



## DECISION

*Fair Work Act 2009*

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

### **Australia Council**

(AG2011/13212)

### **AUSTRALIA COUNCIL ENTERPRISE AGREEMENT 2011-2014**

Commonwealth employment

SENIOR DEPUTY PRESIDENT DRAKE

SYDNEY, 16 NOVEMBER 2011

*Application for approval of the Australia Council Enterprise Agreement 2011-2014.*

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

[2] The Agreement was lodged within 14 days after it was made.

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

[4] The CPSU - Community and Public Sector Union, being the bargaining representative for the Agreement, have given notice under s 183 of the Act to be covered by this Agreement. In accordance with s 201(2) of the Act, I note that the Agreement covers the Union.

[5] The Agreement is approved and, in accordance with s 54 of the Act, will operate from 23 November 2011. The nominal expiry date of the Agreement is 15 November 2014.



SENIOR DEPUTY PRESIDENT

[2011] FWAA 7784

Printed by authority of the Commonwealth Government Printer

<Price code {J}, AE889378 PR516628>



**Australia Council**

# **Enterprise Agreement**

**2011-2014**

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## 1 Title

- 1.1 This document will be titled the Australia Council Enterprise Agreement 2011-2014.

## 2 Foreword

- 2.1 The Australia Council positions itself as an effective, efficient and flexible organisation that enriches our nation by supporting and promoting the practice and enjoyment of the arts.
- 2.2 This Agreement aims to promote the Australia Council's support for the Arts Sector as the primary motivation for delivering effective work outcomes. The Australia Council seeks to reward its employees who demonstrate a commitment to this position.
- 2.3 This Agreement aims to enhance the organisation's capability to achieve its strategic priorities through sound people and resource management and corporate planning processes, and to achieve high standards of public accountability and service.
- 2.4 This Agreement is about creating a workplace which:
- (a) demonstrates an understanding and acceptance of the importance of artists and arts organisations;
  - (b) encourages its people to continuously improve the organisation's processes and practices;
  - (c) promotes an open working environment based on direct, effective communication between managers and employees, and effective and cooperative problem solving;
  - (d) values staff and provides them with the opportunity to balance their professional and personal commitments;
  - (e) demonstrates a safety culture; and
  - (f) embraces diversity in the workforce and actively discourages harassment and discrimination.

## 3 Technical Matters

### Definitions

- 3.1 Under this agreement, the following terms have the meanings that are attached to them:

"**Accrual Year**" means the period that comprises 12 months of continuous service following allocation of Personal Leave credits.

"**Agreement**" means the Australia Council Enterprise Agreement, 2011-2014.

"**Award**" means the *Australia Council Award, 2000* and any other award (as defined in the *Fair Work Act 2009*) which relates to any employee covered by this Agreement and any variations thereto and any new award in full or part replacement thereof.

"**Band**" in relation to the classification structure means a grouping of similar types of work.

"**Bandwidth**" means the hours during which an employee is able to work under the Flexible Working Hours system. The bandwidth hours are 7:30am to 7:00pm, Monday to Friday.

"**Chief Executive Officer**" means the General Manager of the Australia Council, as provided by section 19a of the *Australia Council Act 1975*, or where that position no longer exists, another person or position nominated by the Australia Council or the relevant Minister.

"**Classification Structure**" means the framework utilised by the Australia Council to group jobs into levels by work value and associated remuneration.

"**Consultation**" means the process whereby persons who could be affected by a decision or action are provided with an opportunity to put forward views and suggestions considered before the decision or action is taken.

"**Dependant**" in relation to an employee means an employee's spouse, partner or a child or parent of an employee or the employee's spouse or partner, who ordinarily lives with the employee and who is totally or substantially dependant on the employee.

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

"**Employee**" means a person employed and paid by the Australia Council under and within the meaning of the *Australia Council Act 1975*.

"**Excess Work Credit**" means the amount of work credits above the maximum work credits held by an employee at the end of a month.

"**Excess Work Credit Debit**" means the amount of work credits debits above the maximum work credits held by an employee at the end of a month.

"**Family**" means the member of an employee's family or a significant other who has a strong affinity with the employee.

"**Flexible Working Hours (FWH)**" means a system that is available to employees at up to and including Band 4 classification level that allows them to vary their start and finish times with the constraints specified in this Agreement.

"**Fostered child**" 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.

"**FWA**" means Fair Work Australia.

"**HRIS**" means the Human Resource Information System used by the Australia Council.

"**Irregular or Intermittent Employee**" means an employee whose hours and days of work are subject to change without notice and where there is no regular pattern of work or who is employed for a one-off short term task.

"**Job Evaluation System**" is a system that determines the relative worth of a job in relation to the worth of other jobs within the Australia Council and forms the basis of the Australia Council's classification and remuneration structure.

"**Negotiation**" is a process whereby two or more parties make genuine attempts to reach a position that is acceptable to all parties.

"**Normal Location**" in relation to an employee means the city or town in which the employee normally works.

"**Medical Practitioner**" means a medical service provider or alternative health provider, licensed or registered, and recognised by a private health fund or by Comcare.

"**National Employment Standard (NES)**" are set out in the *Fair Work Act 2009* and comprise of 10 minimum standards of employment required by law".

**"Ordinary Hours of Duty"** means the number of non-overtime hours an employee is expected to work over a four week period:

- (a) full-time employees' ordinary hours of duty are 147 hours;
- (b) part-time ordinary hours of duty are those specified in the employee's Part-time work agreement
- (c) ordinary hours of duty for a non-ongoing employee working on an irregular or intermittent basis are as specified at the time he or she is working to a maximum of 147 hours over a four week period

**"Partner"** in relationship to an employee, means a person who stands in a domestic relationship, without discrimination as to sexual orientation, with the employee.

**"Settlement Period"** means the four week period as determined by the Australia Council that provides the basis under Flexible Working Hours for reconciling an employee's actual working hours with his or her ordinary hours of duty.

**"Standard Day"** means the basis for calculating deductions of leave credits and is the working day for employees who have been removed from Flexible Working Hours:

- (a) for full-time employees, the standard day is 8:30 a.m. to 4:51 p.m., Monday to Friday, with a one hour lunch break as determined by an employee's supervisor; and
- (b) for part-time employees, the standard day is as specified in their Part-time Work Agreement

**"Supervisor/Manager"** means an employee who is authorised by the Chief Executive Officer to provide other employees with directions relating to their work and work practices.

**"Union"** means an employee organisation within the terms of the *Fair Work Act 2009*.

**"Work Credit"** means the tally of hours an employee has worked under Flexible Working Hours that are in excess of his or her ordinary hours of duty.

**"Work Credit Bank"** means the amount of work credits for an employee that are stored for later use and are not included in determining whether the employee has an excess work credit or debit.

**"Work Credit Debit"** means the tally of hours an employee has worked under Flexible Working Hours that are less than his or her ordinary hours of duty.

**"Work Credit Leave"** means any approved absences using work credits.

**"Working Days"** means days on which Australia Council employees are required to work other than public holidays.

### **Coverage and Persons Bound**

- 3.2 This Agreement covers all employees of the Australia Council other than Senior Executive Service (SES) employees or equivalent. All members of the Australia Council's leadership team are designated SES equivalent.

### **Categories of employment**

- 3.3 Employees of the Australia Council are employed in one of the following categories:
  - (a) ongoing employees; or
  - (b) non-ongoing employees who may be employed:
    - (i) on an irregular or intermittent basis (casual) ; or
    - (ii) for a specified term or a specified task.

- 3.4 Ongoing employees must be Australian citizens, have permanent residency status, or have a relevant visa.
- 3.5 Ongoing employment is where an employee is employed by the Australia Council on a permanent and continuing basis. The usual basis for employment at the Australia Council wherever possible is permanent employment. Permanent employees may be employed on a full-time or part-time basis.
- 3.6 The Australia Council may engage employees other than through permanent employment, that is fixed term employment where:
- (a) The specific job performed by the employee is not required to be performed on an ongoing basis, including jobs associated with fixed term programs and projects;
  - (b) The skills and experience required are either:
    - (i) for specific periods of time; or
    - (ii) where a diversity and breadth of skills and experiences are required;
  - (c) Significant levels of accountability are involved at a senior management level.
- 3.7 Non-ongoing employees who have been employed for a specified term or specified task may apply for an ongoing, internally advertised position after 3 months of continuous employment.
- 3.8 The Australia Council is required to develop guidelines on Categories of Employment within 6 months of the date of operation of the Enterprise Agreement. This will be completed via the consultation process in clause 17. Between the Operation Date of the Enterprise Agreement and the development of the Guidelines on Categories of Employment the Australia Council will ensure that where an ongoing position is to be continued it will be recruited as an ongoing position and where people are employed in non ongoing positions that become permanent those people will if originally merit selected in the first instance be directly appointed into the role.

### **Commencement and Duration**

- 3.9 The Date of Operation of the Agreement is seven (7) days after its approval by Fair Work Australia.
- 3.10 The nominal expiry date is three (3) years from the Date of Operation.

### **Relationship with Award**

- 3.11 This Agreement displaces the Australia Council Award 2000 and all previous certified agreements.

### **Relationship with Legislation**

- 3.12 The parties to this Agreement acknowledge that the employment of employees covered by this Agreement is subject to the provisions of the following Commonwealth Acts and Regulations or instruments made under but not limited to these Acts:
- (a) *The Australia Council Act 1975*;
  - (b) *Fair Work Act 2009*;
  - (c) *Long Service Leave (Commonwealth Employees) Act 1976*;
  - (d) *Maternity Leave (Commonwealth Employees) Act 1973*;
  - (e) *Superannuation Act 1976*;
  - (f) *Superannuation Act 1990*;

- (g) *Superannuation Productivity Benefit Act 1988;*
- (h) *Safety Rehabilitation and Compensation Act 1988*
- (i) *Occupational Health and Safety (Commonwealth Employment) Act 1991;*
- (j) *Superannuation Benefits (Supervisory Mechanisms) Act 1990; and*
- (k) *Privacy Act 1988;*
- (l) *Sex Discrimination Act 1984;*
- (m) *Racial Discrimination Act 1975;*
- (n) *Disability Discrimination Act 1992; and*
- (o) *Age Discrimination Act 2004*

**Closed Agreement**

- 3.13 This Agreement exhaustively states the terms and conditions of employment of the employees covered by this Agreement, other than terms and conditions applying under a Commonwealth law.
- 3.14 During the period starting on the date this agreement starts operating and ending on the nominal expiry date, no further claims may be pursued in respect of terms and conditions of employment by a party to the agreement or an employee whose employment is subject to the agreement, except where consistent with the terms of this Enterprise Agreement.

**Delegations**

- 3.15 The Chief Executive Officer may delegate or authorise to a person any of the Chief Executive Officer's powers or functions under this Agreement. The Chief Executive Officer may issue determinations relating to the exercise of a delegated authority or function.

**Acceptance**

- 3.16 This Agreement is made under Section 172 of the *Fair Work Act 2009*.

Date: 1 November 2011

Kathleen Susan (Kathy) Keele  
Chief Executive Officer  
Australia Council of 372 Elizabeth Street, Surry Hills, NSW, 2010  
Authority to Sign: for and on behalf of the Australia Council, the Employer



Date: 1 November 2011

Michael Tull  
National President  
CPSU of 191 – 199 Thomas Street, Haymarket, NSW, 2000

Authority to sign: for and on behalf of the CPSU, Bargaining Representative for employees



## 4 Policies and Guidelines

4.1 The operation of this Agreement is supported by Australia Council policies and guidelines. If there is any inconsistency between the policies and guidelines and the terms of this Agreement, the express terms of this Agreement will prevail.

4.2 Policies and guidelines which support the operation of this Agreement may be made or varied from time to time following consultation as per clause 17 and will apply in the form they are in as at the time of any relevant action/decision. Policies and guidelines that support this agreement are referenced below.

- Bullying
- Child Care Policy
- Code of Conduct Policy
- Equal Employment Opportunity (EEO) Policy
- Home-based Work Policy
- Leave Policy
- Managing Alcohol in the Workplace Policy
- Managing Performance and Conduct Challenges
- No Smoking Policy
- OHS Policy
- Part-time Work Guidelines
- Privacy Policy
- Problem Solving Policy
- Recruitment and Selection Policy
- Travel Policy and Guidelines
- Volunteer Policy
- Rehabilitation
- Work Level Standards
- Workplace Diversity Policy

4.3 Disagreements over the content, application or interpretation of any policies or guidelines will be subject to the Problem Solving provisions (clause 15) of this Agreement.

## 5 Flexibility Clause

5.1 The CEO or delegate and an employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:

(a) the agreement deals with one or more of the following matters:

- (i) arrangements about when work is performed;
- (ii) overtime rates;
- (iii) penalty rates;
- (iv) allowances;
- (v) remuneration; and/or
- (vi) leave; and

(b) the arrangement meets the genuine needs of the Australia Council and employee in relation to one or more of the matters mentioned in paragraph (a); and

- (c) the arrangement is genuinely agreed to by the CEO or delegate and the employee.
- 5.2 The CEO or delegate must ensure that the terms of the individual flexibility arrangement:
  - (a) are about permitted matters under section 172 of the Fair Work Act 2009; and
  - (b) are not unlawful terms under section 194 of the Fair Work Act 2009; and
  - (c) result in the employee being better off overall than the employee would be if no arrangement was made.
- 5.3 The CEO or delegate must ensure that the individual flexibility arrangement:
  - (a) is in writing; and
  - (b) includes the name of the employer and employee; and
  - (c) is signed by the CEO or delegate and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
  - (d) includes details of:
    - (i) the terms of the enterprise agreement that will be varied by the arrangement; and
    - (ii) how the arrangement will vary the effect of the terms; and
    - (iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
- 5.4 states the day on which the arrangement commences
- 5.5 The CEO or delegate must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- 5.6 The CEO or delegate or employee may terminate the individual flexibility arrangement:
  - (a) by giving no more than 28 days written notice to the other party to the arrangement; or
  - (b) if the CEO or delegate and employee agree in writing – at any time.

## **6 Probationary Period**

- 6.1 The Manager will conduct regular reviews of an employee's performance during their Probationary Period, which may be up to 6 months in length from the date of commencement.
- 6.2 If the Employee's performance is assessed as acceptable against the responsibilities of the position and the Performance Objectives agreed to then the Manager will confirm the Employee's appointment at the conclusion of the Probationary Period.
- 6.3 If the supervisor assesses the Employee's performance against the responsibilities of the position and finds them to be unacceptable, the Manager may terminate the Employee's appointment within the Probationary Period, without notice. The Australia Council will consider any extenuating circumstances when assessing an employee's performance during the Probationary Period.
- 6.4 The Employee may terminate the employment relationship within the probationary period without notice.

## **7 Hours of Work**

### **Flexible Working Hours (FWH)**

- 7.1 FWH is only available to employees at up to and including Band 4 classification level.

- 7.2 Employees under FWH are required to record their actual hours worked and any meal breaks or other breaks taken during their working day.
- 7.3 Managers and supervisors are responsible for the management of employee workloads and working hours to minimise the need for employees to build up excessive work credits and enable them to, wherever possible, work their preferred pattern of hours. This will require managers and employees to:
- (a) develop an agreed pattern of hours, taking into consideration the Australia Council's operational requirements, the employee's personal circumstances, and occupational health and safety considerations;
  - (b) monitor the working hours and work credit balance of employees;
  - (c) where necessary, identify alternate ways of dealing with peak workloads;
  - (d) work together to plan time off during non-peak periods to reduce work credits and
  - (e) Work at least 147 hours per four weeks which equates to 36 hours 45 minutes per week
- 7.4 An employee may be removed from the FWH system for a period of time for either operational or disciplinary reasons.

### **Working hours under FWH**

- 7.5 An employee may commence and finish work at any time from 7:30am to 7:00pm, subject to the following:
- (a) for operational reasons, an employee's supervisor, subject to clause 7.3, may require the employee to:
    - (i) start work no later than a specific time within the Standard Day (between 8:30am and 4:51pm, which is equivalent to working hours of 7 hours and 21 minutes plus a 1 hour break);
    - (ii) work up until at least the end of the Standard Day (between 8:30am and 4:51pm).
  - (b) an employee should not work more than 10 ordinary hours of work in a day;
  - (c) an employee should not work for more than 5 hours without taking a meal break of at least 30 minutes

### **Working hours for Band 5 to 6 classifications**

- 7.6 All full-time employees in Band 5 to 6 classifications or equivalent are required to work at least an average of 147 hours per 4 weeks and are expected to work longer hours where necessary to achieve required outcomes. The Australia Council will seek to preserve a safe and responsible workplace seeking to avoid employee fatigue and ill health.
- 7.7 Actual working hours for employees in Band 5 to 6 classifications or equivalent, subject to clause 7.6, are a matter between the employee and his or her supervisor which may include approved absences during normal working hours in recognition of significant additional hours worked by the employee. Methods of recording extended hours are a matter to be agreed between the supervisor and the employee.
- 7.8 In recognition of the working hours of employees in Band 5 to 6 classifications or equivalent, they will be able to be absent from work during the days between Christmas and New Year that are not public holidays without any loss of leave credits.

### **Work Credits**

**(These are only available to employees in Bands 1 to 4)**

- 7.9 Employees may accrue work credits based on the agreed pattern of hours.
- 7.10 The maximum work credit balance that can be carried from one designated fortnight to the next is 37.5 hours for full-time employees or a pro rata amount for part-time employees.

- 7.11 Where an employee has excess work credits at the end of the month, he or she is expected to develop a plan with his or her supervisor to use the excess work credits over the following fortnight.
- 7.12 Where an employee and his or her supervisor cannot agree on a plan under clause 7.11, the Problem Solving process under clause 15.6 is to be used to resolve the matter.
- 7.13 Where an employee does not comply with the plan that is prepared under clause 7.11 and as a result still has excess work credits at the end of that designated fortnight, he or she will have his or her balance reduced to the maximum work credit from the start of the following fortnight.
- 7.14 Where an employee has extenuating personal circumstances, or there are significant operational requirements, the plan prepared under clause 7.11 may be changed by agreement.
- 7.15 Employees will be provided with an opportunity to reduce their work credits to zero before cessation of their employment with the Australia Council.
- 7.16 Work credits held by an employee at the end of his or her last day of work with the Australia Council will not be paid out under any circumstances.

### **Work Credit Leave**

- 7.17 An employee may take Work Credit Leave where approved by his or her supervisor.
- 7.18 Approval of Work Credit Leave is subject to operational requirements and may be cancelled where circumstances change such that the employee is required at work.

### **Public Holidays**

- 7.19 Where an employee is not required to work on a public holiday he or she will be treated, for the purposes of Flexible Working Hours, as having worked the Standard Day.
- 7.20 Clause 7.19 does not apply to casual employees who are receiving the loading specified in clauses 10.7-10.8.

### **Work Credit Bank**

- 7.21 Employees may accumulate a bank of work credits.
- 7.22 The maximum work credits that may be held in an employee's work credit bank at any time is 4 days or a pro rata amount for part-time employees.
- 7.23 The work credits held in the employee's work credit bank may be used in conjunction with a period of Annual Leave of at least 5 days.
- 7.24 The balance of an employee's work credit bank will not be taken into account when determining whether he or she has exceeded the maximum work credits or debits at the end of the designated fortnight.

### **Work Credit Debits**

- 7.25 The maximum work credit debit that can be carried from one month to the next is 1 day (7 hours, 21 minutes) for full-time employees and a pro rata amount for part-time employees.
- 7.26 Where an employee does have more than the maximum work credit debit at the end of the month, the time in excess of the maximum work debit will be treated as an unauthorised absence and will be without pay.
- 7.27 Where an employee has work debits on cessation of employment, the salary value of those work debits will be deducted from any monies owed to the employee, or may be recovered from the employee by other means.

## 8 Work/Life Balance

- 8.1 The Australia Council is committed to supporting its employees in achieving work life balance. This is done by offering:
- (a) Job sharing arrangements
  - (b) Home based work arrangements
  - (c) Access to part-time work
  - (d) Caring Costs
  - (e) Employee Assistance Program (EAP)
- (a) to (c) are offered subject to operational requirements of the organisation. The Australia Council will ensure compliance with Section 65 of the Fair Work Act as relevant.

### Job Sharing

- 8.2 Job sharing arrangements may be approved where operational requirements will not be adversely affected.
- 8.3 Where job sharing arrangements are approved the responsibilities of each employee will be specified in writing before the commencement of the arrangements.
- 8.4 The job sharing arrangements shall cease where:
- (a) one of the participants terminates his or her employment with the Australia Council;
  - (b) one of the participants indicates that he or she no longer wishes to be part of the job sharing arrangement; or
  - (c) the Executive Director of the division/s following a review, determines that the arrangements are not working satisfactorily, in which case, at least 4 weeks' notice will be provided to the participating employees.

### Home Based Work Arrangements

- 8.5 Home based work arrangements may be approved for an employee where the employee's work is suitable for home based work and the home environment is safe and secure. The Home Based Work Policy further outlines the arrangements for home based work in the Australia Council.
- 8.6 Home based work may be approved on an ongoing basis subject to, amongst other things, the employee's home satisfying occupational health and safety and security requirements.
- 8.7 Home based work may be approved for a temporary period in the following types of circumstances:
- (a) the employee would be able to work more effectively from home due to the nature of the work he or she is currently undertaking;
  - (b) the employee is required to care for a family member and would otherwise be required to take Personal Leave; or
  - (c) the employee is unable to attend work on a day or days due to personal circumstances that are unavoidable.

### Part-Time Work

- 8.8 A part-time employee is one whose normal hours of duty are less than 147 hours per 4 weeks.
- 8.9 Unless otherwise specified in this Agreement, remuneration and other conditions, including leave, will be calculated on a pro rata basis for part-time employees.

- 8.10 Allowances of a reimbursement nature will be the same for part-time and full-time employees, unless otherwise stated in policies and guidelines.
- 8.11 All part-time employees will have their part-time work arrangements outlined in their employment contract, in accordance with this Agreement. They will specify:
- (a) the ordinary hours of duty;
  - (b) the hours of work to apply to that employee;
  - (c) the duration of the part-time work; and
  - (d) any specific arrangements that are needed to facilitate the part-time work, including for example, any limitation on the days of the week the employee is able to work his or her ordinary hours of work.

#### **Employee initiated part-time work**

- 8.12 Full-time employees are entitled to request part-time work for a period of up to 12 months. Such a request is expected to be approved where it is compatible with operational requirements.
- 8.13 Notwithstanding clause 8.11, the commencement or continuation of part-time work will only occur where agreement is reached on the details specified in clause 8.11 (a) to (d).
- 8.14 No full-time employee will be required to convert to part-time work.
- 8.15 On completion of any part-time work arrangements, the employee may request a further period of part-time work or a return to full-time work.
- 8.16 An employee may request a return to full-time employment before the end of an agreed period of part-time work.
- 8.17 The part-time work may be reviewed on the initiation of either the employee or his or her supervisor, with 4 weeks' notice.

#### **Australia Council initiated part-time work**

- 8.18 A vacancy may be advertised as a part-time position.
- 8.19 Where a part-time vacancy is advertised, the details of the part-time work may be determined in advance of filling the vacancy.
- 8.20 An employee who has been engaged on a part-time basis by the Australia Council will have no automatic rights to full-time employment.

#### **Caring Costs**

The Australia Council's commitments under this section are further detailed in its Child Care Policy.

- 8.21 The Australia Council recognises the importance of child care in achieving genuine work-life balance for employees. The Australia Council is therefore committed to working with employees to ensure that their child care needs are met.
- 8.22 The Australia Council will endeavour to assist employees secure and maintain child care, and meet any emergency child care needs. This assistance may include, but will not be limited to, the following:
- (a) Flexible hours of work
  - (b) Access to part-time work
  - (c) Approval of paid or unpaid leave to arrange placements at child care centres
  - (d) Reimbursement of fees resulting from the care of a child where the operational needs of the Australia Council prevent parental care outside of usual working hours.
- 8.23 Where an employee is required to work:

- (a) on weekends or public holidays; or
- (b) on days other than those the employee normally works; or
- (c) outside of Sydney temporarily,

the Australia Council is expected to approve reimbursement of reasonable carer costs incurred as a result of the work requirements to a maximum of \$112 per day.

8.24 To be eligible for reimbursement of caring costs under clause 8.23 the employee must:

- (a) obtain prior approval for reimbursement; and
- (b) provide receipts as evidence of costs.

### **Employee Assistance Program**

8.25 The Australia Council will provide employees with access to a confidential, professional, impartial and non-discriminatory counselling service to help them resolve personal, financial and work related problems.

## **9 Leave**

### **General Provisions**

- 9.1 Employees will retain all leave credits that were held before the Date of Operation of this agreement.
- 9.2 All deductions of leave credits will be based on the Standard Day (8:30am-4:51pm inclusive of 1 hour break).
- 9.3 Where any public holiday to which an employee would otherwise be entitled occurs during a period of paid leave, including Maternity leave and other than Long Service Leave, the period of the public holiday is not deducted from the employee's leave credits.
- 9.4 Where approved leave is cancelled without reasonable notice, reimbursement of reasonable travel and incidental costs not otherwise recoverable under any insurance or from any other source is expected to be approved.
- 9.5 These provisions are further outlined in the Australia Council's Leave Policy.

### **Annual Leave**

- 9.6 A period of Annual Leave is expected to be approved where an employee has available credits, subject to operational requirements.
- 9.7 Wherever possible, Annual Leave shall be taken at a time that is mutually agreeable to the employee and the Australia Council.
- 9.8 Employees are entitled to 20 working days of Annual Leave credits for each 12 months of continuous service, accrued on a daily basis.
- 9.9 Annual Leave will not accrue during any period of unauthorised absence or leave without pay that is not to count as service.
- 9.10 Employees on worker's compensation leave for more than 45 weeks will have Annual Leave credits calculated according to actual hours worked after completion of the 45 weeks.

### **Excess Annual Leave**

- 9.11 Where an employee has an existing annual leave credit in excess of 30 days, the employee will continue to accrue Annual Leave but will be directed to reduce the outstanding balance to 30 days or less within 4 months unless a longer period is approved.

- 9.12 Employees may accrue leave in excess of 30 days in exceptional circumstances such as, but not limited to major holiday or planning for a birth of a child. Approval will be contingent on a discussion and agreement between the employee and their manager.
- 9.13 Employees may cash out Annual Leave that is accrued in excess of 20 days

### **Personal Leave**

- 9.14 Personal leave provisions do not apply to any employee who receives a 20 per cent loading under clauses 10.7-10.8. Employees receiving the 20 percent loading do so in lieu of all paid leave entitlements except with long service leave.
- 9.15 Ongoing employees engaged by the Australia Council will be allocated 20 days of full pay Personal Leave credits on commencement with the Australia Council and a further 20 days of full pay credits at the beginning of each subsequent year of continuous service.
- 9.16 Non-ongoing employees engaged by the Australia Council will be allocated the following Personal Leave credits:
- (a) 1.67 days after each month of continuous service for the first 12 months of continuous service; and
  - (b) 20 days from the commencement of the employee's second and subsequent years of continuous service.
- 9.17 Employees on worker's compensation leave for more than 45 weeks will have Personal Leave credits calculated according to actual hours worked after completion of the 45 weeks.
- 9.18 Where an employee obtains workers' compensation benefits for a period during which he or she received paid Personal Leave, the employee shall repay the amount paid for that period and the Australia Council will re-credit that Personal Leave to the employee.
- 9.19 Unused Personal Leave credits will accumulate from year to year without limit but will not be paid out on termination.

### **Approval of Personal Leave**

- 9.20 Subject to the availability of Personal Leave credits, approval is expected to be given for paid Personal Leave for the following purposes:
- (a) personal illness or injury;
  - (b) carer's leave, where the employee is required to care for a family member or member of their household who requires care or support because of a personal illness or injury, or an unexpected emergency;
  - (c) where the employee is moving residence (maximum of one day per year);
  - (d) personal or household emergencies.
- 9.21 Employees may apply to access Personal Leave credits at full or half pay.
- 9.22 Where an employee does not have available Personal Leave credits, unpaid leave may be approved for the same reasons specified in clause 9.20. Unpaid Personal Leave, subject to clause 9.24, will count as service for all purposes.
- 9.23 Where an employee does not have available Personal Leave credits, 2 weeks paid Personal Leave in advance of accrual of the leave may be approved for the same reasons specified in clause 9.20.
- 9.24 Employees who are ill or injured and unable to work for one or more days while on Annual Leave or Long Service Leave may apply for Personal Leave and, subject to approval will have his or her Annual Leave or Long Service Leave credits for that period restored. To have Personal Leave approved under this clause, an employee must provide a medical certificate as verification of the illness or injury.

- 9.25 Where an employee is absent on Personal Leave due to personal illness or injury for more than 4 weeks over a 12 month period, the employee may be required to attend a medical examination to provide an opinion on the employee's fitness for work.
- 9.26 Personal Leave must not be used for the purposes of clauses 9.20 c) and 9.36 if it would be detrimental to an employee in any respect, when compared to the National Employment Standards under the Fair Work Act 2009.

### **Documentary Evidence**

- 9.27 A medical certificate from a medical practitioner (as defined in Definitions) verifying the reason for taking Personal Leave:
- (a) must be provided for all absences of more than five consecutive days;
  - (b) may also be required for any absences:
    - (i) in the first 12 months of non-ongoing employment; or
    - (ii) where the employee has taken more than 5 days of Personal Leave during the accrual year.

### **Notification**

- 9.28 An employee must personally notify his or her supervisor of his or her absence, and intention to apply for Personal Leave, as soon as possible and no later than 10.00 a.m. on the first day of each period of absence.

### **Failure to Comply with Obligations**

- 9.29 Where an employee fails to comply with his or her obligations as specified in clauses 9.14 to 9.28, the absence may be regarded as unauthorised and without pay.

### **Compassionate Leave**

- 9.30 An employee is entitled to 3 days of paid compassionate leave for each occasion (a permissible occasion) when a member of the employee's family, or a member of the employee's household:
- (a) contracts or develops a personal illness that poses a serious threat to his or her life; or
  - (b) sustains a personal injury that poses a serious threat to his or her life; or
  - (c) dies.

All or part of this entitlement may be taken at half pay with a corresponding increase in the number of days leave that may be taken on the death of family member.

### **NAIDOC Leave**

- 9.31 Aboriginal and Torres Strait Islander employees can access two (2) days additional leave for ceremonial purposes to be taken within NAIDOC Week to participate in related activities. This leave does not accrue.

### **Parental Leave**

- 9.32 The Fair Work Act 2009 allows for up to 52 weeks unpaid Parental Leave (including Maternity, Supporting Partner and Adoption Leave) for parents to take on a shared role in caring for their new born child or newly adopted child under the age of sixteen (16) years. Both parents cannot be on any form of Parental Leave at the same time, other than one (1) week at the time of birth, or three (3) weeks in the case of adoption. All Parental Leave provisions under this Agreement are subject to the employee having 12 months continuous service.

### **Maternity Leave**

- 9.33 The entitlement to Maternity Leave is provided for under the Maternity Leave (Commonwealth Employees) Act 1973.

- 9.34 Subject to subclause 9.35, an eligible employee may elect to take a period of Maternity Leave up to 52 weeks, including up to:
- (a) 15 weeks at full pay (12 weeks as per clause 9.33 plus 3 additional weeks); or
  - (b) 30 weeks at half pay (24 weeks as per clause 9.33 plus 6 additional weeks).
- 9.35 Where an employee elects to take paid Maternity Leave at half pay the payment for the 15 weeks will be spread over 30 weeks and only 15 weeks will count as service for all purposes.
- 9.36 An employee who is not eligible for paid Maternity Leave is entitled to, subject to the availability of Personal Leave credits, up to 2 weeks of paid Personal Leave on the birth of a child.

### **Part-time work on return from Maternity or Adoption Leave**

- 9.37 Employees returning directly from Maternity or Adoption Leave will be provided with the option to work on a part-time basis up to a maximum period of 24 months inclusive of Maternity or Adoption Leave taken.
- 9.38 Notice of intent to take up part-time work is required prior to a return from Maternity or Adoption Leave.

### **Adoption Leave**

- 9.39 In the case of Adoption Leave, an employee who has twelve months continuous service and who is the primary care giver is entitled to 15 weeks paid leave during the period of Adoption Leave granted.
- 9.40 Subject to subclause 9.41, an employee may elect to take a period of paid Adoption Leave under subclause 9.39 as either:
- (a) 15 weeks at full pay; or
  - (b) 30 weeks at half pay i.e. spread the payment for the 15 weeks of paid leave over a period of 30 weeks.
- 9.41 Where an employee elects to take paid Adoption Leave at half pay, only 15 weeks will count as service for all purposes.
- 9.42 An employee who is not eligible for paid Adoption Leave is entitled to, subject to the availability of Personal Leave credits, up to 2 weeks of paid Personal Leave on the adoption of a child.

### **Supporting Partner**

- 9.43 Within 52 weeks of the birth or adoption of a child, supporting partners are entitled to 3 weeks paid leave, which will count as service, subject to clause 9.33. This is subject to the employee having 12 months continuous service.

### **Long Service Leave**

- 9.44 The entitlement to Long Service Leave is provided for under the Long Service Leave (Commonwealth Employees) Act 1976.
- 9.45 A period of Long Service Leave that is broken by a period or periods of Annual Leave will not be approved.
- 9.46 The minimum period of Long Service Leave granted will be seven calendar days.
- 9.47 Long Service Leave accruals will be paid out on termination where applicable.

### **Miscellaneous Leave**

- 9.48 Paid Miscellaneous Leave may be approved in, but not limited to, the following circumstances:
- (a) for study purposes;

- (b) to meet jury service obligations;
- (c) for defence force training requirements;
- (d) to donate blood;
- (e) to participate in State Emergency Service activities;
- (f) to appear as a witness for the Commonwealth in legal proceedings;
- (g) organisational leave as deemed in the best interests of the Australia Council; or
- (h) as a result of natural disasters such as bushfires, floods and earthquakes.

9.49 Paid Miscellaneous Leave counts as service for all purposes unless the employee does not resume work with the Australia Council at the end of the period of leave.

9.50 Unpaid Miscellaneous Leave in may be approved, but not limited to, the following circumstances:

- (a) for full-time study commitments;
- (b) for parental leave, adoption, fostering and/or caring responsibilities where no other form of leave is available;
- (c) for ceremonial purposes;
- (d) to participate in national and international sporting events;
- (e) for election campaign purposes;
- (f) to accompany a partner on a temporary posting;
- (g) for career development purposes; or
- (h) for other appropriate purposes where paid leave has been exhausted.

9.51 Unpaid Miscellaneous Leave will not count as service for any purpose.

9.52 Notwithstanding clause 9.51, Unpaid Miscellaneous Leave for the purposes of approved full-time study will count as service for long service leave purposes if the employee resumes work with the Australia Council at the end of the period of Unpaid Miscellaneous Leave.

### **Miscellaneous Leave and Public Holidays**

9.53 Where an employee is on unpaid Miscellaneous Leave on the working days both immediately before and after a public holiday, he or she will not be paid for the public holiday.

9.54 In exceptional circumstances payment of a public holiday that falls within a period of unpaid miscellaneous leave may be approved.

### **Support for Defence Reservists**

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

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

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

- (a) During the employee's first year of ADF Reserve service, a further two weeks paid leave may be granted to facilitate participation in additional ADF Reserve training, including induction requirements.
- (b) With the exception of the additional two weeks in the first year of service, leave can be accumulated and taken over a period of two years, to enable the employee to undertake training as a member of the ADF Reserves.

- (c) Employees are not required to pay their tax free ADF Reserve salary to the Agency in any circumstances.
- 9.57 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.
- 9.58 Eligible employees may also apply for Annual leave, long service leave, leave without pay, top-up pay or they may use work credits or make up time for the purpose of fulfilling ADF Reserve, CFTS or Cadet Force obligations.
- 9.59 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.

### **Emergency Services Duty**

- 9.60 Paid Miscellaneous Leave may be approved for voluntary community service for Emergency Services Duty, up to two (2) weeks per calendar year. This may be extended if there is a demonstrated need for the employee's continued attendance and contingent upon the operational needs of the Australia Council. Where the employee has exhausted paid leave under this provision unpaid leave may be provided.
- 9.61 This may include paid and / or unpaid leave being granted for an employee to undertake essential training, all emergency service responses, reasonable recovery time and leave for ceremonial duties for Emergency Services Duty, depending on operational requirements of the Australia Council.
- 9.62 For the purposes of this agreement, Emergency Services Duty is defined as:
  - (a) Storm and flood response
  - (b) Road rescue
  - (c) Advanced first aid (in isolated rural communities)
  - (d) Rural Fire Service
  - (e) Voluntary ambulance service
  - (f) Marine rescue
- 9.63 Any employee who wishes to access this provision must be a registered member of the volunteer Emergency Services organisation which is providing the relevant community service. Evidence of this membership must be provided before an application for Miscellaneous Leave for Emergency Services Duty. Approval of this leave will be consistent with NES s1.09.

### **Purchased Leave**

- 9.64 Employees with at least 12 months continuous service may apply to purchase 1 to 4 weeks of additional Annual Leave credits each year. Credits must be purchased in one week blocks.
- 9.65 Approval of an application to purchase additional Annual Leave credits will include consideration of the operational implications of the additional leave.
- 9.66 Where the application to purchase additional Annual Leave credits has been approved, the employee will have an amount deducted from his or her fortnightly salary over a 26 fortnight period according to the following formula:

Gross fortnightly salary X number of weeks of Purchased Leave credits

26

- 9.67 Purchased additional Annual Leave counts as service for all purposes.

- 9.68 The employee must use the additional Annual Leave credits within 12 months of the commencement of the salary deductions or unused additional credits will be forfeited and salary deductions repaid to the employee.
- 9.69 Purchase of additional Annual Leave credits does not affect the employee's salary for superannuation purposes.

### **Christmas Closedown**

- 9.70 The Australia Council will be closed on the working days between Christmas and New Year.
- 9.71 Employees will be granted two days non-accruable paid leave to cover this period. This leave will count as service.
- 9.72 Where an employee is required to work during the working days between Christmas and New Year, he or she will be provided with equivalent time off in lieu within four weeks of the closedown.

### **Public Holidays**

- 9.73 Employees will be entitled to the following public holidays:
- (a) New Year's Day (1 January);
  - (b) Australia Day (26 January);
  - (c) Good Friday;
  - (d) Easter Monday;
  - (e) Anzac Day (25 April);
  - (f) The Queen's birthday holiday (on the day on which it is celebrated in a State or Territory or a region of a State or Territory);
  - (g) Christmas Day (25 December);
  - (h) Boxing Day (26 December);
  - (i) Any other day, or part-day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday, other than a day or part-day, or a kind of day or part-day, that is excluded by the Fair Work regulations from counting as a public holiday.
- 9.74 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.
- 9.75 The Australia Council 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.
- 9.76 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.
- 9.77 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).

### **Unauthorised Absences**

- 9.78 Where an employee is absent from duty without approval, the absence will be without pay and will not count as service for any purpose. Other benefits provided under this Agreement, including the Flexible Working Hours scheme, will cease to be available to the employee until he or she resumes duty or is granted leave.

## Other Leave

9.79 An additional paid miscellaneous day within the Christmas / New Year period will be provided to all employees.

9.80 All leave provisions are further outlined in the Australia Council's Leave Policy.

## 10 Pay Rates

10.1 The pay rates for Australia Council employees are included in Appendix 1 of this Agreement. They include pay increases in recognition of productivity and performance improvements arising from this Agreement, and incremental pay increases that will be based on individual performance, as set out in this Agreement.

10.2 The following pay increases are in recognition of productivity and performance improvements arising from this Agreement:

- (a) 3.0% base salary increase effective from the Date of Operation of this agreement; and
- (b) 3.0% base salary increase effective from the first anniversary of the Date of Operation of this agreement.
- (c) 3.2% base salary increase effective from the second anniversary of the Date of Operation of this agreement

10.3 The productivity and performance improvements arising from this Agreement are:

- (a) An improved and streamlined approach to performance management and review including an improved link between performance and pay.
- (b) The maintenance of a common performance advancement date;
- (c) Efficiencies associated with the ongoing delivery of the Australia Council's outcomes and the ongoing nature of the business process review;
- (d) Ongoing streamlining of travel arrangements for relevant employees;
- (e) Enhancements to the CRM system, finance and business intelligence system, Grants Management System and Records Management.
- (f) Improved administration capability in the Arts Funding division through further development of the Business Operations Team and ongoing development of administration processes.

10.4 The Australia Council is committed to supporting employees to meet these productivity objectives and will provide the required support to employees and managers in order to ensure that the objectives are met, subject to the Australia Council's budget and operational priorities.

## Method of payment

10.5 Employees will be paid fortnightly in arrears by electronic funds transfer to a financial institution account of his or her choice.

10.6 The fortnightly rate of pay will be calculated using the following formula:

$$\text{Fortnightly pay} = \frac{\text{Annual Salary} \times 12}{313}$$

## Casual employees loading in lieu of leave

10.7 Casual employees who are engaged on an irregular or intermittent basis shall receive a 20 per cent loading on their salary in lieu of access to all forms of paid leave (other than Long

Service Leave) and payment for public holidays on which the employee is not required to work. Casual employees are entitled to payment for a public holiday which falls on a day on which they are normally rostered to work ordinary hours.

### **Salary on commencement or promotion**

- 10.8 On commencement of employment with the Australia Council, salary will be payable at the minimum point of the salary range applicable to the classification of the job, unless there is authorisation of payment of salary above that point having regard to the experience, qualifications or skills of the employee.
- 10.9 An employee may request a review of his or her salary on commencement within one month of commencing employment with the Australia Council.

### **Classification Structure**

- 10.10 Positions will be classified consistent with the Australia Council work level standards.
- 10.11 The classification structure to apply on the date of operation of this Agreement is set out at Appendix 1.

### **Transfer of Individual Employment Agreement Holders to an Australia Council Enterprise Agreement prior 10 October 2009**

- 10.12 Transfer of employees on Individual Employment Agreements (IEAs) to an Australia Council Enterprise Agreement :
- (a) Where an employee was employed for a fixed-term on an IEA, becoming covered by an Australia Council Enterprise Agreement does not extend or vary the term of their employment or amount to a new engagement for any purpose.
  - (b) Where an employee has been covered by an IEA, once covered by an Australia Council Enterprise Agreement the employee may terminate employment with the provision of one month's notice, except in the case of summary dismissal. Alternatively, the Australia Council may terminate by providing one month's pay in lieu of notice (or five weeks if the employee is over 45 Years of age and has at least two years continuous service).

### **Pay Point Advancement**

- 10.13 The pay point advancement provisions of this Section do not apply to advancement past the "soft barrier" in and Band 3.
- 10.14 An employee in Bands 1, 2, 3, 4, 5 or 6 will advance by one pay point from 1 July in each year, where he or she:
- (a) has been at his or her existing pay point in that Band for at least 6 months of service; and
  - (b) has been assessed as at least "effective" under the Performance Management Framework; and
  - (c) has not been found to be in breach of the Code of Conduct during the previous 12 months.
- 10.15 An employee in Bands 1, 2, 3, 4 or 6 will advance by two pay points from 1 July in each year, where he or she:
- (a) has been at his or her existing pay point in that Band for at least 6 months of service; and
  - (b) has been assessed as at least "exceeds" under the Performance Management Framework; and

(c) has not been found to be in breach of the Code of Conduct during the previous 12 months.

10.16 Where an employee is rated "Does not meet" he or she will not advance to the next highest pay point in the new structure. This situation will be reviewed after 6 months and at that point he or she will advance to the next highest pay point where he or she:

- (a) has been at his or her existing pay point in that Band for at least 6 months of service; and
- (b) has been assessed as at least "effective" under the Performance Management Framework over the most recent six month period; and
- (c) has not been found to be in breach of the Code of Conduct during the previous 6 months.

10.17 Periods of unpaid leave do not count as service for the purposes of clauses 10.14, 10.15 and 10.16.

### **Soft Barrier**

10.18 The location of the soft barrier is as indicated in Appendix 1.

10.19 To progress through the soft barrier in Band 3, an employee must:

- (a) have at least 6 months of service at the pay point immediately below the soft barrier ; and
- (b) have been assessed under the Performance Management Framework as "exceeds" or "outstanding"; and
- (c) have demonstrated that he or she is capable of effectively performing the full range of work at the next work level standard for a Band 3 employee.

10.20 Where an employee progresses through a soft barrier he or she will not skip a pay point at the same time.

10.21 Periods of unpaid leave do not count as service for the purposes of clauses 10.20 or 10.21.

### **Additional Pay Points**

10.22 To be eligible for advancement to an additional pay point at the top of Band 2, Band 3 or Band 4 an employee must be on one of the top two pay points.

10.23 To be eligible for advancement to an additional pay point at the top of Band 5 and Band 6, an employee must be on the top pay point.

10.24 To advance to an additional pay point, the employee must:

- (a) have been assessed under the Performance Management Framework as "exceeds" or "outstanding"; and
- (b) have demonstrated that he or she is capable of effectively performing work that is undertaken in the next band or level; and
- (c) be regularly required to undertake work of that kind, either as relief for someone who is absent, or to deal with excess work requirements.

10.25 An employee on an additional pay point will not receive additional pay where he or she is required to undertake higher level work in the next Band.

10.26 Where an employee who is on the additional pay point in Band 2 is promoted to Band 3, he or she will move to the second pay point on promotion.

10.27 Where an employee who is on an additional pay point in Band 3 or 4 is promoted to the next Band or advanced to the next level, he or she will move to the first pay point in the next Band on promotion.

## **Temporary Work at a Higher Level**

- 10.28 From time to time, an employee may be required to temporarily undertake the duties of an ongoing or non-ongoing role at a higher classification level or band.
- 10.29 Under the classification structure, there will be no temporary work at a higher level within a Band.
- 10.30 Supervisors and managers in consultation with their team may elect to either:
- (a) appoint an employee to work at a higher level to fill a short-term vacancy,
  - (b) not have a job undertaken by anyone during a short-term vacancy; or
  - (c) share the duties of a vacant position amongst other members of the work group, in which case no employee shall be potentially eligible for payment at the higher level, or recorded as working at the higher level, unless he or she is required to spend the majority of his or her time on the higher level duties.
  - (d) provide an opportunity for an employee to undertake a percentage of the role and pay accordingly e.g. If an employee takes on 60% of the role the pay would be 60% of the value of the role. In determining the percentage there will be genuine consideration of work to be performed and good faith discussions between the employee and manager before the percentage is determined. The rate of pay after a percentage of work has been determined shall be no less than the amount specified in 10.32.
- 10.31 Where an employee is required to undertake work at a higher level for a temporary period he or she will be paid his or her normal salary for the first 2 weeks. After the 2 week qualifying period, the employee will be paid at the first pay point of the band in which they are acting.
- 10.32 Where an employee is required to temporarily perform work in a Senior Executive position for more than 3 weeks, the remuneration will be as determined by the Australia Council.
- 10.33 An employee may decline temporary duties at a higher level that are unpaid unless this would result in essential functions not being undertaken.

## **Mobility**

- 10.34 The provisions in clauses 10.34-10.42 do not apply to excess employees as specified in Section 21.
- 10.35 Each position at the Australia Council is outlined in a Position Profile that clearly defines role requirements, key functions, and accountability and responsibility levels.
- 10.36 The parties to this Agreement agree that employees are engaged at the classification level of a specified role rather than in a particular position.
- 10.37 As the arts environment and Australia Council priorities change, in time employees may be reassigned to another role at the same classification level.
- 10.38 The Australia Council commits to taking into account employee preferences, and will not reassign an employee to a role that does not match his or her skill and capability set.
- 10.39 An employee reassigned to an ongoing role will be given a minimum of 4 weeks' notice of the reassignment.
- 10.40 Should an employee prefer not to accept an ongoing reassignment they should inform their manager of their concerns no later than two weeks after the notice of the reassignment so that the issues can be addressed within the four-week notification period. In such circumstances, resolution of the employee's reassignment will require the approval of the Executive Director/s of the relevant division/s.
- 10.41 Where an employee moves to another work area the necessary training and development (generally on-the-job) will be identified and provided.

10.42 Where an employee believes he or she has not been fairly dealt with in relation to a reassignment, he or she may seek resolution as outlined in the Australia Council's Problem Solving process, as per clause 15.6.

10.43 Where an employee is reassigned to a fixed-term contract role at level, he or she will not forfeit his or her status as an ongoing employee of the Australia Council.

### **Salary packaging**

10.44 Salary packaging arrangements will be offered under this Agreement.

10.45 Where salary packaging arrangements are offered, an employee may convert part of his or her salary to non-salary benefits in accordance with guidelines issued and as varied from time to time.

10.46 Fringe benefits tax and any other costs attributable to salary packaging arrangements for an employee must be met by that employee.

10.47 Salary for superannuation, severance and termination purposes for an employee who has elected to convert part of his or her salary to non-salary benefits, shall be determined as if those arrangements did not exist.

### **Superannuation**

10.48 The Australia Council will ensure that all employees are fully informed about superannuation arrangements and levels of employer contributions immediately on commencement or recommencement of employment.

10.49 The Public Sector Superannuation Accumulation Plan (PSSap) will be the Australia Council's default fund for eligible employees who are covered by this Agreement and who do not choose a relevant fund to receive their superannuation contributions.

10.50 Regardless of the fund chosen by an employee in Bands 1 to 4 the Australia Council will pay 15.4% superannuation into the chosen fund.

10.51 Once an employee has commenced their employment, he or she will be assumed to have chosen the Australia Council's default superannuation fund, unless they advise otherwise.

10.52 Superannuation arrangements for employees who are in Classification Bands 5 to 6 at the Date of Operation of this Agreement will remain the same, unless they notify the Australia Council that they are to be changed. From the Date of Operation of this Agreement, new employees in this Classification range will receive the superannuation guarantee, as per legislation (currently 9%), into a complying fund by default.

### **Supported Salary for Employees with a Disability**

10.53 Employees who have a disability to the extent that they meet the impairment criteria for the Disability Support Pension (DSP) may be employed under this Agreement and be paid a supported salary, appropriate to the classification in which they are employed, determined in accordance with the procedures and provisions as per the Supported Wage System

10.54 Clauses 10.54-10.70 of this Agreement define the conditions that will apply to employees who, because of the effects of a disability, are eligible for a supported wage under the terms of this Agreement. In the context of clauses 10.54-10.70 the following definitions will apply:

- (a) "*Supported Salary*" means the Commonwealth Government System to promote employment for people who cannot work at full award wages because of a disability;
- (b) "*Accredited Assessor*" means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System;

- (c) "*Disability Support Pension*" means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991*, as amended from time to time, or any successor to that scheme;
- (d) "*Assessment instrument*" means the form provided for under the relevant government department's system for Supported Salaries that records the assessment of the productive capacity of the person to be employed under the Supported Salary.

**Eligibility criteria**

- 10.55 Employees covered by the Supported Wage System will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this Agreement, because of the effects of a disability on their productive capacity, and who meet the impairment criteria for receipt of a Disability Support Pension.
- 10.56 Clause 10.56 does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provision of this Agreement relating to the rehabilitation of employees who are injured in the course of their current employment.
- 10.57 The provisions of the Supported Wage System do not apply to employers in respect of their facility, program, undertaking service or the like which receives funding under the Disability Services Act 1986 and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of, or are eligible for, a disability support pension, except with respect to an organisation which has received recognition under s.10 or under s.12A of the Act, or if a part only has received recognition, that part.

**Supported wage rates**

- 10.58 Employees to whom this clause applies shall be paid the applicable percentage of the minimum rate of pay prescribed by this Agreement for the class of work which the person is performing according to the following schedule, provided that the minimum amount payable shall be not less than \$75 per week.

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

- 10.59 Where a person's assessed capacity is 10%, he or she shall receive a high degree of assistance and support.

**Assessment of capacity**

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

- (a) the Australia Council and the employee and, where chosen, a representative of the employee, which may be a union; or
- (b) if requested by the Australia Council, the employee and an accredited Assessor in consultation with the employee and, where chosen, his or her representative, which may be a union.

#### **Lodgement of assessment instrument**

10.61 All assessment instruments under the conditions of the Supported Wage System, including the appropriate percentage of the Agreement wage to be paid to the employee, shall be lodged by the Australia Council with Fair Work Australia.

10.62 All assessment instruments shall be agreed and signed by the parties involved, provided that where the employee requests, the instrument shall be provided to the chosen representative of the employee, which may be a union, and will take effect unless an objection is notified to the Registrar within 10 working days.

#### **Review of assessment**

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

#### **Other terms and conditions of employment**

10.64 Where an assessment has been made, the applicable percentage shall apply to the wage rate only. Employees covered by the provisions of clauses 10.54-10.70 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**

10.65 Where the Australia Council employs a person under the provisions of clauses 10.54-10.70 it 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 employees in the area.

#### **Trial period**

10.66 In order for an adequate assessment of the employee's capacity to be made, the Australia Council may employ a person under the provisions of clauses 10.54-10.70 for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.

10.67 During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.

10.68 The amount payable to the employee during the trial period shall be \$75 per week. This minimum may be increased in accordance with variations in the relevant government department's income test free area for earnings.

10.69 Work trials should include induction or training as appropriate to the job being trialled.

10.70 Where the Australia Council and the employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under clause 10.62.

#### **Trainees**

10.71 The Australia Council may employ Trainees under the conditions of this agreement under Band 1.

- 10.72 Trainees are employed as non-ongoing employees for the duration of their Traineeship, subject to satisfactory completion of their probationary period. If the Traineeship has been successfully completed, the employee may be offered ongoing employment.
- 10.73 Where a Trainee is offered ongoing employment on completion of the Traineeship, his or her Traineeship period shall count as service for all purposes.
- 10.74 Working hours and training requirements will be as specified in the Traineeship Agreement between the Australia Council and the Trainee. Such Agreement will be in accordance with relevant legislation and the agreement.
- 10.75 Traineeships will not extend beyond two (2) years.

### **Overtime**

- 10.76 Overtime is only available to employees at up to and including the Band 4 classification level.
- 10.77 This Section does not apply to Emergency Duty as specified in clause 10.83.
- 10.78 Subject to clause 10.76, overtime is payable where:
- (a) prior approval has been given by the Executive Director of the division;
  - (b) an employee is required to work:
    - (i) outside standard hours; or
    - (ii) in excess of 7 hours 21 minutes on any day.
- 10.79 The overtime rate is:
- (a) time and a half for the first 2 hours and double time thereafter for all overtime, Monday to Saturday, other than public holidays;
  - (b) double time for all overtime on Sunday;
  - (c) time and a half for all overtime during standard hours on a public holiday; and
  - (d) double time and a half for all overtime outside standard hours on a public holiday.
- 10.80 The minimum payment for overtime that is not continuous with normal duty will be for four hours of work with the exception of Emergency Duty as specified in clause 10.83.

### **Time in lieu**

- 10.81 Where an employee and his or her manager agree, overtime may be taken as time in lieu within 4 weeks of the overtime or such other time limit agreed to by the employee and his or her supervisor.
- 10.82 The time in lieu is to be calculated at the overtime rate.

### **Emergency Duty**

- 10.83 Emergency duty entitlements are only available to employees at up to and including Band 4 classification.
- 10.84 Emergency duty is where an employee is required to attend work to meet an emergency at a time when the employee would not normally have been on duty and no notice of this requirement was given to the employee prior to last ceasing duty.
- 10.85 All emergency duty is paid at the rate of double time and includes payment for time necessarily spent in travelling to and from duty.
- 10.86 The minimum payment for Emergency Duty will be for three hours of work.

## 11 Allowances

### Travelling Expenses

- 11.1 Where an employee is required and approved to travel on official business and be absent from his or her normal location overnight, the employee will be entitled to the payment for reasonable accommodation, meals and incidentals costs incurred during the travel.
- 11.2 Maximum amounts payable for travel costs will be the travel allowance rates issued each year by the Australian Tax Office (ATO).
- 11.3 The Australia Council will book and pay for employee travel and accommodation. Employees will be given allowance, by direct credit into their account, to cover their meals and incidentals.
- 11.4 Where this is not appropriate, other methods will be used in consultation with the relevant manager. The allowance for meals and incidentals will remain the same.
- 11.5 In any of the above methods, where the employee is not staying in commercial accommodation, he or she will be paid an accommodation component of \$60 per night.
- 11.6 Reimbursement cannot be claimed by employees for any relevant meals and/or accommodation that was, or will be, provided or paid for by the Australia Council or as a consequence of their official duties.
- 11.7 The following are to be applied in calculating meals components of travel related costs:
- (a) breakfast is payable where the employee departs before or returns after 7.00 a.m.;
  - (b) lunch is payable where the employee departs before or returns after 1.00 p.m.; and
  - (c) dinner is payable where the employee departs before or returns after 7.00 p.m.
- 11.8 Incidentals are payable for all periods of 24 hours and/or part thereof.
- 11.9 For the purposes of clause 11.1, a reasonable standard of accommodation is the NRMA 3 star or equivalent standard.

### Overseas conditions

- 11.10 Employees will be reimbursed reasonable costs for accommodation, meals and incidentals while on approved travel outside of Australia.
- 11.11 Reasonable costs for accommodation, meals and incidentals will be paid. The payment will take account of information from the country and the experience of other relevant agencies.
- 11.12 The employee will be provided with an advance to cover accommodation, meals and incidentals. In these instances, the employee must prepare an acquittal and where necessary, reimburse the Australia Council any excess advance payment.

### Meal Allowance

- 11.13 If an employee is required to work overtime and that overtime extends beyond the end of a meal period, he or she will be paid a meal allowance
- 11.14 For the purposes of this Section, a meal period is:
- (a) Monday to Friday – 6.30 p.m. to 7.30 p.m.; and
  - (b) Weekends and public holidays – 12.30 p.m. to 1.30 p.m. and 6.30 p.m. to 7.30 p.m.
- 11.15 The meal allowance rate shall be as per the ATO maximum allowable rate.

### Motor Vehicle Allowance

- 11.16 An employee may be authorised to use their private vehicle providing it is registered and comprehensively insured. As the employee will be using the vehicle at his or her own expense for work related purposes the employee will be paid the lesser of:

- (a) the transport costs which would otherwise have been paid by the Australia Council, including any discounted fares that would have been available; or
- (b) As per the current ATO rate.

### **First Aid Allowance**

11.17 Where an employee possesses a current First Aid Certificate and has been appointed as a First Aid Support Person he or she will receive a First Aid Allowance of \$21.00 per fortnight.

### **Relocation Assistance**

11.18 Where the Australia Council engages a new employee who is required to move in order to take up the position, it may be agreed to provide the employee with relocation assistance.

11.19 The nature and amount of relocation assistance provided to the employee will be determined on a case-by-case basis, taking account of costs incurred by the employee and the benefit to the Australia Council of the employee's engagement.

## **12 Performance Management**

12.1 The Australia Council and its employees are committed to the continuous improvement of the organisation's Performance Management Framework. The Performance Management Framework outlines the organisation's commitment to providing employees with:

- (a) Appropriate key results suited to the position that the employee occupies
- (b) Relevant opportunities to extend and develop employees skills and capability
- (c) Regular feedback on how employees are proceeding against their key results and behavioural requirements.

12.2 The Performance Management Framework includes the following:

- (a) the development of individual performance agreements that are based on the Australia Council's Strategic Priorities;
- (b) regular feedback based on the individual performance agreements;
- (c) mid-cycle review of progress against individual performance agreements, to be completed by the end of January each year; and
- (d) annual assessment against individual performance agreements, to be conducted by the end of June each year
- (e) the development of an individual Career Development Plan Agreement.

12.3 The development of individual performance agreements is the joint responsibility of the employee and their manager. Where necessary each individual performance agreement is expected to be adjusted during the course of a year by mutual agreement between the employee and the manager.

12.4 All work completed during the financial year will be taken into consideration when performance reviews are taking place. Where an employee has a major change in role or tasks assigned to them, a performance review process will take place prior to a new agreement being developed, and this will be considered during the annual performance review.

12.5 Employees' performance will be assessed against the following ratings:

#### **Key Results**

- (a) *Outstanding* - Delivers exceptional outcomes by consistently and substantially working above standard position requirements. Working in a way that delivers results that have benefits beyond their division.

- (b) *Exceeds* - Delivers superior outcomes by developing and applying new knowledge/skills to frequently work beyond standard position requirements.
- (c) *Effective* - Delivers a standard of work that is required by the Position Profile and in line with the Individual Performance Agreement.
- (d) *Does not Meet* - Failed to deliver agreed outcome.

### **Behaviours**

- (a) *Outstanding*- Always exhibits organisational behaviours in all areas of work and encourages, influences and guides others on their use.
- (b) *Exceeds* - Regularly exhibits organisational behaviours in all areas of work and encourages others to do so.
- (c) *Effective* - Often exhibits organisational behaviours in areas of work with occasional encouragement and guidance.
- (d) *Does not Meet* - Rarely and inconsistently demonstrates organisational behaviours in areas of work.

- 12.6 The employee's performance rating will be based on the outcome of their individual performance agreement.
- 12.7 To ensure consistency across the organisation, the Executive team will review all individual performance assessments in line with the Australia Council's performance expectations and the appropriate Classification level. This will be done in consultation with managers. Managers may be required to provide substantiation for performance ratings they have given.
- 12.8 At any time during this process, employees may seek review of the decision and may submit evidence to support their case, which will be taken into consideration.
- 12.9 Where problems arise during this process, clause 15.6 will be applied.
- 12.10 The Australia Council's performance review system will be reviewed as per standard business / continuous improvement practice.

### **Managing Underperformance**

- 12.11 It is expected that managers demonstrate a commitment and willingness to proactively manage the underperformance of their employees and to promptly address problems when they arise.
- 12.12 Where a non-probationary employee is considered to be performing below a satisfactory standard a performance improvement process will be initiated.
- 12.13 The performance improvement process will be aimed at the recovery of the employee's performance such that he or she is able to continue in employment with the Australia Council at the same classification level.
- 12.14 To initiate a performance improvement process, the employee will receive written advice:
- (a) that the employee has not been performing at the required standards;
  - (b) detailing the required standards and where the employee has been failing to satisfy those standards; and
  - (c) requiring the employee to attend a meeting with his or her supervisor to prepare a performance improvement plan.
- 12.15 The performance improvement plan should include:

- (a) appropriate development activities aimed at improving the employee's performance to the required standard;
  - (b) details of work to be undertaken during an assessment period, including any specific standards that are required to demonstrate a satisfactory standard; and
  - (c) commencement and conclusion dates for the assessment period.
- 12.16 The assessment period will be a period of 8 weeks, and will ordinarily be managed by the employee's immediate supervisor.
- 12.17 Following the completion of the assessment period one of the following actions will be implemented:
- (a) take no further action as the employee has met the required standards;
  - (b) extend the assessment period;
  - (c) reduce the employee's classification level;
  - (d) redeploy the employee at the same level; or
  - (e) terminate the employee's employment.
- 12.18 The employee is entitled to choose to be accompanied by a representative, to any meeting associated with the performance improvement process.
- 12.19 The Australia Council's Managing Performance and Conduct Challenges Policy will be used to manage this process.

### **13 Code of Conduct**

- 13.1 All employees are expected to comply with, uphold and promote the values and conduct standards as determined by the Australia Council from time to time. The current Code of Conduct is as follows:

All employees of the Australia Council must comply with the values and conduct standards as determined by the Australia Council. The following values and standards require employees to:

- Behave honestly and with integrity.
- Act with care and diligence.
- Treat everyone with respect and courtesy and without harassment of any kind.
- Comply with all applicable Australian laws.
- Not provide false or misleading information in response to a request for information that is made for official purposes.
- Comply with any lawful and reasonable request given by any Australia Council staff member who is authorised to give the direction.
- Maintain appropriate confidentiality.
- Disclose and take reasonable steps to avoid any conflict of interest (real or perceived) in the course of your employment.
- Use Australia Council and Australian Government resources in a proper manner.
- Not make improper use of inside information, or your duties, status, power or authority to gain, or seek to gain, a benefit or advantage for yourself or any other person.
- Behave in a way that upholds the integrity and reputation of the Australia Council at all times.

## **Alleged breaches of the Code of Conduct**

- 13.2 An employee must not be victimised or discriminated against because he or she has reported a breach or alleged breach of the Code of Conduct.
- 13.3 Where the Chief Executive Officer or authorised person believes that an employee may have breached the Code of Conduct, an investigation of the matter that is consistent with natural justice principles shall occur.
- 13.4 While an investigation of the alleged breach of the Code of Conduct is underway, the employee may be:
- (a) transferred to other duties;
  - (b) suspended from work with pay; or
  - (c) suspended from work without pay.
- 13.5 Where an employee has been suspended from work under clause 13.4, he or she will be provided with an opportunity to make a statement in relation to that action.
- 13.6 A review of the suspension will be undertaken within 30 days.
- 13.7 Where an employee has been suspended without pay, he or she is entitled to utilise leave entitlements and to engage in approved outside employment.
- 13.8 An application for payment of salary on the grounds of financial hardship will be considered.
- 13.9 Where an employee has been suspended without pay and the employee is found to have not breached the Code of Conduct, the employee will be paid for the period of his or her suspension without pay.
- 13.10 Where an employee is found to have breached the Code of Conduct, one of the following actions may be taken:
- (a) counsel the employee;
  - (b) warn the employee;
  - (c) fine the employee an amount up to \$500;
  - (d) determine that loss of pay point advancement to be sufficient penalty;
  - (e) transfer the employee permanently or temporarily to other duties at the same level;
  - (f) reduce the employee to a lower classification level; or
  - (g) terminate his or her employment.
- 13.11 The Managing Performance and Conduct Challenges Policy will be used to deal with these breaches of the Code of Conduct.
- 13.12 Consistent with the Code of Conduct, the values and conduct standards (referred to in clause 13.1) are defined in the Australia Council's Code of Conduct Policy.

## **14 Learning and Development**

- 14.1 The Council has established learning and development activities and resources to provide opportunities for staff members to build their skills and develop their careers which benefit the individual staff member as well as promote improved performance and efficiency of the Council.

Accordingly, the Council is committed to:

- (a) Developing programs to enhance skills development;
- (b) Providing opportunities for staff members to build skill profiles and develop their careers such as;
  - o On-the-job training

- Mentoring (internal and external)
  - Coaching(internal and external)
  - Secondments
  - Exchanges
  - External Training
- (c) Encourages a supportive environment for career development and promoting equitable access to training.

14.2 Planning for career development, learning and development opportunities is shared responsibilities between the staff member and their manager. Although an ongoing process, this planning is formalised through the annual performance review processes. Where the budget does not allow, or is authorisation is not given for certain development opportunities to be taken, the employee will not be disadvantaged in the performance management processes.

14.3 Training and career development opportunities undertaken by a staff member will be based on:

- (a) The current and future skill needs of the work area and the individual staff member;
- (b) The relevance of the activity to the needs of the Council and the individual staff member;
- (c) Encouraging staff members' participation in on-the-job/off-the-job training within the appropriate budgetary provisions.
- (d) The impact of the activities on operational requirements.

### **Studies Assistance**

14.4 All employees are eligible to apply for studies assistance after 12 months of continuous service, provided that the course of study is related to the employee's work at the Australia Council in accordance with the Career Development Framework.

14.5 Studies Assistance is an investment in the acquisition of skills and knowledge that will be utilised in the employee's present role at the Australia Council.

14.6 Studies assistance may consist of one or more of the following:

- (a) Leave (paid and unpaid)
- (b) Flexible Working Hours
- (c) Financial Assistance
- (d) Examination leave
- (e) Text books

14.7 The maximum amount of financial studies assistance per employee is \$1,300 per annum.

## **15 Problem Solving**

This process applies to resolving problems relating to this agreement and the National Employment Standards.

15.1 The Australia Council and its employees are committed to resolving workplace issues efficiently and effectively.

The following process will apply to disagreements arising from matters covered in this agreement and/or disagreements in relation to Occupational Health and Safety matters:

- (a) Wherever possible, disagreements will be promptly resolved between the affected employees.
- (b) Where resolution is not possible between the affected employees, the disagreement may be referred to the next level of management.
- (c) If the matter is still unresolved, it may be referred to the CEO or authorised person for decision.
- (d) Where the problem relates to a genuine safety issue, other processes may be used to resolve the problem in the interests of Workplace Health and Safety, including relocation and/or alternative suitable work.
- (e) At any stage during this process, the employee may choose to have a representative.

### **Referral of disagreement to Fair Work Australia**

- 15.2 If the parties to the dispute have not been able to resolve the disagreement, and the agreed steps for resolving it have been taken, the disagreement may be referred by either party or their representative to Fair Work Australia for conciliation and, if conciliation fails, arbitration.
- 15.3 For the purposes of the Fair Work Act 2009 the parties agree that the Fair Work Australia may apply the provisions the Act with respect to the Fair Work Australia exercising its powers and functions under this Agreement.
- 15.4 Any decision or direction the Fair Work Australia makes in relation to the disagreement shall be in writing. Any decision or direction of the Fair Work Australia be it procedural or final, shall be accepted by all affected persons and complied with by the parties, subject to any right of appeal or review which may exist.
- 15.5 It is a term of this Agreement that while the problem solving process resolution procedure is being conducted work shall continue in accordance with the established custom and practice at the workplace, except where there is a reasonable concern about an imminent risk to an employee's health and safety.
- 15.6 The Australia Council's Problem Solving Policy outlines the process for dealing with disagreements and other problems in the workplace.

## **16 Major Change**

- 16.1 The Australia Council and its employees acknowledge that the processes of major change require shared understanding and genuine consultation in the development and successful implementation of these major change initiatives. The Australia Council is committed to:
  - (a) providing support for employees through the stages of organisational, operational, technological and corporate change.
  - (b) communicating opportunities and the rationale for change
  - (c) ensuring that employees are involved in the development, design, implementation and evaluation of all change initiatives
  - (d) where possible, advising its employees of proposed changes prior to public announcement
- 16.2 The parties to this agreement agree that effective consultation involves the following steps:
  - (a) Employees being notified at the earliest possible opportunity of plans for changes that are likely to have significant effect on employees;
  - (b) Allowing sufficient time for consultation to occur within a timeframe that allows for timely implementation of change;

- (c) Providing employees with information about proposed changes;
  - (d) Providing employees with an opportunity to put forward their views via a number of mechanisms including, but not limited to: directly to managers/supervisors; through staff or union representatives; and through open discussion;
  - (e) Advising employees of how to contribute to the process and provide feedback on their contributions;
  - (f) Providing genuine opportunities for employees and, where they choose, their representatives to contribute to the decision making process prior to the decision.
- 16.3 If there are employees who may be individually affected, they are to be notified confidentially prior to other employees wherever possible.
- 16.4 The level of involvement of the Workplace Forum, or any staff representatives where chosen in the consultative process, should reflect the nature and degree of change and number of employees affected.

## 17 Consultation

- 17.1 The diverse avenues for consultation, as indicated in clause 16.2(d), will provide employees and management with opportunities to raise issues or potential issues for discussion and consideration, directly with the Workplace Forum (WF) union delegates, and other staff representatives. This consultation will occur simultaneously.
- 17.2 The WF comprises up to four representatives, nominated or elected by employees and may include Unions delegates, and up to an equivalent number nominated by management.
- 17.3 The WF will work to a Charter developed and agreed by the employee and management representatives.
- 17.4 The process of consultation undertaken through the various avenues described above will be regularly reviewed by the WF.
- 17.5 The Australia Council will notify employees when discussions have been had with union delegates and the WF and advise them that they can provide feedback on matters involved via the WF, union delegates or their manager. Where discussions with are about providing information the parties will distribute that information by appropriate means.

## 18 Principles for Workplace Delegates

- 18.1 In any matter arising under this Agreement, an employee or group of employees may have an employee representative, which may be a union representative, assist or represent them and all relevant persons will deal with any such representative in good faith.
- 18.2 The role of union workplace delegates is to be respected and facilitated.
- Agencies and workplace delegates must deal with each other in good faith.
- The rights of union workplace delegates and recognised representatives include but are not limited to:
- (a) the right to be treated fairly and to perform their role as workplace delegates without any discrimination in their employment;
  - (b) recognition by the agency that endorsed workplace delegates speak on behalf of their members in the workplace;
  - (c) the right to participate in collective bargaining on behalf of those who they represent, as per the Fair Work Act;
  - (d) the right to reasonable paid time to provide information to and seek feedback from employees in the workplace;

- (e) reasonable paid time off to represent union members in the agency at relevant union forums;
  - (f) reasonable access to agency facilities for the purpose of carrying out work as a delegate and consulting with workplace colleagues and the union, subject to agency policies and protocols;
  - (g) reasonable paid time during normal working hours to consult with colleagues in the workplace;
  - (h) reasonable access to appropriate training in workplace relations matters including training provided by a union;
  - (i) the right to consultation, and access to relevant information about the workplace and the agency; and
  - (j) the right to reasonable paid time to represent the interests of members to the employer and industrial tribunals.
- 18.3 Agencies will seek to facilitate official union communication with employees by means that may include:
- (a) the use of email as a means of communicating with employees and other means of information sharing, including written materials, electronic billboards; and
  - (b) group or individual meetings between employees and their representatives.
- In exercising their rights, workplace delegates and unions will consider operational issues, Australia Council policies and guidelines and the likely affect on the efficient operation of the agency and the provision of services by the Commonwealth.
- 18.4 These principles form the Australia Council and CPSU protocol for workplace delegates for the life of this agreement and the parties commit to further discussions as necessary.
- 18.5 The Australia Council and the CPSU commit to deal with each other in good faith in all matters. Where issues arise around the interpretation the above protocol the parties commit to resolve the issues cooperatively and will identify a contact person to escalate issues if necessary up to and including the using the problem solving process.

## **Cessation of Employment**

### **19 Resignation**

- 19.1 Ongoing employees are required to give a minimum of two weeks' notice when resigning from employment with the Australia Council.
- 19.2 Where an employee fails to give the required period of notice when resigning from employment, the Australia Council may, having regard to the circumstances, deduct an amount of salary equivalent to the quantum of the period of notice that has not been worked from monies owing to the employee.

### **20 Termination payments**

- 20.1 Where an employee ceases employment with the Australia Council, the employee will receive payment in lieu of unused Annual Leave entitlements. This payment will be based on the employee's final rate of salary including any allowances that would have continued to be payable during a period of Annual Leave.
- 20.2 The Australia Council may recover all or part of any debt owed to it by an employee at termination of his or her employment out of monies otherwise payable to the employee, and then pays the employee the balance remaining after recovery of the debt.

- 20.3 The automatic recovery of an overpayment and / or monies owed is through deductions from an employee's salary is as per the Chief Executive Determination under Clause 41 of *the Australia Council Act 1975* and relates to but is not limited to Clauses 7.26, 7.27, 9.59, and 19.2.

## **21 Redeployment, Reduction and Retrenchment**

This section only applies to ongoing, non-probationary employees who are in positions at the Australia Council that become redundant, as per the definition in clause 21.1.

### **Definition of a Redundant Position**

- 21.1 A position may be declared redundant where:
- (a) it is included in a group of positions which comprises a greater number of positions than is necessary for the efficient and economical working of the Australia Council; or
  - (b) the work of the position cannot be effectively done because of technological or other changes in the work methods of the Australia Council, or changes in the nature, extent or organisation of the functions of the Australia Council; or
  - (c) where the work performed by an employee is to be performed in a different locality and the employee is not willing to perform duties at the locality.
- 21.2 The employee is notified in a discussion with their manager that their position is potentially redundant. At this point, the employee is notified of available options (redeployment, retrenchment) and relevant calculations of their entitlements will be provided, inclusive of any notice periods and future termination dates.
- 21.3 If at the time of the discussion under clause 21.2 there is no opportunity for redeployment all notice periods will be paid out, subject to agreement between the employee and the Australia Council.
- 21.4 If at any stage during the notice periods it becomes apparent that there are no opportunities available for redeployment, the employee and the Australia Council may agree that the remainder of the notice periods be paid out and the employment relationship terminated.
- 21.5 The Australia Council may declare a position redundant one month after the discussion referred to in clause 21.2. At this time, the employee will receive written notification of this decision, including a copy of their redundancy entitlements.
- 21.6 The notice period will start from the date of the written notification under clause 21.5.
- 21.7 Where an employee is retrenched the minimum period of notice of termination of employment is four weeks, or five weeks for employees over 45 with at least 5 years of service.
- 21.8 During the notice period the employee must advise if they wish to accept retrenchment or seek retention.
- 21.9 The employee may choose to include a representative in any discussions held as part of this process.

### **Redeployment**

- 21.10 An employee whose position is made redundant will be placed in an available vacant position at the same level or band where he or she is considered to be capable of performing the required duties at a satisfactory standard following a reasonable period of training.
- 21.11 Where there are more redundant positions than available vacant positions, employees whose positions have been made redundant will be placed in the vacant positions on the basis of relative merit.

## **Reduction in level or band**

- 21.12 Where there is an available vacant position at a lower classification band, an employee whose position is made redundant may request redeployment to the available position, and this request is expected to be granted.
- 21.13 Where such agreement is reached, the employee will be paid at his or her former level or band for six (6) months.

## **Retrenchment**

- 21.14 Where an employee whose position has been made redundant cannot be placed in an available vacant position, he or she will be retrenched. The employee will be provided with the following information immediately:
- (a) amount of severance pay, pay in lieu of notice and cashable leave credits;
  - (b) amount of accumulated superannuation contributions;
  - (c) options open to the employee concerning superannuation; and
  - (d) taxation rules applying to the various payments.
- 21.15 An employee whose position is made redundant is entitled to reimbursement of up to \$600 of the cost involved in obtaining financial and career advice about the retrenchment.
- 21.16 The Australia Council may withdraw an offer of voluntary retrenchment, with the agreement of the employee, at any time, up until a notice of termination is provided under clause 21.7.
- 21.17 Where an employee advises that he or she does not want to be retrenched the Australia Council is expected to seek expressions of interest in retrenchment from other employees at the same level or band who are in positions for which the excess employee will be able to perform the required duties.
- 21.18 Where no employee is interested in retrenchment, the original employee will be advised of this and reminded that the retention period commenced from the date of the redundancy notification.
- 21.19 Employees who indicate an interest in being retrenched will be provided with all information related to the retrenchment process including termination calculation. An expression of interest under clause 21.17 is not a guarantee that the Australia Council will take up the offer. The decision will be considered on the basis of merit.

## **Severance benefits**

- 21.20 Subject to clause 21.22, an employee who is retrenched is entitled to a severance payment equal to two weeks salary for each completed year of continuous service plus a pro rata severance payment for completed months of service since the last completed year of service. The redundancy benefit is subject to any minimum amount to which the employee is entitled under the NES.
- 21.21 The severance benefit shall be calculated on a pro rata basis for any period during an employee's period of service in which he or she has worked part-time hours.
- 21.22 The minimum severance payment will be 4 weeks' salary and the maximum will be 48 weeks' salary.
- 21.23 For the purposes of clause 21.20, the period of continuous service includes:
- (a) service with the Australia Council; and
  - (b) any service recognised for the accrual of long service leave under the *Long Service Leave (Commonwealth Employees) Act 1976*.
- 21.24 For the purposes of clause 21.20 the period of continuous service does not include any service which ceased:

- (a) through termination on the following grounds, or on a ground equivalent to any of the following grounds:
  - (i) the employee lacks, or has lost, an essential qualification for performing his or her duties;
  - (ii) non-performance, or unsatisfactory performance, of duties;
  - (iii) inability to perform duties because of physical or mental incapacity;
  - (iv) failure to satisfactorily complete an entry level training course;
  - (v) failure to satisfactorily complete a probationary period; or
  - (vi) a breach of the Code of Conduct; or
- (b) through retrenchment at or above the minimum retiring age applicable to the employee; or
- (c) with the payment of a redundancy benefit or similar payment or an employer-financed retirement benefit.

21.25 For the purposes of clause 21.20, absences from work that do not count as service for Long Service Leave purposes will not count as service for severance pay purposes.

21.26 For the purposes of this Section, the employee's salary will be the higher of:

- (a) the employee's salary at his or her permanent classification level or band; or
- (b) the salary payable at a higher classification level or band where the employee has been temporarily performing work and has been paid at that higher classification level or band for a period of at least 12 months immediately preceding the date on which the employee was given notice of his or her retrenchment, and will include any other allowances in the nature of salary which are paid during periods of Annual Leave and on a regular basis, but excluding any allowances which are of a reimbursement nature or a payment for disabilities associated with the performance of duty.

#### **Required period of notice for retrenchment**

21.27 Where an employee is retrenched, the minimum period of notice of termination of employment is 4 weeks, or 5 weeks for employees over 45 years of age with at least 5 years of service.

#### **Retention Periods**

21.28 An excess employee will be subject to a retention period of:

- (a) 13 months where an employee has 20 or more years of service or is over 45 years of age; or
- (b) 7 months for other employees.

21.29 If an employee is entitled to a redundancy payment in accordance with the National Employment Standards (NES) the relevant period in clause 21.28 (a) and (b) is reduced by the number of weeks redundancy pay that the employee will be entitled to under the NES on termination of employment.

21.30 The retention period will be deemed to have commenced on the date when the employee is advised in writing that he or she is excess.

21.31 During the retention period, the Australia Council will continue to take reasonable steps to find alternative employment for the excess employee.

21.32 Unless the employee agrees otherwise, the Australia Council will not terminate the employment of an excess employee on the grounds of being excess until the applicable retention period has passed.

### **Reduction in classification during retention period**

- 21.33 During the retention period, the Australia Council may, with reasonable notice, reduce an excess employee's classification level as a means of securing alternative employment for the employee.
- 21.34 Where the classification level of an excess employee is reduced under clause 21.33, the employee will be entitled to income maintenance payments to maintain his or her salary at the previous classification level for the duration of the retention period. For these purposes, salary is defined the same as in clause 21.26.

### **Termination at the end of retention period**

- 21.35 Where redeployment of an excess employee has not been achieved, the employee may be provided with notice of termination with effect from no earlier than the end of the retention period subject to clauses 21.28 and 21.29.
- 21.36 The employee's employment must not be terminated at or after the end of the retention period if the employee has not been offered voluntary retrenchment or has elected to resign and his or her resignation was not accepted.
- 21.37 Where an employee's employment is terminated at or after the end of the retention period, he or she must be provided with at least 4 weeks' notice, or 5 weeks if the employee is over 45 years of age and has at least 5 years of service. The notice period may be within the retention period.

### **Payment on Death**

- 21.38 Payment on Death were an employee dies, or the Australia Council determines that the employee has died on a particular date, payment will be authorised for the amount to which the former employee would have been entitled had the employee resigned or retired on that date.
- 21.39 Payment of an amount under clause 21.38 shall be made to the executor of the former employee's estate, the administrator of the former employee's estate, the public trustee or such other person as the law requires in the jurisdiction pertaining to the former employee.

## **22 Abandonment of Employment**

- 22.1 Where an employee is absent from work without notification for 5 working days, the Australia Council will take all reasonable steps to contact the employee.
- 22.2 When the unauthorised absence reaches 10 working days, the employee will be considered to have abandoned their employment and will be terminated.
- 22.3 Where this occurs the employee will be paid out all entitlements to the bank account listed in the employee's file in the payroll system.
- 22.4 Prior to termination the Australia Council will ensure that all reasonable steps to contact the employee have been implemented.
- 22.5 Where an employee has a reasonable explanation for their absence and can provide evidence of that absence their employment with the Australia Council will be deemed to be continuing from the date of termination.

## **23 Review of Decisions to Terminate Employment**

- 23.1 The sole and exhaustive rights and remedies of an employee in relation to termination of employment are those that the employee enjoys under:
- (a) the *Fair Work Act 2009*;
  - (b) other Commonwealth laws (including the Constitution); and
  - (c) at common law.

- 23.2 Termination of, or a decision to terminate employment, cannot be reviewed under this Agreement.
- 23.3 Subject to compliance with the procedures established for determining whether an employee has breached the Code of Conduct, nothing in this Agreement prevents the Australia Council from terminating the employment of an employee for serious misconduct without further notice or payment in lieu, in accordance with the Fair Work Act 2009.

## **24 Other Conditions**

### **Recruitment**

- 24.1 The Recruitment and Selection Policy outlines the process for recruitment and selection of positions in the Australia Council. This policy will be reviewed as per clause 17.

### **Fit-for-work Scheme**

- 24.2 To promote improved health, an employee with a medical and/or an OH&S condition may be reimbursed up to \$100 per financial year for participating in health related activities undertaken outside of work time. Either a medical or an OH&S professional must recommend these activities.

### **Class of travel**

- 24.3 Employees are entitled to travel economy class when required to travel for official purposes.

### **Loss, damage and indemnity**

- 24.4 An employee may be reimbursed for loss or damage to clothing or personal effects, which occurred in the course of his or her work.

### **Anti-discrimination**

- 24.5 The Australia Council is an organisation which values equity and diversity. Consistent with that aim, the Australia Council is committed to preventing and eliminating discrimination on the basis of race, colour, gender, sexual orientation, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, and political opinion, country of origin, membership of an employee organisation or social origin.

### **Equal Opportunity / Workplace Diversity**

- 24.6 The Australia Council is committed to ensuring that it takes full advantage of the diverse backgrounds, talents and perspectives of all its employees.
- 24.7 The parties to this Agreement agree to recognise, value and nurture the different skills and competencies of all employees through flexible and equitable human resource policies, non-discriminatory employment practices and to utilise these differences in ways that serve to enhance the Australia Council's achievement of its Strategic Priorities.

### **Freedom of Association**

- 24.8 In accordance with the Fair Work Act 2009, the Australia Council recognises that employees are free to choose whether or not to join a union.
- 24.9 An employee, who chooses to join or not to join a union, will not be disadvantaged or discriminated against in respect of any term or condition of this Agreement including access to the problem solving processes in clause 15.6. An employee who chooses to be a member of a union has the right to choose to have his or her industrial interests represented by that union.

### **Right of Entry**

- 24.10 Right of entry to the Australia Council applies, subject to permit holders complying with the Australian *Fair Work Act 2009*.

### **Environmental efficiency**

24.11 The Australia Council and its employees are committed to developing and implementing measures to improve the environmental sustainability of Australia Council operations, including measures to address global warming. Employees will implement measures to give effect to this commitment and take personal responsibility for recycling and reducing unnecessary energy usage. During the life of this Agreement, the Australia Council will consult through the WF about giving effect to this commitment.

### **Public Transport Scheme**

24.12 To support its commitment to the environment, the Australia Council will provide employees with access to discounted public transport tickets. These tickets will be valid for periods of six or twelve months and will be paid for by the employee in a method determined by the Executive Director Corporate Resources.

24.13 Subject to clauses 24.12 and 24.14, the Public Transport Scheme will be made available to non-probationary ongoing employees, and other non-probationary employees who will be employed at the Australia Council for at least twelve months.

24.14 In the event of changes in costs to the organisation at any time over the duration of this Agreement, provision of the Public Transport Scheme may be reviewed or withdrawn.

## Appendix

### Classification Structure

Salary Classification		Increases		
		Year 1	Year 2	Year 3
		3.0%	3.0%	3.2%
Band 1	1-1	\$38,341	\$39,491	\$40,755
	1-2	\$39,626	\$40,815	\$42,121
	1-3	\$40,698	\$41,919	\$43,260
	1-4	\$42,371	\$43,642	\$45,039
Band 2	2-1	\$43,388	\$44,689	\$46,119
	2-2	\$44,584	\$45,921	\$47,390
	2-3	\$45,754	\$47,126	\$48,634
	2-4	\$46,942	\$48,351	\$49,898
	2-5	\$48,115	\$49,559	\$51,145
	2-6	\$49,419	\$50,902	\$52,531
	2-7	\$50,704	\$52,225	\$53,896
	2-8	\$51,993	\$53,553	\$55,267
	2-9	\$53,340	\$54,940	\$56,698
	APP	\$55,081	\$56,734	\$58,549
Band 3	3-1	\$55,081	\$56,734	\$58,549
	3-2	\$56,830	\$58,535	\$60,408
	3-3	\$58,311	\$60,061	\$61,983
	3-4	\$59,804	\$61,598	\$63,569
	3-5	\$61,434	\$63,277	\$65,302
	3-6	\$63,357	\$65,258	\$67,346
	3-7	\$65,144	\$67,099	\$69,246
	3-8	\$66,350	\$68,340	\$70,527
	APP	\$67,576	\$69,604	\$71,831
Band 4	4-1	\$66,353	\$68,343	\$70,530
	4-2	\$68,005	\$70,045	\$72,286
	4-3	\$69,867	\$71,963	\$74,266
	4-4	\$73,380	\$75,582	\$78,001
	4-5	\$76,221	\$78,508	\$81,020
	4-6	\$77,745	\$80,078	\$82,640
	APP	\$79,301	\$81,680	\$84,294
Band 5	5-1	\$84,927	\$87,474	\$90,273
	5-2	\$91,718	\$94,470	\$97,493
	APP	\$95,334	\$98,194	\$101,336
Band 6	6-1	\$97,905	\$100,842	\$104,069
	6-2	\$103,300	\$106,399	\$109,804
	6-3	\$111,027	\$114,358	\$118,017
	APP	\$114,735	\$118,177	\$121,959

Soft Barrier

