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**AUSTRALIAN GOVERNMENT SOLICITOR  
ENTERPRISE AGREEMENT 2009**

23 November 2009

**COMMERCIAL IN CONFIDENCE**

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**PART A. SCOPE OF AGREEMENT**

**1. Title**

- 1.1. This agreement is known as the Australian Government Solicitor Enterprise Agreement 2009, or the 'AGS EA 2009'.

**2. Purpose**

- 2.1. This agreement confirms the links made in previous agreements between AGS as a good employer and AGS as a successful business. The agreement recognises that a key element of AGS being a successful business is the professional contribution of and continuous striving for high quality performance by all AGS employees. This in turn results in creating value for our clients, our shareholders and for everyone in AGS.
- 2.2. AGS's corporate plan sets out AGS's business intent, including the strategies and actions it will take to achieve our strategic imperatives.
- 2.3. This agreement sets out the terms and conditions of employment of AGS employees, other than terms and conditions applying under AGS determinations, relevant Commonwealth laws and implied at common law.
- 2.4. The agreement is made between AGS and the employees of AGS.

**3. Coverage**

- 3.1. This agreement covers:
- a. AGS;
  - b. all employees of AGS and does not apply to people who are employed by another agency or employer; and
  - c. the CPSU, if Fair Work Australia notes in its decision to approve this agreement that the agreement covers the CPSU.

**4. Effect on previous agreements and award**

- 4.1. This agreement operates to the entire exclusion of any other agreement, including the People, Performance and Business Success - AGS agreements on employment conditions, of April 1999, June 2000, June 2002 and December 2005.
- 4.2. This agreement operates to the entire exclusion of the Australian Government Solicitor Award 2001 (note that the Award was amended in 2006).

**5. Commencement date and nominal expiry date**

- 5.1. This agreement commences seven days after approval by Fair Work Australia and has a nominal expiry date of 30 June 2012.

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**6. Legislation applying to employment in AGS**

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- 6.1. AGS employees are employed under the *Judiciary Act 1903*. The *Judiciary Act* provides for terms and conditions of employment of AGS employees to be determined by the CEO.
- 6.2. The CEO does not intend to make a CEO determination under the *Judiciary Act* which would negate or override the provisions of this agreement.
- 6.3. Any CEO determinations made under the *Judiciary Act* relating to AGS terms and conditions of employment which are not covered by this agreement and which will apply generally to employees or to classes of employees will be made with the involvement of employees as provided for in Part B of this agreement.

**7. Variation to this agreement**

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- 7.1. In the event that AGS and its employees make a variation to this agreement for the purposes of s 209 of the *Fair Work Act 2009*, a person covered by this agreement will apply to Fair Work Australia in accordance with s 210 of the *Fair Work Act 2009* for approval of the variation.
- 7.2. Subclauses 49 to 49.2 and 84.1 to 84.2, provide for a review of the performance program and individual bonuses, including a vote by employees on any proposed changes. Any changes agreed on by a vote of AGS employees would be the subject of an application to Fair Work Australia to vary the agreement. The new terms, if approved, would replace clauses, 50 to 55 and 85 to 93 and any other terms of this agreement incidental to those clauses.

**8. AGS Employment Handbook**

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- 8.1. This agreement is complemented by the AGS Employment Handbook which sets out procedural and administrative guidelines for the employment conditions set out in this agreement.
- 8.2. The Employment Handbook also includes other employment policies and guidelines, including those which are the consequence of CEO determinations made under the *Judiciary Act 1903*; provisions of other legislation applying to AGS; and policies and guidelines developed by AGS's corporate governance committees.
- 8.3. In addition the Employment Handbook contains support material to assist supervisors and employees to manage their responsibilities under AGS's employment terms and conditions, employment policies and guidelines.
- 8.4. The Employment Handbook does not form part of this agreement.
- 8.5. Where there is any inconsistency with this agreement and the Employment Handbook, this agreement will prevail.
- 8.6. The Employment Handbook is available to all employees on AGSNet.

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**Changes to the Employment Handbook**

- 8.7. The CEO may vary employment policies and guidelines contained in the Employment Handbook after consultation with employees or their representatives as set out in Part B of this agreement.
- 8.8. The CEO may vary support material in the Employment Handbook from time to time without employee involvement, although the CEO will consult with the Employee Council if the CEO determines a need to do so.

**9. Delegations**

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- 9.1. The CEO may delegate any of their powers or functions under this agreement or authorise another person to exercise those powers or functions.
- 9.2. The CEO must not delegate any power or function in relation to dispute resolution under Part Q to a person previously involved in the relevant matter, or authorise such a person to act on the CEO's behalf.

**10. Interpretation and definitions**

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- 10.1. In this agreement, terms defined in Attachment 1 have the meaning given to them in that attachment unless the context requires otherwise.

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**PART B. EMPLOYEE INVOLVEMENT**

**11. Commitment to employee involvement**

- 11.1. AGS is committed to effective communication and consultation with employees. AGS also recognises employees' rights to representation and freedom of association in the workplace. This Part provides a framework for consultation and representation.
- 11.2. The main forum for consultation on matters that may affect AGS employees generally is the AGS Employee Council (EC). The EC includes elected employee representatives and CPSU member representatives. Clause 12 of this agreement sets out the basic terms of reference for the EC.
- 11.3. Where an individual employee or a specific group of two or more employees may be significantly affected by an issue arising in the workplace, AGS will consult with those employees in an appropriate manner given the circumstances. For the purposes of consultation, employees may appoint a representative (including the CPSU).
- 11.4. When consulting with employees under subclause 11.3, AGS will, as soon as practicable, and where appropriate to the issue at hand:
- a. provide relevant information to employees and to their representatives, where requested
  - b. give employees and their representatives an opportunity to put their views to the CEO
  - c. give genuine consideration to the views of employees and their representatives
  - d. take into account matters of confidentiality and commerciality of its business.
- 11.5. Subclause 137.1 of this agreement sets out the rights of employees to access representation by their union and the principles for union workplace representatives.
- 11.6. When bargaining commences for a new enterprise agreement to replace this agreement, employees may choose to appoint a bargaining representative under the Fair Work Act.

**Representation and workplace delegates**

- 11.7. AGS recognises the role of CPSU workplace delegates in assisting AGS's employees, and will provide delegates with appropriate support to carry out their role.
- 11.8. Attachment 3 sets out the principles and arrangements relating to the role and support of delegates.

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**12. AGS Employee Council**

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- 12.1. The EC is a part of AGS's corporate governance arrangements. The EC provides opportunities for employees to be involved in considering issues of significance to employees including :
- a. terms and conditions of employment
  - b. workplace diversity programs
  - c. occupational health and safety
  - d. people management policies including performance management
  - e. development and implementation of workplace reform initiatives.
- 12.2. The EC comprises:
- a. seven employee representatives reflecting the location of AGS offices, elected by the employees of the respective offices
  - b. two AGS employees nominated by the CPSU to represent the interests of AGS employees who are CPSU members
  - c. the CEO, and
  - d. other employees with relevant corporate responsibilities appointed by the CEO.
- 12.3. Elected EC members are representatives of all employees of the offices that elected them. Their role includes:
- a. providing advice to the CEO from an employee perspective on issues relating to the AGS employment terms and conditions
  - b. consulting with and representing the views of all employees of their constituency on issues of significance
  - c. contributing to the development of AGS's employment arrangements, and
  - d. reporting on and explaining to their constituents matters discussed at the EC.
- 12.4. EC elected members and the CPSU nominated members of the EC may hold meetings with interested employees to discuss and receive feedback on significant workplace issues, and may do so prior to the EC meetings.
- 12.5. Any changes to the terms of reference for the EC will be issued by the CEO following consultation with the EC. The terms of reference include the arrangements for selection of representatives. The terms of reference and the minutes of EC meetings are made available to all employees.

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**PART C. REMUNERATION**

**13. Remuneration approach**

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- 13.1. AGS's remuneration approach is to remunerate employees reasonably and appropriately for their performance and contribution to AGS. It is intended that this remuneration approach will assist AGS in attracting and retaining a high calibre, market leading workforce. AGS recognises that there are many considerations relevant to employee attraction and retention, of which remuneration is one.
- 13.2. This agreement provides for:
- a. setting of base salary under AGS's classification system
  - b. superannuation
  - c. remuneration reviews
  - d. individual performance bonuses
  - e. profitability bonuses
  - f. business allowances
  - g. other allowances
  - h. salary packaging, and
  - i. remuneration arrangements for senior executives and senior executive lawyers.
- 13.3. AGS's remuneration approach is based on the following principles:
- a. remuneration decisions are made in the overall context of the AGS corporate plan
  - b. AGS employment costs are sustainable and appropriate to business volumes and profitability
  - c. there is flexibility to respond to changes in business success and individual circumstances
  - d. employees share in AGS's profitability
  - e. remuneration levels are fair and reasonable with employees having confidence in AGS remuneration processes
  - f. remuneration arrangements take into account AGS's commitment to excellent employment conditions, and
  - g. remuneration for individuals may be differentiated on the basis of
    - i. performance and capability
    - ii. financial considerations
    - iii. client value considerations, and

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- iv. relevant external employment markets and internal job relativities.

**14. CEO's annual remuneration report to all employees**

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- 14.1. The CEO will provide a report in the second quarter of each financial year to all employees on remuneration in AGS, including aggregated outcomes of the annual remuneration review and the preceding financial year's individual performance bonuses.
- 14.2. The report will be based on financial data held by AGS for the 12 months ending 30 September of the year in which the report is produced.

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**PART D. CLASSIFICATION STRUCTURE AND BASE SALARY**

**15. Employees in AGS**

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- 15.1. There are three types of employee in AGS
- a. ongoing employee - an employee who performs an ongoing function with no fixed term of employment
  - b. term employee - an employee who is employed for the duration of a specified task or for a specified period of time, and
  - c. casual employee - an employee employed for duties that are irregular or intermittent.

**16. Classification structure**

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- 16.1. All jobs in AGS sit within the AGS classification structure by application of the job classification system.
- 16.2. The job classification system of job design and job evaluation provides an accurate, independent way to measure the value of a job; a mechanism for market comparison; and a link between remuneration and job value.
- 16.3. AGS employees are employed under the legal professional stream or other professional stream of the AGS classification structure.
- 16.4. The legal professional stream covers employees in the following classifications:
- a. Legal Support
  - b. Paralegal (including LDP Level A law graduates and articled clerks)
  - c. Lawyer (including LDP Level A, B and C Lawyers)
  - d. Senior Lawyer, and
  - e. Senior Executive Lawyer.
- 16.5. The other professional stream covers employees in the following classifications:
- a. Specialist
  - b. Senior Specialist, and
  - c. Senior Executive.

**17. Base salary ranges**

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- 17.1. Base salary ranges for classifications set the lower and upper boundaries for base salaries to be paid to employees employed within each classification.
- 17.2. Within those boundaries, base salary for a job within a classification will be determined by job sizing for that role and by consideration of the four factors set

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out in the individual component of the annual remuneration review (subclause 31.3).

- 17.3. The following base salary ranges will apply from the commencement of this agreement. The base salary ranges will increase after each annual base salary increase.

All figures are Full-Time Equivalent (FTE).

<b>Legal Professional Stream</b>	<b>Base salary range</b>
Legal Support	\$31,500 - \$89,500
Paralegal	\$40,000 - \$89,500
Lawyer *	\$47,000 - \$97,500
Senior Lawyer	\$71,000 - \$147,500
Senior Executive Lawyer	\$98,500 - \$231,000

<b>* Base salary ranges within the Lawyer classification for LDP Lawyers</b>	<b>Base salary range</b>
LDP level A	\$47,000 - \$61,500
LDP level B	\$52,500 - \$74,500
LDP level C	\$64,000 - \$92,500

<b>Other Professional Stream</b>	<b>Base salary range</b>
Specialist	\$31,500 - \$89,500
Senior Specialist	\$71,000 - \$147,500
Senior Executive	\$98,500 - \$231,000

- 17.4. The CEO may increase the base salary ranges from time to time.
- 17.5. The base salary ranges set out at subclause 17.3 do not include superannuation, allowances or bonuses.

**18. Progression and promotion**

- 18.1. An employee's remuneration may increase within a classification as a result of a remuneration review, progression or temporary assignment.
- 18.2. An employee's progression to a higher classification will be as a result of promotion or temporary assignment.
- 18.3. An employee's remuneration on promotion will not be less than remuneration before promotion. Any temporary assignment allowance will be taken into account for this purpose.

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**19. Movement between classification streams**

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- 19.1. An employee can move between classification streams by transfer, promotion or temporary assignment.
- 19.2. Base salary cannot be reduced on transfer without the consent of the affected employee except where:
  - a. a sanction of reduction in base salary is imposed as a result of misconduct by the employee
  - b. a reduction in pay results from a transfer to a new classification stream as a result of the loss of an essential qualification
  - c. an employee is transferred to a lower classification or their base salary is reduced by way of action for under performance, or
  - d. an employee is redeployed under AGS's redundancy provisions to a role with a lower base salary after the income maintenance period expires (subclause 120.4).

**20. Casual loading**

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- 20.1. Casual employees will be paid a loading of 20 per cent of their base salary in lieu of entitlements to paid leave and public holiday entitlements under this agreement (except long service leave).

**21. Junior rates**

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- 21.1. Junior rates of pay, as a percentage of the rate for an adult employee, may be applied as follows.

<b>Age</b>	<b>% of adult rate (clause 17)</b>
Under 18 years	60%
At 18 years	70%
At 19 years	81%
At 20 years	91%

**22. Apprentices and trainees**

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- 22.1. Where AGS employs apprentices and trainees they will be paid in accordance with the relevant transitional Australian Pay and Classification Scale, the national minimum wage order or the applicable modern award (if any).

**23. Payment of salary**

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- 23.1. Salary is paid fortnightly in arrears by electronic funds transfer to a financial institution account. Subject to the operational limits of the payroll system an employee may request that certain amounts be directly debited via electronic funds transfer from their salary.

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23.2. Fortnightly salary and the fortnightly payment of annual allowances are calculated using the formula:

$$\text{fortnightly salary rate} = \text{annual salary rate} \times 12/313.$$

**24. Superannuation**

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24.1. AGS will pay superannuation contributions for a continuing member of the CSS, PSS and PSSap in accordance with the relevant superannuation legislation and this clause.

24.2. AGS will pay superannuation contributions for an ongoing employee who is not a continuing member of the CSS, PSS or PSSap so that all times obligations in accordance with its Superannuation Guarantee are met, as a minimum. The following percentage of fortnightly salary will be paid, in accordance with this clause, to the superannuation fund nominated by the employee:

<b>Date effective</b>	<b>Percentage of salary</b>
Up until 30 June 2010	13.1%
Effective from 1 July 2010	13.8%
Effective from 1 July 2011	14.6%
Effective from the last Thursday in June 2012	15.4%

24.3. An ongoing employee who is not a continuing member of the CSS, PSS and PSSap may convert into cash an amount of up to 4.1% of their salary that is paid by AGS as the employer superannuation contribution, on the condition that the amount of the employer contribution does not fall below the prescribed minimum in the relevant legislation. The amount specified by the employee to be converted to cash would be paid to the employee with their fortnightly salary payment.

24.4. On commencement of this agreement, AGS will pay 9% of the fortnightly salary of an employee who is employed on a term or casual basis and who is not a continuing member of CSS, PSS or PSSap, to the employee's nominated superannuation fund. If the Superannuation Guarantee minimum employer contribution should change during the life of this agreement, AGS will pay the minimum contribution required.

24.5. A term or casual employee is not eligible to convert any of the employer superannuation contribution to cash.

24.6. The Employment Handbook contains arrangements that apply to all AGS employees' superannuation entitlements.

**25. Salary packaging**

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25.1. Salary packaging is available to all employees.

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- 25.2. Salary packaging is available in accordance with the following principles:
- a. employees are entitled to salary package up to 50% of their total annual remuneration including bonuses, and
  - b. an employee will reimburse AGS for any resulting fringe benefits tax and administrative costs.
- 25.3. Other salary packaging arrangements may be approved by the CEO, having regard to all the circumstances of the case.
- 25.4. Salary packaging guidelines are set out in the Employment Handbook.

**26. Supported wages system**

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- 26.1. An employee who is unable to work at full capacity because of the effects of a disability may be eligible for a supported wage.
- 26.2. An employee entitled to a supported wage under this agreement will be paid at a rate not less than the rate for the employee set in accordance with the relevant transitional Australian Pay and Classification Scale or replacement instrument.
- 26.3. Arrangements for the supported wage system in AGS are set out in the Employment Handbook.

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**PART E. ANNUAL REMUNERATION REVIEW**

**27. Annual remuneration review**

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- 27.1. AGS will review the remuneration package of all eligible employees in July of each year as part of the AGS-wide annual remuneration review.
- 27.2. The annual remuneration review has two elements:
- a. a general base salary increase as set out in clause 28 and
  - b. provision for other adjustments to an employee's remuneration package based on clause 29.
- 27.3. An employee's base salary will not be reduced as a result of an annual remuneration review or any other remuneration review under this agreement.

**28. Base salary increase**

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- 28.1. For the financial years 2010-2011 and 2011-2012, the CEO will determine, and AGS will pay to eligible employees, an annual base salary increase of:
- a. 3%, where AGS meets its corporate plan profit target for the preceding financial year; or
  - b. 3.5%, where profit from legal service trading (excluding interest) exceeds 8% of legal service revenue in the preceding financial year.
- 28.2. For the financial years 2010-2011 and 2011-2012, the CEO may determine a base salary increase of more than the amounts in 28.1.a or 28.1.b where AGS's corporate plan profit target is met for the preceding financial year.
- 28.3. In relation to the determination of base salary increases, profit target means the profit from legal service trading excluding interest.
- 28.4. In deciding whether to exercise the discretion to determine a base salary increase of more than the amounts in 28.1.a or 28.1.b, the CEO will consider the following factors as well as the advice of the Remuneration Committee:
- a. employment market conditions, including factors that affect employees' real level of remuneration
  - b. AGS's current remuneration commitments
  - c. shareholder expectations
  - d. past and projected profitability, and
  - e. AGS's market positioning.
- 28.5. The discretion in subclause 28.2 does not require the CEO to make a determination under this subclause in any year.

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- 28.6. For any of the financial years 2010-11 and 2011-12, where the corporate plan profit target for the preceding financial year is not met, the CEO will determine and AGS will pay to eligible employees an annual base salary increase of 2.5%.

**29. Individual component of annual remuneration reviews**

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- 29.1. For the financial years 2010-11 and 2011-12, for eligible employees (as defined in clause 32) other than LDP employees, in addition to the base salary increase in the annual remuneration review AGS will commit and pay in aggregate at least 1% of AGS's annual salary bill in respect of that group of employees.
- 29.2. For the financial years 2010-11 and 2011-12, for LDP employees, in addition to the base salary increase in the annual remuneration review, AGS will commit and pay at least 1% of AGS's annual salary bill in respect of that group of employees.

**30. Remuneration increases after nominal expiry date**

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- 30.1. The annual base salary increase and funding for the individual component of the annual remuneration review for the financial year 2012-13 will be the subject of negotiations for the enterprise agreement to replace this agreement. If a new enterprise agreement is made to replace this agreement and that agreement has been submitted to Fair Work Australia by 30 June 2012 for approval, the base salary increase for 2012-13 will be paid according to the increase set out in the agreement submitted to Fair Work Australia. If a new agreement has not been submitted to Fair Work Australia before 1 July 2012, the CEO will determine an annual base salary increase in accordance with clause 28 and clause 29.
- 30.2. If a new agreement to replace this agreement has not been made, or is not in operation on or before 1 July 2013 or 1 July of any year after that, the CEO will determine an annual base salary increase and funding for the individual component of the annual remuneration review in accordance with clause 28 and clause 29, for the relevant year, unless an agreement has been submitted to Fair Work Australia by 30 June of that year. In that case, any remuneration increases will be paid according to the increase set out in the agreement submitted to Fair Work Australia.

**31. Process for individual component of annual remuneration review**

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- 31.1. Directors will review the remuneration package of each of the employees in their office using the remuneration review factors in subclause 31.3 to assess if any elements of the employee's remuneration package ought to be adjusted to ensure their remuneration is appropriate for the employee's performance and contribution to AGS's business success.
- 31.2. When considering the individual component of the annual remuneration review each Director will consult their team leaders, HR Manager, Business Manager and, where applicable, the Practice Manager.

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- 31.3. The remuneration review factors to be used for this process are:
- a. the performance and capability of the employee - including past and projected performance, the mix between fixed and variable pay, the application of skills and qualifications, capabilities, the likelihood of the employee regularly exceeding performance expectations and continuing contribution to AGS's business development
  - b. AGS financial considerations - including affordability of any salary increase, the overall contribution of the individual to the team, the financial performance of the employee as well as of the employee's team and office
  - c. client value considerations - including the value of the employee's work in the relevant market and the quality of the employee's internal and external client relationships, and
  - d. relevant external employment markets and internal job relativities - including market comparisons taking into account superannuation cost, bonuses and other benefits, remuneration for comparable employees paid in the locality and across AGS for the relevant type of work, and job and salary relativities within and across local and national teams.
- 31.4. Each Director will forward their recommendations for the individual component of the annual remuneration review to the CEO in accordance with the timetable set by the CEO.
- 31.5. Upon receiving the Directors' recommendations, the CEO will (with the assistance of the CFO, COO and Director HR and People Development Services) moderate the remuneration review recommendations to ensure consistency of approach across AGS.

**32. Eligibility for remuneration reviews**

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- 32.1. All employees are eligible to receive a base salary increase and to have their individual remuneration reviewed under the annual remuneration review, except:
- a. an employee whose performance is assessed overall as 'not acceptable' under the AGS performance program at the end of cycle performance assessment
  - b. an employee who is participating in an under performance process on the day on which the base salary increase would otherwise take effect.
- 32.2. An employee whose performance is assessed overall as 'not acceptable' will be eligible to receive the base salary increase component of the annual remuneration review from the date that their performance is assessed overall as 'good' or better.

**COMMERCIAL IN CONFIDENCE**

**33. Notification to employees**

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- 33.1. Each Director will notify employees in their office of the outcomes of the annual remuneration review by sending them a letter setting out their new remuneration package detailing changes including base salary and any allowances. This letter will also set out the employer contribution to superannuation, and where available the amount of individual bonus (subclause 50.3) and AGS profitability bonus (subclause 56.5) to be paid in relation to the financial year just completed.

**34. Date of remuneration changes**

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- 34.1. Remuneration changes as a result of the annual remuneration review will be paid in August and will be effective from the last Thursday before 1 July in the new financial year.

**35. Additional reviews**

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- 35.1. During the year, a Director may review an employee's remuneration apart from the annual remuneration review such as in the case of the employee's promotion or a change of role or responsibilities to assess if any elements of the employee's remuneration package ought to be adjusted to ensure their remuneration is appropriate for the employee's performance and contribution to AGS's business success.
- 35.2. The Director will apply the remuneration review factors that are set out in subclause 31.3 and will consult on the same basis as is set out in subclause 31.2.
- 35.3. The CEO will determine the format of the moderation process in such cases.

**36. Guidelines on remuneration reviews**

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- 36.1. The Employment Handbook will provide guidelines on relevant considerations under each of the factors for the individual component of the annual remuneration review.
- 36.2. The Remuneration Committee may from time to time review the guidance material on the application of the remuneration review factors. Any variation to this material will be made with involvement of employees as provided for in Part B of this agreement.

**COMMERCIAL IN CONFIDENCE**

**PART F. ADDITIONAL REMUNERATION ARRANGEMENTS**

**37. Business allowances**

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- 37.1. Business allowances will be available to employees who undertake a special role or special responsibilities or who undertake particular and significant AGS business development activities. The Employment Handbook provides guidelines on business allowances developed by the Remuneration Committee.
- 37.2. Business allowances may have fixed and/or performance related components. The relevant Director will determine the amount of allowance that an employee is entitled to after taking into account the Remuneration Committee guidelines in the Employment Handbook.
- 37.3. Business allowances are not considered part of base salary.
- 37.4. Business allowances may be agreed:
- a. as part of the annual remuneration review
  - b. as part of an additional review under subclause 35.1, or
  - c. for an employee participating in the Executive Development Program.

**38. Temporary assignment**

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- 38.1. A Director may request an employee to take on a temporary assignment where:
- a. there is an excess of work of higher value in the short to medium term
  - b. there are resourcing requirements for a project with an identifiable end date
  - c. specific additional skills are needed for a period
  - d. there is a temporarily vacant role, or
  - e. there are other circumstances that suggest a temporary assignment would be appropriate to address AGS's business needs.
- 38.2. AGS may recognise an employee's work on a temporary assignment through the payment of an allowance, known as the temporary assignment allowance. However an additional allowance will not be paid in all situations.
- 38.3. If an employee is receiving a temporary assignment allowance on the last Thursday in June of any year, that allowance will increase by the same percentage as the base salary increase.
- 38.4. The Employment Handbook contains guidelines for temporary assignment.

**COMMERCIAL IN CONFIDENCE**

**PART G. SENIOR EXECUTIVE LAWYER AND SENIOR EXECUTIVE BENEFITS AND BUSINESS ALLOWANCES**

**39. Senior Executive Lawyer and Senior Executive benefits and business allowances**

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**Senior Executive Benefits**

- 39.1. A Senior Executive Lawyer or Senior Executive who was entitled to Senior Executive benefits, (including the Executive Vehicle Scheme (EVS) or cash in lieu of vehicle, spouse travel, and car parking) immediately before the commencement of this agreement may choose to:
- a. retain their entitlement to these benefits, or
  - b. at any time during the life of this agreement, cash out their entitlement to EVS and spouse travel, and/or car parking benefits, and receive instead:
    - i. for EVS and spouse travel - a Senior Executive Business Allowance of \$20,000 pa. Where an employee has an existing EVS lease the car limit will be increased to \$20,000 pa for the remainder of that lease. The employee will then receive the Senior Executive Business Allowance of \$20,000 pa in place of EVS and spouse travel at the expiration of their EVS lease.
    - ii. for car parking
      - A. in Canberra - a Senior Executive Business Allowance of \$2,000 p.a.
      - B. in all other localities - a Senior Executive Business Allowance of \$5,000 p.a.
- 39.2. A Senior Executive Lawyer or Senior Executive who, immediately before the commencement of this agreement, was not entitled to Senior Executive Benefits, but who could elect to access EVS in exchange for a part of their business allowance, may choose to:
- a. retain their current access to EVS, or
  - b. at any time during the life of this agreement cash out their entitlement to access EVS and receive an immediate increase of \$1,500 to their business allowance.
- 39.3. An employee's choice to replace their Senior Executive benefits with those in 39.1.b.i, 39.1.b.ii or 39.2.b is irrevocable.

**Senior Executive Business Allowance**

- 39.4. A Senior Executive Lawyer or Senior Executive who was entitled to a Senior Executive Business Allowance (SE BA) immediately before commencement of this agreement will continue to receive the SE BA under this agreement.

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- 39.5. When an employee is promoted to, or engaged as, a Senior Executive Lawyer or Senior Executive, the Director will offer the employee a remuneration package appropriate to their role and level of responsibility. This will include:
- a. a base salary within the current base salary range for this classification
  - b. an appropriate superannuation arrangement,
  - c. performance and profitability bonuses and other benefits in accordance with this agreement.
  - d. The Director may offer the employee a SE BA depending on the nature of the role and responsibilities to be undertaken by the employee.

**Annual increase to SE BA**

- 39.6. The amount of SE BA will be increased at the same time and by the same percentage as the base salary increase for that year.

**Pro rata SE BA**

- 39.7. Where a Senior Executive Lawyer or Senior Executive works part time hours or takes leave at half pay, the SE BA is pro rated accordingly.

**COMMERCIAL IN CONFIDENCE**

**PART H. OTHER ALLOWANCES**

**40. Other allowances**

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- 40.1. AGS pays a range of allowances, in addition to business allowances, SE BA and temporary assignment allowance, to eligible AGS employees.

**41. Travel**

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**Motor vehicle allowance**

- 41.1. If an AGS owned vehicle is unavailable during business hours when an employee needs to travel on AGS business, the employee may:
- a. travel by taxi with payment through Cabcharge
  - b. use a private vehicle, or
  - c. use public transport.
- 41.2. In order to be entitled to use a private vehicle, an employee must hold a current driver's licence and the private vehicle used must be registered and covered by comprehensive insurance.
- 41.3. A Motor Vehicle Allowance (MVA) is paid to AGS employees for the use of their private motor vehicles for AGS travel when:
- a. appropriate cost effective alternative transport is not available, and
  - b. it is approved by the Director.
- 41.4. The rate of MVA will be the rate determined from time to time by the Australian Taxation Office.
- 41.5. The maximum allowance payable under these arrangements will not exceed the amount AGS would have paid for the conveyance of the employee if the private motor vehicle had not been used.
- 41.6. Where an employee can demonstrate that the MVA payable is insufficient to meet expenses reasonably incurred the Director may approve the payment of an additional amount.

**Travelling allowance (TA)**

- 41.7. AGS provides payments of Travelling allowance (TA) to meet the reasonable cost of accommodation, meals and incidental expenses incurred by an employee while travelling in Australia or overseas on official business. The rate of TA will be the rate determined from time to time by the Australian Taxation Office.
- 41.8. An employee is not entitled to TA where:
- a. an overnight stay is not required for business purposes, or

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- b. an employee travels to a locality to which the employee is being permanently transferred.

**Travel allowance for travel of more than 21 days**

- 41.9. After an employee has resided in the same locality for a continuous period of 21 days, TA will cease, and the employee will be paid an allowance equal to the lesser of:
  - a. the amount expended by the employee on accommodation, meals and incidentals, or
  - b. an amount the CEO considers to be reasonable in the circumstances.

**Air travel by an AGS employee on AGS business**

- 41.10. Where an AGS employee travels on AGS business, the employee is to travel in economy class. The exceptions to this are:
  - a. where the duration of the flight, the time of travel or the extent of the amount of travel being taken is such that the employee, in the Director's view, should fly in business class, and
  - b. where the employee is a Senior Executive Lawyer or Senior Executive who was a Senior Executive Service officer in AGS on 31 August 1999. In this case, the employee is entitled to travel in business class but is expected to use economy class travel on shorter distance flights.

**Air travel by an AGS employee on client business**

- 41.11. Where an AGS employee travels on client business, and there is a client contractual requirement or client agreement that travel on behalf of the client is to be taken in a defined class of travel, the employee is to travel in that class of travel.
- 41.12. If the class of travel is not specified by client requirement, the employee is to travel in economy class subject to the same exceptions to this set out in subclause 41.10 for travel on AGS business.

**Excess travelling time allowance**

- 41.13. AGS will pay excess travelling time allowance to eligible employees travelling on AGS business away from their usual place of work (exclusive of overtime duty) provided the travelling time exceeds 30 minutes in any one day. Payment will not be made for more than five hours in any one day.
- 41.14. A period of excess travelling time cannot be recorded as additional time on flex time sheets if the employee receives the excess travelling time allowance for that period.

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41.15. Eligible employees are those entitled to overtime as specified in subclause 62.6, i.e., employees in the Legal Support, Specialist, Paralegal and Lawyer classifications.

**Part day travel allowance**

41.16. An employee who is required to be absent from the city in which they usually work on official business for a period of not less than 10 hours but not absent overnight, will be paid Part Day Travel Allowance (Part Day TA). On commencement of this agreement, the rate of Part Day TA is \$51.50 and will be adjusted in line with CPI in July each year.

41.17. Where an employee receives Part Day TA the employee is not entitled to any other allowance in respect of that travel, nor reimbursement of meal costs or overtime meal allowance. However, the amount of Part Day TA will not be reduced for meals provided to the employee during the course of the day. The employee is also entitled to receive cab charge vouchers or reimbursement of car parking for the travel.

41.18. In order to be entitled to Part Day TA, the employee needs to complete a travel requisition form. The form must be approved by their supervisor/team leader and submitted to the local Finance area for processing.

41.19. If the travel is required to work for a client, then the cost of the allowance may be billable to the client. This should be indicated on the movement requisition form for the part day allowance.

41.20. Part Day TA will be paid to an employee once the period of travel has been confirmed in the next available payday.

41.21. In line with the tax ruling by the ATO, this allowance will be shown as assessable income on the employee's payment summary.

41.22. The Employment Handbook provides guidance on AGS travel policies.

**42. First aid allowance**

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42.1. A first aid allowance of \$13.15 per fortnight is payable to first aid qualified employees who are responsible for providing first aid in the workplace.

42.2. A first aid qualified employee is one that holds either a First Aid Certificate of the St John Ambulance Association or a Senior First Aid Certificate of the Australian Red Cross Society.

42.3. Each year the amount of the first aid allowance paid to an employee covered by 42.1 will be increased by the same percentage and at the same time, as the base salary increase applicable to that year.

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**43. Reimbursement for loss or damage to clothing or personal effects**

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- 43.1. Where an employee incurs loss of or damage to clothing or personal effects and the loss or damage in the course of their employment, the employee is entitled to be paid a reasonable amount for the loss or damage.

**44. On-call allowance**

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- 44.1. An employee who is classified as a Specialist or an employee engaged to perform duties in Business & Practice Technology Services may be directed to be 'on-call', that is, contactable and available to perform extra duty outside of their ordinary working hours.
- 44.2. Employees are entitled to an additional payment in respect of each hour that they are on call as follows:
- a. 7.5% of the employee's hourly rate of pay for each hour on call Monday to Friday
  - b. 10% of the employee's hourly rate of pay for each hour on call Saturday and Sunday, and
  - c. 15% of the employee's hourly rate of pay for each hour on call on public holidays.
- 44.3. The hourly rate of payment is calculated based on the employee's annual salary rate, including salary packaged amounts and, if relevant, temporary assignment allowance.
- 44.4. Where an employee is on-call and is required to perform duty but is not recalled to work, overtime payments in accordance with clause 62 will be made, subject to a one hour minimum payment. Where overtime payments are made in relation to a period, the employee will not also be entitled to an on-call allowance for the same period.
- 44.5. Where an employee is on-call and is recalled to duty at a place of work, overtime payments in accordance with clause 62 will be made subject to a three hour minimum payment.

**45. Overtime meal allowance**

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- 45.1. This allowance applies to an employee who is eligible to be paid overtime and who works overtime after the employee's ordinary hours of work, Monday to Friday. The meal allowance is payable whether or not the employee actually stops work for a meal break.
- 45.2. An employee who works overtime before the start of their ordinary hours of work is entitled to the payment of an overtime meal allowance if the overtime commences before 7.00 am and continues up to at least 8.30 am.

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- 45.3. A meal allowance is also payable to an employee who is required to work on a Saturday, Sunday or public holiday where the work extends beyond the completion of a meal break. A meal break would normally be 7.00 am - 8.00 am for breakfast, 12 noon - 2.00 pm for lunch, and 6.00 pm - 7.00 pm for dinner.
- 45.4. The rate of meal allowance will be the rate determined from time to time by the Australian Taxation Office.

**46. Temporary accommodation allowance**

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- 46.1. An employee who is temporarily transferred to a position in a different locality from their usual place of work may be entitled to temporary accommodation allowance (TAA) as determined by the Director of the receiving office. TAA is paid in respect of accommodation-related expenses associated with the relocation of an employee, where the relocation is in the interest of AGS. The Director will take into account whether the employee is accompanied by dependents and the type of accommodation the employee uses when determining the amount of TAA, if any, to be paid to an employee. An employee seeking TAA should discuss this with the relevant Director before making arrangements for temporary accommodation in relation to a relocation.
- 46.2. The Employment Handbook provides guidance on the interstate temporary relocation of employees - AGS initiated assignment.

**47. Relocation expenses**

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- 47.1. An employee who is required by AGS to relocate will have reasonable expenses reimbursed, as determined by the relevant Director. Relocation expenses may also be reimbursed in other circumstances subject to the merits of the case.
- 47.2. Relocation expenses must be negotiated with the relevant Director before the move commences.

**48. Community language allowance**

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- 48.1. Where an employee has particular language skills (for example in a language other than English or in using deaf communication skills) the employee may be entitled to payment of the community language allowance, as determined by the Director. To be eligible for community language allowance:
- a. the CEO must determine that the employee's skills are required by AGS on a continuing basis for the provision of employee or client service; and
  - b. the employee's language skills must be assessed as meeting the necessary standard.

**COMMERCIAL IN CONFIDENCE**

**PART I. INDIVIDUAL PERFORMANCE BONUSES**

**49. Individual performance bonuses**

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- 49.1. Subclauses 50.1 to 55.1 (relating to the individual bonus arrangements) will apply until replaced by agreement between AGS, CPSU and employees.
- 49.2. AGS will conduct a review, of the individual performance bonus provisions, as set out in Attachment 2 to determine if any changes are to be made to these provisions.

**50. Overview**

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- 50.1. AGS rewards employees for high levels of performance outcomes against performance plan targets through the individual performance bonus system.
- 50.2. An employee is eligible for an individual performance bonus in respect of a financial year where the employee has had in place an agreed performance plan for that year in accordance with AGS's performance program.
- 50.3. There are two main types of individual performance bonus:
- a. net production basis, and
  - b. percentage of salary basis.
- 50.4. An employee's role and responsibilities will usually determine which of these individual performance bonuses applies.
- 50.5. In special circumstances, due to the nature of the role and responsibilities of an employee, the relevant Director may, in an annual remuneration review or an additional remuneration review, agree to modify the basis or extent of an employee's individual performance bonus.
- 50.6. Individual performance bonus arrangements for LDP employees are set out in clause 106.

**51. Individual performance bonus - net production basis**

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- 51.1. Subject to this Part, an employee in a predominantly fee earning role will generally be eligible for the individual performance bonus - net production basis.
- 51.2. An eligible employee will receive a performance bonus equivalent to 20% of the employee's net production above their net production target. The performance bonus will only be paid where the employee's overall performance is assessed as 'good' or better under the AGS performance program.
- 51.3. Calculation of the bonus will take into account the Remuneration Committee guidelines on the calculation of net production and net production targets in the Employment Handbook.

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- 51.4. If an employee has a fee earning target and their Director considers the net production basis bonus is not appropriate for rewarding that employee's performance for the whole or part of the performance cycle, the Director will consider whether it would be more appropriate for the employee to receive a bonus calculated on the percentage of salary basis (see clause 52) and may change that basis at any time with prospective effect.
- 51.5. Where an employee is eligible for an individual performance bonus on the net production basis and at AGS's request undertakes roles and responsibilities which in their Director's opinion warrant recognition through remuneration, the Director will consider whether:
- a. any level of fee relief is warranted under the Remuneration Committee guidelines for fee relief set out in the Employment Handbook given the extent of the employee's other (non fee earning activities) or periods undertaking client counsel roles
  - b. a performance based business allowance is more appropriate to recognise the level of activity undertaken in other accountability areas, or
  - c. there should be a change to the employee's remuneration package under the guidelines for the individual component of the annual remuneration review.
- 51.6. For the purposes of subclause 51.5, only in the case of paragraph 51.5.a can any change be retrospective.

**52. Individual performance bonus - percentage of salary basis**

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- 52.1. The individual performance bonus - percentage of salary basis applies to:
- a. an employee who does not have a fee earning target, and
  - b. an employee with a fee earning target whose Director has determined that the employee's bonus should be calculated on a percentage of salary basis rather than on a net production basis under subclause 51.4.
- 52.2. The individual performance bonus - percentage of salary basis will only be paid where the employee's overall performance is assessed as 'very good' or better under the AGS performance program.
- 52.3. The calculation for the percentage of salary is set out in the matrix in 93.7.
- 52.4. For the purpose of bonuses paid as a percentage of salary, salary is the base salary paid to the employee by AGS during the [preceding] financial year. It includes salary packaged amounts and temporary assignment allowance but does not include business allowances or any other allowances or financial benefits provided under this agreement.

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**53. Payment of individual performance bonuses**

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- 53.1. Payment of individual performance bonuses will be made each year as soon as eligibility has been confirmed by the CEO. This would usually be in the first quarter of the financial year but if significant questions remain about the calculation of net production for a fee earner, e.g., in relation to the employee's WIP or outstanding debt, a payment on account will be made where possible in the first quarter.

**54. Part-year payments**

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- 54.1. An employee who has joined AGS during the financial year and will be employed for a minimum continuous period of 12 weeks will be entitled to a part-year payment of bonuses if they meet the requirements in subclause 50.2.
- 54.2. An employee who has been employed for a minimum continuous period of 12 weeks and whose employment in AGS ends during the performance cycle will receive a part-year bonus payment if eligible under 50.2.
- 54.3. If an employee's employment in AGS ends after 30 June and on or before 31 July of the same year and the employee does not have a performance plan in place, the employee's previous year's performance plan will be taken to be the plan for that year.

**55. Individual performance bonus guidelines**

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- 55.1. The Remuneration Committee may issue guidance from time to time to assist Directors in determining suitable bonus arrangements where subclause 51.5 applies.

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**PART J. AGS PROFITABILITY BONUS**

**56. AGS profitability bonus**

- 56.1. The AGS profitability bonus recognises the role employees play in AGS achieving a profitable year.
- 56.2. With effect from the financial year 2009-10, AGS will commit in each year for the payment of a profitability bonus to eligible employees
- a. 10% of that part of AGS's gross legal services trading profit that exceeds \$2.5m, plus
  - b. an additional 10% of that part, if any, of AGS's gross legal services trading profit that exceeds the dollar value of 8.5% of AGS's revenue from legal service trading in that year.
- 56.3. Gross legal services trading profit and revenue from legal service trading for this purpose exclude
- a. interest earned on cash and investment balances, and
  - b. any elements of income and, in the case of profits, any elements of expenditure, which do not represent normal AGS trading.
- 56.4. The profitability bonus will be the same dollar amount for all eligible employees, except where it is pro-rated under subclauses 56.7 and 56.8.
- 56.5. AGS profitability bonuses will be paid to all employees whose performance overall is assessed as 'good' or better under the AGS performance program in the relevant financial year and who are employed by AGS at the time the bonus is paid.
- 56.6. Payment will occur as soon as possible in the following financial year once AGS's financial statements have been audited and settled.

**Pro-rata payments of profitability bonus**

- 56.7. The AGS profitability bonus will be pro-rated for employees who have worked part-time hours during the financial year for which the bonus is being paid.
- 56.8. The bonus will also be pro-rated where an employee commences employment in AGS part way through the relevant financial year or where an employee has a total absence of unpaid leave of 22 days or more in the relevant financial year.
- 56.9. The bonus will not be pro-rated and will be paid at the full rate to an ongoing employee who had a period of unpaid leave of up to 6 months in the relevant financial year where the leave was due to the employee undertaking a secondment to another employer at AGS's request.

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**PART K. WORKING HOURS**

**57. Ordinary hours of work**

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57.1. Full-time ordinary hours of work are 8.30 am to 12.30 pm and 1.30 pm to 4.51 pm (7 hours 21 minutes) and are to be used for the calculation of attendance related arrangements.

**58. Part-time employment**

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58.1. AGS is committed to providing an environment that allows employees to reconcile the competing demands of work and personal requirements through the use of part-time work subject to meeting operational and business requirements.

58.2. Part-time employees are those whose agreed hours of work are less than 147 hours over a four week period.

58.3. Part-time work may be approved by a Director:

- a. approving an application by an employee to work part-time (employee initiated) or
- b. filling a vacancy on a part-time basis (AGS initiated).

58.4. In considering an application for part-time work, a Director will have regard to the following:

- a. operational and business needs of the area generally
- b. the need for the employee to balance work and personal life, and
- c. the requirements for AGS offices to be staffed to cover the full span of opening hours (generally between 8.00 am and 6.00 pm).

58.5. Unless otherwise stated in this agreement, remuneration, leave entitlements and other benefits will be calculated on a pro-rata basis, apart from those allowances of a reimbursement nature, in relation to which a part-time employee has the same entitlement as a full-time employee. Employees eligible for overtime who work part time will be entitled to overtime payments.

58.6. A part-time employee may access Flexible Working Hours arrangements.

**59. Flexible working hours**

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59.1. AGS provides a working environment which allows for flexible working hours (FWH). This recognises that there will be situations when

- a. employees will be absent from the workplace during normal office hours but outside of normal leave arrangements, and
- b. employees will attend work outside of normal office hours in order to meet work demands.

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- 59.2. Each employee may manage their own working hours, in agreement with the supervisor.
- 59.3. Before adopting either a regular personal attendance pattern, such as an early departure for child care responsibilities, or a one-off absence (e.g. to attend an appointment), an employee will discuss these arrangements with their supervisor.
- 59.4. A supervisor will be reasonable when considering a request from an employee to vary their work times or take time off and will have regard to operational requirements, the employee's requirements and other employees' requirements. However, employees have no automatic right to absent themselves from the workplace. Where either the employee or the supervisor needs to vary an existing agreement, this will be done following discussions between the employee and supervisor.

**60. Flex-time**

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- 60.1. Employees in the Legal Support, Specialist and Paralegal classifications are eligible to participate in 'flex-time' which is a component of the FWH entitlements.
- 60.2. Under the flex time arrangements, an employee will accrue a credit, or debit, of hours worked in relation to their ordinary hours of work (usually 147) over a four week period.
- 60.3. If an employee works in excess of their ordinary hours, they will accrue a flex credit. If they work less, they will accrue a flex debit. An employee with a flex credit may apply to access those hours through time off work. A debit will usually require an employee to work additional hours to make up the debit. No employee may accrue more than 20 hours flex credit or 10 hours flex debit within a four week period, except as a result of the circumstances described in 60.4.
- 60.4. An employee who is eligible for flex-time and whose reasonable request to take a period of flex time is not approved by their supervisor due to operational reasons, will retain the flex credit for the time requested until the employee use of the flex time is approved. However, an employee must obtain approval by the Director to accrue flex credit in excess of 20 hours.

**61. FWH - Taking time off**

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- 61.1. Employees do not have a 'right' to take time off under a FWH arrangement, including under 'flex-time'. A flex credit is not an 'entitlement', it is an indication that an employee has worked additional hours and as such, can discuss with their supervisor a suitable time to be away from work.
- 61.2. FWH is not to be used on a regular basis to work a reduced number of days over a period, e.g., nine days in ten or to work on a part time basis. Employees

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wishing to adopt such working hours should approach their supervisor to make this an agreed, formal arrangement, in much the same way that a part-time employee and supervisor agree to that particular work pattern. Any arrangements to work less than 147 hours over a four week period on an ongoing basis must be approved by the Director as set out in subclause 58.3.

- 61.3. It is a responsibility of the supervisor to ensure that an employee is not working excessive hours without either appropriate time off in lieu being available, or if applicable, overtime payments being made.
- 61.4. Where time off in lieu is taken, the time off granted may not equate exactly with the time worked in excess of an employee's ordinary hours of work. However, the absence granted will be reasonable taking into account the excess time worked. A supervisor may suggest that an employee take time off to recognise an extra effort, either short term or sustained - it is not necessary for an employee to apply for time off in lieu.
- 61.5. Except in exceptional circumstances such as where an employee has worked considerably longer hours, other forms of leave such as recreation or long service leave cannot be extended by taking time in lieu under the FWH provisions, such as by using flex credits, without the approval of the employee's Director.

**62. Overtime**

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- 62.1. As far as practicable, supervisors and employees will arrange for work to be completed within the ordinary working hours for the employee and taking account of AGS's FWH arrangements.
- 62.2. When arranging for an employee to work outside ordinary hours, a supervisor must decide whether the employee will be entitled to 'flex-time', time off in lieu, or overtime for the period worked. The supervisor must inform the employee of the applicable entitlement when requesting that an employee work additional hours.
- 62.3. Other issues that must be taken into account by a supervisor before requesting an employee to work additional hours:
  - a. the amount of additional hours already worked by the employee
  - b. if applicable, the credit/debit already accrued by the employee
  - c. the number of hours already worked by an employee that day, and
  - d. the business need for the work to be performed urgently.
- 62.4. Other issues a supervisor may consider when an employees is asked to work outside of their ordinary hours include the following:
  - a. reasonable notice and the employee's ability to comply
  - b. ability to make alternative care arrangements

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- c. ability to reschedule family, lifestyle or educational commitments, and
  - d. operational efficiency.
- 62.5. However, an eligible employee who is directed by their supervisor to work overtime on a Saturday, Sunday, public holiday or between 5.30 pm and 8.00 am Monday to Friday is entitled to be paid for the hours worked on the following basis:
- a. Monday to Saturday - time and a half for the first three hours each day and double time after that
  - b. Sunday - double time, and
  - c. public holiday - double time and a half. For work between 8.00 am and 5.30 pm payment will be at time and a half additional to the single time being paid for a public holiday.
- 62.6. The following employees are eligible to be paid for overtime:
- a. an employee whose classification is Legal Support or Specialist
  - b. an employee whose classification is Paralegal or Lawyer, and
  - c. an employee in Information and Technology Services who is required to work on essential after hours maintenance.
- 62.7. Overtime payments are calculated using base salary and any temporary assignment allowances payable at the time overtime was worked. Ordinary hours set out in subclause 57.1 are applied in calculating overtime.
- 62.8. Subject to rules in relation to on-call allowance if an eligible employee is directed to work overtime for a period which is not continuous with ordinary duty the employee will be entitled to be paid for at least four hours, even if the period actually worked is less than four hours.
- 62.9. Where an employee works during the overtime period under the flexible working hours arrangements in clause 59 there is no eligibility to overtime payments.
- 62.10. An eligible employee and supervisor may agree that the employee will be given paid time off (at the 'overtime rate') in lieu of an overtime payment for overtime worked.

**63. Public holidays**

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- 63.1. AGS will observe the following public holidays and employees will be paid for that day as if it was not a public holiday (if the employee would have otherwise worked on that day):
- a. 1 January (New Year's Day) or, if that day falls on a Saturday or Sunday, the following Monday

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- b. 26 January (Australia Day) or, if that day falls on a Saturday or Sunday, the following Monday
- c. Good Friday and the following Saturday and Monday
- d. 25 April (Anzac Day) or substitute day or another day declared or prescribed by a State or Territory Government as the Anzac Day public holiday
- e. the day observed to celebrate the anniversary of the birthday of the sovereign (Queen’s Birthday)
- f. the day variously called Eight Hour Day, Labour Day, or May Day as proclaimed by State or Territory governments
- g. 25 December (Christmas Day) or, if that day falls on a Saturday or Sunday, 27 December, and
- h. 26 December (Boxing Day) or, if that day falls on a Saturday or Sunday, 28 December.

63.2. AGS also observes an additional day within the Christmas-New Year period as a public holiday, in line with the following table.

<i><b>Christmas Day</b></i>	<i><b>Additional Day</b></i>
Sunday	Wednesday 28 December
Monday	Wednesday 27 December
Tuesday	Monday 31 December
Wednesday	Friday 27 December
Thursday	Monday 29 December
Friday	Tuesday 29 December
Saturday	Wednesday 29 December

63.3. Employees are entitled to the public holidays declared or prescribed by a law of a state or territory, where the employee is based for work, to be observed as public holidays either generally in that state or territory or in particular regions (i.e. local public holidays).

63.4. Public holidays during recreation leave or personal leave are not deducted from recreation leave credits or personal leave credits.

63.5. No payment is made for public holidays occurring during leave without pay.

63.6. Public holidays occurring during long service leave are regarded as part of, and not additional to, long service leave.

**64. Substitute day for cultural or religious observance**

64.1. Where a supervisor and an employee agree, another day may be substituted for any public holiday listed above, for example, for cultural or religious reasons.

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Where an employee cannot work on the day for which a substituted holiday has been granted, the employee will work make-up time at a time to be agreed with the supervisor, without any entitlement to overtime payment.

**65. Unauthorised absences**

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- 65.1. Where an employee is absent from duty without approval, all pay and other benefits provided under this agreement cease to be available until the employee resumes duty, is granted leave or the absence is otherwise approved by the Director.

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**PART L. LEAVE**

**66. Recreation leave**

- 66.1. Employees are entitled to 20 days paid recreation leave for each completed year of full-time service. Recreation leave accrues progressively and accumulates. Part-time employees will accrue recreation leave on a pro-rata basis.
- 66.2. An Employee may access recreation leave at half pay with the agreement of their Director.
- 66.3. Recreation leave counts as service for all purposes.
- 66.4. If an employee is granted leave without pay for a total aggregate period exceeding 22 working days in a calendar year, recreation leave does not accrue for any period of leave without pay beyond the 22 days.
- 66.5. An employee must not take recreation leave without first obtaining the agreement of the supervisor which will not be unreasonably withheld. The employee's recreation leave balance will be reduced by any period of recreation leave taken according to the employee's ordinary hours of work.
- 66.6. An employee who takes recreation leave is entitled to be paid base salary plus any of the following allowances which would have been payable during the period of recreation leave if the employee were not on recreation leave:
- a. temporary assignment allowance
  - b. first aid allowance
  - c. community language allowance
  - d. SE BA; and
  - e. business allowances.
- 66.7. Where an employee takes recreation leave at half pay, any allowance in 66.6 will be paid at half pay for the period the employee is on recreation leave at half pay.
- 66.8. AGS encourages employees to use their recreation leave on a regular basis each year.

**Cashing out recreation leave**

- 66.9. The CEO may agree to cashing out part of an employee's accrued recreation leave provided that in each case:
- a. the employee's remaining accrued entitlement to paid recreation leave is not less than four weeks, and

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- b. the employee has taken a minimum of 2 weeks recreation leave in the 12 months immediately prior to the effective date of the cashing out, and
- c. each cashing out must be the subject of a separate agreement between AGS and the employee, and
- d. the employee must be paid at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.

**Direction to take recreation leave**

- 66.10. An employee's recreation leave balance must be less than two years' worth of annual leave accrual at 1 January each year. From 1 April of the same year, if an employee has not reduced their recreation leave balance to below two years accrual, the employee will be directed to take recreation leave on and from 1 April for the period which would reduce their recreation leave balance to below the two years accrual (i.e. below 40 days for a full-time employee).
- 66.11. In exceptional circumstances, a Director can agree that an employee will take recreation leave for the purposes of clause 66.10 commencing on a date after 1 April, but no later than 31 December of the same year. Only one request may be made by an employee under this clause.

**Cessation of employment**

- 66.12. An employee is entitled to be paid in lieu of any unused recreation leave on cessation of employment.
- 66.13. Allowances that would have been included in the employee's pay if they had taken a period of recreation leave commencing on the day when they ceased to be an employee will be included in the amount paid in lieu of recreation leave.
- 66.14. Where an employee dies, or the CEO has directed that an employee will be presumed to have died on a particular date, the CEO may authorise the payment of an amount to which the employee would have been entitled had employment ceased otherwise than by death.
- 66.15. Payment may be made to dependants or the partner of the employee or their legal personal representative. If payment has not been made within 12 months of the employee's death, it must be made to the legal personal representative.

**67. Purchased leave**

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- 67.1. Purchased leave is available to all ongoing employees and to term employees who are engaged for a period of more than 12 months, subject to the approval of the employee's Director.
- 67.2. Purchased leave will usually be approved so that employees may access up to four extra weeks of unpaid leave each year, in addition to their recreation and other leave entitlements.

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67.3. The salary deduction for purchased leave is spread over a period of three months for each week of purchased leave.

**68. Personal leave**

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68.1. Full-time ongoing employees are entitled to 18 days of paid personal leave on commencement of work in AGS. They will receive a further entitlement of 18 days paid personal leave on each anniversary of their commencement (the 'accrual date').

68.2. On commencing employment with AGS, term employees engaged for less than six months are entitled to accrue personal leave progressively up to eight days for the first two months, followed by one day for each month after that until the end of the six months term .

68.3. If the term employee's engagement exceeds six months, they will continue to accrue personal leave progressively. If the employee is engaged for 12 months or more, the employee will be entitled to paid personal leave of 18 days on each anniversary of their commencement.

68.4. Part-time employees are entitled to personal leave calculated on a pro-rata basis according to their ordinary hours of work on their accrual date.

68.5. Where an employee is granted any periods of leave without pay not to count as service during the personal leave accrual year which in aggregate exceed 22 working days the personal leave will not accrue during that period, and the employee's accrual date is deferred by one day for each day of that leave.

68.6. The CEO may approve the anticipation of some or all of an employee's next year's personal leave entitlements if all of the employee's accrued personal leave has been exhausted.

68.7. The CEO may approve the conversion of an employee's personal leave to half pay.

68.8. Where an employee takes personal leave at half pay, any allowance in 66.6 will be paid at half pay for the period the employee is on personal leave at half pay.

68.9. Paid personal leave counts as service except in the following circumstances:

- a. in the case of invalidity retirement, periods of sick leave after the retirement notice is signed do not count for the purposes of accruing further personal leave credits
- b. where compensation leave has been granted, the maximum period of absence which can count as service is the first 45 weeks.

68.10. The relevant Director may recognise, as personal leave for the purposes of this agreement, some or all of the accrued personal leave of an employee who becomes an AGS employee after the commencement of this agreement, where that personal leave was accrued during a period of service that:

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- a. is continuous with their employment in AGS, and
  - b. is service that is recognised for the purposes of the *Long Service Leave (Commonwealth Employees) Act 1976*.
- 68.11. In some circumstances an employee may be granted leave with or without pay under miscellaneous leave because of illness or injury where the employee's personal leave balance has been exhausted. In that case, the combined continuous period of leave must not exceed 78 weeks without CEO approval.
- 68.12. An employee may use personal leave for absences which are due to:
- a. personal illness or injury
  - b. providing care or support of the employee's partner; a member of the employee's family; a member of the employee's household; a close friend; or a person who is dependent on the employee for care and support, and
  - c. emergency personal reasons.
- 68.13. Where an employee has exhausted their personal leave balance, they may take two days of unpaid leave, per occasion, to care for or support a person covered by 68.12.b.
- 68.14. Due to the nature of personal leave, it will not always be possible for an employee to advise their supervisor that they will be absent before leave is taken. The employee must make all reasonable efforts to contact the supervisor directly as early as possible and by no later than 10.00 am on the morning of the first day of absence.
- 68.15. Unless otherwise agreed by a team leader, no more than four consecutive days of personal leave may be taken without satisfactory evidence of the need for the absence.
- 68.16. A team leader may also require evidence where an employee has frequent single day or two day absences. Certificates from medical practitioners or other health professionals acceptable to health insurance funds will be required as evidence in the case of personal illness or injury or where this is not practicable, other reasonable evidence to support the leave.
- 68.17. An employee who suffers personal illness or injury while on recreation or long service leave and who produces satisfactory medical evidence may apply for that period to be taken as personal leave without deduction to their recreation or long service leave balance for the relevant period. Personal leave may not be taken while an employee is on paid maternity leave or on leave without pay.
- 68.18. Unused personal leave accrues from year to year but there is no payment of unused personal leave at the cessation of employment.
- 68.19. See subclause 72.2 for the availability of personal leave to be taken as part of supporting partner leave.

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**69. Long service leave**

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- 69.1. Long service leave (LSL) is in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976*.
- 69.2. The Employment Handbook provides a summary of the long service leave entitlements under that legislation.

**70. Maternity leave**

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- 70.1. Maternity leave is available on terms no less favourable to the employee than are provided in the *Maternity Leave (Commonwealth Employees) Act 1973*.
- 70.2. In addition, from 1 July 2010, employees who would be eligible for paid maternity leave under subclause 12.1, will be entitled to an additional week of paid maternity leave..
- 70.3. The Employment Handbook provides a summary of the effect of this legislation.

**71. Adoption leave**

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- 71.1. When an employee adopts a child, they are entitled to the same paid leave arrangements in relation to the placement of the adopted child as for an employee giving birth to a child.
- 71.2. Employees are also entitled to unpaid adoption leave in accordance with Part 2-2 of Division 5 of Chapter 2 of the *Fair Work Act 2009*.

**72. Supporting partner leave**

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- 72.1. An employee whose partner gives birth to a child, or whose partner adopts a child, may access five days paid supporting partner leave and up to five days of their personal leave for the purposes of supporting their partner. The leave must be taken from one week before or up to three months after the birth or adoption.
- 72.2. Additional access to personal leave for the purposes of supporting partner leave may be granted by the Director on a case by case basis.

**73. Parental leave**

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- 73.1. Employees are entitled to unpaid parental leave of up to 24 months on terms no less favourable than the *Maternity Leave (Commonwealth Employees) Act 1973* or Part 2-2 of Division 5 of Chapter 2 of the *Fair Work Act 2009*. To be entitled to parental leave under the *Fair Work Act 2009*, the employee must have 12 months continuous service with AGS before commencing the leave.

**74. Compassionate leave**

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- 74.1. A supervisor may grant two days leave with pay to an employee for each occasion when the employee's partner; a member of the employee's family; a

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member of the employee's household; a close friend; or a person who was dependent on the employee for care and support:

- a. contracts or develops an illness that poses a serious threat to their life,
- b. sustains an injury that poses a serious threat to their life, or
- c. dies.

74.2. Additional paid or unpaid leave may be granted by the Director in relation to paragraph 74.1.c. The period and type of leave granted by the Director will be determined on a case by case basis.

**75. Community service leave**

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75.1. Employees are entitled to community service leave in accordance with Part 2-2 of Chapter 2 of the *Fair Work Act 2009*.

75.2. Community service leave includes jury service and voluntary emergency management duties. The Employment Handbook sets out employees' entitlements.

75.3. The Director may also approve additional payments for community service leave.

**76. Miscellaneous leave**

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76.1. In addition to leave provided for elsewhere in this Part, an employee may apply for miscellaneous leave with or without pay.

76.2. In considering whether to approve an application for miscellaneous leave, the relevant Director must have regard to the operational needs of AGS, any guidelines issued by the CEO and the reasons for which the employee is seeking the leave.

76.3. Where the Director decides to approve leave, the Director may:

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

76.4. Examples of circumstances in which miscellaneous leave may be granted with pay (to count as service) include but are not limited to:

- a. leave for the purposes of study
- b. war service sick leave
- c. participation in NAIDOC Week activities
- d. days of cultural or religious significance to an employee
- e. blood donations

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- f. participation in major international sporting or cultural events, and
  - g. extraordinary circumstances such as natural disasters.
- 76.5. Examples of circumstances in which miscellaneous leave without pay may be granted include but are not limited to:
- a. leave for the purposes of study
  - b. personal development and training
  - c. accompanying a partner on a posting
  - d. work of interest to AGS
  - e. for the purposes of caring for young children, and
  - f. for other purposes where other types of paid leave have been exhausted.
- 76.6. Where miscellaneous leave without pay is taken it will be without any form of financial benefit payable under this agreement from the commencement of the leave.
- 76.7. Miscellaneous leave without pay granted for personal development and training or study will count as service except in relation to recreation leave.
- 76.8. Miscellaneous leave without pay granted on account of illness or injury where paid personal leave has been exhausted will count as service (subject to clauses under personal leave) up to a total continuous period of paid or unpaid leave on account of illness or injury of 78 weeks. Any leave without pay granted for this purpose beyond this period will not count as service, unless approved by the CEO.

**77. Defence Reserve leave**

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- 77.1. AGS supports the release of Defence Reservists for training and deployment. AGS will provide support in accordance with Government guidelines, issued from time to time, and included in the Employment Handbook.

**78. Absences not covered by other leave provisions**

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- 78.1. The CEO may authorise absences from the workplace which are not expressly covered by this Part, for example:
- a. time off before a public holiday
  - b. the need to vacate the workplace due to health and safety issues, and
  - c. other unforeseen circumstances.

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**PART M. WORKING ENVIRONMENT**

**79. Safe and supportive working environment**

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- 79.1. AGS is committed to ensuring the health, safety and welfare of its employees and any other people who may be affected by AGS's operations. Having a healthy and safe workplace is the responsibility of everyone in AGS.
- 79.2. In the event of a disruption to normal work arrangements due to construction, building, alterations or refurbishment activities, Directors will make alternative arrangements for employees as required in each particular situation to ensure employee health and safety.
- 79.3. AGS is committed to strengthening its position as a good employer by supporting work/life balance for AGS employees.

**80. Workplace diversity**

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- 80.1. AGS is committed to promoting workplace diversity including equal employment opportunity, and creating an inclusive working environment that values and utilises the contribution of employees of different backgrounds, experiences and perspectives.
- 80.2. AGS is committed to preventing and eliminating discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin. This accords with the relevant Acts applying to AGS.

**81. Flexible working arrangements for parents**

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- 81.1. In addition to AGS's flexible working hours and part time work provisions, an employee who is a parent, or has responsibility for the care of a child who is under school age or a child who is under 18 and has a disability, may request flexible working arrangements.
- 81.2. A director will apply the same considerations to a request for flexible working arrangements as the considerations in sub clause 58.4 and will only refuse a request on reasonable business grounds. An employee will be given written reasons if a request is refused.

**82. Working from home**

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- 82.1. AGS recognises that there may be circumstances in which there are benefits to both employees and AGS through employees working from home and will discuss with employees who seek to work from home whether their request can be accommodated and how this might be done.

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**83. Employee assistance program**

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- 83.1. AGS will provide its employees with access to free confidential professional counselling through an Employee Assistance Program. The aim of the program is to support employees and help them to resolve personal or work related problems.

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**PART N. PERFORMANCE PROGRAM**

**84. Performance program**

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- 84.1. Subclauses 85.1 to 93.8 of this agreement will apply until replaced by agreement between AGS, CPSU and employees.
- 84.2. AGS will conduct a review of the CA 2005 performance program as set out in Attachment 2 of this agreement.

**85. Overview**

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- 85.1. AGS's performance program aligns employees' activities and energies with AGS's corporate and business goals.
- 85.2. An employee participating in the performance program must
- a. develop a performance plan in partnership with their supervisor
  - b. meet regularly with the supervisor, including at the mid-cycle review, to discuss progress and as appropriate adjust the performance plan
  - c. participate in an end of cycle discussion to provide and receive feedback on performance, and to provide feedback to the supervisor
  - d. receive a rating of performance for each accountability area reflecting achievement of goals in the performance plan
  - e. receive an overall performance assessment outcome rating based on the ratings of all the accountability areas, and
  - f. receive an individual bonus, if eligible, and an AGS profitability bonus if the overall rating for performance meets the required standards.

**86. Objectives**

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- 86.1. The performance program is one of the key elements of AGS being a high performing commercial legal practice. The program:
- a. clarifies employees' understanding of work responsibilities and how these fit with AGS's strategic imperatives
  - b. links the goals and outcomes in performance plans, team plans, office plans and AGS's corporate plan
  - c. clarifies AGS's expectations of employees
  - d. ensures employees receive constructive feedback on performance
  - e. provides the basis for rewarding better performers, and
  - f. identifies under performance.

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- 86.2. The performance program is also important to assist with developing individuals, teams and AGS. The program
- a. enables employees to identify learning and development needs and identify ways to address these needs
  - b. encourages improvement in skills, experience and contribution to the business, and
  - c. promotes continuous learning and improvement.

**87. Application**

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- 87.1. The performance program applies to
- a. all ongoing employees
  - b. term employees employed for three months or more, and
  - c. any other employee if the CEO so determines.

**88. Planning framework**

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- 88.1. Linking the performance cycle and performance plans to AGS’s corporate planning framework is one of the key elements in successful performance management. The AGS annual planning framework operates at the following levels:
- a. the corporate plan which addresses strategic imperatives at the organisational level
  - b. national plans and team plans which address goals and outcomes at the operational level, and
  - c. the performance plan which addresses individual goals and achievements.

**89. The performance cycle**

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- 89.1. The performance cycle mirrors the financial year – 1 July to 30 June.

**90. The AGS performance cycle**

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Begin discussions on performance plans, including goals and expected standards of work and any training and development requirements	May - July
All performance plans in place	by end July
Regular monitoring and informal feedback on performance plans, any necessary adjustments made	during the performance cycle

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Mid-cycle review	December - January
End-of-cycle performance discussion	June

**91. The performance plan**

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- 91.1. The performance plan is an agreement between an employee and supervisor that captures the main work priorities for the coming year.
- 91.2. Performance plans are dynamic documents which can vary throughout the performance cycle because of such things as a new work matter arising, changes in business priorities, differing client needs or taking on an AGS business development activity. Variations would be considered in the regular discussions between an employee and supervisor. The performance plan includes the following
  - a. key responsibilities relating to the four accountability areas to enable an employee to focus work energies and activities, so that the performance plan is aligned with corporate needs
  - b. any goals for corporate or team projects
  - c. measurable and achievable standards and targets for each accountability area to clarify the work expectations agreed upon by the employee and supervisor
  - d. any learning and development activities required to support achievement of the performance plan, and
  - e. any other support necessary to achieve the performance plan.

**Accountability areas - links to business and corporate goals**

- 91.3. All employees are expected to achieve standard job requirements and specific goals under each accountability area.
- 91.4. The four accountability areas are used to link individual performance plans to the corporate and business plans. The four accountability areas are:
  - a. work outcomes by profession/specialisation
  - b. client outcomes
  - c. people and teamwork, and
  - d. professionalism.

**92. Regular discussions and feedback**

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- 92.1. As a performance plan is a dynamic document, the employee and the supervisor must review the performance plan on an ongoing basis as

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necessary. Regular discussions must be conducted throughout the cycle where:

- a. goals, standards and targets are checked for continuing relevance or priority and adjusted or confirmed accordingly
- b. feedback on progress and performance is provided to the employee - the employee may also provide feedback to the supervisor, and
- c. learning and development needs are checked for priority and adjusted if necessary.

92.2. If there are concerns about an employee’s performance at any time during the performance cycle, the supervisor must initiate discussion of the employee’s work performance at that time, including reference to the performance plan.

92.3. If these discussions identify any under performance issues, these must be dealt with at the time, as set out in the under performance provisions in AGS’s performance program (clause 94).

**93. End of cycle discussion and assessment**

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93.1. At the end of the cycle the employee and supervisor must undertake a formal assessment of performance to discuss the employee’s performance against the performance plan.

**Impediment or assistance**

93.2. When performance is being assessed, the supervisor and employee must take into account any significant unforeseen factors. These factors may have impeded or assisted achievement and are considered when allocating ratings.

**Rating performance against each accountability area**

93.3. Performance is rated in relation to each accountability area in accordance with the following scale

<b>Rating</b>	<b>Level of performance for each accountability area</b>
<b>Not acceptable</b>	Did not achieve or make significant progress to meet all goals and job requirements in this accountability area in the performance plan.
<b>Good</b>	Achieved or made significant progress towards meeting all goals and job requirements in this accountability area in the performance plan.
<b>Very good</b>	Achieved all, and exceeded some, goals and job requirements in this accountability area in the performance plan.
<b>Excellent</b>	Achieved all, and exceeded most, goals and job requirements in this accountability area in the performance plan.
<b>Exceptional</b>	Achieved and consistently exceeded all goals and job

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requirements in this accountability area in the performance plan.

**Overall assessment**

- 93.4. An overall assessment of an employee's performance is necessary for AGS for calculation of performance and profitability bonuses, salary reviews and, where necessary, to address under performance.
- 93.5. The overall assessment is made at the conclusion of the end of cycle discussion between the supervisor and the employee. The overall assessment is based on, and must clearly relate to, the ratings assigned to each accountability area. The relationship between ratings and overall assessment is set out in the matrix in subclause 93.7. This is a provisional assessment which is subject to the moderation process before being finally settled.

**Moderation**

- 93.6. The Director has responsibility for managing the moderation process in consultation with team leaders (or supervisors). Moderation provides for equity and consistency of overall assessments within the office and then confirms an overall assessment of each employee's performance. If a Director, in the moderation consultation with team leaders, sees insufficient evidence to warrant the rating given to a particular accountability area or to the overall assessment, the Director will seek further clarification on the employee's performance. Any adjustment to the overall assessment is to be made after using the matrix in subclause 93.7 to decide on the final overall assessment. The reasons for an adjustment to a rating or overall assessment are noted on the performance assessment form and further explanatory discussion between the supervisor and employee occurs.

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**Scale for overall assessment**

93.7. The following scale applies for the overall assessment. The last column of this scale is relevant only to individual performance bonuses based on a percentage of salary.

<b>Assessment</b>					<b>% of salary bonus</b>
<b>Good</b>	Good	Good	Good	Good	<b>0</b>
	Good	Good	Good	Very good	<b>0</b>
	Good	Good	Good	Excellent	<b>0</b>
<b>Very good</b>	Good	Good	Good	Exceptional	<b>3</b>
	Good	Good	Very good	Very good	<b>3</b>
	Good	Good	Very good	Excellent	<b>3</b>
	Good	Good	Very good	Exceptional	<b>3</b>
	Good	Good	Excellent	Excellent	<b>3</b>
	Good	Good	Excellent	Exceptional	<b>3</b>
	Good	Very good	Very good	Very good	<b>3</b>
	Good	Very good	Very good	Excellent	<b>3</b>
	Good	Very good	Very good	Exceptional	<b>3</b>
	Good	Very good	Excellent	Excellent	<b>3</b>
	Very good	Very good	Very good	Very good	<b>3</b>
	Very good	Very good	Very good	Excellent	<b>3</b>
<b>Excellent</b>	Very good	Very good	Excellent	Excellent	<b>5</b>
	Good	Excellent	Excellent	Excellent	<b>5</b>
	Very good	Very good	Very good	Exceptional	<b>5</b>
	Good	Very good	Excellent	Exceptional	<b>5</b>
	Good	Good	Exceptional	Exceptional	<b>6</b>
	Very good	Excellent	Excellent	Excellent	<b>6</b>
	Very good	Very good	Excellent	Exceptional	<b>6</b>
	Good	Excellent	Excellent	Exceptional	<b>6</b>
	Good	Very good	Exceptional	Exceptional	<b>6</b>
	Excellent	Excellent	Excellent	Excellent	<b>6</b>
	Very good	Excellent	Excellent	Exceptional	<b>7</b>
	Very good	Very good	Exceptional	Exceptional	<b>7</b>
	Good	Excellent	Exceptional	Exceptional	<b>7</b>
	Excellent	Excellent	Excellent	Exceptional	<b>7</b>
	Very good	Excellent	Exceptional	Exceptional	<b>8</b>
	Good	Exceptional	Exceptional	Exceptional	<b>8</b>
	Excellent	Excellent	Exceptional	Exceptional	<b>9</b>
	Very good	Exceptional	Exceptional	Exceptional	<b>9</b>
	Excellent	Exceptional	Exceptional	Exceptional	<b>10</b>
	Exceptional	Exceptional	Exceptional	Exceptional	<b>10</b>

93.8. Where a Director considers that for extraordinary reasons the matrix in subclause 93.7 does not properly represent the true value of the employee's contribution (because for example the employee has been asked to concentrate

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on one accountability area to meet a particular business need) the Director may approve a higher overall assessment than would otherwise apply.

**94. Under performance**

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**Application**

- 94.1. The requirements for managing under performance relate to all employees other than:
- a. an employee who is on probation, or
  - b. a casual employee.

- 94.2. The requirements for managing under performance are modified, in relation to LDP employees, by clause 95.

**Performance expectations**

- 94.3. If a supervisor considers that an employee's performance is not acceptable the supervisor must ensure that the performance expectations of the employee have been clearly explained and that the employee has been given a reasonable opportunity to improve their performance before any under performance procedures commence.
- 94.4. If the employee's performance is subsequently assessed by their supervisor as 'good' or higher within a reasonable period of the steps taken in 94.3, the supervisor will advise the employee.

**Under performance assessment period**

- 94.5. If a supervisor considers that an employee's performance is still not acceptable after the employee has been given a reasonable opportunity to improve after the steps taken described in subclause 94.3, the supervisor and employee will discuss the employee's performance and the supervisor will give the employee a written notice which states:
- a. that the supervisor considers that the employee's performance is not acceptable for an employee of that level
  - b. why the supervisor believes this to be the case
  - c. that the employee's performance will be assessed over a six week assessment period by the supervisor, and
  - d. the possible consequences for the employee should performance remain not acceptable at the end of the period.
- 94.6. If at the end of the assessment period the employee's performance has improved such that the supervisor assesses it as 'good' or higher as specified in the performance plan or provided that the employee complies with certain

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conditions, the supervisor must advise the employee in writing that this is the case.

- 94.7. If at any time after the end of this assessment period the employee's performance is assessed by the supervisor as 'not acceptable', the supervisor may, in consultation with the HR Manager, decide that:
- a. a further underperformance assessment period is appropriate, or
  - b. it is not appropriate for a further underperformance assessment period to be undertaken. In this case the supervisor provides a report as in subclause 94.8.

**Report to Director**

94.8. If at the end of the under performance assessment period, the supervisor still considers the employee's performance to be 'not acceptable', the supervisor within one week of the end of that assessment period will send a written report to the Director (or if the Director is the supervisor, to the next level of supervision).

94.9. The report must set out:

- a. what the supervisor considers to be the employee's responsibilities and performance requirements
- b. the reasons why the supervisor considers that the employee's performance is below expectation
- c. the nature of the discussions which have been held between the employee and the supervisor regarding the employee's performance, and
- d. the agreed approach that was implemented to improve the performance to the required level.

94.10. The employee must be given a copy of the report to comment upon at the same time as the report is provided to the Director. The employee will be given at least one week to comment on the report to the Director in writing.

**Report to CEO**

94.11. The Director will consider the report and the employee's comments and provide a recommendation to the CEO regarding the employee's employment, such as the options set out in 94.13. The report must be submitted to the CEO within one week of receiving the employee's comments.

94.12. The CEO will consider the report and advise the employee in writing of what the CEO proposes to do. The employee will have one week to respond in writing to the CEO's proposal before the CEO makes a final decision.

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**CEO's decision**

- 94.13. The options available to the CEO are to:
- a. transfer the employee to a different job at an equivalent or lower classification
  - b. terminate the employee's employment, or
  - c. take some other action which the CEO considers appropriate.
- 94.14. If an employee's employment is terminated other than because of serious misconduct, the CEO will give the employee notice or payment in lieu of notice in accordance with s 661 of the *Workplace Relations Act 1996* or s 117 of the *Fair Work Act 2009*, whichever is applicable.

**95. Under performance in relation to LDP employees**

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- 95.1. If a supervisor considers that an LDP employee's performance is not acceptable the supervisor must ensure that the performance expectations of the employee have been clearly explained and that the employee has been given a reasonable opportunity to improve their performance before any under performance procedures commence.
- 95.2. If the employee's performance is subsequently assessed by their supervisor as 'good' or better within a reasonable period of the steps taken in 95.1 the supervisor will advise the employee and no further action will be required.
- 95.3. If a supervisor considers at any time that an LDP employee's performance is not acceptable and the supervisor has taken the steps set out in 95.1, the supervisor and employee will discuss the employee's performance and the supervisor will give the employee a written notice which states:
- a. that the supervisor considers that the employee's performance is not acceptable for an employee of that level
  - b. why the supervisor believes this to be the case
  - c. that the employee's performance will be assessed over a six week assessment period by the supervisor, and
  - d. the possible consequences for the employee should performance remain not acceptable at the end of the period.
- 95.4. If at the end of the assessment period described in 95.3.c the employee's performance has improved such that the supervisor assesses it as 'good' or better as specified in the performance plan or provided that the employee complies with certain conditions, the supervisor must advise the employee in writing that this is the case.

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**Report to Director**

- 95.5. If at the end of the under performance assessment period, the supervisor still considers the employee's performance to be 'not acceptable', the supervisor within one week of the end of that assessment period will send a written report to the Director (or if the Director is the supervisor, to the next level of supervision).
- 95.6. The report must set out:
- a. what the supervisor considers to be the employee's responsibilities and performance requirements
  - b. the reasons why the supervisor considers that the employee's performance is below expectation
  - c. the nature of the discussions which have been held between the employee and the supervisor regarding the employee's performance, and
  - d. the agreed approach that was implemented to improve the performance to the required level.
- 95.7. The employee must be given a copy of the report to comment upon at the same time as the report is provided to the Director. The employee will be given at least one week to comment on the report to the Director in writing.
- 95.8. The Director will consider the report and advise the employee in writing of what the Director proposes to do. The employee will have one week to respond in writing to the Director's proposal before the Director makes a final decision.
- 95.9. The Director may terminate the employee's employment, or take some other action which the Director considers appropriate.
- 95.10. If an employee's employment is terminated under this Part, the Director will give the employee six weeks notice or payment in lieu of notice.

**Further instance of under performance**

- 95.11. If while at the same level the LDP employee's performance again falls to the level of 'not acceptable', the supervisor may, in consultation with the HR Manager, provide a report to the Director as set out in subclause 95.5 to subclause 95.7.

**96. Security and storage of performance plans**

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**Access**

- 96.1. Performance plans are regarded as working documents and should be easily accessed by employee and supervisor for use in day-to-day work, planning and reviewing performance.

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- 96.2. An employee and the supervisor must each keep a copy of the current performance plan and have unlimited access to previous plans where each was a party to that plan.
- 96.3. A supervisor who has taken over supervisory responsibilities for an employee part way through a cycle must have access to that employee's current performance plan.
- 96.4. The HR Manager in an office will have access to all performance plans and assessments within that office.
- 96.5. A Director will also have access to all performance plans and assessments within the relevant office.
- 96.6. The CEO will have access to all performance plans and assessments for AGS employees.

**Privacy**

- 96.7. All information about an employee's plan or assessment is classified as 'staff-in-confidence'. To the extent that it is applicable in AGS, the *Privacy Act 1988* will apply to the recording, retention and use of this information.

**Storage of the performance plan**

- 96.8. In rare circumstances, for example, when the performance plan includes commercial-in-confidence information, it will be stored under secure conditions.

**Storage of the performance assessment**

- 96.9. As a 'staff-in-confidence' document, the original of the performance assessment will be held by the employee, with copies held by the relevant supervisor and Director and stored under secure conditions.

**Destruction of performance plan and assessment**

- 96.10. Copies of the performance plan and performance assessment will not be destroyed within two years of the date the assessment was conducted.

**97. Disagreements and dispute resolution processes**

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- 97.1. Differences of view and disagreements may arise at any time in the performance program. Where appropriate, an employee must first try to resolve the issue informally with their immediate supervisor, and/or team leader.
- 97.2. However, if a dispute relating to the performance program remains unresolved, the dispute resolution procedures in clause 109 of this agreement will apply.

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**PART O. CAREER DEVELOPMENT**

**98. Senior Lawyer/Senior Specialist career development**

- 98.1. The Executive Development Program (EDP) assists Senior Lawyers to develop the skills and behaviours required of Senior Executive Lawyers.
- 98.2. Senior Lawyers will be selected by the CEO for the program based on Director assessment of their potential for promotion in time to leadership roles at Senior Executive Lawyer level.
- 98.3. When selecting employees for an intake to the program, the CEO may also consider Senior Specialists for inclusion.

**99. Lawyer Development Program (LDP)**

- 99.1. The Lawyer Development Program (LDP) provides clear direction and administration of Lawyer and Paralegal recruitment, performance and development expectations, progression, remuneration ranges, financial support for studies and admission, bonuses and employment conditions.
- 99.2. The LDP provides for individual rates of progression based on the individual employee's demonstrated knowledge, skills and experience assessed every six months, at the mid-cycle and end of cycle performance reviews, against the LDP performance standards.

**Eligibility**

- 99.3. The LDP applies to admitted lawyers generally in their first five years of practice and law graduates (including articulated clerks) who have been selected into the Program. Paralegals who are law graduates and who have been merit selected into the LDP are included in the classification of Paralegal and are also part of the LDP at Level A. Other Paralegals (whether or not they are studying towards a law degree) are not participants in the LDP but have access to relevant training provided under the LDP.
- 99.4. An office may employ Paralegals and admitted lawyers for particular, or short term, projects outside the LDP including summer clerkships or work on a specific matter or project.

**Lawyer Development Program conditions of employment**

- 99.5. Unless stated otherwise, LDP employees are subject to the terms and conditions of employment applying to other employees under this agreement. Part P sets out specific employment conditions that apply only to employees in the LDP.
- 99.6. The Employment Handbook contains guidance material relating to the LDP.

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**100. Continuing Legal Education**

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- 100.1. All employees employed in a lawyer classification are expected to participate in sufficient professional development activities to meet the expectations and requirements set in their performance plan.
- 100.2. All employees employed in a lawyer classification must undertake a minimum of 10 hours of Continuing Legal Education (CLE) annually unless the Director approves a lower level of CLE generally, or for a particular employee.

**101. Mandatory Continuing Legal Education and other mandatory schemes**

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- 101.1. Where Mandatory Continuing Legal Education (MCLE) applies and for employees who are members of other professions which have requirements for continuing education in the state or territory in which they are members, employees must ensure that their professional development activities are sufficient to meet those requirements.

**102. Studies assistance**

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- 102.1. AGS is committed to providing studies assistance to support the business interests of AGS by encouraging the development of AGS employees' knowledge and skills to meet AGS's current and future business needs. Approval of studies assistance will be on the basis of the value of the study to AGS.
- 102.2. An ongoing employee or an employee engaged for a term exceeding 12 months may apply for studies assistance.
- 102.3. Studies assistance may take the form of leave with or without pay for study and course-related purposes (e.g. travel and examinations) or financial assistance in the form of reimbursement of some or all costs associated with study (e.g. course fees, fee help, books and materials, travel and accommodation).
- 102.4. The Employment Handbook provides guidance material on studies assistance including procedures for applying for and granting studies assistance.
- 102.5. A Director may approve an application for studies assistance, reject it, or negotiate with the applicant for some other assistance to be provided.
- 102.6. In deciding whether or not to grant studies assistance the Director must consider:
- a. the skills needs of AGS as indicated by AGS's Corporate Plan and current business plan
  - b. AGS's and the office's business performance
  - c. the need to continue the provision of service to clients
  - d. the work performance of the applicant

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- e. the skills and knowledge requirements of the employee identified in the individual performance plan
  - f. the merit of the business case presented, and
  - g. prospects for the application in AGS of the knowledge and skills to be gained through the assisted study.
- 102.7. A Director may impose conditions on the granting of studies assistance (e.g. a requirement that the applicant agree to specific relevant employment following the completion of the assisted study).
- 102.8. A Director may decide that the payment of financial assistance may be made to a successful applicant:
- a. on the applicant being accepted for the course of study (i.e. up front)
  - b. at the end of each successfully completed semester, or
  - c. on successful completion of the course (i.e. on graduation).
- 102.9. If leave is granted to repeat a failed semester no additional assistance will be paid.
- 102.10. The Employment Handbook provides further guidance on studies assistance.

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**PART P. LAWYER DEVELOPMENT PROGRAM (LDP)**

**103. Lawyer Development Program (LDP)**

- 103.1. The relevant Director may through merit selection select an existing employee or recruit a new employee to AGS's Lawyer Development Program.
- 103.2. An AGS employee who has been selected into the Lawyer Development Program is an 'LDP employee' or as an 'LDP Level A', 'LDP Level B' or 'LDP Level C'.
- 103.3. It is an essential qualification for selection to the LDP that the employee has a degree in law recognised in Australia.
- 103.4. It is an essential qualification for:
- a. the promotion of an existing employee or the recruitment of a new employee - to the Lawyer classification, and
  - b. the progression of an LDP Level A or the recruitment of a new employee - to LDP Level B
  - c. that the employee has been admitted to legal practice in an Australian jurisdiction.
- 103.5. An employee in the Paralegal classification who has been merit selected as an LDP Level A is promoted to the Lawyer classification on admission to legal practice in an Australian jurisdiction.
- 103.6. When the relevant Director confirms that an LDP employee has completed Level C of the LDP and therefore has completed the Lawyer Development Program the employee ceases to be an LDP employee. The employee continues as a Lawyer within the Lawyer classification.

**104. Performance management arrangements for LDP employees**

- 104.1. LDP employees take part in the AGS performance program as set out in Part N.
- 104.2. Clause 95 sets out arrangements in relation to the management of under performance.

**105. Remuneration review arrangements for LDP employees**

- 105.1. The Director of an LDP employee will review the remuneration of the employee
- a. as part of the annual remuneration review set out in clause **29** of this agreement
  - b. as an additional remuneration review under clause **35** of this agreement
    - i. after the employee's mid-cycle performance review, in January each year

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- ii. where the employee has changed teams or has changed offices (otherwise than because of a planned rotation)
  - c. in the case of an LDP employee who is at LDP Level A
    - i. on admission to practice, or
    - ii. on progression to LDP Level B, and
  - d. in the case of an LDP employee who is at LDP Level B - on progression to LDP Level C.
- 105.2. The remuneration review will take into account the employee's development and progress against the LDP Performance Standards. Those standards are set out in the Employment Handbook.
- 105.3. Each Director will forward their recommendations for the January remuneration review to the CEO in accordance with the timetable set by the CEO.
- 105.4. Upon receiving the Directors' recommendations, the CEO will (with the assistance of the CFO and Director National HR) moderate the remuneration review recommendations to ensure consistency of approach across AGS.
- 105.5. A remuneration increase determined under this clause is payable:
  - a. where the remuneration review was triggered by an event referred to in this clause - with effect from the day of that event, and
  - b. where the remuneration review was a scheduled review in January - with effect from 1 January in that year.

**106. Bonus arrangements for LDP levels A, B and C**

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- 106.1. Subclauses 106.2 to 106.3 will apply until replaced by agreement between AGS, its employees and the CPSU.
- 106.2. An LDP employee who is at LDP Level A will participate in the arrangements for individual performance bonus on a percentage of salary basis in accordance the arrangements set out in clause 52 unless their Director determines that their individual performance bonus is to be on a net production basis in accordance with the arrangements set out in clause 51.
- 106.3. An LDP employee who is at the LDP Level B or Level C will participate in the arrangements for individual performance bonus on a net production basis set out in clause 51 unless their Director determines that their individual performance bonus is to be on a percentage of salary basis in accordance with the arrangements set out in clause 52.

**107. Other financial support for LDPs**

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- 107.1. LDP employees may be entitled to a range of additional financial benefits as set out in the Employment Handbook guidance on the LDP.

**COMMERCIAL IN CONFIDENCE****PART Q. DISPUTE RESOLUTION****108. Dispute resolution**

- 108.1. The parties recognise that disagreements may arise in the workplace. The parties to any disagreement or dispute at the workplace must genuinely seek to first resolve any disagreement co-operatively through informal discussion at the workplace level.

**109. Dispute settling procedures****Disputes to be resolved at workplace level if possible**

- 109.1. If a dispute relates to a matter arising under this agreement or otherwise in relation to an employee's employment (including in respect of the National Employment Standards) the dispute resolution steps in this Part must be followed.
- 109.2. An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.

**110. Procedure for dispute resolution**

- 110.1. Where disputes arise, the following procedure will apply:
- a. the employee will discuss the dispute with their immediate supervisor, except where the dispute directly involves the immediate supervisor, in which case, the procedure in paragraph 110.1.b may be applied without discussion with the immediate supervisor
  - b. if the dispute has not been resolved, discussions will be arranged involving the supervisor's supervisor, and
  - c. in those exceptional circumstances where the dispute remains unresolved after discussions with the next level of supervisor, an employee may refer the dispute to the CEO. The CEO may appoint an independent person not previously involved in the matter from within or outside AGS to assist in resolving the dispute or to investigate the dispute and make recommendations where necessary.

**111. Work to continue until dispute is resolved**

- 111.1. While the parties are trying to resolve the dispute:
- a. an employee must continue to perform their work normally unless they have a reasonable concern about an imminent risk to their health or safety; and
  - b. an employee must comply with a direction given by the Director to perform other available work at the same workplace, or at another workplace, unless:
    - i. the work is not safe; or

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- 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.

**Fair Work Australia role**

- 111.2. If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to Fair Work Australia.
- 111.3. Fair Work Australia may deal with the dispute in two stages:
  - a. Fair Work Australia will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
  - b. if Fair Work Australia is unable to resolve the dispute at the first stage, Fair Work Australia may then arbitrate the dispute and make a determination that is binding on the parties.

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**PART R. REDUNDANCY**

**112. Redundancy**

112.1. Situations will arise where an employee or employees become excess to AGS's requirements. These provisions are designed to enable these situations to be dealt with expeditiously and in a dignified way for the employee and to minimise disruption to AGS's business.

**113. Application**

113.1. These redundancy provisions do not apply to:

- a. term employees,
- b. casual employees, or
- c. employees who are serving a period of probation;
- d. employees for whom a redundancy process had commenced under CA 2005 and is continuing at the time of commencement of this agreement.

113.2. An employee may become excess to AGS's requirements in three situations:

- a. where the CEO considers that there are more employees at a level and in a particular location than are necessary for the efficient and economical working of AGS ('too many of a kind')
- b. where the CEO considers that the services of an employee cannot be effectively used in AGS because of
  - i. technological or other changes in work methods, or
  - ii. changes in the nature, extent or organisation of the business of AGS ('change affected'), or
- c. where the duties usually performed by the employee are to be performed in a different locality and the employee is not willing to perform duties in the other locality ('duties moved to another locality').

**Affected employees**

**114. Too many of a kind**

114.1. If the CEO considers that there are more employees of a kind as described in 113.2.a than are necessary for the efficient and economical working of AGS, the CEO will:

- a. advise all of the affected employees that this is the case
- b. invite all of the affected employees, and if appropriate, other employees with whom job swaps may be possible, to express interest in redundancy, and
- c. consider any expressions of interest.

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- 114.2. The CEO may invite an employee to elect for redundancy under clause 119 where the employee has expressed interest in redundancy at 114.1.b. The CEO will decide whether or not to accept the election in accordance with clause 119.
- 114.3. If the excess employee situation is not resolved through employees electing for redundancy, the CEO may decide to run a merit selection process for each of the relevant positions.
- 114.4. Before a merit selection is carried out, the CEO must write to each affected employee to advise them that they are likely to become excess if they are not selected and to outline the employee's options.
- 114.5. The CEO will advise an affected employee who is unsuccessful in a merit selection process that they are an excess employee in accordance with clause 117.

**115. Change affected or duties moved to another locality - 'notification period'**

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- 115.1. If the CEO considers that an employee is change affected as described in 113.2.b or affected by duties moved to another locality as described in 113.2.c, the CEO will commence the notification period by writing to the employee and:
- a. advising the employee that they are an affected employee
  - b. giving them reasons why this is so
  - c. telling them that they are likely to become an excess employee, and
  - d. inviting them (or a representative nominated by the employee, or both) to discuss their position with the CEO.
- 115.2. The CEO must discuss with the employee or their representative what steps, if any, may be available for the employee so that the employee will not become an excess employee and the options that are available to the employee if they become excess.

**116. Election for redundancy during the notification period**

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- 116.1. The CEO may invite an employee to elect for redundancy during the notification period. In this case, the CEO will provide the employee with financial information as set out in subclause 119.3 based on a termination date of the end of the notification period.
- 116.2. If the employee elects for redundancy and the CEO accepts the election, the CEO will issue a notice of termination effective on or before the last day of the notification period. The employee will receive payment in lieu of the consideration, acceptance and notice periods.

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- 116.3. Where the CEO provides the financial information in subclause 116 less than 10 days before the end of the notification period, the notification period will be extended to 10 days after the financial information is given.

**Excess employees**

**117. Advice that employee is excess and 'consideration period'**

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- 117.1. If, after the processes described in clause 114 or clause 115 are completed, the CEO considers the employee is an excess employee, the CEO will advise the employee in writing that they are an excess employee.
- 117.2. The CEO's written advice to an employee that they are an excess employee must:
- a. state that the employee is an excess employee
  - b. set out the reasons why the employee is an excess employee, including the relevant circumstances in 113.2
  - c. state that the employee may advise the CEO, within a period of 30 days ('the consideration period') from the date of the advice whether the employee chooses to pursue redeployment or redundancy
  - d. set out the circumstances in which termination of employment would occur if redeployment were not successful, and
  - e. state that the CEO will, if the employee requests it, discuss the employee's situation with the employee, their representative, or both.
- 117.3. The advice that the employee is excess may also set out the financial information referred to in subclause 119.3.
- 117.4. The discussions referred to in 117.2.e will include discussion of any redeployment opportunities for the employee within AGS.

**118. Preference to pursue redeployment or redundancy**

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- 118.1. An excess employee may advise the CEO in writing at any time before the end of the consideration period that they wish to pursue redeployment or redundancy.
- 118.2. An excess employee who does not express a preference by the end of the consideration period will be taken to have expressed a preference for redeployment.

**119. Invitation to elect for redundancy and 'acceptance period'**

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- 119.1. The CEO may invite an employee to elect for redundancy where the employee:
- a. has expressed interest under subclause 114.1.b - at any time

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- b. is an excess employee and who has expressed a preference for redundancy - at any time
  - c. is an excess employee and who has expressed a preference for redeployment - at any time after the end of the consideration period.
- 119.2. An employee who has been invited to elect for redundancy under subclause 119.1 will have 30 days in which to elect for redundancy ('the acceptance period'), but they may make an election at any time within that period by writing to the CEO.
- 119.3. Where an employee has been invited to elect for redundancy, the CEO must give the following financial information to the employee during the acceptance period (if they have not already been given this information):
- a. the amount of severance pay, pay in lieu of notice and unused leave that will be paid to the employee
  - b. how to access information in relation to the employee's superannuation, and
  - c. taxation rules applying to payments that will be made to the employee on termination.
- The information provided is for guidance purposes only and is not capable of binding AGS, e.g., as a contract.
- 119.4. If the CEO gives the employee the financial information less than 10 business days before the end of the acceptance period, the acceptance period will be extended to 10 business days after the financial information is given.
- 119.5. An employee cannot make an election for redundancy after the end of the acceptance period unless the CEO considers that exceptional circumstances exist.
- 119.6. The invitation to elect for redundancy must state when the CEO proposes to issue the notice of termination of employment if the election is accepted by the CEO.
- 119.7. Where an employee elects for redundancy under this clause, and the CEO decides to accept that election, the CEO must issue a notice of termination of employment for the date set out in the invitation unless the CEO and the employee subsequently agree on a different date, or the CEO agrees not to terminate the employee's employment.

**120. Redeployment**

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- 120.1. An excess employee who has not elected for redundancy, or who has expressed a preference to pursue redeployment, will be considered for redeployment within AGS.

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- 120.2. The CEO will take reasonable steps, consistent with the efficient operation of AGS, to transfer an excess employee who is being considered for redeployment to a suitable vacancy at the same level within AGS.
- 120.3. An excess employee who applies for transfer to an advertised vacancy in AGS is entitled to be considered in isolation from, and not in competition with, any applicant who is not an excess employee.
- 120.4. If a suitable vacancy does not exist at the same level within AGS, the CEO may move the excess employee to a job with a lower classification. Where this occurs, the employee will be entitled to income maintenance. Income will be maintained for a period of two weeks for each year of continuous service up to a maximum of 48 weeks.

**121. Termination of employment where redeployment has not been successful**

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- 121.1. The CEO may terminate the employment of an excess employee who has not been successfully redeployed where at least six weeks have passed since the end of the consideration period.
- 121.2. In deciding whether to terminate the employment of an excess employee under this clause, the CEO will take into account any redeployment action that is in progress.
- 121.3. Where the CEO proposes to terminate the employment of an excess employee, the CEO must give the employee the financial information described in 119.3 at least 10 business days before the date of the termination.

**122. Notice periods - termination of employment**

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- 122.1. An employee's employment is terminated under subclause 116.2, 119.7 or clause 121 by the CEO giving the employee a notice of termination of employment.
- 122.2. The notice period is:
- a. if the employee is at least 45 years old and has at least five years continuous service – five weeks, and
  - b. in any other case – four weeks.
- 122.3. The CEO may terminate the employment of an employee before the end of the notice period. Where this occurs, the employee will receive payment in lieu of the notice period.
- 122.4. An employee whose election for redundancy has been accepted by the CEO in subclause 116.2 will receive payment in lieu of the notice period.

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**123. Severance pay**

123.1. An employee whose employment is terminated under clause 116, 119 or clause 121 is entitled to severance pay.

123.2. Severance pay is an amount equal to:

- a. the number of weeks salary specified in the table in subclause 123.3 below up to a maximum of 48 weeks, and
- b. where the employee's advice to the CEO has shortened the consideration period in subclause 117 or the acceptance period in subclause 119, or both - payment for the number of days by which the period was or the periods were shortened by the employee's advice to the CEO, or
- c. where the CEO has accepted an employee's election for redundancy in clause 117, payment for the number of days equivalent to the consideration and acceptance periods if the employee leaves before the end of the notification period.

123.3. Severance entitlements for years of service:

<i>Continuous years of service</i>	<i>Number of weeks salary to be paid as severance</i>	<i>Proportionate payment for completed continuous months of service since last completed year of service</i>
Less than 1 year	4 weeks	Not applicable
At least 1 year but less than 2 years	4 weeks	Not applicable
At least 2 years but less than 3 years	6 weeks	Not applicable
At least 3 years but less than 4 years	7 weeks	Applies to continuous months of service in excess of 3½ years
At least 4 years but less than 5 years	8 weeks	Applies to continuous months of service in excess of 4 years
At least 5 years	2 weeks for every year of continuous service	Applies to continuous months of service since last completed year of service

123.4. Severance entitlements set out in the table in subclause 123.3 are calculated on a proportionate basis for any period of service when the employee worked part-time if the employee has less than 24 years of full-time service.

**124. Assistance with financial advice**

124.1. AGS will pay for financial advice up to a maximum of \$500 (including FBT) for employees who have been invited to elect for redundancy under clause 119, or whose employment is to be terminated under clause 121.

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**125. Assistance with outplacement, redeployment or career counselling**

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- 125.1. An excess employee is entitled to financial assistance for redeployment, outplacement or career counselling up to a maximum of \$5,000 (including FBT). The CEO may approve the provision of assistance to an employee who has elected for redundancy.

**126. Other assistance**

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- 126.1. An excess employee is entitled to reasonable leave with full pay to attend employment interviews, or outplacement or career counselling sessions.
- 126.2. An excess employee is entitled to reasonable removal expenses if the employee is required to move because of a transfer or reduction in classification for redeployment purposes.

**127. Special retirement with consent**

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- 127.1. Notwithstanding anything in this Part, where the CEO, after having taken reasonable steps to identify vacancies in relation to an AGS employee:
- a. at the same level as the employee
  - b. to which the employee could be transferred, and
  - c. the duties of which the employee could, in the opinion of the CEO, perform efficiently
- is satisfied that the services of the employee cannot reasonably be used in AGS at that level, the CEO may, with the consent of the employee, terminate the employment of the employee with a financial benefit determined by the CEO.
- 127.2. The CEO may determine a benefit that is more than 48 weeks salary.

**128. Savings provision**

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- 128.1. If an employee was notified that they were excess or potentially excess under the terms of AGS CA 2005 and that redundancy process is continuing at the time of commencement of this agreement, the employee's redundancy entitlements will be determined in accordance with the provisions of AGS CA 2005 as if that agreement was still in operation for that employee.

**129. Interpretation**

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- 129.1. For the purposes of this Part:
- a. *continuous service* means continuous service in AGS and 'Government Service', as defined in section 10 of the *Long Service Leave (Commonwealth Employees) Act 1976*, where the Government Service is continuous with a period of AGS service, but does not include service which ceased because of redundancy, retirement on invalidity, inefficiency or loss of qualifications grounds, dismissal for misconduct, termination of

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probationary employment for unsatisfactory performance, nor any absence which does not count as service for the purposes of the *Long Service Leave (Commonwealth Employees) Act 1976*

- b. *excess employee* means an employee who has been advised in writing by the CEO that they are excess to AGS's requirements,
- c. *payment*, for the purposes of payment in lieu of notice of termination, means the full rate of pay that the employee would have received if the employee had worked until the end of the notice period. It includes loadings, allowances and overtime and penalty rates.
- d. The employee will also receive payment of the value or costs of non-monetary benefits, profitability and any performance bonuses that the employee would have been entitled to if the employee had worked the relevant period. Employer superannuation contributions will also be made for that period.
- e. *payment*, for the purposes of severance, including payment in lieu of consideration and acceptance periods, means the base salary of the employee immediately before the date of termination of employment. It excludes any business or other allowances (apart from temporary assignment allowance, first aid allowance and community language allowance), payments in lieu, profitability bonuses, individual performance bonuses, employer superannuation contributions and the value or cost of any non-monetary benefits.

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**PART S. INDIVIDUAL FLEXIBILITY ARRANGEMENTS**

**130. Individual flexibility arrangements**

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- 130.1. The CEO and an employee may genuinely agree to vary the terms of Part B (Employee involvement) to Part R Redundancy) (inclusive) of this agreement with terms and conditions for the employee which are more beneficial to the employee. The agreed arrangements will be contained in an Individual Flexibility Agreement (IFA).
- 130.2. The following terms apply to an IFA:
- a. Discussions on an IFA can be initiated by AGS or an employee. An employee may have a representative to represent them in any discussions;
  - b. the IFA may be for a fixed period or only apply when particular conditions are met;
  - c. the IFA must be signed by the CEO and the employee, or where the employee is under 18 by a parent or guardian of the employee, and is enforceable as if it is a term of this agreement;
  - d. failure to reach agreement between the CEO and an employee on entering into an IFA is not subject to the dispute settlement procedures of this agreement;
  - e. the IFA must not contain terms which could not otherwise be included in an enterprise agreement (e.g. unlawful terms);
  - f. the IFA must result in the employee having terms and conditions of employment which are better off overall than if an IFA did not apply to the employee;
  - g. the IFA is able to be terminated by either the CEO or the employee giving not more than 28 days written notice of their intention to terminate or at any time by a written, signed agreement made between the CEO and the employee; and
  - h. a copy of the IFA will be given to the employee within 14 days of the IFA being agreed.

**COMMERCIAL IN CONFIDENCE****ATTACHMENT 1 - INTERPRETATIONS AND DEFINITIONS****131. Interpretations and definitions**

<i>Term</i>	<i>Meaning</i>
Adopted child	An adopted child means a child that: <ol style="list-style-type: none"> <li>a. is under 16 at the day or expected day of placement,</li> <li>b. has not, and would not have, lived continuously with the employee for a period of 6 months or more as at the day or expected day of placement of the child; and</li> <li>c. is not (otherwise than because of the adoption) a child of the employee or the employee's spouse or partner</li> </ol>
AGS	Australian Government Solicitor
Base salary	FTE salary including salary packaged amounts but not including superannuation, allowances of any kind or bonuses
Business allowance	Allowance paid to an employee in recognition of a special role (including Team Leaders and National Client Service Managers), additional duties or specific projects
CEO	Chief Executive Officer of AGS
CFO	Chief Financial Officer of AGS
COO	Chief Operating Officer of AGS
CPSU	Community and Public Sector Union
Director	CEO, COO, Director of an AGS office, CFO, Director Human Resources and People Development Services, Director Client Service and Market Development, or any other person authorised by the CEO in HR Delegations to exercise the functions of a Director under this agreement
EC	AGS Employee Council, an internal AGS committee within AGS's corporate governance structure
EDP	Executive Development Program as described in Part N
Employee	Any person who is an employee of AGS
EVS	Executive Vehicle Scheme
FTE	Full-time equivalent
LDP	Lawyer Development Program as described in Part P
Month	A calendar month - means the period commencing at the beginning of a day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the expiration of the next month; e.g. 25 September to 24 October, 31 March to 30 April, 30 January to 28/29 February
OLG	AGS's Operational Leadership Group, an internal AGS

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	committee within AGS's corporate governance structure
Remuneration Committee	An internal AGS committee within AGS's corporate governance structure which advises the CEO on AGS's overall remuneration strategy, principles, policies and practices
Salary (bonuses)	For the purpose of bonuses paid as a percentage of salary, salary is salary paid to the employee by AGS during the previous financial year. It includes salary packaged amounts and temporary assignment allowances but does not include payments in the nature of first aid allowances, business allowances, SE BA, on-call allowances, overtime, payment in lieu of car, bonuses, or payments on cessation of employment
SE BA	Senior Executive Business Allowance - an allowance which may be paid to some Senior Executive Lawyers or Senior Executives in lieu of access to Senior Executive benefits such as EVS, spouse travel or parking
Support material	Material in the Employment Handbook that provides informal guidance to assist Team Leaders and employees to meet policy requirements.
WIP	Work in progress

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**ATTACHMENT 2 - REVIEW OF PERFORMANCE PROGRAM AND INDIVIDUAL BONUSES -  
TERMS OF REFERENCE**

**132. Purpose**

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- 132.1. The review of AGS's performance program and individual performance bonuses for lawyers and support employees will be conducted for the purpose of advising on what changes should be considered to those arrangements.
- 132.2. The review will have the following terms of reference:
- a. review AGS's individual performance planning and assessment and reward arrangements as operated under CA 2005 (and translated into this agreement).
  - b. consider aims and objectives of those arrangements,
  - c. assess the implications of possible changes to them, and
  - d. develop proposals, including new arrangements, for the CEO to consider.
- 132.3. As a result of the review, employees will be asked to vote on any proposals approved by the CEO. If a majority of employees vote in favour of these proposals, and the proposals would change the current performance program and individual performance bonus arrangements, the revised performance program and bonus system will be implemented as terms of this agreement.
- 132.4. The review should take into account the principles and guidance set out below.

**133. Scope of review**

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- 133.1. The review will focus on clause 85 to clause 93 and clause 50 to clause 55 of this agreement and cover all employee classifications.
- 133.2. The review will include consultation with employees, including providing employees with the opportunity to suggest changes to the current terms in relation to the performance program and individual bonus arrangements.
- 133.3. The review does not extend to other elements of AGS EA 2009 except that the review should advise on any consequential implications of any proposals, such as superannuation or the balance between fixed and variable pay.

**134. Principles**

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- 134.1. The following principles will guide the conduct of the review:
- a. performance program should be simpler and easier to administer. There should be one performance program, if possible, for all AGS employees that is sufficiently flexible to accommodate the needs of AGS employees.
  - b. any proposed changes should be broadly cost neutral to AGS

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- c. any changes will take effect only with the agreement of AGS and employees, to be determined by a vote
- d. any proposals to change the current performance program and individual bonus arrangements must
  - i. encourage and reward high level performance
  - ii. assist AGS in achieving its corporate plan objectives, strategies and targets
  - iii. ensure that AGS's employment costs are sustainable and appropriate to business volumes and profitability.

**135. Review governance**

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- 135.1. AGS will consult with management representatives, EC (including CPSU representatives) and employees in all job classifications - to identify issues and interests to meet corporate plan, team and individual employees' objectives.
- 135.2. The Director HR and People Development Services will chair a reference group to review the input from stakeholders and develop recommendations for any changes to the performance program and individual bonus arrangements.
- 135.3. The reference group will include a cross section of employee representatives from the legal and other professional streams.
- 135.4. The reference group will review the issues and interests of AGS and employees and develop proposals for changes, if any, to the performance program and individual bonus arrangements.
- 135.5. Management representatives and the EC will review the proposals before a final set of proposals is made to the CEO.
- 135.6. If the CEO approves the proposals, AGS employees will vote on any proposals in relation to the performance program and individual bonus arrangements.

**136. Process for deciding changes to current terms and conditions**

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*Timeframe*

- 136.1. Consultation with employees will commence in February 2010.
- 136.2. Proposals by the reference group need to be made and presented to the CEO by 1 December 2010.
- 136.3. If the CEO agrees with the proposals, they will be put to a vote of employees. If the CEO does not agree, the reference group will review the CEO's reasons and revise the proposals in consultation with management representatives and the AGS EC, before making developing new proposals to be considered by the CEO for a vote.

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*Vote on proposed changes*

- 136.4. A vote will be held by 1 March 2011 when all eligible employees will be asked to decide on any proposed changes to AGS EA 2009 as a result of the review of the performance program and individual bonus arrangements.
- 136.5. Eligible employees are those AGS employees who are being paid by AGS at the time of the vote.
- 136.6. Where a majority (51%) of those who vote express preference for the proposal, the proposals, including any changes to the terms of this agreement (if any) will be implemented from 1 July 2011.

*Amendments to process*

- 136.7. If there is a delay in the process for reaching agreement on the proposals to 1 March 2011, the timeframe set out above will be extended by agreement between AGS and the EC.
- 136.8. If an employee vote is held after 30 June 2011, and the vote is carried, any changes will be implemented from 1 July 2012.

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**ATTACHMENT 3 - REPRESENTATION AND WORKPLACE DELEGATES**

**137. Right to representation**

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- 137.1. In accordance with subclause 11.1 of this agreement, employees may
- a. seek and receive advice and assistance from their union or their other chosen representative in the workplace;
  - b. attend meetings with their union or other chosen representative;
  - c. attend legal or industrial proceedings where the employee is a witness or party to a dispute.
- 137.2. With regard to paragraphs 137.1.a to 137.1.c, paid leave will only be granted to an employee by their supervisor where this is reasonable having regard to all the relevant circumstances, including operational issues and the provision of services to AGS's clients.

**138. Principles for workplace delegates**

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- 138.1. AGS respects the role of workplace delegates. AGS and workplace delegates will deal with each other in good faith. The rights of workplace delegates include but are not limited to:
- a. the right to be treated fairly and to perform their role as workplace delegates without any discrimination in their employment;
  - b. recognition by AGS that endorsed workplace delegates speak on behalf of their members in the workplace;
  - c. the right to participate in collective bargaining on behalf of those who they represent, in accordance with the Fair Work Act;
  - d. the right to reasonable paid time to provide information to and seek feedback from employees in the workplace;
  - e. reasonable paid time off to represent AGS's union members at relevant union forums;
  - f. reasonable access to AGS facilities for the purpose of carrying out work as a delegate and consulting with workplace colleagues and the union, subject to AGS's policies and protocols;
  - g. reasonable paid time during normal working hours to consult with colleagues in the workplace;
  - h. reasonable access to appropriate training in workplace relations matters including training provided by a union;
  - i. the right to consultation, and access to relevant information about the workplace and AGS; and

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- j. the right to reasonable paid time to represent the interests of members to AGS and industrial tribunals.
- 138.2. Arrangements to take time off to attend to delegates' responsibilities need to be agreed on an individual basis with the delegate's Director depending on the delegate's job role and responsibilities.
- 138.3. AGS will facilitate official union communication with employees by means that may include:
- a. the use of email to union members and employees who request union communications as a means of communicating with employees; emails for all employees in relation to meetings to be sent via the HR Managers; and other means of information sharing, including written materials, electronic billboards and access to websites; and
  - b. group or individual meetings between employees and their representatives. In exercising their rights, workplace delegates and the unions will consider operational issues, AGS policies and guidelines and the likely effect on the efficient operation of AGS and the provision of services to AGS clients.

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