



FAIR WORK
AUSTRALIA

DECISION

Fair Work Act 2009

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

Administrative Appeals Tribunal

(AG2011/2069)

ADMINISTRATIVE APPEALS TRIBUNAL AGENCY AGREEMENT 2011-2014

Commonwealth employment

COMMISSIONER DEEGAN

CANBERRA, 22 AUGUST 2011

*Application for approval of the Administrative Appeals Tribunal Agency Agreement
2011-2014.*

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

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

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

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



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Administrative Appeals Tribunal

AGENCY AGREEMENT

1 July 2011 – 30 June 2014

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A. OBJECTIVES

Objectives of this Agreement

1. Under this Agreement employees and management of the Tribunal will work together to provide effective, fair, impartial, high quality and prompt review of administrative decisions to the widest range of people, regardless of cultural and linguistic background, religion, gender, sexual preference, marital status, pregnancy, age, disability or political affiliation.
2. The broad objective of this Agreement is to enable the Tribunal to meet this overarching outcome and implement all other elements of the Tribunal's strategic framework.
3. This Agreement seeks to:
 - make the Tribunal an employer of choice;
 - promote work and life balance;
 - achieve clarity and flexibility in terms and conditions of employment;
 - attract and retain quality people by having an affordable and attractive package of pay and conditions;
 - work together to reduce unplanned absences; and
 - motivate employees to build a high performing and increasingly productive organisation.

Employee Responsibilities

4. All employees accept responsibility to contribute to achieving Tribunal outcomes by:
 - being fully conversant with, and upholding the principles and provisions of this Agreement and other supporting policies, guidelines and instructions;
 - understanding where their contribution fits and the standard of work expected;
 - engaging constructively in initiatives to enhance productivity and performance and progress change;
 - adhering to and promoting the APS Values and Code of Conduct and demonstrating behaviours consistent with the Values and the Code;
 - contributing to Tribunal outputs by participating in the Tribunal's Performance Management Program;
 - actively participating in priority Tribunal learning and development activities;
 - abiding by the all Tribunal guidelines, policies (Personnel Directions) and directions/directives (including the Chief Executive Instructions);

- maintaining all required employee records, e.g. attendance, leave and participation in learning and development activities; and
- maintaining full and accurate records of matters which influence any decision on business-related matters and ensuring that all appropriate records are captured on appropriate corporate record keeping systems.

Manager Responsibilities

5. In addition to their Employee Responsibilities, District Registrars and Managers will:
 - be fully conversant with, and uphold the principles and provisions of this Agreement and other supporting policies, guidelines and instructions;
 - provide employees with the tools they need to do their work efficiently, effectively, ethically and creatively;
 - build organisational capability through encouraging employee access to learning and development and giving employees guidance and encouragement to undertake their work effectively;
 - regularly review and prioritise workloads to ensure that staffing levels and classifications are appropriate to achieve desired outcomes and do not negatively impact on employees;
 - encourage, acknowledge and reward good performance; and
 - ensure appropriate consultation on all workplace issues and initiatives that affect employees.

Employees and Managers/District Registrars Working Together

6. Employees and managers are committed to working together in accordance with the APS Values and the Code of Conduct to continuously and innovatively improve the productivity, effectiveness and quality of Tribunal services, both externally to applicants and agencies, and internally via its administrative operations. All parties to the agreement acknowledge that this will be done with consideration to the Government's funding and employment policy framework.

Tribunal Undertakings

7. In return, the Tribunal seeks to provide a satisfying working environment with terms and conditions which:
 - recognise employees' efforts;
 - provide fair reward for the work undertaken, ie an affordable and attractive package of pay and conditions which aim to attract and retain quality people;
 - ensure that reward and advancement are linked to an assessment of skills, performance and the value of the work undertaken;
 - provide flexibility in workplace arrangements, working hours and leave consistent with the service required to be provided to the public and other clients;

- keep employees informed about major developments in relation to the Tribunal's ongoing activities.

B. INCREASING PRODUCTIVITY

Productivity Initiatives

8. This Agreement supports changes to the Tribunal's services and operations that will improve both efficiency and the level of service provided to Tribunal users and to Tribunal employees. These improvements will result from developments in several areas of the Tribunal's operations, including:
- implementation of changes to improve the efficiency and effectiveness of Tribunal operations, including changes arising from the 2010 Workload and Functions review and the Tribunal's Strategic Plan;
 - increased and improved E-learning options in relation to learning and development and staff induction;
 - nationally supporting the ongoing development and implementation of the TRACS Case Management System functionality;
 - completing the rollout of the new functionality of the Tribunal's Human Resources and Finance information management and reporting systems including Employee and Manager Self Service functionality;
 - a commitment to health and well-being strategies aimed at improving employee health and reducing unplanned absences;
 - evaluating and installing modern technology where this shows benefits to the Tribunal nationally;
 - developing and implementing a suite of electronic services, including systems for electronic lodgement and electronic document management.
 - adopting administrative arrangements that will generate savings in Tribunal operations; and
 - ongoing assessment of better ways to do business including use of benchmarking where appropriate.

Unplanned Absences

9. The parties to the Agreement recognise that unplanned absences impact on productivity. They agree that during the Agreement a review will be conducted of unplanned unanticipated absences with the aim of reducing its use by 2.5% over the life of the Agreement.
10. The parties to this Agreement agree that the Terms of Reference of the review will be considered and agreed by the National Consultative Committee (NCC).
11. The Terms of Reference could include, but not be limited, to:
- (a) assessing the use of Personal Leave by areas in the Tribunal;
 - (b) assessing factors influencing the use of Personal Leave; and/or

- (c) efficiencies in work practices which may reduce absenteeism.
12. The review will commence within three months of the first meeting of the National Consultative Committee following the commencement of this Agreement.

C. WORKING TOGETHER

Participative Work Practices

Consultation on major changes

13. This clause applies where a decision is made to introduce major changes in a work area that are likely to have significant effects on employees, other than where provision is already made elsewhere in this enterprise agreement regarding a specific major change.
14. Where a definite decision is made to introduce major changes in program, organisation, structure or technology that are likely to have significant effects on employees, the Registrar must notify the employees who are likely to be affected by the proposed changes and their representatives, if any.
15. Significant effects include:
- termination of employment;
 - major changes in the composition, operation or size of the Tribunal's workforce or in the skills required;
 - the elimination or diminution of job opportunities, promotion opportunities or job tenure;
 - significant alteration in hours of work;
 - the need to retrain employees;
 - the need to relocate employees to another workplace; and
 - the major restructuring of jobs.
16. If:
- (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - (b) the employee or employees advise the Tribunal of the identity of the representative; the Tribunal must recognise the representative.

Registrar to discuss major changes

17. The Registrar must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 14, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give

prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.

18. The discussions must commence as early as practicable after a definite decision has been made to make the changes referred to in clause 14.
19. For the purposes of such discussion, the employees concerned and their representatives, if any, are to be provided in writing all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees. The Registrar is not required to disclose confidential or commercially sensitive information to the employees.
20. In this term, relevant employees means the employees who may be affected by the major change.

Freedom of Association

21. The Tribunal recognises that employees are free to choose whether or not to:
 - be a member of an industrial association;
 - join a particular industrial association; and
 - be represented by an industrial association.
22. Employees will not be disadvantaged or discriminated against because they are, or are not, a member of an industrial association.

Employee Representation

23. In any matter arising under this Agreement, an employee may have an employee representative assist or represent them, and all relevant persons will deal with any such representative in good faith. To avoid doubt, this assistance includes acting as an advocate.
24. For the purposes of this section and to be able to attend approved training, each registry can be represented by a maximum of one (1) Employee Representative. Registries with in excess of 20 staff can be represented by a maximum of two (2) Employee Representatives.
25. Employees who perform a role as an employee representative will:
 - be provided with appropriate training (e.g. industrial relations training);
 - in the first year of performing the role, and/or the first year of this Agreement, be able to access 4 days of paid leave per calendar year to attend appropriate training or undertake other related activities.
 - in subsequent years, be able to access 2 days of paid leave per calendar year to attend appropriate training or undertake other related activities.
 - be provided with facilities and support to perform their function,
 - not suffer any employment related detriment as a result of performing the representative function.

26. Employee representatives may apply to the Registrar for additional leave, with or without pay, to undertake further training or other activities.

National Consultative Committee (NCC)

27. The National Consultative Committee (NCC) provides a forum for additional consultation and communication by management and staff and their representatives, on issues which have Tribunal-wide implications or which involve major change to any section of the Tribunal. These consultation provisions are in addition to and not intended to impact upon the operation of the Model Consultation Clause as in clause 14.
28. The first meeting of the NCC will take place within 3 months of the commencement of this Agreement.
29. The role of the forum is to:
- facilitate an exchange of information and to improve understanding of workplace issues affecting employees;
 - provide an avenue for staff to contribute views on workplace issues affecting them; and
 - provide input into any relevant reviews conducted by the Tribunal that impact on employees.
30. Such issues may include, but are not limited to:
- (a) major changes to the composition, operation or size of the Tribunal workforce or the skills required;
 - (b) monitoring the implementation of the Agreement;
 - (c) the elimination or significant reduction of job opportunities;
 - (d) the introduction of new technology;
 - (e) the need for significant retraining or re-assignment of employees to other duties;
 - (f) the restructuring of jobs where there is a significant change of functions;
 - (g) Occupational Health and Safety issues;
 - (h) significant changes to existing work practices;
 - (i) significant changes to accommodation;
 - (j) the application of policies related to workplace diversity;
 - (k) identifying and promoting good ideas; and
 - (l) promoting cross Tribunal co-operation.
31. In addition to any issues which arise during the term of this Agreement, the NCC will consult on the following issues relating to the development and review of work place policies and procedures:

- (a) review of Unplanned Absences;
 - (b) development of new Tribunal-specific Work Level Standards;
 - (c) development of procedures for the reclassification of positions; and
 - (d) development of a new employee performance and development scheme for all staff; and
32. It is acknowledged that the NCC is not a forum for resolving individual disputes. Any such dispute or disagreement is to be resolved in accordance with clauses 84 to 88 (*Resolution of individual grievances*).
33. In order to ensure effective communication and consultation between staff and management, the composition of the NCC will reflect the organisation as a whole, paying particular attention to the geographical spread of the Tribunal.
34. The Tribunal's NCC will comprise a maximum of 11 members:
- four nominees representing management (one of whom will be the convenor), and
 - seven employee representatives, one for each registry excluding Principal Registry.
- Due to the size of registries, any registry can elect to be represented by an employee representative of another registry.
35. Meetings of the Committee will be held biannually and by teleconference, unless otherwise mutually agreed. Normal meeting protocols such as agendas and minutes will apply with minutes of the meetings made available on the Tribunal intranet.
36. The minimum requirement for a quorum will be two management representatives and four staff representatives.
37. A union organiser/full-time official may be invited by a member of the NCC to attend meetings of the NCC.
38. Three employee representatives will be elected directly by an annual ballot organised by the outgoing Committee. This will not limit an employee's ability to serve consecutive terms.
39. To assist the members of the NCC, sub-committees may be formed to examine, report and make recommendations on matters discussed. The NCC may decide that the sub-committees will include other Tribunal staff who have particular expertise or relevance to, or interest in, the issue in question.
40. In undertaking their responsibilities, Employee Representatives will be provided with appropriate support, including access to training and reasonable work time to undertake these responsibilities. *Refer clauses 23 to 24 in relation to Employee Representatives.*

Implementing this Agreement

41. Tribunal managers and employees and their representatives will cooperate to implement the provisions of this Agreement and the National Consultative Committee will regularly monitor progress.

Communication Facilities

42. The Tribunal authorises the use of designated noticeboards (including electronic noticeboards) to facilitate communication between employees and/or employee representatives in the workplace. Use of such communication facilities must comply with Tribunal policies.

Principles relating to workplace delegates

43. The principles relating to the role and rights of workplace delegates are set out at Attachment E of this Agreement.

Introduction of Change

44. The Tribunal and its employees acknowledge that change in the workplace is ongoing and that good change management is necessary to achieve efficiency and productivity.
45. The Tribunal will provide employees and, where they choose, their representatives with all relevant information in a timely manner about impending changes that may or will impact on employees and/or their employment, and keep employees informed of progress and the possible impact on employees of changes to organisational structure, technology, the composition, operation, size or location of the workforce, or required workplace capabilities. These provisions are in addition to the arrangements at clause 14 and are not intended to impact on the operation of clause 14.

D. A HEALTHY, SAFE AND RESPECTFUL WORK ENVIRONMENT**Occupational Health and Safety**

46. The Tribunal is committed to an ongoing policy on Occupational Health and Safety (OHS) which enables effective cooperation between the Tribunal and employees on OHS matters and creates and maintains a safe and healthy working environment. Tribunal and employee OHS rights and responsibilities are contained in the *Occupational Health and Safety Act 1991 (OHS Act)*, its Health and Safety Management Arrangements (HSMA) and supporting documentation such as the First Aid Policy. Nothing in this Agreement will diminish those rights or responsibilities.
47. Under the *Safety Rehabilitation and Compensation Act 1988 (SRC Act)*, the Tribunal has ongoing responsibility to manage workers' compensation claims and provide rehabilitation and return to work programs for injured employees.
48. The Tribunal recognises that a healthy and safe workplace that is free of discrimination, harassment and bullying is an essential component in creating a professional, productive and supportive work environment.
49. The Tribunal acknowledges its employer responsibilities under the OHS Act and the SRC Act and seeks to meet these responsibilities by:
- providing the resources required to ensure OHS prevention initiatives are established and maintained;
 - encouraging a cooperative and consultative relationship between managers, employees and their representatives in regard to OHS issues;

- creating manager and employee awareness of health and safety issues and building a culture that integrates occupational health and safety into everyday business;
- maintaining a national OHS structure including a network of trained Health and Safety Representatives and a national Health and Safety Committee;
- providing a method for managing OHS disputes in the Tribunal's Health and Safety Management Arrangements (HSMAs); and
- providing an injury management framework that promotes early intervention and safe return to work.

50. The Tribunal will review the HSMAs in consultation with employees and their representatives as required by section 16A of the OHS Act.

Discrimination Free Workplace

51. The Tribunal and its employees agree to respect and value the diversity of the work force in a discrimination free workplace.
52. Nothing in these provisions allows any treatment that would otherwise be prohibited by anti-discrimination provisions in applicable Commonwealth, State or Territory legislation.

Workplace Diversity (A diverse work environment)

53. The Tribunal and its employees are committed to ensuring that workplace diversity principles embodied in the APS Values and the Code of Conduct are fully integrated into all Tribunal activities, management practices, policies and procedures.
54. The *AAT Workplace Diversity Plan* demonstrates the Tribunal's commitment to achieving workplace diversity within the Tribunal and aims to capitalise on the diversity within its work force.
55. The Tribunal and its employees and, where they choose, their representatives will meet these commitments by applying the principles and actions set out in the Tribunal's:
- *Workplace Diversity Plan*;
 - *Reconciliation Action Plan*
 - *Indigenous Employment Strategy*; and
 - *Disability Access Plan*

and succeeding versions of these plans and strategies.

Environmental Initiatives

56. The Tribunal will, in consultation with employees and their representatives, including through the NCC, implement practical measures to reduce the Tribunal's carbon footprint, promote environmental sustainability, minimise the unnecessary consumption of resources and reduce operational and administrative costs through improved workplace practices.

Support for Mature Age Employees

57. The Tribunal recognises that with the continued ageing of the Australian workforce, management and work practices should optimise the contribution of mature age employees.
58. The Tribunal is committed to implementing measures to retain the skills, expertise and corporate knowledge of mature age employees approaching retirement age. In an effort to support and encourage mature age employees to remain in the workforce, in particular past the minimum retiring age, the Tribunal will develop a strategy which shall include:
- (a) promoting the availability of flexible working arrangements and employment conditions such as part-time work;
 - (b) facilitating re-training and mobility for older workers; and
 - (c) facilitating the transfer of corporate knowledge prior to retirement through mentoring and other arrangements.
59. In keeping with the Tribunal's commitment to work/life balance, flexible working arrangements such as part-time work and other provisions contained in this Agreement can be suitable for use by mature age employees as a means to assist their transition to retirement. Employees are encouraged to explore these flexibilities as a means of extending their working lives. Subject to operational requirements, managers will favourably consider flexible working arrangements as a means of retaining mature age employees who might otherwise choose to leave the Tribunal.

Work/Life Balance

60. The Tribunal is mindful of the needs of employees to balance their work and family responsibilities and shall where consistent with both operational arrangements and the employee's family and other responsibilities extend assistance to employees through the flexibilities provided by this Agreement. In circumstances where the Tribunal is unable to approve:
- (a) an application for leave;
 - (b) a proposal to varying working hours or work part-time; or
 - (c) an election to purchase additional leave

the relevant supervisor or manager will provide the employee with reasons in writing including evidence that the Tribunal has considered alternative arrangements or options that might address the requirement of the employee.

Health and Wellbeing Incentives

61. The Tribunal is committed to measures that will promote a healthy and productive workforce. In consultation with the Health and Safety Committee and staff it will offer incentives and opportunities aimed at maximising the health of employees and minimising the number of days lost through illness and injury. This will include access to:
- Vaccinations
 - Eye sight Testing

- Personal Safety – use of taxis
- Assistance with return to work costs
- Employee Assistance Program
- Assistance in relation to group or individual participation in health and fitness related physical activities.

Vaccinations

62. The Registrar will arrange for employees who wish to receive an annual influenza vaccination to do so at Tribunal expense.
63. Local Tribunal management will determine the optimum time to offer the influenza vaccination service each year after consultation with the local government health authority, Tribunal employees and the Human Resources Manager.
64. Other “at risk” vaccination programs, which may include hepatitis and tuberculosis, may be accessible to accredited First Aid Officers in consultation with, and subject to the approval of, the Human Resources Manager.
65. Employees would normally use the vaccination service arranged by the Tribunal, however, if an employee does not use the Tribunal service, reimbursement of the cost incurred by the employee will be limited to the cost of the vaccine.

Eye sight testing

66. 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 \$200 for single vision, bifocal or multifocal spectacles or contact lenses. *Refer Personnel Direction 2.*

Personal safety – use of taxis

67. The Tribunal acknowledges that personal safety issues may arise. Managers and supervisors will, in consultation with the employee concerned, provide appropriate safety measures.
68. Where an employee is directed to work after 7:00 pm, the Tribunal will provide Cabcharge for the journey home of that employee, subject to prior approval by the relevant manager and the request of the employee.
69. Employees travelling interstate who are staying in an unfamiliar area or have concerns regarding their personal safety may also use a taxi for work-related travel, subject to seeking prior approval where practicable.

Assistance with return to work costs

70. The Registrar will, in certain circumstances, consider providing for the:
 - reimbursement of small medical related costs of up to \$200, or another amount as agreed to by the Human Resources Manager; and
 - approval of short term paid Miscellaneous Leave

where it will assist with the employee's return to work.

Employee Assistance Program

71. Through its Employee Assistance Program the Tribunal will continue to provide its employees and their immediate family with access to confidential professional counselling to assist with work or personal issues. The aim of the scheme is to support employees and help them resolve personal or work related issues.

Assistance for group or individual participation in health and fitness related physical activities

72. The Tribunal will provide funds for the payment of yearly gym, fitness/yoga class or similar membership for ongoing employees and long-term non-ongoing employees on request. This will allow employees to take advantage of cheaper rates for annual membership, without the need for a large outlay.
73. Employees will repay the cost over 12 months (or a lesser period if applicable or requested by the employee) through fortnightly salary deductions from their after tax salary. Any balance owing on cessation of employment will be repaid to the Tribunal from final monies. The Tribunal may develop a policy on the arrangements which will operate on the basis that there is no cost, or FBT liability, to the Tribunal.
74. The Registrar will consider and, where agreeable, approve written requests for the provision of funds for assistance towards the participation of a group of Tribunal employees in organised health and fitness related physical activities.

Staff Surveys

75. The Tribunal is committed to conducting Staff Surveys on a regular basis as an important tool in identifying and addressing problems and issues important to employees in relation to their work.

E. RESOLUTION OF AGREEMENT DISPUTES

76. If a dispute relates to a matter under this Agreement, or the National Employment Standards (NES), the parties to the dispute must first attempt to resolve the matter at the workplace level by discussions between the employee or employees concerned and the relevant supervisor/manager.
77. If a resolution to the dispute has not been achieved after discussions have been held in accordance with clause 76, the parties to the dispute will endeavour to resolve the dispute in a timely manner either through discussions with more senior levels of management where appropriate or through alternative dispute resolution methods.
78. If discussions at the workplace level do not resolve the dispute, and all appropriate steps have been taken in accordance with clauses 76 and 77, a party to the dispute may refer the matter to Fair Work Australia.
79. Fair Work Australia may deal with the dispute in 2 stages:
- Fair Work Australia will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and

- if Fair Work Australia is unable to resolve the dispute at the first stage, Fair Work Australia may then:
 - arbitrate the dispute; and
 - make a determination that is binding on the parties.

Note: If Fair Work Australia arbitrates the dispute, it may also use the powers that are available to it under the Act. A decision that Fair Work Australia makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the Fair Work Act 2009. Therefore, an appeal may be made against the decision.

80. The Tribunal or an employee who is a party to the dispute may appoint another person, organisation or association to accompany and/or represent them for the purposes of this term.
81. Resolution of disputes is to occur in good faith by following the same principles as the good faith bargaining requirements at section 228 of the *Fair Work Act 2009*.
82. While the parties are trying to resolve the dispute using the procedures in this term:
- an employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and
 - an employee must comply with a direction given by the Registrar to perform other available work at the same workplace, or at another workplace, unless:
 - the work is not safe; or
 - applicable occupational health and safety legislation would not permit the work to be performed; or
 - the work is not appropriate for the employee to perform; or
 - there are other reasonable grounds for the employee to refuse to comply with the direction.
83. The parties to the dispute agree to be bound by a decision made by Fair Work Australia in accordance with this term.

Resolution of individual grievances (Review of Actions)

84. Employees are entitled to request a review of decisions or actions (including refusal or failure to act) that affect their individual employment and that are ultimately reviewable by the Merit Protection Commissioner, or under other formal complaint resolution mechanisms available under the public service employment framework.
85. In accordance with section 33 of the *Public Service Act 1999* (PS Act) and Part 5 of the *Public Service Regulations 1999* (PS Regulations), an employee is entitled to request an internal review of decisions or actions that relate to their employment.

86. Employees have a right to seek external review of an employment-related decision or action at any time in accordance with section 33 of the PS Act.
87. The parties to the agreement agree that, as far as possible, the following steps will be taken to prevent and informally resolve issues before formal action is taken under the PS Act or the public service employment framework:
- (a) the employee will approach his or her immediate supervisor and seek to discuss the issue;
 - (b) if the matter is not resolved at that level further discussions will be arranged involving a more senior management level;
 - (c) in these discussions the employee may choose to be accompanied for guidance or assistance by a person of his or her choice;
 - (d) examples of action that could be taken by the supervisor include raising the issue with other levels of management or exploring options for third party mediation or help through the Tribunal's employee assistance program; and
 - (e) if the supervisor or manager cannot resolve the issue to the employee's satisfaction, the employee may write to the Registrar seeking formal review of action and briefly describing the issues and specifying the remedial action sought. The matter will then be dealt with under procedures contained in the Personnel Direction 25 on *Review of Actions* issued to Tribunal employees.
88. It is recognised that in certain circumstances when attempting to resolve a process informally, an employee considers it inappropriate to consult their immediate supervisor, such as where the employee is alleging bullying and harassment on the part of the supervisor, then the employee is able to consult their manager or an alternate manager.

F. REMUNERATION & OTHER BENEFITS

SALARY

Classification and Salary Rates

89. The Tribunal is committed to fairly rewarding employees for their contribution to carrying out the work of the Tribunal. Attachment A1 details salary rates to be paid over the life of this Agreement.
90. The Tribunal's classification structure is consistent with the 8-level Australian Public Service classification structure and facilitates mobility within the Tribunal, and between the Tribunal and other Australian Public Service departments and agencies.
91. Employees will be paid fortnightly in arrears and the fortnightly rate of pay will be based on the formula:
- Annual salary multiplied by 12 divided by 313.
92. The salary rate applied to employees will be affected by:

- the work value of their allocated duties, determined by classifying those duties using the Work Level Standards; and
- except for short-term non-ongoing employees, their individual and or team performance as assessed under the Performance Management Program.

93. Staff will progress through the AAT Broadband 3/4 in accordance with the Performance Management Program and Broadbanding arrangements which includes the requirement that movement to a higher pay point or classification within a broadband is linked to achievement of fully effective or better performance.

Work Level Standards

94. The existing AAT Work Level Standards will operate until they are replaced. The Tribunal will review the existing Work Level Standards in consultation with employees and where they choose, their representatives. The review will commence within three months of the first meeting of the National Consultative Committee.

95. The Work Level Standards:

- describe the work at each of the classification levels in this Agreement;
- assist in determining at what level a position is to be classified and therefore what salary rate is applicable.
- include information on any required qualifications; and
- are accessible via the intranet;

Broadbanding

96. The Tribunal recognises that broadbanding can provide significant benefits, reflecting that employees' experience, capability and performance can develop in the job and add value to their work and the organisation. Broadbanding arrangements will be supported by training and development for employees to assist them to meet performance and skill requirements.

97. Broadbanding arrangements apply only to ongoing employees at the AAT Broadband 3/4, as indicated in Attachment A1. They do not apply to non-ongoing employees.

98. The Tribunal's AAT Broadband 3/4 comprises two distinct levels indicated by the Pay Point structure detailed in Attachment A1. The broadband has two separate pay point structures:

- APS 3 equivalent pay point structure - pay points 3.1 and 3.2; and
- APS 4 equivalent pay point structure - pay points 4.1, 4.2 and 4.3.

99. Broadbanding for all employees within the AAT Broadband 3/4 will operate in accordance with the following provisions:

- Advancement within the AAT Broadband 3/4 is based on work availability, the performance of the employee, the needs of the Tribunal and the application of the merit principle.

- Movement to a higher pay point or classification within a broadband is linked to achievement of fully effective or better performance.
100. An employee employed, in either an ongoing or non-ongoing capacity, to undertake the duties of an Administrative Assistant to the Listing Coordinator, an Administrative Assistant (Legal) or another role, as determined by the Human Resources Manager, will be employed on the APS 4 equivalent pay scale. An employee engaged under this clause will not be subject to the AAT Broadband 3/4 barrier but will advance through the APS 4 pay points in accordance with clause 93 and the Tribunal's Performance Management Program.
101. The barrier only applies to staff who are employed and undertaking the duties of a Client Services Officer (or equivalent) or an Administrative Assistant working within a Member Support Team:

(A) Client Service Officer or MST Administrative Assistant AAT Broadband 3/4

- | |
|---|
| <p>(a) an employee who is at pay point 3.1 or 3.2 is eligible for salary progression based on their individual work performance in accordance with clause 93 and the Tribunal's Performance Management Program up to and including pay point 4.1;</p> <p>(b) an employee who is at pay point 4.1 and is rated 3 or better in accordance with the Performance Management Program may be advanced and progress beyond the firm barrier to the next level within the broadband provided that;</p> <p style="padding-left: 40px;">(i) the supervisor and section manager have assessed that they have the skill and knowledge requirements for the available work at the next level;</p> <p style="padding-left: 40px;">(ii) there is sufficient ongoing work required to be performed at the higher level; and</p> <p style="padding-left: 40px;">(iii) the delegate has approved the employee's advancement;</p> <p>(c) where more than one employee satisfies the requirements of sub-clause (b) of this clause, but there is insufficient ongoing work available for all such employees, the relevant supervisor will conduct a merit selection process to determine advancement. Both the process and determination will be subject to approval by the delegate.</p> |
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(B) Other AAT Broadband 3/4

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| <p>(a) an employee who is not at the highest pay point 4.3 is eligible for salary progression based on their individual work performance in accordance with the Tribunal's Performance Management Program.</p> |
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102. Where an employee at the top salary point of their level is advanced to the next level within the broadband, in accordance with the provisions of this clause, they are automatically reclassified to the relevant APS classification level.
103. Where an employee wishes to seek a review of the reclassification or their claims for advancement, the provisions for review of employment actions set out in clauses 84 to 88 (*Resolution of individual grievances*) apply.

104. The Human Resources Manager may determine that a job within a broadband will be advertised in the Tribunal, in the Commonwealth Gazette or more widely, or that the job is undertaken on a temporary assignment basis, or may decide not to proceed with advancement or selection.

Salary Increase

105. In recognition of the commitment by employees to performance and productivity improvement, and the benefits which will flow to the Tribunal from this Agreement, including increased productivity, all employees covered by this Agreement will receive pay increases as follows:
- 3% effective from the date of commencement of this Agreement; being 7 days after its approval by Fair Work Australia (FWA).or 1 July 2011 whichever is the latter;
 - 3% effect from 1 July 2012;
 - 3% effective from 1 July 2013.

Salary on Engagement, Promotion and Assignment of Duties

106. An employee's salary on engagement, promotion and assignment of duties (including movement from another APS Agency) will normally be at the minimum salary rate for the classification, unless the Registrar approves payment at a higher salary point within the classification range having regard to the following criteria:
- length, nature, currency and relevance of experience;
 - the relative experience and knowledge of the applicant, including as compared to other employees performing similar work;
 - contribution that can be made immediately;
 - qualifications and skills of the employee gained in previous Commonwealth or other relevant service including that with the Tribunal;
 - public service experience including that with the Tribunal at level and above including during periods of temporary assignment of duties;
 - current remuneration; and
 - any other matter the Registrar considers appropriate.
107. Where, at the time of engagement, an employee's salary is set at an incorrect salary point within the applicable salary scale, the Registrar may determine (in writing) the payment of the employee's salary at the correct salary point.
108. Where an employee agrees, in writing, to temporarily perform work at a lower work value level, the Registrar may determine (in writing) that the employee shall be paid a rate of salary applicable to the lower work value level.
109. At the discretion of the Registrar, an employee moving to the Tribunal whose salary in their previous agency (current salary) exceeds the current rate the employee would otherwise be entitled to under this Agreement, the employee

will be maintained on their current salary until such time as their salary is absorbed by Tribunal pay increases.

110. Guidelines relating to salary, in particular matters such as salary on engagement, promotion, assignment of duties, movement from another APS agency, etc. are set out in Personnel Direction 41, *Salaries*.

Categories of Employees; Non Ongoing & Intermittent/Irregular employees

111. Employees covered by this Agreement are engaged in accordance with the *Public Service Act 1999*:
- (a) as an ongoing employee
 - (b) as a non-ongoing employee for a specified term or specified task
 - (c) as an intermittent or irregular employee
112. The usual basis for engagement is as an ongoing employee unless, having regard to section 22 of the PS Act and clause 3.5 of the PS Regulations, the nature of the role or work warrants filling the position:
- on a non-ongoing basis for either a specified term or task, or;
 - on an irregular/intermittent basis.
113. Delegates will review the employment of non-ongoing employees upon the renewal of their contracts to assess, among other things, whether the duties should be advertised for filling on an ongoing basis. The employee will be advised accordingly of the outcome of this review and of any other relevant issues relating to their tenure. Typically engagement for a specified term or task as an intermittent or irregular employee will be to address a temporary increase in workload or a temporary need for particular skills.

Non-ongoing Employees Engaged for Duties that are Irregular or Intermittent

114. Employees may be engaged on a non-ongoing basis to undertake duties which are casual, irregular or intermittent in nature and will be remunerated on an hourly basis.
115. Non-ongoing employees engaged for duties that are irregular or intermittent will receive a loading of 20% of salary in lieu of paid leave and public holidays except that employees are entitled to the following;
- accrue Long Service Leave in accordance with the provisions of the *Long Service Leave (Commonwealth Employees) Act 1976* (LSL Act); and
 - unpaid Compassionate Leave of two days per occasion;
 - unpaid Carer's Leave of two days per occasion consistent with the *Fair Work Act 2009*;
 - unpaid Parental Leave if the employee has continuous employment of more than 12 months and has an ongoing expectation of employment, consistent with the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, and the *Fair Work Act 2009*.

- but will not accrue Annual or Personal Leave, cannot purchase leave, and is not entitled to school holiday care allowance or any payment for Compassionate, Miscellaneous, Adoption, Foster Parents, Maternity or Parental Leave or other leave or payment for public holidays on which they do not work.

Supported Salary Rates for Employees with a Disability

116. Employees who are eligible for a supported salary who meet the impairment criteria for the Disability Support Pension will be paid the applicable percentage of the relevant rate for the work value they are performing in accordance with the “*Special Supported Wage System (Employees with a Disability) transitional Australian Pay and Classification Scale*” or replacement instrument.

Supported Wage Prescribed Rates

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

Other Employment Conditions

117. Where an assessment has been made, the applicable percentage will 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

118. Where the Registrar 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.

Junior Rates

119. Junior rates of pay are calculated as a percentage of the APS Level 1 minimum adult rate of pay included at Attachment A1. Junior employees will receive salary advancement in accordance with their age.

Individual Flexibility Arrangement

120. A Registrar and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:

- the arrangement deals with 1 or more of the following matters:
 - arrangements about when work is performed;
 - overtime rates;
 - penalty rates;
 - allowances;
 - remuneration; and/or
 - leave; and
 - the arrangement meets the genuine needs of the Tribunal and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
 - the arrangement is genuinely agreed to by the Registrar and employee.
121. The Registrar must ensure that the terms of the individual flexibility arrangement:
- are about permitted matters under section 172 of the *Fair Work Act 2009*; and
 - are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
 - result in the employee being better off overall than the employee would be if no arrangement was made.
122. The Registrar must ensure that the individual flexibility arrangement:
- is in writing; and
 - includes the Tribunal's name and employee; and
 - is signed by the Registrar and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
 - includes details of:
 - the terms of the enterprise agreement that will be varied by the arrangement; and
 - how the arrangement will vary the effect of the terms; and
 - how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
 - states the day on which the arrangement commences and, where applicable, when the arrangement ceases.
123. The Registrar must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
124. The Registrar or employee may terminate the individual flexibility arrangement:

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

Reporting of supplementary arrangements in individual flexibility agreements

125. The number and use of supplementary arrangements in individual flexibility agreements will be reported to and discussed with the NCC on a biannual basis.

Method of Payment

126. Employees will have their fortnightly salary paid in arrears by electronic funds transferred into a financial institution account of their choice. There will be scope for deductions to be made at an employee's request prior to his or her fortnightly salary being transferred into his or her nominated account. Prepayment of salary may be made only on cessation of employment in which case entitlements will be paid out as soon as possible after the employee ceases.

Provision of electronic payslips and Payment Summaries

127. During the life of this Agreement the Tribunal may provide all employees with:
- access to an electronic payslip (printable) verifying payments made by the Tribunal to the employee.
 - electronic payment summaries at the end of each financial year.
128. Employees on continuous leave for more than 4 weeks will be provided with printed payslips on a fortnightly basis unless the employee indicates these are not required.
129. Where employees are on long term leave or have separated from the Tribunal, a hard copy payment summary will be sent to their mailing address.

Recovery of Overpayments and Other Debts to the Tribunal

130. Salary, salary related and other debts that an employee or former employee owes to the Tribunal will be recovered in accordance with Personnel Direction 1, *Recovery of Overpaid Salary and Allowances*, as varied from time to time by the Registrar in accordance with clause 483 as well as Chief Executive Instructions 7.1–7.4. These provide for the automatic recovery of an overpayment through deductions from an employee's salary and the explicit consent from the individual employee concerned for a deduction to be made. This clause applies to all clauses contained in this agreement relating to overpayments and other debts to the Tribunal including those in relation to:
- Salary Packaging
 - the Transport Loan Scheme
 - Health and Fitness related physical activities
 - Flex Debits

- Leave Taken in Excess of Credits
- or resulting from Resignation, Retirement or other forms of separation.

Superannuation

131. The Tribunal will ensure that all employees are provided with information about superannuation arrangements prior to or immediately on commencement or recommencement of employment.
132. Superannuation will be available to employees in accordance with the *Superannuation Act 1976*, the *Superannuation Act 1990*, the *Superannuation Act 2005*, the *Superannuation (Productivity Benefit) Act 1988*, or other applicable legislation.
133. The Tribunal will make compulsory employer contributions as required by the applicable legislation and fund requirements.
134. Employer contributions to the PSSap will be 15.4% of the employee's fortnightly contribution salary. Employer contributions for employees in other accumulation schemes will be at the same rate as for employees in PSSap. Employer contributions will not be reduced by any other contributions made through salary sacrifice arrangements. This clause does not apply where a superannuation fund cannot accept employer superannuation contributions (e.g. unable to accept contributions for people aged over 75).
135. The Tribunal will maintain the rate for employer contributions where an employee who is eligible for membership of the Public Sector Superannuation Accumulation Plan exercises superannuation choice. To remove any doubt, this includes employees who access superannuation choice.
136. The Registrar may choose to limit superannuation choice to complying superannuation funds that allow employee and/or employer contributions to be paid through fortnightly electronic funds transfer (EFT) using a file generated by the Tribunal's payroll system.
137. Employer superannuation contributions will not be paid on behalf of employees during periods of unpaid leave that does not count as service, unless otherwise required under legislation.
138. Where an employee is ineligible to receive employer contributions due to age-related reasons the Tribunal will maintain the employer contributions as it does to employees without that condition.
139. Employees over the age of 70 will receive a superannuation allowance, where the Tribunal is not permitted by any Commonwealth law to pay all of the employer contribution to the employee's superannuation fund. The superannuation allowance payable to the employee will be equivalent to the gross amount the Tribunal would have paid if the employee was entitled to receive employer superannuation contributions, less any contribution amount accepted to the employee's superannuation fund. This allowance will be taxable and will be paid fortnightly with salary. The allowance will not count as salary for any purpose.
140. Employees may choose to sacrifice part of their salary from a menu of non-cash benefits in accordance with the applicable guide. Participation in salary packaging will not affect salary for superannuation purposes or any other purpose.

141. The Tribunal will consult with employees, and where they choose, their representatives regarding any changes in superannuation arrangements.

Salary Packaging

142. Ongoing employees and non-ongoing employees whose initial employment contract exceeds 12 months, and are not employed on an irregular and intermittent basis, are able to participate in the Tribunal's salary packaging scheme as contained within the Tribunal's Personnel Directions 27 and 28. The Personnel Directions may be varied from time to time by the Registrar in accordance with clause 483 and to comply with legislation and government policy. The scheme operates under the principles of:
- The items which may be salary packaged are restricted to personal superannuation and motor vehicles.
 - Eligible employees are able to package up to 100% of their pre-tax salary less any mandatory deductions from salary, e.g. superannuation employee contributions.
 - All costs, including fringe benefits tax and administrative costs, incurred as a result of salary packaging are to be met by the employee.
 - The employee's salary for superannuation purposes and redundancy and termination payments, and any other purpose, will be the gross salary which the employee would receive if not taking part in salary packaging.
 - The employee is responsible for obtaining their own financial advice on salary packaging.
 - Any money owing to the Tribunal must be repaid before the employee leaves the Tribunal.
143. In exceptional circumstances, an employee deemed ineligible under clause 142 may apply to the Human Resources Manager to participate in the scheme. The Human Resources Manager will consider the application and advise the employee of his/her decision.
144. The Tribunal reserves the right to limit salary packaging to superannuation to funds that allow contributions to be paid through electronic funds transfer (EFT) using a file generated by the Tribunal's payroll system.

ALLOWANCES

Temporary Assignment of Duties

145. An employee may decline a manager's invitation to perform duties temporarily at a higher classification level.
146. Where an employee has been temporarily assigned duties at a higher classification level the following provisions will apply:
- (a) an employee temporarily assigned all or part of the duties of a higher classification will be paid either an allowance equal to the difference between the employee's own salary and the salary the employee would have received if promoted to the higher classification, or an amount of

\$3,000 per annum, whichever amount is the greater, or an alternative amount determined by the Registrar;

- (b) payment of temporary assignment allowance will only be made where the direction is for a continuous period of one week or more;
 - (c) temporary assignment allowance will be paid for the entire continuous period of approved leave taken by another employee, including flex leave, where:
 - (i) flex days are taken at the beginning and/or end (or a day or days in between) of that period of leave; and
 - (ii) where that leave includes a week of accumulated flex leave, generally at the beginning or end of that period of leave;
 - unless
 - (iii) there are specific reasons not to pay the temporary assignment allowance, as notified by the District Registrar or Manager to the Human Resources Manager
 - (d) once an employee has received a salary advancement at a higher classification, that salary advancement will be retained for future temporary assignment at that classification level unless the employee does not perform at that higher classification level for two consecutive years. Nothing in this clause will prevent the Registrar from applying the provisions of clauses 146 (a) and 146 (b).
147. Where an employee is temporarily assigned duties at a Senior Executive Service (SES) classification, an appropriate temporary assignment allowance to bring the employee's salary of no less than a minimum of \$3,000 per annum above the maximum of the Executive Level 2 salary scale will be paid. Other benefits will be determined by the Registrar for the period of the temporary assignment.

Special Duties Allowance

148. The Registrar may approve payment of allowances of a special nature to compensate additional duties that arise from the conduct of work, e.g. due to the addition of new duties or responsibilities, whether of a short or longer term nature.

Conference Registrar's Allowance

149. Conference Registrars who are directed to exercise powers as an "authorised Conference Registrar" under section 33(4) of the *Administrative Appeals Tribunal Act 1975* will be paid an allowance of 2% of salary.
150. When an employee agrees to prepare for and/or conduct conferences other than when acting as a Conference Registrar under clause 146(b) they will be paid an allowance of \$50 per day on which conferences are performed. An employee cannot be paid more per financial year under this clause than a Conference Registrar's entitlement under clause 149.

First Aid Officers Allowance

151. Where the Registrar is satisfied that an employee possesses a first aid certificate and continuing ability commensurate with that qualification, and the employee has first aid responsibilities, the employee will be paid a fortnightly allowance of:
- (i) \$25.75 effective from the commencement date of this Agreement or 1 July 2011, whichever is the latter;
 - (ii) \$26.50 effective from 1 July 2012; and
 - (iii) \$27.50 effective from 1 July 2013.
152. Payment of First Aid Allowance will cease for continuous absences of over four weeks.

Health and Safety Representative (HSR) allowance

153. Where the Registrar is satisfied that an employee has been duly appointed to duties as a Health and Safety Representative, has undertaken the training and maintained the ability needed to discharge those duties, the employee will be paid a fortnightly allowance of:
- (i) \$25.75 effective from the commencement date of this Agreement or 1 July 2011, whichever is the latter;;
 - (ii) \$26.50 effective from 1 July 2012; and
 - (iii) \$27.50 effective from 1 July 2013.
154. Payment of HSR Allowance will cease for continuous absences of over four weeks.

Workplace Harassment Contact Officer (WHCO) allowance

155. Where an employee has successfully undertaken the relevant training, is appointed as a Workplace Harassment Contact Officer by the Registrar, and has maintained the ability needed to discharge those duties, they will be paid a fortnightly allowance of:
- (i) \$13.00 effective from the commencement date of this Agreement or 1 July 2011, whichever is the latter;
 - (ii) \$13.25 effective from 1 July 2012; and
 - (iii) \$13.75 effective from 1 July 2013.
156. Payment of WHCO Allowance will cease for continuous absences of over four weeks.

Secure Room Custodian allowances

157. Where an employee appointed to duties as a Secure Room Custodian by the Registrar has undertaken the training and maintained the ability needed to discharge those duties, the employee will be paid a fortnightly allowance of \$50.00 for the duration of this Agreement:
158. Payment of the fortnightly Secure Room Custodian allowance will cease for continuous absences of over four weeks.

159. Where an employee completes an initial Top Secret clearance process they will be paid an allowance of \$500.
160. Where an employee completes a re-validation process for a Top Secret clearance they will be paid an allowance of \$250.
161. Reasonable telephone related costs associated with responding to alarm calls will be reimbursed.
162. Where a Secure Room Custodian is required to respond to an alarm call and:
 - (i) does not attend AAT premises - the Custodian will receive an additional payment of \$50.00; or
 - (ii) attends AAT premises - the Custodian is entitled to receive payment in accordance with the Emergency Duty provisions (including travel related costs) of this agreement.

Travelling Allowance

163. An allowance will be payable to an employee who travels on official business and is away from home overnight. The allowance, which is payable in advance, is to meet the cost of accommodation, meals and any incidental expenses incurred by the employee while travelling on official business. The rates of Travelling Allowance are to be those equal to the "*Reasonable daily travel allowance amounts*" published in each year's relevant Tax Ruling by the Australian Taxation Office (ATO). Employees will be paid travel rates using the lowest annual salary range in accordance with the approach detailed in Personnel Direction 33, *Allowances and Relocations Assistance* and Chief Executive Instruction 5.16, *Travel - Domestic*.
164. The Tax Rulings mentioned in this clause do not form part of this Agreement.
165. The Registrar may, subject to the presentation of receipts, authorise an additional payment in circumstances where an employee has incurred reasonable costs in excess of the Travelling Allowance calculated under clause 163 and Personnel Direction 33, *Allowances and Relocations Assistance*. Alternately, prior approval may be given by the Registrar to exceed the normal Travelling Allowance rates in special circumstances.
166. Where an employee is provided with either accommodation or meals, or both, at Tribunal expense, the employee will not be paid for those components of Travelling Allowance in respect of any accommodation or meals provided.
167. To facilitate an employee's request to move to another locality on compassionate grounds, the Registrar may, with the employee's agreement, waive entitlements to travelling allowance for the period of the move.

Illness while travelling

168. Where an employee falls ill or is injured while travelling on official business and subsequently takes leave, return journey costs will be provided to the employee on their return home.

Overpayment of Travelling Allowance

169. Where a travelling allowance overpayment occurs, the amount of the overpaid allowance will be reimbursed to the Tribunal to reflect the travel actually

undertaken. Reimbursement to the Tribunal will be made in accordance with the Chief Executive Instructions.

Overseas Travel and associated Travelling Allowances

170. Staff required to undertake official overseas business related travel are entitled to be paid appropriate Overseas Travelling Allowances, to travel at premium economy (if available), otherwise business class or equivalent, class of travel, have access to appropriate rest periods and have other related costs met by the Tribunal. Staff will not be out of pocket for reasonable work related expenses incurred.
171. Personnel Direction 33, *Allowances and Relocations Assistance* and Chief Executive Instruction 5.30, *Travel – Overseas* set out the arrangements relating to Overseas Travel when an employee is required to travel overseas on official business. The Personnel Direction may be varied from time to time by the Registrar in accordance with clause 483472.
172. Where Overseas Travelling Allowance is payable the rates will be those equal to the “*Reasonable daily travel allowance amounts*” published in each year’s relevant Tax Ruling by the ATO.
173. The Tax Rulings mentioned in this clause do not form part of this Agreement.

Motor Vehicle Allowance

174. The Registrar may request and authorise an employee to use a private car owned or hired by the employee at his or her own expense for official purposes, where it is considered that it will result in greater efficiency or involve less expense for the Tribunal than if public transport was used or where public transport is not available to meet the needs of the person travelling. Such authorised employees will receive a Motor Vehicle Allowance calculated in accordance Personnel Direction 33, *Allowances and Relocations Assistance*. Where Motor Vehicle Allowance is payable the rates will be those equal to the “*Rates per business kilometre*” or equivalent as published each year by the ATO.
175. Where an employee is required to undertake official travel, but has not been requested to use a motor vehicle under clause 174, and requests permission to use a private car owned or hired by the employee at his or her own expense, the Registrar may allow the employee to do so provided the journey does not increase the time away from work and costs less than would otherwise have been the case had public transport been. The allowance to be paid to the employee will be the lesser of either the motor vehicle allowance for the journey or the amount that would otherwise have been spent on conveying the employee to the location.

OVERTIME AND RELATED ITEMS

Overtime

176. Overtime is only to be worked with the approval of the Registrar for work performed in addition to regular hours of work.
177. For part-time employees, overtime is work performed at the direction of the Registrar which is in addition to the employee’s agreed or regular hours or is

beyond the total hours of work over the settlement period specified for the employee in the employee's PTE agreement.

178. The Registrar may direct employees to work reasonable overtime. Guidelines relating to the administration and payment of overtime are set out in Personnel Direction 37, *Overtime and related conditions*. Subject to conditions contained within the Personnel Direction overtime is payable where an employee is directed to work out of their ordinary hours, and this work is outside the standard hours, ie 8.30 am to 5.00 pm, Monday to Friday; and
- (a) For APS level employees - in circumstances where the Registrar believes the payment of overtime is appropriate; or
 - (b) For Executive Level employees – in exceptional circumstances where the Registrar believes the payment of overtime is appropriate.
179. Where necessitated by operational requirements, the Registrar may direct an employee to work overtime outside regular hours provided that 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 having regard to:
- any risk to the employee's health and safety;
 - the employee's personal circumstances, including family responsibilities;
 - the needs of the work unit;
 - the notice (if any) given by the Registrar of the overtime and by the employee of an intention to refuse it; and
 - any other relevant matter
180. Payment for authorised overtime will be at the following rates calculated in accordance with the formulae set out in Personnel Direction 37, *Overtime and related conditions*.
- | | |
|---------------------|--|
| Monday to Saturday: | Time and one half, double time after three hours |
| Sunday: | Double time |
| Public Holiday | Falling on a weekday, double time and a half for work outside standard hours. For duty within standard hours, time and a half. |
- provided that the Registrar may determine an alternate rate in exceptional circumstances. *See also Time Off in Lieu.*
181. Overtime, which is not continuous with normal duty, will be paid at the relevant rate for a minimum period of four hours. Where more than one separate attendance is involved the total payment will not exceed what would have been paid if the employee had remained on duty. A meal break does not break continuity for these purposes.
182. Where employees are required to attend for work on the days described in this Agreement as Christmas Shutdown, the overtime payment rate will be single time in addition to salary already received for that day.

Overtime Meal Allowance

183. An overtime meal allowance will be paid in certain circumstances to any employee who is directed to work overtime. These circumstances are set out in Personnel Direction 37, *Overtime and related conditions*.
184. An employee who works approved overtime after the end of ordinary duty for the day, to the completion of or beyond a meal period without a break for a meal, will be paid a meal allowance in addition to any overtime.
185. Meal Allowance rates are to be those sourced from the Australian Taxation Office (ATO) annual taxation determination on reasonable overtime meal allowance expenses. The Meal Allowance will be reviewed and adjusted once a year at 1 July in line with the taxation determination.
186. A meal period is:
- 7.00 am to 9.00 am
 - noon to 2.00 pm
 - 6.00 pm to 7.00 pm
 - midnight to 1.00 am
187. A meal allowance is also payable to an employee who:
- is required, after the completion of the employee's ordinary hours of duty for the day, to perform duty after a break for a meal which occurs after that completion, and is not entitled to payment for that break;
 - is required to perform duty before the commencement of ordinary hours of duty, who breaks for a meal and is not entitled to payment for that break;
 - is required to perform duty on a Saturday, Sunday or public holiday, in addition to the employee's normal weekly hours of duty, extending beyond a meal break and is not entitled to payment for that meal break; or
 - is recalled to duty at a place of work while in receipt of Restriction Allowance and the duty extends beyond a meal break.

Rest Relief after Overtime

188. An employee who works approved overtime will be entitled to an 8 hour break plus reasonable travelling time before recommencing work without incurring any loss of pay. Where this break is not possible due to operational requirements, the employee will be paid double time for the next period of work.

Emergency Duty

189. An:
- APS 1 to 6 employee, or
 - an Executive Level 1 employee responsible for IT support, or

- an Executive Level 1 or 2 employee who is a Secure Room Custodian and is undertaking Custodian related duties

who is called into work to meet an emergency outside the span of hours from 7.30 am to 6.30 pm Monday to Friday, and had received no notification of the call prior to ceasing ordinary duty, will be paid for the period of work and any time necessarily spent in travelling to and from the work site at the rate of double time in accordance with Personnel Direction 37, Overtime and related conditions. The minimum payment for such work will be two hours at double time.

190. The maximum salary used for the calculation of Emergency Duty entitlements for Executive Level 1 and 2 employees is the top of the APS Level 6 pay scale.

Restriction Allowance

191. Where an employee is required to be contactable and available to work for a specified period outside the span of hours in clause 223, the employee will be paid Restriction Allowance in accordance with Personnel Direction 37, *Overtime and related conditions* at a rate of:
- (a) 7.5% of his or her hourly rate of salary for each hour restricted on Monday to Friday;
 - (b) 10% of his or her hourly rate of salary for each hour restricted on weekends; and
 - (c) 15% of his or her hourly rate of salary for each hour restricted on public holidays.
192. Where an employee in receipt of a Restriction Allowance is recalled to duty at a place of work, a 3 hour minimum overtime payment will apply and where the employee is required to perform duty, but is not recalled to a place of work, a one hour minimum overtime payment will apply.
193. Where an employee on restriction is recalled to duty and receives an overtime payment, the employee will not be entitled to receive the Restriction Allowance for the period for which overtime is payable.
194. Executive Level employees (or equivalent) may be paid Restriction Allowance with the approval of the Registrar in exceptional circumstances.

OTHER

Temporary Relocation Assistance

195. Where an employee is required to work in a different geographic location:
- (a) for a period of 3 weeks (ie 21 days) or less, he or she will be paid Travelling Allowance as per clause 163 and Personnel Direction 33, *Allowances and Relocations Assistance*;
 - (b) for a period in excess of 3 weeks and up to 13 weeks from the day on which he or she commenced work at the new location, the Registrar will, in consultation with the employee, determine an agreed package of assistance to meet the additional costs incurred as a result of the employee being temporarily relocated. The package will be determined in

accordance with the guidelines set out in Personnel Direction 33, *Allowances and Relocations Assistance*;

- (c) for periods of temporary relocation in excess of 13 weeks from the day on which the employee commenced work at the new location, the agreed package of assistance will be determined in accordance with the guidelines set out in Personnel Direction 33, *Allowances and Relocations Assistance*.

196. An employee who temporarily works in another geographic location at his or her request may receive temporary relocation assistance at the discretion of the Registrar.

Relocation Assistance

197. With the agreement of the Registrar, ongoing employees of the AAT or other APS employees who relocate, move on either promotion or at level or on reduction in the interests of the Tribunal to a different geographic location may be eligible to receive the assistance from the Tribunal where they are applicable. The agreed package of assistance will be determined in accordance with the guidelines set out in Personnel Direction 33, *Allowances and Relocations Assistance*.

198. In circumstances where the period of the move is not less than 12 months, payment of a one off disturbance allowance will be made to ongoing employees of the AAT or other APS employees who relocate, move on either promotion or at level or on reduction in the interests of the Tribunal to a different geographic location. Applicable rates of disturbance allowance components as set out in Attachment A of Personnel Direction 33, *Allowances and Relocations Assistance* may be varied from time to time by the Registrar in accordance with clause 483.

Excess Fares

199. An employee will be entitled to reimbursement of excess fares where temporarily performing work at a place other than his or her usual place of work, when the cost of travel to and from the employee's temporary place of work is greater than the cost of travel to and from the employee's usual place of work. Excess fares are not reimbursed where the employee is receiving Travelling Allowance or has moved in anticipation of an ongoing move.

Loss, Damage and Indemnity

200. In accordance with Personnel Direction 15, *Loss and Damage to Personal Effects or Clothing* as varied from time to time by the Registrar in accordance with clause 483, the Registrar may approve reimbursement to an employee for loss or damage to clothing or personal effects that occurred in the course of the employee's work where the employee does not receive reimbursement or compensation from any other source and provided that:

- (a) the loss or damage was caused through a fault with Commonwealth property or goods; or
- (b) the loss or damage was caused through an act or omission of another Commonwealth employee; or

- (c) the loss or damage occurred while protecting Commonwealth goods or property; or
- (d) the Registrar considers the loss or damage may reasonably be attributable to the performance of the employee's duties.

Reimbursement of Fares

201. Where an employee becomes critically or dangerously ill while he or she is travelling on official business and a close family member travels to visit the critically or dangerously ill employee, the Registrar will, where requested and supplied with satisfactory medical evidence, authorise that the family member be reimbursed for reasonable travel costs.

Public Transport Loan Scheme

202. A public transport loan scheme will be made available to ongoing and approved long-term non-ongoing employees during the life of this Agreement. The scheme will assist eligible employees to take advantage of discounted yearly rail, bus tram and ferry tickets (or a combination of them) or parking vouchers. Tribunal costs are to be recouped through deduction from the employee's salary over an agreed period of time. Guidelines relating to the scheme are set out in Personnel Direction 42, *Public Transport and Parking Costs Loan Scheme* which may be varied from time to time by the Registrar in accordance with clause 483.

Outside Employment

203. An employee, ongoing or non-ongoing, who wishes to undertake paid or unpaid work outside the Tribunal employment, must obtain prior written approval for permission to engage in Outside Employment. Where a request for outside work is not approved, the Registrar will provide the employee with reasons for the decision in writing. Guidelines relating to Outside Employment are set out in Personnel Direction 20, *Outside Employment*.

Tribunal issued mobile phones

204. Where the Tribunal provides an employee with a mobile phone, the Registrar may approve for limited personal use.

G. FLEXIBLE WORKING ARRANGEMENTS & OPPORTUNITIES FOR STAFF

205. Where the provisions of this section provide for less than the National Employment Standards, the National Employment Standards will prevail.
206. The Tribunal is committed to assisting employees with a work/life balance that recognises the family, carers (including elder care and care for dependants with a disability) and other personal commitments of employees. In keeping with that commitment, this Agreement contains measures and entitlements to achieve that balance.
207. In making decisions about access to these measures and entitlements, the Tribunal will give priority to the importance of employees being able to meet their caring responsibilities and achieving a good work/life balance.

208. The Tribunal will only deny an employee request where there are demonstrable operational reasons for doing so and where requested will provide that decision and the reasons to the employee in writing. Where a request is denied the Tribunal will meet with the employee, and where they choose, their representative, to consider alternative measures which might be accessed to meet the needs of the employee.
209. Flexible working arrangements (e.g. regular part-time work, job sharing, flextime and working from home) and streamlined and more flexible leave arrangements (e.g. Purchased Leave and enhanced Personal Leave for caring purposes) not only provide employees with greater choice of working arrangements, but also helps to balance their work and personal lives.

Flexible Working Arrangements for parents

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

Note: 'long term casual employee' is defined at s.12 of the Fair Work Act 2009

212. A request made in accordance with clause 210 must be in writing and set out details of the change sought and the reasons for the change. The Registrar will respond in writing to the request within 21 days and will only refuse on reasonable business grounds. Where the request is refused, the response will include reasons for the refusal.
213. For the purposes of this clause:
- 'qualifying service' means service that is recognised for redundancy pay purposes;
 - 'casual' means an employee engaged on an irregular or intermittent basis.

WORKING FLEXIBLY

214. The Tribunal recognises that employees have to balance their working life with other interests, such as family, community work, and lifestyle choices. This balance is best achieved by providing employees with the greatest possible flexibility in their attendance patterns.
215. It is acknowledged that an employee's pattern of working hours under this Agreement must ensure that operational needs are met. Important considerations when employees and managers consider the pattern of working

hours will be the impact on clients and other members of the workgroup and the personal needs of the employee.

Assistance for Caring Responsibilities

216. The Tribunal acknowledges that employees often have diverse primary caring responsibilities and provides scope for various leave to assist employees in balancing these responsibilities with their work at the Tribunal. However, there may be occasions where operational requirements mean that the Tribunal cannot accommodate a request for leave or may require an employee to work away from home outside his or her normal work pattern. In these circumstances, the Tribunal will provide assistance as set out in Personnel Direction 11, *Family Responsibility Policy Statement*. In accordance with these guidelines, assistance may include reimbursement of up to \$50 per day or \$250 per employee per week (or a higher amount at the Registrar's discretion) for the life of this Agreement.

Flextime and Flexible work arrangements

217. Flexible working arrangements enable employees and supervisors to vary working hours, patterns and arrangements to provide maximum flexibility with resulting benefits to clients, employees and the Tribunal. Two schemes operate for all ongoing and non-ongoing employees, with the exception of employees engaged on an irregular or intermittent basis, with access determined by an employee's classification:

- Flextime is accessible to APS level employees;
- Flexible work arrangements are available to Executive level employees;
- APS level employees who are temporarily reassigned to Executive level duties are able to choose which scheme applies to them.

218. The Tribunal has a detailed *Flexible Working Hours Policy* (Personnel Direction 3) which may be varied from time to time by the Registrar in accordance with clause 483.

Hours of work

219. Where the provisions of this section provide for less than the National Employment Standards, the National Employment Standards will prevail.

220. The ordinary hours of work will be:

- (a) for full-time employees – 150 hours per four-week period, or 7 hours 30 minutes per day; and
- (b) for part-time employees – the number of hours per four-week period as agreed in their part-time work arrangement (as varied from time to time).

221. The standard hours of attendance are:

- (a) for full-time APS level employees – from 8.30 am to 5.00 pm with a one hour unpaid lunch break from 1.00 pm to 2.00 pm;
- (b) for part-time APS level employees – as agreed in their part-time work arrangement as varied from time to time;

- (c) for full-time and part-time Executive level employees – as agreed under clause 244.

222. Core hours for all APS Level employees will be 9.30 am to 12.00 pm and 2.00 pm to 4.00 pm unless varied by agreement by an employee and their supervisor based on operational needs. Employees shall ordinarily be present at work during core hours.

Span of Hours

223. The bandwidth of ordinary hours within which an employee may work is 7.30 am to 6.30 pm, Monday to Friday. Tribunal Registries will provide services for 9 hours each working day. This would normally be between 8.00 am and 5.00 pm, Monday to Friday. However, the District Registrar may, with the agreement of the Registrar and in consultation with clients and Registry staff, determine an alternative range of office hours (e.g. 8.30 am to 5.00 pm). It is expected that this span of hours will meet most of the Tribunal's operational needs.

224. Where an employee specifically requests to do so, the Registrar may approve an employee to work outside this span of hours for a short period due to exceptional temporary circumstances. Any hours worked on this basis will not attract overtime rates.

Flex credit

225. Where an employee works in excess of their ordinary hours on any given day they will accrue flextime credits for the period in excess of their ordinary hours for that day.

226. The standard maximum flextime credit for full-time Tribunal staff is 30 hours. For part-time staff the maximum flextime credit is calculated on a pro-rata basis. An employee may carry a flextime credit in excess of their maximum credit over the end of one settlement period, however, an excess credit cannot be carried over two settlement periods.

227. Employees may seek approval to carry forward an additional 7 hours and 30 minutes over and above the standard maximum credit of 30 hours. This additional credit can be taken in a block of 5 days once each calendar year. Absences under this scheme must be planned and approved by the Supervisor. When seeking to carry forward these additional credits, employees must nominate the dates they will be utilising the one week flex leave. The one week's flex leave must be recorded on the Attendance Sheet or ESS facility (when implemented and available). Employees may not go into debit to take the 5 days' flex leave. This five day period cannot be taken in conjunction with other flex leave.

228. The maximum flextime absence which may be permitted in a settlement period is four days (other than the 5-day block), which can be taken in single or two day lots but cannot be continuous with flex leave in the previous or next settlement period. All approvals are subject to operational requirements.

229. The restrictions on taking flextime leave up to the maximum credit (refer clauses 226 to 228) does not apply when an employee formally advises their intention to cease employment with the Tribunal. Employees can use their flextime credits before leaving the Tribunal and supervisors will not prevent this from happening.

230. An employee's attendance in excess of standard working hours is subject to the availability of work and the agreement of the employee's manager. To ensure productivity is maintained and improved, attendance beyond standard working hours that is not required, in the view of the employee's manager, will not accrue flextime credits. Attendance for work beyond the flexible hours span of Monday - Friday 7.30 am – 6.30 pm will count for flextime credit only with approval by the manager.

Insufficient work

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

Flex debit

232. Where an employee works less than their ordinary hours on any given day, without being on other approved leave, they will have flextime debited for the period not worked, up to their ordinary hours for that day.
233. A flex debit of up to 10 hours may be carried over indefinitely by all Tribunal staff. Any debit in excess of 10 hours at the end of the settlement period must be cleared either by salary adjustment through the use of Miscellaneous Leave Without Pay not to count as service, or in special circumstances, Annual Leave.
234. Any flex debit which is outstanding on cessation of employment with the Tribunal will be recovered by way of salary deduction or deduction of Annual Leave.

Working Patterns

235. The pattern of hours by which employees work their ordinary hours is a matter for agreement between supervisors and staff. However, employees will:
- (a) make themselves available for reasonable direction to work outside their agreed pattern of work;
 - (b) not be required to work for more than ten hours ordinary time on any day; and
 - (c) not work more than five consecutive hours without a meal break of at least thirty minutes.
236. The Registrar may direct an employee to adopt a particular pattern of working hours, subject to providing 2 weeks notice of such a direction. In making such a direction the Registrar will take into account:
- (a) operational requirements;
 - (b) the impact on parties appearing before the Tribunal and their representatives;
 - (c) the impact on other staff; and
 - (d) the personal needs of the employee (e.g. need to collect dependant children).

Recording attendance

237. All employees will record their actual time of arrival and departure and any leave or breaks each day. Unless otherwise instructed by the Registrar this will be recorded in the Tribunal's electronic Attendance Sheet or ESS facility (when implemented and available) and submitted four-weekly to designated employees in each Registry then on to the Human Resources Section for processing.

Time Off in Lieu

238. All employees working authorised overtime have the option of taking their overtime entitlement as Time Off In Lieu (TOIL) calculated at the applicable overtime rate.

239. Time Off in Lieu must be taken in accordance with operational requirements.

240. Where time off in lieu of payment has been agreed, but the employee has not been granted that time off within four (4) weeks or another agreed period due to operational requirements, the employee may elect to receive payment of the original overtime or restriction duty entitlement.

Unauthorised Absence

241. Where an employee is absent from duty without approval, all pay and other benefits provided under this Agreement, e.g. flextime, flexible work arrangements, etc. will cease to be available until the employee resumes duty or is granted leave. Where flextime or flexible work arrangements no longer applies, employees will revert to working standard hours of attendance as defined in clause 220. Unauthorised absences do not count as service for any purpose.

Working Flexibly – Executive Level employees

242. This Agreement recognises the concept of 'Working Flexibly' for employees at the Executive Level. Executive Level employees have particular responsibilities that may require them to work variable and additional hours at times to ensure the achievement of the Tribunal's outcomes and strategic priorities. It is important that the Tribunal recognises these efforts and contributions made by Executive Level employees.

243. The 'Working Flexibly' concept also involves recognising the following matters:

- respect for the professionalism of the Tribunal's senior staff and the trust that this engenders;
- the desirability of preserving a safe and responsible workplace and avoiding employee fatigue and ill-health; and
- the need for employees to maintain sufficient and demonstrable records of the hours worked.

244. In recognition of their attendance requirements and to assist in enabling a reasonable work/life balance, an Executive Level employee has the flexibility to determine his or her actual hours of work on each day (including short term absences during the day), subject to the following:

- a) the employee's Supervisor/Manager may require the employee to start work by no later than a nominated time or to finish work no earlier than a nominated time (provided this does not result in the employee working in excess of his or her ordinary hours on an ongoing basis);
 - b) the employee must be at work on every weekday unless he or she is part-time, on an approved form of leave, or his or her Supervisor/Manager has agreed to the employee having time off in recognition of additional hours the employee has worked; and
 - c) the employee works no less than the employee's ordinary hours of work for a four-week period as set out in clause 220 of this Agreement.
245. The arrangements for 'Working Flexibly' should be established and agreed by Supervisor/Managers and their Executive Level employees, reflecting the elements of respect and trust integral to the concept. Primary consideration should be given to the operational requirements of the Tribunal whilst taking into account the need to balance this with the individual's personal circumstances.
246. Supervisor/Managers and their Executive Level employees will work together to manage workloads and working hours. Where due to operational requirements an Executive Level employee has been required to work in excess of his or her ordinary hours, the employee may request reasonable time off in recognition of the additional work from his or her Supervisor/Manager. Reasonable time off for Executive Level employees is not on an hour for hour basis but will be determined having regard to the factors in clause 247. The arrangements are intended to provide Executive Level employees with fair and reasonable access to time off in recognition of the matters mentioned in Clause 243.
247. In determining what is reasonable time off for the purposes of clause 246, the factors to be considered include:
- the number of additional hours that have been worked;
 - the period over which those hours have been worked;
 - the impact on the health and wellbeing of the employee; and
 - the nature of the employee's role.

The time off can be in the form of a part or full day absence. Such absences do not need to be covered by official leave.

248. In determining when reasonable time off may be taken in accordance with clause 246, the factors to be considered are:
- the impact on the health and wellbeing of the employee;
 - the employees' personal circumstances;
 - the operational requirements of the Tribunal; and
 - the employee's level of responsibility.

The Tribunal considers it is good practice to allow Executive Level employees to access reasonable time off as soon as possible after the additional hours have been worked.

249. Taking into account the matters mentioned in clause 243, reasonable requests from employees under these arrangements will not be refused, except for genuine operational reasons.
250. Disagreements over flexible work arrangements under these provisions, including access to reasonable time off, may be referred to the Registrar.
251. All Executive Level employees must maintain a record of working hours either on the Tribunal's Aurion system or as agreed with their Supervisor/Manager.
252. During the course of this agreement the Tribunal will develop additional guidelines on the working arrangements for Executive Level employees which will be incorporated into training for Managers. These guidelines will assist the Tribunal in taking steps to ensure that Executive Level employees in different work units and different locations receive consistent treatment in relation to time off in recognition of additional hours worked.

Public Holidays

253. Where the provisions of this section provide for less than the National Employment Standards, the National Employment Standards will prevail.
254. Employees will observe the following holidays each year and will be paid as if that day were not a public holiday:
 - New Year's Day (1 January);
 - Australia Day (26 January);
 - Good Friday;
 - Easter Monday;
 - Anzac Day (25 April);
 - The Queen's birthday holiday (on the day on which it is celebrated in a State or Territory or a region of a State or Territory);
 - Christmas Day (25 December);
 - Boxing Day (26 December);
 - Any other day, or part-day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday, other than a day or part-day, or a kind of day or part-day, that is excluded by the Fair Work regulations from counting as a public holiday.
255. If under a state or territory law, a day or part day is substituted for one of the public holidays listed above, then the substituted day or part day is the public holiday.

256. The Registrar and an employee may agree on the substitution of a day or part day that would otherwise be a public holiday, having regard to operational requirements.
257. An employee, who is absent on a day or part-day that is a public holiday in the place where the employee is based for work purposes, is entitled to be paid for the part or full day absence as if that day or part-day was not a public holiday, except where that person would not normally have worked on that day.
258. Where a public holiday falls during a period when an employee is absent on leave (other than Annual or paid Personal/Carers Leave) there is no entitlement to receive payment as a public holiday. Payment for that day would be in accordance with the entitlement for that form of leave (e.g. if on Long Service Leave on half pay, payment is on half pay).
259. In accordance with Tribunal's active support of diversity in the workplace, approval may be given for an employee to substitute a cultural or religious day of significance to the employee for any day that is a prescribed holiday.
260. Where an employee is on approved paid leave (full or half pay) on either or both sides of a public holiday, the employee will receive full pay for the public holiday. Where an employee is on unpaid leave on both sides of a public holiday they will receive no pay for the public holiday.

Christmas Closedown

261. The Tribunal will close its normal operations from close of business on the last working day before Christmas, with business resuming on the first working day after New Year's Day.
262. Employees will be provided with time off for the working days between Christmas and New Year's Day and will be paid in accordance with their ordinary hours of work. Where an employee is absent on leave, payment for the Christmas closedown provision will be in accordance with the entitlement for that form of leave, (e.g. if on Long Service Leave half pay, payment is on half pay) .
263. There will be no deduction from Annual or Personal/Carer's Leave credits for the closedown days.
264. During the Christmas Closedown period registries will be open for lodgement and enquiries and for this purpose staffing of registries will be at a minimum and is at the discretion of the District Registrar.
265. Employees, other than Executive Level 1 or 2 employees, working standard hours on those days will in addition to the payment for the holiday be able to elect to:
- (a) be paid at the rate of single time; or
 - (b) take days off in lieu. Time off in lieu will be on a one for one basis - that is one day off for each day worked.
266. Executive Level 1 or 2 employees working on those days may access reasonable Time Off In Lieu.

Part-time Employment

267. The Tribunal is committed to part-time and job-sharing working arrangements to assist employees reconcile the competing demands of work and life responsibilities. The guidelines for establishing and administering part-time and job-share arrangements are set out in Personnel Direction 39, *Part-time employment and job-share arrangements*. Personnel Direction 3, *Flexible Working Hours Policy*, details the flextime arrangements applying to part-time staff.
268. The Registrar may engage an employee on a part-time basis. In such cases the part-time arrangements will continue without the need for an annual review.
269. The Registrar and an employee may enter into part-time employment (PTE) arrangements. A full-time employee cannot be compelled to work part-time.
270. In responding to applications for part-time and job-sharing arrangements, management will take into account the ability to redistribute work within a team, any supervisory function performed by the employee, the life and family responsibilities of the employee and the views of the team members directly involved. Applications will be considered sympathetically and managers will not unreasonably oppose requests by employees to convert to part-time hours.
271. If an application is declined for:
- part-time employment
 - variation of part-time arrangements
 - reversion or conversion to full-time employment
- the employee will be provided with reasons in writing. Where applications are not approved, the employee may seek a review of the decision under the provisions for review of employment actions set out in clauses 84 to 88 (*Resolution of individual grievances*).
272. Part-time employees are those whose regular hours of work are less than 37 hours 30 minutes per week. Part-time employees will normally be required to work at least three consecutive hours on each of their nominated workdays.
273. A full-time employee may request to work on a part-time basis for a fixed period up to a maximum of 12 months, subject to review and extension as agreed from time to time.
274. The number, pattern and period of reduced working hours for a part-time employee, and details of any specific arrangements that are necessary to facilitate the PTE, will be set out in writing in an agreement at the commencement of the period of part-time employment. This also applies to variations of PTE arrangements.
275. Remuneration and other employment conditions and benefits for part-time employees will be calculated on a pro-rata basis, apart from allowances paid by way of reimbursement for which part-time employees will receive the same amount as full-time staff. These employment conditions include those relating to flexible working hours and leave.
276. The terms of a PTE agreement can be reviewed and varied at any time by agreement between the employee and the manager, subject to the approval of the Registrar. This includes reversion or conversion to full-time arrangements

before the originally agreed date. Any request for review by the employee will be considered within one month.

277. Where there is no review date, the review will take place one year after the date of the commencement of this Agreement. As much notice as possible will be given where the Tribunal or the employee seek to vary the hours of part-time work at the end of the fixed period.
278. Part-time hours can be varied on a short term basis to facilitate access to training or other Tribunal development opportunities.
279. Notwithstanding clause 278, where operational requirements might significantly affect the viability of the agreement, the Registrar may seek to review and vary the PTE arrangements at any time subject to the agreement of the employee. Where the Registrar seeks to vary an existing agreement for operational reasons, the employee will be given 4 weeks notice of the proposed change to consider the proposal.
280. A full-time employee who has been approved to work part-time for personal reasons for a period will, on expiry of the approved period, revert to full-time employment performing allocated duties at the same level as before commencing part-time work or re-negotiate a further period of part-time work.
281. The Tribunal will provide access to ongoing part-time work for people returning from Maternity Leave or Parental Leave Without Pay for parenting purposes. The Tribunal will ensure that all employees returning from Parental Leave will have access to ongoing part-time work.
282. Within the six weeks prior to the birth of the employee's child, the employee will have access to part-time work if requested.
283. Employees returning from Maternity or Parental Leave will be provided with access to PTE for a period of 3 years upon application. Applications for part-time employment beyond the initial 3 year period will be considered in line with the Part-Time Employment provisions under this Agreement.
284. Under the National Employment Standards, an employee who is a parent has the right to request flexible working arrangements to care for a child if the child is under school age, or under 18 and has a disability. Requests may only be refused on reasonable business grounds. *Refer to clauses 209-211 which provides more detail in regard to flexible working arrangements for parents.*
285. Employees choosing to work part-time hours will not be disadvantaged in terms of promotion, temporary reassignment of duties, access to development opportunities or other employment related matters.

Job Sharing

286. Job sharing is an arrangement initiated by two or more employees wishing to share one full-time job, each working part-time on a regular, continuing basis.
287. Applications will be considered sympathetically and managers will not unreasonably oppose requests by employees wishing to work under a job-share arrangement. The Registrar may approve, subject to operational requirements, applications for job-sharing arrangements.
288. Employees working under job-sharing arrangements will be considered to be part-time staff.

Home Based Work (HBW)

289. To assist employees' balance their work and family responsibilities the Tribunal has a policy of allowing home based work in appropriate circumstances. In exercising the discretion to allow home based work the Registrar will, by reference to the policy consider benefits to the Tribunal as well as to the employee before making a decision.

H. SKILLED, COMMITTED AND DIVERSE STAFF

290. The Tribunal will capitalise and build on the diversity and range of skills, experience and commitment of its employees in order to achieve its organisational goals through meeting the needs of both employees and clients throughout the life of this Agreement.

Induction and Orientation

291. The Tribunal considers that it is important that new employees become aware of (and remain familiar with) the AAT corporate goals, its targets and strategies, history, structure and operations and with employees' rights and responsibilities within the organisation.
292. The Tribunal will maintain and work to improve upon structured processes which ensure that:
- (a) orientation is given a high priority and that timely orientation sessions (self-paced or with a supervisor) are conducted for all new entrants, regardless of tenure, proposed period of service, previous work background or location. This includes:
 - (i) A personal meeting or telephone contact with a representative of Human Resources to explain all relevant terms and conditions of employment;
 - (ii) A formal induction to the Tribunal and the registry on the day of commencement delivered by the relevant supervisor or section manager. This induction is to cover the Tribunal in broad terms as well as specific information related to the job and section they are working in; and
 - (iii) Access to comprehensive information relevant to employment in the Tribunal.
 - (b) existing employees who move to new areas within the Tribunal also receive appropriate orientation in their new role; and
 - (c) re-orientation programs are available, where appropriate, for other staff.

Learning and Development

293. The Tribunal is committed to providing opportunities for all employees to develop and enhance their skills and knowledge to meet the current and future requirements of the Tribunal and the APS. This commitment will improve services, enable the Tribunal to have a more skilled, flexible and mobile workforce and enhance employees' career prospects.

294. The Tribunal expects its employees to take responsibility, as part of the Performance Management Program, by identifying areas where further development would be of benefit to themselves and the Tribunal in the acquisition and maintenance of higher level skills relevant to the Tribunal.
295. To improve the links between training and our organisational goals, some training and development funds have been devolved to supervisors. This will continue to assist the integration of learning, planning and performance management at the team and individual level.
296. In addition to 'on the job' learning and Tribunal specific training required for performance of duties, and in recognition of the benefits of private study and structured learning and development activities, all ongoing employees have access to five days per year for training to enhance and broaden their personal skills. These activities will be managed having regard to the effectiveness of individual and team learning within available training budgets, while maintaining operational effectiveness.

Studies Assistance

297. Studies Assistance will be available during this Agreement to eligible employees in accordance with the Tribunal's Personnel Direction 7, *Studies Assistance*, as varied from time to time by the Registrar in accordance with clause 483.
298. The Registrar may provide assistance for employees undertaking a course of study through:
- approval as a student;
 - approval of leave for study activities; and
 - approval of financial assistance to assist with costs incurred when undertaking an approved course of study.

Support for Professionals

299. The Tribunal will reimburse or pay for the cost of annual membership fees of professional associations up to \$750 a year where membership of the association is an essential requirement of an employee's duties.
300. The Tribunal will reimburse or pay up to \$100 a year per employee towards annual membership of other professional associations relevant to the work of the Tribunal.

Commitment to increase Aboriginal and Torres Strait Islander employment

301. The Tribunal will make reasonable endeavours to increase Aboriginal and Torres Strait Islander employment over the life of this Agreement. In consultation with employees and representatives, the Tribunal will implement targeted strategies to improve the attraction and retention of Aboriginal and Torres Strait Islander employees to meet this goal.

I. PERFORMANCE MANAGEMENT

302. All ongoing employees are required to participate in the Performance Management Program. Salary advancement for employees on less than the top pay point of each classification, or less than the top pay point within the AAT Broadband 3/4 will occur:
- (a) by participation in the Performance Management Program; and
 - (b) obtaining a performance assessment of fully effective or higher.
303. The Tribunal has incorporated performance management into its normal operations for a number of reasons including the recognised need that it has to offer the highest standard of service to its clients (the Australian people and other Tribunals and Agencies). To do this, it recognises that it is essential that employees receive appropriate and timely training so that they can be fully equipped to do their jobs, to know what they are expected to do and how they are considered to be achieving against those expectations.
304. The Performance Management Program Guidelines were developed in consultation with employees and provide a scheme which is workable, simple in its structure, easily understood by those working within its guidelines and measurable. The guidelines will continue to be updated, where required, by the Registrar in accordance with clause 483. Provisions contained in the current guidelines include:
- (a) ongoing employees complete a 12 month performance cycle with a quarterly (informal) review and (formal) appraisal upon completion of the cycle;
 - (b) both the quarterly review and the final appraisal consider team and individual performance;
 - (c) employees' performance is rated on a five-point scale, where one is unsatisfactory and five is outstanding. Salary advancement is determined according to program guidelines; and
 - (d) employees who believe they have not been treated fairly by their supervisor in the application of the guidelines may apply for review in accordance with the Performance Management Program Guidelines. Such reviews will be undertaken promptly.
305. Non-ongoing employees who are offered an extension of contract after completing a minimum of 12 months service at a particular APS level, will be offered renewal at the next salary point for that level provided their performance in the previous 12 months is assessed as fully effective or better by the relevant supervisor.
306. The Tribunal will provide a summary statistical report to the NCC in relation to performance ratings of each category, ie, gender, classification, registry and section, while protecting the individual's privacy.

Managing Under-Performance

307. The Tribunal is committed to addressing under-performance matters promptly and in accordance with the principles of procedural fairness. Personnel Direction 34, *Managing Under-Performance (refer Attachment D)* sets out the provisions to apply to non-probationary, ongoing employees.

308. Should a decision be made to terminate an employee's employment as a result of the procedures set out in Personnel Direction 34, *Managing Under-Performance*, the employee will have a right of review of the decision in accordance with *Termination of Employment - Review Mechanism* provisions contained in this Agreement at clauses 466 to 468.
309. An employee may lodge an application for Review of Action in accordance with the conditions set out in Personnel Direction 25, *Review of Actions*. An application for Review of Action cannot be lodged against a decision to terminate employment, as described in clause 467.
310. An employee may receive guidance or assistance from a person of his or her choice at any stage of the procedure outlined in this section in line with clause 23.
311. The procedure outlined in Personnel Direction 34, *Managing Under-Performance*, will not be used where it is more appropriate to use the misconduct or invalidity retirement procedures.

J. LEAVE ARRANGEMENTS

312. Where the provisions of this section provide for less than the National Employment Standards, the National Employment Standards will prevail.
313. Decisions concerning the administration of leave will be fair and equitable and will ensure that the interests and responsibilities of both the employee and Tribunal are appropriately acknowledged.
314. The administration, management and approval of leave will be in accordance with the provisions contained in this Part and Tribunal leave related Personnel Directions as varied from time to time by the Registrar in accordance with clause 483.
315. Under this Agreement, employees currently employed by the Tribunal retain all existing unused accrued leave.

Portability of Leave

316. Where an employee moves (including on promotion or for an agreed period) from another agency where they were an ongoing APS employee, the employee's unused accrued Annual Leave and Personal/Carers Leave (however described) will be recognised, provided there is no break in continuity of service. The provisions of the *Financial Management and Accountability Orders 1997* apply to such transfer of accrued leave entitlements.
317. Where an employee is engaged as either an ongoing or non-ongoing APS employee immediately following a period of ongoing employment in the Parliamentary Service or the ACT Government Service, the employee's unused accrued Annual Leave and Personal/Carers Leave (however described) will be recognised.
318. Where a person is engaged as an ongoing employee, and immediately prior to the engagement the person was employed as a non-ongoing APS employee, the Registrar may, at the employee's request, recognise any accrued Annual Leave and Personal/Carers Leave (however described), provided there is no break in continuity of service. Any recognised Annual Leave excludes any accrued leave paid out on separation.

319. For the purposes of this clause:
- 'APS employee' has the same meaning as the *Public Service Act 1999*
 - 'Parliamentary Service' refers to employment under the *Parliamentary Service Act 1999*
320. The entitlement to these accrued credits of leave and any future entitlement to Annual Leave and Personal Leave shall be as prevailing in the Tribunal.
321. Employees who move from another APS Agency where the full-time standard hours are less than those of the Tribunal will have the whole days of their Annual Leave balance converted to 7 hour 30 minute days. For example, 147 hours (20 days x 7 hours 21 minutes) will be converted to 150 hours (20 days x 7 hours 30 minutes).

Recognition of Prior Service

322. In addition to clause 316, the Registrar has discretionary capacity to recognise prior service with organisations where the employee was previously employed under the PS Act, the *Parliamentary Service Act 1999*, or from the ACT Government Service where there has been a break in service, may be recognised for Personal Leave (however described) purposes if the break in service is not more than 2 calendar months. Eligible prior service will be recognised for Long Service Leave purposes in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976* if the break in service is not more than 12 months.

Part day absences

323. Where possible, the Tribunal prefers for staff to utilise available Flex Leave or Time Off In Lieu for absences of less than one day rather than accessing available Personal or Annual Leave entitlements.
324. Where an employee takes a part of a day as approved leave the leave required will be based on a standard day of 7 hours 30 minutes between the hours of 8.30 am to 1.00 pm and 2.00 pm to 5.00 pm.

Notification of absence

325. Generally, employees must obtain prior approval for all leave and provide reasonable notice of the intended period of leave.
326. Where an employee will be absent from work and illness, injury or an emergency prevents prior approval for the grant of leave, the employee must notify their manager (or if unavailable, an alternative senior employee or manager) before 9.30 am of the reason and expected length of the absence.

Leave taken in excess of credits

327. Where an employee's leave absence is not covered by available paid leave for the particular leave type applied for, they may apply to access other forms of leave. The delegate will consider the application taking into consideration the circumstances of the situation.
328. Where the delegate does not approve the accessing of other forms of paid leave the Human Resources Section will consult with the employee in determining an appropriate recovery action schedule.

329. Where, in the opinion of the employee, the schedule will cause financial hardship the employee may seek to negotiate alternative recovery arrangements with the HR Manager.

ANNUAL LEAVE

330. Employees are entitled to 4 weeks paid Annual Leave for each year of employment calculated in accordance with the formula detailed at clause 345.
331. Guidelines relating to Annual Leave, in particular matters such as its utilisation, including use with other leave types, deeming, and payment in lieu, etc. are set out in Personnel Direction 17.
332. Employees may apply to take Annual Leave of five consecutive working days or more on half pay. Subject to operational requirements, there will be no constraint on the maximum period of leave taken in accordance with this clause.
333. Employees are encouraged to take their full Annual Leave entitlement each calendar year. Managers are responsible for enabling employees to take this leave by effective planning within their work area.
334. The minimum period of Annual Leave that can be taken on half pay by a part-time employee will be the equivalent to that part-time employee's normal weekly part-time hours.
335. Where employees take more than 40 Annual Leave half pay days during a calendar year those Annual Leave half pay days taken in excess of 40 will be considered not to count as service.
336. Where an employee chooses to take Annual Leave on half pay they cannot purchase leave in the same calendar year.
337. The employee and their relevant manager will be notified when the employee's Annual Leave accrual reaches 30 and 40 days.
338. Where an employee's Annual Leave accrual is approaching 40 days, the employee and the employee's manager should discuss and agree on a leave management strategy to reduce the amount of accrued Annual Leave.
339. Where an employee's Annual Leave accrual has reached 40 days (or part-time equivalent), the employee may be directed by the Registrar to take Annual Leave. An employee cannot be directed to use accumulated Annual Leave entitlement that accrued less than 2 years ago. An employee will be provided with a minimum of four weeks notice when directed by the Registrar to take Annual Leave.
340. An employee may not be directed to take Annual Leave where the employee:
- has made an application for Annual Leave of a period greater than 10 days in the previous 6 month period and the application was not approved; or
 - is following a management strategy to reduce the employee's amount of accrued leave, which has been agreed with their manager consistent with clause 338.

341. Where an employee has been on compensation leave and has commenced a graduated return to work program, they will not be directed to be on leave until three months after returning to their pre-injury hours of work.
342. The Tribunal will monitor Annual Leave accruals through regular reports to the Registrar and managers, providing leave balances by Registry/Section. This high level information may also be provided to the NCC on a biannual basis.
343. Annual Leave credits will be reduced where an employee has an absence or absences without pay totalling 30 or more calendar days that are not to count as service in a calendar year.
344. Where any designated (or substituted) public holiday for which the employee is entitled to payment occurs during any period of Annual Leave, the period of the holiday is not deducted from the Annual Leave entitlement.

Calculation formula

345. Annual Leave credits will be calculated in accordance with the following formula:

$$\frac{A \times B \times C}{D}$$

Where:

- A = number of weekly hours worked for the period
- B = number of calendar days to count as service in the period
- C = a basic Annual Leave credit of 4 weeks
- D = Number of calendar days in the year (365 or 366)

Payment in lieu on retirement, resignation, termination of employment or death

346. Where an employee ceases employment with the APS, the employee is to receive payment in lieu of unused Annual Leave credits, including payment in lieu of uncredited Annual Leave accrued on a pro rata basis for each calendar day of continuous service, since the employee's last credit of Annual Leave or since the date of commencing duty in the case of an employee who has not accrued an Annual Leave credit.
347. Payment in lieu will be calculated using the employee's final rate of salary, including allowances that would have been included in the employee's pay during a period of Annual Leave.
348. Employees who leave the APS to join the Parliamentary Service or ACT Government Service, where the employee's Annual Leave is recognised by the receiving employer, will not be entitled to payment in lieu of Annual Leave.
349. Where an employee dies or is presumed to have died on a particular date, the Registrar may authorise the payment of the amount to which the former employee would have been entitled had the employee ceased employment on resignation or retirement. Payment may be made to the dependants or partner of the former employee or the former employee's legal personal representative. If a payment has not been made within 12 months of the former employee's death, it should be paid to the legal personal representative. On death of an

employee, any monies owing to the Commonwealth as a result of advanced Annual Leave credits will be waived. Long Service Leave credits will be paid out in accordance with the *Long Service Leave Act (Commonwealth Employees) 1976*.

Expenses cancellation of leave/recall to duty from leave

350. Where an employee's leave is cancelled without reasonable notice or an employee is recalled to work from leave, where the employee requests he/she will be reimbursed reasonable travel costs and incidental expenses not otherwise recoverable under any insurance or from any other source. Reasonable costs which could be reimbursed are detailed in Personnel Direction 17.

Cashing Out of Annual Leave

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

PURCHASED LEAVE

353. Except where clause 335 applies, ongoing employees may apply to purchase up to four weeks additional leave per year (in one-week increments) subject to operational requirements. Guidelines relating to the administration of Purchased Leave are set out in Personnel Direction 4, *Purchased Leave*.
354. An ongoing employee may apply to the Registrar to purchase greater than 4 weeks additional leave. Where more than 4 weeks Purchased Leave is taken in a calendar year it will not count as service for Annual Leave, Personal Leave or Long Service Leave purposes but will count for superannuation purposes.

PERSONAL LEAVE

355. Where the provisions of this section provide for less than the National Employment Standards, the National Employment Standards will prevail.
356. Employees new to the APS who are engaged on an ongoing basis will be credited with four weeks full pay Personal Leave on commencement with the Tribunal and thereafter each year on the anniversary of their commencement. Employees engaged on a non-ongoing basis will be credited with a pro-rata equivalent Personal Leave entitlement based on four weeks full pay annual entitlement determined by the length of their contract or contract extension. Guidelines relating to the administration of Personal Leave are set out in Personnel Direction 40, *Personal Leave and War Service Personal Leave*.

357. Employees may elect to use Personal Leave credits at half pay. Employees may also elect to receive no pay during a period of Personal Leave.
358. Unused Personal Leave will accumulate, but cannot be paid out on separation.
359. Personal Leave may be granted by the Registrar in the following circumstances:
- (a) where the employee is ill or injured;
 - (b) to care or provide support for members of their immediate family or household who are ill or injured or have an unexpected emergency affecting them; and
 - (c) where the Registrar is satisfied there are other emergency or compelling reasons for granting the leave,
 - (d) other significant, special or emergency reasons – a reasonable period/s of leave considered by the Registrar to be appropriate in the circumstances; or
- provided acceptable medical or documentary evidence is provided to the Registrar for any absence relating to personal or family illness or emergency situation which is of more than three continuous days. Where acceptable evidence is not provided, that period of the absence in excess of three days will be unauthorised. *Also refer to Compassionate Leave.*
360. The Tribunal recognises that ongoing caring responsibilities occur where employees have responsibility for children, elderly or disabled people as well as in cases of a chronic illness.
361. An employee is obliged to inform their manager of the reason for, and likely duration of, absences for which Personal Leave is sought.
362. An employee will not be entitled to paid Personal Leave while also taking paid leave under the *Maternity Leave (Commonwealth Employees) Act 1973*, paid Parental Leave, paid Adoption Leave or paid Foster Parents leave.

Unpaid Carer's Leave

363. An employee including an employee engaged on an irregular or intermittent basis is entitled to 2 days of unpaid Carer's Leave for each occasion (a permissible occasion) when a member of the employee's immediate family, or a member of the employee's household, requires care or support because of:
- (a) a personal illness, or personal injury, affecting the member; or
 - (b) an unexpected emergency affecting the member.
364. An employee may take unpaid Carer's Leave for a particular permissible occasion as a single continuous period of up to 2 days or any separate periods to which the employee and the Registrar agree.
365. An employee cannot take unpaid Carer's Leave during a particular period if the employee could instead take paid Personal/Carer's leave.
366. Medical certificates from registered health practitioners will be accepted for the purpose of personal illness or injury. Where it is not practicable to provide a

medical certificate, a statutory declaration made by the employee will be accepted.

Medical or other supporting documentation

367. Generally, employees will not be required to provide acceptable documentation (e.g. medical certificates) for Personal Leave absences or absences on compassionate grounds other than where the absence is for more than three continuous days (refer clause 359). However, acceptable documentation may be required, in exceptional circumstances, if requested by the Registrar. Acceptable documentation cannot be required for periods preceding the Registrar's request.
368. Medical certificates from registered health practitioners and registered health providers will be accepted for personal illness and injury, caring and compassionate leave purposes. Where it is not reasonably practicable to provide a certificate, a statutory declaration made by the employee will be acceptable.
369. The one exception to clause 359 is where:
- an employee has a personal illness or injury which requires ongoing treatment, and/or may result in the employee taking Personal Leave for illness or injury on a regular or intermittent basis; and
 - the Registrar has received medical evidence confirming the ongoing condition.
370. In these circumstances the Registrar has the option of approving future leave based on the initial medical evidence. This means the leave is approved on the basis that medical evidence has been provided to support the future absence without the employee having to provide medical or other supporting evidence on each occasion. Approval of leave in accordance with this clause is at the discretion of the Registrar.

Interaction with other leave types

371. An employee who has exhausted their available Personal Leave may elect to utilise their accrued and available Annual Leave or Long Service Leave for Personal Leave purposes. Accessing of Long Service Leave must be in accordance with the Long Service Leave provisions of this Agreement and the LSL Act.
372. An employee on Annual Leave or Long Service Leave who is ill or injured or required to care for a sick family or household member as per clause 359 can apply to the Registrar to take a minimum of a whole day's Personal Leave and have the other leave re-credited following the production of satisfactory medical or other evidence.
373. Personal Leave cannot be used to re-credit other forms of paid or unpaid leave other than those prescribed in clause 372 of this Agreement.

Fitness for Continued Duty – Direction to attend medical examination

374. The Registrar may direct an employee to undergo a medical examination in certain circumstances in accordance with PS Regulations 3.2. The procedures are detailed in Personnel Direction 30, *Fitness for Continued Duty*.

375. Under PS Regulations 3.2 and 3.3, the Registrar (Delegate) may, by written notice, direct an employee to attend a medical examination if the Delegate believes that the state of health of the employee:
- (a) may be affecting the employee's work performance
 - (b) has caused, or may cause the employee to have an extended absence from work
 - (c) may be a danger to the employee
 - (d) has caused, or may cause, the employee to be a danger to other employees or members of the public, or
 - (e) may be affecting the employee's standard of conduct.
376. For the purpose of clause 375, an extended absence is:
- an absence from work of at least four continuous weeks, or
 - a combined total of absences from work, within a 13-week period, whether based on a single or separate illness or injury, of at least four weeks.

Insufficient Personal Leave credits

377. In exceptional circumstances, where an employee has exhausted all available paid Personal Leave the Registrar may, in addition to granting Personal Leave Without Pay, approve the next accrual of Personal Leave credit for the employee. The Registrar may consider whether the employee should utilise other leave credits before approving the next accrual of Personal Leave credit. The leave must be for personal illness, injury or caring purposes and be supported by a medical certificate or other supporting documentation.
378. Where an employee takes leave without pay not to count as service, Personal Leave credits will be adjusted on a pro rata basis.

Part-time provisions

379. Part-time employees will accrue Personal Leave on a pro rata basis. Leave will be credited based on the weekly hours worked as at the date of Personal Leave accrual. Personal Leave granted will be deducted from credits on an "hour for hour" basis, with no salary variation.

Employees Receiving Workers' Compensation

380. An employee who has received workers' compensation for a total of more than 45 weeks will accrue Personal Leave and Annual Leave on an 'hours actually worked' basis.

Return to Work

381. In all cases where employees have been on extended or regular periods of leave due to illness or injury, their return to work should be managed in accordance with Tribunal Return to Work processes as varied from time to time by the Registrar in accordance with clause 483.

WAR SERVICE PERSONAL LEAVE

382. Employees who are war veterans will accrue two separate credits of paid War Service Personal Leave:

Special Credit	Annual Credit
Nine (9) weeks War Service Personal Leave is credited on first commencement with APS following eligible military service.	Three (3) weeks annual credit on commencement and again following each twelve (12) months of service. Unused credits accumulate, subject to a maximum credit balance of nine (9) weeks. This credit cannot be accessed until the special credit has expired.

383. The Registrar may only grant War Service Personal Leave when an employee is unfit for duty due to a war-caused or defence-caused medical condition that has been determined under the *Veterans' Entitlements Act 1986*. The employee should present a statement from the Department of Veterans Affairs stating what condition(s) has been accepted as being war caused. The guidelines for the administration of War Service Personal Leave are set out in Personnel Direction 40, *Personal Leave and War Service Personal Leave*.

MISCELLANEOUS LEAVE

384. The purpose of Miscellaneous Leave is to increase flexibility for the Tribunal and its employees by providing that leave may be made available for a variety of purposes where there are no other appropriate leave provisions for the grant of leave.
385. Miscellaneous Leave may be granted by the Registrar:
- to an employee where their other leave entitlements are exhausted;
 - as paid or unpaid leave;
 - for the period, or part of the period, requested;
 - in the case of leave without pay – either to count as service or not to count as service; and
 - subject to conditions.
386. The guidelines for the administration of Miscellaneous Leave are set out in Personnel Direction 35, *Miscellaneous Leave including Defence Reserve Leave*.
387. When considering requests for Miscellaneous Leave, the Registrar will take into account:
- the reason for the proposed leave;
 - the period of proposed leave;
 - the employee's length of service;

- the employee's recent leave-taking history;
- whether other leave options or flexible working arrangements are more appropriate;
- whether options outside of work time are available;
- normal and reasonable community obligations (both the Tribunal's and the employee's);
- where the employee is applying to take leave to undertake full-time study, the benefit to the Tribunal of those skills and experience;
- where the employee is applying to take unpaid leave to undertake alternative employment, the benefit to the Tribunal of those skills and experience together with consideration of any potential conflict of interest;
- the operational requirements of the work area; and
- any other factors considered relevant.

388. The Registrar may approve leave under this clause to support, among other things, a Tribunal employee:

- who is a Defence Reservist;
- on jury service ;
- preparing and attending for court industrial appearances;
- donating blood, plasma, platelets, or similar;
- dealing with a disaster emergency; or
- to be released as a community service volunteer for emergency services (e.g. State Emergency Service), including for training and ceremonial duties.

389. Miscellaneous Leave without pay, or any extended leave, shall not be artificially split with Annual Leave or Long Service Leave, including as a means to maximise use of public holidays or to maintain eligibility for superannuation contributions or to enable the employee to access a greater entitlement to Long Service Leave than could be granted to the employee if they were not on that form of leave.

390. Supporting evidence may be required by the Registrar from the employee.

391. The Registrar will advise the employee in writing of their decision to grant or refuse leave. If the leave is granted, this advice will include details of the leave and any conditions to which the leave is subject. Where the request is refused the employee will be advised of the reason for the decision to refuse leave.

COMMUNITY SERVICE LEAVE

392. Where the provisions of this section provide for less than the National Employment Standards, the National Employment Standards will prevail.

393. An employee, including an employee engaged on an irregular or intermittent basis who engages in an eligible community service activity under the *Fair Work Act 2009*, is entitled to be absent from work under the Community Service Leave provisions of the FW Act.
394. An employee is entitled to be absent from work for the period of activity, including:
- time when the employee engages in the activity;
 - reasonable travelling time associated with the activity;
 - reasonable rest time immediately following the activity.
395. An employee with at least 12 months continuous APS service, and who is not engaged on an irregular or intermittent basis, may be granted up to 2 days paid (and thereafter reasonable unpaid) Community Service Leave. Paid leave will not be available to attend ceremonial functions unless the organisation certifies in writing that the employee is required to attend as part of their duties. Absences for Community Service Leave will otherwise be without pay.

Voluntary Emergency Management Activity

396. An employee engages in a voluntary emergency management activity only if they:
- engage in an activity that involves dealing with an emergency or natural disaster or attend a training course or ceremony related to that activity; and
 - engage in the activity on a voluntary basis; and
 - the employee is a member of, or has member-like association with, a 'recognised emergency management body'; and either
 - the employee was requested by or on behalf of the body to engage in the activity; or
 - no such request was made, but it would be reasonable to expect that if the circumstances had permitted the making of such a request, it is likely that such a request would have been made.

Jury Service

397. Where the provisions of this section provide for less than the National Employment Standards, the National Employment Standards will prevail.
398. Employees working for the Tribunal are exempt from jury service pursuant to subsection 4(3) of the *Jury Exemption Act 1965* and subregulation 5(2)(k) of the *Jury Exemption Regulations 1965 (Cth)* as amended.
399. Employees who are summoned to attend Court for the purpose of serving on a jury, should advise the Court that they are exempt from jury service.

COMPASSIONATE LEAVE

400. Where the provisions of this section provide for less than the National Employment Standards, the National Employment Standards will prevail.
401. An employee is entitled to a period of up to 3 days of Compassionate Leave for each occasion when a member of the employee's family or household:
- contracts or develops a personal injury or illness that poses a serious threat to his or her life;
 - sustains a personal injury that poses a serious threat their life; or
 - dies.
402. Under this section an employee (other than an employee who is employed on an irregular or intermittent basis) is entitled to paid Compassionate Leave. For an employee who is employed on an irregular or intermittent basis any approved Compassionate Leave will be unpaid.
403. An employee may be required to provide reasonable evidence to the Registrar in support of an application for Compassionate Leave.
404. The employee may take the period of leave as a single continuous period of three days, three separate periods of one day each or any separate periods to which the Registrar and employee agree.
405. Paid Compassionate Leave will count for service for all purposes.

DEFENCE RESERVE LEAVE

406. An employee may be granted leave (with or without pay) to enable the employee to fulfil Australian Defence Force (ADF) Reserve and Continuous Full Time Service (CFTS) or Cadet Force obligations. The guidelines for the administration of Defence Reserve leave are set out in Personnel Direction 35, *Miscellaneous Leave including Defence Reserve Leave* and are in line with the Defence Reserves Support Council's recommendations. *The entitlement to leave for Reserve Service is prescribed under the Defence Reserve Service (Protection) Act 2001.*
407. An employee is entitled to ADF Reserve leave with pay, for up to four weeks during each financial year for the purpose of fulfilling service in the ADF Reserve. These purposes include training and operational duty as required.
408. During the employee's first year of ADF Reserve service, a further two weeks paid leave may be granted to facilitate participation in additional ADF Reserve training, including induction requirements.
409. With the exception of the additional two weeks in the first year of service, leave can be accumulated and taken over a period of two years, to enable the employee to undertake training as a member of the ADF Reserves.
410. Employees are not required to pay their tax free ADF Reserve salary to the Tribunal in any circumstances.
411. An employee who is an officer or instructor of cadets in a Cadet Force may be granted paid leave of up to three weeks each financial year to perform duties as an officer or instructor of Cadets. For these purposes 'Cadet Force' means the

Australian Navy Cadets, Australian Army Cadets, or the Australian Air Force Cadets.

412. Defence Reserve leave counts as service for all purposes, except for unpaid leave to undertake Continuous Full Time Service (CFTS). Unpaid leave for the purpose of CFTS counts for all purposes except Annual Leave.
413. Eligible employees may also apply for Annual Leave, Long Service Leave, Leave Without Pay, top-up pay or they may use flextime or make up time for the purpose of fulfilling ADF Reserve, CFTS or Cadet Force obligations.
414. Employees are to notify supervisors at the earliest opportunity once the dates for ADF Reserve, CFTS or Cadet Force activities are known and/or changed.

MATERNITY LEAVE AND PARENTAL LEAVE

415. Where the provisions of this section provide for less than the National Employment Standards, the National Employment Standards will prevail.
416. Employees are entitled to Maternity Leave in accordance with the *Maternity Leave (Commonwealth Employees) Act 1973*. Guidelines relating to Maternity Leave and Parental Leave are set out in Personnel Direction 38, *Parenting Leave including Maternity Leave*.
417. An eligible employee going on Maternity Leave may elect to spread the payment for the first 12 weeks of Maternity Leave over 24 weeks at half pay.
418. The *Maternity Leave Act 1973* (ML Act) provides for 12 weeks paid leave, any period of leave approved under clause 416, beyond the initial 12 weeks' period specified by the ML Act, will not count as service for any purpose.
419. Two weeks paid Parental Leave (Miscellaneous Leave for parenting purposes) will be granted to employees following the birth, adoption, or long-term fostering of a child. This leave is in addition to any paid or unpaid leave available under the ML Act or paid Adoption Leave, or paid Foster Parents Leave and is accessible by the child's mother, father, partner, adoptive or foster parents.
420. An eligible employee going on paid Parental Leave may elect to take the 2 weeks paid Parental Leave as 4 weeks at half pay. Should the employee elect to utilise the Parental Leave on half pay only the first two weeks will count as service.
421. An employee who:
 - (a) has 12 months continuous service within the APS; and
 - (b) has or will have responsibility for the care of the child (including a child for whom the employee is not the biological parent) with whom the employee has a domestic or household relationship; and
 - (c) is not entitled to paid Maternity, Parental, Adoption or Foster Parents Leave under this Agreement (other than leave mentioned at clause 419)

may apply to the Registrar for unpaid Parental Leave up to a total of 52 weeks within 12 months of the birth, adoption or fostering of the child.

422. Where an employee's spouse is an APS employee and is also granted leave to care for a new born or newly adopted child, the sum of the periods of leave granted to the employee and his or her spouse for parental purposes will not exceed 66 weeks.
423. Parental Leave without pay does not count as service for any purpose.
424. The Tribunal will consider requests under the following terms, namely:
- (a) access to up to 8 weeks Parental Leave without pay simultaneously with their partner;
 - (b) increasing the amount of Leave Without Pay from 52 weeks to 104 weeks; and
 - (c) access to part-time work where possible up to when the child/ren reached school age.
425. The Tribunal shall consider the request having regard to the employee's circumstances and provided the request is genuinely based on the employee's parental responsibilities. The Tribunal will only refuse the request on reasonable grounds related to the effect on the workplace or the Tribunal's operational requirements. Such grounds may include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
426. An employee returning to duty from Maternity Leave will have access to part-time employment for up to 3 years. Further applications for part-time employment will be considered in line with the part-time work provisions of this Agreement and a manager will not unreasonably oppose applications for part-time employment beyond the initial 3 year period.

ADOPTION LEAVE

427. An employee with 12 months continuous service in the APS who is the primary care giver to an adopted child may be entitled to 12 weeks of paid Adoption Leave.
428. The adoptive child must not:
- (a) have previously lived with the employee for a period of six months or more before the day of placement; and
 - (b) the adoptive child must not be a child or step-child of the employee or the employee's partner, unless that child has not been in the custody and care of the employee or the employee's partner for a significant period of time, e.g. a continuous period of six months or more immediately before the adoption.

FOSTER PARENTS LEAVE

429. An employee with 12 months continuous service in the APS who has assumed long term responsibility arising from the placement of the child by a permanent 'fostering' arrangement:
- by a person or organisation with statutory responsibility for the placement of the child; and

- where the child is not expected to return to their family.

will be entitled to Foster Parents Leave of 12 weeks where they are the primary carer.

PROCESS FOR ACCESSING ADOPTION OR FOSTER PARENTS LEAVE

430. An employee must provide written notice to the Registrar (Delegate) of their intention to apply for Adoption or Foster Parents Leave, and the date the child is expected. Documentary evidence of approval for adoption or long term fostering must be submitted when applying for this leave.
431. Eligible employees may take 12 weeks paid leave from the date of placement of the child and up to 40 weeks unpaid leave. Paid leave may be taken up to a period of 24 weeks at a rate of no less than half their salary but any period of leave in excess of 12 weeks will not count as service for any purpose.
432. Adoption or Foster Parents Leave must be taken as a single, unbroken period during the period commencing one week prior to assuming responsibility for the child and ceasing six months after assuming responsibility, unless the Registrar considers that exceptional circumstances exist having considered an application from the employee.
433. An employee who has insufficient Annual Leave credits may take 2 days unpaid pre-Adoption or pre-Foster Parents Leave to attend interviews or examinations required to obtain approval to adopt or foster a child.
434. In exceptional circumstances, the Registrar will consider an application for Adoption or Foster Parents Leave to be made available from up to one month prior to the date of placement of a child. Should a request be approved and the adoption does not transpire, the employee is required to notify the Registrar immediately who will determine an appropriate end date to the Adoption or Foster Parents Leave.
435. Where both parents are eligible employees in the Tribunal they may share the paid leave entitlements under clauses 419, 427 and 429 for the period that they are the primary care giver.
436. Where an employee returns to work after a period of Adoption or Foster Parents Leave, the employee will be assigned to the duties previously performed or to alternative duties appropriate to the employee's skills and classification.
437. An employee returning to duty from Adoption or Foster Parents Leave will have the right to access part-time work in accordance with the part-time provisions in this Agreement.

RETURN TO WORK AFTER MATERNITY, PARENTAL, ADOPTION AND FOSTER PARENTS LEAVE

438. On ending Maternity, Parental, Adoption or Foster Parents Leave, an employee is entitled to return to:
 - the employee's pre-leave duties; or
 - if those duties no longer exists – an available position for which the employee is qualified and suited at the same classification and pay as

applied pre-Parental/Maternity Leave. Where this is not practical, other duties will be sought, with the Redeployment, Reduction and Redundancy provisions applying to any placement.

439. For the purposes of this clause, duties means those performed:
- if the employee was moved to safe duties because of the pregnancy – immediately before the move; or
 - if the employee began working part-time because of the pregnancy – immediately before the part-time employment began; or
 - otherwise – immediately before the employee commenced Maternity, Parental, Adoption or Foster Parents Leave.
440. Where the returning employee seeks part-time employment, their previous duties must be considered for conversion initially and, if this is not practical, they may be assigned to alternative duties suitable for part-time employment.
441. An employee returning to duty from Maternity Leave will have access to part-time employment for up to 3 years. Further applications for part-time employment will be considered in line with the part-time work provisions of this Agreement and a manager will not unreasonably oppose applications for part-time employment beyond the initial 3 year period.
442. An employee returning to duty from Parental, Adoption and Foster Parents Leave will have the right to access part-time work in accordance with the part-time provisions in this Agreement.

LONG SERVICE LEAVE

443. Employees are entitled to Long Service Leave in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976*.
444. Employees will not be entitled to a greater amount of Long Service Leave than is authorised under the LSL Act.
445. Long Service Leave is available at full pay and half pay.
446. The minimum period which Long Service Leave can be taken is 7 calendar days (at full or half pay). Long service leave cannot be broken with other periods of leave, except as otherwise provided by legislation. This provision ensures that Long Service Leave cannot be accessed in a manner which provides a greater amount of leave than the employee is entitled to under the LSL Act.
447. Consecutive periods of Long Service Leave separated only by public holidays and/or weekends will not be approved.
448. Employees must apply for Long Service Leave and have the leave formally approved before the leave may be taken.
449. For any period of Long Service Leave the final date will be the day before the employee returns to duty or commences another leave type.

CULTURAL LEAVE

450. The Tribunal recognises the obligations placed on Aboriginal and Torres Strait Islander and other employees to participate in ceremonial activities and other cultural obligations associated with their culture or ethnicity.
451. To allow staff to meet obligations and participate in activities, the following leave provisions are provided:
- up to two days leave with pay each year under the Miscellaneous Leave provisions to participate in activities or other cultural or ceremonial events such as NAIDOC Week; and
 - one month unpaid leave each year under the Miscellaneous Leave provisions to fulfil cultural obligations. This leave will not count as service for any purpose.

COMMUNITY VOLUNTEERING LEAVE

452. Employees with at least 12 months continuous APS service may be granted up to 2 days paid (and thereafter reasonable unpaid) Miscellaneous Leave to undertake volunteer with community organisations registered on the GoVolunteer website. Paid leave will not be available to attend ceremonial functions unless the organisation certifies in writing that the employee is required to attend as part of their duties.
453. Volunteer work must not:
- involve any payment in cash or kind for work performed;
 - replace a paid worker;
 - as a general rule be undertaken solely for direct personal benefit;
 - be work which does not have a community focus;
 - present a conflict of interest for the Tribunal;
 - be primarily focused on promoting particular religious or political views.
454. The amount of leave granted will take account of operational requirements.
455. Periods of paid Community Volunteering Leave will count as service for all purposes. Periods of leave without pay of greater than 30 calendar days in a calendar year will not count as service unless otherwise approved by the Registrar.

K. WORKFORCE PLANNING & ADJUSTMENT

Resignation and Retirement

456. Ongoing employees may resign or retire unilaterally by giving the Registrar a minimum of two weeks notice of in writing. The letter of resignation or retirement should include the date and time of effect.

457. Non-ongoing employees engaged for a specified term or for the duration of a specific task may resign unilaterally by giving the Registrar a minimum of two week's notice of resignation in writing.
458. Non-ongoing employees engaged to perform intermittent or irregular duties may resign unilaterally without notice.
459. Upon written request from the employee, and where the Registrar is of the opinion that extenuating or compassionate circumstances exist, the Registrar may reduce or waive either the requirement for notice or the amount of salary forfeited as sanction for resignation without the appropriate notice.
460. Where an employee submits a resignation which takes effect from close of business on a public holiday, the resignation will be deemed effective from close of business on the working day immediately prior to the public holiday.

Employee Support and Transition

461. The Tribunal will continue to provide employees support and career opportunities covering learning and development options, placement, redeployment and counselling. These services include:

Learning and Development

- (a) educating employees about change and developing skills to assist them to cope with change;
- (b) access to competency assessment and learning training in generic job seeking skills; and
- (c) a reasonable level of support in retraining and re-skilling for new duties within the Tribunal, the APS or externally.

Counselling and support

- (a) general career counselling;
- (b) access to professional personal counselling via the Employee Assistance Program;
- (c) financial counselling; and
- (d) information on the options available including redeployment, voluntary retrenchment and involuntary retrenchment.

Placement and Redeployment

- (a) information and assistance in redeployment;
- (b) liaison with internal/external providers to facilitate early placement of employees to other APS agencies;
- (c) reasonable assistance and support in applying for positions both within and outside the APS; and
- (d) where possible, temporary assignment to other APS agencies where ongoing placement options exist.

REDEPLOYMENT, REDUCTION AND RETRENCHMENT

462. The provisions that relate to redeployment, reduction and retrenchment are set out at Attachment B with the exception of the following clauses relating to *Employee consultation process* and *Termination of Employment – Review Mechanism*.

Employee consultation process

463. Prior to reaching any decision to terminate the employment of an employee on grounds other than would justify summary dismissal, the Registrar will:

- (a) inform the employee that the termination of their employment is being considered;
- (b) advise the employee of the reasons for termination; and
- (c) provide the employee with an opportunity to show cause why their employment should not be terminated.

464. An employee shall be given reasonable time to respond, and shall be provided with details of any relevant material. An employee may choose to be assisted by a representative.

465. Any request by the employee to meet and discuss the matter shall not be unreasonably refused.

Termination of Employment - Review Mechanism

466. The sole and exhaustive rights and remedies of an employee in relation to termination of employment are:

- the *Fair Work Act 2009*;
- under other Commonwealth laws (including the Constitution); and
- at common law.

467. Termination of, or a decision to terminate employment, cannot be reviewed under the dispute prevention and settlement procedures/review of action procedures addressed in clauses 76 to 88 of this Agreement.

468. Nothing in this Agreement prevents the Registrar or their delegate from terminating the employment of an employee for serious misconduct, without further notice or payment in lieu, in accordance with the relevant provisions of the *Fair Work Act 2009*, subject to compliance with the procedures established by the Registrar for determining whether an employee has breached the Code of Conduct under section 15 of the PS Act.

L. TECHNICAL MATTERS

Purpose

469. This Agreement sets out the employment terms and conditions for those employees of the Administrative Appeals Tribunal it covers for its duration.

Agreement Title

470. This Agreement, made under section 172 of the *Fair Work Act 2009*, shall be known as the *Administrative Appeals Tribunal Agency Agreement 2011-2014*.

Parties to the agreement

471. In accordance with section 53 of the *Fair Work Act 2009*, this Agreement applies to all ongoing and non-ongoing APS employees in the Administrative Appeals Tribunal employed under the PS Act, as amended or replaced from time to time, but does not apply to:

- Senior Executive Service employees; and
- employees whose salary is not paid by the Tribunal.

472. This Agreement covers:

- the Registrar of the AAT, on behalf of the Attorney-General and the Commonwealth of Australia, as the employing authority in respect to employees employed in the Administrative Appeals Tribunal;
- all persons whose employment is, at any time when the Agreement is in operation, subject to the Agreement; and
- the Community and Public Sector Union (CPSU), if Fair Work Australia notes in its decision to approve the agreement that the CPSU is bound by the agreement.

473. Employees acting at Senior Executive Service (SES) levels will continue to be subject to this Agreement with any additional entitlements determined by the Registrar.

Operation of the Agreement

474. This Agreement commences operation on the seventh day after it is approved by Fair Work Australia and shall nominally expire on 30 June 2014.

Closed Agreement / No extra claims

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

476. The parties to this Agreement agree that, should special and extraordinary circumstances arise during the life of this Agreement or where legislative change affects employees' conditions of employment, they will confer to ensure that the objectives of the Agreement continue to be achieved.

Variation of the Agreement

477. This Agreement may be varied by application to Fair Work Australia under Section 210 of the *Fair Work Act 2009*.

Comprehensive Agreement

478. The application and administration of Tribunal employment arrangements and conditions are regulated and guided by an overall employment framework made

up from legislation, this Agreement and associated Tribunal instructions, guidelines and policies.

479. While the terms of legislation are not incorporated into this Agreement, employment in the Tribunal is subject to the provisions of the following Acts (and regulations and instruments made under those Acts) among others:

The Public Service Act 1999

Fair Work Act 2009

Fair Work (Transitional and Consequential Amendments) Act 2009

Long Service Leave (Commonwealth Employees) Act 1976

Maternity Leave (Commonwealth Employees) Act 1973

Paid Parental Leave Act 2010

Superannuation Act 1976

Superannuation Act 1990

Superannuation Act 2005

Superannuation Guarantee (Administration) Act 1992

Superannuation Benefits (Supervisory Mechanisms) Act 1990

Superannuation (Productivity Benefit) Act 1988

Superannuation (Consequential Amendments) Act 2005

Safety Rehabilitation and Compensation Act 1988

Occupational Health and Safety Act 1991

The Public Employment (Consequential & Transitional) Amendment Act 1999

Administrative Decisions (Judicial Review) Act 1977;

Archives Act 1983;

Criminal Code Act 1995

Crimes Act 1914

Disability Discrimination Act 1992

Human Rights and Equal Opportunity Act 1986

Privacy Act 1988

Racial Discrimination Act 1975

Sex Discrimination Act 1984

Defence Reserve Service (Protection) Act 2001

Financial Management and Accountability Act 1997

480. Provisions of these Acts relevant to Tribunal employment are referred to as necessary in this Agreement and in other Tribunal instructions, guidelines and policies published on the Tribunal intranet.

481. To maintain the integrity of the Agreement reached between the parties to the Agreement, the parties to the Agreement agree to meet and confer about a relevant matter where:

- any clause in this Agreement is removed; or
- a party to the Agreement receives advice that a clause in this Agreement is not enforceable; or
- amendments to legislation or regulations undermine the operation of a clause to this Agreement or make it unenforceable.

Tribunal Guidelines and Policies

482. The operation of this Agreement is supported by Tribunal policies (in the form of Personnel Directions or Chief Executive Instructions), procedures, and guidelines that as amended from time to time, will continue to apply to all employees of the Tribunal. These policies and guidelines provide employees

and managers with a more comprehensive understanding of provisions and conditions relating to their employment and responsibilities as Tribunal employees and managers. If there is any inconsistency between the policies, procedures and guidelines and the terms of this Agreement, the express terms of this Agreement will prevail.

483. Personnel Directions, policies, procedures and guidelines which support the operation of this Agreement may be made or varied from time to time by the Registrar following consultation with employees, and where they choose their representatives, and will apply in the form they are in as at the time of any relevant action/decision.
484. Disputes over the content, application or interpretation of any policies, procedures or guidelines which support the operation of this Agreement will be subject to the Dispute Resolution procedures of the Agreement.
485. Tribunal guidelines and policies are published on the Tribunal's intranet.

Delegations

486. The Registrar may delegate any or all of his or her powers and functions under this Agreement, including this power of delegation, and may do so subject to conditions.

DEFINITIONS

AAT	Administrative Appeals Tribunal.
Agreement	means the <i>Administrative Appeals Tribunal Agency Agreement 2011-2014</i> .
ACT Government Service	employment under the <i>ACT Public Sector Management Act 1994</i> , <i>Fire Brigade (Administration) Act 1974</i> , the <i>Legal Aid Act 1992</i> or <i>Institute of Technology Act 1992</i> .
AIRC	Australian Industrial Relations Commission.
APS	Australian Public Service.
ATO	Australian Taxation Office
Delegate	means a person authorised by the Registrar to be a delegate of the Registrar under the terms of this Agreement.
Dependant	In relation to an employee means: <ul style="list-style-type: none"> • the spouse of the employee; and/or • a child or parent of the employee, or of the spouse of the employee, being a child or parent who ordinarily resides with the employee and who is wholly or substantially dependent upon the employee.

Dependent child	in relation to an employee, means a child who is dependent on the employee and less than 21 years of age.
Employee	means a person employed by the Administrative Appeals Tribunal, whether ongoing, non-ongoing, full-time or part-time, or irregular/ intermittent capacity, under and within the meaning of the <i>Public Service Act 1999</i> .
Employee representative	means any person whom the employee(s) nominates or elects as a representative who may include an employee or a representative from an industrial association.
Excess employees	<p>an employee is excess if:</p> <ul style="list-style-type: none">• they are included in a group of employees in the Authority, comprising a greater number than is necessary for the efficient and economical working of the Authority;• due to technological or other changes in the work methods of the Tribunal, or structural or other changes in the nature, extent or organisation of the functions of the Tribunal, the services of the employee cannot be effectively used; or• the duties usually performed by the employee are to be performed at a different locality and the employee is not willing to perform those duties at the new locality, and the Registrar has determined that the employee is excess to the Tribunal's requirements.
Family or Family Member	<p>means a person who is:</p> <ul style="list-style-type: none">• is related by blood or by marriage (in fact/in law) or by adoption or by traditional kinship;• stands in a genuine domestic or household relationship with an employee without discrimination as to sexual preference;• is a child or adopted child or a child in the care and custody of an employee; or• is a child or adopted child or a child in the care and custody of the person who stands in a genuine domestic or

household relationship with an employee.

FWA

Fair Work Australia

Family or immediate family

- a spouse or partner of the employee irrespective of gender (including a former spouse or partner); and/or
- a child (including an adopted child, a step-child, a foster child or an ex-nuptial child),
- parent, grandparent, grandchild or sibling of the employee; and/or
- a child (including an adopted child, a step-child, a foster child or an ex-nuptial child),
- parent, grandparent, grandchild or sibling of the employee's spouse or partner;
- a member of an employee's household; and/or
- traditional kinship where there is a relationship or obligation, under the customs and traditions of the community or group to which the employee belongs.

Fostered child

a fostered child of an employee means a child for whom the employee has assumed primary responsibility for the long term care of the child who is, or will be, under 16 years of age and the child is not (otherwise than because of the fostering) a child of the employee or the employee's spouse or de facto partner.'

Irregular or Intermittent employee

an employee engaged to meet short term or irregular work demands without an expectation of ongoing employment.

LSL Act

Long Service Leave (Commonwealth Employees) Act 1976 as amended from time to time.

ML Act

Maternity Leave Act 1973 as amended from time to time.

Medical evidence

means a medical certificate provided by a registered health practitioner.

Movement or Move

reassignment of duties to a staff member, whether on a temporary or permanent basis,

either within the Tribunal or from/to another agency or department. Previously referred to as 'transfer'.

De facto Partner

- (a) means a person who, although not legally married to the employee, lives with the employee in a relationship as a couple on a genuine domestic basis (whether the employee and the person are of the same sex or different sexes); and
- (b) includes a former de facto partner of the employee."

PS Act

Public Service Act 1999 as amended from time to time.

PS Regulations

Public Service Regulations 1999 as amended from time to time.

Recognised emergency management body

- a body or part of a body, that has a role or function under a plan that:
 - is for coping with emergencies and/or disasters
 - is prepared by the Commonwealth, a State or a Territory
- a fire-fighting, civil defence or rescue body, or part of such a body
- any other body, or part of a body, which substantially involves:
 - securing the safety of persons or animals in an emergency or natural disaster
 - protecting property in an emergency or natural disaster
 - otherwise responding to an emergency or natural disaster.

This would include bodies such as the State Emergency Service (SES), Country Fire Authority (CFA) or the RSPCA (in respect of animal rescue).

Registrar

the person for the time being performing the duties of the office of Registrar of the Administrative Appeals Tribunal, including a

delegate of the Registrar or a person authorised for the purpose by the Registrar.

Salary

the employee's rate of pay (in accordance with the pay rates at Attachment A1) will be salary for all purposes, including superannuation (subject to relevant superannuation scheme rules), overtime, redundancy and termination payments.

Supervisor or Manager

means the person who has responsibility for overseeing/ monitoring/ managing/ directing or supervising another employee or group of employees.

Team Leader

means the same as supervisor.

Travelling time

in relation to overseas travel on official business, means the period between the latest recommended airport check-in time for the scheduled departure from the place where the journey originates and the scheduled time of arrival at the destination, excluding any rest period or stop over en route where the employee is not required to work.

Tribunal

means the Administrative Appeals Tribunal.

War veteran

a person who, as a member of the Defence Force, rendered continuous full-time service outside Australia:

- (a) as a member of a unit of the Defence Force that was allotted for duty; or
- (b) while the person was allotted for duty within the meaning of sub-section 5(12) of the *Veterans' Entitlements Act 1986*, in an operational area described in item 4,5,6,7 or 8 of Schedule 2 of that Act, during the period specified in that item.

Signatories to the Agreement

By signing below, the parties bound by this Agreement signify their agreement to its terms.




Philip Kellow, Registrar, Administrative Appeals Tribunal, on behalf of the
Attorney-General, 55 MARKET STREET SYDNEY NSW 2000

12 AUGUST 2011


RUPERT EVANS

DEPUTY National Secretary, PSU Group, on behalf of the Community
and Public Sector Union and CPSU members within the Tribunal

12 AUGUST 2011


JAN SADLER, AAT employee covered by this Agreement
12 AUGUST 2011
J6/17, 55 Market Street
SYDNEY NSW 2000

Attachment A – Arrangements relating to Broadbanding

1. The classification structure for the life of the agreement will comprise:
 - Executive Level 2
 - Executive Level 1
 - APS Level 6
 - APS Level 5
 - AAT Broadband 3/4
 - APS Level 2
 - APS Level 1

2. The AAT Broadband 3/4 contains five pay points, three at the APS 4 level and two at the APS 3 level. There is a firm barrier between the first and second pay points of the APS 4 level pay points.

Attachment A1 - Salary Rates

APS Classification Structure	AAT Broadband	Pay Point	Current salary	Salary at commencement*	Salary at 1 July 2012	Salary at 1 July 2013
				3.00%	3.00%	3.00%
Executive Level 2		E2.3	\$117,071	\$120,584	\$124,202	\$127,929
		E2.2	\$110,410	\$113,723	\$117,135	\$120,649
		E2.1	\$102,977	\$106,067	\$109,249	\$112,527
Executive Level 1		E1.3	\$101,224	\$104,261	\$107,389	\$110,611
		E1.2	\$91,321	\$94,062	\$96,884	\$99,791
		E1.1*	\$84,526	\$88,580	\$91,238	\$93,976
APS Level 6		6.3	\$77,763	\$80,097	\$82,500	\$84,975
		6.2	\$71,282	\$73,421	\$75,624	\$77,893
		6.1*	\$67,695	\$69,937	\$72,035	\$74,196
APS Level 5		5.3	\$66,464	\$68,459	\$70,513	\$72,629
		5.2	\$64,643	\$66,583	\$68,581	\$70,639
		5.1	\$62,678	\$64,559	\$66,496	\$68,491
APS Level 4	AAT Broadband	4.3	\$61,016	\$62,847	\$64,733	\$66,675
		4.2	\$58,668	\$60,429	\$62,242	\$64,110
		<i>Barrier</i>	<i>Barrier</i>	<i>Barrier</i>	<i>Barrier</i>	
APS Level 3	3/4	4.1	\$56,196	\$57,883	\$59,620	\$61,409
		3.2	\$54,422	\$56,055	\$57,737	\$59,470
		3.1	\$52,420	\$53,993	\$55,613	\$57,282
APS Level 2		2.3	\$49,800	\$51,295	\$52,834	\$54,419
		2.2	\$47,034	\$48,446	\$49,900	\$51,397
		2.1	\$44,269	\$45,597	\$46,965	\$48,374
APS Level 1		1.3	\$43,231	\$44,528	\$45,864	\$47,240
		1.2	\$41,176	\$42,412	\$43,685	\$44,996
		1.1	\$39,117	\$40,291	\$41,500	\$42,745

* This salary increase will apply with effect from the date of commencement of this Agreement, being 7 days after approval by Fair Work Australia, or 1 July 2011 whichever is the latter.

These salary points were below the thresholds released by the Australian Public Service Commission. The Registrar has approved for salary increases under this Agreement to be based on the thresholds of: APS 6.1 \$67,900 and EL1.1 \$86,000.

Junior Rates of Pay for APS 1 employees as a Percentage of the Adult Rate (at the Minimum Pay Point)

Under 18 years	60 %
At 18 years	70 %
At 19 years	81 %
At 20 years	91 %

Attachment B – Redeployment, Reduction and Retrenchment

The provisions below relate to redeployment, reduction and retrenchment. Clauses relating to the associated *Employee consultation process* and *Termination of Employment – Review Mechanism* are at clauses 463 to 465 and 466 to 468 respectively.

1. The following provisions apply only to ongoing employees not serving a probationary period.
2. Throughout the application of the following provisions:
 - (a) the Registrar will take all reasonable steps, consistent with the efficient management of the Tribunal, to move an excess employee to a suitable duties at an equal classification level within the Tribunal or in another APS agency; and
 - (b) An employee and where they choose their representative may, consistent with clause 6 of this Attachment, raise issues concerning a redundancy situation directly with his or her supervisor or manager.

Notification and Consultation Process

3. When the Registrar is aware that an employee(s) is likely to become excess to requirements, the Registrar will advise the employee(s) of the situation as soon as possible, and where they choose, their representatives will also be notified.
4. The initial notification will usually occur orally so as to maximise the time employees have to consider their options.
5. When the Tribunal becomes aware that a significant excess staffing situation may develop, the Registrar will advise relevant employees, managers and employee representatives. Where 15 or more employees are likely to become excess, the Tribunal will comply with the provisions of the *Fair Work Act 2009*.

Discussion Period

6. Discussions with the potentially excess employee(s) or, where an employee requests, with the employee's representative, will be held to consider:
 - (a) measures which might be taken to reduce the incidence of an employee becoming excess;
 - (b) redeployment opportunities for the employee(s) concerned, including identifying whether the employee(s) seeks redeployment; and
 - (c) whether voluntary retrenchment might be appropriate and whether the employee(s) wants to be offered voluntary retrenchment.
7. The Registrar may, prior to the conclusion of these discussions, invite employees who are not potentially excess to express interest in voluntary retrenchment, where those terminations would permit the redeployment of employees who are potentially excess. The Registrar will not advise an employee that he or she is excess until the discussions referred to in clause 6 of this Attachment have occurred. The period of these discussions will not exceed four weeks (or a lesser period as agreed).

Voluntary Retrenchment

8. Where the Registrar invites an excess employee to do so, the employee will have one month to elect for voluntary retrenchment. The Registrar will not give notice of termination under section 29 of the PS Act on the grounds that the employee is excess to the requirements of the Tribunal before the end of that period or until such election is received (in circumstances where the election is received before the end of that period). The employee is only entitled to receive one offer of voluntary retirement.
9. An employee who elects to be retrenched before the end of the one month election period will receive payment for the unexpired period of the election period in addition to any notice period specified in clause 28 of this Attachment.
10. An employee who has not already received the following information must be given, at the beginning of the election period, information on the:
 - (a) amount of redundancy pay, pay in lieu of notice and paid up leave credits;
 - (b) amount of accumulated superannuation contributions;
 - (c) options open to the employee concerning superannuation;
 - (d) taxation rules applying to the various payments; and
 - (e) availability of financial assistance to a maximum of \$1,500 (including GST) for financial counselling and/or career counselling.

Redundancy Benefit

11. An employee who elects for retrenchment with a redundancy benefit and whose employment is terminated by the Registrar under section 29 of the *Public Service Act 1999* (PS Act) on the grounds that he /she is excess to the requirements of the Tribunal, is entitled to payment of a redundancy benefit of an amount equal to two weeks' salary for each completed year of continuous service, plus a pro-rata payment for completed months of service since the last completed year of service, subject to any minimum amount the employee is entitled to under the National Employment Standards (NES).
12. For earlier periods of service to count there must be no breaks between the periods of service, except where:
 - (a) the 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; or
 - (b) the earlier period was with the APS and ceased because the employee was deemed to have resigned from the APS on marriage under the repealed section 49 of the repealed *Public Service Act 1922*.
13. The minimum sum payable will be 4 weeks' salary and the maximum will be 48 weeks' salary.
14. The redundancy benefit will be calculated on a pro rata basis for any period where an employee has worked part-time hours during his or her period of service and the employee has less than 24 years full-time service, subject to

any minimum amount the employee is entitled to under the National Employment Standards.

15. Subject to the following sub-clauses, service for redundancy pay purposes means:
- (a) service in the Tribunal;
 - (b) Government service as defined in section 10 of *the Long Service Leave (Commonwealth Employees) Act 1976*;
 - (c) service with the Commonwealth (other than service with a joint Commonwealth-State body corporate in which the Commonwealth does not have a controlling interest) that is recognised for Long Service Leave purposes;
 - (d) service with the Australian Defence Forces;
 - (e) APS service immediately preceding deemed resignation (as defined), if the service has not previously been recognised for redundancy pay purposes; and
 - (f) service in another organisation where an employee was moved from the APS to that organisation with a transfer of function or an employee engaged by that organisation on work within a function is engaged as a result of the move of that function to the APS and such service is recognised for Long Service Leave purposes.
16. Periods of service will not count for redundancy pay purposes if they ceased:
- (a) through termination on the following grounds, or on a ground equivalent to any of the following grounds:
 - the employee lacked or lost, an essential qualification for performing his or her duties;
 - non-performance or unsatisfactory performance, of duties;
 - failure to satisfactorily complete entry level training course;
 - inability to perform duties because of physical or mental incapacity;
 - failure to meet a condition imposed under sub-section 22(6) of the PS Act; or
 - a breach of the Code of Conduct
 - (b) on a ground equivalent to a ground listed in subparagraph (a) above under the repealed *Public Service Act 1922*; or
 - (c) through voluntary retrenchment at or above the minimum retiring age applicable to the employee; or
 - (d) with the payment of a redundancy benefit or similar payment or an employer-financed retrenchment benefit.

17. Absences from work which do not count as service for any purpose will not count as service for redundancy pay purposes.

Rate of payment - redundancy benefit

18. For the purpose of calculating payment of a redundancy benefit, salary includes:
 - (a) the employee's salary, and
 - (b) the salary of the higher position, where the employee has been performing work at a higher level for a continuous period of at least twelve months immediately preceding the date on which he or she is given Notice of Termination; and
 - (c) other allowances in the nature of salary that are paid during periods of Annual Leave and on a regular basis, excluding allowances which are a reimbursement for expenses incurred, or a payment for disabilities associated with the performance of duty.

Retention Periods

19. An excess employee who does not agree to be retrenched with the payment of a redundancy benefit will be entitled to the following period of retention:
 - (a) 56 weeks where the employee has 20 years or more service or is over 45 years of age; or
 - (b) 30 weeks for all other employees.
20. The retention period will commence on the earlier of the following:
 - (a) the day the employee is advised in writing by the Registrar that he or she is an excess employee; or
 - (b) one month after the day on which the Registrar invites the employee to elect to be terminated.
21. During the retention period the Registrar:
 - (a) will continue to take reasonable steps to find alternative employment for the excess employee; and/or
 - (b) may, with 4 weeks' notice, reduce the excess employee's classification as a means of securing alternative employment for the excess employee. Where an excess employee is reduced in classification before the end of the appropriate retention period, the employee will continue to be paid at the previous level for the balance of the retention period.
22. During the retention period the employee:
 - (a) will take reasonable steps to find alternative employment; and
 - (b) actively participate in learning and development activities, trial placements or other arrangements agreed to in order to assist in obtaining an ongoing placement.

23. Upon request from the excess employee, the Registrar may approve financial assistance in meeting reasonable travel and incidental expenses incurred in seeking alternative employment where these costs are not met by the prospective employer.
24. The retention and notice periods specified in this Agreement will be extended by any periods of approved Personal Leave supported by medical evidence that is taken during these periods.
25. If an employee is entitled to a redundancy payment in accordance with the National Employment Standards, the relevant period in clause 19 above is reduced by the number of weeks redundancy pay that the employee will be entitled to under the National Employment Standards on termination, as at the expiration of the retention period (as adjusted by this clause).

Retention period – early termination

26. Where the Registrar is satisfied that there is insufficient productive work available for the employee within the Tribunal during the remainder of the retention period and that there is no reasonable redeployment prospects in the APS:
 - (a) the Registrar may, with the agreement of the employee terminate the employee's employment under s.29 of the PS Act; and
 - (b) upon termination, the employee will be paid a lump sum comprising:
 - (i) the balance of the retention period (as shortened for the National Employment Standards under clause 25) and this payment will be taken to include the payment in lieu of notice of termination of employment, plus
 - (ii) the employee's National Employment Standards entitlement to redundancy pay (being the amount the retention period was shortened by under clause 25 above (i.e. the National Employment Standards component)).
27. An excess employee will not be retrenched involuntarily or reduced in classification if they have not been invited to elect to be retrenched or have elected to be retrenched but the Registrar refuses to approve it.

Period of Notice

28. Where the employee agrees to be voluntarily retrenched, the Registrar can approve the employee's termination and upon approval will give the required Notice of Termination required under section 29 of the PS Act. The period of notice will be 4 weeks (or 5 weeks for employees over 45 years of age with at least five years of continuous service).
29. The same periods of notice apply to employees who are involuntarily retrenched provided that the notice of termination will as far as practicable be concurrent with the retention period.
30. Where an employee elects or the Registrar directs an earlier termination date within the notice period, the employee will receive payment in lieu of notice for the unexpired portion of the notice period.

Attachment C – Recognition of allowances for particular purposes

	Counts as salary for superannuation purposes (CSS and PSSdb only.	Counts towards salary for calculation of overtime.	Payable during Long Service Leave	Payable during Annual Leave	Reduced pro rata during period of half pay leave (if payable during leave)	Included in income maintenance for excess staff	Included in salary for calculation of retrenchment redundancy payments	Included in salary for payment in lieu of notice of termination of employment	Payment in lieu of Long Service Leave	Payment in lieu of Annual Leave
Temporary Assignment Allowance (<i>Higher Duties Allowance</i>)	@	✓	*	*	✓	*	*	*	#	^
Conference Registrar's Allowance – 2%	&	✓	*	*	✓	*	*	*	#	^
Conference Registrar's Allowance – Ad Hoc \$50 per day	X	X	X	X	X	X	X	X	X	X
First Aid Allowance	✓	X	X	X	X	X	X	✓	X	X
Health and Safety Representative Allowance	✓	X	X	X	X	X	X	✓	X	X
Workplace Harassment Contact Officer Allowance	✓	X	X	X	X	X	X	✓	X	X
Secure Room Custodian allowance - \$50 per fortnight	✓	X	X	X	X	X	X	✓	X	X
Secure Room Custodian allowance – other payments	X	X	X	X	X	X	X	X	X	X
Restriction Allowance	@	X	X	X	X	*	X	*	X	X

Key

✓	Yes
#	Yes, if in receipt of allowance for a continuous period of greater than 12 months
^	Yes, if in receipt of allowance on last day of service
X	No
@	Yes, subject to a qualifying period in accordance with the Superannuation (CSS/PSS) Salary Regulations 1978, unless indicated otherwise in this Agreement
&	Yes, for staff who are in receipt of a continuing payment of the 2% Conference Registrar's allowance. Yes, subject to a qualifying period in accordance with the Superannuation (CSS/PSS) Salary Regulations 1978, for staff who have been temporarily assigned to the role of Conference Registrar and eligible to be paid the 2% Conference Registrar's allowance.
*	Yes, subject to certain conditions

Attachment D - Managing Under-Performance

1. The Tribunal is committed to addressing under-performance matters promptly and fairly. This Personnel Direction sets out the provisions to apply to non-probationary, ongoing employees.
2. Where an under-performance situation is seen to be developing a supervisor will provide informal feedback to the employee about the perceived under-performance and the expected level of performance.
3. Where, despite attempts to improve performance through feedback and other measures, the performance of an employee consistently falls below what is considered "adequate", as described in the Performance Management Program Guidelines, the following formal procedures will apply:
 - (a) The supervisor will provide the employee with a written notice indicating the need for performance to improve. This may occur as a result of an unsatisfactory performance review. The notice will specify the acceptable standard of work, how the employee's work does not meet that standard and how performance will need to improve over the next two months in order to meet the standard. During the two-month period the employee's performance will be reviewed and assessed. A copy of the written notice will be provided to the Human Resources Manager and, where requested by the employee, to a third party.
 - (b) Prior to issuing the notice to improve performance, and to ensure that the process is transparent, the supervisor will discuss the problem and the proposed course of action with a District Registrar or Manager from outside the Registry.
 - (c) During the two month period, the supervisor, and where appropriate the other District Registrar or Manager, will assess the employee's performance and prepare a progress report at the midway point and at the conclusion of the period on the individual's performance. The employee must be given the opportunity to provide comments on the supervisor's progress report.
 - (d) Within seven days of the end of the two month period the supervisor will forward to the Human Resources Manager an assessment of whether the employee has met the required standard of performance, together with progress reports and any other relevant documentation.
 - (e) If the employee has met the required standard at the end of the two month period, no further action will be taken, provided that if the employee's poor performance recommences within 6 months, then the review process will recommence without the need to start from the beginning of the two month period or to wait for the next performance cycle.
 - (f) If at the end of the two month period, the employee fails to meet the required performance standard, the Human Resources Manager will write to the employee asking the person to show cause within seven days as to why he/she should not be terminated, or subject to some other action that may be taken (see below).
 - (g) The Human Resources Manager will either :
 - (i) determine that no further action is to be taken; or

- (ii) issue the employee with a notice of termination; or
 - (iii) take some other action, which may include issuing a Notice of Reduction in either classification or salary within a classification or broadband.
 - (h) If the Human Resources Manager, as supervisor, has conducted the assessment of the employee's performance, the roles and responsibilities undertaken under clauses 3 (a) to (g) by the Human Resources Manager will instead be undertaken by the Assistant Registrar.
 - (i) An employee will have a right of review of a decision to terminate his or her employment as a result of this procedure will be in accordance with the *Termination of Employment - Review Mechanism* provisions contained within the employee's individual or enterprise agreement.
 - (j) Where action is taken in accordance with clause 3 (g)(iii):
 - (i) the employee may lodge an application for Review of Action with the Registrar. Such applications should generally be lodged within 14 days of receipt of the Notice of Reduction;
 - (ii) any such application for review will be finalised within four weeks from date of lodgement;
 - (iii) if the review results in a recommendation supporting the application by the employee, the Notice of Reduction will be revoked without detriment to the employee; and
 - (iv) if the Registrar has personally conducted the appraisal which results in the issuing of the Notice of Reduction, a review of action under Division 5.3 of the *Public Service Regulations 1999* may be lodged with the Merit Protection Commissioner under Regulation 5.24(3) of the *Public Service Regulations 1999* whether or not an internal review has been undertaken. If any review results in a recommendation by the Merit Protection Commissioner supporting the application by the employee, the Notice of Reduction will be revoked without detriment to the employee.
 - (k) Nothing in this procedure prevents an employee who has received a written warning, voluntarily requesting in writing that he/she be issued with a notice of termination at any stage in the process. On receipt of any such request, the Human Resources Manager will decide whether or not to terminate the person.
4. An employee may receive guidance or assistance from a person of his or her choice at any stage of the procedure outlined in this section in line with clause 23 of the Agreement.
 5. The procedure outlined in this Personnel Direction will not be used where it is more appropriate to use the misconduct or invalidity retirement procedures.

Attachment E - Principles relating to workplace delegates

All parties to the agreement acknowledge the following principles relating to workplace delegates:

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

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

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

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

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

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

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

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