.
347. If the temporary absence is for at least 8 weeks, the employee is eligible for 1 return airfare to the usual work locality during that period, and during any further 8 week period. If an employee with dependants is accompanied by all dependants, the fare will not be granted. The airfare is to be used in the employee's own time, and all other costs associated with the travel will be met by the employee.

#### **Assistance for permanent relocation**

348. Employees who are relocated permanently to a different geographic location at the Agency's initiative may discuss a package of assistance with the relevant manager, to be approved by the Fair Work Ombudsman. The assistance must meet reasonable costs necessarily incurred, which may include payment or reimbursement of costs for the sale and purchase of a house, reasonable travel, transport, removal and temporary accommodation costs, as well as other expenses necessarily incurred through relocation.
349. At the discretion of the Fair Work Ombudsman, employees who permanently relocate to a different geographic location at their own request may discuss a package of assistance with the relevant manager, to be approved by the Fair Work Ombudsman.
350. Employees who relocate to take up employment with the Agency will discuss a package of assistance with the relevant manager, to be approved by the Fair Work Ombudsman.

# ATTACHMENTS

## Classifications, the FWO General Broadband and salary rates Attachment A. Table 1

Broadband	APS Classification	Pay point	Salaries effective on commencement 4% increase	Salaries effective 1 July 2012 3% increase	Salaries effective 1 July 2013 2% increase
FWO General Broadband	Executive Level 2	Exec 2.5	\$130,580	\$134,498	\$137,188
		Exec 2.4	\$126,420	\$130,213	\$132,817
		Exec 2.3	\$119,995	\$123,595	\$126,067
		Exec 2.2	\$115,744	\$119,216	\$121,600
		Exec 2.1	\$111,575	\$114,923	\$117,221
	Executive Level 1	Exec 1.3	\$104,464	\$107,598	\$109,750
		Exec 1.2	\$100,592	\$103,610	\$105,682
		Exec 1.1	\$96,769	\$99,672	\$101,665
	APS Level 6	APS 6.5	\$87,442	\$90,065	\$91,867
		APS 6.4	\$83,562	\$86,069	\$87,790
		APS 6.3	\$80,319	\$82,729	\$84,383
		APS 6.2	\$78,155	\$80,500	\$82,110
		APS 6.1	\$76,016	\$78,296	\$79,862
	APS Level 5	APS 5.3	\$74,384	\$76,615	\$78,148
		APS 5.2	\$72,324	\$74,493	\$75,983
		APS 5.1	\$70,186	\$72,292	\$73,738
	APS Level 4	APS 4.4	\$68,322	\$70,371	\$71,779
		APS 4.3	\$66,534	\$68,530	\$69,901
		APS 4.2	\$64,869	\$66,815	\$68,151
		APS 4.1	\$62,958	\$64,847	\$66,144
	APS Level 3	APS 3.4	\$60,977	\$62,807	\$64,063
		APS 3.3	\$59,369	\$61,151	\$62,374
		APS 3.2	\$57,926	\$59,664	\$60,857
		APS 3.1	\$56,546	\$58,242	\$59,407
	APS Level 2	APS 2.4	\$55,031	\$56,681	\$57,815
		APS 2.3	\$53,044	\$54,635	\$55,728
		APS 2.2	\$51,617	\$53,166	\$54,229
		APS 2.1	\$50,250	\$51,757	\$52,792
	APS Level 1	APS 1.2	\$46,053	\$47,435	\$48,384
		APS 1.1	\$44,304	\$45,633	\$46,546

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Salaries are full-time equivalent (pro rata for part-time employees).

Employees whose salaries are above the maximum salary on commencement will have their salary maintained.

## DEFINITIONS

<b>Agency</b>	Means the Office of the Fair Work Ombudsman, a statutory Agency created by Part 5-2 of the FW Act.
<b>Agreement</b>	Where referenced in the context of, means the <i>Fair Work Ombudsman Enterprise Agreement 2011 – 2014</i> .
<b>APS</b>	The Australian Public Service.
<b>Classification</b>	An approved classification as defined in the Public Service Classification Rules. At date of lodgement, non-SES classifications in FWO are APS Levels 1 – 6, Executive Levels 1 and 2. The Fair Work Ombudsman General Broadband is a local title which groups the duties of some of these classifications.
<b>Commencement in a job</b>	<ul style="list-style-type: none"> <li>a) an engagement into the APS;</li> <li>b) movement between APS agencies;</li> <li>c) assignment or reassignment of duties within Agency (i.e., transfer);</li> <li>d) promotion; or</li> <li>e) movement to a higher classification in a broadband.</li> </ul>
<b>Consultation</b>	Provision to employees and, where they choose, their representative of relevant information and a genuine opportunity to influence the decision and contribute to the decision making process.
<b>Dependant</b>	<p>In relation to an employee means:</p> <ul style="list-style-type: none"> <li>a) the spouse of the employee; and/or</li> <li>b) a child or parent of the employee, or of the spouse of the employee, being a child or parent who ordinarily resides with the employee and who is wholly or substantially dependent upon the employee.</li> </ul> <p>For the purposes of eligibility for Agency allowances or assistance, an adult dependant is a person for whom the employee is eligible to claim a tax offset from the Australian Tax Office. A child dependant is a child less than 18 years or a full-time student less than 25 years.</p>
<b>DEEWR</b>	The Department of Education, Employment and Workplace Relations
<b>EA</b>	Enterprise agreement
<b>Employees</b>	All persons employed under the <i>Public Service Act 1999</i> (PS Act) who are covered by this agreement.
<b>Executive Level employees</b>	Employees engaged as EL1 or EL2 employees
<b>Fair Work Ombudsman or FWO</b>	Means the Agency Head of the Office of the Fair Work Ombudsman appointed under section 681 of the FW Act.

<b>Family</b>	A person, who is related by blood or marriage, has a strong affinity with the employee (this may include traditional kinship) or stands in a bona fide domestic relationship with the employee. Family includes a spouse (including a former spouse, a de facto spouse or a former de facto spouse), a child or an adult child, parent, grandparent, grandchild or sibling of the employee.
<b>Manager</b>	The person to whom an employee is responsible and who is authorised by the Fair Work Ombudsman to exercise the powers and responsibilities of manager in relation to that employee.
<b>Medical evidence</b>	A certificate or report provided by: <ul style="list-style-type: none"> <li>a) a registered health practitioner, including a doctor, dentist, optometrist, optician, radiographer, physiotherapist, chiropractor or podiatrist; or</li> <li>b) another health practitioner (e.g. naturopath, herbalist, homeopath, iridologist, osteopath, or acupuncturist) in circumstances where the employee has either been referred to that health practitioner by a registered health practitioner, or obtains a registered health practitioner's endorsement that the treatment provided was desirable.</li> <li>c) An employee may also provide a Statutory Declaration instead of a certificate, if it is not reasonably practicable to provide a certificate.</li> </ul>
<b>Non-ongoing employee</b>	Is an employee engaged for : <ul style="list-style-type: none"> <li>• A specified term (paragraph 22(2)(b) of the PS Act);</li> <li>• For the duration of a specified task (paragraph 22(2)(b) of the PS Act); or</li> <li>• For duties that are intermittent (paragraph 22(2)(c) of the PS Act).</li> </ul>
<b>Non-ongoing employees engaged for duties that are irregular or intermittent</b>	An employee engaged on an hourly basis to work on an ad hoc or irregular basis, usually less than full-time hours in any week. Each period of work is an episode and is a distinct period of service with no guarantee or expectation of work beyond the period of current employment.  Also referred to as "casual" employees in this agreement.
<b>Ongoing employee</b>	As per paragraph 22(2) of the PS Act.
<b>Ordinary Hours</b>	Ordinary hours are 7 hours 30 minutes and are used to calculate leave accruals and deductions, deductions for unauthorised absences, deductions for participation in industrial action as defined in the FW Act and part-time hours.
<b>Partner</b>	In relation to a person who is a member of a couple, the other member of the couple.
<b>Policy, procedures, guides and guidelines</b>	Where policies, procedures or guidelines are referenced in this agreement, this will have the meaning of the Agency policies, procedures, guides and guidelines will apply where they have been developed and authorised.
<b>PS Act</b>	The <i>Public Service Act 1999</i> , as amended from time to time.

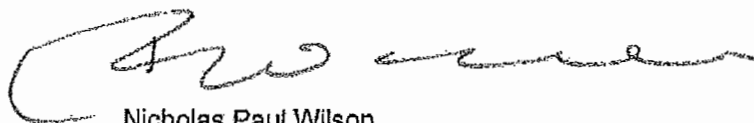
<b>Redeployment</b>	Reassignment of duties within the Agency or movement to another APS Agency.
<b>Salary</b>	The employee's salary is the relevant rate at Attachment A or as determined by the Fair Work Ombudsman from time to time. It is salary for all purposes, including superannuation (subject to relevant superannuation scheme rules), overtime, payment of excess flextime, severance and termination and excludes loadings and allowances. Neither participation in salary sacrifice arrangements nor purchased leave affect salary as defined.
<b>Salary advancement</b>	This means the movement through the pay points within the salary range for a classification. These increases are counted as salary for the purposes of determining salary for superannuation purposes, in accordance with the relevant superannuation fund rules.
<b>Settlement period</b>	A settlement period is 20 consecutive working days from payday Thursday to the Wednesday before payday, 4 weeks following. This is a total of 150 hours per 4 week settlement period.
<b>FW Act</b>	The <i>Fair Work Act 2009</i>
<b>the Regulations</b>	The <i>Fair Work Regulations 2009</i>

This agreement is made and approved under section 172  
of the *Fair Work Act 2009*.

The persons below sign this agreement in accordance with Regulation 2.06A  
of the *Fair Work Regulations 2009*.

**On behalf of the Minister for Tertiary Education, Skills, Jobs and  
Workplace Relations**

Signed:

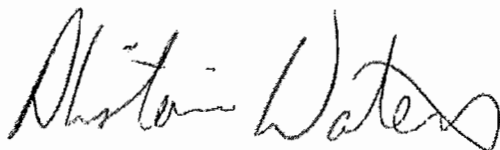


Nicholas Paul Wilson  
Fair Work Ombudsman  
Office of the Fair Work Ombudsman  
Level 9, 414 La Trobe Street, Melbourne VIC 3000

Date: 18<sup>th</sup> August 2011

**On behalf of the Community and Public Sector Union**

Signed:



Alistair Waters  
Deputy National President  
Community and Public Sector Union  
First Floor, 40 Brisbane Avenue, Barton ACT 2600

Date: 22<sup>nd</sup> August 2011



Australian Government

# Fair Work OMBUDSMAN

GPO Box 9887 Melbourne VIC 3001 | 414 LaTrobe Street Melbourne VIC 3000  
P: (03) 9954 2611 F: (02) 6264 5367 E: [nicholas.wilson@fwo.gov.au](mailto:nicholas.wilson@fwo.gov.au)

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## UNDERTAKING

The Fair Work Ombudsman gives the following undertaking under section 190 of the *Fair Work Act 2009* in relation to the Fair Work Ombudsman Enterprise Agreement 2011-2014 (**Agreement**):

*The FWO will not for the duration of the Agreement rely on clause 176 of the Agreement for the taking of personal/carer's leave during annual leave and will rely on clause 156 of the Agreement.*

## EXPLANATION

On the face of it, clause 176 would require a medical certificate to be produced for such leave which, if relied upon, would be inconsistent with clause 156 which allows for the leave to be taken without the production of a medical certificate.

The effect of this undertaking will not cause financial detriment to any employee or result in substantial changes to the Agreement.

On behalf of the Minister for Tertiary Education, Skills, Jobs and Workplace Relations

Signed:

Nicholas Wilson  
**FAIR WORK OMBUDSMAN**

*18th* August 2011