



FAIR WORK
AUSTRALIA

DECISION

Fair Work Act 2009

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

Productivity Commission

(AG2011/12108)

PRODUCTIVITY COMMISSION ENTERPRISE AGREEMENT 2011—2014

Commonwealth employment

COMMISSIONER SMITH

MELBOURNE, 22 SEPTEMBER 2011

Application for approval of the Productivity Commission Enterprise Agreement 2011—2014.

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

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

[3] The CPSU, the Community and Public Sector Union, being a bargaining representative for the Agreement, have given notice under s.183 of the Act that they would like the Agreement to cover them. In accordance with s.201(2) of the Act I note that the Agreement covers this organisation.

[4] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 29 September 2011. The nominal expiry date of the Agreement is 30 June 2014.



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Productivity Commission

Enterprise Agreement 2011 to 2014

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1 Objectives and Coverage

1.1 Title

- 1.1.1 This Agreement will be known as the Productivity Commission Enterprise Agreement 2011 – 2014.

1.2 Definitions and Abbreviations

- a) 'AC CSB' means the Assistant Commissioner, Corporate Services Branch
- b) 'Agreement' means the Productivity Commission Enterprise Agreement 2010-2011
- c) 'FWA' means Fair Work Australia
- d) 'APS' means the Australian Public Service
- e) 'the Act' means the *Fair Work Act 2009*
- f) 'Chairman' means the Chairman of the Productivity Commission, who holds the same powers as those of a Secretary of an Australian Government department
- g) 'classification' means a classification within the 'Public Service Classification Rules'
- h) 'Commission' means the Productivity Commission
- i) 'FAC' means First Assistant Commissioner
- j) 'HDA' means higher duties allowance
- k) 'HoO' means the Head of Office
- l) 'OH&S' means occupational health and safety
- m) 'on-going employee' means a person defined in section 22 (2)(a) of the *Public Service Act 1999*
- n) 'PCCC' means the Productivity Commission Consultative Committee

- o) 'CPSU' means the Community and Public Sector Union
- p) 'NES' means the National Employment Standards under the *Fair Work Act 2009*
- q) 'relevant senior manager' means:
 - for research and inquiry staff — the FAC of the relevant office;
 - for the Research Co-ordination Unit — the Principal Adviser Research of the relevant office;
 - for corporate services staff — the Assistant Commissioner, Corporate Services Branch; and
 - for Media and Publications and Executive support staff — the HoO.

1.3 Parties Covered by this Enterprise Agreement

- 1.3.1 This Agreement is made under s.172 of the *Fair Work Act 2009 (the Act)*, between the Chairman of the Productivity Commission and employees, as defined in sub-clause 1.3.2, of the Productivity Commission.
- 1.3.2 Employees whose employment will be subject to this Agreement are those non-SES staff employed under the *Public Service Act 1999*.
- 1.3.3 The CPSU may give notice to Fair Work Australia under s.183 of *the Act* that it wants to be covered by this agreement.

1.4 Delegation

- 1.4.1 In exercising his/her responsibility for managing the Commission within the terms of this Agreement, the Chairman may delegate any or all of his/her powers and functions under this Agreement, excluding this power to delegate, and may do so subject to conditions. Such delegation shall not prevent the personal exercise by the Chairman of a power or function so delegated.

1.5 Objectives

1.5.1 This Agreement aims to further the efficiency and effectiveness of the Commission by providing a satisfying and rewarding work environment for employees and encouraging high performance. This is a principles based agreement with implementation detail contained in the Commission's supporting policy documents.

1.5.2 Specifically, this Agreement seeks to:

- a) provide flexibility to match employee numbers, skills and experience to the varying work requirements;
- b) build on the existing performance-based culture by recognising and rewarding achievement;
- c) continue professional and personal development programs;
- d) provide flexibility in working arrangements to enable employees to balance professional and personal responsibilities;
- e) enhance organisational performance through the Performance Management System;
- f) promote employee and management commitment to workplace diversity, through anti-discrimination, harassment prevention, family friendly and other employee welfare principles and policies;
- g) provide a safe work environment in accordance with OH&S legislation;
- h) promote a mutually co-operative workplace culture based on consultation, communication and participative decision making processes; and
- i) provide a satisfying and rewarding work environment for employees.

1.6 Principles

1.6.1 In developing this Agreement, care has been taken to ensure that the following principles have been embraced:

- a) the arrangements and provisions are consistent with the Commission performing its statutory functions under the *Productivity Commission Act 1998*, and achieving its outputs as agreed with the relevant Minister;
- b) the arrangements and provisions are able to be accommodated within the Commission's budget; and

- c) changes to working arrangements or conditions flowing from this Agreement will be agreed between the parties to the Agreement, as provided for throughout this Agreement.

1.7 Comprehensive Agreement

- 1.7.1 This workplace agreement is a comprehensive agreement, and its terms shall not be detrimental to the terms, as varied from time to time, of the National Employment Standards (NES) contained in *the Act*.
- 1.7.2 It is acknowledged that employment in the Commission is subject to the provisions of Commonwealth Acts, as amended and consolidated, and regulations and instruments made under these Acts including:
 - a) *Long Service Leave (Commonwealth Employees) Act 1976*;
 - b) *Maternity Leave (Commonwealth Employees) Act 1973*;
 - c) *Occupational Health and Safety (Commonwealth Employment) Act 1991*;
 - d) *Public Service Act 1999*;
 - e) *Public Employment (Consequential and Transitional) Amendment Act 1999*;
 - f) *Safety Rehabilitation and Compensation Act 1988*;
 - g) *Superannuation Act 1976*;
 - h) *Superannuation Act 1990*;
 - i) *Superannuation Benefits (Supervisory Mechanisms) Act 1990*;
 - j) *Superannuation Guarantee (Administration) Act 1992*;
 - k) *Superannuation Productivity Benefit Act 1988*; and
 - l) *Fair Work Act 2009*.

1.8 Duration of Agreement

- 1.8.1 The Agreement will come into effect seven days after approval by FWA and the nominal expiry date will be 30 June 2014.
- 1.8.2 From the commencement of this Agreement, a party to the Agreement or an employee whose employment is subject to the Agreement shall not pursue further claims for terms and conditions of employment that would have effect during the period of operation of this Agreement, except where consistent with the terms of this Agreement.

1.9 Individual Flexibility Arrangements

1.9.1 The Chairman of the Commission and an employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:

- a) the agreement deals with one or more of the following matters:
 - i) arrangements about when work is performed;
 - ii) overtime rates;
 - iii) penalty rates;
 - iv) allowances;
 - v) remuneration; and/or
 - vi) leave; and
- b) the arrangement meets the genuine needs of the Commission and employee in relation to one or more of the matters mentioned in paragraph (a); and
- c) the arrangement is genuinely agreed to by the Chairman and employee.

1.9.2 The Chairman must ensure that the terms of the individual flexibility arrangement:

- a) are about permitted matters under section 172 of the *Fair Work Act 2009*; and
- b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
- c) result in the employee being better off overall than the employee would be if no arrangement was made.

1.9.3 The Chairman must ensure that the individual flexibility arrangement:

- a) is in writing; and
- b) includes the name of the employer and employee; and
- c) is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and

- d) includes details of:
 - i) the terms of the enterprise agreement that will be varied by the arrangement; and
 - ii) how the arrangement will vary the effect of the terms; and
 - iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
- e) states the day on which the arrangement commences and, where applicable, when the arrangement ceases.

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

1.9.5 The Chairman or employee may terminate the individual flexibility arrangement:

- a) by giving no more than 28 days written notice to the other party to the arrangement; or
- b) if the employer and employee agree in writing — at any time.

1.9.6 Information on the use of these arrangements, that does not identify individuals, will be provided to the PCCC upon request.

1.10 Dispute Avoidance and Settlement Procedures

1.10.1 If a dispute relates to a matter under the agreement, or the NES, the parties to the dispute must first attempt to resolve the matter at the workplace level by discussions between the employee or employees concerned and the relevant supervisor / manager.

1.10.2 If a resolution to the dispute has not been achieved after discussions have been held in accordance with clause 1, the parties to the dispute will endeavour to resolve the dispute in a timely manner either through discussions with more senior levels of management where appropriate or through alternative dispute resolution methods.

1.10.3. If discussions at the workplace level do not resolve the dispute, and all appropriate steps have been taken in accordance with clauses 1 and 2, a party to the dispute may refer the matter to Fair Work Australia.

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

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

b) if Fair Work Australia is unable to resolve the dispute at the first stage, Fair Work Australia may then:

i) arbitrate the dispute; and

ii) make a determination that is binding on the parties.

Note: If Fair Work Australia arbitrates the dispute, it may also use the powers that are available to it under the Act.

A decision that Fair Work Australia makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the Fair Work Act 2009. Therefore, an appeal may be made against the decision.

1.10.5. The Commission or an employee who is a party to the dispute may appoint another person, organisation or association to accompany and/or represent them for the purposes of this term.

1.10.6. Resolution of disputes is to occur in good faith by following the same principles as the good faith bargaining requirements at section 228 of the Fair Work Act 2009.

1.10.7. While the parties are trying to resolve the dispute using the procedures in this term:

a) an employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and

b) an employee must comply with a direction given by the Chairman to perform other available work at the same workplace, or at another workplace, unless:

i) the work is not safe; or

ii) applicable occupational health and safety legislation would not permit the work to be performed; or

iii) the work is not appropriate for the employee to perform; or

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

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

1.11 Major Change Consultation

1.11.1 This clause applies where a decision is made to introduce major changes in a work area that are likely to have significant effects on employees, other than where provision is already made elsewhere in this enterprise agreement regarding a specific major change.

1.11.2 Where a definite decision is made to introduce major changes in program, organisation, structure or technology that are likely to have significant effects on employees, the Chairman must notify the employees who are likely to be affected by the proposed changes and their representatives, if any.

1.11.3 Significant effects include:

a) termination of employment;

b) major changes in the composition, operation or size of the Agency's workforce or in the skills required;

c) the elimination or diminution of job opportunities, promotion opportunities or job tenure;

d) significant alteration in hours of work;

e) the need to retrain employees;

f) the need to relocate employees to another workplace; and

g) the major restructuring of jobs.

- 1.11.4 The Chairman must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 2, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.
- 1.11.5 The discussions must commence as early as practicable after a definite decision has been made to make the changes referred to in clause 2.
- 1.11.6 For the purposes of such discussion, the employees concerned and their representatives, if any, are to be provided in writing all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees. The Chairman is not required to disclose confidential or commercially sensitive information to the employees.

1.12 Consultative Committee

- 1.12.1 In addition to the arrangements outlined in clause 1.11, employees will have the opportunity to be consulted and participate in matters affecting their employment through the PCCC. The PCCC will consider a broad range of workplace issues which affect employees, including monitoring implementation of this agreement.
- 1.12.2 The membership of the Committee will comprise four management representatives and five employee elected representatives (two representing Melbourne Inquiry/Research employees, two representing Canberra Inquiry/Research employees and one representing employees in the corporate Areas), and the CPSU if, after the enterprise agreement is made, it gives notice to Fair Work Australia and the Productivity Commission that it wants to be a party to this agreement.
- 1.12.3 The role, functions and other matters pertaining to the PCCC are set out in the PCCC policy document. Any significant change to this policy will be subject to approval by a majority of employees who are covered by this Agreement.

1.13 Workplace Delegates

- 1.13.1 Table C outlines the arrangements for workplace delegates.

1.14 Acknowledgment of Other Documents

- 1.14.1 Policies and guidelines which relate to the Agreement will be developed and maintained in consultation with employees and the relevant unions, through the PCCC. This Agreement prevails over policies and guidelines to the extent of any inconsistency. Any disputes over the application of policies and guidelines which relate to the Agreement will be managed under the provisions of this Agreement.

1.15 No Extra Claims

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

2 Duties, Classification, Performance and Remuneration

2.1 Duties

- 2.1.1 Employees will undertake duties in the Commission as assigned by their supervisor from time to time. These duties will be consistent with the job description and duty statement of the employee's substantive classification, unless otherwise agreed.
- 2.1.2 Employees will at all times conduct themselves in a manner consistent with the APS Values and the APS Code of Conduct as set out in the *Public Service Act 1999* and will have particular regard to the Commission's policies and managerial objectives, including those relating to workplace behaviour, occupational health and safety, staff development and training, disability discrimination and workplace diversity.

2.2 Classification and Broadband Structure

- 2.2.1 The structure under the 'Public Service Classification Rules', the Commission's four-level broadband structure and local designations is set out below. While the broadband structure will operate within the Commission, employees will retain a related classification in the APS 8-level structure. This is required to maintain the concept of a cohesive APS and to facilitate movement between agencies.

APS 8-level structure	Broadband structure	Commission's local designations
APS 1 to 4	Staff Level 1	Assistant Research Economist/ Administrative Coordinator
APS 5 & 6	Staff Level 2	Research Economist/Administrator
Executive Level 1	Staff Level 3	Senior Research Economist/ Senior Administrator/ Assistant Director/Manager
Executive Level 2	Staff Level 4	Director/Manager

- 2.2.2 The minimum and maximum salaries for each of the four bands in the broadband structure, as well as for the related classifications in the APS 8-level structure, are set out in appendix A.

2.3 Advancement of Classification Within the Commission's Broadband Structure

2.3.1 Advancement between bands

- 2.3.1.1 Advancement between bands in the Commission's broadband structure will require vacancies to be advertised and filled on the basis of a merit selection process.

2.3.2 Advancement within a band

- 2.3.2.1 Advancement within a broadband is related to:
- a) the employee being rated 'fully effective' in performance appraisal over the previous 12 months;
 - b) the Commission's requirements in respect of changes in the duties and responsibilities that the employee would undertake at a higher level (linked to the Commission's work level standards); and
 - c) the employee's capacity to perform at a higher level.
- 2.3.2.2 Where salary advancement involves movement beyond an advancement checkpoint within a broadband, the employee's position will be reclassified to the corresponding APS 8-level classification, and the employee will remain attached to the position in accordance with Public Service Commissioner Direction 4.6.
- 2.3.2.4 Salary advancement under the preceding provisions, other than where the employee continues to receive higher duties allowance, will become the employee's new substantive salary. As far as practicable, the new salary will be effective from the beginning of the pay period after which it is approved.
- 2.3.2.5 Advancement within a broadband is not a promotion for the purposes of Division 5 of the *Public Service Regulations 1999* which, among other things, provides for review of promotion decisions in respect of APS positions equivalent to the Commission's Staff Levels 1 and 2.

2.4 Performance

- 2.4.1 Performance management seeks to foster productivity and effectiveness through continuous improvement in employees' performance. It aims to do so by linking achievement to recognition and rewards and, where necessary, by providing procedures for handling underperformance.
- 2.4.2 Performance management in the Commission will be transparent, equitable, fair, reviewable, linked to training needs, cognisant of required remedial action and linked to remuneration. It will be clearly linked to the performance of the individual, the skills and responsibilities as described in the relevant job description, duty statement and selection criteria, and the Commission's work level standards appropriate to the classification of the employee's duties during the assessment period.
- 2.4.3 All employees covered by this Agreement will participate in the Commission's performance management scheme as described in the Commission's Performance Management Policy. No alteration to, or variations in practice from, the reviewed Performance Management policy, will be made without prior consultation and agreement with the PCCC.
- 2.4.4 Formal performance appraisal will occur biannually for the six month periods to 30 November and 31 May. The final outcome of such appraisal includes the determination of a performance rating for each employee.
- 2.4.5 All performance ratings under the 'Performance Management Policy' are to be based on the following scale:

Rating	Definition
Fully effective	<i>Performance meets all the work value standards for the employee's classification level. This requires ratings of satisfactory or higher in all key result areas.</i>
Needs improvement	<i>Performance does not fully meet all the work value standards for the employee's classification level. This indicates a rating of unsatisfactory in at least one key result area.</i>

- 2.4.6 If an employee in two consecutive appraisal outcomes achieved a rating of 'needs improvement', it would normally be expected that the underperformance process, as set out in appendix B, would be implemented, but this does not preclude the process at an earlier stage.
- 2.4.7 Employees who are dissatisfied with any aspect of the performance management process, including their moderated performance rating have recourse to the Commission's 'Review of Action Procedures'.

2.5 Remuneration

2.5.1 Productivity and performance improvements

2.5.1.1 The pay increases and other enhancements to employment conditions included in this Agreement are in recognition of the productivity and performance improvements that have been agreed by the parties to the Agreement. The productivity improvements under the agreement are:

- the introduction of 'Time off in Lieu' for Executive Level employees (Staff level 3 and 4 employees) in place of access to full flex-time arrangements;
- implementation of new systems and systems enhancements to improve productivity and efficiency, including electronic records management, improved systems for managing stakeholder involvement in Commission projects, and the introduction of new report writing templates to co-incide with an upgrade of Office applications;
- changes to facilitate savings in property operating costs and improved travel management.

In recognition of additional productivity measures under the agreement, a bonus of 0.5% of salary will be paid to Staff Level 1 and Staff Level 2 employees, and 1.0% to Staff Level 3 and Staff Level 4 employees, on the date the Agreement comes into effect. This bonus will apply to the salary level for each employee immediately prior to the application of the annual salary increase under clause 2.5.3.

2.5.2 Annual salary increase

- 2.5.2.1 Subject to a minimum rating of ‘fully effective’, employees will be paid a 4.0 per cent increase in base salary from the date of effect of this agreement. Thereafter employees rated ‘fully effective’ will be paid a 2.5 per cent increase in base salary with effect from the beginning of the first pay period in financial year 2012-2013, and a 2.5 per cent increase in base salary with effect from the beginning of the first pay period in financial year 2013–2014.
- 2.5.2.2 Employees receiving a rating of ‘needs improvement’ in either of the November or May appraisal periods, shall receive half of the annual increase in base salary. Employees assessed as ‘needs improvement’ in both appraisal periods are not eligible for any increase.

2.5.3 Incremental advancement within classifications

- 2.5.3.1 Subject to clause 2.5.2.3, in addition to the Commission-wide annual salary increase, employees who are not already at the top of the salary range for their classification will advance by an annual increment of 2.5 per cent, with effect from the beginning of the first pay period in the financial year, until they reach the top of the salary range for their classification. Staff whose current salaries are less than 2.5 per cent from the top of the range will receive a salary advancement to the top of the range.
- 2.5.3.2 Incremental advancement for SL4 (EL2) employees into the discretionary salary area (as identified in appendix A) is not automatic. The HoO may consider proposals from a relevant senior manager for the exercise of that discretion at the end of a performance assessment cycle, taking into account the work value of the relevant position and the skills, experience, and performance of the employee
- 2.5.3.3 Incremental advancement under clause 2.5.2.1 is conditional on not having received a rating of ‘needs improvement’ in either of the six monthly performance assessments immediately prior to the increase becoming due. Employees receiving a ‘needs improvement’ for both six monthly assessments immediately prior to the increase becoming due are not eligible for an increase. Employees receiving a ‘needs improvement’ for one six monthly assessment immediately prior to the increase becoming due are eligible for half of the incremental advancement.

2.5.4 Other salary advancement provisions

- 2.5.4.1 In accordance with the 'Performance Management Policy,' employees who are, or have been, on higher duties for three months or more will be assessed at both their nominal and acting classifications. Salary advancements will be made at both levels where applicable.
- 2.5.4.2 The HoO may consider proposals from a relevant senior manager to increase the salary of an employee at any time. Salary increases so agreed will be implemented through an individual flexibility arrangement under clause 1.9.
- 2.5.4.3 In instances where salary increases for different reasons coincide, the increases are to be implemented sequentially (that is, each increase produces a new base to which any subsequent increase is applied).
- 2.5.4.4 Other cases of salary advancement involving special circumstances are covered in the 'Performance Management Policy'.
- 2.5.4.5 An employee who has a salary higher than that provided for their relevant classification in the Salary Table at appendix A of this agreement will maintain that salary, including the annual salary increase provided in clause 2.5.1.1.

2.6 Adjustments to Remuneration

- 2.6.1 If an employee transfers to the Commission from another APS Commission and their remuneration is higher than the equivalent level in the Commission, the Chairman may maintain the new employee's salary until the Commission's salary range reaches an equivalent.
- 2.6.2 If an employee requests a reduction in classification, the Chairman may agree and may reduce the employee's salary to a commensurate level at the lower classification. The Chairman may reduce the salary of an employee whose classification is reduced as a result of underperformance or disciplinary provisions.
- 2.6.3 The Chairman may correct the commencing salary of a new employee where, because of an administrative or similar error, an employee's salary on commencement is found to be incorrect.

2.7 Superannuation

- 2.7.1 The Commission will make compulsory employer contributions as required by the applicable legislation and fund requirements.
- 2.7.2 Where employer contributions are to an accumulation superannuation fund, the employer contribution will be 15.4% of the fortnightly superannuation contribution salary [or ordinary time earnings]. This will not be reduced by any other contributions made through salary sacrifice arrangements. This clause does not apply where a superannuation fund cannot accept employer superannuation contributions (e.g. unable to accept contributions for people aged over 75).
- 2.7.3 Employer superannuation contributions will not be paid on behalf of employees during periods of unpaid leave that does not count as service, unless otherwise required under legislation.
- 2.7.4 The Chairman may choose to limit superannuation choice to complying superannuation funds that allow employee and/or employer contributions to be paid through fortnightly electronic funds transfer using a file generated by the payroll system.

2.8 Superannuation Salary Payment (for employees with arrangements in place prior to commencement of the Agreement)

- 2.8.1 This clause applies only to Employees who had an existing superannuation salary payment arrangement in place under a previous Productivity Commission employment framework.

Where an Employee has an existing arrangement to reduce the percentage of superannuation contributions made to the superannuation fund of choice, to no less than the minimum percentage of superannuation contributions provided for by the *Superannuation Guarantee (Administration) Act 1992* and to be paid as salary the difference between the superannuation contribution paid and an amount equivalent to the 15.4 per cent employer contribution, they are entitled to continue this arrangement under this Agreement.

The allowance will be in the nature of salary, it will be taxable and will count for superannuation purposes.

2.9 Flexible Remuneration Packaging

2.9.1 Employees covered by this agreement have access to salary packaging arrangements in accordance with the Commission's Flexible Remuneration Guidelines. Where an employee takes up the option of salary packaging on a 'salary sacrifice' basis, the employee's salary for purposes of superannuation, severance and termination payments (and any other purpose) will be determined as if the salary sacrifice arrangement had not been entered into.

2.10 Frequency and Method of Salary Payment

2.10.1 For the purposes of calculating pay both for full-time and part-time employees, the daily standard working hours will be 7 hours and 21 minutes.

2.10.2 Salary payments under this Agreement will be paid fortnightly in arrears and made by electronic funds transfer to a bank, building society or credit union account nominated by the employee and to a salary-packaging administrator on the employee's behalf (if required).

2.10.3 The Commission will arrange additional fixed deductions to other institutions at the request of the employee.

2.10.4 Fortnightly salary will be calculated by the formula:

$$\text{Annual Salary} \times \frac{12}{313}$$

2.11 Salary Prepayment

2.11.1 Prepayment of salary for approved annual and long service leave in excess of 10 days will be available on request. The payment will be made on the next appropriate scheduled pay day.

2.11.2 Payment on termination of employment will be made on the next scheduled pay day after separation.

2.12 Higher Duties

2.12.1 Where agreed with the employee, the Chairman may reassign the duties of an employee so that the duties may have a higher work value within the employee's

broadband, or the duties of a position in a higher broadband including a Senior Executive Service position.

- 2.12.2 The eligibility for higher duties allowance (HDA) will be different for Staff Levels 1 & 2 and Staff Levels 3 & 4:
- a) Employees substantively at Levels 1 & 2, HDA will be payable for periods of two weeks or more.
 - b) Employees substantively at Levels 3 & 4, HDA will be payable for periods of eight weeks or more.
- 2.12.3 Periods of higher duties of less than the minimum period will not carry higher remuneration but will be recognised during performance appraisal.
- 2.12.4 Where full duties are performed, HDA will be calculated as the difference between the employee's existing remuneration and the remuneration the employee would receive if promoted to the higher classification. Remuneration will take account of salary, potential for performance bonuses and SES allowances where applicable. Where the employee is assigned only part of the duties of the higher position, the amount of HDA will be determined by the Chairman.

2.13 Employees on Supported Wage

- 2.13.1 Employees who are eligible for a supported salary in accordance with the Supported Wage System: Guide and Assessment Process will be paid the applicable percentage of the relevant salary rate prescribed below for the work value they are performing as follows, provided the amount payable will be not less than the minimum rate provided in the "Special Supported Wage System (Employees with a Disability) Australian Pay and Classification Scale".

Supported Salary Rate Percentages

Assessed capacity	% of prescribed salary rate	Assessed capacity	% of prescribed salary rate
10%	10%	60%	60%
20%	20%	70%	70%
30%	30%	80%	80%
40%	40%	90%	90%
50%	50%		

2.14 Casual Employees

- 2.14.1 A non-ongoing employee who is engaged to do work that is intermittent or irregular in nature (commonly referred to as a ‘casual’ employee) will receive a 20 per cent loading in addition to the hourly rate of salary relevant to the work value of the duties to be performed, in recognition of the irregular nature of such work. An employee in receipt of this loading does not accrue annual leave or personal leave, cannot purchase leave, and is not entitled to school holiday care allowance or any payment for compassionate, miscellaneous, special, adoptive, maternity or parental leave or payment for public holidays on which they do not work.

3 Employee Benefits and Allowances

3.1 First Aid Allowance

- 3.1.1. An employee will be paid a fortnightly allowance of \$22.00 if he or she holds a current first aid certificate and the Chairman has authorised the employee to perform incidental First Aid Officer duties.
- 3.1.2 Part-time employees will be entitled to pro-rata payment based on their approved weekly hours of duty.

3.2 Travel

- 3.2.1 The Commission will meet reasonable expenses (in relation to accommodation, meals, incidentals and transportation), in accordance with its travel policy.
- 3.2.2 Rates of allowance may be varied in accordance with ATO advices. In the event that these advices cease to be available, the rates will be adjusted by the Chairman following consultation with the PCCC.

3.3 Additional caring costs

- 3.3.1 Employees, who have child care responsibilities, and are directed to undertake overnight travel away from their home locality, may apply for reimbursement of additional costs for commercial child caring services where the normal child caring arrangements are not available. Such arrangements are subject to pre-approval by the delegate approving the directed travel.

3.4 School holiday family care

- 3.4.1 The Commission will contribute to the cost of school holiday care for primary school children of employees where the employee has been denied leave for operational reasons.
- 3.4.2 The Commission's contribution of up to \$200.00 per family per week will be for the reasonable costs incurred by an on-going employee for their primary school children to attend approved care. Reimbursement will be net of any government subsidy available to the employee.
- 3.4.3 'Approved Care' is defined as a program that has been licensed by, accredited by and/or subsidised by a Government agency.

3.5 Relocation

- 3.5.1 For voluntary and involuntary geographical relocations (whether temporary or ongoing), reasonable relocation and accommodation expenses will be paid. Payment may be made on a lump sum basis. Payment will be in accordance with the Commission's policy on relocation conditions. The Commission's policy will not be altered without prior consultation with employees through the PCCC.

3.6 Other allowances and conditions

- 3.6.1 The Chairman may authorise the payment of an allowance, the access to a condition of service, an increase in an allowance, the extension of a condition of service or the reimbursement of an expense to an employee covered by this Agreement. Access to entitlements and conditions approved under this clause will be implemented through an individual flexibility arrangement under clause 1.9.

4 Hours and Organisation of Work

4.1 Principles

- 4.1.1 Arrangements for a more flexible workplace will allow employees to balance professional and personal commitments, while providing the Commission with the flexibility needed to meet corporate objectives.
- 4.1.2 Managers will take into account employee preferences regarding hours of attendance, subject to operational needs.
- 4.1.3 All employees, including Executive Level employees, are able to work flexible hours.
- 4.1.4 Employees and their manager are required to work together to manage workloads and working hours.

4.2 Standard Hours of Work

- 4.2.1 The standard day is defined as 7 hours and 21 minutes (36.45 per week) between the bandwidth times of 8.00am to 6.00pm, Monday to Friday. However, the affect of Christmas closedown under clause 5.14.4 of this Agreement requires averaged working hours of 37.30 per week.
- 4.2.2 The standard core hours for attendance during which hours most staff will be on duty are 9.30am to 12.00pm and 2.00pm to 4.00pm.

4.3 Agreed Attendance Arrangements

- 4.3.1 Attendance arrangements may be agreed between managers and Staff Levels 1 – 4 employees (in a team or individual context as appropriate) having regard to the following:
 - a) all areas of the Commission are to be appropriately staffed to meet operational requirements during the standard day;

- b) managers are to have regard to employees' personal and family commitments;
- c) employees may not work more than 10 hours in any one day (unless the period in excess of 10 hours is directed overtime), nor more than five hours without a meal break of a minimum of 30 minutes;
- d) the need to ensure that employees are productively employed and effectively supervised where appropriate; and
- e) any physical limitations (such as access to buildings and associated costs of occupation, health and safety, and security considerations). In this regard, employees should provide managers with prior advice of their intentions to work before 6.00am or after 9.00pm Monday to Friday, or at any times on weekends or public holidays.

The attendance arrangements for part-time employees will be agreed between the employee and the manager on an individual basis.

- 4.3.2 Managers can require employees to attend and work the standard day within the bandwidth hours, although the timing of meetings, training sessions and the like will be scheduled during and around core hours as far as operationally practicable.
- 4.3.3 All employees are required to record their times of attendance in a manner determined by the Chairman. These records will be retained by the employees' managers in a consolidated form, which is available for audit.

4.4 Flextime

- 4.4.1 Staff levels 1 and 2 (APS 2 – 6) may participate in the flextime scheme. This scheme allows hours worked in excess of 37.30 per week (includes additional 9 minutes per day required by Christmas closedown under clause 5.14.4 of this Agreement), to be banked as credit on a 1-for-1 basis for time off at a later stage.
- 4.4.2 Actual hours of attendance are to be reconciled to the employee's agreed normal weekly hours of work over a settlement period of four weeks. Where actual hours of attendance do not equal the normal hours applying to the settlement period, the credit or debit balance will be transferred to the next settlement period.
- 4.4.2 The maximum flex credit carry-over will be five days. For part-time employees, the maximum credit carry-over will equate to the agreed weekly hours of work. Should work circumstances require, managers may agree to a credit carry-over of more than five days, providing steps are taken to reduce the credit to five days or

less by the end of the next settlement period. The relevant senior manager is to be informed where carry-overs exceed five days.

- 4.4.3 The maximum flex debit carry-over will be two days. For part-time employees, the maximum debit carry-over will equate to 40 per cent of the maximum credit carry-over. Where an employee has accumulated in excess of the allowable debit carry-over at the end of a settlement period, the manager will advise the personnel section to arrange for the excess hours to be without pay and automatically deducted from the next available pay. In exceptional circumstances, managers may agree to a debit carry-over of more than two days providing steps are taken to reduce the debit to two days or less by the end of the next settlement period. The relevant senior manager is to be informed where debit carry-over exceeds two days.
- 4.4.4 Credits accumulated cannot be cashed out.
- 4.4.5 Employees will not build up excessive flex credits where there is no operational need for them to be working additional hours.

4.5 Absences from Duty on Flextime

- 4.5.1 Absence from duty during agreed core hours is subject to prior approval by the employee's manager. Excluding other forms of approved leave, absences under agreed flextime attendance arrangements must not exceed five days during a four-week settlement period.

4.6 Reversion to Standard Day

- 4.6.1 Managers may revert an employee to a 7.21 hour standard day for a period where:
- a) it is necessary to meet essential work requirements; or
 - b) it is reasonable because an employee has failed to comply with the agreed attendance arrangements.
- 4.6.2 The relevant senior manager is to be informed of reversion decisions.

4.7 Time Off In-Lieu

- 4.7.1 The Productivity Commission recognises the focus on achievement of outcomes for executive level employees. The achievement of organisational outcomes may require variable and additional working hours to achieve these outcomes. It is important that these efforts and contributions are recognised by the Commission.
- 4.7.2 Where a Staff Level 3 and 4 (Executive Levels 1 and 2) employee works in excess of ordinary hours, the manager and employee are required to agree arrangements for reasonable time off in lieu to recognise the additional effort. These arrangements are intended to provide Executive Level employees with fair and reasonable access to time off, though not intended to compensate on an hour for hour basis. Recognising the importance of work-life balance, time off in lieu arrangements will generally apply to additional hours worked on weekends and public holidays and those on worked outside bandwidth hours (between 8.00am to 6.00pm, Monday to Friday).
- 4.7.3 The operation of TOIL is described in the Commission's TOIL Guidelines. No alteration to, or variations in practice from, the TOIL Guidelines, will be made without prior consultation and agreement with the PCCC.

4.8 Executive Level Employees and Flexible Hours

- 4.8.1 Executive Level employees have access to flexible working arrangements. Subject to their manager's agreement, they may choose start, finish and break times, and may vary hours of attendance to manage personal commitments. Variations in attendance times and short-term absences may be agreed without the need for a leave application.

4.9 Overtime

- 4.9.1 With opportunities for flexible working hours by all employees, the parties to this agreement will endeavour to minimise the need for overtime.
- 4.9.2 Overtime is to be worked by the prior direction of the Chairman, or where circumstances do not permit prior direction, subsequently approved in writing by the Chairman.

- 4.9.3 Employees can be directed to attend outside agreed attendance arrangements when necessary for operational requirements. Any such directed duty outside 8.00am to 6.00pm (excluding public holidays) or in excess of 7 hours 21 minutes on a day (pro rata for part time employees), will be considered as overtime.
- 4.9.4 The rate of payment for all overtime will be time-and-a-half of the employee's current salary plus any allowances in the nature of salary.
- 4.9.5 As an alternative to paid overtime, an employee may choose time-off-in-lieu at the rate of one and one-half hours for each hour of directed overtime worked.
- 4.9.6 If time-off-in-lieu cannot be taken within four weeks, the employee is entitled to payment for overtime worked at the standard overtime rate of time-and-a-half.

4.10 Reasonable Additional Hours

4.10.1 A manager may request an employee to work reasonable additional hours. In determining whether additional hours are reasonable, the following must be considered:

- (a) any risk to employee health and safety from working the additional hours;
- (b) the employee's personal circumstances, including family responsibilities;
- (c) the needs of the workplace or enterprise in which the employee is employed;
- (d) whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, working additional hours;
- (e) the notice (if any) given by the employer of any request or requirement to work the additional hours;
- (f) the notice (if any) given by the employee of his or her intention to refuse to work the additional hours;
- (g) the usual patterns of work in the APS;
- (h) the nature of the employee's role, and the employee's level of responsibility;
- (i) whether the additional hours are in accordance with averaging provisions included in a modern award;
- (j) any other relevant matter, including the hours the employee has worked in the preceding months.

4.10.2 Employees cannot be required to work unreasonable hours.

4.11 Flexible Working Arrangements (Part-Time Employment)

4.11.1 Part-time employment provides a flexible employment option for employees and a valuable mechanism for matching employee levels to workloads for the Commission. Part-time employment is defined as a person regularly working less than 147 hours per four-week settlement period by prior arrangement.

4.11.2 Consistent with an overall objective of encouraging flexibility:

- a) part-time work may be requested by any employee (other than casual employees);
- b) employees may make a written request to work on a part-time basis for a finite period.
- c) proposals for part-time work initiated by employees will not be subject to quotas limiting the number of part-time employees;
- d) existing employees will not be required to convert to part-time hours without their agreement;
- e) proposals for part-time work initiated by employees will be considered taking account of the personal requirements of the employee, the employee's individual performance and the Commission's operational requirements, including the availability of a suitable position; the Chairman may agree to the request subject to management of any residual workload;
- f) the pattern of hours of duty will be agreed between the employee and their supervisor;
- g) part-time work proposals may be refused on reasonable business grounds but if refused, employees will be advised in writing within 21 days of their application of the reason(s) for refusal;
- g) remuneration and conditions will be calculated on a pro-rata basis, other than allowances of a reimbursement nature that will be paid as for all other employees;
- h) a part-time employee who was previously full-time may revert to full-time before the expiry of the finite period by request in writing to the Chairman.

4.11.3 The Chairman may engage employees on a part-time basis where the duties to be performed do not justify full-time employment or where there are difficulties attracting full-time staff to perform the required duties. Employees engaged under

management initiated part-time employment may apply to the Chairman to convert to full-time employment.

4.12 Flexible Work Arrangements for Parents

4.12.1 An employee who is a parent, or has responsibility for the care of a child under school age or a child under 18 who has a disability, may request flexible working arrangements, including part-time hours. The employee is not eligible to make this request unless they have completed at least 12 months of continuous qualifying service (the Chairman may waive this requirement in exceptional circumstances).

4.13 Job Sharing

4.13.1 The Chairman may approve job sharing arrangements subject to operational circumstances and the basis of the employees' application. Working agreements will be settled between the Chairman and the applicant employees.

4.14 Home Based Work

4.14.1 The Chairman may initiate, or enter into at the request of an employee, a home-based working arrangement. Arrangements will accord with the Commission's Home based work policy, as amended from time to time. The Commission's policy will not be altered without prior consultation and agreement with the PCCC.

4.14.2 Informal arrangements will be considered by the Chairman for employees who wish to work from home for short, infrequent and/or irregular periods.

5 Leave

5.1 Principles

5.1.1 Portability of Leave

5.1.1.1 Where an employee moves (including on promotion or for an agreed period) from another agency where they were an ongoing APS employee, the employee's unused accrued Annual leave and Personal/carers leave (however described) will be recognised, provided there is no break in continuity of service.

5.1.1.2 Where an employee is engaged as either an ongoing or non-ongoing APS employee immediately following a period of ongoing employment in the Parliamentary Service or the ACT Government Service, the employee's unused accrued Annual leave and Personal/carers leave (however described) will be recognised.

5.1.1.3 For the purposes of this clause 'APS employee' has the same meaning as the Public Service Act 1999. 'Parliamentary Service' refers to employment under the Parliamentary Service Act 1999

5.1.1.4 Where a person is engaged as an ongoing employee, and immediately prior to the engagement the person was employed as a non-ongoing APS employee, the Chairman may, at the employee's request, recognise any accrued Annual leave and Personal/carers leave (however described), provided there is no break in continuity of service. Any recognised Annual leave excludes any accrued leave paid out on separation.

5.1.2 Recognition of prior service

5.1.2.1 Provisions for the recognition of prior service for long service leave purposes are set out in the *Long Service Leave (Commonwealth Employees) Act 1976*.

5.1.3 Standard day for leave purposes

5.1.3.1 For the purposes of leave accumulation and usage, the standard day will be 7 hours and 21 minutes.

5.1.4 Management of unplanned absences

- 5.1.4.1 The Commission will adopt a range of strategies to assist in managing unplanned absences, including the development of more information for managers and employees on the use of leave and analysis of absence data.

5.1.5 Leave agreements

- 5.1.5.1 Where an employee's amount of accrued annual leave is 60 days or greater, the employee and the employee's manager will discuss the situation and seek to agree on a leave management strategy to stabilise the amount of leave accrued in the future. Employees with less than 60 days accrued annual leave may also seek a leave agreement with their manager to facilitate leave planning.

5.2 Annual Leave

- 5.2.1 Full-time employees will be credited progressively with 20 days annual leave throughout each year. Credits will not accrue for 'periods of leave without pay not to count as service' where the aggregate of these periods exceeds 30 calendar days in the year of accrual. Pro rata adjustments will be made for part-time employees.
- 5.2.2 Credits available at the commencement of the requested leave period may be accessed in any application for leave.
- 5.2.3 Annual leave is subject to prior approval by the employee's manager.
- 5.2.4 On application, employees may be granted annual leave at half pay to a maximum of 16 weeks of absence in any one calendar year— such leave counts as service for all purposes.
- 5.2.5 Employees who have taken at least two weeks annual leave at half pay or full pay in the twelve months preceding the date of their application will be able to cash out accrued annual leave as long as the employee's remaining accrued entitlement is equal to at least four weeks. Pro rata arrangements apply for part-time employees.
- 5.2.6 On separation from the APS, annual leave credits will be paid out at the employee's final rate of salary, including any allowances that would have been payable during annual leave.

5.2.7 Payment on death:

- a) Under this Agreement, annual leave credit is calculated as if the employee had separated from the Commission on resignation or retirement on the date on which death either occurred or is presumed to have occurred.
- b) The Chairman may make payment to the dependants of the former employee, or to the former employee's legal representative. If payment has not been made within 12 months of the employee's death, the Chairman may make payment to the estate or legal representative.

5.3 Purchased Leave

5.3.1 The Chairman may approve an application from an employee to purchase additional leave of up to four weeks per annum, to count as service.

5.3.2 Leave is purchased at the rate of the employee's ongoing salary and allowances at the date that the purchase is approved. Higher duties allowance is not included in the purchase cost and will not be paid to the employee during periods of purchased leave. Deductions are taken from fortnightly salary in equal instalments over the course of a year or a lesser period if preferred by the employee.

5.3.3 Where an employee ceases employment with the Commission and, at the date of cessation, they have paid for purchased leave that has not been used, the outstanding balance will be reimbursed at the rate at which the leave was purchased.

5.3.4 Applications for purchased leave must include a leave agreement outlining the employee's plan for the taking of the leave which has been signed by the employee and their manager.

5.4 Long Service Leave

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

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

5.5 Personal Leave

- 5.5.1 Employees are entitled to 15 days paid personal leave credits per annum (pro rata for part-time employees). For employees new to the APS, this will be credited upon commencement and annually on their anniversary of commencement thereafter. For existing APS employees transferring to the Commission, where a single annual credit has previously occurred, 15 days is credited upon the anniversary of their previous annual credit and thereafter; where credits have been progressively accrued, the balance of the remaining credits to a total of 15 days for that year will be awarded at the next date a credit would have fallen due, and this date shall be the anniversary date thereafter. Anniversary dates for all employees are extended by any leave taken in the accrual year that exceeds 30 days and does not count for service. Paid personal leave credits may be used for either sick or carer's purposes. Unused paid personal leave credits will accumulate.
- 5.5.2 Paid personal leave (sick) may be used when the employee is unfit for work due to their own personal illness or injury, or their attendance at medical appointments.
- 5.5.3 Paid personal leave (carer's) may be used to cover absences from work due to an illness, or injury, or an unexpected emergency which requires the employee to care for:
- a) a member of the employee's immediate family defined under *the Act* as a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee or of a spouse or de facto partner of the employee;
 - b) a member of the employee's household defined as a person who normally lives at the employee's residence;
 - c) any other person who the employee and their manager agree by reason of special circumstances of a particular case is of sufficiently close relationship.
- 5.5.4 An employee is also entitled to a period of two days unpaid carer's leave for each occasion when a member of the employee's immediate family or household, requires care or support because of personal illness or injury or an unexpected emergency. The period of unpaid personal leave may be taken as a single period of two days or any separate period to which the employee and manager agree.

- 5.5.5 Employees are required to notify their manager of any absences, for personal leave, in advance or as soon as possible after the absence commences, advising the reason for the absence.
- 5.5.6 An employee will provide a medical certificate or, where it is not practical to provide a medical certificate, a statutory declaration or other supporting evidence acceptable to his/her manager in the following circumstances:
- a) personal leave for three or more consecutive working days, unless the manager informs the employee that such evidence will not be required
 - b) once the employee has accessed five occasions of personal leave (of at least a single day duration) without such suitable evidence, within the previous 12 months, unless the manager informs the employee that such evidence will not be required
 - c) if the manager has reason to believe that the employee's absence is not consistent with the appropriate use of personal leave.
- 5.5.7 An employee who is medically unfit for duty for one day or longer while on annual leave or Long Service Leave and who produces satisfactory medical evidence may apply for personal leave. Annual leave or Long Service Leave will be re-credited to the extent of the period of personal leave granted.
- 5.5.8 An employee will not be entitled to paid personal leave while also entitled to paid leave under the *Maternity Leave (Commonwealth Employees) Act 1973*.
- 5.5.9 Employees in receipt of workers compensation for more than 45 weeks will accrue personal leave on the basis of hours actually worked.
- 5.5.10 An employee will not, without the employee's consent, be retired on invalidity grounds before the employee's personal leave credit has been utilised.
- 5.5.11 Accrued personal leave credits will not be paid out on separation from the Commission.

5.6 Special Leave

- 5.6.1 An employee may access up to three days paid special leave for approved purposes in a personal leave accrual year. Leave approved under this clause will count as service for all purposes, and unused special leave will accrue as personal leave.

5.7 Compassionate Leave

5.7.1 Compassionate leave (bereavement)

5.7.1.1 In the event of the death of a person who is a member of the employee's immediate family (as defined in *the Act*), or a member of the employee's household, an employee is entitled to at least two days, and the Chairman may grant an employee three days, compassionate leave (bereavement) on full pay.

5.7.1.2 In the event of the death of a person who is agreed by the employee and their manager to be of sufficiently close relationship, an employee may be granted compassionate leave (bereavement) on full pay to attend the funeral.

5.7.2 Compassionate leave (life threatening illness or injury)

5.7.2.1 An employee is entitled to two days of paid compassionate leave for each occasion when a member of the employee's immediate family, or a member of the employee's household, contracts or develops a personal illness or sustains a personal injury that poses a serious threat to his or her life.

5.7.3 Compassionate leave (casuals)

5.7.3.1 A casual employee is entitled to two days unpaid compassionate leave in the event of a death of a person who is a member of the employee's immediate family or household, or on each occasion when a member of the employee's immediate family or household contracts or develops a personal illness or sustains a personal injury that poses a serious threat to his or her life.

5.8 Paid Parental Leave

5.8.1 Paid maternity leave

5.8.1.1 Employees are entitled to the provisions of the *Maternity Leave (Commonwealth Employees) Act 1973*.

5.8.1.2 Where an employee is eligible for paid maternity leave and wishes to take a consecutive period of at least 12 weeks duration of paid maternity leave, that employee may elect, in advance of commencing the paid maternity leave, to spread the payment for the paid leave over a period of 24 weeks at half normal salary. This period of leave beyond the required period of 12 weeks will not count as service for any purpose (for all intents and purposes the period beyond the required period of 12 weeks is regarded as maternity leave without pay).

5.8.1.3 If an employee who is a member of the CSS or PSS Defined Benefits superannuation funds elects to receive their paid maternity leave over 24 weeks (ie during 12 weeks of paid maternity leave and 12 weeks maternity leave without pay) and wishes to continue their employee superannuation contributions for the period beyond the period of 12 weeks paid maternity leave, they are required to make an election prior to the commencement of such leave. Elections made after such time will not attract employee and employer superannuation payments prior to the date of such election.

5.8.2 Paid adoption and fostering leave

5.8.2.1 An employee who adopts or permanently fosters a child and who is the primary carer for the child, is entitled to the same paid leave provisions as an employee who is eligible for maternity leave.

5.8.3 Additional paid parental leave

An employee who is entitled to and takes maternity leave or adoption / fostering leave as set out above, will be granted an additional four weeks contiguous full pay leave, separate from other forms of leave. If the employee so requests payment may be made over eight weeks contiguous to a payment made under sub-clause 5.8.1.2. The provisions of sub-clause 5.8.1.3 will be available to the employee.

5.8.4 Paid partner leave

5.8.4.1 An employee who is not entitled to paid Maternity Leave or Adoption / Fostering leave is entitled to two weeks of paid partner Leave on the occasion of their spouse or de-facto partner giving birth, or upon the occasion of their adopting or permanently fostering a child.

5.9 Unpaid Parental Leave

5.9.1 Ongoing employees are entitled to leave of absence without pay for a maximum of 52 weeks to care for their new child. The leave is to be taken during a period of 66 weeks commencing on the day of the birth of a child of the employee, or in the case of an adopted or permanently fostered child, on the day on which the employee assumes responsibility for the child.

5.9.2 Interaction with paid maternity, adoption and fostering leave: in aggregate, the maximum leave without pay for maternity and parental leave will not exceed 36 weeks.

5.9.3 A period of unpaid parental leave does not count as service for any purpose.

5.9.4 An employee may request his or her employer to agree to an extension of unpaid parental leave for the employee for a further period of up to 12 months immediately following the end of the available parental leave period.

5.10 Return to Work after Parental Leave

5.10.1 On ending parental, maternity, adoption or fostering leave, an employee is entitled to return to:

a) the employee's pre-parental/maternity/adoption/fostering leave duties; or

b) if those duties no longer exists – an available position for which the employee is qualified and suited at the same classification and pay as applied pre-parental/maternity leave. Where this is not practical, other duties will be sought, with the redeployment, reduction and redundancy provisions applying to any placement.

5.10.2 For the purposes of this clause, duties means those performed:

- a) if the employee was moved to safe duties because of the pregnancy – immediately before the move; or
- b) if the employee began working part-time because of the pregnancy – immediately before the part-time employment began; or
- c) otherwise – immediately before the employee commenced maternity, parental, adoption or fostering leave.

5.11 Defence Reservist Leave

5.11.1 An employee may be granted leave (with or without pay) to enable the employee to fulfil Australian Defence Force (ADF) Reserve and Continuous Full Time Service (CFTS) or Cadet Force obligations.

Note: The entitlement to leave for Reserve Service is prescribed under the Defence Reserve Service (Protection) Act 2001.

5.11.2 An employee is entitled to ADF Reserve leave with pay, for up to four weeks during each financial year for the purpose of fulfilling service in the ADF Reserve. These purposes include training and operational duty as required.

a) During the employee's first year of ADF Reserve service, a further two weeks paid leave may be granted to facilitate participation in additional ADF Reserve training, including induction requirements.

b) With the exception of the additional two weeks in the first year of service, leave can be accumulated and taken over a period of two years, to enable the employee to undertake training as a member of the ADF Reserves.

c) Employees are not required to pay their tax free ADF Reserve salary to the Commission in any circumstances.

5.11.3 An employee who is an officer or instructor of cadets in a Cadet Force may be granted paid leave of up to three weeks each financial year to perform duties as an officer or instructor of Cadets. For these purposes 'Cadet Force' means the Australian Navy Cadets, Australian Army Cadets, or the Australian Air Force Cadets.

5.11.4 Defence Reserve leave counts as service for all purposes, except for unpaid leave to undertake Continuous Full Time Service (CFTS). Unpaid leave for the purpose of CFTS counts for all purposes except Annual leave.

5.11.5 Eligible employees may also apply for Annual leave, long service leave, leave without pay, top-up pay or they may use flextime or make up time for the purpose of fulfilling ADF Reserve, CFTS or Cadet Force obligations.

5.11.6 Employees are to notify supervisors at the earliest opportunity once the dates for ADF Reserve, CFTS or Cadet Force activities are known and/or changed.

5.12 Other Leave

5.12.1 In addition to the other categories of leave covered in this chapter, the Chairman may grant leave with pay (full or part) or without pay to an employee where it is considered to be in the interest of the Commission.

5.12.2 Leave granted with pay will count as service for all purposes. Leave granted without pay will not count as service for any purpose, unless otherwise determined by the Chairman

5.12.3 Examples of events that this leave type may be granted for include:

a) for bereavement (additional to that provided for in clause 5.6);

b) to engage in an eligible community service activity as prescribed by *the Act* including:

(i) jury service (including attendance for the purpose of jury selection) that is required by or under a law of the Commonwealth or of a State or Territory; or

(ii) carrying out a voluntary emergency management activity (including leave for regular training, all emergency services responses, reasonable recovery time, reasonable travel time, and ceremonial duties); or

(iii) an activity prescribed in regulations;

c) to undertake a course of study which has relevance to the work of the Commission;

d) to deal with the effects of a disaster significantly affecting the employee;

e) to accompany a partner on a temporary posting;

f) to engage in employment in the interest of the Commission;

- g) to engage in employment in not-for-profit organisations;
- h) to prepare or give evidence on behalf of the Commonwealth;
- i) to attend as an accredited official or competitor for Australia in an approved international sporting event;
- j) for ceremonial or cultural purposes (including to an employee of Aboriginal or Torres Strait Islander descent for NAIDOC activities);
- k) other purposes where other types of leave have been exhausted; and
- l) War Service sick leave.

5.12.4 Where Commission policies or practices already exist in relation to leave provisions the continuing arrangements will be no less favourable to the employee than those applying in those policies at the date of lodgement of this Agreement.

5.13 Public Holidays

5.13.1 Full-time employees will observe the following public holidays:

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

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

- 5.13.3 The Agency Head and an employee may agree on the substitution of a day or part day that would otherwise be a public holiday, having regard to operational requirements.
- 5.13.4 An employee, who is absent on a day or part-day that is a public holiday in the place where the employee is based for work purposes, is entitled to be paid for the part or full day absence as if that day or part-day was not a public holiday, except where that person would not normally have worked on that day.
- 5.13.5 Where a public holiday falls during a period when an employee is absent on leave (other than Annual or paid Personal/carers leave) there is no entitlement to receive payment as a public holiday. Payment for that day would be in accordance with the entitlement for that form of leave (e.g. if on long service leave on half pay, payment is on half pay).
- 5.13.6 Public holidays, during annual leave or personal leave, are not deducted from annual leave credits or personal leave credits.
- 5.13.7 No payment is made for public holidays occurring during leave without pay.
- 5.13.8 Part-time employees will observe only those public holidays which fall on their designated days of work.

5.14 Christmas Close-Down

- 5.14.1 The Commission will close its normal operations from close of business on the last working day before Christmas, with business resuming on the first working day after New Year's Day.
- 5.14.2 Employees will be provided with time off for the working days between Christmas and New Year's Day and will be paid in accordance with their ordinary hours of work. If particular employees are required to attend for duty during those days, for urgent work purposes, they will be entitled to an extra two days in lieu as soon as work commitments allow. Where an employee is absent on long service leave, payment for the Christmas closedown provision will be in accordance with the entitlement for that form of leave, (e.g. if on long service leave half pay, payment is on half pay) .
- 5.14.3 There will be no deduction from annual or personal/carer's leave credits for the closedown days.

5.14.4 In recognition of the additional leave over the Christmas – New Year period, employees will work an additional nine minutes per day averaged during the year.

5.14.5 An employee who is medically unfit for duty for one day or longer while on Christmas closedown and who produces satisfactory medical evidence may apply for personal leave instead and have the Christmas closedown leave re-credited.

5.15 Unauthorised Absence

5.15.1 Where an employee is absent from duty without approval, all pay and other benefits provided under this Agreement will cease to be available until the employee resumes duty or is granted leave.

6 Studies Assistance

- 6.1 The Commission recognises that leave with pay (full or part) or without pay for study purposes can benefit both the individual through their career development and the Commission through skill transfer. The Chairman will favourably consider such leave applications where these are shown to be of mutual benefit.
- 6.2 The terms and conditions relating to the overseas development award, post-graduate study awards and studies assistance will apply as outlined in the relevant policy documents.
- 6.3 An employee who is not satisfied with the process or outcome of their study leave application has recourse to the Commission's Review of Actions policy.

7 Redeployment, Retirement and Redundancy Provisions

7.1 Principles

7.1.1 Redeployment, retirement and redundancy provisions apply in excess staffing situations. For the purposes of this clause, an employee is an 'excess employee' if:

a) the employee is included in a class of employees employed in the Commission, which class comprises a greater number of employees than required for the efficient and economical operation of the Commission; or

b) the employee is surplus to requirements due to technological change, other changes in work methods, or changes in organisation or functions of the Commission; or

c) where the duties usually performed by the employee are to be performed at a different locality and the employee is not willing to perform duties at that locality, but does not include an employee on probation, or non-ongoing employees.

7.1.2 If the Chairman identifies an employee as excess, the Chairman will inform the employee and hold discussions with the employee and any representative nominated by the employee. The following options will be explored:

a) Redeployment at the employee's current classification level within the Productivity Commission or the APS. The Commission may use the services of an external placement organisation to assist in the process of redeployment and the provision of retraining services.

b) Reduction on redeployment pursuant to clause 7.5.4 of this Agreement.

c) Transfer of another employee to the position occupied by the excess employee (a 'swap') and the former employee immediately accepting voluntary retrenchment in accordance with clause 7.2. This clause is subject to the Chairman being satisfied that the excess employee can, with reasonable training, effectively replace the employee accepting voluntary retrenchment.

d) Termination of the employee's employment (referred to elsewhere in this clause as redundancy) under section 29 of the *Public Service Act 1999*,

with entitlements pursuant to clause 7.3 of this Agreement. An offer of redundancy can be made to an excess employee during a redeployment period.

7.2 Voluntary Retrenchment

- 7.2.1 Where an excess employee wants an offer of voluntary retrenchment, the Chairman may, after assessing the redeployment prospects of that employee, make one written offer of voluntary retrenchment.
- 7.2.2 The employee will have one month in which to advise the Chairman of their acceptance of the offer, prior to the issue of a notice of termination under s.29 of the *Public Service Act 1999*.
- 7.2.3 To enable an excess employee to make an informed decision, the employee will have access to information on:
- a) the sums of money that would be payable by way of severance pay, pay-in-lieu of notice and leave credits;
 - b) the amount of accumulated superannuation contributions;
 - c) the options open to the employee concerning superannuation; and
 - d) the taxation treatment of the various payments.
- 7.2.4 Excess employees will be provided with financial assistance of up to \$850 for the purpose of seeking financial information.
- 7.2.5 The period of notice of termination will be four weeks, except for excess employees over 45 years of age with at least five years continuous service, when the notice period will be five weeks.
- 7.2.6 Where an employee's employment is terminated at the beginning of, or within, the notice period, the employee will receive payment-in-lieu of notice as set out in the *the Act* for the unexpired portion of the notice period.

7.3 Redundancy Benefit

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

7.4 Salary

- 7.4.1 For the purpose of calculating a termination payment, salary will be the excess employee's :
- current salary including allowances paid in the nature of salary, other than higher duties allowance; or
 - if the excess employee has been receiving higher duties allowance for a period of more than 12 months, that current salary including any other allowance paid in the nature of salary.

7.5 Retention Periods

- 7.5.1 An excess employee who does not agree to be retrenched with the payment of a redundancy benefit will be entitled to the following period of retention:
- a) 56 weeks where the employee has 20 years or more service or is over 45 years of age; or

b) 30 weeks for all other employees.

7.5.2 During the retention period, every effort will continue to be made to find alternative employment for the excess employee. Upon request, the employee will be referred to a commercial outplacement Commission with a \$1,700 limit on costs.

7.5.3 If an employee is entitled to a redundancy payment under the NES, the retention period at clause 7.51 will be reduced by the employee's redundancy pay entitlement under the NES on termination, calculated as at the expiration of the retention period (as adjusted by this clause).

7.5.4 Where the Chairman is satisfied that there is insufficient productive work available for the employee within the Commission during the remainder of the retention period and that there is no reasonable redeployment prospects in the APS:

a) the Chairman may, with the agreement of the employee, terminate the employment under s.29 of the PS Act; and

b) upon termination, the employee will be paid a lump sum comprising:

i. the balance of the retention period (as shortened for the National Employment Standards under sub-clause 7.5.2) and this payment will be taken to include the payment in lieu of notice of termination of employment, plus

ii. the employee's NES entitlement to redundancy pay.

7.6 Involuntary Termination

7.6.1 The Chairman may involuntarily terminate the employment of an excess employee at the end of the retention period.

7.6.2 The notice periods for involuntary termination of employment are the same as those specified in clause 7.2.5, and will be, as far as practicable, concurrent with the retention period.

7.6.3 The employment of an excess employee will not be terminated involuntarily without first having been made an offer of voluntary retrenchment.

7.7 Income Maintenance

- 7.7.1 Where an excess employee is reduced in classification, the employee will be eligible for income maintenance payments for the balance of the applicable retention period set out in clause 7.5.
- 7.7.2 Income maintenance payments are the amounts payable to maintain the level of salary and allowances being paid to the excess employee on the date the employee is notified as an excess employee or the date immediately prior to being reduced in classification, whichever is the later.

7.8 Review of Decisions to Terminate Employment

- 7.8.1 The sole and exhaustive rights and remedies of an employee in relation to termination of employment are those that the employee enjoys under:
- Part 3-2 of the *Fair Work Act 2009*;
 - other Commonwealth laws (including the Constitution); and
 - at common law.
- 7.8.2 Termination of, or a decision to terminate employment, cannot be reviewed under the dispute prevention and settlement procedures in clause 1.10 of this Agreement.
- Nothing in this Agreement prevents the Chairman from terminating the employment of an employee for serious misconduct subject to compliance with the procedures established by the Chairman for determining whether an employee has breached the Code of Conduct under section 15 of the *Public Service Act 1999*.

APPENDICES

A Salary Table

Commission broadband structure	APS classifications	Salary ranges pre lodgement	APS minimum threshold	4.0% increase from commencement	2.5% increase from first pay financial year 2012-13	2.5% increase from first pay financial year 2013-14
SL1	APS 2 min	32960	43100*	44824	45945	47094
	APS 2 max	49821		51814	53109	54437
	APS 3 min	48060	49100*	51064	52341	53650
	APS 3 max	60248		62658	64224	65830
	APS 4 min	55613	55300	57838	59284	60766
	APS 4 max	67895		70611	72376	74185
SL2	APS 5 min	62315	61600	64808	66428	68089
	APS 5 max	72413		75310	77193	79123
	APS 6 min	67779	67900*	70616	72381	74191
	APS 6 max	82840		86154	88308	90515
SL3	EL 1 min	84577	86000*	89440	91676	93968
	EL 1 max	108909		113265	116097	118999
SL4	EL 2 min	104275	102200	108446	111157	113936
	EL 2 max	130810		136042	139443	142929
	discretionary	137874		143389	146974	150648

*signifies a new APS minimum salary threshold has been applied

B Underperformance

1. After a reasonable period of counselling and coaching, an employee whose performance appears to be unsatisfactory will be issued with a formal warning. The formal warning will set out:
 - a) details of the required standards for the duties the employee has been assigned and how the employee has failed to meet those standards
 - b) details of how the employee's performance will be assessed
 - c) the possible consequences if the employee has not attained and sustained the required standards by the end of the assessment period.
2. A person nominated by the Chairman will then conduct a fair and impartial assessment of the employee's work performance over an agreed period of time (this should normally be not less than one month and not longer than three months). The employee will be provided with feedback on his or her performance during the assessment period.
3. At the end of the assessment period, if the employee's work performance is assessed as meeting the required standard, the assessor will report this finding to the decision-maker. If the decision-maker agrees with the finding, the employee will be advised of this and no further action need be taken under these provisions.
4. If the employee is assessed as not having met the required standard, the assessor will report this finding to the decision-maker. The decision-maker will advise the employee of the finding and of the action that he or she proposes to take, which may include one or more of the following:
 - a) termination of employment
 - b) reduction in classification and remuneration
 - c) reassignment of duties
 - d) some other appropriate action.

5. The employee will be given seven days from the receipt of the advice to respond to the findings and the action proposed by the decision-maker.
6. The decision-maker, having taken into account the assessor's findings and the employee's response, will advise the employee in writing of his or her decision and the action to be taken.
7. If an employee is dissatisfied with any action in relation to their employment, they may seek a review under the terms of the Commission's Review Of Actions policy.
8. These procedures are not to be used in cases of misconduct, which will be dealt with under the provisions of the *Public Service Act* and/or the *Fair Work Act*, or in cases of invalidity, which will be handled under the *Safety Rehabilitation and Compensation Act* and/or the terms of the relevant superannuation legislation.

C Workplace Delegates

The role of union workplace delegates and other elected union representatives is to be respected and facilitated.

Agencies and union workplace delegates must deal with each other in good faith.

In discharging their representative roles at the workplace level, the rights of union workplace delegates include but are not limited to:

- the right to be treated fairly and to perform their role as workplace delegates without any discrimination in their employment;
- recognition by the Commission that endorsed workplace delegates speak on behalf of their members in the workplace;
- the right to participate in collective bargaining on behalf of those whom they represent, as per the Fair Work Act;
- the right to reasonable paid time to provide information to and seek feedback from employees in the workplace on workplace relations matters at the Commission during normal working hours;
- the right to email employees in their workplace to provide information and seek feedback, subject to individual employees exercising a right to 'opt out';
- undertaking their role and having union representation on an agency's workplace relations consultative committee;
- reasonable access to Commission facilities (including telephone, facsimile, photocopying, internet and email facilities, meeting rooms, lunch rooms, tea rooms and other areas where employees meet) for the purpose of carrying out work as a delegate and consulting with members and other interested employees and the union, subject to Commission policies and protocols;
- the right to address new employees about union membership at the time they enter employment;
- the right to consultation, and access to relevant information about the workplace and the agency; and
- the right to reasonable paid time to represent the interests of members to the employer and industrial tribunals.

In discharging any roles that may involve undertaking union business, the rights of union workplace delegates include but are not limited to:

- reasonable paid time during normal working hours to consult with other delegates and union officials in the workplace, and receive advice and assistance from union staff and officials in the workplace;
- reasonable access to appropriate training in workplace relations matters including training provided by a union;
- reasonable paid time off to represent union members in the Commission at relevant union forums.

In exercising their rights, workplace delegates and unions will consider operational issues, departmental policies and guidelines and the likely affect on the efficient operation of the Commission and the provision of services by the Commonwealth.

For the avoidance of doubt, elected union representatives include APS employees elected to represent union members in representative forums, including, for example, CPSU Section Secretaries, Governing Councillors and Section Councillors, and APESMA Government Division Committee members.