



Australian Government

Migration Review Tribunal • Refugee Review Tribunal

CERTIFIED AGREEMENT

2009 - 2011

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PART 1 CORE PRINCIPLES

Purpose and objectives

- 1.1 This Agreement provides the terms and conditions of employment for Australian Public Service (APS) employees of the Migration Review Tribunal and Refugee Review Tribunal (the Tribunals) below the Senior Executive Service level.
- 1.2 The objectives of this Agreement are to:
 - attract and retain quality people by having an affordable and attractive package of pay and conditions;
 - contribute to the achievement of, and be consistent with, the Tribunals' strategic objectives as set out in the Tribunals' Plan; and
 - improve productivity through greater efficiency and flexibility in the way that the Tribunals implement Government policy.
- 1.3 The Tribunals are committed, through effective policies, communication and training, to ensuring that the Agreement is fully implemented and supported throughout the period of the agreement.
- 1.4 Improvements in pay and conditions will be funded from within the funding provided by Government. Productivity initiatives and changes to work practices and staffing structures will be implemented during the life of this Agreement to fund the pay rise and improved conditions.
- 1.5 To assist in the identification and implementation of productivity initiatives, the Tribunals will foster an environment where employees at all levels are encouraged to put forward suggestions for improving productivity and the quality of the service and to participate in the consideration and implementation of change within the Tribunals. Staff and management agree to encourage teamwork and close communication between management and staff, and to maintain an environment which respects and values diversity.

Working at the MRT and RRT

- 1.6 This Agreement establishes conditions of employment which reflect the Tribunals' commitment to providing employees with a work/life balance that recognises the family and other personal commitments of employees and having a workplace in which:
 - the APS Values and APS Code of Conduct are upheld;
 - there is a positive working environment and satisfaction with work and conditions;
 - the contributions of employees are recognised and valued;
 - good performance and good workplace behaviour are encouraged;
 - there is high quality management, and decision-making is timely, consistent, fair and transparent;
 - the importance of an employee's work/life balance is considered as well as workload reasons when considering leave requests and making other decisions which affect an employee's life;

- decisions affecting leave and working arrangements are fair and reasonable, and aim to balance work requirements and the employee's family and community responsibilities and lifestyle;
- employees will be given the knowledge and skills training to enable them to do their work in the current working environment and into the future; this includes the provision of appropriate English as a Second Language training, determined by the needs of individuals;
- there are career and developmental opportunities;
- all employees including part time employees will be considered for promotions, higher duties and transfers on the basis of merit;
- workplace diversity is valued, there is no discrimination or harassment, and the principles of equity and diversity are integrated into practices, policies and procedures;
- health and safety issues are identified and addressed; and
- environmental issues are identified and addressed.

Responsibilities of supervisors and managers

1.7 It is expected that supervisors and managers will:

- behave according to the APS Values and Code of Conduct;
- act in accordance with the provisions of this Agreement;
- ensure staff understand how their work contribution fits in to the overall objectives of their team, section and the Tribunals and the standard of work expected;
- contribute to activities that advance the goals of their work area and the Tribunals and be adaptable and flexible to accommodate the changing needs of the Tribunals' work;
- create a trusting environment by communicating accurately, ensuring the message is understood, listening and responding appropriately;
- acknowledge the contribution of employees and take an interest in people as individuals;
- provide a supportive and equitable working environment where learning and development is accessible to all;
- regularly review work progress and make adjustments to priorities and tasks as necessary within the resources provided; and
- seek feedback and self-development opportunities.

Responsibilities of staff

1.8 It is expected that staff will:

- behave according to the APS Values and Code of Conduct;
- act in accordance with the provisions of this Agreement;
- contribute to activities that advance the goals of their work area and the Tribunals and be adaptable and flexible to accommodate the changing needs of the Tribunals' work; and

- seek feedback and self-development opportunities.

Freedom of association

1.9 The Tribunals recognise that employees are free to choose whether or not to join and participate in a union and to have their industrial interests represented by that union. Equally, employees have the right to represent themselves directly or arrange other representation. Employees whether or not they choose to be members of a union will not be disadvantaged or discriminated against, including in terms of representation in respect of any term or condition of this Agreement, including the Dispute Avoidance and Resolution procedures set out in this Agreement.

Changes to legislation

1.10 Where there are amendments to legislation which may affect the provisions of the Agreement, the parties agree to meet and confer in order to maintain the spirit of the Agreement.

1.11 Should there be changes to relevant legislation during the life of this Agreement, the parties to this Agreement will discuss the effect of such changes. Where necessary, the parties will agree to a variation of this Agreement.

PART 2 CONSULTATION AND ORGANISATIONAL CHANGE

Introduction

- 2.1 The Tribunals recognise that its employees in all their diversity are its richest asset.
- 2.2 The Tribunals embrace the principles of participative work and management practices which balance the needs of clients and employees. When the Tribunals are changing to meet new demands it is particularly important that both formal and less formal mechanisms of information sharing and participation in planning and work design are available and operate effectively.
- 2.3 Contributions from employees result in more efficient and productive Tribunals. To achieve the benefits which can result from participative management practices, the Tribunals will give adequate notice and consult with employees and their representatives, at all stages about change processes affecting employees. For their part, employees and their representatives on consultative forums will actively and constructively participate in the consultative forums and opportunities provided under this Agreement.

Consultative forums

- 2.4 A staff consultative forum will be formed comprising equal representation by management and employee representatives. There will be two levels of consultation:
 - **The National Consultative Committee (the NCC).** It will look at issues such as the Certified Agreement and policies arising from the Agreement and administrative efficiencies. This forum will meet in person at least 4 times per year.
 - **Local Consultative Committees (the LCCs).** These committees will be established in each work location and will be used to address local issues. Unresolved matters will be referred to the NCC.
- 2.5 In addition to already established committees, staff consultative committees may be established to address specific issues.
- 2.6 Issues which will be considered by the consultative forums include:
 - monitoring the implementation of this Agreement;
 - HR policies and guidelines;
 - work organisation and structures;
 - operational efficiency;
 - workplace diversity and cooperative workplace relations;
 - arrangements for the provision of counselling services including the selection of a provider;
 - provision of employees' training and development;
 - information technology;

- occupational health and safety;
 - financial, resource and corporate planning;
 - matching of staff resources to workloads;
 - accommodation; and
 - environmental issues.
- 2.7 Each committee and sub-committee established by the NCC will present a report at each meeting. The Director Human Resources will present an annual report of the operation and use of the Employee Assistance Program.
- 2.8 Representatives' involvement in formal consultative meetings will be on paid time. Reasonable paid time will also be made available prior to formal meetings for preparation (including consultation with employees). The timing and duration of these activities should be agreed between the employees involved and their section head. If agreement cannot be reached at this level, the supervisor should refer the outstanding issues to the local manager.
- 2.9 The existing arrangement where a representative is invited to attend the regular meetings of the Tribunals' APS management group will continue within the framework of the current Protocol unless varied by agreement of all members of the NCC. Agendas and minutes from these meetings will be circulated to all employees.
- 2.10 Representatives may access photocopy, word processing, internal E mail, phone and fax facilities and stationery supplies where such activity is related to effective participation in the Tribunals' formal consultative processes.
- 2.11 Representatives will be able to take paid leave to attend training, conferences or seminars to undertake their role professionally - to a maximum of five (5) days per calendar year. Employees other than representatives may be granted leave up to three (3) days per calendar year to attend training to enhance skills in cooperative workplace relations. Applicants for this leave must provide information on the purpose and benefit of the training and, to ensure operational requirements can be met, provide adequate notice.
- 2.12 The Tribunals recognise that employee representation is an important and legitimate part of the representatives' work responsibilities. Equally, the Tribunals expect that representatives will perform their roles while maintaining their efficiency in undertaking their work responsibilities. The Tribunals acknowledge that at times those in these positions may experience some difficulties in managing to balance their work responsibilities with their role. This would be at those times when local Tribunal policy issues demand considerable consideration of material and discussion with representatives or employees, for example, during formulation or review of an Agreement. At these times individuals should approach their supervisor to discuss how their duties will be temporarily reallocated. If agreement cannot be reached at this level, the supervisor should refer the outstanding issues to the local manager.

Local initiatives

- 2.13 Local managers must encourage an atmosphere of participation by employees by providing mechanisms that facilitate employee suggestions. Regular section meetings are one way to facilitate participation in workplace issues and the management of the Tribunals actively encourages these forums.

- 2.14 In this Agreement one of the important principles is that issues that arise in the workplace are generally best managed at the local level; ie. by individual employees and where they choose their representative interacting with local managers.
- 2.15 Individual managers are to ensure that employees are given information and are consulted on the development of policy or procedures, structural change or resource matters. Consultation can occur through:
- Local Consultative Committees;
 - section/branch meetings; and
 - direct with each employee and where they choose, their nominated representatives.
- 2.16 A Working Party may be established to deal with particular issues.
- 2.17 When dealing with an issue local managers must ensure information is circulated that:
- provides a clear description of the issues involved; and
 - provides a time frame for finalisation which includes reasonable opportunity for employees and where they choose, their representatives, to provide input.
- 2.18 The parties to the Agreement recognise that regular face-to-face meetings between managers and employees can be an effective way of encouraging employee participation.

Implementation of Government decisions

- 2.19 As soon as practical after the Principal Member becomes aware of major changes to the Tribunals or the role of the Tribunals or differences in employment conditions which may result in disadvantage or reassignment of employees, the Principal Member will fully brief employees and their representatives and consider any appropriate action to support the transition. In addition the Principal Member will keep staff and their representatives fully informed of all developments under established consultative arrangements and take a number of special measures. These include providing staff with support and career opportunities covering learning and development options, placement, redeployment and counselling as follows:
- **Learning and development**
 - educating staff about change and developing skills to assist them to cope with change;
 - access to competency assessment and learning training in generic job seeking skills; and
 - a reasonable level of support in retraining and re-skilling for new duties within the Tribunals, the APS or externally.
 - **Counselling and support**
 - general career counselling;
 - access to professional personal counselling via the Employee Assistance Program;
 - financial counselling; and
 - advice on the options potentially available including redeployment, voluntary retrenchment and involuntary retrenchment.

- **Placements and reassignments**

- liaison with internal/external providers to facilitate early placement of staff to other APS agencies;
- reasonable assistance and support in applying for positions both within and outside the APS; and
- where possible, temporary placement in other APS agencies where ongoing placement options exist.

Redeployment, reduction and retrenchment

2.20 The provisions for redeployment, reduction and retrenchment are contained in Schedule 2.

Notice boards

2.21 Representatives may use workplace notice-boards for the display of information relevant to their role as a representative.

2.22 The Principal Member will have the right to remove offensive or improper items from any notice board.

PART 3 WORKING TOGETHER PRODUCTIVELY

Continuous improvement

- 3.1 The parties to the Agreement recognise the importance of continually improving effectiveness, productivity, client service and working conditions to successfully achieve the objectives of the Tribunals.
- 3.2 The parties to the Agreement agree to pursue incremental and continuous improvements to the organisational effectiveness of the Tribunals in line with best practice throughout the life of this Agreement. Continuous improvement will be facilitated by the Tribunals fostering an environment where staff at all levels are encouraged to participate, learn, acquire new skills and be innovative.
- 3.3 The Tribunals recognise the value of their staff and the contribution they will make to achieving the objectives of the Tribunals throughout the life of this Agreement.
- 3.4 It is agreed that any improvement initiatives, reviews, or opportunities for improving resource utilisation implemented through strategies identified will occur in accordance with the consultation arrangements and managing change provisions of clauses 3.6 and 3.7 of this Agreement.

Efficient utilisation of resources

- 3.5 The parties to the Agreement agree to work towards achieving optimal utilisation of resources. This includes measures to improve utilisation of accommodation and environmental efficiency and the identification and implementation of other initiatives to improve the efficiency and effectiveness of the use of the Tribunals' resources.

Managing change

- 3.6 The parties to the Agreement recognise that for the Tribunals to achieve their outcomes, realise opportunities for productivity gains and improvement and respond to changes in the external environment, they will need to continue to consider changes to structure, operations or priorities.
- 3.7 Consultation should occur at the formative stages of the planning, development and implementation of change. The National Consultative Committee (the NCC), Local Consultative Committees (the LCCs) where appropriate and affected employees will be given the opportunity to provide input when a proposal is developed, or to respond to a management proposal. When an organisational change proposal is being developed and options are being considered, the developers of the proposal shall include details of financial considerations (costs and savings) associated with the proposal where this is possible.

Learning and personal development

- 3.8 The Tribunals will ensure that employees can access learning opportunities which enable them to do their jobs better and which support their career development within the APS.

Learning and development activities

- 3.9 'Learning and development' activities encompass a full range of non-training and training solutions, both on-the-job and off-the-job, which can be either structured (formal) or unstructured (informal). The Tribunals undertake to budget for the learning activities of their staff. Examples of learning activities include:
- skills development and awareness training;
 - career development and leadership programs;
 - access to vocational and higher education to develop generalist and specialist competency and expertise;
 - distance and on-line learning;
 - on the job development including work rotations, project work or involvement in higher level workplace meetings; and
 - attendance at seminars and forums on matters relevant to the employee's job or workplace.

Identifying learning needs

- 3.10 Employees and their supervisors agree to use performance exchanges and the performance agreement process to identify learning needs formally. Identified learning needs should relate to the employee's performance agreement and/or to organisational requirements and to career goals.

Learning time

- 3.11 Learning time will be made available to an employee requiring time during on-duty hours to complete approved distance and/or other approved learning activities.

Leave

- 3.12 Employees may be granted leave by the Principal Member to enable them to undertake approved study.

Costs

- 3.13 Employees may be provided with assistance in meeting reasonable costs associated with learning activities, including fares and travel in accordance with the Tribunals' Study Assistance Scheme Guidelines.

Executive level development initiatives

- 3.14 Executive level employees are recognised as a key group in achieving the outputs of the Tribunals. Accordingly, all Executive level employees will be provided with access to higher level development initiatives designed to equip them to undertake the full range of responsibilities and roles required at this level. These initiatives will include skills development as part of the continuing development of professional and leadership capacity. Learning activities will include workshops and specific courses aimed at building frontline management capability.

Funding learning and personal development

- 3.15 The Tribunals will set aside not less than 2.5% of non-Member salaries annually to fund employee training and development needs. This funding will be reviewed annually in consultation with employees and their representatives.
- 3.16 The Management of the Tribunals will be responsible for developing training policies, identifying corporate training objectives and allocating funds between training categories such as competency development, corporate training and career development. In exercising these responsibilities management will consult with the appropriate consultative committee. Employees who hold professional qualifications or memberships may be provided with time to attend learning and development activities required to maintain a professional qualification or membership. This clause does not limit entitlements to training under the general training and development provisions or under the studies assistance provisions.

Induction for new employees

- 3.17 The Tribunals will ensure that all new employees undertake an induction and orientation program comprising:
- A personal meeting, telephone contact or video conference with a representative of Human Resources immediately on commencement to explain all relevant terms and conditions of employment.
 - A formal introduction to the Tribunals on the day of commencement delivered by the relevant supervisor or section manager. This induction is to cover the Tribunals in broad terms as well as specific information related to the job and section they are working in.
 - Access to comprehensive information relevant to employment in the Tribunals.
 - A follow up meeting with the relevant supervisor/manager two (2) weeks later.
 - Participation in a hearing observation program as follows:
 - For non ongoing employees employed for less than 2 months, observation of at least one hearing including discussion of the case with the Member; and
 - For all other employees, observation of at least one hearing, including discussing the case with the Member, reading the case file before the hearing and reading the final decision.
- 3.18 If a group of new employees commences together, a group induction may be organised.

Studies assistance

- 3.19 The Tribunals' policy is to support the training and development of its employees. The studies assistance scheme is one means that is used to encourage employees to enhance their knowledge and skills in areas that are relevant to the operation of the Tribunals.
- 3.20 Studies assistance will be granted at one of three levels as follows:
- Tier 1 where the study is highly and directly relevant to the employee's current job or expected job during the period of study.

- Tier 2 where the study is relevant to both the work of the Tribunals and the employee's current job or potential APS career path.
 - Tier 3 where the study is relevant to career development.
- 3.21 The level of studies assistance which may be granted to an employee is dependent upon the relevance of the study or learning to the employee's job and/or future career development.
- 3.22 All ongoing staff, both full and part time are eligible to receive studies assistance for an approved scheme of study. Non ongoing staff and trainees will not generally be eligible for studies assistance, however applications will be considered on a case by case basis.
- 3.23 To receive any studies assistance, an employee must seek approval for the scheme of study. Consideration will be given to the benefit of the proposed scheme of study to the Tribunals and the capacity of the employee to balance the study commitments with his or her work responsibilities.
- 3.24 Approval of a scheme of study and a determination on entitlements will be given for the entire course of study regardless of its duration. Employees will not need to reapply for approval of a scheme of study each semester.
- 3.25 Approval and a determination on entitlements will generally be given prior to commencement of the scheme of study. All financial assistance is payable on a reimbursement basis ie: following the production of receipts of expenditure, and employees must provide documentary evidence of the compulsory expenditure incurred. Study leave however is approved in advance and will not be approved retrospectively.
- 3.26 An employee may not be reimbursed for any costs incurred for a scheme of study where he or she discontinued or did not pass the course.
- 3.27 Leave without pay for study purposes may be granted to an employee for up to three consecutive years to undertake full time study.

Performance management

- 3.28 The objectives of the Tribunals' performance management systems are to encourage, foster and reward good performance by:
- providing employees with a clear description of their duties, accountabilities and expected standard of performance and an opportunity to discuss, contribute to and clarify these issues with their supervisor;
 - providing employees with regular, participative and structured feedback on their performance and facilitating the early identification and constructive resolution of any concerns about an employee's performance;
 - complementing personal development plans by ensuring that training and development needs are identified and addressed, and that development opportunities support performance priorities and career progression; and
 - linking salary advancement to a structured performance review.
- 3.29 The system will provide open, objective, fair and results oriented assessments against the duties, accountabilities and performance standards established and documented with the employee at the commencement of each assessment cycle. The system is expected to assist the Tribunals meet their corporate objectives through improved job satisfaction and employee motivation, better communication

between employees and their supervisors and improved performance by employees, teams and managers.

- 3.30 The Tribunals are committed to the success of the performance management system and will conduct necessary and sufficient training on the operation of the system to assist employees and managers to understand and to competently and confidently participate in the system.

Managing underperformance

- 3.31 The key objective of managing under-performance is to return under-performing employees to acceptable performance.
- 3.32 An under-performing employee is one who is failing to attain and sustain an acceptable standard of work performance as determined by the Work Level Standards for their classification level and the performance expectations established in their Performance Agreement.
- 3.33 Employees will engage in regular and timely dialogue on their performance through the performance agreement processes. Where a supervisor has concerns relating to the poor performance of an employee, the supervisor will raise these concerns at the time with the employee and work with them to develop performance improvement strategies, including appropriate training and development opportunities, against which progress will be monitored.
- 3.34 If after this intervention, the employee fails to attain and sustain effective performance, formal underperformance measures can be initiated. Corrective action at this time will be aimed at enabling the employee to attain and sustain effective performance.
- 3.35 The processes for managing under-performance apply to all ongoing employees who are not on probation. Separate guidelines apply to the management of under-performance by probationers and non-ongoing employees, and are available on *express*.
- 3.36 Before commencing procedures for managing under-performance, the manager must consider possible mitigating factors such as unreasonable workload, serious personal issues which may have contributed to a temporary decline in performance or whether adequate support and training has been available to the employee.
- 3.37 The key principles of the Tribunals managing under-performance arrangements are based on equity, efficiency, effectiveness, ethical conduct and natural justice. They are:
- effective communication between employees and their managers:
 - employees understanding the standards expected of them and taking responsibility for their individual performance with appropriate support and guidance from their supervisor;
 - supervisors taking timely remedial action including revising the Performance Agreement as necessary, and establishing a Performance Improvement Plan, which clearly identifies performance expectations and any training and support needs that the employee may have; and
 - timely, fair and transparent procedures.
- 3.38 In working with the employee to improve performance, the manager is required to:

- provide the employee with clear information which identifies the areas where the employee has failed to perform satisfactorily and how their performance does not meet the required standard;
 - review and amend, if needed, the employee's Performance Agreement in conjunction with the development of a Performance Improvement Plan detailing the tasks to be undertaken and performance standards to be achieved and how performance will be assessed and measured;
 - provide the employee with relevant job related training and development assistance;
 - if appropriate, offer external counselling through the Employee Assistance Program provider;
 - closely monitor the employee's performance and provide regular written feedback to the employee during the period covered by the Performance Improvement Plan;
 - maintain comprehensive documentation of the process; and
 - inform the employee of the implications of not improving their work performance, including the likelihood of being rated 'unsatisfactory' against their Performance Agreement.
- 3.39 To ensure that the process is transparent, the supervisor will discuss the problem and the proposed course of action with a manager from another section or the Director, Human Resources prior to providing the written notice.
- 3.40 The period covered by the Performance Improvement Plan is normally about 3 months, however the period may be extended depending on the nature of the deficiencies and the hours of attendance of the individual. At the end of the agreed period, an assessment shall be made as to whether the employee has achieved an acceptable standard of performance.
- 3.41 The process entails the following steps:
- The employee is issued with a notice of the need to improve performance;
 - The employee is given 7 days to respond to the notice:
 - Initial performance counselling meeting;
 - Performance Improvement Plan is developed;
 - Assessments are undertaken on a fortnightly basis to determine progress. These assessments are documented in writing and given to the employee in the regular fortnightly meetings.
 - Employee given opportunity to comment on assessments;
 - After a period of 3 months (or the agreed extension as per clause 3.40), the supervisor must, within 7 days, send a report with recommendations together with the fortnightly progress reports and any other relevant documents, to the Principal Member and the employee;
 - Employee given opportunity to comment on report;
 - Principal Member makes a preliminary decision; and
 - The Principal Member will discuss the situation with the employee and consider the employee's comments prior to making a decision.

- 3.42 An employee may elect to have a representative of their choice accompany them to any sessions held within this process to ensure procedural fairness is observed and provide other guidance or support to them at any stage during the process.

Unsatisfactory performance of duties

- 3.43 Where the Principal Member concludes that reasonable efforts to manage the under-performance of an employee have failed to return the performance of the employee to an acceptable level, the Principal Member will then decide to either:
- take no action
 - reduce the employee's classification;
 - lower the salary point in the band;
 - to reassign the employee, with or without a reduction in classification or salary point; or
 - terminate the employee's employment.
- 3.44 If an employee is, without consent, reduced in salary or classification, the employee may under section 33 of the *Public Service Act 1999*, seek a review of any decision to reduce their classification.
- 3.45 The decision to terminate employment for underperformance will be made by an unbiased decision-maker.
- 3.46 Any decision to terminate employment for underperformance will be based on sufficient evidence to support the decision.
- 3.47 If action is commenced to terminate an employee's employment, the employee will be given 7 days to state why they believe their employment should not cease.
- 3.48 The sole and exhaustive rights and remedies of an employee in relation to termination of employment are those that the employee has under:
- Division 4 of Part 12 of the *Workplace Relations Act 1996*;
 - other Commonwealth laws (including the Constitution); and
 - common law.
- 3.49 Further guidelines for managing under-performance are on *express*.

Breaches of the Code of Conduct

- 3.50 The Principal Member will determine whether an employee has breached the APS Code of Conduct in accordance with procedures approved and issued by the Principal Member RRT, in accordance with the *Public Service Act 1999*, Public Service Regulations and Public Service Commissioner's Directions.
- 3.51 An employee may elect to have a representative of their choice to provide support, guidance and/or representation.

Dispute avoidance and resolution

- 3.52 The following are the procedures for preventing and settling disputes over matters arising under this Agreement. Where an employee exercises a right of review under section 33 of the *Public Service Act 1999*, there will be no right of review in respect of the same matter under clauses 3.52 to 3.60 of this Agreement. Where a dispute arises, affected employees may nominate that they be accompanied/represented by a representative or a person of their choosing.

- 3.53 The level to which matters are progressed through the following steps of this procedure should not go beyond the initiating level of decision making or the appropriate level for resolution.
- 3.54 In the event of any matter arising which is of concern or interest, the employee(s) or where they choose their representative(s) shall discuss the matter with the immediate supervisor.
- 3.55 If the matter is not resolved at this level, the employee(s) or where they choose their representative(s) shall refer the matter to the appropriate representative of management in that establishment or work place who shall, within 24 hours or as otherwise agreed, arrange a conference of the parties to the dispute to discuss the matter.
- 3.56 In instances where the matter remains unresolved, the appropriate level of senior management shall be notified and a conference on the matter shall be arranged to be attended by senior management representatives and the employee(s) or where they choose their representative(s).
- 3.57 If the matter remains unresolved, it shall be referred to the Principal Member and/or his/her nominated representative for discussion with the employee(s) and where they choose their representative(s) and appropriate action.
- 3.58 If the matter is not resolved it may be notified by a party to the dispute to the Australian Industrial Relations Commission (AIRC).
- 3.59 Unless the parties to the dispute agree to the contrary the AIRC shall, in responding to notifications, have regard to whether the parties to the dispute have, in good faith, undertaken the previous steps of these procedures.
- 3.60 Consistent with s 170LW of the *Workplace Relations Act 1996*, the AIRC is, by this Agreement, empowered to settle disputes concerning the application of this Agreement that are notified to it under clause 3.58 above.

Review of actions

- 3.61 Under the Public Service Regulations, employees may seek a review of a range of actions which affect their employment including, for example, the application of conditions of employment; performance management issues; inappropriate behaviour in the workplace; discrimination; harassment; a determination that the employee has breached the APS Code of Conduct or the imposition of a sanction following such a determination. An action includes a decision and a refusal or failure to act.
- 3.62 An employee may elect to have a representative of their choice to provide support, guidance and/or representation.
- 3.63 In most cases, application for review of an action must be made to the Principal Member in the first instance. Where the employee is dissatisfied with the outcome of that review, they may choose to refer the matter to the Merit Protection Commissioner.
- 3.64 In some special circumstances an employee may make an application for review of an action directly to the Merit Protection Commissioner.

Termination provisions

- 3.65 The sole and exhaustive rights and remedies of an employee in relation to termination of employment are those that the employee has under:

- Division 4 of Part 12 of the *Workplace Relations Act 1996*;
 - other Commonwealth laws (including the Constitution); and
 - common law.
- 3.66 Termination of or a decision to terminate, employment, cannot be reviewed under the dispute avoidance and settlement procedures addressed in clauses 3.52 to 3.60 nor the Review of Actions provisions referred to in clauses 3.61 to 3.64 of this Agreement.
- 3.67 Nothing in this Agreement prevents the Agency Head from terminating the employment of an employee for serious misconduct, without further notice or payment in lieu, in accordance with paragraph 661(1)(c) of the *Workplace Relations Act 1996*, subject to compliance with the procedures established by the Principal Member RRT, for determining whether an employee has breached the Code of Conduct under section 15 of the *Public Service Act 1999*.
- 3.68 An employee may elect to have a representative of their choice to provide support, guidance and/or representation.

PART 4 BALANCING WORK AND LIFE

- 4.1 The Tribunals are committed to managing working patterns in a way which both:
- affords employees the greatest possible flexibility to help them balance their working life with their family, community and lifestyle choices; and
 - facilitates the Tribunals in meeting their operational requirements, including providing a high level of service to its clients.
- 4.2 The provisions below on working hours, working patterns and leave are designed to help the Tribunals achieve these objectives. When applying these provisions employees and their managers are committed to considering the impact of working patterns on clients, on the workgroup and on the personal needs of each staff member.
- 4.3 The Tribunals support access to part time work by employees at all levels. An employee who is a part time employee will be considered for promotion, higher duties and transfer on the basis of merit.

Hours of duty

Operating hours

- 4.4 The operating hours of the Tribunals are 8.30am to 5.00pm, Monday to Friday. Hearings normally conclude by 5.00pm. Where hearings continue after 5.00pm, some Registry employees may be required to work after 5.00pm. In this situation, the provisions of clause 4.188 may apply.

The standard day

- 4.5 The standard day for full time employees will be 7 hours and 21 minutes. For administrative purposes the standard day will be 8.30am to 12.30pm and 1.30pm to 4.51pm. The standard day for part time employees will be the ordinary hours specified in their Part Time Work Agreement.

Working hours

- 4.6 The ordinary hours of duty for full time employees of the Tribunals will be 147 hours per four week settlement period. The settlement period commences on a nominated Thursday and finishes 27 calendar days later on a Wednesday. Ordinary hours for both full and part time employees will be worked within the bandwidth of 7.00am to 7.00pm, Monday to Friday.
- 4.7 An employee's supervisor may agree to an employee request to work normal hours of duty between 7.00pm and 8.00pm on an individual day. Overtime would not be payable in these circumstances.
- 4.8 The Principal Member may agree to an alternative bandwidth requested by an employee which can be within the boundaries of 7.00am to 8.00pm - Monday to Friday.
- 4.9 Employees must not work more than 9.5 ordinary hours in a day or more than five (5) continuous hours without taking a meal break of at least 30 minutes.

- 4.10 An employee should agree with their supervisor, a general pattern of attendance. The general pattern of attendance shall be agreed consistent with the principles established at Clause 4.1 of this Agreement.
- 4.11 An employee and the Principal Member may agree to a pattern of hours which includes hours that are outside the standard bandwidth hours and/or on the weekend. The employee is not eligible for any overtime or any other penalty type payments during the employee's agreed pattern of hours.

Flextime system

- 4.12 Flextime is a system of flexible working hours which helps employees manage their own patterns of attendance within the ordinary and core hours specified in this Agreement, and provides flexibility and other benefits to clients, the Tribunals and employees.
- 4.13 Employees may only commence work before 8.30am or finish work after 5.30pm if sufficient work and any required supervision is available.

Core hours

- 4.14 Normal core hours are 10.00am to 12.00 midday and 2.00pm to 4.00pm, Monday to Friday.
- 4.15 The Principal Member may agree to alternative core hours requested by an employee.
- 4.16 All employees working under the flextime system must be at work during core hours unless on approved leave.
- 4.17 To optimise the Tribunals' effectiveness, supervisors can require employees (including part time employees where this is consistent with their ordinary hours as set under clauses 4.60 and 4.66 of this Agreement) to attend at specific times during the period from 8.30am to 5.00pm, unless leave has been approved. For example particular work areas may have a roster over the lunchtime period to enable a client service to be maintained during the non core period of 12 noon to 2.00pm.

Recording attendance

- 4.18 Employees at classification levels APS Level 1 to APS Level 6 are required to record their actual time of arrival and departure, and their breaks during the day, at the time these occur. Attendance will be recorded on an electronic flex sheet or an approved attendance sheet. Employees classified above APS Level 6 are required to maintain a diary or flex sheet of their attendance.
- 4.19 Whole-day absences resulting from approved leave or a public holiday are counted as 7 hours and 21 minutes towards the working time in a settlement period.
- 4.20 Where a part day absence is approved as leave, the leave to be taken and debited will be 7 hours and 21 minutes less the time the employee attends work between 8.30am and 4.51pm.
- 4.21 Part time employees should record the actual agreed part time hours for which they were absent from duty.

Flex credit and debit

- 4.22 At the end of each settlement period, a full time employee should have a balance of between 137 and 187 hours, ie up to 10 hours debit or up to 40 hours credit. The potential balance range for a part time employee is given by the formula:
- maximum debit = 10 x (part time hours per cycle/147)*
maximum credit = 40 x (part time hours per cycle/147)
- 4.23 At the end of each settlement period, hours in excess of 147 for a full time employee may be credited to the next period, provided that no more than 40 hours may be carried over from one period to the next. The only exception to this rule will be where a credit above this carryover limit has been accumulated to meet operational requirements as agreed in advance with the employee's manager, in which case, the employee must be either: provided with an opportunity to take sufficient flex leave during the following settlement period to reduce their flex credits to below maximum; or be paid for the excess flex credits at normal hourly rates of pay in which case, the employee's flex credits will be reduced accordingly. The same rule will apply to part time employees on a pro rata basis according to the number of hours worked.
- 4.24 Incidence of excess flex credits will be reported to and monitored by the Local Consultative Committees.
- 4.25 Excess flex credits may be held for two settlement periods as long as the employee and his or her supervisor have agreed to the timing of flex leave in the second settlement period that is sufficient to eliminate the excess flex credits. Once such agreement has been reached, the timing of the flex leave can be changed by mutual agreement between the employee and his or her supervisor as long as the flex leave is still taken before the end of the second settlement period. Where the employee elects not to take the flex leave as agreed, his or her flex credits will be reduced to the maximum flex credit from the start of the next settlement period.
- 4.26 An employee may also carry over a debit of up to 10 hours. Any debit exceeding 10 hours will be deducted as Leave Without Pay (LWOP) unless approved otherwise by the Principal Member. The same rules will apply to part time employees on a pro rata basis according to the number of hours worked.
- 4.27 Where an employee has flex debits on cessation of employment, the salary value of those flex debits will be deducted from any monies due to the employee or otherwise recovered from the employee.

Flex leave

- 4.28 Employees will be granted flex leave during core hours provided that the operational needs of the work area can be met with reasonable adjustment.
- 4.29 Up to five (5) flex days may be taken in a settlement period.
- 4.30 Except where genuine emergencies arise, local supervisors will require notice of flex leave. This notice period will vary from supervisor to supervisor and employees should check local rules when they start in a new section with a new supervisor.
- 4.31 Flex leave taken in conjunction with other leave eg. recreation or long service leave, must be taken at the beginning or end of the leave period.
- 4.32 With reasonable notice to the supervisor, flex leave will be available for staff to participate in cultural or religious activities.

Breaches of flextime obligations

- 4.33 Where an employee is found to have breached their obligations under the flextime system, the Principal Member may direct that the employee is to work the standard day for a nominated period.

Excess travelling time

- 4.34 Where an employee at a classification level below EL1 is required to travel away from the employee's normal location on official business, the employee may record the travel time as hours worked. For the purposes of this clause, travel time is:
- where inter city transport is used, from one hour before the scheduled departure time of that transport until one hour after arrival at the temporary location; or
 - in other cases, from the actual time of departure from the employee's home until the actual arrival time at the temporary location.
- 4.35 The amount of time that can be credited to an employee under clause 4.34 is not limited by the restriction on the maximum hours that can be worked as specified in clause 4.9.

Working hours for Executive level staff

- 4.36 An Executive level employee may be granted time off in lieu in accordance with the following guidelines:
- although required to work the number of hours prescribed in this Agreement and expected to work longer hours where necessary to achieve required outcomes, Executive level employees may be granted time off in lieu where they work more than the prescribed number of hours in this Agreement.
 - the actual pattern of hours for Executive level employees is to be determined through negotiation between the employee and their supervisor.
 - Executive level employees are required to maintain a diary or flex sheet recording their attendance.
 - approval for taking time off in lieu will be given by the employee's immediate supervisor taking into account operational requirements.
 - time in lieu credits cannot be cashed out.

Overtime

- 4.37 Overtime is a payment designed to recompense employees for the inconvenience involved in working longer hours than the normal working day to meet business needs.
- 4.38 An employee may be called for duty at any time the employee is required. An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable. Reasons may include, but not be limited to any risk to employee health and safety, the employee's personal circumstances including any family responsibilities, and the length of notice given by the manager of the overtime and by the employee of their intention to refuse it.
- 4.39 Employees at the APS 1 to APS 6 level and equivalent are entitled to the payment of overtime or time in lieu.

- 4.40 Overtime duty for a full time employee is that duty which the employee is directed to work which:
- falls outside the bandwidth; or
 - is not continuous with ordinary duty; or
 - falls before 8.30am, where the employee also works at least 7 hours 21 minutes from 8.30am in which case the overtime rate will apply to the duty undertaken before 8.30am; or
 - falls after 5.00pm, where the employee has already worked at least 7 hours 21 minutes in which case the overtime rate will apply from 5.00pm; or
 - falls after 5.00pm, where the employee has on that day not worked at least 7 hours 21 minutes but has been directed to work overtime from a specified time (in which case the overtime rate will apply from the specified time); or
 - involves a direction on both the required starting and finishing times for the day in which case the overtime rate will apply from 4pm where the employee has already worked at least 7 hours 21 minutes ordinary duty; or
 - is in excess of an employee's agreed pattern of hours.
- 4.41 Overtime duty for a part time employee is that duty which the part time employee is directed to work which is not part of their ordinary hours of duty, or which is outside the bandwidth of hours, or which otherwise causes them to exceed, in any one calendar week, their prescribed weekly hours of part time duty.
- 4.42 Overtime may not be worked without the prior approval of the local manager.

Overtime rates and time in lieu

- 4.43 Overtime worked Monday to Saturday will be paid at time and a half for the first 3 hours each day and double time thereafter. Overtime worked on Sunday will be paid at double time. Overtime worked on a public holiday will be paid at the rate of 2.5 times the hourly rate (duty on a public holiday not in excess of the prescribed weekly hours, that is duty during prescribed standard hours, will be payable at 1.5 times the hourly rate in addition to payment for the holiday). Salary for the purpose of calculating overtime payments includes any temporary performance loading being received by the employee at the time of performing the overtime.
- 4.44 Overtime may be taken as a salary payment, or as time off in lieu at overtime rates, at the choice of the employee subject to operational requirements. Overtime taken as salary will be paid in arrears.
- 4.45 Overtime is defined as continuous with the ordinary duty where there is no break between the end or beginning of ordinary duty and the commencement or end of overtime, other than a meal break.
- 4.46 Where an employee is required to separately attend work for the purposes of undertaking overtime, ie where the overtime is not continuous with ordinary duty, the employee will receive a minimum payment of four hours overtime.
- 4.47 Overtime payments do not count as salary for superannuation or long service leave purposes subject to the provisions in the superannuation and long service leave legislation.

Emergency duty

- 4.48 Where an employee is called on duty to meet an emergency:

- i. at a time when the employee would not ordinarily have been on duty; and
- ii. no notice was given to the employee prior to ceasing duty;

the employee will be paid for such emergency duty at the rate of double time, including time spent travelling to and from.

- 4.49 The minimum payment will be for a period of three hours if the employee needs to travel to a location, and one hour in all other circumstances.
- 4.50 Emergency duty provisions do not apply to employees above the maximum salary point of an APS Level 6, except with the approval of the Principal Member or delegate.

Rest relief

- 4.51 An employee who has not had at least eight consecutive hours off duty, plus reasonable travelling time, between the time they cease overtime and the time they are next required to commence ordinary duty, is entitled to:
- absent themselves from work with no loss of pay until they have been off duty for a period of eight consecutive hours, plus reasonable travelling time; or
 - if certified by their manager that such a break was not possible, double ordinary time rates for the time worked until they have had eight consecutive hours off duty, plus reasonable travelling time.
- 4.52 Employees absenting themselves from work for Rest Relief purposes should record having worked standard hours when maintaining their flextime records.
- 4.53 If the overtime is worked on a Saturday, Sunday or public holiday, the employee is entitled to at least eight consecutive hours off duty in the 24 hours before commencing duty on the next standard working day.
- 4.54 Rest Relief is not applicable in circumstances where an employee is required to work only a short period of overtime starting immediately before commencing ordinary duty.

Overtime meal allowance

- 4.55 Where an employee is required to work for more than five (5) hours since the employee's last meal break due to approved overtime, the employee will be required to take a 30 minute meal break and will be entitled to a meal allowance in accordance with the Allowance guidelines.

Home based work

- 4.56 With an employee's agreement, the Principal Member, following advice from an employee's local manager, may permit an employee to work from home on either a regular or temporary basis. Home based work will only be approved where:
- the employee's duties can be effectively performed and supervised from home to the extent that the operational effectiveness of the Tribunals is not compromised;
 - having regard to OHS, security and working environment considerations, the home based site is suitable for the duties to be performed; and

- the cost to the Tribunals in establishing a home based work site, including the cost of a mandatory inspection of the home based work site by an OHS expert, does not exceed \$1,000.
- 4.57 In extenuating circumstances additional financial assistance may be approved by the Principal Member.
- 4.58 A home based work arrangement between an employee and his or her manager can only be varied by agreement, but may be terminated by either the employee or manager with a minimum notice period of two (2) weeks or such shorter period as may be agreed between the employee and the manager. No notice is required however, if the agreement is terminated due to the failure of the employee to comply with requirements established as part of their agreement. The arrangement can be varied or terminated by the Tribunals as a result of operational requirements, the inefficiency and/or ineffectiveness of the arrangement and/or the failure of the employee to comply with requirements established as part of their agreement.
- 4.59 When an application to work from home is received affected staff will be consulted about the impact of that application on the relevant work area.

Part time work

- 4.60 A part time employee is an employee, other than a casual employee, whose agreed hours of ordinary duty are less than 147 hours per four week cycle. Before commencing work on a part time basis an employee will be issued by the Principal Member with a written notice which specifies their prescribed ordinary hours of duty and the pattern in which these hours will be worked. These hours will be within the span and meal time requirements specified for all employees under this Agreement, and may only be varied in accordance with the terms below.
- 4.61 Part time employment may be initiated by an employee or, in respect of vacant positions, by management.
- 4.62 An employee may initiate part time employment by submitting a request to the Principal Member through their local manager. This request may be to work part time for either a set or an indefinite period. The local manager will discuss the request with the employee and consider all available options for accommodating the employee's request, including such options as part time temporary performance arrangements and the employment of part time non-ongoing staff, before submitting a recommendation to the Principal Member to either approve or to refuse the request.
- 4.63 The Principal Member will not unreasonably refuse an employee request for part time work, especially where the employee wishes to work part time in order to combine work with family requirements, or to prepare for termination, or to readjust to the workplace after extended sick leave or where medical or rehabilitation considerations apply. If there is a decision made by the Principal Member to refuse a request to work part time, then the Principal Member must give the employee a written statement of reasons for their decision within six (6) weeks. An employee may request a review of the decision to refuse a request for part time work.
- 4.64 When an application for part time work is approved, management will ensure that arrangements are put in place to cover the work hours previously undertaken by that work area without placing additional demands on existing staff in that work area or decrease the workflow to that area consistent with the decrease in work hours available.

- 4.65 The Tribunals will only initiate the establishment of a part time position where the work required to be undertaken is less than would justify a full time position or the availability of part time work is a necessary recruitment or retention device.
- 4.66 For employees returning to work from a period of maternity leave or adoption leave, part time work is automatically available for a period of five (5) years from the birth.

Variation of part time hours

- 4.67 A part time employee and his or her supervisor may, by agreement, vary the number or pattern of the employee's ordinary hours of duty. Any variation which will continue for more than four weeks must have the written consent of the part time employee. Subject to the conversion provisions below, the Principal Member may also approve a part time employee converting to full time hours. Where an employee is permitted to work part time hours for a set period, they will revert to full time employment at the end of that period, unless a further application for part time work has been approved.

Protection of full and part time employees

- 4.68 No pressure will be exerted on full time officers to convert to part time employment or to reassign to another position to make way for part time employment. In this context, the written agreement of a full time employee must be obtained before the hours of that employee's position can be varied and before that officer can be reassigned from one position to another. Similarly, an employee engaged as a part time employee may not be required to convert to full time hours, unless such a requirement was included in their letter of engagement. A full time employee who has been allowed to convert to part time hours may not be required to convert back to full time hours, other than in the terms provided in their latest approval to work part time.

Conversion from part time to full time hours

- 4.69 A part time employee may revert or convert to full time hours in the following circumstances:
- an employee who has been permitted to convert from full time to part time hours for a set period, will revert to full time hours at the end of that period, unless agreed otherwise;
 - an employee who has been permitted to convert from full time to part time hours for a set period, but wishes to revert to full time hours before the end of that period, will be permitted to revert to full time hours as soon as practicable, but no later than expiry of the agreed period of part time work;
 - an employee who has been permitted to convert to part time hours for an indefinite period, will on application be permitted to revert to full time hours as soon as practicable; and
 - employees originally engaged as part time employees may apply for reassignment or promotion to a full time position in the normal way.

Consultation

- 4.70 When a part time work application is received affected staff will be consulted about the impact of that application on the relevant work area.

Entitlements

- 4.71 Remuneration and other benefits for part time employees will be calculated on a pro rata basis in proportion to the hours worked, apart from those allowances of a reimbursement nature, where part time employees will receive the same amount as full time employees.

Outside employment

- 4.72 Outside employment must not be inconsistent with the provisions of the APS Code of Conduct as contained in section 13 of the *Public Service Act 1999*. In general, employees should not engage in outside employment, whether paid or unpaid, where a (real or perceived) conflict of interest with their official duties is likely to result; or where the outside employment is likely to affect their efficiency in the performance of their official duties.
- 4.73 All employees, including those on leave from the Tribunals, must notify the Principal Member prior to engaging in paid employment outside their official duties. The Principal Member will not unreasonably prevent outside employment keeping in mind the need for a proper balance between the interests of the Tribunals and the right of employees to lead their private lives free of unnecessary restrictions. An employee must also notify the Principal Member prior to undertaking voluntary work if a possible conflict of interest is reasonably foreseeable.

Leave

General

- 4.74 Unless for health and/or safety reasons, the timing and duration of leave is to be mutually agreed.
- 4.75 **Eligibility to accrue leave:** Any employee who is not a casual employee accrues leave regardless of the number of hours or days worked in a week. Apart from long service leave, casual employees do not accrue leave.
- 4.76 **Definition of a 'week':** For the purposes of leave, unless otherwise stipulated, a 'week' refers to the approved weekly hours for an employee, whether full time or part time
- 4.77 **Prior employment:** Where an employee joins the Tribunals from an employer staffed under the *Public Service Act 1999*, the *Parliamentary Service Act 1999* or from the ACT Government Service, accrued recreation leave and sick leave (however described) will be transferred, provided there is no break in continuity of service. Employees seeking to have prior employment recognised for long service leave purposes must apply for recognition of that service, and claims will be assessed in accordance of the provisions of the *Long Service Leave (Commonwealth Employees) Act 1976*. Where recognition is sought, the onus is on the employee to obtain all information necessary from prior employers to support their claim. Advice may be sought from Human Resources staff. This requirement does not apply to an employee who moves to the Tribunals from another APS agency.
- 4.78 **Notification of absences:** Employees who are unable to attend for duty on a particular day, should notify their supervisor as soon as practicable (normally no later than 9.30am) of their absence. Notification should include reason and expected duration of absence. If unable to return on the expected day, the employee must again notify their supervisor on or before that day. Where the supervisor is

unavailable, the next most senior officer available should be notified. Wherever possible, absences should be reported by the employee personally. Where an employee fails unreasonably to comply with his or her obligations as specified in this clause, the absence may be regarded as unauthorised and without pay.

- 4.79 ***Unauthorised Absence:*** Unauthorised absence will not count as service for any purpose and all pay and other benefits provided under this Agreement will cease to be available until the employee resumes duty or is granted leave, provided that accrued recreation leave entitlements and any monies owing will be paid out if the unauthorised absence is followed by dismissal. Unauthorised absence will be deducted in 5 minute units, rounded up, with 7 hours and 21 minutes being deducted for a full day's absence.
- 4.80 ***Effect of absences on leave credits:*** Continuous service may include up to 30 calendar days of unpaid leave that does not count as service and up to 4 weeks of purchased leave during the 12 month period. However, recreation and personal leave will not be credited for the periods where more than 30 calendar days unpaid leave that does not count as service or more than 4 weeks of purchased leave has been taken in calendar year.
- 4.81 ***Part day leave:*** While employees are encouraged to use flex credits to take part day leave, they are not precluded from using other types of leave appropriate to the absence.

Personal leave

- 4.82 Ongoing employees will accrue 4 weeks (full time equivalent 147 hours) of paid Personal Leave (PL) per year of full time service, credited on 1 January each year.
- 4.83 Ongoing employees, other than those referred to in clause 4.77, who are engaged from outside the APS will be credited with 4 weeks (147 hours) of PL on commencement, with up to a further 4 weeks (147 hours), adjusted for their part year service, being credited on the following 1 January.
- 4.84 Non-ongoing employees, other than casual employees, who are engaged for a specified term will have their PL credited on the same basis as ongoing employees under clauses 4.82 and 4.83, provided that:
- the total credit on commencement may not exceed 12.25 hours leave for each month of the employee's prospective term, and
 - the employee's credit on 1 January will be adjusted for both part year service during the preceding year and for part year service under their prospective term for the forthcoming year, and
 - in the event that the employee's continuous service extends beyond their prospective term for any reason, such as engagement as an ongoing employee, a readjustment will be made to their credit under this clause.
- 4.85 Non-ongoing employees, other than casual employees, to whom clause 4.84 does not apply, will be credited with 12.25 hours PL at the commencement of each month of full time service.
- 4.86 Where a non-ongoing employee whose leave has been credited under clause 4.85 is subsequently engaged as an ongoing employee, the employee will retain any leave accrued to that date in addition to receiving the normal entitlement on engagement, provided that the pro rata credit on the following 1 January will be based only on service since engagement.

- 4.87 Unused accrued PL is carried over each year and accumulated without limitation during the employee's employment with the Tribunals.
- 4.88 The Principal Member may, subject to the availability of PL credits, approve paid PL for an employee for the following purposes:
- personal illness or injury and attending medical appointments;
 - accompanying members of family or household to medical appointments;
 - caring responsibilities;
 - death and/or funeral of members of family or household or close friends;
 - moving residence;
 - house emergencies;
 - car accidents;
 - caring for children in an emergency;
 - caring for members of family or household who are ill;
 - to attend a graduation ceremony of the employee;
 - birth of a child of the employee;
 - flooding;
 - natural disasters;
 - religious and/or cultural observance;
 - attending own citizenship ceremony;
 - attending a Tribunal sports day;
 - attending court as a witness in a private capacity;
 - attending local government activities in the capacity of mayor or councillor, where such positions are not paid positions;
 - attending NAIDOC week activities;
 - attending as a participant in international sporting events;
 - for activities related to tertiary study, such as attending exams or preparing essays; or
 - other circumstances which are considered appropriate by the Principal Member.
- 4.89 Employees must advise their supervisor of the reasons for applying for PL and when consulting a health practitioner should provide evidence such as a medical certificate in support of an application. Managers or supervisors may require the employee to provide documentation for absences, for instance where a supervisor has a reasonable concern about an employee's attendance or where an illness may necessitate a prolonged absence.
- 4.90 For personal leave other than personal illness or injury, documentation, where available, should be provided in support of an application.
- 4.91 For OHS reasons, if an employee is certified unfit for work by a medical practitioner, they will be deemed to be on personal leave.
- 4.92 For the purposes of PL family will include any person dependent on the employee for care or support without discrimination in interpretation as to race or sexual orientation.

- 4.93 For the purpose of certifying leave through illness the Tribunals will accept certificates from the following practitioners where they are registered to practise by the relevant State or Territory authority:
- Medical practitioners;
 - Registered nurses;
 - Dentists, optometrists, opticians, radiographers or physiotherapists;
 - Podiatrists, chiropractors or osteopaths;
 - Naturopaths, homeopaths, acupuncturists
- provided that these arrangements apply for the purposes of personal illnesses for PL leave only. Evidence in support of claims for compensation for work related injuries or illness must meet the requirements of the *Safety Rehabilitation and Compensation Act 1988*.
- 4.94 Employees with a long term illness requiring an extended absence from work may apply to convert some or their entire PL to half pay.
- 4.95 Employees on paid maternity leave are not able to access PL.
- 4.96 Employees on recreation leave or long service leave may have that leave re-credited for any days for which, if they had not been on recreation or long service leave, they would have been too ill to attend for duty provided that:
- suitable documentation is provided on their return from leave;
 - they have PL credits available for the period sought; and
 - the period of leave is at least one day.
- 4.97 The Principal Member may on application increase the amount of PL available, or allow an employee to anticipate up to 4 weeks (147 hours) PL where all other PL credits are exhausted.
- 4.98 The maximum period of continuous leave for personal illness that can count as service is 78 weeks, of which up to 52 weeks may, if sufficient credits are available, be taken as paid PL, with the remaining period taken as unpaid PL. Beyond 78 weeks leave is without pay not to count as service except for long service leave. Where an employee has accrued more than 52 weeks PL, the Principal Member may approve a longer period of paid leave. This leave would count as service.

Recreation leave

- 4.99 ***Calculation of credit:*** Ongoing and non ongoing employees are entitled to a recreation leave credit of 4 weeks per year of continuous service based on their weekly hours. Recreation leave can only be requested if credits have accrued. Recreation leave accrues and is credited monthly at the rate of:
- $1/12 \times (4 \times \text{weekly hours})$
- 4.100 Employees in receipt of worker's compensation for more than 45 weeks will accrue recreation leave on the basis of hours actually worked. Recreation leave counts as service for all purposes.
- 4.101 ***Approval of recreation leave:*** The Principal Member will approve an employee's request for recreation leave where sufficient credit is available subject to operational requirements.
- 4.102 ***Use of recreation leave:*** Employees are encouraged to take reasonable breaks from work for rest and recreation, and should aim to take recreation leave on a regular

basis. Supervisors will ensure in any 12 month period, employees are given the opportunity to take recreation leave.

- 4.103 **Half pay recreation leave:** Recreation leave at half pay may be granted to an employee on the basis that one day's recreation leave at full pay is equivalent to 2 days recreation leave at half pay.
- 4.104 **Public holidays:** Where a designated public holiday for which an employee is entitled to payment occurs during any period of recreation leave, the public holiday will not be deducted from the recreation leave entitlement.
- 4.105 **Effect of leave without pay:** All absences which do not count as service will not be included in calculations of recreation leave credits.
- 4.106 **Deeming rule:** An employee may maintain a credit of up to 8 weeks recreation leave credits at any time. Where an employee has more than 8 weeks credits at 1 October in any year, the employee must take sufficient leave to reduce the credit by the excess amount. In exceptional circumstances the Principal Member may defer this requirement.
- 4.107 Where an employee has more than 8 weeks recreation leave credits at 1 October, they will be deemed to be on recreation leave until such time as the credits has been reduced to 8 weeks of credits. Human Resources will provide advice of excess leave credits to all line managers no later than 1 September. Managers will discuss plans for reducing excess leave with identified staff.
- 4.108 **Cancellation of leave or recall to duty:** Where an employee's recreation leave is cancelled without reasonable notice, or an employee is recalled to duty from leave, the employee will be entitled to be reimbursed reasonable travel costs and incidental expenses not otherwise recoverable under any insurance or from any other source.
- 4.109 **Subsidised child care:** The Tribunals will subsidise child care costs incurred by employees who for operational reasons are unable to be granted recreation leave during a scheduled school holiday. The subsidy will be \$10 per day towards the cost of care for each school child enrolled in an accredited program. The maximum payment an employee may receive under this arrangement is \$100 per week.

Purchased leave

- 4.110 Employees may apply to the Principal Member to purchase up to 8 weeks purchased leave credits each year. Credits must be purchased in one week blocks. The maximum credit that can be held at any time is 8 weeks.
- 4.111 Where an employee is seeking approval to purchase more than 4 weeks of purchased leave, he or she must give reasonable notice when he or she intends to take the purchased leave. This time can be changed by mutual agreement between the employee and his or her supervisor.
- 4.112 An employee may request approval of up to 8 weeks of purchased leave to be taken in conjunction with the employee's recreation leave credits to allow the employee to be on leave during all school holidays during the year.
- 4.113 Purchased leave must be used within 24 months of the commencement of salary deductions.
- 4.114 Where the Principal Member approves the application for purchased leave credits, the employee will have an amount deducted from his or her fortnightly salary over a 12 month period according to the following formula:

- 4.115 Purchased leave counts as service for all purposes where 4 weeks or less is taken in a year. Where more than 4 weeks of purchased leave is taken in a year, only the first 4 weeks will count as service.
- 4.116 Purchased leave credits will be allocated to the employee following the commencement of salary deductions.
- 4.117 Approval of purchased leave does not affect the employee's salary for superannuation purposes.
- 4.118 If an employee, having taken purchased leave, leaves the Tribunals for another APS agency monies 'owed' will be recoverable directly from the employee.
- 4.119 'Purchased leave' is not counted in the limit of two years recreation leave credits for deeming purposes.
- 4.120 Once a period of purchased leave is approved it cannot be rescinded except in special circumstances. If a period of purchased leave is cancelled a refund of the salary deductions already made will be paid as a lump sum as soon as practicable and within the following two pay periods. Similarly if purchased leave is not used because an employee leaves the Tribunals before leave is taken but payments have been deducted, the Tribunals will refund this as a lump sum as soon as is practicable and within the following two (2) pay periods.
- 4.121 Salary deductions and payment of salary during purchased leave are made at the employee's nominal salary (ie Temporary Performance Loading, first aid allowance and shift penalties are not included). If a person is paid a salary advancement, promoted or permanently reassigned on reduction then deductions will increase or decrease accordingly.

Leave without pay

- 4.122 Leave without pay may be approved subject to operational requirements.
- 4.123 Applications for leave without pay require the approval of the Principal Member where:
- the leave sought is for a continuous period greater than 12 months, or
 - approval of the application will result in the employee taking leave without pay totalling more than 12 months in a three (3) year period, or
 - an employee with less than 12 months continuous service with the Tribunals is seeking more than 4 weeks leave without pay.
- 4.124 All other applications are subject to the approval of the employee's local manager.
- 4.125 Unless provided or approved otherwise, leave without pay will not count as service for any purpose.

Career interval

- 4.126 An employee is entitled to up to three months leave without pay after five years of service with the Tribunals. The first 8 weeks will count as service for all purposes.

Miscellaneous leave

- 4.127 The Principal Member may grant an employee miscellaneous leave, with or without pay. The reasons for which miscellaneous leave may be granted, and the conditions associated with such grants, are contained in the following clauses.
- 4.128 **Bereavement leave:** An employee is entitled to up to three (3) days paid bereavement leave on the occasion of the death of a partner, child, parent, brother, sister, grandchild or grandparents of an employee or their partner, including step and half relatives, a person with whom the employee has a cultural kinship relationship (eg an Aboriginal or Torres Strait Islander kinship relationship), or a close friend. The Principal Member may grant bereavement leave in other circumstances or may grant additional leave.
- 4.129 **Volunteer fire fighters/State Emergency Services volunteers:** The Principal Member will approve paid leave to employees undertaking duties in emergency situations including rest relief and recovery time or if participating in a ceremonial event recognising those involved in an emergency. There is no maximum limit on this leave if it is taken in conjunction with a local emergency in their community.
- 4.130 Volunteer fire-fighters and Emergency Services volunteers who are asked to attend emergencies interstate or in regional areas or to attend training to enable them to undertake duties in emergency situations may be granted paid leave by the Principal Member to do so but need to discuss with their supervisor timing issues and the duration of the proposed leave. Extended paid leave for emergency services duties interstate or in Regional areas will not automatically be approved. All emergency service leave granted will be counted as service for all purposes.
- 4.131 **Volunteer leave:** An employee is entitled to one day's paid leave per calendar year to perform voluntary work for a not-for-profit community organisation, or to undertake training as a fire-fighting or emergency services volunteer. The Principal Member may approve further appropriate paid and/or unpaid leave for community volunteering.
- 4.132 **Jury service:** An employee is entitled to leave of absence to undertake jury service which will count as service for all purposes. An employee will continue to be paid by the Tribunals but will be required to pay to the Tribunals the amount received for jury service less any additional expenses incurred as a result of the jury service.
- 4.133 **Blood donation:** Subject to operational requirements, an employee may take a break from duty on a day to donate blood to the Red Cross or like institution. The employee will be eligible for paid time to cover the period taken for the procedure and reasonable travel time between the employee's normal workplace and the nearest donation point.
- 4.134 **Defence Service leave:** Ongoing employees who are members of the Defence Reserve will be granted leave to meet training and other requirements.
- 4.135 The Principal Member may grant an employee defence service leave, with or without pay.
- 4.136 The Principal Member will determine a reasonable amount of leave in the circumstances, taking into account operational requirements and the particular requirements of the Australian Defence Force Reserve.
- 4.137 In addition, an employee will be granted up to four days paid leave per calendar year to undertake annual training where the employee's Defence Commanding Officer

certifies in writing that the employee's attendance is required for an obligatory annual training period.

4.138 All Defence Service leave granted will be counted as service for all purposes.

War service sick leave

4.139 Employees may be eligible for war service sick leave while unfit for duty because of a war caused condition.

4.140 A war caused condition means an injury or disease of an employee that has been determined under the *Veteran's Entitlements Act 1986* to be war caused or defence caused.

4.141 Employees who have served in the Australian Defence Forces in a war, conflict or peace keeping operation will receive 9 weeks special war service sick leave credits on engagement or on return from the war, conflict or peace keeping operation and a further 3 weeks war service sick leave credits on commencement and after each subsequent 12 months of continuous service.

4.142 An employee who has previously been employed in the APS and had war service sick leave credits available at the time he or she left the APS will be entitled to war service sick leave credits equivalent to unused credits from their previous APS employment.

4.143 War service sick leave credits, not including the special credits received on engagement, will accumulate from one year to the next up to a maximum of 9 weeks.

4.144 Approval of war service sick leave by the Principal Member will be subject to available credits and the provision of a medical certificate stating the nature of the medical condition and a statement from the Department of Veterans' Affairs or its successor stating that the medical condition is a war caused condition.

4.145 Approved war service sick leave credits are to be exhausted before using personal leave for approved war service conditions.

4.146 War service sick leave will count as service for all purposes.

4.147 For the purposes of clause 4.141, periods of continuous service includes up to 30 days of unpaid leave not to count as service during the period but does not include any period of unauthorised absence.

Study leave

4.148 An employee may be granted leave by the Principal Member to undertake approved study. If granted with pay, leave will count as service. If granted without pay, leave will count as service for all purposes other than the accrual of recreation leave.

Tribunal leave

4.149 The two working days between Christmas and New Year will be Tribunal Leave days.

4.150 If:

- an employee works during this time as part of the required skeleton staff; or
- a part time employee's ordinary hours do not include the days of the week on which those days fall;

the employee will be entitled to alternative paid day or days off to be taken at another time convenient to the employee with the agreement of the employee's manager.

4.151 The Tribunal Leave days will be:

| If Christmas is on: | Tribunal Leave is: |
|---------------------|----------------------------------|
| Sunday | Thursday & Friday (29/30 Dec) |
| Monday | Thursday & Friday (28/29 Dec) |
| Tuesday | Thursday & Friday (27/28 Dec) |
| Wednesday | Monday & Tuesday (30/31 Dec) |
| Thursday | Tuesday & Wednesday (30/31 Dec) |
| Friday | Wednesday & Thursday (30/31 Dec) |
| Saturday | Thursday & Friday (30/31 Dec) |

Maternity leave

- 4.152 Maternity leave will be in accordance with the *Maternity Leave (Commonwealth Employees) Act 1973* and provisions. Periods of maternity leave will not break an employee's continuity of service. Under the Maternity Leave Act a woman is entitled to 12 weeks paid or unpaid leave.
- 4.153 Under this Agreement, where an employee is entitled to paid leave under the *Maternity Leave (Commonwealth Employees) Act 1973*, the employee is entitled to, over the entitlements under the Act, a further two weeks of paid leave called Additional Paid Maternity Leave.
- 4.154 An employee may also access LWOP for child care purposes during the period ending 5 years after the birth of her child.
- 4.155 Where an employee on maternity leave applies for paid leave at any time after the expiration of the required absence, and is eligible for that leave, the application will be granted.
- 4.156 An employee returning from leave taken within 2 years of the birth of her child has the right to return to the position she held prior to commencing maternity leave (or, where the employee was reassigned to a safe job or to a part time position because of her pregnancy, to the position held before that reassignment) or, if that position no longer exists, or the employee returns after more than 2 years, the nearest equivalent position in status and remuneration which she is qualified and able to perform.
- 4.157 An employee returning from maternity leave is entitled to access part time employment in accordance with clause 4.66 of this Agreement.
- 4.158 In order to provide more flexible provisions for maternity leave, approval may be given to spread the payment of paid maternity leave over a period of up to 28 weeks at a rate of no less than half normal salary. Any period beyond the first 14 weeks does not count as service for any purpose and this administrative arrangement does not extend the total period of paid or unpaid maternity leave available under the *Maternity Leave (Commonwealth Employees) Act 1973*.

Parental leave

- 4.159 Three weeks paid parental leave will be granted to ongoing employees with 12 months continuous service, following the birth, adoption, or long-term fostering of a

child. This leave is not available to employees entitled to maternity or adoption leave.

- 4.160 Any employee will be entitled to a period of leave of absence without pay for a period of up to 104 weeks from the date of birth of their child, or in the case of adoption on the day the employee assumes responsibility for the child.

Adoption leave

- 4.161 An employee who has been employed by the Tribunals for at least 12 months and who adopts a child under the age of 5 years and who has primary responsibility for the day-to-day care of the child is entitled to up to 14 weeks paid leave to count as service. Up to 2 weeks of the leave can be taken prior to the date of adoption.
- 4.162 Adoption leave may be taken at half pay but any period of leave in excess of 14 weeks will not count as service for any purpose.
- 4.163 An employee accessing adoption leave may also access LWOP for child care purposes during the period ending five years after the adoption of the child.
- 4.164 Where an employee on adoption leave applies for paid leave following the expiration of the adoption leave, and is eligible for that leave, the application will be granted.
- 4.165 An employee returning from leave within 2 years of the adoption of a child has the right to return to the position held prior to commencing adoption leave or, if that position no longer exists or the employee returns after more than 2 years, the nearest equivalent position in status and remuneration which the employee is qualified and able to perform.
- 4.166 An employee returning from adoption leave is entitled to access part time employment in accordance with clause 4.66 of this Agreement.
- 4.167 These provisions will not apply if the adoptive child is a child or stepchild of the employee or their spouse or partner and has previously lived with the employee or their spouse for a period of six (6) months or more.

Long Service Leave (LSL)

- 4.168 Long Service Leave will be in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976*.
- 4.169 The minimum period that an employee may be granted long service leave is seven (7) calendar days.

Leave for other purposes

- 4.170 The Principal Member may grant leave for any other reason not covered by an existing type of leave. If granted with pay, leave will count as service.

Public holidays

- 4.171 The Tribunals will cease normal operations on the public holidays specified below and employees will be paid salary as if that day were not a public holiday:
- 1 January (New Year's Day) or, if that day falls on a Saturday or Sunday, the following Monday;
 - 26 January (Australia Day) or, if that day falls on a Saturday or Sunday, the following Monday;

- Good Friday and the following Saturday and Monday;
- 25 April (Anzac Day);
- the day observed to celebrate the anniversary of the birthday of the Sovereign in the relevant State;
- the day variously called 'Eight Hour Day', 'Labour Day', or 'May Day' as proclaimed by State governments;
- 25 December (Christmas Day) or, if that day falls on a Saturday or Sunday, 27 December;
- 26 December (Boxing Day) or, if that day falls on a Saturday or Sunday, 28 December; and
- an additional holiday within the Christmas/New Year period according to the following table:

| <u>Christmas Day</u> | <u>Additional day</u> |
|----------------------|-----------------------|
| Sunday | Wednesday 28 December |
| Monday | Wednesday 27 December |
| Tuesday | Monday 31 December |
| Wednesday | Friday 27 December |
| Thursday | Monday 29 December |
| Friday | Tuesday 29 December |
| Saturday | Wednesday 29 December |

- 4.172 In addition an employee may observe up to two (2) local public holiday(s) each year when those days are declared under State law and gazetted in the State Government Gazette and are observed by the whole of the community in the relevant State or relevant part of the State concerned. In Victoria, this includes the Melbourne Cup holiday.
- 4.173 Where a State or Territory Government gazette a holiday in substitution for a holiday prescribed under clause 4.171, the State or Territory declared substitute holiday will be observed by employees in the relevant State or Territory.
- 4.174 Where the Principal Member and an employee agree, another day may be substituted for any holiday prescribed above, for reasons such as religious or ceremonial purposes.

Invalidity retirement

- 4.175 Within the limit set by clause 4.98, an employee will not, without the employee's consent, be retired on invalidity grounds before the employee has exhausted his or her PL credits.

Safe and healthy workplace

- 4.176 The Tribunals are committed to a safe workplace which provides employees with flexibility to balance their work and private lives without compromising the delivery of services to clients. This will be achieved through flexible working hours, leave provisions, appropriate overtime, employee services and the adoption of legislative protections for employees.
- 4.177 The parties to this Agreement are committed to preventing and managing illness and injury in the workplace by providing a safe and healthy environment for employees

and returning injured employees to work. They will achieve this by seeking to identify, avoid or eliminate workplace hazards, facilitating the involvement of employees and their chosen representatives, and complying with all relevant legislative requirements. This includes avoiding potentially stressful working conditions through proper management practices such as effective communication and consultation mechanisms.

- 4.178 The Tribunals are committed to building a culture that places emphasis on health and wellbeing of staff and encourages a balance between their work and private lives. This will be achieved through flexible working arrangements including leave and flexitime provisions and appropriate overtime.
- 4.179 The security of employees in all locations is of fundamental importance and will be an important feature in any workplace design considerations.
- 4.180 The OHS committees will monitor and develop, in consultation with staff and where they choose their representatives, an occupational health and safety plan, policies and strategies.
- 4.181 The Tribunals encourage improvements to the health and well being of employees through the following initiatives:

Employee assistance program

- 4.182 The Tribunals will continue to provide employees with access to confidential professional counselling to assist with work or personal issues through its Employee Assistance Program. The aim of the scheme is to support employees and help them to resolve personal or work related issues.
- 4.183 Financial support for the first six (6) sessions will be available and sessions may be attended during working hours without a requirement to take flex or other paid leave.

Vaccination program

- 4.184 The Tribunals will continue to provide free inoculations against infectious diseases either through Tribunal-wide programs or when requested by an employee.

Promoting healthy lifestyles

- 4.185 The Tribunals recognise that healthy employees are more productive employees and will subsidise employee activities which promote a healthy lifestyle. A healthy lifestyle reimbursement is available to ongoing employees and non ongoing employees engaged for 12 months or more. Reimbursement is available on production of receipts for healthy lifestyle related expenses.
- 4.186 A single claim of up to \$120 can be claimed in each calendar year; or, if a claim is not made in one calendar year, a single claim of up to \$240 can be made in the next calendar year. Reimbursement under this scheme is available for healthy lifestyle items/activities such as:
 - Sports membership (e.g. training or competition fees)
 - fitness programs (e.g. fitness or health club membership)
 - sports equipment
 - quit smoking programs
 - health checks (e.g. annual or periodic health assessments)

- weight loss programs
- healthy life seminars
- stress management programs
- health related services (e.g. therapeutic massage or physiotherapy).

Eye sight testing

4.187 Employees may be reimbursed for eyesight testing and for optical correction for work-related operation of screen based equipment every two years. The rate of reimbursement will not exceed:

- | | |
|---|-------|
| • Single vision spectacles/contact lenses | \$140 |
| • Bifocal spectacles/contact lenses | \$180 |
| • Multifocal spectacles/contact lenses | \$270 |

Personal safety

4.188 The Tribunals acknowledge that personal safety issues may arise. Managers and supervisors will, in consultation with the employee concerned, provide appropriate safety measures. For example, where an employee is required to work at night or falls ill during the day, a manager may issue a cabcharge voucher to enable the employee to go home in safety.

Additional family care costs

4.189 Where an employee is required to:

- work outside his or her normal pattern of hours; or
- be away from home overnight,

the Principal Member may reimburse the employee for all or part of additional family care costs incurred by the employee, net of any Government assistance payable to the employee.

4.190 To be eligible for possible reimbursement of additional family care costs under clause 4.189, the employee must:

- seek approval for reimbursement before the additional costs are incurred; and
- have taken reasonable steps to minimise the additional costs.

Resignation

4.191 An employee is required to give reasonable notice. Reasonable notice for employees up to APS 6 is two weeks and for EL1 and over, 4 weeks notice. These periods may be shortened or waived by the Principal Member.

PART 5 CONDITIONS FOR NON ONGOING STAFF

Non ongoing employees

- 5.1 The Tribunals recognise that full time ongoing employees will form the bulk of staffing. Non-ongoing employment arrangements will not be used as a replacement for ongoing employment.
- 5.2 Non-ongoing employees may be engaged in accordance with section 22 of the *Public Service Act 1999* and regulation 3.5 of the Public Service Regulations.
- 5.3 Non-ongoing employees may only be engaged on a short term basis for up to 12 months, unless the Tribunals require a specific task or project to be undertaken or position to be filled for a period exceeding 12 months where ongoing engagement would not be appropriate because either:
- the project has a finite life, and the Tribunals would be unable to redeploy the employee in a position requiring similar skills with a similar status at the expiry of the project; or
 - the position to be filled has a substantive occupant who is on approved leave, and there will be no continuing need for the employee when the substantive occupant returns to duty.
- 5.4 Non-ongoing employees would normally only be engaged at the lower classification level. However, where no suitably qualified person is available within the Tribunals, or from another APS agency if the operational demands allow time for an approach to be made to other agencies, a non-ongoing employee may be engaged at a higher level if the work level requires.

Casual employees

- 5.5 Casual employees are employees engaged to carry out duties that are irregular or intermittent. Casual employees will only be engaged where work is identified which cannot be formed into a meaningful full time or part time position for an ongoing or non-ongoing employee. No full time or part time employee may be converted to a casual employee. Casual employees must not be engaged for more than an average of 15 hours per week over a four (4) week settlement period. The number of casual employees will not exceed 10% of funded full time positions.
- 5.6 The Tribunals envisage casual employees being primarily used as support staff. Casual employees may be engaged when there are no other officers to act as hearing attendants, or in local centres where video conference hearings are being used, and for circuit hearing attendant work. Other casual employees would normally only be engaged at the lower classification level after ongoing and non-ongoing employees have filled other classifications. However, where no suitably qualified person is available within the Tribunals or from another APS agency, a casual employee may be engaged at a higher level if the work level requires it. Casual employees will be paid at an hourly rate plus 20%. Casual employees are not eligible to leave entitlements set out in Part 4 of this Agreement.

PART 6 REMUNERATION

Pay

- 6.1 The salary rates paid at each classification level are detailed in Schedule 1.
- 6.2 Employees will receive salary increases of:
- i. 4.3% with effect from the date of the order to vary the Agreement;
 - ii. 4.3% to be paid with effect from 15 October 2009; and
 - iii. 4.3% to be paid with effect from 11 November 2010.

Salary on engagement, promotion, assignment, movement or reduction

Salary point advancement

- 6.3 Salary point advancement within a classification level will be based on the achievement of a rating of satisfactory or higher or the equivalent assessment ranking in the performance management system.
- 6.4 Where an employee's last performance appraisal occurred within three (3) months of their due date for salary advancement, and the performance rating was satisfactory or higher, the employee will automatically advance a salary point.
- 6.5 Where an employee has not reached the highest salary point at their substantive level, subject to clause 6.6, the date of effect for pay point advancement will be 12 months from either of:
- the date the employee commenced with the Tribunals; or
 - the date the employee last advanced in pay through either promotion or pay point advancement.
- 6.6 An employee will not advance a salary point while their performance is unsatisfactory (as assessed under the performance management system and authorised by the Director HR). When the employee's performance returns to satisfactory they will be eligible for salary point advancement taking effect from that date.
- 6.7 Employees who are performing higher duties will be able to advance a salary point of the higher classification notwithstanding any salary point advancement at their substantive level in the same 12 months, where:
- they have been performing at the higher classification for a cumulative period of 12 months (ie. broken or continuous higher duties) over a 3 year period ; and
 - their higher duties performance has been assessed in accordance with the performance management system and has been rated as satisfactory or higher at that classification level.
- 6.8 Where an employee has advanced a salary point in the circumstances described in paragraph 6.7, they will retain that salary point for any subsequent higher duties,
- 6.9 An employee, who is performing higher duties, will automatically salary point advance at their substantive level if salary point advancement at their substantive level falls due during a period of higher duties.

Salary on reduction, movement, engagement or promotion

- 6.10 Where an employee is engaged by the Tribunals, or is promoted, their salary will generally be paid at the minimum point of the salary range applicable to the classification of the duties they will be undertaking. On engagement, salary will be set out in the letter of offer.
- 6.11 The Principal Member may authorise payment of salary above the minimum point in the range, having regard to the employee's experience, qualifications, skills and length of time the employee has acted at that APS classification or a higher level.
- 6.12 Where an employee is employed in the APS immediately prior to taking up a position at the same or equivalent classification level, the Principal Member or delegate shall:
- pay the employee at a salary point immediately above their current salary; or
 - where their current salary is higher than the highest salary point for that classification at the Tribunals, maintain the employee at their current salary until such time as they are able to advance a salary point or their salary is overtaken by the Tribunals' pay increases.
- 6.13 Employees who are promoted within the Tribunals and who have undertaken higher duties at the level to which they are promoted will, upon promotion, be paid a salary equivalent to the salary point they achieved while on higher duties at that level.
- 6.14 Where an employee requests reassignment of duties to a lower classification for reasons other than misconduct or under performance, either on a permanent or temporary basis, the employee's salary will be at the salary point in the lower classification based on their service at that level and above.

Trainees

- 6.15 The Tribunals may utilise Graduate APS and Trainee APS (Administrative) traineeships. Trainees will be held against designated trainee positions and will not be used as a replacement for employees. If the Tribunals propose to engage trainees, affected staff will be consulted about the impact of this on the relevant work area.
- 6.16 Graduate APS trainees will be required to undertake a course of training determined by the Principal Member. During this period the Graduate APS trainee will be paid against a pay point within the APS 2 designation as determined by the Principal Member. When the Principal Member is satisfied that the course of training has been successfully completed, the Graduate APS trainee will be advanced to a salary point within the APS level 3 at or above the minimum pay point.
- 6.17 Trainee APS (Administrative) will be required to undertake a course of training determined by the Principal Member. When the Principal Member is satisfied that the course of training has been successfully completed, the Trainee APS (Administrative) will be advanced to the minimum salary point for the APS Level 1 designation.

Allowances

General

- 6.18 Unless otherwise specified, allowances will be paid at rates determined by the Principal Member.

Temporary performance loading

- 6.19 A position which will be vacant for less than 10 working days will only be filled by temporary performance in circumstances in which operational demands can be clearly demonstrated.
- 6.20 Positions which are expected to be vacant for 10 days or more but less than three (3) months will be filled where:
- the position is assessed by the manager in consultation with the staff of the section with reference to section work plans as requiring filling for that period, and
 - a suitably skilled person is able to discharge the key duties of the position.
- 6.21 Where temporary filling action is approved, each consequential vacancy will also be considered on its merits under these criteria.
- 6.22 Positions which are expected to be vacant for three (3) or more months will be filled unless a formal restructure of the area is completed and the outcome of the review results in a decision to abolish the position or redistribute the work of the position for a defined period.
- 6.23 No employee will be paid at a higher level while performing duties of another employee who is absent on flex leave other than where the flex leave is taken in conjunction with a period of recreation leave and is equal to or less than the period of recreation leave.
- 6.24 An employee who is granted paid leave while receiving temporary performance loading will continue to be paid temporary performance loading during the period that they are on leave. Temporary performance loading will not, however, be paid beyond the date on which it would have ceased if the employee had not been on leave.
- 6.25 Where an employee has temporarily performed the duties of a higher classification for a continuous period of 12 months, or for a total period of 12 months within a 3 year period at the Tribunals, they will be considered for salary advancement in that higher classification for the period of the temporary performance on the same basis as if they held the position on a substantive basis. After movement to a higher pay point has been attained under this clause it will be retained by the employee for any future temporary performance at that classification level or on promotion to that level.

Temporary performance loading in SES position

- 6.26 Where an employee is required to work temporarily in a Senior Executive Service (SES) position, an appropriate loading commensurate with the salary range for SES employees and other benefits will be determined by the Principal Member for the period of temporary performance.

Functional allowances

- 6.27 An allowance of \$556 per annum paid fortnightly will be payable where:
- an employee possesses a current First Aid Certificate and is recognised by the Principal Member as a First Aid Officer for the Tribunals.
 - an employee volunteers to perform duties as a Floor or Area Warden, attends appropriate training, and is recognised by the Principal Member as a Warden for the Tribunals.

- an employee volunteers to perform duties as a Workplace Harassment Contact Officer, attends appropriate training, and is recognised by the Principal Member as an Harassment Contact Officer for the Tribunals.
 - an employee volunteers to be a Health and Safety Representative, attends appropriate training, and is recognised by the Principal Member as an Health and Safety Representative for the Tribunals.
- 6.28 An employee will only be entitled to one allowance under clause 6.27 if performing more than one role.
- 6.29 The allowance will increase in line with pay rise percentages.

Community Language Allowance (CLA)

- 6.30 The Principal Member may approve the payment of Community Language Allowance to an employee who uses a language or languages other than English in carrying out his or her duties.
- 6.31 Relevant languages include Aboriginal and Torres Strait Islander languages and AUSLAN and other non-spoken forms of communication used by or for the hearing impaired.
- 6.32 In determining whether an employee should be paid Community Language Allowance, the Principal Member will consider whether there is an identifiable and continuing need for the language skills of the employee in providing client, customer and staff services and whether the employee's language skills are adequate.
- 6.33 Where an employee is approved to be paid Community Language Allowance under clause 6.30, the employee will be paid either:
- \$775.00 per annum where the employee has adequate language skills for simple communication; or
 - \$1,557.00 per annum where the employee has satisfied the requirements of the NAATI Paraprofessional Interpreter (or equivalent) or is competent to interpret general non-specialist dialogues.
- 6.34 CLA will increase in line with pay rise percentages.

Overtime meal allowance

- 6.35 Where an employee is required to work for more than 5 hours since the employee's last meal break due to approved overtime, the employee will be required to take a 30 minute meal break and will be entitled to a meal allowance in accordance with the Allowance Guidelines.

Restriction allowance

- 6.36 Where an employee at a classification level below EL1 is required by the Principal Member to be contactable and available for work for a specified period ('restriction period') outside that employee's bandwidth hours, he or she will be paid a Restriction Allowance.
- 6.37 The Principal Member may, in exceptional circumstances, approve payment of a Restriction Allowance to employees at the EL1 and EL2 classification levels. Where such approval is provided, the amount of Restriction Allowance payable will be based on the maximum pay point of the APS 6 classification.

- 6.38 Subject to clause 6.37, the employee's salary for the purpose of calculating Restriction Allowance payable will include any payment for temporary performance at a higher classification level.
- 6.39 Local arrangements for Restriction Allowance may be implemented where the majority of suitable employees are in agreement. Under such local arrangements access will be shared equitably among suitable employees subject to their availability and expertise. Restriction Allowance rates will be paid in accordance with the agreed local rate. The local arrangements may be reviewed and varied through the life of this Agreement.
- 6.40 Where an employee is required to work during a 'restriction period', they will be paid overtime. The minimum overtime payment during a restriction period is:
- three hours if the employee is required to attend a Tribunal work location; or
 - one hour in all other circumstances.
- 6.41 Emergency Duty provisions as specified in clause 4.48 do not apply to employees recalled to work during a period in which a Restriction Allowance would otherwise be payable.

IT systems monitoring allowance

- 6.42 Officers who agree to monitor the status of IT systems periodically and receive email or SMS notification of problems with IT systems outside ordinary working hours will be paid an allowance of \$2,000 per annum paid fortnightly. The allowance will increase in line with pay increases. The allowance is payable to officers occupying the positions of Operations Manager, Applications Manager, Senior Network Administrator and Senior Database Administrator. Clauses 4.36 to 4.55 are applicable as appropriate to work undertaken to resolve an IT systems problem or issue.

Travel allowance

- 6.43 Where an employee is required and approved by the Principal Member to travel on official business and be absent from his or her normal location overnight, the employee will be entitled to the payment of a Travel Allowance for a maximum of 21 consecutive days.
- 6.44 Travel Allowance payable to an employee will be calculated from one hour before transport departs the employee's normal location to one hour after transport arrives at the employee's normal location.
- 6.45 Travel Allowance payable to an employee will be adjusted by removing the relevant meals and/or accommodation components for any meal and/or accommodation that was, or will be, provided or paid for by the Tribunals.
- 6.46 The Principal Member may authorise the payment of additional Travel Allowance in excess of the normal rates where an employee incurred reasonable costs that were more than the Travel Allowance originally paid to the employee. In such instances the employee must verify the expenditure with appropriate documentation.

Review travel allowance

- 6.47 Where an employee is required to temporarily reside in a locality away from home a Review Travel Allowance will be payable after the first 21 calendar days.

- 6.48 For the purposes of determining when the first 21 calendar days have elapsed under clause 6.47, short return trips home or trips to other locations will be counted as part of the first 21 days.
- 6.49 The Review Travel Allowance will be based on reasonable costs for accommodation, meals and incidentals as determined by the Principal Member.
- 6.50 In determining a reasonable amount of Review Travel Allowance, the Principal Member may consider reasonable additional costs that the employee is required to meet while residing in that locality.
- 6.51 An employee may elect not to receive all or part of his or her Review Travel Allowance entitlements.
- 6.52 The election to waive any entitlements under clauses 6.50 and 6.51 can only be at the initiation of the employee.
- 6.53 The intention of clauses 6.51 and 6.52 is to allow employees the opportunity to work at another location for personal reasons.

Part day travel allowance

- 6.54 An employee who is required and approved by the Principal Member to travel on official business that is more than 100 kms away from his or her normal work location and is away from his or her normal work location for more than 6 hours but does not stay overnight, is entitled to a part day travel allowance.
- 6.55 The part day travel allowance is \$47.30 per day and will increase in line with pay rise percentages.

Class of travel

- 6.56 Employees are entitled to travel economy class in Australia and business class outside Australia when required to travel on official purposes

Overseas conditions

- 6.57 Employees will be reimbursed reasonable costs for accommodation, meals and incidentals while on approved travel outside of Australia.
- 6.58 The Principal Member will determine reasonable costs for accommodation, meals and incidentals taking account of information from the country and the experience of other relevant agencies.
- 6.59 The Tribunals may provide an employee with an advance to cover accommodation, meals and incidentals. In these instances, the employee is to prepare an acquittal and where necessary, reimburse the Tribunals any excess advance payment.

Motor vehicle allowance

- 6.60 Motor vehicle allowance will be payable in accordance with the Allowance Guidelines.

Disability allowance

- 6.61 The Tribunals will seek to prevent employees from being subjected to any disabilities in their office working conditions. "Disabilities" means any detrimental effects on the working conditions caused by factors associated with building activities such as construction, alterations or refurbishment.

- 6.62 In these circumstances, the Principal Member will determine and pay an appropriate disability allowance in accordance with the Allowances Guidelines.

Tribunal issued mobile phones

- 6.63 Where the Tribunals provide an employee with a mobile phone, limited personal use is permitted.

Superannuation

- 6.64 The Government has introduced legislation to establish new superannuation arrangements that will provide employees with greater choice and control over their superannuation savings. The Tribunals will inform employees about superannuation arrangements, including levels of employer contributions, immediately on commencement or recommencement of employment.
- 6.65 The Tribunals, staff and where they choose their employee representatives will consult together about the impact of any new legislative changes to superannuation arrangements when they are being implemented.
- 6.66 The default superannuation fund for eligible employees appointed after 1 July 2005 who do not nominate another approved superannuation fund will be the Public Sector Superannuation Accumulation Plan (PSSAP).
- 6.67 The Tribunals' employer superannuation contribution on behalf of eligible new employees who nominate to participate in a superannuation scheme other than the PSSAP will be at the rate mandated for the PSSAP.

Salary packaging

- 6.68 Salary packaging may be available to all employees, subject to compliance with any government directives and taxation legislation and in accordance with guidelines. Any fringe benefits tax and administrative costs incurred as a result of the employees remuneration packaging arrangements will be met by the employee.

Work level standards

- 6.69 Unless otherwise agreed by the parties to this Agreement, the Tribunals will continue to classify all its APS and Executive Level positions using the 2003 DIAC [Work Level Standards](#) until replaced by MRT-RRT work level standards.

Supported wage system

- 6.70 Details of the supported wage system are included at Schedule 3.

Public transport loan scheme

- 6.71 A public transport loan scheme will be made available to all employees during the life of this agreement. Any fringe benefits tax and administrative costs incurred will be met by the Tribunals.

Loss, damage and indemnity

- 6.72 The Principal Member may endorse reimbursement for loss or damage to clothing or personal effects which occurred in the course of the employee's duties. The amount

reimbursed will be based on new for old for clothing and most personal items however some depreciation will be applied for electrical/computer equipment etc.

Relocation assistance

6.73 Tribunal employees who:

- win a promotion involving relocation from one city to another; or
- reassign from one city to another at the request or direction (other than in response to a request from the employee) of the Principal Member,
- relocate to another city due to the closure of a registry or relocation of functions

shall be entitled to reimbursement of:

- the cost of conveyance of the employee, dependants and partner by the most economical means;
- the reasonably incurred cost of removal of furniture and household effects of the employee, dependants and partner from the locality resided in immediately prior to the reassignment to the new locality;
- to the payment of a disturbance allowance in accordance with the Allowances Guidelines; and
- up to 3 weeks temporary accommodation at the new location at the rates in accordance with the Allowances Guidelines.

6.74 For relocation resulting from being engaged by the Tribunals or the Principal Member determining a request for permanent or temporary reassignment, the Principal Member may, at his or her discretion, approve reimbursement of reasonable relocation expenses and the full or part payment of a disturbance allowance provided that the Principal Member will advise whether or the extent to which such costs will be met and payment made prior to an applicant accepting an offer of employment or reassignment. The Principal Member is not bound to authorise the reimbursement of any relocation costs.

Payment on death

6.75 When an employee dies, or the Principal Member has directed that an employee will be presumed to have died on a particular date, the Principal Member may authorise the payment of the amount to which the former employee would have been entitled had they ceased employment by resignation or retirement. Before making payments or ceasing the employee's salary, the Principal Member shall make contact with the employee's immediate family to discuss the Tribunals' process in these circumstances.

6.76 After such contact has been made, payment may be made to dependants or the spouse of the former employee or their legal representative. If payment has not been made within 12 months of the former employee's death, it should be made to the legal representative.

6.77 On the death of an employee, any monies owing to the Commonwealth as a result of advanced recreation leave credits will be waived.

Payment on cessation

- 6.78 Where an employee ceases employment with the APS, the employee will receive payment in lieu of unused recreation leave credits, including uncredited recreation leave entitlements. This payment will be based on the employee's final rate of salary including any allowances that would have continued to be payable during a period of recreation leave.
- 6.79 The Tribunals may recover all or part of any debt owed to the Tribunals by an employee at termination of his or her employment out of monies otherwise payable to the employee. The employee will be paid the balance remaining after recovery of the debt.

PART 7 TECHNICAL MATTERS

Parties bound

- 7.1 This Agreement was made under section 170LJ of the pre-reform *Workplace Relations Act 1996* and extended and varied under Clause 2A of Schedule 7 of the *Workplace Relations Act 1996* and binds:
- the Minister for Immigration and Citizenship and employees employed under the *Public Service Act 1999* who are covered by the Agreement (see clause 7.2 below);
 - the Community and Public Sector Union; and
 - the Association of Professional Engineers, Scientists and Managers, Australia (the Professional Officers' Association (Victoria) amalgamated with APESMA in 2006).

Coverage

- 7.2 This Agreement applies to all non SES employees within the Migration Review Tribunal and Refugee Review Tribunal employed under the provisions of the *Public Service Act 1999*.

Duration

- 7.3 This Agreement commenced on 29 November 2005 and has a nominal expiry date of 29 November 2011. The original expiry date of 29 November 2008 was extended under clause 2A of Schedule 7 to the *Workplace Relations Act 1996*.
- 7.4 Subject to any relevant change in Government policy, the Tribunals will commence consultations on and negotiation of a replacement Agreement with employees and where they choose, their representatives, no later than nine months before the nominal expiry date of this Agreement.

Closed Agreement

- 7.5 Subject to clause 7.7, this Agreement exhaustively states the terms and conditions of employment of the employees covered by this Agreement other than terms and conditions applying under a Commonwealth law.
- 7.6 Subject to clause 7.7, during the period starting on the date this Agreement starts operating and ending on the nominal expiry date, there will be no further claims that would increase labour costs by a party to the Agreement or an employee whose employment is subject to the Agreement.

Flexibility clause

- 7.7 Notwithstanding anything else in this Agreement, the terms of the Agreement may be supplemented on either an individual employee basis or for a group of employees (known as a flexibility agreement) as follows:
- discussions on a flexibility agreement can be initiated by the Principal Member or an employee or a group of employees;
 - employees can have a representative;

- the flexibility agreement must be signed by the Principal Member and the employee(s), and is enforceable as if it is a term of the Agreement;
- the number of flexibility agreements, the operational reasons for them and the general nature of benefits agreed under flexibility agreements will be reported at each meeting of the NCC in a manner that protects the privacy of individual employees; and
- there will be no restriction on an individual employee disclosing the terms of their own agreement.

Variation

- 7.8 This Agreement may only be varied in line with clause 2A of Schedule 7 to the *Workplace Relations Act 1996*.
- 7.9 Where an issue associated with the provisions of this Agreement arises, and the parties to this Agreement agree that guidelines are required in relation to that issue, except where inconsistent with this Agreement, the Principal Member will develop such guidelines with the NCC.

Delegations

- 7.10 The Principal Member may, by instrument in writing, delegate or authorise to a person, any of the Principal Member's powers and functions under this Agreement.

Relationship with other arrangements

- 7.11 This Agreement is a comprehensive agreement and displaces:
- the Australian Public Service Award 1998 as varied from time to time unless otherwise indicated in the Agreement;
 - the Continuous Improvement in the Australian Public Service Enterprise Agreement: 1995-96;
 - Migration Review Tribunal and Refugee Review Tribunal Certified Agreement 2003 – 2005.
- 7.12 It is acknowledged that employment is subject to the provisions of the following Acts (and regulations or instruments made under the Acts), including:
- *Age Discrimination Act 2004*
 - *Disability Discrimination Act 1992*
 - *Human Rights and Equal Opportunity Act 1986*
 - *Long Service Leave (Commonwealth Employees) Act 1976*
 - *Maternity Leave (Commonwealth Employees) Act 1973*
 - *Migration Act 1958*
 - *Occupational Health and Safety Act 1991*
 - *Privacy Act 1988*
 - *Public Employment (Consequential and Transitional) Amendment Act 1999*
 - *Public Service Act 1999 (PS Act)*
 - *Racial Discrimination Act 1975*
 - *Safety, Rehabilitation and Compensation Act 1988*

- *Sex Discrimination Act 1984*
- *Superannuation Act 1976*
- *Superannuation Productivity Benefit Act 1988*
- *Superannuation Act 1990*
- *Superannuation Benefits (Supervisory Mechanisms) Act 1990*
- *Superannuation Act 2005*
- *Workplace Relations Act 1996.*

Transitional arrangements

- 7.13 The parties to this Agreement acknowledge that transitional arrangements will be required to implement this Agreement. The parties to the Agreement agree that extant HR policies will apply to the extent that they are not inconsistent with this Agreement until new policies or guidelines are developed in consultation with the NCC.

Broadbanding

- 7.14 Any broadbanding proposals are to be considered in accordance with principles to be agreed prior to the establishment of a new broadband in any area of the Tribunals.

Definitions

Agency Head means the Principal Member of the Refugee Review Tribunal.

AIRC means the Australian Industrial Relations Commission.

APESMA refers to the Association of Professional Engineers, Scientists and Managers, Australia. The Professional Officers' Association (Victoria) (POAV) amalgamated with APESMA in 2006.

APS means Australian Public Service.

Award means the Australian Public Service Award, 1998 and any other award (as defined in sub-section 4 (1) of the *Workplace Relations Act 1996*) which relates to any employee covered by this Agreement and any variations thereto and any new award in full or part replacement thereof.

Bandwidth is the span of hours in which full time employees may work, ie 7.00am to 7.00pm.

Casual employee means a non-ongoing employee who is engaged on an irregular or intermittent basis and is paid a loading in lieu of leave entitlements.

Certification date means the date the AIRC certifies this Agreement.

Child includes adopted and foster children.

Code of Conduct refers to the APS Code of Conduct under the *Public Service Act 1999*.

Continuous service means:

- in relation to Long Service Leave, continuous service as defined in Section 12 of the *Long Service Leave (Commonwealth Employees) Act 1976*;
- in relation to notice of termination, continuous service as defined in regulation 12.11 of the Workplace Relations Regulations;
- in relation to all other matters, the length of time an employee has been employed by the Tribunals and/or another APS agency without a break in service through termination of employment. The length of time an employee has been employed includes any period of paid leave and unpaid leave which has been granted as counting as service but excludes any periods of unauthorised absence or leave designated as not to count as service.

Core hours means the hours during which employees must be on duty unless granted leave, ie 10am to 12 noon and 2pm to 4pm.

CPSU refers to the Community and Public Sector Union.

Dependant means an employee's spouse, partner or a child or parent of the employee or the employee's spouse or partner, who ordinarily lives with the employee and who is totally or substantially dependent on the employee.

DIAC means the Department of Immigration and Citizenship.

EAP means the Employee Assistance Program.

Employee means a person employed and paid by the Tribunals under and within the meaning of the *Public Service Act 1999*.

Employer means the Minister for Immigration and Citizenship.

Family means the spouse, partner, children of the employee (including adopted and foster), and mother and father (including guardian and foster), brother, sister and grandparents of the employee, including step, in-law and half relatives.

Local manager means the Executive Level 1 or above person in charge of an area.

NCC means the National Consultative Committee.

Non-ongoing employee means an APS employee who is not an ongoing APS employee as defined in the *Public Service Act 1999*.

Normal location means the city or town in which the employee normally works.

Ongoing employee means a person engaged as an ongoing APS employee as defined in section 7 of the *Public Service Act 1999*.

Operating hours means the hours the Tribunals are open for business and is 8.30am to 5.00pm.

Ordinary hours means the hours of duty required to be worked by employees, ie for full time 147 hours per 4 week settlement period which averages as 7 hours 21 minutes per day.

Part time employee means an employee whose approved hours of work are less than 147 hours over a four week settlement period.

Parent includes guardian, foster and step-parents.

Partner means a person who stands in a bona fide domestic relationship, without discrimination as to sexual orientation, with the employee, and has done so for a period of 12 months or more.

Principal Member means the Principal Member of the RRT, who is the agency head of the statutory agency established by section 473A of the *Migration Act 1958*. The statutory agency consists of the Principal Member and all MRT-RRT officers. The Principal Member of the RRT is also appointed as the Principal Member of the MRT.

Registrar means the Registrar of the Tribunals.

Relevant union means a registered trade union which is party to this Agreement and which is representing an employee who is a member of that union.

Representative means an employee of the Tribunals who is a union representative, a staff elected representative, or a representative of an employee.

Salary means an employee's rate of salary/pay (as set out in Schedule 1) will be salary for all purposes. Specifically, where salary packaging arrangements and purchased leave arrangements are in place, the employee's salary for purposes of superannuation, severance and termination payments will be determined as if the salary packaging arrangement had not been entered into.

Serious misconduct means as defined under the *Workplace Relations Act 1996*.

Standard day for full time employees is 7 hours and 21 minutes. For administrative purposes the standard day will be 8.30am to 12.30pm and 1.30pm to 4.51pm. The standard day for part time employees will be the ordinary hours specified in their Part Time Work Agreement.

Supervisor means an employee who is authorised by the Principal Member to provide other employees with directions relating to their work and work practices.

Temporary performance loading means the payment received for acting in a position of a higher classification. Previously known as *higher duties allowance*.

Tribunals means the Migration Review Tribunal and the Refugee Review Tribunal.

SCHEDULE 1 : PAY SCALES

| Level | Pay Point | Current Pay | Adjusted pay | 4.3% from date of order extending Agreement | 4.3% from 15 October 2009 | 4.3% from 11 Nov 2010 |
|---------------------|-----------|-------------|-----------------|---|---------------------------|-----------------------|
| APS 1 at 17 | | \$21,296 | \$21,296 | \$22,212 | \$23,167 | \$24,163 |
| APS 1 at 18 | | \$24,846 | \$24,846 | \$25,914 | \$27,029 | \$28,191 |
| APS1 at 19 | | \$28,751 | \$28,751 | \$29,988 | \$31,277 | \$32,622 |
| APS 1 at 20 | | \$32,301 | \$32,301 | \$33,689 | \$35,138 | \$36,649 |
| APS 1 Adult | | | | | | |
| | 1 | \$35,495 | \$35,495 | \$37,021 | \$38,613 | \$40,273 |
| | 2 | \$36,678 | \$36,678 | \$38,255 | \$39,900 | \$41,616 |
| | 3 | \$37,663 | \$37,663 | \$39,282 | \$40,971 | \$42,733 |
| | 4 | \$39,198 | \$39,198 | \$40,883 | \$42,641 | \$44,475 |
| APS 2 | | | | | | |
| | 1 | \$40,132 | \$40,132 | \$41,857 | \$43,657 | \$45,535 |
| | 2 | \$41,229 | \$41,229 | \$43,002 | \$44,851 | \$46,779 |
| | 3 | \$42,303 | \$42,303 | \$44,122 | \$46,020 | \$47,999 |
| | 4 | \$43,395 | \$43,395 | \$45,261 | \$47,207 | \$49,237 |
| | 5 | \$44,474 | \$44,474 | \$46,386 | \$48,381 | \$50,461 |
| APS 3 | | | | | | |
| | 1 | \$45,672 | \$45,672 | \$47,636 | \$49,684 | \$51,821 |
| | 2 | \$46,851 | \$46,851 | \$48,866 | \$50,967 | \$53,158 |
| | 3 | \$48,033 | \$48,033 | \$50,099 | \$52,253 | \$54,500 |
| | 4 | \$49,271 | \$49,271 | \$51,390 | \$53,600 | \$55,904 |
| APS 4 | | | | | | |
| | 1 | \$50,869 | \$50,869 | \$53,056 | \$55,337 | \$57,717 |
| | 2 | \$52,478 | \$52,478 | \$54,734 | \$57,088 | \$59,542 |
| | 3 | \$53,836 | \$53,836 | \$56,151 | \$58,565 | \$61,083 |
| | 4 | \$55,209 | \$55,209 | \$57,583 | \$60,059 | \$62,641 |
| APS 5 | | | | | | |
| | 1 | \$56,707 | \$56,707 | \$59,146 | \$61,689 | \$64,342 |
| | 2 | \$58,475 | \$58,475 | \$60,990 | \$63,612 | \$66,348 |
| | 3 | \$60,114 | \$60,114 | \$62,699 | \$65,395 | \$68,207 |
| | 4 | | \$61,230 | \$63,863 | \$66,609 | \$69,473 |
| APS 6 | | | | | | |
| | 0 | \$61,230 | \$61,230 | - | - | - |
| | 1 | \$62,754 | \$62,754 | \$65,452 | \$68,267 | \$71,202 |
| | 2 | \$64,474 | \$64,474 | \$67,246 | \$70,138 | \$73,154 |
| | 3 | \$67,712 | \$67,712 | \$70,624 | \$73,661 | \$76,828 |
| | 4 | \$70,337 | \$70,337 | \$73,361 | \$76,516 | \$79,806 |
| LO (APS 4-6) | | | | | | |
| | 1 | \$50,869 | \$50,869 | \$53,056 | \$55,337 | \$57,717 |
| | 2 | \$55,209 | \$55,209 | \$57,583 | \$60,059 | \$62,641 |
| | 3 | \$56,707 | \$56,707 | \$59,146 | \$61,689 | \$64,342 |
| | 4 | \$60,114 | \$60,114 | \$62,699 | \$65,395 | \$68,207 |
| | 5 | \$61,230 | \$61,230 | \$63,863 | \$66,609 | \$69,473 |
| | 6 | \$64,474 | \$64,474 | \$67,246 | \$70,138 | \$73,154 |
| | 7 | \$70,337 | \$70,337 | \$73,361 | \$76,516 | \$79,806 |

| | | | | | | |
|-------------------|----------|-----------|------------------|------------------|------------------|------------------|
| EL 1 | 1 | \$78,417 | \$78,417 | \$81,789 | \$85,306 | \$88,975 |
| | 2 | \$84,682 | \$84,682 | \$88,323 | \$92,121 | \$96,082 |
| | 3 | | \$86,690 | \$90,418 | \$94,306 | \$98,361 |
| | 4 | | | | | |
| SLO (EL 1) | 1 | \$78,417 | \$78,417 | \$81,789 | \$85,306 | \$88,975 |
| | 2 | \$84,682 | \$84,682 | \$88,323 | \$92,121 | \$96,082 |
| | 3 | \$95,391 | \$95,391 | \$99,493 | \$103,771 | \$108,234 |
| | 4 | | \$97,680 | \$101,880 | \$106,261 | \$110,830 |
| EL 2 | 1 | \$90,416 | \$90,416 | \$94,304 | \$98,359 | \$102,589 |
| | 2 | \$95,391 | \$95,391 | \$99,493 | \$103,771 | \$108,234 |
| | 3 | \$102,523 | \$102,523 | \$106,931 | \$111,529 | \$116,325 |
| | 4 | | \$105,394 | \$109,926 | \$114,653 | \$119,583 |
| PLO (EL 2) | 1 | \$105,953 | \$105,953 | \$110,509 | \$115,260 | \$120,217 |
| | 2 | \$108,663 | \$108,663 | \$113,336 | \$118,209 | \$123,292 |
| | 3 | | \$111,706 | \$116,509 | \$121,519 | \$126,745 |

Notes: 'Adjusted pay' reflects adjustments to increments which will come into effect on the date of the order extending the Agreement.

SCHEDULE 2: REDEPLOYMENT, REDUCTION AND RETRENCHMENT

1.1 This Section only applies to ongoing, non-probationary employees who are declared as excess employees of the Tribunals as defined in paragraph 1.2.

Definition of excess employee

- 1.2 An employee is an excess employee where, in the opinion of the Principal Member:
- the employee is included in a group of employees employed in the Tribunals, which comprises a greater number of employees than is necessary for the efficient and economical working of the Tribunals; or
 - the services of the employee cannot be effectively used because of technological or other changes in the work methods of the Tribunals, or changes in the nature, extent or organisation of the functions of the Tribunals; or
 - where the duties usually performed by the employee are to be performed in a different locality, the employee is not willing to perform duties at the locality, and the Principal Member has determined that these provisions will apply to that employee.
- 1.3 The Principal Member will advise an employee in writing if he or she is an excess employee.

Consultation

- 1.4 As soon as practical after becoming aware that an employee is likely to become excess, the Principal Member will advise the employee of this situation. Where more than one employee is affected, the Principal Member will make reasonable efforts to ensure that all affected employees are advised at the same time, including employees who are on leave. Where 15 or more employees are likely to become excess the Principal Member will comply with the provisions of sections 660 and 668 of the *Workplace Relations Act 1996* by notifying the relevant union(s) where one or more of the affected employees is a member of that union. This advice will include the following information:
- the reasons for the Principal Member considering that an employee is likely to become an excess employee;
 - the time when, or the period over which, the Tribunals propose to carry out the terminations; and where changes in the staffing structure are proposed;
 - the number and classification of employees in the part of the Tribunals affected; and
 - the number and classification of employees expected to be required for the performance of any continuing functions in the part of the agency affected.
- 1.5 Where an employee is excess as a result of changes which have a relatively long lead time, such as a decision to outsource services or as a result of government changes, the Principal Member will provide the employee with initial advice under paragraph 1.4 as early as possible and preferably 4 months before providing confirmation that the employee is excess under this paragraph.

- 1.6 Following advice under paragraph 1.4, the Principal Member or their nominee will hold discussions with the employee and where they choose their nominated representative to consider:
- measures that might be taken to avert an employee(s) becoming excess;
 - redeployment opportunities for the employee(s) concerned, including whether the employee(s) seek redeployment;
 - referral to an external career transition service provider if available;
 - whether voluntary retrenchment might be appropriate and whether the employee(s) wants to be offered voluntary retrenchment; and
 - where more than 15 employees are involved and advice is provided to a relevant union, the method of identifying employees as excess, having regard to the efficient and economical working of the Tribunals and the relative efficiency of employees.
- 1.7 The Principal Member may invite employees who are not potentially excess to express interest in voluntary retrenchment where those retrenchments would permit the redeployment of potentially excess employees who do not wish to accept voluntary retrenchment.
- 1.8 The Principal Member may declare an employee to be excess one month after discussions under paragraph 1.6 have commenced, unless a lesser period is agreed to by the Principal Member and the employee.

Assistance to excess or potentially excess employees

- 1.9 The Tribunals will provide excess or potentially excess employees with support to assist them to pursue alternative career paths. This support may include:
- assistance and advice from HR on entitlements and services
 - educating those employees about change and developing skills to assist them to cope with change;
 - access to courses related to job seeking skills;
 - a reasonable level of support through providing time to attend, and/or financial assistance with, short courses related to re-training and re-skilling for new duties within the Tribunals, the APS or externally;
 - general career counselling;
 - personal counselling through the Employee Assistance Program; or
 - support in applying for positions within and outside the APS through reasonable paid time to research vacancies and release of the employee for trial placements with other agencies.
- 1.10 The Principal Member will liaise at the earliest date possible with DIAC or other APS agencies to identify redeployment opportunities. Should no suitable positions exist within the Tribunals, management will take the necessary steps to assist excess or potentially excess employees with redeployment; and referral to an external career service.
- 1.11 An employee will be entitled to reasonable leave with full pay and to attend necessary employment interviews, and may request assistance in meeting reasonable travel and

incidental expenses incurred in seeking alternative employment where these are not met by the prospective employer, from the earlier of the date that the employee is:

- advised by the Principal Member under paragraph 1.4 that they are potentially excess as a result of government changes; or
- advised that the Principal Member has approved an election by the excess employee to be terminated; or
- advised in writing by the Principal Member that the employee is an excess employee.

Voluntary retrenchment

- 1.12 Employees who are advised that they are excess may opt for either:
- an immediate offer of voluntary retrenchment; or
 - an opportunity to pursue redeployment followed by an offer of voluntary retrenchment if they are not redeployed.
- 1.13 The employee who opts to pursue redeployment will have a two month period from the date of notification that they are excess to pursue redeployment before they receive an offer of voluntary retrenchment.
- 1.14 Only one offer of voluntary retrenchment will be made to an excess employee.
- 1.15 Where an offer of voluntary retrenchment has been made, the Tribunals will provide the employee with the following information:
- amounts of severance pay, pay in lieu of notice and paid up leave credits;
 - amount of accumulated superannuation contributions;
 - options open to the employee concerning superannuation; and
 - taxation rules applying to the various payments.
- 1.16 The employee will have up to one month, or one week after provision of the information in paragraph 1.15, whichever is the later, to accept the offer of voluntary retrenchment but can accept the offer at any time before those limits have passed.
- 1.17 Employees taking up offers of voluntary retrenchment will, if not already accessed under paragraph 1.9, be reimbursed for accessing the following services up to a total value of \$2000:
- stress management counselling;
 - career transition, retraining opportunities and occupational information;
 - professional assessment to assist in determining vocational skills, aptitudes and interest;
 - information on programs to upgrade skills or acquire new skills, including provision for payment of fees, training allowances, books and equipment;
 - assistance with job search, resume preparation and interview skills before merit selection processes occur;
 - assistance with job placement;
 - assistance with trade/skill certification; and
 - financial counselling.

Severance benefits

- 1.18 Subject to paragraph 1.19, an employee who accepts an offer of voluntary retrenchment and whose employment is terminated by the Principal Member under s.29 of the *Public Service Act 1999* (PS Act) on the ground he/she is excess to requirements, is entitled to a severance payment equal to two weeks salary for each completed year of continuous service plus a pro rata severance payment for completed months of service since the last completed year of service.
- 1.19 The minimum severance payment will be 4 weeks' salary and the maximum will be 48 weeks' salary. Payment will be calculated on a pro rata basis where the employee has worked part time hours during the period of service and the employee has less than 24 years full time service.
- 1.20 For the purposes of paragraph 1.18, the period of service includes:
- Government service as defined in Section 10 of the *Long Service Leave (Commonwealth Employees) Act 1976*;
 - service with the Commonwealth (other than service with a joint Commonwealth/State body corporate in which the Commonwealth does not have a controlling interest) which is recognised for long service leave purposes;
 - service in the Australian Defence Forces;
 - APS service immediately preceding deemed resignation under the repealed section 49 of the *Public Service Act 1922*, if the service had not previously been recognised for severance pay purposes; and
 - service in another organisation where:
 - an employee was transferred from the APS to that organisation with a transfer of function; or
 - an employee engaged by that organisation on work within a function is appointed as a result of the transfer of that function to the APS; and
 - such service is recognised for Long Service Leave purposes.
- 1.21 For earlier periods of service to count there must be no breaks between the periods of service, except where:
- the earlier period of service was with the APS and ceased because the employee was deemed to have resigned from the APS on marriage under the repealed s.49 of the *Public Service Act 1922*.
 - a break in service is less than 1 month and occurs where an offer of employment with the new employer was made and accepted by the employee before ceasing employment with the preceding employer.
- 1.22 For the purposes of paragraph 1.18, the period of service does not include any service which ceased:
- through termination on the following grounds, or on a ground equivalent to any of the following grounds:
 - the employee lacks, or has lost, an essential qualification for performing his or her duties;
 - non-performance, or unsatisfactory performance, of duties;
 - inability to perform duties because of physical or mental incapacity;

- failure to satisfactorily complete an entry level training course;
 - failure to meet a condition imposed under subsection 22(6) of the *Public Service Act 1999*; or
 - a breach of the Code of Conduct; or
 - on a ground equivalent to a ground listed in subparagraph (a) above under the repealed *Public Service Act 1922*; or
 - through voluntary retirement at or above the minimum retiring age applicable to the employee; or
 - with the payment of a redundancy benefit or similar payment or an employer-financed retirement benefit.
- 1.23 For the purposes of paragraph 1.18, absences from work which do not count as service for long service leave purposes will not count as service for severance pay purposes.
- 1.24 For the purposes of this Section, the employee's salary will be the higher of:
- the employee's salary at his or her permanent classification level; or
 - the salary payable at a higher classification level where the employee has been temporarily performing work and has been paid at that higher classification level for a period of at least 12 months immediately preceding the date on which the Principal Member gave the employee notice of his or her termination, and will include any other allowances in the nature of salary which are paid during periods of Annual Leave and on a regular basis, but excluding any allowances which are of a reimbursement nature.

Notice of termination for voluntary retrenchment

- 1.25 An excess employee who declines an offer of voluntary retrenchment or who does not accept the offer within the one month period will immediately be referred to an external career agency for career advice services.
- 1.26 Where the excess employee accepts an offer of voluntarily retrenchment, the Principal Member may retrench the employee by giving the required notice of termination, or payment in lieu of notice. The period of notice will be four (4) weeks (or five (5) weeks for an employee over 45 with at least five years continuous service).
- 1.27 An employee may request that they be permitted to terminate their employment before the expiry of the notice period. Where the employee agrees to termination at the beginning of or within the notice period the employee will receive payment in lieu of notice as set out in s.661 of the *Workplace Relations Act 1996* for the unexpired portion of the notice period.

Retention periods

- 1.28 An excess employee who declines an offer of voluntary retrenchment or who do not accept an offer within the one month period will be subject to a retention period of:
- 13 months where an employee has 20 or more years of service or is over 45 years of age; or
 - 7 months for other employees.

- 1.29 The retention period will be deemed to have commenced on the date when the employee is advised by the Principal Member under paragraph 1.3 that he or she is excess.
- 1.30 The retention period will be extended by any periods of Personal Leave for personal illness or injury up to a maximum extension of 26 weeks.
- 1.31 Unless the employee agrees otherwise, the Principal Member will not terminate the employment of an excess employee under s.29 of the PS Act on the grounds of being excess until the applicable retention period has passed.
- 1.32 Where there is not sufficient work for an excess employee to undertake during the retention period, the Principal Member and the employee may agree to terminate his or her employment under s.29 of the PS Act and pay the employee the salary that would otherwise have been payable during the remainder of the retention period.
- 1.33 Wherever possible, the notice of termination will be concurrent with the retention period.

Redeployment

- 1.34 The Tribunals will take all reasonable steps to identify suitable redeployment options for any excess employee who has been placed on a retention period, including but not limited to redeployment within the Tribunals or DIAC.
- 1.35 During the retention period, the employee will be considered in isolation for any permanent vacancy that occurs in the Tribunals at his or her permanent classification level. Where the employee is assessed as suitable for such vacancy, he or she will be reassigned to those duties and other applicants will not be considered.

Reduction in classification during retention period

- 1.36 During the retention period, the Principal Member may, with 4 weeks' notice, reduce an excess employee's classification level as a means of securing alternative employment for the employee.
- 1.37 Where the Principal Member reduces the classification level of an excess employee under paragraph 1.36, the employee will be entitled to income maintenance payments to maintain his or her salary at the previous higher classification level for the duration of the retention period. For these purposes, salary is defined the same as in paragraph 1.24.
- 1.38 An excess employee required to move the employee's household to a new locality as a result of a reassignment or reduction in classification will be entitled to reimbursement of reasonable relocation expenses.

Termination at the end of retention period

- 1.39 Where redeployment of an excess employee has not been achieved, the Principal Member may provide the employee with notice of termination under s.29 of the PS Act with effect from no earlier than the end of the retention period.

- 1.40 The Principal Member must not terminate the employee's employment at the end of the retention period if there is another Tribunal employee at the same level who is interested in a voluntary retrenchment and performing duties for which the excess employee is considered suitable.
- 1.41 An excess employee will not be terminated involuntarily if the employee has not been invited to accept an offer of voluntary retrenchment or has elected to be terminated but the Principal Member has refused to approve it.

SCHEDULE 3: SUPPORTED SALARY PAYMENTS FOR EMPLOYEES WITH A DISABILITY

- 1.1 This schedule prescribes the conditions which will apply to employees who, because of the effects of a disability, are eligible for a supported wage under the terms of this Agreement.

Workers eligible for a supported wage

- 1.2 In the context of these provisions, the following definitions will apply:

Supported wage system means the Commonwealth Government system to promote employment for people who cannot work at full wages because of a disability, as documented in "Supported Wage System: Guidelines and Assessment Process".

Accredited assessor means a person accredited by the managing unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.

Disability support pension means the Commonwealth pension scheme to provide income security for persons with a disability as provided for under the *Social Security Act 1991*, as amended from time to time, or any successor to that scheme.

Assessment instrument means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

Eligibility criteria

- 1.3 Employees covered by these provisions will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this Agreement, because of the effects of a disability on their productive capacity and who meet the impairment criteria test for a Disability Support Pension.
- 1.4 These provisions do not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provision of this agreement/award relating to the rehabilitation of employees who are injured in the course of their employment.
- 1.5 These provisions also do not apply in respect of any facility, programme, undertaking, service or the like which receives funding under the *Disability Services Act 1986* and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a Disability Support Pension, except with respect to an organisation which has received recognition under s10 or s12A of the Act, or if a part only has received recognition, that part.

Supported salary rates

- 1.6 Employees to whom these provisions apply shall be paid the applicable percentage of the salary prescribed by this Agreement for the class of work which the person is performing according to the following schedule:

| Assessed Capacity | % of prescribed salary |
|-------------------|------------------------|
| 10% * | 10% |
| 20% | 20% |
| 30% | 30% |
| 40% | 40% |
| 50% | 50% |
| 60% | 60% |
| 70% | 70% |
| 80% | 80% |
| 90% | 90% |

Provided that the minimum amount payable shall be not less than the minimum weekly payment for employees with a disability working under the Supported Wage System.

- * Where a person's assessed capacity is 10%, they shall receive a high degree of assistance and support.

Assessment of capacity

- 1.7 For the purpose of establishing the percentage of the salary rate to be paid to an employee under this Agreement, the productive capacity of the employee will be assessed in accordance with the Supported Wage System and documented in an assessment instrument.

Lodgement of assessment instrument

- 1.8 All assessment instruments under the conditions of these provisions, including the appropriate percentage of the Agreement wage to be paid to the employee, shall be:
- lodged by the employer with the Registrar of the AIRC; and
 - agreed and signed by the parties to the assessment.

Review of assessment

- 1.9 The assessment of the applicable percentage should be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the Supported Wage System.

Other employment conditions

- 1.10 Where an assessment has been made, the applicable percentage shall apply to the salary only. Employees covered by these provisions will be entitled to the same terms and conditions of employment as all other workers covered by this Agreement paid on a pro rata basis.

Workplace adjustment

- 1.11 Where the Principal Member employs a person under these provisions, he or she shall take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

Trial period

- 1.12 In order for an adequate assessment of the employee's capacity to be made, the Principal Member may employ a person under these provisions for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four (4) weeks) may be needed.
- 1.13 During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.
- 1.14 The minimum amount payable to the employee during the trial period shall be no less than the minimum weekly payment for employees with a disability working under the Supported Wage System.
- 1.15 Where the Principal Member and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under paragraph 1.13 above.

THIS AGREEMENT IS MADE BY THE PARTIES:

Denis O'Brien
Principal Member
Refugee Review Tribunal
For the Minister for Immigration and Citizenship

Date

For the Community and Public Sector Union

Date

For the Association of Professional Engineers, Scientists
& Managers Australia

Date