



FAIR WORK
AUSTRALIA

DECISION

Fair Work Act 2009

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

National Transport Commission

(AG2011/9732)

NATIONAL TRANSPORT COMMISSION ENTERPRISE AGREEMENT 2011—2014

Commonwealth employment

COMMISSIONER SMITH

MELBOURNE, 6 JULY 2011

National Transport Commission Enterprise Agreement 2011—2014.

[1] An application has been made for approval of an enterprise agreement known as the *National Transport 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 National Transport Commission. The agreement is a single-enterprise agreement.

[2] The applicant has provided undertakings. A copy of the undertakings, as recorded in the transcript of proceedings conducted on 29 June 2011, are attached in Annexure A. I am satisfied that the undertakings meet the requirements as provided for by s.190 of the Act.

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

[4] CPSU, the Community and Public Sector Union and The Association of Professional Engineers, Scientists and Managers, Australia, being bargaining representatives for the Agreement, have given notice under s.183 of the Act that they want the Agreement to cover them. In accordance with s.201(2) of the Act I note that the Agreement covers these organisations.

[5] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 6 July 2011. The nominal expiry date of the Agreement is 31 March 2014.



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ANNEXURE A



FAIR WORK
AUSTRALIA

TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

55398-1

COMMISSIONER SMITH

AG2011/9732

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

**Application by National Transport Commission
(AG2011/9732)**

Melbourne

4.01PM, WEDNESDAY, 29 JUNE 2011

PN1

THE COMMISSIONER: Can I take appearances, please? Mr Ritchie?

PN2

MR M. RITCHIE: Ritchie, initial M, from Victorian Employers Chamber of Commerce and Industry, seeking leave to appear for National Transport Commission.

PN3

THE COMMISSIONER: Thanks, Mr Ritchie.

PN4

MR B. KARAMBATSOS: Bill Karambatsos, appearing for the Community and Public Sector Union.

PN5

THE COMMISSIONER: Thank you.

PN6

MS S. OZDEMIR: Ozdemir, S, appearing for APESMA and APESMA members of NTC.

PN7

THE COMMISSIONER: Thank you. You're appearing Ms McRae?

PN8

MS C. McRAE: Clare McRae from the NTC, the CPSU bargaining team.

PN9

THE COMMISSIONER: Thank you very much. Now, in this matter I raised with the parties two concerns just for discussion. They related to clause 9.2(c) and clause 9.8(f). As a result of those discussions, there is an undertaking that's going to be given, Mr Ritchie?

PN10

MR RITCHIE: Thank you, Commissioner. Regarding 9.2(c), the employer proposes the following undertaking to accompany the National Transport Commission enterprise agreement 2011, 2014, in order to achieve approval of the proposed agreement in accordance with section 186 of the Fair Work Act 2009.

PN11

Regarding clause 9.2(c) which reads:

PN12

The band-width of hours in which an employee may work their ordinary hours are 7.30 am to 7 pm, Monday to Friday, or as otherwise agreed on an individual basis between the direct manager and employee.

PN13

NTC undertakes to substitute that clause with the following words:

PN14

The band-width of hours in which an employee may work their ordinary hours are 7.30 am to 7 pm, Monday to Friday.

PN15

THE COMMISSIONER: Thank you.

PN16

MR RITCHIE: The NTC recognises otherwise agreed arrangements under the formally voided clause can instead be arranged with an individual employee through the individual flexibility arrangements otherwise provided in clause 9 of the proposed agreement.

PN17

THE COMMISSIONER: Thank you.

PN18

MR RITCHIE: Secondly, for the other issue that you raised, Commissioner, which is 9.8(f) of the proposed agreement, NTC proposes to modify 9.8(e) of the agreement which currently reads:

PN19

No more than five days of time off in lieu may be accumulated at any given time and no more than 10 days of time off in lieu may be accumulated in a 12-month period unless approved by the chief operating officer.

PN20

In order to improve the operation of 9.8(e) and (f) of the proposed agreement, the employer proposes that 9.8(e) reads:

PN21

No more than five days of time off in lieu may be accumulated at any given time and no more than 10 days of time off in lieu may be accumulated in a 12-month period -

PN22

full stop.

PN23

THE COMMISSIONER: Thanks. Does anybody wish to say anything on those undertakings? Are they accepted?

PN24

MR KARAMBATSOS: Accepted.

PN25

MS McRAE: Accepted.

PN26

THE COMMISSIONER: Good. Thank you. I thank the parties for their assistance in the matter. I have read the proposed agreement. I understand that it took some time to make and that there were open and frank discussions, I think the euphemism is, for those negotiations. You have reached a hard-fought agreement which you're to be commended upon and I am satisfied that the agreement complies with the provisions of the Act and I approve the agreement as from today. Thank you for your attendance. The matter is adjourned.

<ADJOURNED INDEFINITELY

[4.05PM]



National Transport Commission

Enterprise Agreement

2011 - 2014

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

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1 PREAMBLE

1.1 Context

- (a) The National Transport Commission is a body corporate established by the National Transport Commission Act 2003 (the Act). The Act requires the NTC to develop, monitor and maintain uniform or nationally consistent regulatory and operational reforms relating to road transport, rail transport and intermodal transport. NTC reports to, and advises, the Australian Transport Council, which comprises Commonwealth, state and territory Ministers.
- (b) The NTC is funded by the Commonwealth, states and territories on a shared basis as set out in the Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport (IGA).
- (c) The NTC is reviewed according to the Act to recommend whether it should continue and whether its Act should be repealed or amended, which may include changes in the NTC's functions or operations.
- (d) Terms and conditions in this agreement have been agreed to by the NTC commissioners in accordance with section 44 of the Act.

1.2 Meaning of certain terms used in this Agreement

- (a) If a term that is used in this Agreement is not defined in this Agreement, but is defined in or under the Fair Work Act 2009 (Cth), it has that defined meaning.

Note: The National Employment Standards ("NES") are Divisions 3 to 12 of Part 2-2 of the Fair Work Act 2009 (Cth). Most of the definitions applying to those Standards are found in section 12 of the Fair Work Act 2009 (Cth).

- (b) In this Agreement, a reference to continuous service is a reference to continuous service as a direct employee of the NTC.

2 SCOPE

2.1 Title

This Agreement is to be referred to as the National Transport Commission Enterprise Agreement 2011 – 2014.

2.2 Period of operation

This Agreement shall reach its nominal expiry date on 31 March 2014.

2.3 Parties bound

This Agreement is made under Section 172 of the Fair Work Act 2009 (Cth) and will be binding on:

- (i) the National Transport Commission (NTC)
- (ii) employees who are employed in the classifications set out appendix A of this Agreement and employed by the NTC ("Employees")
- (iii) the Community and Public Sector Union (CPSU)
- (iv) the Association of Professional Engineers Scientists and Managers Australia (APESMA).

2.4 Relationships to awards, policies, procedures and guidelines

- (a) The NTC policies and procedures, as varied from time to time, which are relevant to matters contained within this Agreement, support this Agreement. To the extent of any inconsistency arising between the policies, procedures or guidelines, and the Agreement, the provisions of this Agreement will prevail.
- (b) Policies or procedures that support the operation of this agreement will only be made or varied by agreement between the parties.

- (c) Employee entitlements provided in this Agreement will not be undermined by changes to policies and procedures.
- (d) This agreement is comprehensive and sets out all terms and conditions of employment in the NTC. This agreement displaces the Australian Government Employment Conditions and Salaries Award 2003 and all other awards otherwise applicable.

2.5 Relationship to the NES

- (a) The NES apply as minimum entitlements and have effect subject to any term of this Agreement as permitted by section 55 of the Fair Work Act 2009 (Cth).
- (b) Where this Agreement has provisions which are contemplated by the NES, and the minimum entitlements in the NES as set out in the Fair Work Act 2009 (Cth) are more favourable to an Employee in a particular respect than those provisions, then the NES will prevail in that respect and the provisions dealing with that matter in this Agreement will have no effect in respect of that Employee. The provisions in the Agreement will otherwise prevail.

2.6 Agreement availability

- (a) Copies of this Agreement will be made available to employees and prospective employees at the time of an offer of employment, via either electronic or hard copy. The Agreement will also form part of the induction process for new employees.
- (b) Employees covered by the Agreement and managers supervising employees covered by the Agreement must be aware, and ensure understanding, of the relevant conditions and entitlements covered by this Agreement.

2.7 No further claims

A party to this 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.

3 OBJECTIVES OF THE AGREEMENT

- (a) Through this Agreement, the objectives of the NTC and its employees are to:
 - (i) maintain flexibility in the NTC processes, systems and structure to ensure that the NTC delivers the agreed outcomes of its annual work program and other matters as directed by the ATC
 - (ii) ensure that employees clearly understand their roles, responsibilities, entitlements and employment conditions
 - (iii) ensure that employees have adequate support, training and development to build and maintain the skills necessary for meeting current and emerging organisational priorities
 - (iv) make the NTC attractive to current and potential employees as a good place to work, including by fostering an appropriate work and life balance for employees
 - (v) strengthen cooperation and trust within the NTC through consultation, resolution of any disagreements, and fairness and transparency in decision making
 - (vi) provide the NTC employees with input into and an opportunity to influence organisational directions and matters affecting their working environment
 - (vii) manage people effectively, including regular and constructive feedback about performance and behaviour
 - (viii) comply with occupational health and safety standards and regulations and maintain a safe, harassment free workplace
 - (ix) continue to evaluate the NTC processes, systems and structure with a view to improve the way work is undertaken and managed.

4 PRODUCTIVITY SAVINGS

- (a) The parties agree that during the period of this Agreement they will work together to deliver the NTC's strategic plan, work programme and improve the NTC's effectiveness in:
 - (i) building and retaining its in-house skills and capability
 - (ii) developing as a centre of excellence in accordance with the NTC's strategic direction.
- (b) In addition, the NTC will seek to undertake its operations in an efficient manner

5 ACHIEVING RESULTS THROUGH PEOPLE

5.1 Duties

- (a) An employee's duties are set out in the Position Description provided upon appointment to their position. Duties may be changed from time to time, in consultation with affected employees, according to organisational needs. Employee performance plans consistent with Position Descriptions are to be developed in accordance with 5.5.
- (b) Employees are to report directly to the person specified in their Position Description (direct manager) or as advised in writing by the NTC.
- (c) A reference in this Agreement to a direct manager is a reference to the direct manager at the relevant time.
- (d) Employees, in carrying out their duties must be familiar with, and act at all times in accordance with, NTC values and with the NTC Code of Conduct, the NTC's Health and Safety Management Arrangements, and all other NTC policies and procedures.

5.2 Recognition and reward

NTC recognition and reward schemes will operate to encourage and reward achievements by individuals and teams, and strengthen commitment to the values and objectives of the NTC by encouraging behaviours which align with the NTC's High Performance Culture or the agreed performance management system.

5.3 Managing individual performance

Individual performance is managed in accordance with the system outlined in this agreement. The NTC's Performance Management Guidelines set out the supporting processes for performance management. The objectives of the NTC performance management system are to:

- (i) support the achievement of organisational objectives
- (ii) recognise and reward employees for their performance and achievements at work
- (iii) support the ongoing learning needs of employees
- (iv) effectively identify and manage underperformance
- (v) provide a "no surprises" transparent and consistent process for rating performance of employees
- (vi) provide a tool for driving cultural change
- (vii) encourage reciprocal honest and constructive dialogue about performance and development between employees and their managers
- (viii) facilitate and support the professional development of employees for their current and future roles consistent with the strategic direction of the NTC.

5.4 The performance planning and review process

- (a) At the commencement of each financial year, a performance plan is developed covering the competencies and accountabilities for each employee. The plan is to be agreed between the employee and their direct manager. It is expected that the performance plan will be developed by the end of August of each year.

- (b) An agreed performance plan is to be completed within two weeks of the employee commencing with the NTC, or commencing a new Position Description.
- (c) Each employee's performance plan will recognise and provide support for individual learning and development needs, consistent with operational responsibilities.
- (d) The performance plan will be designed so that the "exceeds base competencies" category is achievable by all staff.
- (e) It is expected that the vast majority of staff will achieve the requirements of the performance plan resulting in "exceed base competencies"
- (f) A formal mid-year performance review and report is completed in December/January of each year. The mid-year review provides an opportunity for the employee and their direct manager:
 - (i) to discuss the employee's performance, and
 - (ii) to agree revised performance targets and development needs in response to changing circumstances, if necessary.
- (g) An annual performance review is conducted in accordance with the agreed performance plan by the end of June of each year. A review report is prepared by the direct manager, and the employee may provide written comments on the report before it is signed.
- (h) Throughout the performance planning and review process managers and employees will engage in honest and constructive feedback and identify any performance matters as they arise ensuring there are "no surprises" when completing formal reviews in (d) and (e).
- (i) Reviews should be considered within the context of the employee's performance across the review period.

5.5 Skills and knowledge based development

An employee's direct manager, following discussion with the employee, will recommend skills or knowledge based development where it is identified as part of an employee's professional development plan or where it is required for the employee to successfully undertake their role. Such development must relate to an employee's current or future work tasks, and may include mentoring or coaching and approved study as set out in clause 11.7 (a).

5.6 Performance categories and ratings

- (a) The following performance categories will be used to assess an employee's performance:
 - (i) Does not meet base competencies
 - (ii) Meets base competencies
 - (iii) Exceeds base competencies
 - (iv) Significantly exceeds base competencies
- (b) Following the annual performance review, the direct manager will rate the employee's performance as achieving one of the categories above. The performance rating reflects the direct manager's assessment of an employee's overall level of achievement during the annual review period, based on the agreed performance plan. The ratings recognise and reward growth and provide employees with certainty about how they progress within their salary band.
- (c) It is expected that vast majority of staff will "exceed base competencies".
- (d) This clause is subject to the operation of clause 5.8.

5.7 Performance based salary increases

- (a) The following salary increases will be applied on 1 July each year over the life of this agreement, based on performance over the previous 12 month period:

Performance category	Performance based increase
Does not meet base competencies	0%
Meets base competencies	1%
Exceeds base competencies	2.5%
Significantly exceeds base competencies	4% to 6%

- (b) Employees who have been employed by NTC for less than 12 months will have performance based salary increases paid on a pro rata basis.
- (c) An employee whose salary has reached the top of the salary range for their classification will have their performance based increase paid as a bonus payment. The amount of the bonus payment will be equal to the performance based increase outlined in (a).
- (d) Where an employee's performance based salary increase has the effect of exceeding the salary range for the classification, the employee will receive the performance based increased up to the limit of the range. Any residual increase or future increases will be paid in accordance with (c).

5.8 Transition from existing performance management system

- (a) A new performance management system ('the new system') based on a competency framework will be developed and agreed to by the parties to this Agreement. To meet this commitment, the parties have agreed to commence discussions immediately after the commencement of the Agreement and to have an agreed system to replace the current performance management framework prior to 31 August 2011.
- (b) The parties are committed to replacing the performance management system with an objective, consistent, transparent, fair and equitable performance management system. The following principles will be used by the parties when developing the new system:
 - (i) The new system will reflect existing position descriptions and will not make the performance requirements more onerous than the current performance management system.
 - (ii) The new system will not reduce an employee's salary or restrict access to salary progression.
 - (iii) The new system will provide transparency of assessment and certainty in relation to what is required to achieve salary progression within a band.
 - (iv) The parties are committed to delivering the new system through ongoing good faith bargaining.
 - (v) The current performance management system will apply until the development and implementation of the new performance management system.
 - (vi) Transition to a new system will be through a process agreed between the parties.
- (c) The new system will commence on 1 September 2011. During the first ten months of operation, adjustments may be made to the system in consultation with employees and by agreement with the parties to this Agreement to improve its effectiveness. By 1 July 2012, the finalised system will be fully implemented.
- (d) The performance management system that is in place at the time of signing this agreement will continue until 31 August 2011. The performance categories and any associated salary increases under this Agreement will be aligned to the existing performance categories as follows:

Existing performance category	Performance category under Agreement	Performance based increase
Requires development	Does not meet base competencies	0%
	Meets base competencies	
Effective	Exceeds base competencies	2.5%
Exceeds expectations	Significantly exceeds base competencies	4% to 6%

- (e) Performance based salary increases will be paid in full for employees employed by the NTC for those 12 months, regardless of the duration of time that the current system and the new system are in operation for. That is employees will not be impacted by the change over.

5.9 Managing underperformance

- (a) The NTC is committed to the effective performance management of all employees. When managing underperformance the NTC will endeavour to assist staff to meet the required standards.
- (b) The NTC's Performance Management Guidelines set out details of how individual underperformance is managed.
- (c) Managers should not wait until the mid-year or end-year performance reviews to identify and manage underperformance. Early action should be taken to overcome obstacles or and provide support and development to improve performance. There is an obligation on both manager and employee to address performance issues which may include utilising training, mentoring and appropriate EAP services.
- (d) Where an employee's work performance is rated as "requires development" (at any time) and the poor performance is to be managed, the direct manager will advise the employee in writing that they consider the work performance as "requires development" and include details of:
- (i) the required competencies for the employee's duties and how the employee has failed to meet them
 - (ii) how the employee's performance will be assessed
 - (iii) an action plan that details the steps the employee must take in order to meet their performance plan and includes the accomplishment of stated accountabilities and behaviours
 - (iv) The possible consequences if the employee has not attained and sustained the required competencies by the end of an assessment period.
- (e) The employee will have 7 days to comment on the written notice.
- (f) The employee's performance will then be assessed at the interim review period, which occurs at 6 weeks, and at a final review period, which occurs at 13 weeks. Consideration should be given to the nature of the duties undertaken by the employee and any other relevant circumstances. During this assessment period the direct manager will provide the employee with weekly feedback on their performance.
- (g) If an employee is unable to demonstrate a capacity to meet the action plan at the interim review period the assessment period may be terminated.
- (h) At the end of the assessment period:
- (i) if the employee's performance is assessed as "meets base competencies", the normal performance management process would resume. If the employee's work performance is rated as "requires development" again at a later time, an abbreviated process would be undertaken, such as assessment over a shorter period of time
 - (ii) if the employee's performance is not assessed as "meets base competencies", the direct manager must provide a written report to the employee and the CEO

on the matter, together with any written comments the employee wishes to make in respect of the report.

- (i) If a report is provided to the CEO in accordance with clause (h)(ii), the CEO may issue a notice of intention to:
 - (i) terminate the employment of the employee
 - (ii) assign the employee to other duties, either at the same level or a lower level within the NTC if it is determined that the employee is capable of performing those duties, or
 - (iii) take other action that may be appropriate.
- (j) The employee will have 7 days to make representations why the action proposed should not be taken.
- (k) At the end of the 7 days, the CEO, having considered any representations, may issue a notice of his decision about the action taken in relation to the employee.

5.10 Recruitment and selection

- (a) The NTC is committed to providing ongoing permanent employment to staff for work of an ongoing nature. The NTC will also second employees and utilise temporary or contract employment to maintain flexibility and be responsive to organisational objectives.
- (b) Where a vacancy arises, the NTC will initially seek to fill the position internally where there is a suitably skilled internal candidate. If no suitable internal candidate meets the selection criteria the position may be filled by an external candidate.
- (c) Appointments to advertised positions will be based upon merit. The assessment of merit in relation to the performance of the duties of a particular position will be based on the key selection criteria for the position, including academic, technical or other qualification considered necessary for the position.
- (d) Recruitment and selection practices must be transparent and free from patronage, favouritism or unjustified discrimination.
- (e) The NTC will ensure new employees will go through an induction process within the first four weeks of employment.

5.11 Probationary period

- (a) An employee must serve a probationary period of 3 months during which time either the employee or the NTC may elect to terminate their employment by giving 2 weeks notice.
- (b) The purpose of the probationary period is for the NTC to evaluate the employee's performance against the requirements of the position as agreed between the employee and their direct manager, and for the employee to assess their satisfaction with the position.
- (c) After two months of employment, the direct manager and employee will formally review the employee's performance against the performance plan agreement, and the direct manager will provide a report on their assessment before the end of the probationary period.

5.12 Confidentiality

- (a) For the purposes of this clause, confidential information means trade secrets or other confidential know-how or information that an employee becomes aware of, or generates in the course of, or in connection with, their employment at the NTC.
- (b) Employees must not disclose any confidential information to any other person except as required in the course of, or in connection with, carrying out their duties, or as required by law. If an employee discloses confidential information as part of his or her duties, they must make it clear to the person to whom the disclosure is made that the information must be kept confidential.

5.13 Outside or alternate employment

- (a) Employees should not engage in any employment which may be a conflict of interest with their role at the NTC.
- (b) Where there may be a potential conflict of interest, the employee should seek the written permission of the Chief Executive Officer prior to engaging in that employment.

5.14 Legal representation

If an employee is required to attend a court, tribunal or other similar forum, as part of the normal course of their duties for the NTC, the employee will be provided with the appropriate legal representation.

6 SAFETY

6.1 Occupational Health and Safety and Wellbeing

- (a) The NTC and its employees agree that they will strive to promote and maintain a safe workplace and work environment, one that is free from bullying, harassment, excessive workload and unsafe hours, including but not limited to providing relevant awareness and training.
- (b) The NTC and its employees will continue to comply with, and will strive to exceed, the statutory health and safety standards and regulations, including processes for consultation with employees on occupational health and safety (OH&S) matters. The applicable legislation is the Occupational Health and Safety Act 1991 (Cth) or any other subsequent Commonwealth safety legislation applicable to the NTC and its employees.
- (c) OH&S and protection from bullying and harassment are to be facilitated by appropriate measures including Health and Safety Management Arrangements and OH&S policies, with any disputes being dealt with under clause 13. The NTC will:
 - (i) monitor OH&S and wellbeing issues and have a strategy to identify and implement activities which address relevant OH&S matters
 - (ii) make available an employee assistance program
 - (iii) make available annual influenza vaccinations to all employees.
- (d) OH&S representatives may opt to consult with the staff consultative forum on OH&S issues.
- (e) The NTC will continue to provide appropriate numbers of Fire and Building Wardens, Harassment Officers, First Aid Officers and first aid kits.

7 A FAIR AND FLEXIBLE WORKPLACE

7.1 Work/life balance

- (a) The NTC recognises the need for employees to have an appropriate balance between work and other commitments.
- (b) The NTC recognises the importance of a flexible working environment which takes into account the wide range of individual employee needs and circumstances, including, but not limited to, mature age workers, employees with caring responsibilities, parents and young people.

7.2 Diversity

- (a) The NTC is committed to promoting and supporting workplace diversity and to creating an environment that values and utilises the contributions of people with different backgrounds, experiences and perspectives.
- (b) The NTC and its employees commit to assist and involve Indigenous people in the workplace by providing a sensitive and supportive work environment.

7.3 Retaining employees

The NTC recognises the value of retaining skilled and experienced employees, including mature aged employees, and commits to encouraging those who are making a valuable contribution to stay longer in the workforce.

7.4 Carers' responsibilities

The NTC recognises that employees may have caring responsibilities, including for children or for family members who are elderly, disabled or have a chronic illness. The NTC will have regard to achieving a balance between work and caring responsibilities in developing and implementing flexible arrangements in the workplace.

7.5 Freedom of association

The NTC recognises the freedom of association provisions of the Fair Work Act 2009 (Cth). It is recognised that employees may choose to be represented by a union. Employees will not be disadvantaged or discriminated against in respect of their employment on the basis that they choose to either belong to, or not belong to, a union.

8 EMPLOYEE CONSULTATION

8.1 Consultation

- (a) Consultation is a process of seeking information prior to making decisions. Effective consultation involves mutual trust and respect and can identify opportunities, assist decision making and help ensure any new ideas work effectively in practice.
- (b) The NTC is committed to communicating and consulting with employees and where they chose, their representatives, genuinely seeking their contribution to the decision making process and providing feedback on that contribution.
- (c) Prior to making any definite decision which will have a material impact on employees or their working environment, the NTC will notify employees and provide employees with relevant information and the opportunity to discuss any proposed changes and their likely impact. The NTC will give employees appropriate opportunity to consider and respond to the issues raised and will give genuine consideration to employee responses in making a final decision.
- (d) The NTC will consult with employees utilising a number of mechanisms, including written communications, the intranet, staff meetings and the Staff Consultative Forum.
- (e) It is acknowledged that there may be circumstances where the NTC is not able to consult with employees, for example, government imposed changes.
- (f) An individual employee's choice to be represented will be respected by all parties in the workplace.

8.2 Staff Consultative Forum

- (a) A Staff Consultative Forum will be established with representation including:
 - (i) the CEO or nominated representative from the Executive Group
 - (ii) one representative from the senior manager level
 - (iii) four representatives—one manager level, one policy analyst, one senior policy analyst level, and one corporate support employee—elected by employees covered by this Agreement.
- (b) NTC will arrange for the Staff Consultative Forum to meet on a quarterly basis, and at any other time if a significant change is anticipated. The issues to be considered by the Forum will include:
 - (i) significant changes in the operations of the NTC which are likely to have an impact on employees or their working environment
 - (ii) any matters which impact on employees' terms and conditions and working environment
 - (iii) the operation of this Agreement

- (iv) the operation of, or changes to, policies, procedures and guidelines which support this Agreement.
- (c) Officials or representatives of unions whose members are covered by this Agreement will be able to attend meetings of the Staff Consultative Forum.
- (d) Access to appropriate facilities (including reasonable time, communication systems, office equipment and notice boards) will be available to elected members of, or those presenting to, the Staff Consultative Forum for the purpose of facilitating such consultation and representation.

8.3 Policies, procedures and guidelines

The NTC will consult appropriately with employees prior to developing new, or changing any existing, policies, procedures and guidelines.

8.4 Major change

- (a) This term applies if:
 - (i) the employer has made a definite decision to introduce a major change to production, program, organisation, structure, or technology in relation to its enterprise, and
 - (ii) the change is likely to have a significant effect on employees of the enterprise.
- (b) The employer must notify the relevant employees of the decision to introduce the major change.
- (c) The relevant employees may appoint a representative for the purposes of the procedures in this term.
- (d) The employer must recognise the representative if:
 - (i) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation, and
 - (ii) the employee or employees advise the employer of the identity of the representative.
- (e) As soon as practicable after making its decision, the employer must:
 - (i) discuss with the relevant employees:
 - a. the introduction of the change, and
 - b. the effect the change is likely to have on the employees, and
 - c. measures the employer is taking to avert or mitigate the adverse effect of the change on the employees, and
 - (ii) for the purposes of the discussion—provide, in writing, to the relevant employees:
 - a. all relevant information about the change including the nature of the change proposed; and
 - b. information about the expected effects of the change on the employees; and
 - c. any other matters likely to affect the employees.
- (f) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (g) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- (h) If a term in the enterprise agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in subclauses (b), (c) and (e) are taken not to apply.
- (i) In this term, a major change is likely to have a significant effect on employees if it results in:
 - (i) the termination of the employment of employees, or

- (ii) major change to the composition, operation or size of the employer's workforce or to the skills required of employees, or
 - (iii) the elimination or diminution of job opportunities (including opportunities for promotion or tenure), or
 - (iv) the alteration of hours of work, or
 - (v) the need to retrain employees, or
 - (vi) the need to relocate employees to another workplace, or
 - (vii) the restructuring of jobs.
- (j) In this term, relevant employees means the employees who may be affected by the major change.

9 WORKING HOURS

9.1 Principles

Managers, supervisors and employees have a mutual responsibility for managing their working hours and patterns, including leave planning, and maintaining a work/life balance. The provisions below are designed to be sufficiently flexible for the NTC to meet its business requirements and the employment arrangements set out in this Agreement.

9.2 Hours of operation and bandwidth

- (a) The standard day is defined as being 7 hours 36 minutes per day. This is a total of 38 hours per week, or 76 hours per fortnight.
- (b) Office hours are 9am to 5pm.
- (c) The bandwidth of hours in which an employee may work their ordinary hours are 7.30am to 7pm Monday to Friday, or as otherwise agreed on an individual basis between the direct manager and employee.
- (d) Hours for part-time employees are those agreed between the employee and their direct manager.
- (e) An employee will not normally be expected to work additional hours beyond the standard day.
- (f) Employees are entitled to refuse to work additional hours if they are unreasonable.

Note: The factors set out in section 62(3) of the NES in the FW Act apply to the question of whether additional hours are reasonable or unreasonable:

- any risk to employee health and safety from working the additional hours;
- the employee's personal circumstances, including family responsibilities;
- the needs of the workplace or enterprise in which the employee is employed;
- 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
- any notice given by the employer of any request or requirement to work the additional hours;
- any notice given by the employee of his or her intention to refuse to work the additional hours;
- the usual patterns of work in the industry, or the part of an industry, in which the employee works;
- the nature of the employee's role, and the employee's level of responsibility;
- whether the additional hours are in accordance with averaging provisions included in a modern award or enterprise agreement;
- any other relevant matter.

9.3 Flexible working arrangements

- (a) The NTC is committed to providing flexible working arrangements to assist employees in getting an appropriate balance between work and personal lives.
- (b) Managers and employees will work to ensure the flexible working arrangements in this Agreement are used to achieve working patterns which provide a balance between work

and personal lives, identify opportunities for improved productivity, and minimise the need for employees to work hours in excess of the standard day.

- (c) Subject to operational requirements, individual start and finish times may be varied within the ordinary hours bandwidth to allow an employee to better meet their personal commitments, subject to the following conditions:
- (i) The employee must advise their direct manager with sufficient notice of the variance in times (including any times outside of office hours)
 - (ii) The employee must work at least 5.5 hours within the office hours on each working day, not including time allowed for a lunch break
 - (iii) No more than 10 hours may be worked on any day under these arrangements
 - (iv) Flexible working arrangements under sub clause (c) are not to be used for the purposes of accumulating leave days
 - (v) Appropriate time reporting, recording and monitoring arrangements must be agreed by the employee and their direct manager to ensure compliance with these conditions.
- (d) Subject to operation requirements, an employee may with the agreement of their manager access work arrangements outside of those listed in (c). Such work arrangements may involve the taking of time off for either a part or a whole of a working day. Such requests must be made and approved in writing and the arrangements should not create Occupational Health and Safety issues or conflict with operational requirements.
- Example: Lucy volunteers for 2 hours at her daughter's school canteen on a Wednesday afternoon. In agreement with her direct manager, Lucy works an additional 30 minutes a day, excluding the Wednesday, each week to make up her hours.*
- (e) The arrangements under clause 9.3(d) should be reasonably considered with any change in direct management and should not be unreasonably refused.
- (f) Other workplace flexibilities that are available in this Agreement will be genuinely considered and include but are not limited to:
- (i) part-time work
 - (ii) working from home
 - (iii) job sharing
 - (iv) use of leave provisions.
- (g) If an employee applies to access any of the flexible working arrangement provisions of this Agreement and the request is denied, the direct manager must provide the employee with a reason for the decision in writing and consider and discuss with the employee any alternatives available under this Agreement that may address the employee's work life balance or carer responsibilities.

9.4 Part-time employment

- (a) The provision of part-time working arrangements is a significant contributor in helping employees to achieve a balance between their work and personal responsibilities.
- (b) The NTC will agree to reasonable requests for regular part-time work, subject to operational requirements.
- (c) For any period that an employee works part-time, they will be paid a pro-rata amount of total remuneration and will accrue annual and personal/carers leave on a pro-rata basis based on standard hours of part-time work. A part-time employee will receive their standard payment for any public holiday that falls on a day that is a normal allocated work day during that period.

9.5 Working from home or other locations

- (a) Employees are to undertake their duties principally at Melbourne, or at any other location that an employee and the NTC agree on.

- (b) An employee and direct manager may agree to the employee working from home on either a temporary or intermittent basis in accordance with the process detailed in the Flexible Working Arrangements policy subject to 2.4(a).

9.6 Job sharing

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

9.7 Travelling for work purposes

- (a) The NTC may require an employee to undertake reasonable travel to carry out their duties.
- (b) In organising and approving business travel, managers shall be flexible in accommodating the needs of individuals and should take into account family responsibilities, personal circumstances and other relevant factors that may affect an employee's ability to travel.
- (c) Travel, where possible, should be undertaken during the ordinary hours bandwidth. If the direct manager and employee agree that the travel is to be undertaken outside the bandwidth, time off in lieu (hour for hour) is applied consistent with clause 9.8. For the purposes of this clause:
 - (i) for air travel work time commences 30 minutes prior to the scheduled departure time of the employees flight. Work time ceases 30 minutes after the actual time of the return flights arrival;
 - (ii) for all other travel, work time commences from the point that the trip commences and terminates when the employee return to the place at which the trip originated.
- (d) For the purposes of (c) if an employee is required to spend time away from their home the accommodation provided by the NTC is considered to be their home.
- (e) This provision does not apply to travel between the employee's home and their ordinary place of work.

9.8 Overtime and time off in lieu

- (a) Upon provision of reasonable notice, and in order to meet business needs, employees may be reasonably directed to work overtime. Overtime is work which is performed:
 - (i) outside the bandwidth
 - (ii) on a public holiday
 - (iii) in excess of a standard day, or
 - (iv) outside a part-time employee's ordinary hours of work.
- (b) Where an employee is directed to work overtime, this can only be done by agreement by the direct manager and employee on the basis that:
 - (i) the approximate period of time over which these modified arrangements will be in place has been explained
 - (ii) feasible alternative arrangements for managing the workload have been considered
 - (iii) the employment arrangements set out in this Agreement have been explained, and
 - (iv) the NTC will keep a record of the TOIL hours.
- (c) Managers are required to facilitate the taking of time off in lieu with employees for any agreed overtime completed.
- (d) Time off in lieu will be taken at a rate equal to the amount of overtime worked (that is, one hour in lieu for each hour worked).

- (e) No more than five days of time off in lieu may be accumulated at any given time and no more than ten days of time off in lieu may be accumulated in a twelve month period unless approved by the Chief Operating Officer.
- (f) Prior to the cessation of employment, managers should provide opportunities to enable employees to use their TOIL hours. Employees should also take all reasonable steps to use their TOIL hours. Where any TOIL hours are outstanding at the cessation of employment, these should be paid to the employee at ordinary rates.

10 SALARY AND CLASSIFICATION

10.1 One off payment

All NTC employees covered by this Agreement will be entitled to a \$500 one off payment when the Agreement is approved by Fair Work Australia. The one off payment will be paid to employees within 14 days of the approval of this Agreement.

10.2 Remuneration

- (a) An employee's total remuneration has been calculated on the basis of a standard working week and includes any entitlement to annual leave loading.
- (b) For the purposes of this Agreement, a reference to an employee's total remuneration at any time is a reference to Annual salary plus superannuation.
- (c) Annual salaries will be increased by 3% on 1 July each year during the term of this Agreement.

10.3 Classification table

- (a) Appendix A sets out the rates of pay for employees covered by this agreement which incorporates an annual general increase of 3%.
- (b) A new band for Corporate Managers has been created. A Corporate Manager is defined as a role that is predominantly involved in managing internal corporate activities such as administration, information systems or internal policies.
- (c) Corporate managers who consistently operate a substantive portion of their role as a Policy Manager will be part of the Policy Manager Classification. This would be reflected in their Position Description

10.4 Transition from existing salary ranges

At the commencement of this agreement (prior to July 1) any employee whose salary is below the pay rate specified for their classification in the Salary and Classification Table (Appendix A, Table 1), will have their salary rate adjusted to the minimum rate for that classification. This adjustment will occur prior to the annual and performance based salary increases on July 1, 2011.

10.5 Superannuation

The NTC will make superannuation contributions on an employee's behalf in accordance with the relevant legislation. Payment will be made into a complying superannuation fund or scheme chosen by the employee.

10.6 Salary sacrifice

- (a) An employee may elect to salary sacrifice in accordance with the process set out in the NTC Salary Sacrifice policy.
- (b) Any fringe benefits tax applicable to a salary sacrifice item is the employee's responsibility and is to be included in the approved amount of salary sacrifice as part of that amount.

10.7 Remuneration review

An employee's total remuneration is to be reviewed in June each year. Any increase will depend on the outcome of the employee's performance rating in accordance with clause 5.6.

10.8 Individual flexibility arrangements

- (a) The NTC and employees covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the Agreement if:
 - (i) the agreement deals with one or more of the following matters:
 - a. arrangements about when work is performed
 - b. overtime rates
 - c. penalty rates
 - d. allowances
 - e. leave loading, and
 - (ii) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (i), and
 - (iii) the arrangement is genuinely agreed to by the employer and employee.
- (b) The employer must ensure that the terms of the individual flexibility arrangement:
 - (i) are about permitted matters under section 172 of the Fair Work Act 2009, and
 - (ii) are not unlawful terms under section 194 of the Fair Work Act 2009, and
 - (iii) result in the employee being better off overall than the employee would be if no arrangement was made.
- (c) The employer must ensure that the individual flexibility arrangement:
 - (i) is in writing, and
 - (ii) includes the name of the employer and employee, and
 - (iii) 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
 - (iv) includes details of:
 - a. the terms of the enterprise agreement that will be varied by the arrangement; and
 - b. how the arrangement will vary the effect of the terms, and
 - c. 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
 - d. states the day on which the arrangement commences.
- (d) The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- (e) The employer or employee may terminate the individual flexibility arrangement:
 - (i) by giving no more than 28 days written notice to the other party to the arrangement; or
 - (ii) if the employer and employee agree in writing—at any time.

11 ALLOWANCES

11.1 Work related travel

- (a) Employees are entitled to reimbursement of the reasonable costs of travel and incidental expenses they incur in carrying out their duties
- (b) Where an employee requests pre-payment of reasonable out-of-pocket expenses, the NTC will pay the employee subject to:
 - (i) arrangements having been made for NTC to pre-pay booked expenses, such as accommodation
 - (ii) within a reasonable period upon return from travel, the employee must submit receipts for all expenses and return any unspent payment to the NTC.

11.2 Professional memberships and accreditation

Where the NTC requires an employee to maintain a professional membership or accreditation for the purposes of fulfilling their role in the organisation, the NTC and the

employee will make appropriate arrangements to cover the cost and time to undertake the professional membership or accreditation.

11.3 Higher duties

- (a) The NTC may provide an employee with the opportunity to perform duties in excess of his/her current classification or role for the purposes of professional development and to meet an organisational need. An employee may agree at any time during the term of this Agreement to perform duties of a higher classified position ("higher duties"). Subject to this clause, an employee who agrees to perform higher duties will receive a higher duties payment.
- (b) An employee will be eligible for a higher duties payment if:
 - (i) they demonstrate, or are ready to demonstrate, the necessary skills and competencies to perform the higher duties, and
 - (ii) they are prepared to assume the additional responsibilities of the higher duties.
- (c) Where an employee is required to perform higher duties, the employee will be paid an amount equivalent to the difference between the employee's base salary and the lowest base salary point for the higher classification for the agreed period that the Higher Duties are performed.
- (d) Where an employee's salary is above the base point of the higher duties salary, the manager and employee will have a discussion about an appropriate higher duties payment.
- (e) To qualify for Higher Duties an employee must complete ten consecutive working days of Higher Duties for a particular classification (it is expected that the employee completes these ten working days in a manner in which she/he is exposed to the range of activities, task and competencies necessary to perform the Higher Duties).
 - (i) A part-time employee will complete the ten consecutive working days qualifying period in an equivalent period commensurate with her/his part-time hours.
 - (ii) All days worked towards the Higher Duties qualifying period must be recorded.
 - (iii) A period of Higher Duties can only be shared between employees if it enables each employee to meet the qualifying period.

11.4 Meal and travel allowance for overtime

Where an employee is asked to work before 7.30am or after 7pm, the NTC will provide the employee with a taxi voucher. The NTC will reimburse the employee for any reasonable meal expenses incurred as a result of this work outside of the bandwidth of hours.

11.5 Financial support for approved study

- (a) The NTC will provide the following financial support for any approved higher professional qualification (including tertiary and HECS/HELP courses):
 - (i) Contribution for course fees up to 50% to a maximum limit of \$2,500 per calendar year
 - (ii) Up to 5 days study leave per calendar year to attend examinations, course work and lectures, subject to approval by the direct manager
 - (iii) Part-time employees will be eligible for financial support and pro-rata study leave.
- (b) The NTC has the discretion to provide an amount of support greater than that outlined in this section, as per the Further Education and Study Leave Guidelines.

11.6 Motor vehicle allowance

- (a) When a direct manager authorises an employee to use a private motor vehicle for official purposes, the employee will receive a Motor Vehicle Allowance in accordance with the per kilometre car expenses rates determined by the Australian Taxation Office.

- (b) Any private motor vehicle to be used for official purposes must be registered and insured.

11.7 Public transport tickets

- (a) NTC can arrange for employees to purchase yearly public transport metropolitan rail/tram/bus tickets.
- (b) The yearly tickets are purchased by the NTC and are reimbursed by employees through their fortnightly pay. If an employee leaves the NTC before full payment of yearly tickets are reimbursed the employee must pay the total balance owing back to the Commission before their departure.

11.8 Additional costs assistance

In addition to determining remuneration levels, the NTC may also determine payment rates for additional costs including but not limited to travel, living away from home allowance, additional child care costs arising from operational requirements, and other employment related allowances.

12 LEAVE

12.1 Annual leave

- (a) Full-time employees are entitled to annual leave accruing at the rate of 20 days per year of continuous full-time service. Annual leave for part-time employees is accrued on a pro rata basis.
- (b) Annual leave accrues from the commencement date of employment.
- (c) Entitlement accrues progressively during each year.
- (d) An employee may request leave at any time during the year. The time of taking leave is subject to the approval of the employee's direct manager (or delegate). Leave will not be unreasonably refused.
- (e) Public holidays that fall within a period of annual leave do not form part of that leave. Similarly, any other leave (other than unpaid parental leave) taken during a period of annual leave does not form part of the annual leave.
- (f) Managers are to ensure that in any 12 month period, employees are given the opportunity to use annual leave.
- (g) If an employee accrues unused annual leave in excess of 40 days, the NTC may with one month's notice, require the employee to take up to a quarter of that leave within a 3 month timeframe. The NTC will not direct an employee to take leave where the employee is able to demonstrate that particular circumstances exist and the employee agrees to arrangements that will reduce the leave balance within an agreed timeframe.
- (h) On separation from the NTC, an employee will be paid for annual leave accrued at the time of separation.

12.2 Annual leave at half pay

Annual leave may be provided to an employee at half pay for a period of leave if the employee is to exhaust all available paid annual leave within the anticipated leave period.

12.3 Long service leave

- (a) Employees are entitled to 13 weeks long service leave after 10 years of recognised employment and will continue to accrue long service leave on a pro rata basis at the rate of 1.3 weeks per year.
- (b) An employee may access this entitlement, on a pro rata basis, after an initial 7 years of continuous service.
- (c) An employee may elect either to take the leave immediately before their employment ends, or to be paid out the entitlement. However, an employee may not elect to take the first option if employment is terminated under clause 14.1.

- (d) Where an employee ceases employment as a consequence of death, permanent disability, redundancy or retirement and the employee completed more than 1 year of continuous service at the time of termination, the employee, or the employee's estate, will receive payment of unused pro rata Long Service Leave as part of his/her final pay. For the purpose of applying this clause "retirement" means an employee who is sixty (60) years of age, or over, and has provided the NTC with written notice of intention to retire from his or her employment.
- (e) To the extent permitted by the Long Service Leave Act 1992 (Vic.), subclauses (a) to (d) are intended to provide entitlements greater than those set out in that Act. In all other respects that Act applies to the calculation of entitlement to long service leave, and to the taking of that leave.

Note: The Act deals with issues such as when an employee may take the leave (section 66); in what circumstances the leave can be split (section 67) or taken in advance (section 71); the exclusion of public holidays from the leave (section 70); and taking the leave at half pay (section 71A). The Act forbids the paying out of the leave (section 74), except if employment ends. It also deals with technical issues such as the continuity of employment (section 62) and what absences from work count as service (section 63).

12.4 Paid personal/carer's leave

- (a) Employees are entitled to paid personal/carer's leave of 15 days per year of continuous full-time service. Part-time employees accrue personal/carer's leave on a pro rata basis.
- (b) Employees may only take the leave:
 - (i) if unfit for work because of a personal illness, or a personal injury, or
 - (ii) to provide care or support for a member of the employee's immediate family, or a member of their household, who requires care or support due to illness, injury or an unexpected emergency affecting her or him.

Note: Section 11 of the *Fair Work Act 2009* (Cth) states that members of an employee's immediate family include a spouse, de facto partner, child, parent, grandparent, grandchild or sibling; and a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner.

- (c) Personal/carer's leave accrues from the commencement date of employment.
- (d) Entitlement to the leave is to accrue progressively during each year. Untaken leave accumulates indefinitely, but no payment for unused leave will be made to an employee upon termination of their employment.
- (e) An employee must ensure that NTC has been advised of an absence including details of the expected duration of absence, due to personal illness/injury or carer leave as soon as reasonably practicable.
- (f) In the case of an absence in excess of 3 consecutive working days, an employee is required to supply a medical certificate or other reasonable evidence in relation to the absence.
- (g) Entitlement to any additional days leave under (f) in relation to that absence ceases unless the employee complies with the request.
- (h) Where reasonable suspicion exists of a misuse of personal/carer leave, the NTC may seek suitable evidence to support any future absences, NTC will provide in writing the reasons for the suspected misuse as well as details of the duration of time the employee is to provide suitable evidence to support any future absences.
- (i) Any public holidays that fall within a period of leave under this clause do not form part of that leave.
- (j) An employee may seek an additional 5 days paid leave in a calendar year if the employee:
 - (i) has completed more than 12 months continuous service
 - (ii) has exhausted all other forms of paid leave

- (iii) provides written advice from their medical practitioner certifying that the employee has a serious illness requiring hospital treatment or medical procedures that causes the employee to be unfit for work.

12.5 Unpaid carer's leave

If an employee has used all of their paid personal/carer's leave entitlement, the employee may take up to 2 days unpaid carer's leave on each occasion to care for or support a member of the employee's immediate family or household who requires the care or support due to illness, injury or an unexpected emergency affecting him or her. The same notification procedures regarding personal/carer's leave apply.

12.6 Compassionate leave

- (a) An employee may take 3 days paid compassionate leave on each occasion when a member of the employee's household or immediate family contracts or develops a personal illness that poses a serious threat to his or her life; or sustains a personal injury that poses a serious threat to his or her life; or dies. This leave is non-cumulative.
- (b) If there are reasonable grounds, the NTC may request the employee to provide reasonable evidence that the leave was for a reason set out in paragraph (a).
- (c) If an employee has used the entitlement to the leave under paragraph (a) in respect of the death, illness or injury of a particular person, and further time off is required, up to a further 3 days unpaid leave may be taken.

12.7 Unpaid Parental leave

- (a) An employee may take parental leave in relation to the birth of their child, or if the employee adopts a child, on the following terms:
 - (i) the employee must have completed at least 12 months of continuous service immediately before the date of birth, or the day, or expected day, of placement in the case of an adoption
 - (ii) the leave is without pay (except as specified in clause 12.9 or 12.9(b)) and is for the purpose of enabling the employee to care for the child
 - (iii) the maximum period of leave that an employee may take is 52 weeks, subject to paragraph (iv)
 - (iv) the employee may extend the period of leave by up to 12 months by submitting a written request to the NTC before the expiry of the leave period. Leave requests will not be unreasonably refused
 - (v) the leave is to run concurrently with any paid leave taken
 - (vi) the employee is not entitled to take any paid personal/carer's, compassionate or jury service leave while taking the leave, and is not entitled to be paid for any public holidays that occur while taking the leave
 - (vii) the employee must give the NTC written notice of the leave intended to be taken, and must specify in the notice the intended start and end dates of the leave
 - (viii) if the period specified in such a notice is less than the employee's available parental leave, the period may be extended by giving the NTC a further written notice specifying a new end date of the leave that is still within the period of available leave. The notice must be given 4 weeks before the previously notified end date,
 - (ix) the period of leave previously notified may be reduced, with the agreement of the NTC
 - (x) the taking of the leave does not count as service for any purpose, but does not break continuity of service
 - (xi) if each member of a couple employed at the NTC intends to take unpaid parental leave:

- a. they each must take the leave in a single continuous period
 - b. the leave taken by each of the employees must be taken sequentially
 - c. however up to 3 weeks of the leave may be taken at the same time as the spouse or partner, provided it is within the 3 weeks of the event.
- (b) If, while on parental leave, the NTC makes a decision that will have a significant effect on the status, pay or location of the job the employee was doing before starting the leave, (or, if relevant, before moving to an appropriate safe job), the NTC must take all reasonable steps to provide information about, and an opportunity to discuss, the effect of that decision on that job.

12.8 Return to work after parental leave

- (a) On finishing parental leave, the employee is entitled to return to the job the employee was doing before starting the leave (or, if relevant, before moving to an appropriate safe job), or if that job no longer exists, a reasonably equivalent position.
- (b) With the agreement of the NTC, an employee may, on return to work from a period of parental leave, be given access to part-time employment until the child reaches school age. Requests will not be unreasonably refused.

12.9 Paid parental leave

- (a) If an employee has at least 12 months continuous service:
 - (i) they may take up to 16 weeks paid leave in relation to giving birth to a child; or if the employee has adopted a child and is the primary care giver to the child, immediately following, and in relation to, the placement of the child with the employee
 - (ii) they may take up to 2 weeks paid parental leave if their spouse or de facto partner gives birth to a child, or if they have adopted a child and their spouse or de facto partner is the primary care giver to the child.
- (b) All periods of paid parental leave can be taken at half-pay.
- (c) These arrangements are in addition to the entitlements under the Commonwealth Governments paid parental leave scheme.

12.10 Other matters relating to parental leave

- (a) If the employee is pregnant, parental leave in relation to the pregnancy may start 6 weeks before the expected date of birth of the child.
- (b) If an employee is pregnant and continues to work during the period of 6 weeks before the expected date of confinement, the NTC may on reasonable grounds ask for a medical statement that states that the employee is fit to continue their duties; or that states that the employee is fit to continue in an appropriate safe job.
- (c) The NTC may require the employee to take a period of unpaid parental leave if the employee does not give it such a medical certificate within 7 days; or the employee gives it a certificate that states that they are fit to continue in an appropriate safe job, and there is no appropriate safe job available.
- (d) If an employee has exhausted their personal leave, they may take unpaid special maternity leave if unfit for work because the employee has a pregnancy-related illness; or the employee has been pregnant, and the pregnancy ends within 28 weeks of the expected date of birth of the child otherwise than by the birth of a living child.
- (e) If an employee takes unpaid special maternity leave, entitlement to parental leave in relation to the pregnancy is reduced by the amount of the special leave taken while pregnant.
- (f) If an employee is pregnant and is entitled to take unpaid parental leave, and has given the notice referred to in clause 12.7(a)(vii), and gives the NTC a medical certificate that states that they are fit to work, but that it is inadvisable for them to continue in their present position during a stated period (the risk period) because of illness, or risks arising out of the pregnancy; or hazards connected with that position:

- (i) If there is an appropriate safe job available, the employee is entitled to be transferred to that job for the risk period, with no other change to terms and conditions of employment
- (ii) If no appropriate safe job is available, the employee is entitled to take paid no safe job leave for the risk period
- (iii) If it has not already ended, the risk period ends when the pregnancy ends.

12.11 Unpaid pre-adoption leave

Employees may take up to 2 days of unpaid pre-adoption leave to attend any interviews or examinations required in order to obtain approval to adopt a child.

12.12 Purchased leave

In June or December of any 12 month period, or upon commencement of employment, an employee may elect to purchase either two or four weeks leave. Purchased leave will count for service for all purposes. The employee's salary for superannuation purposes is their salary based on the purchased leave.

12.13 Leave without pay

- (a) Staff may apply for leave without pay for a minimum of 2 months up to a maximum of 12 months upon completing one year of service.
- (b) Applications should be submitted to the employee's direct manager 2 months prior to the start of the intended leave period.
- (c) The granting of leave without pay will be at the discretion of the NTC
- (d) Staff will accrue Long Service Leave during the period of leave without pay in accordance with the Long Service Leave Act 1992 (Vic).
- (e) Performance based salary increases will be paid on a pro rata basis for employees who take leave without pay during the review cycle.

12.14 Study leave

- (a) The NTC will provide up to five days of study leave per calendar year for any approved higher professional qualification development courses. These days should be taken to attend examinations and/or course work lectures. A leave application form must be completed and the study leave approved by the employee's direct manager. Part-time employees will be eligible for pro-rata study leave.
- (b) The process for applying for study leave is provided for in NTC's "Further Education and Study Leave Policy".

12.15 Jury service leave

If an employee is called for jury service (including attendance for the purpose of jury selection) under a Commonwealth, state or territory law, they may take jury service leave on the following terms:

- (i) the employee is entitled to be paid for the period of their absence on jury service
- (ii) the employee must take all necessary steps to obtain any amount of jury service pay to which they are entitled for that period
- (iii) the employee must advise the NTC in writing of the total amount (if any) of jury service pay that they have been, or are entitled to be, paid for that period
- (iv) the amount the employee will be paid by the NTC for jury service leave will be reduced by that amount (if any).

12.16 Community service leave

- (a) Employees are entitled to be paid for absence from duties to carry out a voluntary emergency management activity or an activity prescribed by regulations made for the purposes of Division 8 of the National Employment Standards, if their absence is reasonable in all the circumstances. An employee's absence under this clause encompasses any period in which they engage in the activity, reasonable travelling time

associated with the activity, and reasonable rest time immediately following the activity, as agreed with the direct manager.

- (b) Employees wanting to undertake activities for an approved charity can draw on their current annual leave or long service leave entitlements. Where annual leave or long service leave entitlements have been exhausted, an employee can request leave without pay for the purposes of undertaking a reasonable amount of approved charity work, subject to operational requirements and as agreed by their direct manager.

12.17 Other matters concerning leave

- (a) Employees are entitled to be paid, for the period of any paid leave taken, the pro rata amount of total remuneration for that period.
- (b) The taking of any leave permitted under this Agreement counts as service for all purposes, unless otherwise stated in this Agreement.

Note: Clause 12.7(a)(x) states that unpaid parental leave does not count as service.

12.18 Public holidays

- (a) Employees are entitled to be absent on all public holidays gazetted by the Victorian Government, and are entitled to be paid for that absence. An applicable public holiday is based on that employee's place of work and not the location of the residence.
- (b) If an employee is based at a location other than Victoria, they will be entitled to be paid for their absence on all public holidays declared by the applicable state or territory government.

12.19 Christmas close down period

NTC will be closed for normal business and employees will not be required to perform normal duties on the working days between Christmas and New Years Day. Employees will be paid for the close down period.

13 DISPUTE PREVENTION AND RESOLUTION

- (a) The following is the agreed process to genuinely attempt to resolve grievances and or disputed issues in the workplace that may arise during the life of this Agreement.
- (b) This clause operates for disputes relating to:
 - (i) a matter arising under the agreement, or
 - (ii) the National Employment Standards.
- (c) An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.
- (d) In the first instance, the parties to any dispute must genuinely attempt to resolve the dispute at the workplace level by discussions between the employee or employees concerned and their direct manager in accordance with the internal process detailed in the NTC's policy on Grievance and Dispute Settlement.
- (e) In instances where the dispute has not been resolved in accordance with (d):
 - (i) the parties may refer the dispute to any third party or persons, which may include an agreed alternative dispute resolution (ADR) process. In order for this to occur, the parties must agree; or
 - (ii) a party to the dispute may refer the matter to Fair Work Australia.
- (f) The parties may agree on the process to be utilised by Fair Work Australia or the ADR process including mediation, conciliation and consent arbitration.
- (g) If the parties cannot agree and the matter remains unresolved, Fair Work Australia may exercise any method of dispute resolution available to it under the Fair Work Act and that it considers appropriate to ensure the resolution of the dispute. If the parties agree, Fair Work Australia may make a determination that is binding on the parties.

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

- (h) While the parties are trying to resolve the dispute using the procedures in this term:
 - (i) 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
 - (ii) an employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace, unless:
 - a. the work is not safe, or
 - b. applicable occupational health and safety legislation would not permit the work to be performed, or
 - c. the work is not appropriate for the employee to perform, or
 - d. there are other reasonable grounds for the employee to refuse to comply with the direction.
- (i) The parties to the dispute agree to be bound by a decision made by Fair Work Australia or ADR in accordance with this term.
- (j) Disputes relating to termination are to be addressed through provisions under the Fair Work Act.

14 WORKPLACE DELEGATES

- (a) The role of union workplace delegates is to be respected and facilitated. The NTC and workplace delegates must deal with each other in good faith
- (b) The NTC will provide facilities for up to 2 nominated workplace delegates/representatives for each employee representative body that is signatory to this agreement. This subclause is subject to no significant changes to employee numbers.
- (c) The rights of union workplace delegates and recognised representatives include:
 - (i) the right to be treated fairly and to perform their role as workplace delegates without any discrimination in their employment
 - (ii) recognition by the NTC that endorsed workplace delegates speak on behalf of their members in the workplace
 - (iii) the right to participate in collective bargaining on behalf of those who they represent, as per the Fair Work Act
 - (iv) the right to reasonable paid time to provide information to and seek feedback from their employees in the workplace
 - (v) reasonable access to time in accordance with (g) to represent union members in the agency at relevant union forums
 - (vi) reasonable access to agency facilities for the purpose of carrying out work as a delegate under this agreement and consulting with workplace colleagues and the union, subject to agency policies and protocols
 - (vii) reasonable paid time in accordance with (g) to consult with colleagues in the workplace
 - (viii) access to paid time of an initial 2 day union introductory training session and subsequent one day per annum per delegate for appropriate training in workplace relations matters including training provided by a union – other access facilitated through flexible work arrangements
 - (ix) the right to participate in consultation as outlined in this agreement, and access to relevant non-confidential information about the workplace and the agency
 - (x) the right to reasonable paid time in accordance with the Fair Work Act to represent the interests of members to the employer and industrial tribunals
 - (xi) any other rights as specified in the Fair Work Act.
- (d) The NTC will seek to facilitate official union communication with employees by means that may include:

- (i) the use of email, subject to individual employees exercising a right to 'opt out', and other means of information sharing, including written materials, electronic billboards and access to websites, and
- (ii) group or individual meetings at times that minimise impact on normal operations such as during lunch periods, unless otherwise agreed. Paid time meetings will be agreed by the parties in advance of the meeting.
- (e) Excluding 14(d), where the NTC agrees is appropriate, the NTC will facilitate joint meetings and communications between unions and employees.
- (f) In exercising their rights, workplace delegates and unions will consider operational issues, NTC policies and guidelines and the likely effect on the efficient operation of the agency and the provision of services by the organisation.
- (g) In recognition of the number of employees of the NTC, it is the intention of the parties that reasonable paid time under clause 14(b) will be:
 - (i) approximately 1 day per month under ordinary circumstances. Bargaining periods are not considered ordinary circumstances.
 - (ii) the provision of 1 day per month can be used in conjunction with training days in (c)(viii)
 - (iii) in times of a significant employee event or major change, delegates may be required to perform their delegate functions in excess of this time. In these circumstances, the parties will agree on what is reasonable time.

15 TERMINATION, REDEPLOYMENT AND REDUNDANCY

15.1 Notice to terminate employment

- (a) The NTC may at any time terminate an employee's employment without notice if they are found to have engaged in serious misconduct.

Note: **Serious misconduct** is defined in regulation 1.07 of the *Fair Work Regulations 2009 (Cwlth)*.
- (b) An employee may terminate their employment at any time by providing 2 weeks notice if employed for less than one year and 4 weeks if employed for more than 1 year. Alternate notice periods may be negotiated.
- (c) The NTC may at any time terminate an employee's employment by giving the following amount of notice, or pay in lieu of notice for the following period:

Period of continuous service at the end of the day the notice is given	Period of notice
not more than 1 year	2 weeks
more than 1 year	4 weeks
more than 2 years, and you are over 45 years old (if this applies, it overrides the previous items)	5 weeks

Note: The *Fair Work Act 2009 (Cwlth)* provides remedies for unfair dismissals (which essentially are dismissals that are harsh, unjust or unreasonable). In most circumstances a dismissal would be considered to be unfair if there is no legally valid reason for it, or if the dismissed employee was not given an opportunity to respond to the reason given for it. These matters override this clause.

15.2 Redundancy

- (a) In general, redundancy occurs where the NTC has made a definite decision that it no longer requires specific positions currently being filled by employees and that decision leads to the termination of employment.
- (b) A position may be redundant in such circumstances as (but not limited to):
 - (i) a position being deemed by the NTC to be in excess of its operational requirements (for operational reasons), or
 - (ii) the position is no longer required due to the introduction of workplace change (including technology changes), or

- (iii) changes resulting from a review and subsequent restructure of functions within the organisation (including the position[s] being transferred to a different locality).
- (c) For the purpose of consultation, redundancy is considered to be a significant workplace change and as such clause 8.4 (Major change) of this Agreement will apply. The following consultation shall occur, as a minimum, in relation to a proposed redundancy:
 - (i) The NTC will hold discussions with employees directly affected by the proposed redundancy, and any chosen employee representatives, within 4 weeks, or earlier where possible, after the NTC has determined that the positions are to be made redundant
 - (ii) The nature of the discussions will be to consult on redeployment opportunities, the potential number of terminations resulting from the redundancy, the categories of employees affected and, if applicable, any measures that may minimise the number of terminations.
- (d) An employee whose employment is terminated on account of redundancy ("Retrenchment") shall be provided advice in writing of the pending retrenchment including the exit date and estimate of final payment.
- (e) Either the NTC or the employee may elect payment in lieu of notice in place of the employee working through the notice period.
- (f) In addition to any payment the employee may be entitled to under subclause 15.2(e) the NTC must make a severance payment to the employee of the following pro rata amounts of their total remuneration:

Period of continuous service	Amount of severance pay
1 year or less	2 weeks
1 year and up to the completion of 2 years	4 weeks
2 years and up to the completion of 3 years	6 weeks
3 years and up to the completion of 4 years	7 weeks
4 years and over	2 weeks for each year of service up to a maximum of 24 years of service (48 weeks)

- (g) Subclause (a) does not apply if the NTC offers the employee alternative employment on terms that are substantially similar to, and, considered on an overall basis, that are no less favourable than, the terms that applied to the job that is no longer to be done by anyone, and the employee rejects the offer.
- (h) If the NTC terminates an employee's employment under clause 15.2, it will offer the employee career transition services as provided for in clause 15.4.

15.3 Redeployment

- (a) The NTC will provide an employee whose position has been made redundant an opportunity to be considered for an alternative position(s) within the organisation during the notice period provided for in clause 15.1(c). Redeployment may be to either a role that is considered on an overall basis to be a "suitable alternative position" or an "alternative position".
- (b) A "suitable alternative position" means a position that on an overall basis draws upon the employee's skills, competencies, behaviours and experience without diminishing work capacity, status, income or equivalent career progression. This could also include a position where an employee, with up to three months training will have the skills and competencies to undertake the position.
- (c) An "alternative position" means any position that the NTC offers and the employee elects to accept and is not limited to a "suitable alternative position" and will have the skills and competencies to do so with up to three months training.
- (d) Where an employee is on personal leave with a medical certificate at the time their position is made redundant, the remaining period of personal leave will not be included in the notice period.
- (e) Where an alternative position is paid at a lower classification level, the employee shall continue to receive her/his existing salary (including existing penalties and/or

allowances) for a period of twelve months from the date of transfer. After 12 months, his/her salary will revert to the lower classification level, should he/she remain in the alternative position or any subsequent alternative position.

- (f) Should the NTC require an employee to move his/her household to a new locality as a consequence of redeployment within the NTC will be reimbursed for reasonable expenses incurred from the move. Payment of these expenses will be mutually agreed to prior to the Redeployment being finalised.

15.4 Career transition services

- (a) In the case of retrenchment under clause 15.2, the NTC will provide the affected employee to a maximum of \$2,500, the following services from a suitably qualified and independent provider of career transition services at the employees request. Career transition services will include:
 - (i) résumé preparation
 - (ii) career counselling
 - (iii) interview skills, and
 - (iv) job search.
- (b) An employee will be provided with paid leave to attend career transition activities and/or interviews for alternative employment during the notice period provided for in clause 15.2(d).

Appendix A: Classification tables

Table 1

Classification	Annual Salary range (\$) as at signing of agreement (excluding superannuation)	
	Bottom	Top
Manager Policy	\$94,175	\$126,214
Manager Corporate	\$72,816	\$111,650
Senior Policy Analyst	\$69,903	\$92,233
Policy Analyst	\$55,340	\$ 68,932
Executive Assistant	\$44,660	\$57,282

Table 2

Classification	Annual Salary range (\$) as at 1 July 2011 (excluding superannuation)	
	Bottom	Top
Manager Policy	97,000	130,000
Manager Corporate	75,000	115,000
Senior Policy Analyst	72,000	95,000
Policy Analyst	57,000	71,000
Executive Assistant	46,000	59,000

Table 3

Classification	Annual Salary range (\$) as at 1 July 2012 (excluding superannuation)	
	Bottom	Top
Manager Policy	\$99,910	\$133,900
Manager Corporate	\$77,250	\$118,450
Senior Policy Analyst	\$74,160	\$97,850
Policy Analyst	\$58,710	\$73,130
Executive Assistant	\$47,380	\$60,770

Table 4

Classification	Annual Salary range (\$) as at 1 July 2013 (excluding superannuation)	
	Bottom	Top
Manager Policy	\$102,907	\$137,917
Manager Corporate	\$79,568	\$122,004
Senior Policy Analyst	\$76,385	\$100,786
Policy Analyst	\$60,471	\$75,324
Executive Assistant	\$48,801	\$62,598

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TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

55398-1

COMMISSIONER SMITH

AG2011/9732

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

**Application by National Transport Commission
(AG2011/9732)**

Melbourne

4.01PM, WEDNESDAY, 29 JUNE 2011

PN1

THE COMMISSIONER: Can I take appearances, please? Mr Ritchie?

PN2

MR M. RITCHIE: Ritchie, initial M, from Victorian Employers Chamber of Commerce and Industry, seeking leave to appear for National Transport Commission.

PN3

THE COMMISSIONER: Thanks, Mr Ritchie.

PN4

MR B. KARAMBATSOS: Bill Karamatsos, appearing for the Community and Public Sector Union.

PN5

THE COMMISSIONER: Thank you.

PN6

MS S. OZDEMIR: Ozdemir, S, appearing for APESMA and APESMA members of NTC.

PN7

THE COMMISSIONER: Thank you. You're appearing Ms McRae?

PN8

MS C. McRAE: Clare McRae from the NTC, the CPSU bargaining team.

PN9

THE COMMISSIONER: Thank you very much. Now, in this matter I raised with the parties two concerns just for discussion. They related to clause 9.2(c) and clause 9.8(f). As a result of those discussions, there is an undertaking that's going to be given, Mr Ritchie?

PN10

MR RITCHIE: Thank you, Commissioner. Regarding 9.2(c), the employer proposes the following undertaking to accompany the National Transport Commission enterprise agreement 2011, 2014, in order to achieve approval of the proposed agreement in accordance with section 186 of the Fair Work Act 2009.

PN11

Regarding clause 9.2(c) which reads:

PN12

The band-width of hours in which an employee may work their ordinary hours are 7.30 am to 7 pm, Monday to Friday, or as otherwise agreed on an individual basis between the direct manager and employee.

PN13

NTC undertakes to substitute that clause with the following words:

PN14

The band-width of hours in which an employee may work their ordinary hours are 7.30 am to 7 pm, Monday to Friday.

PN15

THE COMMISSIONER: Thank you.

PN16

MR RITCHIE: The NTC recognises otherwise agreed arrangements under the formally voided clause can instead be arranged with an individual employee through the individual flexibility arrangements otherwise provided in clause 9 of the proposed agreement.

PN17

THE COMMISSIONER: Thank you.

PN18

MR RITCHIE: Secondly, for the other issue that you raised, Commissioner, which is 9.8(f) of the proposed agreement, NTC proposes to modify 9.8(e) of the agreement which currently reads:

PN19

No more than five days of time off in lieu may be accumulated at any given time and no more than 10 days of time off in lieu may be accumulated in a 12-month period unless approved by the chief operating officer.

PN20

In order to improve the operation of 9.8(e) and (f) of the proposed agreement, the employer proposes that 9.8(e) reads:

PN21

No more than five days of time off in lieu may be accumulated at any given time and no more than 10 days of time off in lieu may be accumulated in a 12-month period -

PN22

full stop.

PN23

THE COMMISSIONER: Thanks. Does anybody wish to say anything on those undertakings? Are they accepted?

PN24

MR KARAMBATSOS: Accepted.

PN25

MS McRAE: Accepted.

PN26

THE COMMISSIONER: Good. Thank you. I thank the parties for their assistance in the matter. I have read the proposed agreement. I understand that it took some time to make and that there were open and frank discussions, I think the euphemism is, for those negotiations. You have reached a hard-fought agreement which you're to be commended upon and I am satisfied that the agreement complies with the provisions of the Act and I approve the agreement as from today. Thank you for your attendance. The matter is adjourned.

<ADJOURNED INDEFINITELY

[4.05PM]