



**safe work australia**

# Safe Work Australia Enterprise Agreement

**2011–2014**



## Safe Work Australia Enterprise Agreement

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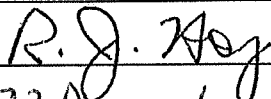
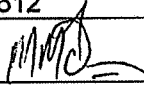
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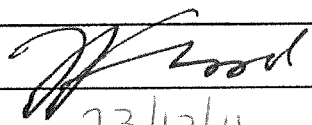
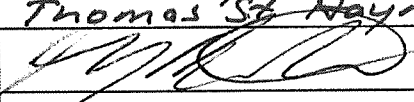
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## Signature Page

For the Employer

Signed:	
Date:	23 December 2011
Name in full (printed):	Rex Jeffery Hoy
Position:	Chief Executive Officer
Address:	Level 3, 220 Northbourne Ave Braddon ACT 2612
Witnessed by:	
Witness name in full (printed):	MARC EDWARDS MAHON
Witness address:	LEVEL 3, 220 NORTHBOURNE AVE BRADDON ACT 2612

## Bargaining Representatives

Signed:	
Date:	23/12/11
Name in full (printed):	Nadine Flood
Position:	National Secretary
Address:	Level 5, 191-199 Thomas St Haymarket
Witnessed by:	
Witness name in full (printed):	JAMES BATCHELOR
Witness address:	LEVEL 6, 191-199 THOMAS ST. HAYMARKET -

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## **PART B TECHNICAL AND GENERAL**

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### **Background**

1. This Agreement is made under section 172 of the *Fair Work Act 2009*.

### **Title**

2. This Agreement shall be known as the Safe Work Australia Enterprise Agreement 2011 – 2014.

### **Purpose**

3. The purpose of this Agreement is to set out the terms and conditions of employment of Employees covered by the Agreement.

### **Parties Covered by this Agreement**

4. In accordance with section 53 of the *Fair Work Act 2009*, this Agreement binds and applies to:
  - The Chief Executive Officer, Safe Work Australia;
  - All Employees of Safe Work Australia whose employment is, at any time when the Agreement is in operation, covered by the Agreement; and
  - The Community and Public Sector Union if Fair Work Australia notes in its decision to approve this Agreement that it covers that union.

### **Coverage**

5. Subject to Clause 6, Employees including Casual Employees of Safe Work Australia engaged under the *Public Service Act 1999* are covered by this Agreement.
6. For this Agreement Employees of the Agency do not include:
  - Persons substantively performing duties in the Senior Executive Service; or
  - A person whose salary is not paid or funded by the Agency.

### **Commencement and Duration**

7. This Agreement will begin operation seven days after approval by Fair Work Australia.
8. This Agreement shall nominally expire on 30 June 2014.

### **No Extra Claims**

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

### **Variations to Agreement**

10. This Agreement may only be varied in accordance with the *Fair Work Act 2009*.

## Relationship to Legislation

11. It is acknowledged that employment is subject to the provisions of Acts (and Regulations and Instruments made under those Acts) including, but not limited to, the:  
*Administrative Decisions (Judicial Review) Act 1977;*  
*Age Discrimination Act 2004;*  
*Disability Discrimination Act 1992;*  
*Fair Work Act 2009;*  
*Long Service Leave (Commonwealth Employees) Act 1976;*  
*Maternity Leave (Commonwealth Employees) Act 1973;*  
*Occupational Health and Safety Act 1991;*  
*Public Service Act 1999;*  
*Privacy Act 1988;*  
*Racial Discrimination Act 1975;*  
*Safety, Rehabilitation and Compensation Act 1988;*  
*Sex Discrimination Act 1984;*  
*Superannuation Act 1976;*  
*Superannuation Act 1990;*  
*Superannuation Act 2005;*  
*Superannuation Benefits (Supervisory Mechanisms) Act 1990;*  
*Superannuation (Productivity Benefit) Act 1988; and*  
*Superannuation Guarantee (Administration) Act 1992*
12. Reference to any legislation in this Agreement is a reference to legislation as amended or replaced from time to time.
13. To the extent that there is an inconsistency between this Agreement and any applicable legislation, the terms of the legislation will prevail except where the provisions of the Agreement provide for greater entitlements to Employees than those enacted by the legislation.
14. This Agreement states the terms and conditions of employment of the Employees covered by this Agreement other than terms and conditions applying under a relevant Commonwealth law or implied at common law.
15. The operation of this Agreement is supported by Safe Work Australia policies, procedures, and guidelines. If there is any inconsistency between the policies, procedures and guidelines and the terms of this Agreement, the express terms of this Agreement prevail.
16. The Agency will ensure that all policies, procedures and guidelines are readily available to Employees.
17. Policies, procedures and guidelines which support the operation of this Agreement may be made or varied from time to time following consultation with the parties to the Agreement and will apply in the form they are in as at the time of any relevant



action/decision. Where a proposed, new or altered policy, procedure or guideline may detrimentally affect employee conditions or entitlements, it may only be varied by agreement.

18. Agency policies, procedures and guidelines that do not underpin or support the Agreement, that is those that do not pertain to employee entitlements or the performance of work, may be varied after advising and consulting the parties. But where a change may adversely affect one or more Employees, it shall also be referred to the Workplace Consultative Forum (WCF) for consideration. Adequate notice of such proposed changes must be given.
19. For the avoidance of doubt, Agency policies, procedures and guidelines do not form part of this Agreement unless the Agreement expressly provides that they have been incorporated in the Agreement.
20. Disputes over the content, application or interpretation of any policies, procedures or guidelines which support the operation of this Agreement will be subject to the Dispute Resolution procedures of the Agreement.

### **Delegation**

21. The Chief Executive Officer may, in writing, delegate any of the Chief Executive Officer's powers or functions under this Agreement (other than under this clause).
22. A person exercising powers or functions under the previous Clause must comply with any direction of the Chief Executive Officer.

### **Interpretation and Definitions**

"Action" includes a refusal or failure to act.

"Agency" means Safe Work Australia

"Agreement" means the *Safe Work Australia Enterprise Agreement 2011-2014*.

"APS" means Australian Public Service.

"APS Code of Conduct" and "Code of Conduct" means the set of rules as defined in section 13 of the *Public Service Act 1999*.

"APS Employee" has the same meaning as the *Public Service Act 1999*.

"APS Values" and "Values" means the values as defined in section 10 of the *Public Service Act 1999*.

"Approved Student" means an Employee who has received approval from the Chief Executive Officer to undertake formal study.

"Broadband" refers to the combination of two or more Classifications in a single unit called a Broadband. A Broadband encompasses the full range of work value of the Classifications contained within it.

"Cadet APS" means an Employee allocated the classification of Cadet APS in accordance with the Classification Rules 2000. Cadets undertake a Cadetship with Safe Work Australia involving a combination of full-time tertiary study and work placement throughout the duration of their studies.

“Casual Employee/s” means a person engaged as an APS Employee for duties that are irregular or intermittent.

“Chief Executive Officer” means the Agency Head of Safe Work Australia.

“CPSU” means the Community and Public Sector Union.

“DEEWR” means the Department of Education, Employment and Workplace Relations.

“Delegate” means a person to whom the Chief Executive Officer of Safe Work Australia has given the legal capacity to exercise a power or function under this Agreement.

“Dependant” means the spouse of the Employee; and/or child or parent of the Employee, or of the spouse of the Employee, being a child or parent, who ordinarily resides with the Employee and who is wholly or substantially dependent on the Employee.

“Employee/s” means an Employee of the Safe Work Australia covered by this Agreement (whether full-time or part-time) and includes Employees on temporary placement in the Agency.

“Fair Work Act” means the *Fair Work Act 2009*.

“Family” means a person who:

- (a) is related by blood or by marriage to the Employee; or
- (b) is a *de facto* partner, former spouse or former *de facto* partner of the Employee without discrimination as to sexual preference; or
- (c) is a parent, grandparent, grandchild or sibling of the employee or spouse of the Employee; or
- (d) is a child, adopted child or a foster child, including an adult child of the Employee; or
- (e) is related through traditional kinship and is in a genuine domestic or household relationship with the Employee; or
- (f) otherwise is a member of the Employee’s household but not employed by the Employee; or
- (g) the Chief Executive Officer is satisfied has a strong familial affinity with the Employee.

“Foster care” means an arrangement whereby an Employee, as primary carer, assumes long-term responsibility for a child:

- (a) Arising from the placement of the child by a ‘fostering’ arrangement or Parentage Order by a person/organisation with statutory responsibility for the placement of the child;
- (b) Where the child is, or will be, under 16 years of age as at the day of placement, or the expected day of placement, of the child;
- (c) Where the placement of the child:
  - (i) is for a period longer than six months; and
  - (ii) in circumstances where it is not expected that the child will return to their family; and
- (d) The child is not (otherwise than because of the fostering) a child of the Employee or the Employee’s spouse or *de facto* partner. The ‘placement’ of a child, means the earlier of the following days:
  - (i) the day on which the Employee first takes long term care of the child; or
  - (ii) the day on which the Employee starts any travel that is reasonably necessary to take custody of the child.

“Graduate APS” means an Employee allocated the classification of Graduate APS in accordance with the Classification Rules 2000. Graduates undertake a structured program of training and work placements.

“Branch” means a major organisational unit within Safe Work Australia that includes the term Branch in its name.

“Branch Manager” means the Employee responsible for a work unit described as a Branch within Safe Work Australia.

“Manager” means the person to whom the employee is responsible and is authorised by the Chief Executive Officer to exercise the powers and responsibilities of a manager or supervisor in relation to that employee.

“Official Travel” means travel that an Employee is requested to undertake on behalf of Safe Work Australia. Official Travel requires formal approval by the Chief Executive Officer.

“Partner” means a person who is a member of a couple, the other member of the couple and includes a “De facto Partner” as defined in the *Fair Work Act 2009*.

“Public Service Act” means the *Public Service Act 1999*.

“Recognition of Travel Time” means for APS 1-6 level (and equivalent) Employees, that travel on official business undertaken between 7.00 am and 7.00 pm bandwidth (Monday to Friday) may be recorded as flextime. The start and finish times of the 12 hour bandwidth may be adjusted in recognition of travel time with Chief Executive Officer’s approval (e.g. 5.00 am – 5.00 pm). Travel time is recorded within the bandwidth as follows:

- for air travel to and from capital cities time recorded would normally be 75 minutes before the flight departs and up to 75 minutes after the flight arrives,
- for air travel to country and regional centres from a capital, the time recorded would normally be 75 minutes before departure and 45 minute after arrival,
- for air travel from a country or regional centre to a capital, 45 minutes before departure and 75 minutes after arrival, and
- all other travel would normally be recorded as actual departure and arrival times.

“SES” means a member of the APS Senior Executive Service employed by Safe Work Australia. A reference to the SES includes their equivalents as provided for in Schedule 1 of the Public Service Classification Rules 2000.

“Shift Worker” means an Employee who is rostered to work ordinary hours outside of the period 7.00 am to 7.00 pm Monday to Friday and/or Saturdays, Sundays or public holidays for an ongoing or fixed period.

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

“the Agency” means Safe Work Australia.

“Trainee APS (Administrative)” means an Employee allocated the Classification of Trainee APS (Administrative) in accordance with the Classification Rules 2000. Trainee APS (Administrative) Employees undertake a training program for a period of 12 months which combines time at work with training, and can be full-time, part-time or school-based.

“Training Classification” means the classifications listed in Schedule 4 of the Public Service Classification Rules 2000.

“Workplace Delegate/s” means an Employee nominated by the CPSU as a CPSU delegate within Safe Work Australia.

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## **PART C REMUNERATION ARRANGEMENTS**

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### **Annual Productivity Based Salary Increases**

23. In recognition of their commitment to this Agreement and associated productivity initiatives, Employees will receive a one-off lump sum payment together with salary increases on commencement of the Agreement, from 1 September 2012 and from 1 July 2013.
24. The quantum or rate of benefits are:
- The lump sum productivity payment shall be \$750 payable to each on-going Employee, and each non on-going Employee with more than 6 weeks remaining in their current engagement with the Agency, plus:
  - On commencement of the Agreement an increase of 0.5% and no more than 1.25%
  - On 1 September 2012 in the order of 3.75%; and
  - On 1 July 2013 no less than 3.25% and no more than 3.52%
25. No qualifying period applies in relation to an Employee's eligibility to receive a productivity salary increase.
26. The new salary rates for employees in the General Classification resulting from these increases form [Appendix 1](#) to this Agreement. New salary scales for Employees in the Government Lawyer and Trainee classifications are at [Appendix 2](#) and [Appendix 4](#) respectively. The pay increases on commencement for the Government Lawyer and Trainee classifications are no less than 0.65%.

### **Salary Maintenance – Existing Employees**

27. An Employee in receipt of a salary above the salary range published at [Appendix 1](#) for their classification and pay point on commencement of this Agreement will have their salary maintained at that higher rate until the relevant rate of pay in [Appendix 1](#) equals or exceeds the Employee's maintained salary at which time the applicable salary in [Appendix 1](#) will apply to the Employee for all purposes.
28. The provisions of Clauses 33 to 38, describing Individual Flexibility Arrangements, will be used to introduce or vary any salary above the salary ranges in [Appendix 1](#).

### **Salary Rates and Salary Advancement**

29. On commencement of this Agreement, an Employee will receive the salary relevant to their current Classification and pay point as specified in [Appendix 1](#).
30. Subject to this Agreement, an Employee may achieve a further salary increase on 15 August each year by performance based salary advancement through the pay points relevant to the Employee's Classification or Broadband based on the outcome of the Employee's participation in the Agency's Performance Appraisal and Development Scheme.
31. The Performance Appraisal and Development Scheme in Part N of this Agreement includes rules about eligibility for performance based salary advancement, including the qualifying period.

## **Salary Advancement for Safe Work Australia Government Lawyers and Trainees**

32. Salary advancement provisions for Safe Work Australia Government Lawyers are outlined in [Appendix 2](#). Salary advancement provisions for Safe Work Australia Trainees may be found at [Appendix 4](#).

## **Individual Flexibility Arrangement**

33. The Chief Executive Officer and an Employee covered by this Agreement may agree to make an Individual Flexibility Arrangement to vary the effect of terms of the Agreement if:
- the Individual Flexibility Arrangement deals with one or more of the following matters:
    - arrangements about when work is performed;
    - arrangements regarding travel;
    - overtime rates;
    - penalty rates;
    - allowances;
    - remuneration; and/or
    - leave; and
  - the arrangement meets the genuine needs of the Agency and the Employee in relation to one or more of the matters mentioned above; and
  - the arrangement is genuinely agreed to by the Chief Executive Officer and the Employee.
34. The Chief Executive Officer must ensure that the terms of the Individual Flexibility Arrangement:
- are about permitted matters under section 172 of the Fair Work Act 2009; and
  - are not unlawful terms under section 194 of the Fair Work Act 2009; and
  - result in the Employee being better off overall than the Employee would be if no arrangement was made.
35. The Chief Executive Officer must ensure that the Individual Flexibility Arrangement:
- is in writing; and
  - includes the name of the Employer and the Employee; and
- is signed by the Chief Executive Officer and the Employee and if the Employee is under 18 years of age, signed by a parent or guardian of the Employee; and
- includes details of:
    - the terms of the enterprise agreement that will be varied by the Individual Flexibility Arrangement; and
    - how the Individual Flexibility Arrangement will vary the effect of the terms; and
    - how the Employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the Individual Flexibility Arrangement; and
  - states the day on which the Individual Flexibility Arrangement commences, when the Individual Flexibility Arrangement will be reviewed and, where applicable, when the Individual Flexibility Arrangement ceases.
36. The Chief Executive Officer must give the Employee a copy of the Individual Flexibility Arrangement within 14 days after it is agreed to.

37. The Chief Executive Officer or the Employee may terminate the Individual Flexibility Arrangement:
- by giving no less than 28 days written notice to the other party to the Arrangement; or
  - if the Chief Executive Officer and the Employee agree in writing — at any time.
38. Aggregated information, including the reasons for use of Individual Flexibility Arrangements, will be provided to the Workplace Consultative Forum.

Note: From time to time the Workplace Consultative Forum may request or seek advice on Flexibility Agreements.

### **Payment of Salary**

39. Employees will be paid fortnightly in arrears and the fortnightly rate of pay will be based on the following formula:

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

### **Method of Payment**

40. Employees will have their fortnightly salary paid in arrears by electronic funds transfer into a financial institution account of their choice allowing for reasonable disbursements or deductions at the request of the Employee.

### **Flexible Remuneration and Salary Packaging**

41. Access to flexible remuneration packaging via the Agency's Salary Packaging Policy - as varied from time to time - will be available to all Employees, including Casual Employees, covered by this Agreement.
42. Employees may access salary packaging and may package up to one hundred percent of salary.
43. Where an Employee takes up the option of flexible remuneration packaging on a 'salary sacrifice' basis, the Employee's salary for purposes of superannuation, severance and termination payments (and any other purpose) will be determined as if the flexible remuneration packaging arrangement had not been entered into.
44. Any fringe benefits tax incurred in relation to an individual Employee as a result of his or her salary packaging arrangement will be met by the individual Employee.

### **Salary on Engagement or Promotion**

45. Where an Employee is engaged (either on an ongoing or a non-ongoing basis) or is promoted within or to the Agency, salary will be payable at the minimum point of the Agency's salary range applicable to the Classification of the Employee, unless the Chief Executive Officer authorises payment of salary above the minimum point in that salary range, having regard to:
- the experience, qualifications and skills of the Employee;
  - the pre-promotion salary of the employee;
  - work level standards; and
  - the nature of the duties which are to be assigned to the Employee.

46. An Employee, to whom Clause 45 applies, may discuss salary with the Chief Executive Officer before taking up the assigned duties. The qualifying periods for salary advancement under the Performance Appraisal and Development Scheme will be taken into account in this discussion.
47. Where, at the time of commencement, an Employee's salary is set at an incorrect salary point within the applicable salary range, the Chief Executive Officer may authorise in writing the payment of the Employee's salary at the correct salary point.
48. Where an Employee is promoted within the Agency and has previously been temporarily assigned duties at this Classification and that period of temporary assignment immediately precedes the date of effect of the promotion, the period of temporary assignment will count towards the qualifying period for salary advancement.

#### **Salary on Assignment within or Movement to the Agency at the same Classification**

49. Where an Employee is assigned new duties within, or moves to, the Agency at the Employee's existing Classification, salary will be payable at the point of the Agency salary range determined by the Chief Executive Officer having regard to:
- the experience, qualifications and skills of the Employee;
  - the salary payable to the Employee in respect of the duties they performed before the new duties were assigned or they were moved;
  - work level standards; and
  - the nature of the duties which are to be assigned to the Employee.

#### **Salary on Temporary Assignment to the Agency from another agency at a Higher Classification**

50. Where an Employee from another agency (the "other agency") is temporarily assigned duties in Safe Work Australia either at a higher Classification or in a part of a Broadband that has a higher equivalent APS Classification than the duties performed by the Employee in the other agency, salary will be payable at the minimum point of the applicable Safe Work Australia salary range unless the Chief Executive Officer authorises payment of salary above the minimum point in that salary range, having regard to:
- the experience, qualifications and skills of the Employee;
  - the salary payable to the Employee in respect of the duties they performed in the other agency;
  - work level standards; and
  - the nature of the duties which are to be assigned to the Employee.

#### **Salary Maintenance on Movement to the Agency**

51. At the discretion of the Chief Executive Officer, an Employee moving to Safe Work Australia from another agency (the "other agency") whose salary at the other agency (current salary) exceeds the current maximum of the relevant Classification in this Agreement can be maintained on their current salary until such time as their salary is commensurate with the relevant Safe Work Australia salary. This salary maintenance will be done in the same manner as described at Clause 27.

#### **Salary on Reduction to Duties with a Lower Classification**

52. Where the Classification of an Employee is reduced, on either a temporary or ongoing basis in accordance with the provisions of this Agreement and/or the provisions of the



Public Service Act, and on the initiative of the Chief Executive Officer, salary will be determined by the Chief Executive Officer having regard to:

- the experience, qualifications and skills of the Employee;
- the salary payable to, and Classification of, the Employee in respect of the duties they performed before the new duties were assigned to the Employee;
- the classification of the Employee in relation to the new duties; and
- work level standards.

53. The reduced salary will be at the top of the salary range of the lower classification. However, where an Employee's classification has been reduced as a result of an adverse Code of Conduct determination, their salary may be at any point in the lower classification range as determined by the Chief Executive Officer.

Note: Where the reduction in Classification is a result of workforce adjustment outlined in Part Q of this Agreement, an Employee's reduced salary will take effect after the expiration the retention period determined in Part Q.

54. Where an Employee requests or agrees in writing, to perform work at a lower classification level, salary will be determined at a rate applicable to the lower level for the period specified. Normally this would be at the top of the salary range of the lower classification.
55. Where the reduction in Classification is Employee-initiated, no income maintenance period will apply unless agreed by the Chief Executive Officer.

#### **Rate of Salary – Regular Part-Time Employment**

56. Unless agreed otherwise in writing between the Employee and the Chief Executive Officer, where an Employee is employed for an agreed number of regular hours per week which is less than the ordinary hours of work specified in this Agreement, the Employee shall receive, on a pro rata basis, equivalent pay and conditions to those of a full-time Employee.
57. In relation to allowances and benefits in the nature of reimbursement, an Employee to whom Clause 56 applies will receive entitlements specified in the relevant clauses of this Agreement.

#### **Rate of Salary – Casual Loading**

58. Where an Employee, whether ongoing or non-ongoing, does not work a regular number of hours per Settlement Period, or performs duties on an intermittent basis, or is otherwise treated as a Casual Employee, the Employee will be paid an additional 20% loading of their normal hourly rate of pay. The loading is in lieu of any payment in relation to any form of paid leave (except Long Service Leave) or in relation to any period not worked on a public holiday or during the Christmas Close-Down.
59. An Employee paid an additional 20% loading shall be regarded as a Casual Employee for the purposes of the *Fair Work Act 2009*. If a modern award covering non SES employment in the Agency is made during the life of this Agreement, and that award provides for a higher casual loading, the new rate specified in the modern award shall apply.

#### **Cadet Rates**

60. The Chief Executive Officer may engage a person as a Cadet APS.

61. A Cadet APS Employee will be paid 67% of the minimum salary point of APS 3.
62. When the Chief Executive Officer is satisfied that the course of training has been successfully completed, a Cadet APS Employee will be allocated a Classification in accordance with the Classification Rules and the Chief Executive Officer will determine a salary within the applicable range.

### **Trainees and Trainee Rates**

63. The Chief Executive Officer may engage a person as a Trainee APS (Administrative).
64. Trainee APS (Administrative) Employees will be assigned a classification within the Safe Work Australia Training Broadband and undertake a course of study determined by the Chief Executive Officer.
65. A Trainee APS (Administrative) Employee will be paid at the minimum salary point of APS 1 or such other salary point as the Chief Executive Officer determines.
66. The Chief Executive Officer shall determine when an APS Trainee's course of study and training has been successfully completed.
67. On successful completion of their training requirements, the classification of Safe Work Australia Trainee APS (Administrative) will be the APS 1 Classification level. The Employee will then be integrate in to the Safe Work Australia Level 1 Broadband described in [Appendix 1](#). Once integrated into the Broadband, the salary will be the base point of the APS 3 classification level unless the Chief Executive Officer determines otherwise having regard to the experience, qualification and skills of the Employee.

### **Graduate Rates**

68. The Chief Executive Officer may engage a person as a Graduate APS.
69. A Graduate APS Employee will be required to undertake a course of training determined by the Chief Executive Officer. While undertaking training, a Graduate APS Employee will be paid at a salary point within the APS 3 Classification of the APS 1-3 Broadband, as determined by the Chief Executive Officer.
70. When the Chief Executive Officer is satisfied that the course of training has been successfully completed, a Graduate APS Employee will be allocated a Classification in accordance with the Classification Rules. The Chief Executive Officer will then assign duties within the APS 3 Classification of the APS 1-3 Broadband and determine salary.

### **Supported Salary Rates**

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

### **Supported Wage Prescribed Rates**

Assessed Capacity	% of prescribed salary rate	Assessed Capacity	% of prescribed salary rate
10%	10%	50%	50%

20%	20%	60%	60%
30%	30%	70%	70%
40%	40%	80%	80%
		90%	90%

### **Junior Rates**

72. Junior rates of pay are only applicable to the APS1 level as detailed at [Appendix 1](#) and [Appendix 4](#).

### **Superannuation**

73. The Agency will make compulsory employer contributions as required by the applicable legislation and fund requirements.
74. Without providing financial advice; the Agency will:
- ensure that a new Employee is fully informed about superannuation arrangements immediately on commencement or recommencement of employment; and
  - allow superannuation choice for an Employee who is eligible for membership of the Public Sector Superannuation Accumulation Plan.
75. The Agency's default superannuation fund is the Public Sector Superannuation Accumulation Plan. The Agency will provide employer superannuation contributions to members of the Public Sector Superannuation Accumulation Plan of no less than 15.4% of an Employee's fortnightly contribution salary.
76. Where an employee has chosen an accumulations superannuation fund other than the Public Sector Superannuation Accumulation Plan, the employer contribution will be the same percentage as required for employees who are members of Public Sector Superannuation Accumulation Plan. This will not be reduced by any other contributions made through salary sacrifice arrangements. This clause does not apply where a superannuation fund cannot accept employer contributions (for example, it is unable to accept contributions for people aged over 75).
77. The Agency will pay superannuation contributions to accumulation superannuation funds during periods of paid and unpaid parental leave (including Maternity, Parental, Adoption and Foster Care Leave). Contributions for periods of paid leave are not limited. Periods of unpaid leave are up to a maximum of 52 weeks.
78. The Chief Executive Officer may choose to limit superannuation choice to complying superannuation funds that allow Employee and/or employer contributions to be paid through fortnightly electronic funds transfer using a file generated by the payroll system used by the Agency.
79. Any fees applied by a chosen fund associated with the administration of superannuation contributions will be borne by the Employee.

### **Death of Employee**

80. Where an Employee dies, or the Chief Executive Officer has determined that an Employee is presumed to have died on a particular date, the Chief Executive Officer will, subject to any legal requirements, authorise the payment of the amount to which the former Employee would have been entitled had the Employee resigned or retired

from employment. Long Service Leave credits will be paid out in accordance with the *Long Service Leave Act (Commonwealth Employees) 1976*.

81. Payment will be made at the Chief Executive Officer's discretion to the dependants or the partner of the former Employee or the Employee's personal representative. If a payment has not been made within 12 months of the former Employee's death or presumed date of death, it will be paid to the Employee's legal personal representative.

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## PART D CLASSIFICATION STRUCTURE

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### Classification Structure

82. The Public Service Classification Rules 2000 make rules about the classification of APS Employees. In the event that new APS Rules are developed while the Agreement remains in force, the parties shall meet and confer about the best approach to give effect to the changes.
83. Work Level Standards are the basis for determining the appropriate classification of duties.
84. The parties to the Agreement agree to implement Work Levels consistent with any APS-wide review outcomes.

### Safe Work Australia Broadbands

85. Safe Work Australia Broadbands applicable to Agency Employees covered by this Agreement are detailed in [Appendix 1](#), [Appendix 2](#) and [Appendix 4](#).
86. Broadbanding describes the action of combining two or more classification levels in a single, broadband level.
87. The Safe Work Australia classification structure and Broadbands consists of the following:

#### General Classification Structure

EL2

EL1

#### Safe Work Australia General Broadband

Safe Work Australia Broadband Level 2 (APS 4-6)

Safe Work Australia Broadband Level 1 (APS 1-3)

#### Training Broadband

Safe Work Australia Training Broadband (APS 1-4)

#### Safe Work Australia Government Lawyer Broadband

Safe Work Australia Principal Government Lawyer Broadband 2 (EL2)

Safe Work Australia Government Lawyer Broadband 1 (APS 3 – EL1)

Note: [Appendix 2](#) details the Government Lawyer Broadbands.

### Safe Work Australia Training Broadband

88. The Safe Work Australia Training Broadband at [Appendix 4](#) is used for those Employees required to undertake a mandatory training or development program whose progression is subject to successful completion of that program.

89. In addition to the training classifications provided for in this Agreement, the Chief Executive Officer may assign other classifications to the Safe Work Australia Training Broadband relevant to the training and development program being undertaken by an Employee or to ensure consistency with Whole of Government approaches. Where a Whole of Government approach is taken in relation to a training and development program, the Whole of Government provisions will apply on like conditions to the extent of any inconsistency.

Note: Any changes to the Safe Work Australia Training Broadband entered into during the life of the Agreement shall comply with APS Classification Rules and the Bargaining Framework.

### **Safe Work Australia Graduates**

90. Safe Work Australia Graduates will enter the Agency at the APS3 classification level within the Safe Work Australia Training Broadband. The salary will be integrated within the Safe Work Australia Level 1 Broadband described in [Appendix 1](#). The salary will be the base point of the APS3 classification level unless the Chief Executive Officer approves payment of a higher salary having regard to the experience, qualifications, skills and previous salary of the Employee.
91. On successful completion of the Graduate Program the classification of Safe Work Australia Graduates will be the APS3 classification level. The salary of these Employees will be the top point of the APS3 classification level unless the Chief Executive Officer determines otherwise.

### **Cadet APS**

92. Employees recruited as Cadet APS will undertake a course of study as determined by the Chief Executive Officer. Cadet APS will be assigned a classification level within the Safe Work Australia Training Broadband. On successful completion of their course of study and a final twelve week work placement, Cadets will be allocated to the APS 1 classification level. The Employee will then be integrated within the Safe Work Australia Level 1 Broadband described in [Appendix 1](#). The salary will be set at the base salary point of the APS1 classification level unless the Chief Executive Officer determines otherwise having regard to the experience, qualifications and skills of the Employee.

### **Selection Processes**

93. The Agency is committed to good practice in its approach to recruitment, promotion and assignment of duties, which is consistent with the legislative framework established by the Public Service Act.
94. An Employee who has been formally declared an Excess Employee by the Chief Executive Officer in accordance with Part Q will be considered for vacancies at or below their substantive Classification prior to any decision to advertise externally.
95. Despite anything in any other provision of this Agreement, the Chief Executive Officer may move, on an ongoing or other basis, a person from another Agency to the Agency at their current Classification or equivalent, provided all interested Employees within the Agency have been provided with the opportunity to be considered, where it is practicable and appropriate to do so.

**Provision of Electronic Payment Summaries**

96. The Agency will provide electronic payment summaries to all Employees at the end of each financial year. Where Employees are on long term leave or have separated from the Agency a hard copy payment summary will be sent to their mailing address.

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## **PART E ALLOWANCES**

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### **School Holiday Care Allowance**

97. The Agency will contribute to the cost of school holiday care for primary school children of Employees, when the Employee is at work. Where both carers work for the Agency, the allowance will only be paid when both are at work.
98. On production of a receipt from an approved school holiday program provider, the Agency will reimburse \$18 per child per day up to a maximum of \$180 per family per week. It is not intended that this reimbursement be subject to tax instalment deductions.

### **Departmental Liaison Officer (DLO) Allowance**

99. An Employee who receives the DLO allowance is not entitled to claim for flextime or any overtime worked while performing the duties of DLO. The DLO Allowance will be increased over the life of the Agreement. On commencement the Allowance shall be \$19,000; from 1 September 2012 it will rise to \$ 19,750; and from 1 July 2013 it will be \$ 20,500.

### **Workplace Responsibility Allowance**

100. An ongoing Employee is entitled to a workplace responsibility allowance of \$26 per fortnight where they are appointed to a workplace responsibility role consistent with the Workplace Responsibility Allowance Policy and have successfully completed a training program and any refresher courses required by the Workplace Responsibility Allowance Policy.
101. A workplace responsibility role includes a First Aid Officer, Harassment Contact Officer, Fire Warden or Health and Safety Representative.
102. In exceptional circumstances, where agreed by the Chief Executive Officer, a part-time or non-ongoing Employee may be appointed to a workplace responsibility role.
103. If an Employee undertakes more than one of the recognised workplace responsibilities they will not be entitled to multiple payment of the workplace responsibility allowance.

### **Cadets – Books and Equipment Allowance**

104. A Cadet Employee is entitled to reimbursement for all compulsory fees paid during the year relating to the approved study paid for that year. It is not intended that this payment by way of reimbursement be subject to tax instalment deductions. A cadet also receives payment of an annual allowance of \$550 or another amount as determined by the Chief Executive Officer, to provide for books and equipment. Where a Whole of Government approach is taken, the Whole of Government provisions will apply on like conditions to the extent of any inconsistency with these provisions.

### **Community and Indigenous Australian Languages Allowance**

105. An Employee is eligible for an annual allowance of \$1,700 per annum where the Employee is accredited to a fluent level in a recognised Community or Indigenous Australian language by an appropriate individual or body, and where the Employee is



required to utilise a particular Community or Indigenous Australian language in the delivery of the Agency's programs.

**Loss, Damage and Indemnity Allowance**

106. The Chief Executive Officer may approve reimbursement to an Employee for loss or damage to clothing or personal effects which occurred in the course of the Employee's work. This reimbursement is not subject to tax instalment deductions.

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## **PART F    WORKING HOURS**

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107. The Agency recognises Employees have family and personal obligations and is committed to providing flexibility in working arrangements that allow it to assist Employees in balancing their personal and work commitments.
108. All Employees may request flexible working arrangements consistent with the relevant provisions of this agreement. Managers and Employees have a responsibility to ensure that those flexible working arrangements are applied and accessed fairly and consistently.
109. Managers and Employees are mutually responsible for managing work flows and ensuring that leave and other flexible work arrangements are maintained through proper planning and consultation. Flexible work arrangements are also integral to business and workforce planning.
110. An Employee who is a parent, or has responsibility for the care of a child under school age or a child under 18 who has a disability, may request flexible working arrangements consistent with the *Fair Work Act 2009*. This includes but is not limited to requests for part-time work.
111. A Casual Employee engaged for irregular or intermittent duties may only request flexible work arrangements if the Employee is:
- a long-term casual Employee as defined at section 12 of the *Fair Work Act 2009*, immediately before making the request; and
  - has a reasonable expectation of continuing employment on a regular and systemic basis.
112. For a request to be in accordance with Clause 108, it must be in writing and set out details of the change sought and the reasons for the change. The Chief Executive Officer will respond in writing to the request within 21 days and will only refuse on reasonable business grounds. Where the request is refused, the response will include reasons for the refusal.

### **Standard Working Hours**

113. Employees will not be required to work excessive hours and have the right to refuse unreasonable additional hours. Managers and Employees should work together to ensure Employees' workloads are reasonable.
114. All Employees are required to maintain a record of employment including hours worked. This will assist in monitoring workloads. The Employee's Manager may access this record on request.

115. Under this Agreement the following definitions apply:

Ordinary Hours or Standard Hours	means a 7 hour 30 minute day within the Bandwidth
Standard Day	is 8:30 am to 12:30 pm and 1:30 pm to 5:00 pm Monday to Friday, except where a public holiday occurs
Settlement Period	is the four week period beginning on a pay Thursday for the purposes of determining flex debit/credit carryover
Bandwidth	is 7:00 am to 7:00 pm from Monday to Friday, except on a public holiday or where a different start time is approved for travel purposes

### **Ordinary Hours – Full-Time Employees**

116. With effect from the date of commencement of this Agreement, the ordinary hours for full-time Employees will be 150 hours per settlement period.
117. An Employee may vary their pattern of ordinary hours outside the standard day in accordance with the flextime and Executive Level working arrangements provisions.
118. Employees must take a meal break of at least 30 minutes after 5 continuous hours of work. The maximum number of agreed working hours to be worked in a day is 10 hours, unless also working overtime.

### **Part-Time Employees**

119. The Agency may engage an Employee on a permanent part-time basis. An Employee engaged on a part-time basis does not have an automatic right to vary their part-time hours or access full-time hours.
120. A part-time Employee is an Employee whose ordinary hours are less than 150 hours in a settlement period. Employees are required to work at least three hours on any agreed working day.
121. Remuneration and other entitlements for part-time Employees, including leave, will be calculated on a pro-rata basis with 7 hours 30 minutes per day considered the full-time equivalent. Entitlements based on reimbursement will be the same as for full-time staff.
122. Employees who work part-time can agree to work outside their agreed hours and pattern of work. In such instances part-time Employees with the exception of Executive Level Employees (or equivalent) will be entitled to flex time provisions, but where work is directed outside their agreed hours, overtime rates are applicable. Executive Level Employees (or equivalent) have access to TOIL provisions as per clauses 173-181.

### **Request for Part-Time Work**

123. The Agency and an Employee may enter into part-time employment arrangements. A full-time Employee cannot be compelled to work part-time.
124. An Employee may request access to part-time employment at any time. Managers will make every attempt to accommodate the request having regard to both the operational requirements of the Agency and the personal needs of the Employee.

125. Where a request for part-time work is denied the Employee will be provided promptly with written reasons for the decision. The manager will meet with the Employee, and where they choose their representative, to consider alternative measures to meet the needs of the Employee.
126. Part-time work arrangements will be set out in a written agreement which may include the Employee's hours of duty, the duration of the agreement and details of any specific arrangements that are necessary to facilitate the part-time employment.
127. The terms of a part-time agreement cannot be varied without the agreement of the Employee and the Chief Executive Officer. This includes reversion or conversion to full-time arrangements before the originally agreed date. Any request for review by the Employee will be considered within one month. Part-time hours can be varied by agreement between the Employee and the manager on a short term basis to facilitate access to training or other opportunities. At the end of the part-time agreement the Employee can either return to full-time work or apply for a further period of part-time employment.
128. Employees returning from maternity, parental, foster or adoption leave will be provided with access to part-time employment, upon application, up until the child reaches four years of age. The part-time hours and days of work are to be agreed between the Manager and Employee having regard to operational requirements and the Employee's circumstances.
129. An Employee who is part-time should be genuinely considered for promotion and transfers on the basis of merit but any part-time arrangement will need to be renegotiated in the new position. Part-time employment arrangements are not to disadvantage Employees with respect to training, leave, overtime and other entitlements.
130. It is the Manager's responsibility to ensure that part-time Employees are informed of issues in the work area. Wherever possible, meetings should be scheduled to ensure that part-time Employees are able to attend.

### **Flextime**

131. Flextime is available to all APS level (or equivalent) Employees. Flextime allows for Employees and Managers to vary working hours and patterns to provide maximum organisational flexibility. It allows the Manager and Employee to design flexible working arrangements that take account of the need to balance the achievement of organisational outcomes and the individual's personal commitments. All hours must be recorded in the manner stipulated by the Agency.
132. An Employee's pattern of ordinary hours should be agreed between the Employee and their Manager. These agreed hours may on occasions need to be varied by either the Employee or the Manager to accommodate operational or personal needs.
133. Where agreement cannot be reached on the pattern of ordinary hours, the issue should be resolved in accordance with the Dispute Resolution procedures of this Agreement. While the dispute is being resolved the Employee will work a Standard Day.

## **Employees Accumulate Flextime within the Bandwidth**

### Flex Credits

134. A flex credit is where an Employee accumulates hours in excess of Ordinary Hours. An Employee may carry over a maximum of 37.5 hours flex credit into the next settlement period. An Employee may only carry over a flex credit in excess of 37.5 hours where the Manager has expressly agreed to the additional hours being worked.
135. Where an Employee has a flex credit in excess of 37.5 hours, the Employee and their Manager must identify and discuss appropriate actions to try to reduce the flex credit. It is the responsibility of Managers and Employees to take positive steps to reduce flex credits.
136. No reasonable request for flex leave will be refused.
137. If an Employee's flex credit exceeds 37.5 hours over a sustained period a performance management discussion must be held to address the cause of the excessive hours and include a review of work arrangements.
138. If appropriate actions to reduce the flex credit cannot be agreed within two settlement periods People, Finance and Business Services Team must be advised and will then facilitate a resolution. Where the Employee's flex credits exceed 37.5 hours and there is no opportunity for these to be reduced Corporate Services Branch may:
  - direct that flex leave be taken; or
  - offer the Employee the option to cash out flextime credits in excess of 37.5 hours at the ordinary time rate.
139. An excess credit situation such as this should only occur in exceptional, non-enduring, non-recurring circumstances.

### Flex Debits

140. A flex debit occurs when the Employee works less time than their ordinary hours. A maximum of 22.5 hours debit can be accumulated and carried over to the next settlement period. Any flex debit will be deducted from a person's final monies if they cease to work for the Agency.
141. Where an Employee has accrued annual leave credits in excess of 20 days (or equivalent of a one year entitlement) the Employee may apply to the Chief Executive Officer to cash out any credits in excess of 20 days (or equivalent of a one year entitlement) to offset their flex debit. Cashing out of annual leave to reduce a flex debit should only be considered in one off situations, not as an ongoing arrangement to manage the flex debit.
142. Where an Employee carries over a flex debit of 22.5 hours or more, the Employee and their Manager must agree on appropriate actions to reduce the flex debit. Options to reduce debits may include:
  - agreeing on a work pattern that will reduce the debit over time;
  - applying to cash out annual leave credits to reduce all or part of the debit consistent with National Employment Standards (refer Clause 141);
  - applying for miscellaneous leave without pay for all or part of the debit; or
  - a combination of the above.

143. In agreeing on the appropriate actions to reduce a flex debit, the operational requirements of the work area and the personal commitments of the Employee must be considered.
144. An excess debit situation such as this should only occur in exceptional, non-enduring, non-recurring circumstances and longer term arrangements to manage attendance must be agreed.

#### Flex Leave

145. Flex leave is where an Employee works less than their ordinary hours on any given day and is not on any other form of leave. An Employee may use up to the equivalent of 5 days flex credits in a settlement period. Flex leave requires prior approval and for periods of one day or more reasonable notice is required.
146. Where there is demonstrably insufficient work, a Manager may require an Employee not to work hours in addition to their Ordinary Hours.
147. Managers are responsible for ensuring that Employees do not build excessive flex credits with no opportunity to access flex leave.

#### Attendance requirements, rostering and scheduling meetings

148. Where an Employee's Manager considers the Employee's attendance is unsatisfactory or that the Employee is misusing flex, the Employee will be advised in writing and will be required to work a Standard Day for a period specified by the Manager. The Employee and the Manager may also agree to alternative arrangements including new work times that do not vary the number of hours work.
149. Where an Employee is required to work to a set roster or within fixed times, the Manager will ensure that where operational requirements allow choice and flexibility options for the Employee are established within the roster or fixed times.
150. Wherever possible, meetings will be held within affected Employees' agreed hours and patterns of work.

#### **Overtime**

151. Where operational requirements make it necessary, a Manager may direct an Employee to work outside their ordinary hours on any day. Employees may also be restricted to be contactable to return to work outside ordinary hours. The restriction provisions will apply in these cases as outlined in Clauses 159 to 164.
152. The Manager must give reasonable notice about the requirement to work overtime and be mindful of the personal responsibilities of the Employee.
153. An Employee directed to perform work outside and in excess of their ordinary hours on a given day is eligible for an overtime payment, or where agreed, time off in lieu of overtime payment.
154. Where a period of overtime is not continuous with ordinary time work, the base period of overtime payment for such work will be calculated as if the Employee had worked for 4 hours. When determining whether a period is continuous with ordinary time work, meal breaks should not be regarded as breaking continuity.

155. Overtime payments will be calculated as follows:
- **Monday to Saturday:** one and a half times the hourly rate for the first three hours each day and double the hourly rate thereafter
  - **Saturday:** double the hourly rate for Shift Workers (as per Shift Work provisions)
  - **Sunday:** double the hourly rate
  - **Public Holiday:** two and a half times the hourly rate. (Duty on a public holiday not in excess of an Employee's ordinary hours - that is, duty that is not overtime but which is part of the Employee's ordinary hours - will be paid at one and a half times the hourly rate additional to payment for the holiday).
156. For non Executive Level Employees generally time off in lieu of overtime payment may be taken as follows:
- where the Manager and the Employee agree, on an "hour for hour" basis with an entitlement to residual payment (for example - 3 hours time off plus 3 hours pay at half-time, in lieu of 3 hours overtime at time and a half); or
  - on a penalty time basis, for example, 4½ hours time off in lieu of overtime payment.
157. Where time off in lieu of payment has been agreed and the non Executive Level Employee has not been granted time off within four weeks or another agreed period, due to operational requirements, payment of the original entitlement will be made.
158. Executive Level Employees will only be eligible to receive overtime payments in exceptional circumstances and with the approval of the Chief Executive Officer. They may be compensated for additional hours worked in the form of time-off-in-lieu but there is no obligation on managers to provide compensation on an hour-for-hour basis.

### **Restriction Allowance**

159. Where an Employee is required to remain contactable and available to perform extra duty outside their agreed ordinary hours (i.e. be restricted), they will be paid a restriction allowance.
160. Where a group of Employees are restricted on a regular basis, the manager will ensure that restriction over weekends and public holidays is rostered equitably.
161. Restricted Employees will receive a Restriction Allowance at the rate of 9% of their hourly rate for each hour they are restricted outside the bandwidth, subject to:
- prior approval of the Chief Executive Officer; and
  - their remaining contactable and available to perform extra duty; and
  - the Employee not being in receipt of any other payment for the period for which Restriction Allowance would otherwise be payable, except as provided for in the following paragraph.
162. Restriction Allowance is payable whether or not the restricted Employee is required to perform duty outside the agreed ordinary hours. Where a restricted Employee, entitled to overtime payment is required to perform duty, overtime will be payable and subject to:
- a one hour base rate of payment when work is performed without the necessity to travel to the workplace
  - a three hour base rate of payment including travel time if work is required to be performed at the workplace.

163. If an Employee is required to perform subsequent periods of duty within the one hour minimum payment period, only the initial one hour minimum is payable. Where an Employee is required to undertake a second period of duty that commences after the one hour minimum payment period has elapsed for the previous first period of duty, a further second one hour minimum payment period commences and a further one hour minimum is payable.
164. Restriction Allowance will continue to be paid for periods of overtime worked while restricted.

### **Emergency Duty and Additional Child Care Costs**

165. Emergency duty will attract a base payment of two hours (which includes reasonable travel time) at double the hourly rate, which will be payable for all emergency callouts without prior notice. Executive Level Employees will only be eligible to receive emergency duty payments in exceptional circumstances with the approval of the Chief Executive Officer.
166. Employees who undertake emergency duty are also entitled to reimbursement for child care costs where those costs are incurred as a necessary consequence of undertaking Emergency Duty and could not reasonably have been avoided by the Employee.

### **Overtime Meal Allowance**

167. Where a non Executive Level Employee is directed to work at least 3 hours outside their ordinary hours they will receive a flat rate meal allowance of \$27.50 where such an Employee works a further 5 hours on a Saturday, Sunday or public holiday, they will receive an additional meal allowance of \$27.50.
168. Where exceptional circumstances exist and an Executive Level Employee is eligible for paid Overtime, they may also claim a meal allowance of \$27.50 but only where they have been directed to work at least three continuous additional hours outside their ordinary hours of work.
169. Where an Executive Level employee is supervising employees on overtime who are eligible for the payment of a meal allowance, the Executive Level employee will also be eligible for payment of a meal allowance.

Note: Overtime Meal Allowance is payable regardless of whether the directed overtime is compensated as paid overtime or as TOIL.

### **Rest Break**

170. Employees should not commence work on any day without having at least eight hours plus reasonable travelling time minimum break from the previous day's work, including any overtime worked, without specific approval from the Chief Executive Officer.
171. Where the Chief Executive Officer requires an Employee to resume or continue work without having had a minimum break, the Employee will be paid at double the hourly rate for the hours worked, until he or she has had an eight hour break.
172. Where all or some of the Employee's minimum break occurs during ordinary hours, the Employee will not lose pay for the absence.



## **Executive Level Employees – Flexible Working Arrangements – TOIL**

173. The Agency does not endorse working arrangements that oblige Executive Level Employees to work excessive or unreasonable hours.
174. Executive Level Employees are able to work flexible hours where their Manager agrees. Managers shall deal with requests in a timely and reasonable manner. Except in exceptional cases, Employee requests to work flexible hours may only be refused on business grounds or for work health and safety reasons.
175. Executive Level Employees who intend to work additional hours and receive TOIL as compensation should first discuss their plans with their Manager.
176. Additional non standard hours should only be worked where other options have first been considered.
177. The Manager and the Executive Level Employee must work together to minimise the number of additional hours worked and any adverse affect on the Employee.
178. Prior to Executive Level Employees working outside of ordinary hours, Managers and Executive Level Employees are to take into account:
  - operational requirements and work priorities;
  - the need to balance work and personal life;
  - the particular circumstances of part-time Employees
  - Agency guidelines;
  - the Employee's ongoing workload; and
  - other relevant factors including custom and practice in the relevant work team.
179. The Agency's flextime arrangements do not apply to Executive Level Employees and Managers are under no obligation to provide TOIL on an hour-for-hour basis. However, a Manager must ensure that Employees who are asked to work additional hours are treated fairly and granted reasonable time off. Time off will be taken as soon as practicable at a mutually agreed time, usually within four weeks, and in recognition of the additional hours worked. Such absences do not need to be covered by any form of leave, may be taken as whole or part days and may be taken in conjunction with approved leave. A formal leave application need not be completed. Further guidance on TOIL can be found in the Agencies TOIL guidelines.
180. The Branch Manager of Corporate Services or the Chief Executive Officer may assist in resolving disagreements regarding the allocation of work to be performed outside of ordinary hours and the level of compensation available to individual Executive Level Employees for undertaking it. However, the primary responsibility for resolving such matters rests with those directly affected.
181. Executive Level Employees should not commence work on any day without having at least eight hours plus reasonable travelling time minimum break from the previous day's work.

## **Working from Home**

182. Safe Work Australia permits Employees to work from home where the arrangement benefits the individual and the Agency. Arrangements may be entered into between the Manager and Employee for regular or ad hoc working from home arrangements. Further information is in the Agencies Working from Home Guidelines.

183. Working from home arrangements must suit the type of work performed and operational requirements.
184. Employees must seek approval from the Chief Executive Officer to obtain home based IT access. Executive Level 2 salary scales have been previously adjusted by \$3,000 per annum for the purpose of funding their own home-based IT equipment and access.
185. All Employees with approved home based work arrangements in accordance with this Agreement will be supplied with a smart token to facilitate access to the Agency's IT system.
186. Where Employees below the EL2 level have a regular approved Working from Home arrangement assistance to maintain home based IT equipment and internet access will be provided as determined by the Chief Executive Officer up to a maximum value of \$3,000 per annum.

### **Unauthorised Absences**

187. Where an Employee is absent from duty without approval, all pay and other benefits provided under this Agreement, cease to be available until the Employee resumes duty, or is granted leave or ceases employment. Such absences will not count as service for any purpose.
188. Unauthorised absences may be referred to the Chief Executive Officer to determine the appropriate action under the *Public Service Act 1999*.

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## PART G PUBLIC HOLIDAYS AND CHRISTMAS CLOSEDOWN

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### Public Holidays

189. Subject to this Part, Employees, other than unrostered Casual Employees, shall be entitled to the following public holidays without loss of pay:
- 1 January, New Year's Day, 26 January, Australia Day, Good Friday and Easter Monday
  - Anzac Day – 25 April
  - in each State and Territory, the day observed to celebrate the anniversary of the birthday of the Sovereign;
  - Labour Day or equivalent (Eight Hour Day/May Day) as proclaimed by State and Territory Governments
  - Christmas Day, 25 December
  - Boxing Day, 26 December
190. Additional local public holidays legislated, declared, proclaimed, gazetted or otherwise prescribed as a holiday in a State, Territory or locally, 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.
191. 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.
192. An Employee may refuse on reasonable grounds a request to work on a public holiday.
193. In accordance with section 116 of the *Fair Work Act 2009*, where an Employee, other than a unrostered casual, is absent from his or her normal employment on a day, or part-day, that is a public holiday, he or she will be paid their normal rate of pay for the usual hours they work on that day or part day when it is not a public holiday.
- Note: This means that, excepting absences on paid annual or paid personal leave, there is no entitlement to receive full payment as a public holiday. Payment, if any, for that day will match the entitlement for that form of leave (e.g. if on long service leave on half pay, payment is on half pay).
194. Where an Employee is on paid personal leave or annual leave at full or half pay on either side of the public holiday, payment for the public holiday will be made at the Employee's full rate of pay.
195. Where an Employee is on leave without pay on either side of the public holiday no payment will be made for the public holiday.
196. An Employee and the Chief Executive Officer may agree to substitute another day (or part thereof) to replace a public holiday (or part thereof). This may apply to instances where the Employee does not observe a public holiday because they are attending for work with the Agency on that day.
- Note: A substitute day-off, public holiday or the equivalent time off in lieu may be agreed where the Employee has, for example, worked or will work on the designated public holiday either at their normal place of work in the ACT or interstate or overseas.
197. Where an Employee works on a public holiday and the Employee is entitled to overtime payments under this Agreement, he or she will receive overtime pay calculated at double time and a half for the hours worked on a public holiday. This

provision does not apply where a substitute public holiday has been agreed to by Chief Executive Officer and taken by the Employee.

198. An Executive Level Employee who works on a public holiday is entitled to either a substitute public holiday or part thereof depending on the hours worked or time off in lieu where the Chief Executive Officer agrees.
199. A substitute public holiday may also be agreed between an Employee and the Chief Executive Officer for any of the public holidays described in this Part to mark a day of cultural or religious significance to the Employee.
200. The choice of any substitute holiday shall, amongst other things, be made having regard to any significant operational issues.

### **Christmas Closedown**

201. Safe Work Australia premises will shut from 12.30 pm of the last working day before Christmas Day and re-open the first working day following the first day of January; this will be known as the Christmas Closedown.
202. Employees are not required to attend for duty during the Christmas Closedown, unless directed otherwise by the Chief Executive Officer. Employees will be provided with time off for the Christmas Closedown with no loss of leave entitlements, and will be paid in accordance with their ordinary hours of work.
203. Where an Employee who is eligible for overtime and restriction provisions is directed by their Manager to attend work or be available for work during the Christmas Closedown, the overtime rate applicable to Sunday overtime will apply for the days designated as Christmas Closedown.

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## PART H LEAVE

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### Leave Proposals

204. The Agency provides access to a range of flexible leave options for paid and unpaid absences from work that assists Employees to balance their work and personal responsibilities with the needs of the Agency. Further explanatory information on leave can be found in the Leave Policy.

### Application and Approval

205. Employees have a right to request leave and the Chief Executive Officer shall grant an Employee leave in accordance with this Part.
206. If a leave request is not approved the Employee must be promptly informed of the reason(s) and, if requested, in writing. Wherever practicable, efforts are to be made to approve leave requests. Approvals for leave apart from Personal leave, Compassionate leave and all types of Parental leave (including Foster and Adoption leave) may be subject to operational requirements. Flextime is also subject to operational requirements.
207. Where leave is not approved, an Employee can utilise the *Review of Actions* provisions detailed in the Agreement.

### Portability of Accrued Annual and Personal Leave Entitlements

208. Where an Employee is engaged by the Agency on an ongoing or non ongoing basis on or after the date on which this Agreement commences from an employer staffed under the *Public Service Act 1999*, the *Parliamentary Services Act 1999* or from the ACT Government Service, accrued Annual leave, Personal leave and Carer's leave (however described) will be transferred, provided there is no break in continuity of service.
209. Service with organisations where the Employee was previously employed under the *Public Service Act 1999*, the *Parliamentary Service Act 1999*, or from the ACT Government Service will be recognised for Personal and Carer's leave purposes if the break in service is not more than two calendar months. Service for Long Service Leave will be recognised if the break in service is not more than 12 months.
210. For the purposes of this Part, prior Personal/Carers leave and annual leave credits will not be recognised where the Employee received a pay out on separation including a redundancy payment from their previous employer.
211. The entitlement under this Part to use or expend these accrued leave credits, and any future entitlements, will be that prevailing in the Agency.

### Deferral of Leave Accruals

212. Where an Employee takes 30 days or more leave without pay in a calendar year it does not count as service for any purpose.
213. Where an Employee takes 30 or more days leave without pay during the calendar year, annual and personal leave accruals are to be reduced on a pro-rata basis and further long service leave accruals are to be deferred by the number of calendar days absent from duty while on leave without pay. Where the accumulated period of leave

without pay is 30 calendar days or more in a calendar year, the entire period will affect leave accruals and/or deferral of leave accruals.

Note: Clauses 212 and 213 are subject to the provisions of the *Maternity Leave (Commonwealth Employees) Act 1973* which provides, *amongst other things*, that an employee who has not completed the service requirements of that Act, the first period or 12 weeks absence, whichever is the lesser, counts as service for all purposes.

### **Cancellation of Leave or Recall to Duty from Leave**

214. Where an Employee's leave is cancelled by his or her Manager without reasonable notice, or they are recalled to work from leave, reasonable travel costs, travelling time, incidental costs and other unavoidable costs arising from the recall to duty will be reimbursed where they are not recoverable under insurance or from another source and all unused leave will be re-credited.

Note: See also provisions on Emergency Duty at Clauses 165-166.

### **Re-Crediting of Leave**

215. An Employee who is:

- medically unfit for one day or longer; or
- required to care for a member of his or her family who is sick or injured; or
- eligible for compassionate or bereavement leave with pay

while on Annual leave or Long Service leave, who provides satisfactory evidentiary material to their Manager, may apply to have an equivalent amount of their Annual or Long Service leave re-credited. The amount of leave re-credited shall be equal to the amount lost on account of illness, caring responsibilities, compassionate circumstances or bereavement.

### **Annual Leave – Conditions**

216. An Employee will be entitled to the equivalent of four weeks annual leave, either expressed in hours or fractions of days, for each full year worked. Annual leave accrues daily and is credited monthly. Where an Employee works part-time, the Employee's annual leave entitlement will accrue on a pro-rata basis according to the approved part-time hours.
217. Annual Leave credits for an eligible Employee will be calculated monthly using the following formula:

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

A = number of hours per week for the period (based on a 7 hour 30 minute day)

B = number of calendar days to count as service in the period

C = basic annual credit of four weeks per annum

D = number of actual (calendar) days in the calendar year

218. Each period of service that has different weekly hours is calculated separately. If separate credits are calculated, all credits are added and expressed as a total number of hours of leave available.

- 219. Leave will accrue and be credited and available to an Employee at the end of the first calendar month during which the Employee has worked for the full month.
- 220. Annual Leave enables Employees to take a break from work. Employees are encouraged to take annual leave at regular intervals.
- 221. Annual Leave credits may be accessed at any time, subject to operational requirements and the approval of the Employee's manager. Any unused annual leave accumulates. Annual leave counts as service for all purposes.
- 222. An Employee may seek approval from their Manager to take annual leave at half pay. There is no minimum qualifying period for half-pay Annual Leave, subject to available credits. Where an Employee takes Annual Leave at half pay, the Employee cannot access purchased leave in the same calendar year.
- 223. An Employee with more than 40 days Annual Leave credits (or the equivalent of two years) will not unreasonably be refused Annual Leave of up to 10 days.
- 224. Employees who have accrued an Annual Leave credit of 50 days (or equivalent of two and a half years) or more may be directed by their Manager to take at least 10 days Annual Leave within 12 weeks of the direction. The Manager may agree to extend the period to take leave to 6 months where long leave has been pre approved and arranged. The Employee must reduce their Annual Leave credit to below 40 days by the end of the 6 month period.
- 225. Where an Employee who has a 50 day credit (or equivalent of two and a half years) applies for leave the Manager shall grant a period of leave to enable the Employee to reduce their leave credits below 50 days (or equivalent of two and a half years).
- 226. Employees who commence with, or who return to, the Agency and who carry over an Annual Leave credit of 50 days or more, will have a 12 week period of grace during which they will be expected to reduce their Annual Leave credit to below 50 days (or equivalent of two and a half years).
- 227. In exceptional circumstances the Chief Executive Officer may extend the period of grace in which the Employee's credit must be reduced to less than 50 days.
- 228. An Employee who ceases employment with the APS will be paid for unused Annual Leave credits. Payment includes allowances in the nature of salary which are paid during periods of Annual Leave and on a regular basis, excluding allowances which are a reimbursement for expenses incurred.
- 229. An Employee may elect to utilise unused Annual Leave credits prior to leaving the APS.
- 230. Periods of Long Service Leave cannot be broken with Annual Leave except as provided under legislation (that is during periods of unpaid Maternity Leave).

### **Cashing out of Annual Leave**

- 231. Consistent with the provisions of the *Fair Work Act 2009*, there is no limit on the amount of Annual Leave that an Employee may cash out provided that the Employee's remaining accrued entitlement to Annual Leave does not fall below four weeks. Each cashing out of a particular block of Annual Leave must be by a separate agreement in writing with the Chief Executive Officer. The Employee will be paid the full amount that

would have been paid to the Employee had the Employee taken the leave that is cashed out. The Chief Executive Officer will not approve requests to cash out leave in accordance with this clause unless the Employee has taken at least three weeks Annual Leave in the 12 months immediately prior to the request to cash out the leave being made.

### **Sabbatical Leave**

232. Employees may, with the approval of the Chief Executive Officer, take up to 12 weeks Sabbatical Leave once every five years.

### **Purchased Leave Scheme**

233. With the approval of the Chief Executive Officer, Employees may elect to purchase up to eight weeks additional leave per calendar year or up to 12 weeks per calendar year in the case of Sabbatical Leave. Employees will have an amount deducted from their annual salary, dependent on the amount of leave purchased and the Employee's salary. Salary payments will be averaged over the whole year to ensure that a standard rate reflecting the period of additional leave purchased is received over the whole year. Purchased leave may not be taken at half pay.
234. Where an Employee chooses to purchase Annual Leave they cannot take Annual Leave at half pay in the same calendar year.
235. Unless otherwise agreed, purchased leave not taken during the nominated 12 month period will automatically be reimbursed as salary.
236. Where an Employee who has taken purchased leave either proceeds on extended leave or leaves the Agency before having repaid the full amount, the amount outstanding must be repaid in full before the Employee's departure.
237. Purchased leave counts as service for all purposes including superannuation. Superannuation will be paid in accordance with the relevant superannuation legislation. Purchasing leave will not affect salary for superannuation purposes.
238. Purchased leave generally should be accessed in weekly blocks.

### **Long Service Leave**

239. Long Service Leave is intended to provide Employees with a substantial break from work after a period of service of 10 years or longer.
240. Employees will be entitled to Long Service Leave as provided for in the *Long Service Leave (Commonwealth Employees) Act 1976*. A full-time Employee accrues three months Long Service Leave after 10 years service and nine calendar days each year thereafter.
241. An eligible Employee may access Long Service Leave for a minimum period of seven calendar days at any one time but may do so at either half or full pay. Long Service Leave cannot be broken with other periods of leave, except as otherwise mandated by legislation.



## Personal Leave

242. Ongoing Employees are entitled to 18 paid days (or the part-time equivalent pro rata) personal leave annually, credited on 1 January each year. Unused personal leave will accrue from year to year.

243. Personal Leave may be used by an Employee to:

- deal with personal illness or injury, including to attend a medical or dental appointment;
- caring for family who are ill or injured or who require assistance; and
- unforeseen or unplanned events or emergencies or providing family support including:
  - attending to health or other personal matters;
  - accompanying Family to assist with health or other personal matters; and
  - other pressing or unavoidable absences connected with the health or well being of the Employee or member of the Employee's Family as may be approved by the Chief Executive Officer.

Note: See also Miscellaneous Leave.

244. On initial engagement with the Agency, ongoing Employees will be credited with 18 working days Personal Leave. On the following January, their existing credits will be calculated on a pro rata basis for service between the engagement date and 31 December of the year of engagement less any leave taken. Ongoing Employees engaged on a part-time basis will be treated in like manner and accrue Personal Leave based on their actual hours worked.

245. For the purposes of calculating the amount of personal leave to be credited where a period of non-APS service is recognised for Personal Leave purposes, leave taken or paid out in lieu during the period of recognised service will reduce the Personal Leave credit on engagement.

246. Employees commencing with the Agency on a transfer or promotion after commencement of this Agreement will have their existing Personal Leave credits, however described, transferred to the Agency. Where Personal Leave was credited on a basis other than 1 January each year they will have their Personal Leave Credits adjusted on commencement to align with an accrual date of 1 January.

247. In the first 12 months of service in the Agency non-ongoing Employees will be entitled to an initial credit of 7 working days Personal Leave where there is no prior service recognised. A further credit of one day for each following month of service up to a maximum of 18 days paid personal leave in a calendar year will then accrue. After 12 months service in the Agency, the provisions for ongoing Employees will apply.

248. An Employee receiving workers' compensation for more than 45 weeks will accrue Personal Leave on the basis of actual hours worked.

249. Personal Leave may be granted with pay; or where paid Personal Leave Credits are exhausted without pay.

250. Employees may be granted Personal Leave at half pay instead of full pay where extraordinary circumstances exist.

251. Personal Leave is cumulative but will not be paid out on separation.

252. Where an Employee, including a Casual Employee, has exhausted their paid Personal Leave entitlements they may take two days unpaid leave for each occasion where a member of their family or household requires care because of illness, injury or unexpected emergency. The Employee must provide medical documentary evidence to their Manager in support of their leave application.
253. An Employee cannot take unpaid Carer's leave during a particular period if the Employee could instead take paid Personal Leave.

### **Use of Personal Leave**

254. There is no cap placed on the use of Personal Leave for caring purposes. It is, however, only to be used for occasional, non-enduring situations while longer term arrangements are being made if necessary. There is no limit to the maximum continuous amount of Personal Leave which may be granted for absences due to personal illness or injury, subject to available credits, medical documentary evidence and, if required, the opinion of a medical practitioner nominated by the Agency.

### **Provision of Medical Certificates**

255. No more than three consecutive days of Personal Leave may be taken without medical documentary evidence.
256. Medical certificates from registered health practitioners will be accepted for the purpose of personal illness, injury or caring responsibilities. Where it is not reasonably practicable to provide a medical certificate a statutory declaration made by the Employee will be accepted.
257. A Manager may request that medical documentary evidence is provided by the Employee for any future period of leave where:
- a pattern of absence has been identified; or
  - further evidence or information is needed on the circumstances underlying the application for leave; or
  - arrangements are in place for managing attendance as part of managing performance; or
  - the Manager has concerns about the amount of unverified Personal Leave the Employee has taken in a calendar year.
258. Under this Part, where an Employee does not provide the requested medical documentation, Personal Leave ordinarily will be without pay. Where there is a disagreement about the evidence provided or the need for evidence provided, the matter may be referred the Branch Manager of Corporate Services for determination.
259. Where a statutory declaration is made by the Employee for Personal Leave due to illness or injury purposes or for caring purposes, the statutory declaration must include:
- a statement to the effect that the Employee has, is, or will be unfit for work during the period because of a personal illness or injury; or
  - a statement to the effect the Employee is required to be absent for caring purposes; and
  - a statement outlining the reason(s) why it was impractical for the Employee to obtain medical documentary evidence from a registered health practitioner.
260. For the avoidance of doubt, it is noted that in respect of the use of Personal Leave:

- Employees may choose to use flextime arrangements instead of accessing unused Personal Leave credits; and
- Personal Leave will not be debited where an Employee is medically unfit for duty on a Public Holiday which the Employee would otherwise have observed.

### **Compassionate Leave**

261. An Employee is entitled to a period of three days of paid compassionate leave for each occasion when a member of the Employee's family or household:

- contracts or develops a personal illness or sustains a personal injury that poses a serious threat to his or her life; or
- dies.

Note: The Agreement therefore provides in each instance one additional day of paid compassionate leave than that granted by the *Fair Work Act 2009*. Consistent with the relevant National Employment Standard, Casual Employees engaged by the Agency are entitled to three days unpaid compassionate leave per occasion.

262. Compassionate leave in each instance need not be taken as a single block.

263. An Employee may be required to provide reasonable evidence to the Chief Executive Officer in support of an application for compassionate leave.

264. Compassionate leave will count for service for all purposes.

### **Miscellaneous Leave**

265. Miscellaneous leave provides flexibility to Managers and Employees. It can be made available with or without pay for a variety of purposes. Where Miscellaneous Leave is refused the Manager will promptly advise the Employee (if requested) in writing of the reason for the decision to refuse leave.

266. Subject to this Agreement, any form of Miscellaneous Leave may be approved:

- for the period requested or for another period;
- with or without pay; and
- to count as service or not to count as service.

267. The Chief Executive Officer shall determine each application after discussion with the requesting Employee as appropriate. Circumstances in which Miscellaneous Leave may be granted are listed in [Appendix 6](#) to this Agreement.

268. When considering requests for Miscellaneous Leave, the Chief Executive Officer will take into account:

- the Employee's circumstances
- community norms and obligations
- operational requirements
- options for using other than work time.

269. A period of leave approved in accordance with Clause 266 will be with or without pay as determined by the Chief Executive Officer subject to the entitlements set out in [Appendix 6](#).

270. The Chief Executive Officer may determine under Clause 266 that only a part of the period of leave will be with pay.

- 271. Subject to any relevant award or legislation, and unless the Chief Executive Officer determines otherwise, any continuous period of Miscellaneous Leave without pay greater than 30 calendar days will not count as service for Annual and Personal Leave purposes.
- 272. Employees shall be granted Miscellaneous Leave without pay where, due to an agreed increase in their hours, they have not yet accrued the equivalent of four weeks Annual Leave, based on their pre-existing working hours.

### **Maternity and Maternal Leave**

- 273. Maternity Leave with pay is available to eligible Employees in accordance with the *Maternity Leave (Commonwealth Employees) Act 1973* (the Maternity Leave Act).
- 274. An Employee eligible for paid Maternity Leave will receive an additional four weeks Maternal leave with pay to be taken immediately following the period of paid Maternity Leave provided under the Maternity Leave Act.
- 275. In order to provide more flexible administration of Maternity Leave, the Chief Executive Officer may give approval to an Employee, in advance, to spread the payment for the 16 week period of absence up to a maximum period of 32 weeks at a rate no less than half normal salary. Only the first 16 week period will count as service.
- 276. In addition to the entitlement for paid and unpaid leave under the Maternity Leave Act, an Employee may apply for additional unpaid Parental Leave in accordance with Clause 287.
- 277. An Employee is unable to access Personal Leave while on paid Maternity and Maternal leave.
- 278. Where Maternity Leave is taken over the period of Christmas Shutdown, the leave will be taken to include the additional days provided as part of the shutdown.
- 279. Subject to medical verification of pregnancy, the requirement to reduce Annual Leave Credits below 50 days (or equivalent to two and a half years) will not apply during the term of the pregnancy and the period of paid Maternity and Maternal leave. Annual Leave Credits must be reduced below 50 days (or equivalent to two and a half years) before the Employee returns to work.

### **Supporting Partner Leave**

- 280. An Employee whose partner gives birth to or adopts or fosters a child is entitled to four weeks of paid or eight weeks at half pay supporting partner leave immediately following the birth or adoption or fostering of a child.
- 281. Paid Supporting Partner leave, including leave taken at half pay, counts as service for all purposes. In calculating the period of service, it is the number of weeks paid leave taken that is assessed.
- 282. A request for supporting partner leave must be submitted to the Chief Executive Officer and accompanied by documentary evidence if requested.

## **Primary Carer Leave**

283. An Employee, other than the mother, who becomes the primary care giver for a new born baby will be entitled to a period of eight weeks paid primary carer leave. Primary Carer Leave may be taken at half pay.
284. Where an Employee becomes the primary care giver for a child, on account of the death or incapacity of the adoptive or fostering parent, the Employee is entitled to Primary Carer Leave as provided for in this Part. This is in addition to any entitlement they may have under clauses 280-282.
285. Paid Primary Carer leave, including leave taken at half pay, shall count as service for all purposes. In calculating the period of service, it is the number of weeks paid leave taken that is assessed.

## **Parental Leave**

286. An Employee is not entitled to Parental Leave until they have 12 months continuous service in the APS or they meet the eligibility requirements under the *Fair Work Act 2009*.
287. Following the paid period of Maternity, Adoption, Foster or Supporting Partner leave, an Employee may take unpaid Parental Leave to enable them to continue to be the primary care-giver of the newborn or adopted or fostered child. An eligible Employee may take a period of Parental Leave of up to 12 months, less any period of Maternity, Adoption, Fostering or Supporting Partner Leave taken.
288. Upon request from the Employee, the Agency will agree to an extension of unpaid Parental Leave for a further period of up to 12 months, immediately following the end of the initial 12 month period.
289. Unpaid Parental Leave will not count as service for any purpose, except for the purposes set out in the *Fair Work Act 2009*.
290. An Employee is not entitled to take paid Personal Leave or Compassionate Leave while he or she is taking leave without pay for parental purposes except as provided under legislation (that is, during periods of unpaid Maternity Leave).
291. An Employee returning to duty from Parental Leave will have the right to access part-time work in accordance with the part-time provisions in this Agreement.

## **Adoption Leave**

292. An Employee with a period of service as per the *Maternity Leave (Commonwealth Employees) Act 1973* is entitled to 16 weeks paid leave for the purposes of adopting a child.
293. Following adoption approval, an Employee who is the primary carer of the child is entitled to 16 weeks of paid Adoption leave where:
- the adoptive child is under school age on the day of placement; and
  - the adoptive child did not previously live with the Employee for a period of six months or more before the day of placement; and
  - the adoptive child is not a child or step-child of the Employee or the Employee's partner, unless that child had not been in the custody and care of the Employee or the Employee's partner for a significant period of time.

294. Documentary evidence of approval for adoption must be submitted to the Chief Executive Officer when applying for Adoption Leave.
295. Adoption Leave is available from one month prior to the date of placement of a child. Adoption Leave must be taken as a single, unbroken period.
296. An Employee is unable to access Personal Leave while on paid Adoption Leave.
297. In order to provide more flexible provisions for Adoption Leave, Employees have the option to spread the payment for Adoption Leave over a period of up to 32 weeks at a rate of half normal salary. The 16 weeks of Adoption Leave counts as service for all purposes. Any Adoption Leave in excess of 16 weeks does not count as service for any purpose.
298. An Employee may also apply for unpaid Parental Leave in accordance with Clause 287.
299. An Employee returning to duty from Adoption Leave will have the right to access part-time work in accordance with the part-time provisions in this Agreement.

### **Foster Care Leave**

300. An Employee, with a period of service as per the *Maternity Leave (Commonwealth Employees) Act 1973*, is entitled to 16 weeks paid Foster Care Leave for the purposes of the long term fostering of a child.
301. Foster Care Leave is available from one week prior to the date of placement of a child who has not previously lived with the Employee for a continuous period of six months or more and should commence within eight weeks of the child being placed.
302. Subject to Clause 304, the period of paid Foster Care Leave counts as service for all purposes.
303. An Employee is unable to access Personal Leave while on paid Foster Care leave.
304. In order to provide more flexible administration of Foster Care Leave, the Chief Executive Officer may give approval to Employees, in advance, to spread the payment for the 16 week period of absence to a maximum period of 32 weeks at a rate no less than half normal salary. Only the first 16 week period will count as service.
305. The Chief Executive Officer may approve an additional period of Foster Care Leave so that an Employee may care for a fostered child up to a maximum period of 52 weeks (including the period of paid leave).
306. The additional period of Foster Care Leave will be without pay and will not count as service for any purpose, unless the Chief Executive Officer determines otherwise.
307. An Employee may also apply for unpaid Parental Leave in accordance with Clause 287.

### **Return to Work After Parental and Like Forms of Leave**

308. On ending Parental or Maternity or Adoption or Primary Carer Leave or Foster Care Leave, an Employee is entitled to return to:
- the Employee's pre-Leave duties; or

- if those duties no longer exist—an available position for which the Employee is qualified and suited at the same Classification and pay as applied pre-Leave.

309. For the purposes of this Clause, duties mean those performed:

- if the Employee was moved to safe duties because of the pregnancy—immediately before the move; or
- if the Employee began working part-time because of the pregnancy—immediately before the part-time employment began; or
- otherwise - immediately before the Employee commenced Maternity or Parental or Adoption or Primary Carer Leave.

310. An Employee returning to duty from Parental or Maternity or Adoption, Foster Care or Primary Carer Leave will have the right to access part-time work in accordance with the part-time provisions of this Agreement.

### **Defence Reserve Leave**

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

312. 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.

313. 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.

314. During an Employee's first year of ADF Reserve service, a further two weeks paid leave may be granted by the Chief Executive Officer to facilitate participation in additional ADF Reserve training, including induction requirements.

315. 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.

316. Employees are not required to pay their tax-free ADF Reserve salary to Safe Work Australia in any circumstances.

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

318. Defence Reserve Leave counts as service for all purposes, except for unpaid leave to undertake CFTS. Unpaid leave for the purpose of CFTS counts for all purposes except Annual Leave.

319. An eligible Employee may also apply for Annual Leave, Long Service Leave, Miscellaneous Leave without pay, top-up pay or they may use flextime to make up time for the purpose of fulfilling ADF Reserve, CFTS or Cadet Force obligations.

320. An Employee is to notify their Manager at the earliest opportunity once the dates for ADF Reserve, CFTS or Cadet Force activities are known and/or changed.

### **War Service Sick Leave**

321. Employees with certain Defence Force Service prescribed by the *Veterans' Entitlement Act 1986* are eligible for additional sick leave in relation to war-caused medical conditions.
322. An eligible Employee may accrue two separate credits, a special credit of nine weeks on commencement in the APS and an annual credit of three weeks for each year of APS service. Unused credits will accumulate to a maximum of nine weeks.
323. An eligible Employee may apply to the Chief Executive Officer to use War Service Sick Leave.
324. Where an Employee's War Service Sick leave credits have been exhausted, the Employee may apply for Personal Leave.
325. Employees who rejoin the APS following an earlier period of APS employment in which they had been credited with war service sick leave will be credited with the following:
- any special credit that remained unused at the final day of the prior APS employment; and
  - any annual credit held on the final day of the prior APS employment.

### **Community Service (Emergency Management and Jury Service) Leave**

326. In accordance with section 108 of the *Fair Work Act 2009*, leave for participation in voluntary emergency management duties, including training, emergency service responses, reasonable travel and recovery time and ceremonial duties will be approved. Employees shall in addition be entitled to paid leave to undertake emergency service duties including rest and recuperation after such duty (for example, with a country fire authority or State or Territory emergency service organisation). Employees may be required to provide supporting documentation.
327. An Employee will continue to be paid by the Agency for any period of jury service, but will be required to pay to the Agency any amount of jury service pay received by the Employee with the exception of an amount that is, or that is in the nature of, an expense-related account.

### **Community Volunteer Leave**

328. Employees may be granted up to two days paid (and thereafter reasonable unpaid) Miscellaneous Leave each calendar year to volunteer with community organisations registered on the GoVolunteer website or other local community organisations such as the Rotary or the Lions Club. Paid leave will not be available to attend ceremonial functions unless the organisation certifies in writing that the Employee is required to attend as part of their duties.
329. Volunteer work must not:
- involve any payment in cash or kind for work performed;
  - replace a paid worker;
  - as a general rule be undertaken solely for direct personal benefit;
  - be work which does not have a community focus;
  - present a conflict of interest for the Agency;
  - be primarily focused on promoting particular religious or political views.



330. The amount of additional unpaid leave granted will take account of operational requirements.

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## **PART I TRAVEL**

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### **General**

331. While travelling on Agency business, all Employees are entitled to a reasonable standard of accommodation (consistent with Agency travel rates), meals and transport without personal expense. Travel must be organised to ensure maximum value to the Commonwealth with no personal expense, monetary gain or other type of benefit to the Employee. The Agency will meet reasonable costs associated with official domestic and international travel.
332. To encourage the use of video conferencing, an Employee shall, before submitting a travel request, undertake appropriate training in the use of the Agency's video conferencing facilities. Where training has not been completed, travel may only proceed with the agreement of the Chief Executive Officer.
333. In determining travel requirements a Manager will, wherever possible, take into account, and make allowance for, people's circumstances, including family responsibilities, safety, security and other relevant factors.
334. For the purposes of the calculation of allowances in this part, when travelling by domestic airline, travel time includes 75 minutes before the scheduled departure time and 75 minutes after the actual arrival time. This may be extended at the discretion of the Chief Executive Officer.

Note: For recording flextime – see definition of Recognition of Travel Time.

335. There may be occasions where additional costs may be incurred by an Employee beyond the allowances provided under this Part. Payment or reimbursement of these additional costs requires the prior approval of the Chief Executive Officer.
336. Accommodation expenses are to be paid by an Australian Government Credit Card wherever possible. Where this is not possible, the Employee will be reimbursed or provided with an advance of money. Reimbursement will be made to an Employee upon production of a tax invoice/receipt. An advance for accommodation expenses requires the prior approval of the Chief Executive Officer and the Employee will be required to acquit the advance on return from travel.
337. It is the Employee's responsibility to immediately advise the Agency of changes or cancelled travel arrangements.
338. An Employee may, with reasonable cause, decline to undertake Official Travel.

### **Class of Travel**

339. Domestic air travel will be by economy class. International air travel will be by business class. Travel by bus or train will be by first class, where available.

### **Travel Card**

340. All Employees must use the Agency's Travel Card issued for official travel purposes consistent with the Safe Work Australia *Travel Policy*.

## **Part Day Travel**

341. Where an Employee is required to travel for official purposes for a period of ten hours or more but no overnight stay is required an allowance of \$44 for part day travel will be payable to Employees through the salary system.

## **Travel Expenditure**

342. An Employee who undertakes travel on official business and is required to be away from home overnight will be entitled to have actual travel expenditure within the indicative daily cap paid for or reimbursed by the Agency. Further guidance is provided for in the Safe Work Australia *Travel Policy*.
343. The indicative daily cap is inclusive of meals and incidentals only.
344. Employees may withdraw up to \$40 for incidentals and meals, where the Employee chooses, from an ATM without the requirement to provide receipts of expenditure. Any cash withdrawal will reduce the indicative daily cap available for other meals or incidental costs by the amount withdrawn.
345. The indicative daily cap applies to full day absences entailing an overnight stay in commercial accommodation and the purchase of all meals. Should an Employee require an increase to the indicative daily cap written approval of the Chief Executive Officer is required prior to travel being undertaken.
346. Where the Chief Executive Officer decides that the accommodation rate is insufficient in specific circumstances, a higher rate may be approved.
347. Commercial accommodation costs within the accommodation rate will be met by the Agency and charged to the Employee's travel card.
348. Where the Employee chooses to stay in non-commercial accommodation no accommodation expenses will be paid by the Agency. An Employee may access up to \$60 per night to meet expenses associated with staying in non-commercial accommodation. Meal costs are expected to be charged to the travel card.
349. The Chief Executive Officer will approve an acquittable cash advance payment withdrawn from an ATM to meet travel expenses where it is known or anticipated that the travel card will not be accepted. The acquittable cash amount may be up to the indicative daily cap and accommodation rate for that location, as necessary.

## **Reviewed Travel Allowance**

350. Payment arrangements and the level of entitlement for travel expenses will be reviewed after 21 days and paid on the basis of reasonable actual expenses or an alternative package of assistance agreed between the Employee and the Chief Executive Officer. A trip home will not be regarded as a break for the purposes of determining reviewed travel allowance.

## **Recognition of Travel Time**

351. For APS1 – 6 (and equivalent) Employees, travel on official business undertaken between the 7:00 am to 7:00 pm bandwidth may be recorded as flex time. The start and finish times of the 12 hour bandwidth may be adjusted in recognition of travel time with the approval of the Chief Executive Officer.

352. Travel time will not be paid as overtime.

353. Time Off in Lieu on an hour for hour basis in recognition of travel time may be approved in advance for APS1 – 6 Employees in exceptional circumstances by the Chief Executive Officer. Executive Level Employees can access time off in lieu in recognition of travel time as per clauses 173-181.

### **Capacity to Vary Travel Arrangements**

354. Subject to the consultation provisions of this Agreement, the Chief Executive Officer and an Employee may devise an alternative set of travel arrangements to replace the existing set of travel arrangements set out in this Agreement and give effect to them through the Individual Flexibility Arrangements.

### **Airline Club Membership**

355. Where it is anticipated that eight or more business trips will be required to be undertaken in a 12 month period Airline Club membership is available for that period.

### **Emergency Situations while Travelling on Official Business**

356. Assistance may be authorised by the Chief Executive Officer in situations where:

- an Employee becomes seriously or dangerously ill while travelling on official business and the Employee's partner or a family member travels to visit the Employee; or
- a member of the Employee's family or the Employee's partner's family dies or becomes seriously or dangerously ill while the Employee is travelling on official business and the Employee needs to return home or adjust their travel plans.

357. The assistance may comprise:

- reimbursement to the Employee for the cost of an economy return airfare in respect of travel within Australia; or
- where the use of a motor vehicle is approved, or is the most appropriate form of travel, motor vehicle allowance consistent with provisions in this Agreement.

### **Motor Vehicle Allowance**

358. Where the Chief Executive Officer authorises an Employee to use their private vehicle for official purposes the Employee will be entitled to a flat rate Motor Vehicle Allowance (MVA) of 75 cents per kilometre. The maximum MVA claimable is the distance x 75 cents per kilometre, or the full economy airfare (based on the lowest practical fare available on the day), whichever is the lesser.

### **Family Care Expenses when Travelling**

359. When an Employee with family caring responsibilities is required to travel away from home for official purposes, the Agency will provide reimbursement on production of receipts for the full cost of 'additional commercial care' (over normal arrangements) for family members.

360. Where commercial care is not available, for example in remote areas, the Chief Executive Officer has the discretion to approve the cost of the care provided by other arrangements. This reimbursement will be up to \$65 per night subject to provision of satisfactory evidence.

## **Overseas Travel**

361. Employees required to travel on official business outside of Australia are entitled to Business Class travel or its equivalent.
362. Where an Employee is posted overseas, the Employee's terms and conditions for overseas service will be consistent with the Safe Work Australia Overseas Conditions Policy as varied from time to time. The package provided to Employees overseas by the Department of Foreign Affairs and Trade (DFAT) will be used as a basis for the Policy. The Safe Work Australia Overseas Conditions Policy will prevail to the extent of any inconsistency with this Agreement.

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## **Part J      RELOCATION ASSISTANCE**

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### **Principles**

363. Where a person accepts a position with Safe Work Australia, they will generally be expected to meet the cost involved in getting to their new place of employment. They may, however, seek financial support from the Agency which may be provided at the discretion of the Chief Executive Officer. Assistance may include travel costs and the cost of relocating the Employee's personal effects such as furniture. Apart from help with airfares, relocation assistance will not generally be granted to non ongoing Employees.
364. When an existing Employee permanently or temporarily relocates for employment purposes, the Agency may contribute towards reasonable costs associated with the relocation subject to the eligibility provisions and monetary limits detailed in these provisions.
365. Any assistance provided will take into account the business requirements and the monetary limits of the relocation provisions for Employee initiated moves.
366. Any relocation assistance provided will be agreed in writing between the Chief Executive Officer and the Employee before any relocation action takes place.
367. An Employee may negotiate a relocation package for the reimbursement of reasonable expenses up to \$45,000 where the Agency initiates the transfer of the employee from one location to another. However, the Chief Executive Officer shall determine the extent of any reasonable financial assistance in relation to the following circumstances:
- engagement as an ongoing Employee;
  - promotion within the Agency;
  - promotion or movement on an ongoing basis to the Agency;
  - temporary assignment which exceeds or is expected to exceed 12 months (or in some circumstances, a shorter period where the Chief Executive Officer considers it appropriate);
  - movement within the Agency; or
  - assignment to new duties in accordance with Part Q of this Agreement.
368. Reasonable financial assistance may include:
- transport and travel costs;
  - temporary accommodation costs;
  - the cost of moving of household furniture and effects to the new location;
  - disturbance allowance;
  - additional education costs;
  - kennelling and transporting of pets; and
  - any other costs the Chief Executive Officer determines to be reasonable.

### **Employee Initiated Moves**

369. Where a Safe Work Australia Employee applies for promotion or transfer at level which involves permanently moving from one geographic locality to another, the Employee may negotiate a relocation package for reimbursement of reasonable expenses limited to a total of \$15,000 payable by the gaining work area. However, the Agency will only rarely meet such costs. Reasonable expenses associated with the relocation of the Employee and family, may include, but are not limited to:

- 
- the cost of temporary accommodation for up to three months;
  - reimbursement of costs incurred in the sale and purchase of a home;
  - additional education costs;
  - the cost of travel;
  - the removal of furniture and household effects, including motor vehicles and removal insurance;
  - additional mortgage interest costs;
  - disturbance allowance; and
  - kennelling and transporting a pet or pets.

370. Employees who temporarily transfer at the initiative of the Agency for a period of at least 13 weeks or more may negotiate a relocation package for reimbursement of reasonable expenses limited to a total of \$15,000. Reasonable expenses may include but are not limited to those detailed in the provisions for Employee Initiated Moves.
371. Employees requesting transfer to another locality for personal reasons are generally not eligible for relocation assistance.
372. The Chief Executive Officer may approve payments in excess of the limits specified above where exceptional circumstances exist.

### **Disturbance Allowance**

373. Where the household effects of an existing Employee to whom the relocation provisions apply have been removed at the Agency's expense from the Employee's former locality to the new locality, the Employee is entitled to be paid a one-off Disturbance Allowance of \$825 for an Employee who relocates alone and \$1,650 for an Employee who relocates with a spouse, partner or dependant.
374. Disturbance allowance is a one-off payment to offset the incidental costs of moving such as:
- connection or reconnection of telephone service;
  - stamp duty and any establishment fee payable on registration of the Employee's motor vehicle;
  - any establishment fee payable for transfer of the Employee's driver's licence;
  - connection of public utilities; and
  - other non-reimbursable costs.
375. Where an Employee has received Disturbance Allowance at the new locality and subsequently relocates within the new locality, no further Disturbance Allowance is payable.

Note: This provision does not apply to moves within the Canberra Region.

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## **PART K   WORKPLACE HEALTH AND WELL BEING**

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### **Work Health and Safety (WHS)**

376. Safe Work Australia is committed to maintaining a safe and healthy work environment for all Employees and visitors.
377. The Agency acknowledges that a healthy working environment is free from bullying and harassment and that excessive workloads may pose a threat to the health and well being of Employees.
378. The Agency will utilise the knowledge and capacities of the parties to improve health and safety in the workplace and to resolve WHS issues quickly and effectively.
379. The Agency will also provide return to work opportunities for ill and injured Employees consistent with its legal obligations.
380. All parties acknowledge their responsibility to support the Agency in meeting its work health and safety obligations under law. All parties must comply with safety directions so as not to place themselves or others at risk of injury or illness. This includes:
- observing and following safety requirements and procedures;
  - reporting credible potential and actual workplace hazards and incidents;
  - participating in effective and constructive consultation and co-operating on WHS matters; and
  - complying with the Health and Safety Management Arrangements which detail the Agency's work, health and safety management processes, responsibilities and commitments.
381. Where a dispute in relation to WHS cannot be resolved satisfactorily under existing WHS laws, the Agency's Health and Safety Management Arrangements, if any, or under a stand-alone WHS Agreement entered into with Employees or their representatives, it shall be dealt with under the Dispute Resolution Procedures contained in this Agreement.

### **Work Health and Safety Committee**

382. The Agency will establish a WHS Committee.

### **Health and Fitness Program**

383. The Agency will, including on the recommendations of the WHS Committee, promote health awareness among Employees, through funding annual programs focusing on health and lifestyle such as presentations on health and fitness.
384. These programs may be undertaken jointly with other agencies or through provision of services to Employees collectively or individually. All Employees will have the opportunity to access some form of health awareness programs organised and funded by the Agency.

### **Annual Health Allowance**

385. To assist in the promotion of good health, the Agency will reimburse eligible Employees for personal health related expenditures up to a value of \$200 per annum.



386. For the purposes of Clause 384, an eligible Employee is:

- an ongoing Employee who attended for work or was absent on paid leave in the three months prior to making the claim
- a non-ongoing Employee with at least three months continuous service with the Agency.

387. The health related allowance to be paid as a single lump sum on the first full pay period on or after 1 September each year.

388. To qualify for the Annual Health Allowance, the Employee must lodge a claim with the Agency and, if requested, provide evidence of expenditure that the sum claimed was to promote their personal health or well-being in the previous 12 months.

389. Examples of items that will ordinarily qualify as bona fide expenditures shall include, but are not limited to, gym memberships, quit smoking programs, swimming pool fees, health and fitness testing and activities, sporting equipment, dietary and good eating programs and dental check-ups not met by the Employee's health fund.

### **Flu Shots**

390. Safe Work Australia will provide Employees with the opportunity to receive a seasonal influenza vaccination once annually at no cost to the Employee.

### **Lactation Breaks**

391. Safe Work Australia supports mothers who are returning to work and who wish to make arrangements to continue to breast or bottle feed their baby.

392. Nursing mothers are entitled to take lactation breaks. The Agency will encourage the support of Managers and colleagues for nursing mothers.

393. The Agency will seek to provide suitable facilities for Employees who are nursing mothers to breastfeed, bottle feed or express milk, including:

- a lockable area that is clean, hygienic and private
- comfortable seating
- access to facilities for washing hands and equipment
- adequate and secure refrigeration space for the storage of expressed milk

progress on implementing these initiatives shall be assessed by the WCF within three months of the Agreement commencing.

394. The Agency will over the life of the Agreement investigate, through the Australian Breastfeeding Association, accreditation as a breastfeeding-friendly workplace.

### **Employee Assistance Scheme**

395. The Agency will provide access to a confidential, professional counselling service at no cost to an Employee and their family to help resolve both personal and work-related problems.

## **Accommodation and Physical Environment**

396. The parties agree to work together during the life of the Agreement to maintain a high quality physical working environment for employees and make efficient use of resources.
397. Where disruption due to construction, building, refurbishment or relocation of a workplace is significant and unavoidable to the extent that it disrupts working arrangements (including where it has the potential to compromise the health and safety of employees) and where this cannot be minimised including through temporary relocation, the Chief Executive Officer may, taking into the duration of the disruption, authorise Miscellaneous Leave with pay or working from home arrangements.
398. The Agency will seek to prevent employees from being subjected to any unreasonable impact on their working environment from building work. If Miscellaneous Leave with pay or working from home arrangements fail to redress employee concerns regarding working conditions, a daily allowance of \$15 will be paid to employees in the affected location in the building for the period of exposure.
399. For the purposes of this Part, “unreasonable impact on their working conditions” means any detrimental effects on the working conditions of office-based employees caused by a variety of factor associated with building activities, including one or generally more of the following: dust, noise, fumes, extremes of temperature, vibrations, wet, dirt or loss of amenities.
400. “Building activities” means any construction, building alterations or significant refurbishment activities at an office location within the Agency’s control.

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## **PART L LEARNING AND DEVELOPMENT**

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### **Skills Recognition and Development**

- 401. The Agency will identify learning and development needs of Employees annually through the Performance Appraisal and Development Scheme outlined in Part N of the Agreement. The Performance Appraisal and Development Scheme will include an Employee's development needs within their PDA.
- 402. Induction and learning and development programs will be prepared, drawing on the Work Level Standards, public sector competencies and other relevant material.
- 403. Employee progress against their identified development needs will be tracked through the Performance Appraisal and Development Scheme.
- 404. The Agency encourages each Employee to participate in learning and development programs which will enhance the performance of duties in the APS and supports Employee participation in APS-wide programs.
- 405. Professional development needs, where these relate to an essential qualification required to perform an Employee's duties, will be funded by the Agency. The Chief Executive Officer may approve funding of other professional development needs where these are agreed between the Chief Executive Officer and the Employee.
- 406. Where an Employee is required to be a member of a professional association, or professionally licensed or registered, in order to fulfil their role with the Agency, the Chief Executive Officer will reimburse the Employee the cost of annual registration upon receipt of a tax invoice. The Chief Executive Officer may consider reimbursement of professional membership, registration or license in other circumstances where there is a benefit to the Agency to do so.

### **Study Assistance Scheme**

- 407. The Agency encourages, and Managers support, Employees to undertake formal study in fields which link to the achievement of the Agency's strategic goals or which meet the Employee's career development needs. Further guidance is in the Agencies studies assistance guidelines.
- 408. The Agency will provide financial or other assistance to an Employee to undertake formal courses of study at tertiary and higher education institutions and other vocational education courses where the study is agreed as part of an Employee's PDA.
- 409. The Chief Executive Officer will have regard to the relevance of the study to the business needs of Safe Work Australia, benefit of study to the Employee and the Agency, the Employees learning and development needs, potential impact on an Employee's performance, impact on the work area and any other consideration relevant on a case by case basis.
- 410. Studies Assistance is one way the Agency supports lifelong learning for Employees and may include approved paid and unpaid leave, and/or reimbursement of costs up to \$3,000 per calendar year.

- 411. An Employee undertaking an approved course can request paid leave up to eight hours per week (15 hours for Indigenous Australian Employees). Employees can request leave without pay for up to 12 months for study purposes.
- 412. The Chief Executive Officer will assess each application for study assistance on a case by case basis. The applicant will be advised in writing of the outcome and if the application is not approved the delegate will notify the Employee of the reasons for the decision.

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## **PART M DIVERSITY AND INCLUSION**

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413. The Agency is committed to promoting and supporting workplace diversity and to creating an environment that values and utilises the contributions of people with different backgrounds, experiences and perspectives. The Agency is an inclusive organisation that values fairness, equity and diversity consistent with the APS Values and Code of Conduct.
414. The Agency is committed to increasing employment opportunities and career pathways for:
- People with a disability;
  - Aboriginal and Torres Strait Islander peoples
  - Persons from a culturally and linguistically diverse backgrounds; and
  - Mature age workers.
415. The Agency is committed to promoting equity in employment; supporting an inclusive, safe, fair, productive and successful workplace that is free from discrimination and harassment; and ensuring that employment decisions are based on merit.

### **Mature Age Workers**

416. The Agency recognises the ageing of the Australian workforce and is committed to ensuring policies and work practices optimise the contribution of mature age Employees and encourage those who are making a valuable contribution to stay in the workforce longer.
417. The Agency encourages the use of the flexibilities within this Agreement such as part-time work, flexible work arrangements (including hours) and leave to assist mature age Employees to remain in the workforce or transition to retirement. Managers and Employees are encouraged to discuss the options available in the lead up to retirement and develop transition to retirement plans.

### **Indigenous Australians**

418. The Agency is committed to increasing employment opportunities for Aboriginal and Torres Strait Islander Employees over the life of the Agreement consistent with the Government's targets for the recruitment of Indigenous Australians.
419. The Agency recognises that policy development, program and service delivery, and support for Indigenous Australian people, are most effective when they are provided by people who have a knowledge and understanding of the issues facing Indigenous Australians and who are able to communicate sensitively with them.

### **Disability**

420. The Agency is committed to increasing employment opportunities and accessibility for people with disability, increasing disability awareness, and ensuring consultation with Employees with a disability occurs when developing policies and programs that may impact on them. The Agency Disability Employment Plan will ensure that the right mechanisms are in place to encourage people with disability to work and stay in a department that supports them.

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## **PART N    MANAGING PERFORMANCE**

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### **Principles and Objects**

421. Performance Management and Development provides Managers and Employees with a framework for establishing individual performance expectations that align with the Agency's corporate goals. It helps Employees and Managers set performance targets, measure performance against them, and provides Employees with the development and support required to achieve their maximum potential.
422. The agreed system of performance management will be simple, fair and transparent and link to learning and development opportunities.
423. The performance management arrangements will be administered fairly and consistently. Employees will be provided with regular, frank and constructive feedback about their performance. Employees will also have the opportunity to provide similar feedback to their Managers.
424. In administering the scheme, the Agency will not penalise Employees on account of their personal circumstances or employment status.
425. The Performance Appraisal and Development Scheme will:
- provide Employees with a clear understanding of their role and what is expected of them at work
  - recognise and reward Employee's for their performance and achievements at work;
  - provide a clear link between an Employee's performance, learning and development needs and the achievement of the Agency's strategic directions; and
  - be supported by an open, positive and responsive work culture.
426. The Agency endorses the principle of "no surprises". A key goal of performance management is that each Employee arrives at year's-end knowing how they have performed, after receiving ongoing and regular feedback during the year.
427. Where an employee is to be rated Unsatisfactory, this will usually be done well before the end of the performance appraisal cycle. The end of cycle review is not the best time to assess and rate an employee as Unsatisfactory, especially if performance concerns have not been raised or discussed with the Employee previously in the cycle. If there is an exception to this approach, it will most likely be where a significant performance issue arises towards the end of the performance cycle.
428. New guidelines governing the operation of the Agency's Performance Appraisal and Development Scheme will be formulated and presented to the WCF for consideration within four months of this Agreement coming into effect.

### **Major Elements of the Performance Appraisal and Development Scheme**

429. The Performance Appraisal and Development Scheme outlined in this Agreement will apply to the 2011-2012 performance cycle and to subsequent performance cycles.
430. All ongoing Employees, and non ongoing Employees engaged for four months or more, will participate in the Scheme and each will prepare a Performance

Development Agreement (PDA). This will assist in ensuring regular and structured performance feedback. Other Employees may choose to participate.

431. A dual Performance Rating model measuring performance against key deliverables and observable work behaviours will apply.
432. In addition to the ongoing discussions between Employees and Managers two formal points of review are mandatory: the mid cycle review and the end cycle review. For the mid cycle review, Employees will be provided with an indicative rating of 3, 2 or 1 for Key Deliverables and Observable Work Behaviours. For the end of cycle review, Employees will be provided with a Final Performance Rating of 3, 2 or 1 for Key Deliverables and Observable Work Behaviours. In each case, this will be in accordance with the following performance scale and descriptors:

	Rating	Key Deliverables	Observable Work Behaviours
3	Exceeds Expectations	Employee consistently exceeds expectations in all Key Deliverables or in the majority of the Key Deliverables in their performance agreement.	Employee consistently exceeds expectations in all Observable Behaviours or in the majority of the Observable Behaviours in their performance agreement.
2	Meets Expectations	Employee generally achieves, or demonstrates considerable progress towards achieving, the Key Deliverables in their performance agreement.	Employee demonstrates, or shows considerable progress towards meeting, the Observable Work Behaviours in their performance agreement.
1	Unsatisfactory	Employee does not meet expectations, including by not achieving several Key Deliverables in their performance agreement.	Employee does not meet expectations, including several Observable Work Behaviours in their performance agreement.

**Note:** “Meets Expectations” rating could be applied to new Employees, newly promoted or transferred Employees or Employee’s returning from long term absences, as it reflects that the Employee is in a stage of learning and development and/or that the Employee has not been in their position for a period long enough to demonstrate that they are always meeting expectations

### Salary Advancement

433. On 15 August each year an ongoing Employee (excluding Employees in the Safe Work Australia Training Broadband) who is not already at the top pay point applying to their current APS classification within the Safe Work Australia General Broadband Structure will advance to the next pay point above if the Employee:
- has performed duties in Safe Work Australia at that classification level for a period of at least three continuous months in the relevant performance cycle; and
  - has received ratings of 2 or better for both key deliverables and observable work behaviours as part of the end of cycle performance appraisal ending 30 June each year.
434. An Employee who receives a rating of Meets Expectations, but needs additional training or support to consistently perform (e.g. where the Employee is new to the role)

during their end of performance cycle review will still gain incremental advancement (where not already on the top pay point for their classification) but will continue to meet with their Manager to agree on what actions or training will be undertaken.

435. An Employee who receives a performance rating of Unsatisfactory should be managed in accordance with the Managing Underperformance process set out in Clauses 447-462. No salary advancement is payable.

### **Accelerated Advancement**

436. An ongoing Employee (excluding Employees under the Safe Work Australia Training Broadband) who is not already at the top pay point applying to his or her current APS classification within the Safe Work Australia Broadband structure who is rated as Exceeds Expectations against key deliverables and observable work behaviours may be nominated by their Branch Head for accelerated advancement by two pay points within his or her current classification level.
437. Where an Employee is rated as Exceeds Expectations against both key deliverables and observable work behaviours but is already at the top pay point for their current classification they are to be considered for additional assistance in furthering their APS career through the Agency's Rewards and Recognition scheme.

Note: As a guide, it is expected that each Branch Head will nominate at least one Employee per performance cycle for either accelerated advancement or additional career assistance.

### **Responsibilities for Performance Appraisal**

438. Employees must participate in all stages of the performance appraisal process including performance reviews.
439. Managers must:
- participate in all stages of the performance appraisal process;
  - discuss any requirement to vary the PDA throughout the cycle;
  - take action to address underperformance throughout the cycle;
  - provide constructive and effective feedback about performance; and
  - apply a consistent rating scale; and undertake performance reviews.

### **Performance Development Agreements**

440. Performance Agreements will:
- be developed between the Manager and the Employee;
  - include a reasonable number of key deliverables and observable work behaviours with appropriate performance measures;
  - identify and record learning and development requirements and any support needs, including for current skill/knowledge gaps and for future career goals; and
  - show a clear link between the business outcomes and performance measures included on an Employee's performance agreement and how these contribute to the achievement of the Agency's strategic goals.

### **Performance Assessment Cycle**

441. The Performance Appraisal and Development Scheme will operate on a twelve-month cycle from 1 July to 30 June.



442. At mid and end of cycle reviews an Employee's Manager should provide the Employee with feedback in writing on the performance appraisal template on their business outcomes including adherence to APS Values and Code of Conduct.

### **Rewards and Recognition**

443. The Agency's Rewards and Recognition Guide shall set out options that can be applied throughout the Agency for rewarding and recognising high level performance, including Agency-wide measures. These arrangements provide the flexibility to deliver rewards and recognition at appropriate times.

### **Managing Underperformance**

444. Performance assessment will provide the framework for managing underperformance within the Agency. While assessment will operate on an annual cycle with mid-cycle discussions of performance, a Manager or an Employee may initiate a discussion of work performance, including underperformance, at any time.
445. The primary focus of the underperformance arrangements is supporting an Employee to attain or regain an acceptable level of performance. In achieving this end, the Agency will ensure that the principles of procedural fairness are applied in relation to decisions taken in respect of managing underperformance.
446. The process for managing underperformance does not apply:
- to non-ongoing Employees;
  - to Employees on probation;
  - where there is a health-related reason for the underperformance; or
  - where an essential qualification has been lost.
447. The processes of performance appraisal and managing underperformance are linked but distinct. Issues relating to performance generally are dealt with through the Performance Appraisal and Development process over a 12 month cycle. Issues relating to underperformance should be addressed promptly and, subject to due process, may lead to an Employee's performance being rated as Unsatisfactory at any time during the performance cycle. The 'no surprises' principle must be rigorously applied where cases of underperformance or Unsatisfactory performance arise.

### **Underperformance Procedures**

448. Where a Manager believes that an Employee is underperforming, the Manager must advise the Employee and then work constructively with them to address the Manager's concerns with the aim of attaining and sustaining the work standards required.
449. Where possible underperformance has been identified, discussed with the Employee and remedial action attempted for a reasonable period of time but proven unsuccessful, the Manager must then determine whether the Employee should be formally rated as Unsatisfactory against either or both of the indicators in the Agency's Performance rating scale.
450. A formal rating of Unsatisfactory for either key deliverables or observable work behaviours may trigger the underperformance process.
451. Where a formal rating of Unsatisfactory has been given it must be communicated promptly to the Employee and in writing together with a succinct statement of reasons.

452. Once an Unsatisfactory rating has been recorded, the Chief Executive Officer shall then review the matter and may invoke the Agency's formal processes for managing underperformance or remit the matter to the relevant Manager.
453. The form of any action to be taken after the Chief Executive Officer has made a decision under Clause 451 will have regard to factors including whether:
- an Employee's performance has remained consistently below the expected standard;
  - the extent of under-performance;
  - any progress being made through informal steps already undertaken;
  - whether issues are ongoing; and
  - the prospects of remedial action succeeding.
454. Where the Chief Executive Officer determines that an Employee's work performance is Unsatisfactory and needs to be managed in accordance with this Part, they will, as soon as practicable, advise the Employee in writing that they consider the Employee's work performance Unsatisfactory. The written advice to the Employee will identify the reasons for the rating, set out ways that the Employee's performance is to improve and include details of the following:
- the required standards for the duties the Employee has been assigned and how the Employee has failed to meet those standards;
  - how the Employee's performance will be assessed; and
  - the possible consequences if the Employee has not attained and sustained the required standards by the end of an assessment period.
455. The Employee will have ten working days to comment.
456. After the employee's comments (if any) have been considered, an eight week assessment period may then begin. An interim assessment report will be provided to the Employee on his or her work performance after four weeks and a final report after eight weeks.
457. Where, having regard to the comments (if any) provided by the Employee, the Manager considers it necessary, the Employee's performance may be further assessed over a further assessment period.
- Note: "*further assessment period*" means a period, not less than one month and not exceeding three months, determined by the Manager having regard to:
- the nature of the duties undertaken by the Employee;
  - the availability of the Employee to undertake those duties; and
  - any other relevant circumstance.
458. During the further assessment period, the Manager will provide the Employee with regular feedback on their performance.
459. If, at the end of the further assessment period, the Employee's performance is not assessed as Meets Expectations or better by the Manager, the Manager must provide a written report to the Chief Executive Officer together with comments in writing (if any) the Employee wishes to make in respect of the written report.
460. Following receipt of the report and comments (if any) the Chief Executive Officer may issue a notice of intention to do one of the following:
- terminate the employment of the Employee;
  - assign the Employee to other duties at their current classification;

- assign to the Employee duties either with a lower classification or at a lower level within a broadband having determined that those duties are appropriate to that classification or lower level within a broadband and that the Employee is capable of performing those duties; or
- take other action specified in the notice that may be appropriate.

461. A notice issued under the previous clause will indicate which of the four options is intended.

462. The Employee will have ten working days to make representations why the action proposed in the notice should not be taken.

463. At the end of the ten working days, the Chief Executive Officer, having considered the representations (if any) submitted under Clause 461, may issue a notice of his or her decision about the action taken in relation to the Employee.

### **Temporary Assignment and Performance Management**

464. Where an Employee is temporarily assigned new duties the Employee and their Manager should determine, based on the expected duration of the temporary assignment, whether a new PDA should be developed.

465. An Employee, who has been temporarily assigned to duties with a Higher Classification for any duration during the appraisal cycle, must be rated against their substantive position. The Employee's performance at the higher level throughout the cycle should be taken into account for the performance rating of their substantive position.

### **Review of Actions and Performance**

466. The mechanisms for the internal review of employment actions set out in Part S of the Agreement are available to Employees seeking review of action associated with performance appraisal.

### **Managing Breaches of the Code of Conduct**

467. Breaches of the Code of Conduct will be dealt with under procedures established in accordance with section 15 of the *Public Service Act 1999*.

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## **PART O    WORKFORCE MANAGEMENT AND PLANNING**

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### **Recruitment**

468. The Agency's recruitment and selection arrangements reflect the APS Values and in particular, the essential components of fairness, equity and merit based decision making. The Agency will continue to enhance recruitment and selection processes to ensure timely outcomes.

### **Mobility**

469. The Agency supports and encourages career development and mobility so as to give Employees the opportunity to broaden their skills and experience and meet their personal goals and fulfil their potential while benefitting the organisation by aligning the talents of its workforce with current and future organisational priorities.
470. The Agency will put in place systems to support this commitment to mobility. In supporting and encouraging career development and mobility, managers will ensure that movement at level will not be unreasonably opposed.
471. Where an Employee's PDA includes mobility as an agreed learning and development strategy and an opportunity is identified by the Employee but is not supported by the Manager, the Manager's view will be explained to the Employee. If the Employee remains dissatisfied with this explanation the matter can be raised with the next level of management.

### **Permanent Movement within a Broadband**

472. Permanent movement between classification levels within a broadband applies to ongoing Employees only.
473. Movement to a higher APS classification level within a broadband is not automatic and can only occur when:
- there is work available at the higher level; and
  - the Employee's performance is assessed as Meets Expectations or better for both key deliverables and observable work behaviours; and
  - the Employee demonstrates an ability to undertake the higher level work and if appropriate has the necessary qualification, skills and/or experience;
  - or when an Employee is successful in an open merit selection process consistent with the *Public Service Act 1999*.

### **Options for Movement within a Broadband**

474. When filling a job within the broadband, the Chief Executive Officer will consider the options available including moving an ongoing Employee within a broadband, conducting an Internal Expression of Interest, or advertising the job externally. All movements between classifications within a broadband will be notified on the Safe Work Australia Intranet.

### **Option 1 – Moving an Ongoing Employee within a Broadband**

475. This option is only available where there is one Employee in the work area within the broadband performing similar work who meets the eligibility requirements in Clauses 471-472. Where the Chief Executive Officer approves the movement of an ongoing

Employee to the next highest classification level within the Broadband the Employee will move to the base pay point of that classification unless the Chief Executive Officer determines a higher pay point within the classification having regard to the experience, qualifications and skills of the Employee.

### **Option 2 – Internal Expressions of Interest**

476. Where there are a number of Employees at the same classification level in the work area doing similar work an Internal Expression of Interest should be undertaken.
477. The Chief Executive Officer must consider whether the Internal Expression of Interest should be advertised only in that work area or more widely within the Agency. Applicants must meet the eligibility requirements in Clauses 471-472. On approval from the Chief Executive Officer the successful Employee(s) will move to the base pay point of the next highest classification level within the broadband unless he or she determines a higher pay point within that classification having regard to the experience, qualifications and skills of the Employee.

### **Option 3 – External Advertising**

478. The Chief Executive Officer decides to advertise externally.

### **Promotion Appeal Rights**

479. Movement of an Employee to a higher classification level within the same broadband is not considered a promotion for the purposes of the *Public Service Act 1999*. Therefore, Employees who are unsuccessful in their application for movement within a broadband have no promotion appeal rights.

### **Movement between Broadbands**

480. Movement between one broadband level to a higher broadband level, or to an Executive Level classification is a promotion for the purposes of the *Public Service Act 1999*.
481. An open merit selection process is mandatory in these situations.

### **Date of Effect for Movements within a Broadband**

482. Internal movements to a higher classification level within a broadband will take effect four weeks from the Chief Executive Officer's approval unless he or she agrees to an earlier date.

### **Temporary Performance Loading (TPL)**

#### Principles

483. Temporary performance means work at a higher APS classification level.
484. Safe Work Australia aims to minimise the number of Employees on long-term temporary performance by advertising ongoing vacancies as they occur.
485. The Agency will consider the suitability and availability of Agency Employees before engaging a non-ongoing Employee or contractor to undertake or fill a temporarily vacant job.

486. Where an Employee is temporarily assigned duties applicable to a higher Classification or to a higher Classification within their current Broadband, the Employee may discuss any salary issues with the Chief Executive Officer before taking up the new duties.

#### General Rules

487. A Manager may split the temporary performance duties between Employees for developmental purposes.
488. If the TPL opportunity is for the minimum period that would attract TPL and a decision is made to share the opportunity between Employees, each Employee will be paid TPL for the period they perform at the higher classification level.
489. Where temporary performance loading is payable this would normally be at the base pay point of the higher classification.
490. A Manager may approve payment of TPL at a pay point above the base pay point. In considering such an approval, the Manager will take into account the Employee's previous periods of temporary performance, the Employee's performance, skills and relevant experience.
491. A Manager will ensure that the type of merit process for TPL is determined in advance and Employees advised of the process.
492. For a temporary performance period of three continuous months or less, the Manager will consider the claims on merit of all available Employees in the work area who are below the classification level available for temporary performance.
493. Where temporary performance is necessary for a period of more than three continuous months, an internal merit selection process should be used to find the most suitable Employee available.
494. In circumstances where there is a frequent and recurring or onerous requirement for short term periods of temporary performance, the Chief Executive Officer may approve the payment of TPL for a period of less than the minimum period that would usually attract TPL.
495. An Employee may decline a Manager's invitation to perform duties temporarily at a higher classification level.
496. All periods of temporary assignment, paid or unpaid, will be recorded on the Agency's HR information system for record-keeping and delegation purposes.

#### APS 1 - 6 Employees

497. Where an APS 1 – APS 6 Employee is temporarily assigned duties with a higher Classification for a continuous period of three weeks or more, or a shorter period which is then extended to or beyond three weeks, the Employee will be paid at the salary point determined in accordance with Clauses 488-489 in the range attaching to the higher Classification or the higher Classification within the Broadband.
498. Where the initial period is intended to be continuous for three weeks or more payment will commence immediately. Where a shorter period is extended up to or beyond three

weeks, payment will be made once the period reaches or exceeds three weeks and will be backdated to the date of commencement of the temporary assignment.

499. These arrangements apply to each new period of temporary assignment and non-continuous periods are not aggregated.

#### TPL for Executive Level Employees

500. An Executive Level 1 Employee who is temporarily assigned duties with a higher Classification will be eligible for the payment of TPL once they have performed work in the Agency at the higher classification for a period of four weeks. Periods of acting need not be continuous and shall include periods of duty performed at the higher Classification after 1 July 2011.
501. Where an Executive Level Employee is temporarily assigned SES duties and has accumulated or will accumulate a period of four weeks or more service discharging those responsibilities, a higher temporary salary will be set by the Chief Executive Officer. For the purposes of qualifying for a temporary higher salary when performing SES duties, non continuous periods of acting are aggregated. Periods of acting performed after 1 July 2011 count towards the four week minimum qualifying period for TPL.
502. Whenever an Employee is temporarily assigned duties to an SES role the Employee may discuss any salary issues with the Chief Executive Officer before taking up the new duties.

#### **Salary Advancement and TPL**

503. Where an Employee has been in receipt of TPL from 1 April or earlier and remains on TPL at that classification level or higher until 15 August in that year, salary advancement will occur at the Employee's temporary performance and substantive levels effective from 15 August, subject to dual performance ratings of Meets Expectations or better. Where there is a break of three weeks or less in TPL between 30 June and 15 August the Employee is still eligible for salary advancement at both levels.
504. An Employee who is promoted between 1 April and 30 June in any year, who was in receipt of TPL immediately before the promotion, so that the Employee has served three continuous months or more at their current substantive level by 15 August that year, is eligible for salary advancement at the higher level effective from 15 August, subject to dual performance ratings of Meets Expectations or better.

#### **TPL while on Leave**

505. Where an Employee is absent on paid leave, or observes a Public Holiday and has been directed to perform duties at a higher classification, payment of TPL will continue during the absence as if the Employee was still at work, to the extent of the continued operation of the direction. Where the period of leave is at half pay, the rate of TPL will be adjusted to reflect the lower rate of pay.

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## **PART P   SEPARATION**

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### **Employee Initiated Separation from the APS**

506. An Employee will, where practicable, give a minimum of two weeks' notice of their intention to resign or retire from the APS, except where a lesser period is agreed with the Chief Executive Officer.
507. Where an Employee submits a resignation which takes effect on a public holiday, the resignation will be deemed effective from close of business on the working day immediately prior to the public holiday. All resignations will be deemed to take effect at close of business of the resignation date.



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## **PART Q REASSIGNMENT AND TERMINATION ARRANGEMENTS FOR EXCESS EMPLOYEES**

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### **Principles**

508. These provisions are designed to facilitate effective career transition for excess Employees while addressing the organisational requirements of the Agency.
509. These excess Employee provisions recognise the need for financial security and supportive career counselling while Employees seek new work.
510. The Agency will as far as practicable, avoid involuntary terminations and will throughout the process take all reasonable steps to transfer a potentially excess or excess Employee to a suitable vacancy at an equal classification within the Agency.
511. The Agency will also comply with the APS Redeployment Policy announced in April 2011 and its successor policies.

Note: Consistent with this policy, the Agency supports the concept of exploring redeployment options within the Agency and broadly within the APS. These may include the use of job swaps or job exchanges to assist Employees to avoid involuntary retrenchment. The Agency will use its best endeavours to support APS-wide redeployment initiatives including any central register of vacancies maintained by the APSC.

512. Consistent with the consultation provisions in the agreement, the Agency will communicate with Employees and their representatives during workplace change which will include notification of whether an excess Employee situation is likely and the process to identify affected Employees.
513. Where 15 or more Employees are likely to become excess, the Chief Executive Officer will comply with the provisions of Division 2, Part 3-6 of the *Fair Work Act 2009*.

### **Application**

514. The following provisions apply to all Employees, covered by this Agreement excluding:
- an Employee serving a probationary period; and
  - a non-ongoing Employee.
515. An offer of voluntary termination to an Employee who is not fit for and not at work may be made to an Employee who is excess in accordance with the Excess Employee circumstances outlined in the Definitions section below, only where the Chief Executive Officer, having regard to the Commonwealth's potential liability, decides it is appropriate.

## Definitions

516. The following definitions apply:

Excess Employee	An Employee will be considered excess where: <ul style="list-style-type: none"><li>a. the Employee is part of a class of Employees that is larger in size than is necessary for the efficient and economical working of the Agency; or</li><li>b. the services of an Employee cannot be effectively used because of technological or other changes in the work methods of the Agency, or structural or other changes in the nature, extent or organisation of the functions of the Agency; or</li><li>c. the duties usually performed by the Employee are to be performed in a different locality, the Employee is not willing to perform the duties at the other locality and the Chief Executive Officer has determined that these provisions will apply to that Employee</li></ul>
Discussion and Consideration Period	is a period of two months commencing from the date the Chief Executive Officer makes an Employee a formal offer of voluntary termination
Salary	includes: <ul style="list-style-type: none"><li>a. the Employee's salary on the date of termination; and</li><li>b. temporary performance loading where the Employee has received the loading for a continuous period of at least 12 months immediately preceding the date on which the Employee is given a formal offer of a voluntary termination; and</li><li>c. allowances in the nature of salary which are paid during periods of Annual Leave and on a regular basis, excluding allowances which are a reimbursement for expenses incurred, or a payment for disabilities associated with the performance of duty.</li></ul>
Retention Period	is a period of 13 months where an Employee has 20 or more years of continuous, current APS service at the time of the offer, or is over 45 years of age; or 7 months for other eligible Employees. The retention period commences the day after the expiry of the discussion and consideration period.

## Discussion and Consideration Period

517. Where an excess Employee situation is identified the Chief Executive Officer will:

- advise in writing, the Employee(s) directly affected and their representatives of the situation, the reasons and scope;
- discuss the voluntary termination and reassignment processes with affected Employees;
- hold discussions with the Employee(s) and their representatives; and
- offer the affected Employee(s) voluntary termination.

## **Voluntary Termination Offer**

518. The offer must state when the Chief Executive Officer proposes to issue the termination notice if the offer is accepted.
519. The offer should include the following information to assist the Employee in their considerations:
- amount payable as termination pay, pay in lieu of notice and accrued annual and long service leave credits;
  - amount of accumulated superannuation contributions;
  - superannuation options;
  - taxation rules applicable to the various payments; and
  - the availability of financial assistance, on a reimbursement basis, towards obtaining independent financial advice up to the value of \$1200
520. The Employee(s) will have two months in which to consider the offer of voluntary termination. An Employee who has received an offer of voluntary termination must advise the Chief Executive Officer, in writing, before the end of the discussion and consideration period whether the Employee wishes to be considered for re-assignment or voluntary termination.
521. The discussion and consideration period may be shortened, with the written agreement of the Employee. The Employee will be entitled to receive payment for the unexpired portion of the discussion and consideration period as per Clause 523.
522. If the Employee does not accept the formal offer of voluntary termination or express a preference for reassignment, the Employee will be taken to have a preference to be considered for reassignment, and their retention period will commence in accordance with Clause 538.
523. Employees will be become excess one month after the date the Employee receives a formal offer of voluntary termination unless during this time their employment has been terminated, they have been redeployed or the Chief Executive Officer decides they are no longer in an excess situation.
524. Should the Employee request an earlier termination date that falls within the discussion and consideration period, the Employee will be entitled to receive payment for the unexpired portion of the discussion and consideration period. In addition, the payment in lieu of the unexpired portion of the discussion and consideration period will include an amount equivalent to the Annual Leave and Long Service Leave entitlements that would have accrued to the Employee had they worked through their discussion and consideration period.

## **Career Transition Assistance**

525. At the time the Employee is offered a voluntary termination or as soon as possible thereafter but, in any event, no later than one month after the voluntary termination offer, excess Employee(s) will be offered Career Transition Assistance which will include:
- advice on the re-assignment and redundancy process;
  - a point of contact for individual queries;
  - assistance with identifying re-assignment opportunities; and
  - training/redeployment assistance.

Note: Such information is provided for guidance only and is not an offer capable of forming a binding contract.

526. Employees may also access the Agency's Employee Assistance Program for free personal counselling.

### **Voluntary Termination Process**

527. If an Employee accepts an offer of voluntary termination, and the Chief Executive Officer agrees to the termination, the Chief Executive Officer will issue a "notice of termination" under section 29 of the *Public Service Act 1999*.
528. The period of notice will be four weeks, or five weeks for an Employee over 45 years of age with at least five years of continuous, current APS service at the time of the offer. Where an Employee elects to terminate their employment before the expiration of the notice period, payment in lieu for the unexpired portion of the notice period will be made.
529. Notice of termination will not be given before the end of the discussion and consideration period without the agreement of the Employee.
530. Only one offer of voluntary termination will be made to an Employee in an excess or potentially excess situation.
531. Job swaps will be available until the end of the period for discussion and consideration of voluntary termination where a Safe Work Australia Employee who is excess but does not want a voluntary termination, swaps jobs with an Employee from within Safe Work Australia or from another agency who is not excess but who wants voluntary termination. Job swaps are subject to the Chief Executive Officer's approval on a case by case basis.
532. An Employee will not be involuntarily terminated if a redundancy situation affects a number of Employees engaged in similar work at the same location, and there exists one or more Employees who have been made and accepted an offer of voluntary termination and have been refused, and still wish to accept voluntary termination.

### **Severance Pay**

533. An Employee who accepts voluntary termination and whose employment is terminated under section 29 of the *Public Service Act 1999* on the grounds that they are excess to requirements will be entitled to the following severance pay, subject to any minimum amount the Employee is entitled to under the National Employment Standards (NES):
- two weeks' salary for each completed continuous year of service; and
  - a pro-rata payment for completed continuous months of service since the last completed year of service.
  - the minimum amount of severance pay is an amount equal to four weeks' salary and the maximum amount payable is an amount equal to 48 weeks' salary.
534. Severance pay is calculated on a pro-rata basis for any period of service when the Employee worked part time, subject to any minimum amount the Employee is entitled to under the NES.

## **Service for Severance Pay Purposes**

535. Service for severance pay purposes means:

- service in the Agency;
- Government service as defined in section 10 of the *Long Service Leave (Commonwealth Employees) Act 1976*;
- service with a Commonwealth body (other than service with a Joint Commonwealth-State body corporate in which the Commonwealth does not have a controlling interest) which is recognised for Long Service Leave purposes;
- service with the Australian Defence Forces;
- APS service immediately preceding deemed resignation under repealed section 49 of the *Public Service Act 1922*, if the service has not previously been recognised for severance pay purposes; and
- service in another organisation where an Employee was transferred from that organisation with a transfer of function; or an Employee engaged by that organisation on work within a function is appointed as a result of the transfer of that function to the APS and such service is recognised for Long Service Leave purposes.

536. For earlier periods of service to count, there must be no breaks between the periods of service, except where:

- the break in service is less than one month and occurs where an offer of employment with the new employer was made and accepted by the Employee before ceasing employment with the preceding employer; or
- the earlier period of service was with the APS and ceased because the Employee was deemed to have resigned from the APS on marriage under the repealed section 49 of the *Public Service Act 1922*.

## **Service Not to Count for Severance Pay Purposes**

537. Periods of service that will not count as service for redundancy pay purposes are periods of service that ceased by way of:

- termination under section 29 of the *Public Service Act 1999*; or
- prior to the commencement of the *Public Service Act 1999*, by way of redundancy; forfeiture of office, retirement on the grounds of invalidity, inefficiency or loss of qualifications; dismissal or termination of probationary appointment for reasons of unsatisfactory service; or
- voluntary retirement at or above the minimum retiring age applicable to the Employee; or
- payment of a redundancy benefit or a similar payment or an employer-financed retirement benefit.

538. Absences from duty which do not count as service for Long Service Leave purposes will not count for severance pay purposes.

## **Retention Period**

539. Should an Employee not accept the formal offer of voluntary termination, the Employee will commence their retention period on the day after the expiry of the discussion and consideration period. The notice period will be concurrent with the retention period.

540. The intention of the retention period is to enable excess Employees to be reassigned within the APS or to find other suitable employment. Consistent with this intention, during the retention period:
- the Agency will continue to provide and resource reasonable career transition services and support, and take reasonable steps to move an excess Employee to a suitable vacancy, to another agency and to pursue placements outside the APS consistent with this Agreement; and
  - Employees will take reasonable steps to secure permanent re-assignment or placement.
541. The retention period is:
- 13 months where an Employee has 20 or more years of continuous, current service with the APS or is over 45 years of age; or
  - 7 months for other Employees.
542. If an Employee is entitled to a redundancy payment under the NES, the relevant period in the above clause is reduced by the number of weeks redundancy pay that the Employee will be entitled to under the NES on termination, as at the expiration of the retention period (as adjusted by this clause).
543. Where the Chief Executive Officer determines there is insufficient productive work available to an excess Employee during the retention period, the Chief Executive Officer may, with the agreement of the Employee, terminate his or her employment under section 29 of the *Public Service Act 1999* and pay the balance of the retention period as a lump sum.

### **Reassignment Services and Reduction in Classification**

544. The following provisions will apply to Employees during their retention period:
- The Employee can access up to \$1200 for payment for outplacement services or training opportunities that would be expected to enhance the employment prospects of Employees.
  - Excess Safe Work Australia Employees will be considered first and in isolation from, and not in competition with, other applicants who are not excess for an advertised vacancy to which the Employee seeks transfer but only at or below the Employee's level. In placing excess Employees consideration will be given to the Employee's current skills and experience or the Employee's ability to acquire the relevant skills for the advertised vacancy in a short period of time.
  - Suitable trial placements in another organisation including private sector organisations will be funded for up to three months where there is an identifiable opportunity for permanent placement and no job swap arrangement is involved. An individual Employee may undertake more than one trial placement.
  - The Employee may on request, be provided with assistance in meeting reasonable travel costs and incidental expenses incurred in seeking alternative employment.
  - If a suitable vacancy does not exist at the same level within the Agency or where the Chief Executive Officer proposes to reduce an excess Employee's classification as a means of securing alternative employment, the Employee will be given four week's notice. If reduction occurs after the offer of voluntary termination and before the end of the retention period the Employee will receive payments to maintain the Employee's salary level for the balance of the retention period.

- Employees over 45 years of age and Employees in regional remote areas may be eligible for additional outplacement assistance (up to the value of \$3,000) during the retention period.

### **Leave during the Retention Period**

545. Retention periods will only be extended by certified leave for personal illness or injury or mandatory Maternity Leave, where the Chief Executive Officer is satisfied that an Employee is substantially incapacitated and unfit for work. The retention period will not be extended for other absences except where the Chief Executive Officer is satisfied that exceptional circumstances exist. The period will not be extended on these grounds beyond an additional eight weeks.

### **Involuntary Termination**

546. If an excess Employee is unsuccessful in obtaining permanent reassignment at the end of the retention period, his or her employment will be terminated under section 29 of the *Public Service Act 1999*.

547. Where an excess Employee's employment is to be terminated the Employee will be given four week's notice of termination (or five weeks for an Employee over 45 years of age with at least five years of continuous, current APS service). This period of notice will be served, as far as practicable, concurrently with the retention period.

548. Where an Employee elects to terminate their employment before the expiration of the notice period, payment in lieu for the unexpired notice period will be made.

549. In deciding whether to terminate an excess Employee, the Chief Executive Officer will take account of any re-assignment process that may be in progress.

550. An excess Employee may consent to involuntary termination during the retention period. Severance benefits are not available to Employees who resign or consent to involuntary termination during the retention period.

### **APS Code of Conduct Breaches and Underperformance in Retention Period**

551. Where action in relation to a suspected breach of the APS Code of Conduct or action relating to unsatisfactory performance extends into, or commences, during the retention period the matter will be dealt with in accordance with the relevant Agency provisions as varied from time to time.

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## **PART R WORKING RELATIONS**

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### **Principles of Consultation**

552. Safe Work Australia is committed to open, genuine and meaningful communication with Employees and their representatives. Dialogue between the parties will be conducted in a timely manner and in a spirit of mutual co-operation. Employee input will be encouraged and feedback will be provided. All parties recognise the importance of maintaining a professional, constructive and co-operative approach in their dealings with each other. Where formal consultative mechanisms exist, the right of Employees to be represented in those processes is to be respected.

### **Consultation**

553. The parties will consult on workplace issues that arise.

554. Consultation includes sharing information and providing a genuine opportunity for Employees and their representatives to put their views directly to the appropriate decision-maker and for those views to be properly considered and responded to before a decision is made.

555. The Agency is committed to consulting directly with Employees about workplace matters that affect them.

556. The Agency also recognises the right of individual Employees to choose representatives to act on their behalf in consultative processes.

557. Employees and their representatives may at any time raise issues directly with the Agency.

558. The Agency uses a range of means to communicate and consult with Employees and their representatives to enhance mutual understanding of workplace issues.

559. To enhance communication and consultation the Agency will, including in respect of its performance management system, encourage Employees and their respective managers including Branch Heads, to meet regularly to discuss and consider workplace issues.

560. The Agency will consult with Employees regarding workplace matters, including on significant changes either directly or through:

- Branch Meetings;
- The Workplace Consultative Forum; and
- Other staff–management forums that may be established from time to time.

### **Consultation on Major Changes affecting Employees**

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

562. Where a definite decision is made to introduce major changes in program, organisation, structure or technology that are likely to have significant effects on



Employees, the Chief Executive Officer must notify the Employees who are likely to be affected by the proposed changes and their representatives, if any, in a timely manner.

563. Significant effects include:

- Termination of employment;
- Major changes in composition, operation or size of the Agency's workforce or in the skills required;
- The elimination or diminution of job opportunities, promotion opportunities or job tenure;
- Significant alteration in hours of work;
- The need to retrain Employees;
- The need to relocate Employees to another workplace; and
- The major restructuring of jobs.

564. The Chief Executive Officer must discuss with the Employees affected and their representatives, if any, the introduction of changes referred to in Clause 560, the effects the changes are likely to have on Employees and measures to avert or mitigate the adverse effects of such changes on Employees and must give prompt consideration to matters raised by the Employees and/or their representatives in relation to the changes.

565. The discussions must commence as early as practicable after a definite decision has been made to make the changes referred to in Clause 561.

566. For the purposes of such discussions, the Employees concerned and their representatives, if any, are to be provided in writing with all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on Employees and any other matters likely to affect Employees. The Chief Executive Officer is not required to disclose confidential or commercially sensitive information to the Employees.

### **Workplace Consultative Forum**

567. Safe Work Australia shall establish and maintain a consultative forum. This will be known as the 'Workplace Consultative Forum' (the WCF). The WCF is a consultative and not a deliberative body that makes recommendations and not final decisions.

568. The WCF shall have a minimum of twelve members and will include:

- The Chief Executive Officer or their nominee
- Two management representatives appointed by the Chief Executive Officer
- The Branch Head, Corporate Services
- Two elected Employee representatives drawn from each Branch in the Agency
- An Agency Employee nominated by the Community and Public Sector Union and supplementary representation when requested by a majority of the WCF or by the Chief Executive Officer.

569. The Chair of the WCF shall be rotated regularly between management and Employee representatives in a manner agreed by the WCF.

570. The quorum for a valid meeting shall be nine members.

571. The WCF shall meet at least six times in each calendar year. The maximum gap between meetings shall be 10 weeks.

572. Subject to a period of three working days notice, the WCF must convene where the Chief Executive Officer has received a written request for a meeting from a minimum of six members. The Chief Executive Officer may convene the WCF at any time.
573. All meetings of the WCF shall be open to Employees. Minutes highlighting any agreed action points shall be kept and published on the Safe Work Australia Intranet in a timely manner.
574. Where the WCF agrees, non members may be invited to participate directly in the work of the WCF including meetings.
575. The WCF may form subcommittees and, with the agreement of the Chief Executive Officer, co-opt Agency staff to them.
576. The WCF shall have terms of reference that include but are not limited to advising the Chief Executive Officer on:
- The implementation of the Enterprise Agreement
  - Agency guidelines, policies and manuals
  - Staffing and mobility arrangements
  - Change management including IT and training
  - Effective use of resources
  - Work Health and Safety issues affecting Agency Employees
  - Information and Records Management
  - Local Accommodation Issues involving construction, building alteration or significant refurbishment
  - Communication issues
  - Social activities within the Agency
  - Any matter referred to it by the Chief Executive Officer
  - Workplace matters generally, but the WCF will usually decline to deal with matters involving individual or collective industrial disputes being dealt with by way of the dispute resolution provisions under this Agreement or matters going to the particular conduct of individual Employees.
577. The WCF's terms of reference and membership may be varied or added to by a three-quarters majority vote of WCF members. Notice of a proposed change to the constitution or terms of reference of the WCF must be circulated at least 10 working days before the meeting at which the proposed change is to be considered.
578. The WCF is to be provided with adequate administrative support with WCF representatives to have their role recognised in the PDA and to be provided with adequate time to consult with staff.

### **Freedom of Association**

579. The parties recognise the freedom of association provisions of the *Fair Work Act 2009*.
580. The parties recognise that Employees are free to choose to join or not join a union. Irrespective of that choice, Employees will not be disadvantaged or discriminated against in respect of their employment under this Agreement. Employees who choose to be members of a union have the right to have their industrial interests represented by that union and to participate in lawful union activities, subject to the terms of this Agreement and relevant industrial legislation.

## **Rights of Workplace Delegates and Elected Union Representatives**

581. Unless otherwise stated, these provisions represent minimum rights and entitlements. They are not intended to reduce rights under existing protocols, custom and practice or otherwise agreed by the parties.
582. The role of union workplace delegates and other elected union representatives is to be respected and facilitated.
583. The Agency and union workplace delegates must deal with each other in good faith.
584. In discharging their representative roles at the workplace level, the rights of union workplace delegates include but are not limited to:
- the right to be treated fairly and to perform their role as workplace delegates without any discrimination in their employment;
  - recognition by the Agency that endorsed workplace delegates speak on behalf of their members in the workplace;
  - the right to participate in collective bargaining on behalf of those whom they represent, as per the *Fair Work Act 2009*.
  - the right to reasonable paid time to provide information to and seek feedback from Employees in the workplace on workplace relations matters at the Agency during normal working hours;
  - the right to email Employees in their workplace to provide information and seek feedback, subject to individual Employees exercising a right to 'opt out';
  - undertaking their role and having union representation on the Agency's workplace consultative committee;
  - reasonable access to Agency facilities (including telephone, facsimile, photocopying, internet and email facilities, meeting rooms, lunch rooms, tea rooms and other areas where Employees meet) for the purpose of carrying out work as a delegate and consulting with members and other interested Employees and the union, subject to Agency policies and protocols;
  - the right to address new Employees about union membership at the time they enter employment;
  - the right to consultation, and access to relevant information about the workplace and the Agency; and
  - the right to reasonable paid time to represent the interests of members to the employer and industrial tribunals.
585. In discharging any roles that may involve undertaking union business, the rights of union workplace delegates include but are not limited to:
- reasonable paid time during normal working hours to consult with other delegates and union officials in the workplace, and receive advice and assistance from union staff and officials in the workplace;
  - reasonable access to appropriate training in workplace relations matters including training provided by a union; and
  - reasonable paid time off to represent union members in the Agency at relevant union forums.
586. In exercising their rights, workplace delegates and unions will consider operational issues, Agency policies and guidelines and the likely affect on the efficient operation of the Agency and the provision of services by the Commonwealth.

587. For the avoidance of doubt, elected union representatives include APS Employees elected to represent union members in representative forums, including, for example, CPSU Section Secretaries, Governing Councillors and Section Councillors.

### **Facilitating Union Communication with Employees**

588. In addition to the Rights of Workplace Delegates and Elected Union Representatives set out above, the Agency will consider requests from unions for all-staff emails and seek to facilitate those requests where possible, subject to operational requirements.
589. The Agency shall withdraw resources and support being provided by it to workplace delegates where the latter are promoting or facilitating unprotected industrial action by the union.

### **Representation Generally**

590. In any matter arising under this Agreement, an Employee may have a representative (who may be a union representative) assist or represent them, and all relevant persons will deal with any such representative in good faith. To avoid doubt, this assistance includes acting as an advocate in relation to the Employee's entitlements and rights.
591. Employees who perform a role as an Employee representative will be provided with reasonable access to appropriate training in workplace relations matters and support as agreed to perform their function. The Agency agrees that the representative will not suffer any employment related detriment as a result of performing the representative function.

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## **PART S PROCEDURES FOR PREVENTING AND SETTLING DISPUTES**

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### **Resolution of Agreement Disputes**

592. If a dispute relates to a matter under this Agreement, including Work Health and Safety matters as provided for at Part K of the Agreement, or the NES, the parties to the dispute must first attempt to resolve the matter at the workplace level by discussions between the Employee or Employees concerned and the relevant Manager.
593. At all stages of the dispute, the Employee or Employees concerned are entitled to choose to be represented and may appoint a representative of their choice, which may be the union, for the purposes of these procedures.
594. Resolution of disputes is to occur in good faith by following similar principles to those pertaining to good faith bargaining as outlined at section 228 of the *Fair Work Act 2009*.
595. If a resolution to the dispute has not been achieved after discussions have been held in accordance with Clause 591, the parties to the dispute will endeavour to resolve the dispute in a timely manner either through discussions with more senior levels of management where appropriate or through alternative dispute resolution methods.
596. If discussions at the workplace level do not resolve the dispute, and all appropriate steps have been taken in accordance with Clauses 591 and 594, a party to the dispute may refer the matter to Fair Work Australia.
597. Fair Work Australia may deal with the dispute in two stages:
- Fair Work Australia will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
  - if Fair Work Australia is unable to resolve the dispute at the first stage, Fair Work Australia may then:
    - arbitrate the dispute; and
    - make a determination that is binding on the parties.

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

598. While the parties are trying to resolve the dispute using the procedures in this Part:
- an Employee must continue to perform his or her work as he or she would normally in accordance with established custom and practice at the Agency that pertained prior to the dispute arising unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and
  - an Employee must comply with a direction given by the Agency Head to perform other available work at the same workplace, or at another workplace, unless:
    - the work is not safe; or
    - applicable work health and safety legislation would not permit the work to be performed; or
    - the work is not appropriate for the Employee to perform; or
    - there are other reasonable grounds for the Employee to refuse to comply with the direction.

599. The parties to the dispute agree to be bound by a decision made by Fair Work Australia in accordance with this term.
600. Any disputes arising under a previous collective agreement, determination or enterprise bargain, or the NES that are unresolved at the date that this Agreement commences will be dealt with under the dispute resolution procedures in this Agreement.

### **Review of Actions**

601. The Agency is committed to attempting to resolve Employee's concerns in an informal manner wherever possible. Employees are therefore encouraged to discuss their concerns with their immediate Manager or their Branch Manager in the first instance. If the subject matter of the complaint cannot be resolved, or is inappropriate to discuss with the Employee's immediate Manager or Branch Manager, the matter will be referred to the Chief Executive Officer.
602. Nothing in Clause 600 prevents an Employee from exercising their right of review of an action relating to their employment through the processes provided for in section 33 of the Public Service Act and Part 5 of the Public Service Regulations 1999.

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

603. The sole and exhaustive rights and remedies of an Employee in relation to termination of employment are those that the Employee has under:
- the *Fair Work Act 2009*
  - other Commonwealth laws (including the Constitution); and
  - at common law.
604. Termination of, or a decision to terminate, employment cannot be reviewed under the procedures for preventing and settling disputes or under the procedures for internal review of employment action included in this Agreement.
605. Nothing in this Agreement prevents the Chief Executive Officer from terminating the employment of an Employee for serious misconduct, without further notice or payment in lieu of notice, in accordance with subsection 123(1)(b) of the *Fair Work Act 2009*, subject to compliance with the procedures established by the Chief Executive Officer under section 15 of the *Public Service Act 1999* for determining whether an Employee has breached the Code of Conduct.

## APPENDIX 1 AGENCY SALARY SCALES

### General Classifications, Broadbands and Salary Increases (\$)

Broadband	Classification	Pay Point	Current From 15 Sept 2011 \$	On Commencement \$	From 1 Sept 2012 \$	From 1 July 2013 \$
	Exec Level 2	4	128,987	129,700	134,565	139,275
		3	120,777	121,400	125,955	130,360
		2	113,951	114,500	118,795	122,955
		1	107,455	108,200	111,260	116,190
	Public Affairs Officer		103,950	104,625	108,550	112,350
	Exec Level 1	4	100,923	102,100	105,930	109,640
		3	95,849	96,350	99,965	103,465
		2	93,509	94,000	97,525	100,940
		1	91,315	91,820	95,265	98,600
Broadband 2	APS 6	3	81,661	82,300	85,385	88,375
		2	76,677	77,250	80,145	82,755
		1	74,260	74,700	77,500	80,215
	APS 5	3	70,619	70,980	73,640	76,220
		2	67,462	67,800	70,345	72,805
		1	66,055	66,500	68,995	71,410
	APS 4	3	63,982	64,780	67,210	69,565
		2	61,495	61,890	64,210	66,365
		1	59,822	60,210	62,470	64,655
Broadband 1	APS 3	2	57,285	57,650	59,810	61,905
		1	54,998	55,355	57,430	59,440
	APS 2	3	52,480	52,850	54,830	56,755
		2	51,511	51,855	53,800	55,685
		1	49,248	49,570	51,430	53,230
	APS 1	2	45,846	46,150	47,880	49,555
		1	41,930	42,200	43,785	45,320
		Age 20	38,158	38,406	39,850	41,240
		Age 19	33,965	34,185	35,465	36,710
		Age 18	29,351	29,541	30,665	31,730
		Under 18	25,158	25,321	26,275	27,195

Junior rates of pay are only applicable to the APS1 classification level and will be calculated as a percentage of an APS1 equivalent adult base rate of pay as follows:

- Under 18 years of age 60%
- At 18 years of age 70%
- At 19 years of age 81%
- At 20 years of age 91%

## APPENDIX 2 GOVERNMENT LAWYER BROADBANDS

**Table 1 - Principal Government Lawyer Band**

Classification	Pay Point	Current From 15 Sept 2011 \$	On Commencement \$	From 1 Sept 2012 \$	From 1 July 2013 \$
Principal Government Lawyer (Exec Level 2)	2	132,212	133,100	138,090	142,930
	1	122,588	123,400	128,030	132,510

**Table 2 – Government Lawyer Broadband**

Classification	Pay Point	Current From Sept 2011 \$	Commencement \$	1 Sept 2012 \$	1 July 2013 \$
Senior Government Lawyer (Exec Level 1)	3	111,861	113,250	117,500	121,620
	2	95,848	96,475	100,100	103,600
	1	91,315	91,910	95,260	98,700
Government Lawyer (APS6)	6	81,661	82,400	85,490	88,480
	5	76,677	77,175	80,070	82,880
	4	74,260	74,750	77,555	80,260
Government Lawyer (APS 5)	3	67,462	67,900	70,440	72,930
Government Lawyer (APS 4)	2	61,495	62,270	64,600	66,860
Government Lawyer (APS 3)	1	57,285	57,660	59,830	61,920

### Safe Work Australia Lawyers – Eligibility and Advancement Arrangements

606. This attachment establishes specific broadband and salary advancement arrangements available to lawyers working in the Agency's legal areas. These arrangements have been developed to allow the Agency to recruit and retain qualified, high performing and experienced lawyers, and to promote training and development of the Agency's lawyers.
607. The Agency agrees to provide Employees with access to the Government Lawyer broadband structure where it is determined their duties require the regular and continuing application of legal skills to work performed in the Agency.

### Eligibility and Selection Requirements

608. The eligibility requirements for entry to Government Lawyer and Senior Government Lawyer jobs are:



- a degree in Laws from an Australian tertiary institution or a comparable overseas qualification which is appropriate to the duties of the classification; or
- admission as a legal practitioner, however described, of the High Court or the Supreme Court of an Australian State or Territory; and
- if the Head of the Legal Area in which the Employee works determines it appropriate, possession of a current restricted practising certificate issued by the ACT Law Society, or the obtaining of such a certificate within three months of commencing employment with the Agency.

609. The eligibility requirements for entry to Principal Government Lawyer jobs are:

- admission as a legal practitioner, however described, of the High Court or the Supreme Court of an Australian State or Territory; and
- if the Head of the Legal Area in which the Employee works determines it appropriate, possession of a current restricted practising certificate issued by the ACT Law Society, or the obtaining of such a certificate within three months of commencing employment with the Agency.

610. Selection for Government Lawyer, Senior Government Lawyer and Principal Government Lawyer jobs will be made in accordance with the Agency's recruitment and selection arrangements.

### **Transfer to Government Lawyer Broadband**

#### Government and Senior Government Lawyer

611. Employees who meet the eligibility requirements for employment as a Government Lawyer or Senior Government Lawyer may apply to the Head of the Legal Area in which the Employee works to transfer to the Government Lawyer Broadband. Where the transfer to the Government Lawyer Broadband is approved, the Employee will move from his or her current APS classification to the equivalent APS classification in the Government Lawyer Broadband.

612. The Employee's salary on transfer to the Government Lawyer Broadband will be the equivalent of their current salary within the relevant APS classification of the Government Lawyer Broadband, or if there is no equivalent salary, to the salary closest to, but not lower than their current salary. Where the Employee's salary is above the top pay point of the relevant APS classification within the Government Lawyer Broadband the Employee will retain their current salary until such time as their salary falls within the pay point range of the relevant APS classification within the Government Lawyer Broadband.

#### Principal Government Lawyer

613. Executive Level 2 Employees who meet the eligibility requirements for employment as a Principal Government Lawyer may apply to their Branch head to transfer to the Principal Government Lawyer Band. Where the transfer to the Principal Government Lawyer Band is approved, the Employee will move from his or her current salary to the equivalent salary in the Principal Government Lawyer Band, or, where there is no equivalent salary, to the salary point closest to, but not lower than their current salary. Where the Employee's current salary exceeds the top pay point of the Principal Government Lawyer Band the Employee will retain their current salary until such time as their salary falls within the pay point range of their Principal Government Lawyer Band.

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614. Employees who do not work within a Legal Area will be subject to the Agency's general recruitment and selection arrangements.

### **Salary Determination**

615. Where an Employee commences in, or is promoted to a Government Lawyer, Senior Government Lawyer, or Principal Government Lawyer job, salary will be determined within the relevant classification level set out in Table 1 and Table 2 above having regard to the experience, qualifications and skills of the Employee and his or her likely corporate contribution. This is subject to the Employee not being paid higher than the first pay point in the Government Lawyer scale, unless the Chief Executive Officer is satisfied that the Employee has been admitted as a legal practitioner, however described, of the High Court or the Supreme Court of a State or Territory.

### **Government Lawyer Advancement Provisions**

616. Advancement through the salary points set out in Table 1 and Table 2 above will be effective from 15 August each year, after assessment of performance under the Agency's Performance Appraisal and Development provisions as set out in Part N of this Agreement (to the extent that it is not inconsistent with this Schedule) and subject to the following conditions:
- A government lawyer who is not on the top pay point for their classification and whose performance is rated as Exceeds Expectations against both the key deliverables and observable behaviours may advance up to a maximum of three incremental pay points.
  - An Employee within the Government Lawyer Broadband shall not be advanced beyond the first pay point in the Government Lawyer Broadband unless the Chief Executive Officer is satisfied that the Employee has been admitted as a legal practitioner, however described, of the High Court or the Supreme Court of a State or Territory.
617. An Employee within the Government Lawyer Broadband shall not be advanced beyond the sixth pay point in the Government Lawyer scale unless the Employee has:
- performed work of the type and complexity required by a Senior Government Lawyer for at least three months; and
  - received performance ratings of Meets Expectations for both key deliverables and observable work behaviours at the end of the performance cycle; and
  - the Chief Executive Officer determines that the Employee is capable of performing work at the Senior Government Lawyer level; and
  - there is work at that level available for the Employee to perform.
618. Where an Employee is advanced to the Senior Government Lawyer level, such an Employee will only be advanced to the first salary point in the Senior Government Lawyer scale and must remain at that level for at least 12 months before being eligible for further advancement within the Senior Government Lawyer scale; and
619. Where the Chief Executive Officer determines that there is more than one Employee at the Government Lawyer level who is capable of performing work at the Senior Government Lawyer level, but that there is insufficient work available at the Senior Government Lawyer level for all such Employees, a merit selection exercise should be conducted to determine which Employee or Employees will be advanced to the Senior Government Lawyer level.

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## **APPENDIX 3      SUPPORTED SALARY RATES**

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620. An Employee who is eligible for a supported salary in accordance with the Special Supported Wage System will be paid the applicable percentage of the relevant salary rate prescribed below for the work value they are performing as follows, provided the amount payable is not less than that determined by Fair Work Australia or its successor.

Note: As of 3 June 2011 the minimum wage for Supported Salary earners is set at \$75 per week.

### **Supported Salary Rate Percentages**

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

## APPENDIX 4    SAFE WORK AUSTRALIA TRAINING BROADBAND

Broadband	Classification	Pay Point	Current From 15 Sept 2011	On Commencement Adjusted plus \$	From 1 Sept 2012 \$	From 1 July 2013 \$
Safe Work Australia Training Broadband	APS 4	3	63,982	64,400	66,810	69,155
		2	61,495	61,900	64,220	66,470
		1	59,822	60,210	62,470	64,655
	APS 3	2	57,285	57,660	59,810	61,915
		1	54,998	55,355	57,430	59,450
	APS 2	3	52,480	52,825	54,800	56,720
		2	51,511	51,850	53,800	55,675
		1	49,248	49,570	51,425	53,230
	APS 1	2	45,846	46,150	47,880	49,550
		1	41,930	42,205	43,790	45,320
		Age 20	38,158	38,406	39,845	41,240
		Age 19	33,965	34,185	35,465	36,710
		Age 18	29,351	29,545	30,655	31,725
		Under 18	25,158	25,325	26,270	27,190

Notes: (a) A cadet APS undertaking full-time study will be paid at 57% of the minimum (including junior rates where applicable) that would be payable to the Cadet APS if he or she was performing practical training.

(b) Junior rates of pay are only applicable to the APS 1 classification level and will be set as a percentage of an APS 1 equivalent adult base rate of pay as follows:

- under 18 years of age – 60%
- at 18 years of age – 70%
- at 19 years of age – 81%
- at 20 years of age – 91%

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## **APPENDIX 5     SHIFT WORKERS**

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621. Shift workers are those Employees whose rostered ordinary hours fall outside the period 7:00 am – 7:00 pm Monday-Friday and/or include Saturdays, Sundays or public holidays for an ongoing or fixed period.

622. Shift workers will receive the following shift work allowances;

<b>Rostered Time of Work</b>	<b>Penalty rate</b>
Work performed on a shift, any part of which falls between 7:00 pm and 7:00 am	15%
Work performed continuously for a period exceeding four weeks on a shift falling wholly between 7:00 pm and 7:00 am	30%
Work performed on a Saturday	50%
Work performed on a Sunday	100%
Work performed on a public holiday	150%

### **Rates for Working on Saturdays, Sundays and Public Holidays**

623. Penalty rates for shift work performed on a Saturday, Sunday or public holiday will be payable for any time worked after midnight on those days, including where the shift commenced the day before.

### **Capacity to Average Penalties**

624. The Chief Executive Officer and a majority of affected Employees may agree that shift penalties be averaged over an agreed cycle.

625. An agreement on a level of average shift work allowance requires:

- a. the agreement of the majority of affected Employees; and
- b. the change not disadvantaging Employees.

626. Where the above requirements are met, the Chief Executive Officer is authorised to implement an agreement made under this clause which will prevail over the shift work allowance provisions specified in Clause 620, to the extent of any inconsistency, with effect from the date determined by the Chief Executive Officer.

### **Crib Time**

627. Where an Employee working a shift pattern is required to be on standby during meal breaks they will be paid crib time of single time for the period they are required to be on standby.

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## **Operation of Shifts**

628. Managers will allocate shifts equitably among Employees undertaking shiftwork, with shift rosters specifying the standard hours of work for each shift.
629. A shift worker can be moved from one shift team to another by agreement at any time or with seven days notice. If seven days notice has not been given, except where this is not possible due to the illness or unanticipated absence of another Employee, overtime will apply as per the overtime provisions of this Agreement for work outside the Employee's previously rostered hours of duty until the Employee has received seven days notice of the shift change.
630. Shift workers can exchange shifts or rostered days off by mutual agreement and with the approval of the relevant manager provided that the arrangement does not give rise to an Employee working overtime.

## **Consultation – Introduction of Shift Work and Changes to Hours**

631. Where a Manager considers the introduction of shiftwork is necessary, or where they propose to make changes to roster arrangements (including the cessation of shift work), discussions will be held with the affected Employees, and, where they so choose, their representatives.

## **Leave**

632. Shift workers will accrue an additional half day of paid annual leave for each Sunday or public holiday worked, up to a maximum of five days for each calendar year.
633. If the Employee is rostered off on a public holiday, they will if practicable, within one month of that public holiday, be granted a day's paid leave in lieu of that holiday. Where it is impractical to grant a day's leave in lieu, the Employee will be paid one day's pay at ordinary time.
634. Where a shift worker takes annual leave, they will be paid shift penalty payments in respect of any duty which the shift worker would have performed had they not been on approved annual leave.
635. Where a shift worker takes a period of leave, other than annual leave, shift penalties are not payable for the period of the absence.

## **Introduction of 12 Hour Shifts**

636. The Chief Executive Officer and affected Employees may consider the introduction of 12-hour shifts. Where this occurs, discussions will be held with affected Employees, and where they so choose their representatives, to consider:
- a. suitable rostering and support arrangements, including meal breaks and a forward rotation of shifts; and
  - b. any trial and review processes considered appropriate.
637. Roster arrangements for 12 hour shifts will not involve more than three consecutive night shifts for any Employee(s).
638. Twelve hours shifts may be implemented with the agreement of a majority of affected Employees.

639. If twelve hour shifts are introduced, any hours worked as overtime will be paid at double time.

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## **APPENDIX 6 MISCELLANEOUS LEAVE**

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### **Entitlement**

640. The Chief Executive Officer shall approve Miscellaneous Leave, with pay:

- to attend religious to obligations, including observances of religious holidays which are not formally designated as Public Holidays in the Agreement (up to 3 days per calendar year); or
- cultural leave (up to two days) in a calendar year to take part in activities associated with the Employee's culture or ethnicity; or
- for moving house (1 day per year);
- for dealing with unforeseen emergencies or disasters;
- to donate blood;
- veteran's pension and related medical purposes;
- where an employee is compelled to appear as a witness in legal proceedings;
- for representatives of Employees preparing for and/or attending court, industrial or dispute resolution proceedings directly involving the Agency (subject to operational requirements); and
- for an employee undertaking volunteer work with a charitable organisation to which donations are recognised by the Australian Taxation Office (two days per year maximum).

Note: For the avoidance of doubt, the forms of leave listed in this Clause will usually be taken as paid leave. Where this Clause identifies a quantum of leave in brackets, once that identified entitlement has been exhausted, leave will generally be granted in the form of unpaid leave.

### **Examples of Circumstances where Miscellaneous Leave may be Granted**

641. In addition to the circumstances described above, situations for which Miscellaneous Leave (with or without pay as determined by the Chief Executive Officer) may be granted include:

- meeting parental and/or caring responsibilities, including in circumstances relating to adoption or foster care in addition to parental leave entitlements under this Agreement;
- for Indigenous Australians, to undertake ceremonial obligations, (including participation in NAIDOC events or marking the death of a member of the immediate or extended family) and to fulfil other ceremonial obligations under Aboriginal or Torres Strait Islander law;

Note: The base grant of indigenous ceremonial leave is 20 days in any 2 calendar years. Indigenous Ceremonial leave is without pay and does not count as service. Indigenous Ceremonial leave is in addition to Compassionate Leave. NAIDOC leave may be granted to employees who are not of Indigenous descent.

- Employees generally, undertaking religious or ceremonial obligations;
- accompanying a spouse on a temporary posting overseas;
- campaigning for election to a public office, noting that in some circumstances there may be a legal requirement for a candidate to resign from the APS in order to be eligible to stand for election. Employees should seek their own legal advice;
- engagement in work or employment in the interests of defence or public safety;
- engagement in private sector employment associated with compensation leave;
- employment in the interest of the Australian Public Service



- holding office in a non-government or voluntary welfare sector organisation, providing the Employee has been employed in the APS for a continuous period of four years, with at least two years in the Agency;
- meeting full-time study commitments ;
- moving permanent residence when the move takes longer than 1 day;
- dealing with long-term health problems;
- attending to domestic emergencies such as where an Employee's house or home contents have been destroyed or damaged or are at risk;
- participating at international sporting events; or
- any other circumstances approved by the Chief Executive Officer.

Note: For the avoidance of doubt, leave granted under this Clause will usually be unpaid.