



Australian Government

**Office of the Australian Building and
Construction Commissioner**

Office of the Australian Building and Construction Commissioner

Enterprise Agreement 2011-2014

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PART A -SCOPE OF THE AGREEMENT

Agreement title

1. This Agreement is to be referred to as the Office of the Australian Building and Construction Commissioner Enterprise Agreement 2011 -2014.

Purpose

2. The purpose of this Agreement is to provide terms and conditions of employment to employees covered by the Agreement and to support the Office of the Australian Building and Construction Commissioner (the Agency) to meet its functions, which include promoting harmonious, productive and cooperative workplace relations and ensuring compliance with national workplace laws in the building and construction industry.
3. This Agreement directly supports ongoing changes made in the work, organisation and performance of the Agency. This Agreement also recognises the range of functions and operations performed by the Agency.

Commitment to productivity improvements

4. This Agreement directly supports ongoing changes made in the work, organisation and performance of the ABCC that will continue to occur with the implementation of the Government's workplace relations legislation. This Agreement also recognises that changes to the priorities of the ABCC as a result of amendments to Commonwealth workplace laws will escalate change for the ABCC's activities and outcomes leading to an increase in the scope of operations and functions performed by the Agency.

Commitments to staff

5. The ABCC is committed to providing flexible working arrangements to assist employees in getting an appropriate balance between their work and personal lives. All parties to this Agreement recognise the need to balance these flexibilities with the Agency's aim to perform its functions in the most efficient and effective manner.
6. Managers and employees will work to ensure the flexible working arrangements in this Agreement are used to achieve working patterns which provide a balance between work and personal lives, identify opportunities for improved productivity and minimise the need for employees, including Executive Level employees, to work hours in excess of their usual hours.
7. The Agency maintains a safe and healthy work environment for all employees, consistent with its legal obligations.
8. The Agency respects and values the diversity of its workforce, provides support to prevent and eliminate harassment, bullying and discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction, and social origin.
9. The Agency will create a workplace that actively supports the careers and cultural needs of all employees. Initiatives that encourage increased representation of Aboriginal and Torres Strait Islander employees in the Agency will be pursued.

Coverage of the Agreement

10. This Agreement covers the Agency and all its non-SES employees.

Commencement date

11. This Agreement will commence to operate seven days after it is approved by Fair Work Australia (FWA) (the commencement date).

Nominal expiry date

12. This Agreement shall nominally expire on 30 June 2014.

No extra claims

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

Relationship to other legislation

14. This Agreement operates in conjunction with a range of other Acts (including regulations, directions, rules or instruments made under those Acts) as in force from time to time, that may regulate terms and conditions of employment, including:
- a) *Public Service Act 1999*;
 - b) *Fair Work Act 2009*;
 - c) *Fair Work (Transitional and Consequential Amendments) Act 2009*
 - d) *Financial Management and Accountability Act 1997*;
 - e) *Long Service Leave (Commonwealth Employees) Act 1976*;
 - f) *Maternity Leave (Commonwealth Employees) Act 1973*;
 - g) *Superannuation Act 1976*;
 - h) *Superannuation Act 1990*;
 - i) *Superannuation Act 2005*;
 - j) *Superannuation (Productivity Benefit) Act 1988*;
 - k) *Superannuation Benefits (Supervisory Mechanisms) Act 1990*;
 - l) *Safety, Rehabilitation and Compensation Act 1988*;
 - m) *Public Employment (Consequential and Transitional) Amendment Act 1999*;
 - n) *Occupational Health and Safety Act 1991*.
 - o) *Privacy Act 1988*;
 - p) *Equal Employment Opportunity (Commonwealth Authorities) Act 1987*;
 - q) *Paid Parental Leave Act 2010*
 - r) *Defence Reserve Service (Protection) Act 2001*
 - s) *Public Service Classification Rules 2000*

Supporting policies, procedures, guides, guidelines and definitions

15. The operation of this Agreement is supported by those Agency policies, procedures, guides and guidelines which are incorporated by reference in this Agreement. Definitions can be found Attachment B.
16. In accordance with section 257 of the *Fair Work Act 2009* (FW Act), where this Agreement incorporates such policies, procedures, guides or guidelines, these policies, procedures, guides and guidelines are incorporated as in force from time to time.
17. If there is any inconsistency between the policies, procedures, guides and guidelines and the terms of this Agreement, the express terms of this Agreement will prevail.
18. The Agency agrees to follow the consultation procedures contained in this Agreement before any substantial changes are made to:
- a) the policies, procedures, guides and guidelines incorporated by reference, and
 - b) policies, procedures, guides and guidelines which are developed to support the operation of this Agreement in relation to matters affecting entitlements or conditions of employment.

Delegation

19. Where the Agreement implies that approval is necessary or specifies that payment will be made or leave will be granted, but a head of power is not specified, the Agreement should be read as meaning the approval of the ABC Commissioner will be obtained prior to the action occurring.
20. The ABC Commissioner may delegate any or all of his or her powers or functions under this Agreement, including this power of delegation, and may do so subject to conditions.

PART B -FORMS OF EMPLOYMENT

Forms of employment

21. Employees under this Agreement will be employed as:
- a) a full time employee (ongoing or non-ongoing);
 - b) a part time employee (ongoing or non-ongoing); or
 - c) a casual employee (non-ongoing employees engaged for duties that are irregular or intermittent)

Full time employees

22. Full time employees will be engaged on the basis that their ordinary hours of work will be equivalent to 150 hours per four week period.
23. Full time employees will be paid fortnightly, in arrears, based on the following formula:

$$\text{Fortnightly pay} = \frac{\text{annual salary} \times 12}{313}$$

Part time employees

24. Part time employees will be engaged on the basis that their ordinary hours of work are less than 150 hours per four week period.
25. The ordinary hours of work of a part time employee will be agreed in a part time work agreement.
26. Where the hours of a part time employee are to be varied for a short, non continuing period, these changes can be accommodated in a variety of ways. If the change is for a period of 1 week or less, flextime or other flexible arrangements as agreed between the employee and their manager are to be used. Where the changes are for a period of more than 1 week, flexible arrangements may be used or, a new part time work agreement can be entered into.
27. Part time employees will be paid fortnightly, in arrears, based on the following formula:

$$\text{Fortnightly pay} = \frac{\text{annual salary} \times 12}{313} \times \frac{\text{Part time ordinary hours of work}}{\text{Full time ordinary hours of work}}$$

28. Leave and other entitlements of part time employees will be calculated on a pro rata basis, based on the proportion of hours worked in comparison to full time hours.
29. Clause 27 does not apply to allowances of a reimbursement nature. In such instances, the part time employee will receive the same allowance amount as a full time employee.

Casual employees

30. Casual employees are employees who are engaged under subsection 22(2)(c) of the *Public Service Act 1999 (PS Act)*.
31. Casual employees will be paid fortnightly, in arrears, based on the following formula:

$$\text{Fortnightly pay} = \frac{\text{annual salary} \times 12}{313 * 75} \times \frac{\text{Actual hours worked in fortnight}}{1.2}$$

32. The formula in clause 31 includes a 20 per cent casual loading. This loading is paid in lieu of public holidays and

paid leave, with the exception of long service leave (as per the *Long Service Leave (Commonwealth Employees) Act 1976*).

33. Unless specified elsewhere in this Agreement, casual employees are not entitled to paid leave.

PART C-REMUNERATION

Classifications and salary rates

34. The classifications and salary rates applicable during the term of this Agreement are provided at Table 1, Attachment A. The salaries in Table 1, Attachment A are full time equivalent and will be pro-rated for part-time employees.
35. The ABCC salary rates on commencement of this Agreement are shown in the column entitled "ABCC increment level on commencement" in Table 1, Attachment A.
36. On 1 July 2012 the salary rates in Table 1, Attachment A increase by 3.00% as shown in the column entitled "ABCC increment salary as at 1 July 2012".
37. On 1 July 2013 the salary rates in Table 1, Attachment A increase by 2.00% as shown in the column entitled "ABCC increment salary as at 1 July 2013".
38. Clauses 34, 35, 36 and 37 operate subject to clauses 48 to 52 of this Agreement.

Supported salary rates for employees with disability

39. Employees with a disability who are eligible for a supported salary will be paid the applicable percentage of the relevant salary rate for the work value they are performing.

Fortnightly pay

40. Employees will be paid fortnightly, in arrears.
41. Payment will be made by electronic funds transfer (EFT) into a financial institution account of the employee's choice.

Salary on commencement of this Agreement

42. On commencement of this Agreement, employees whose conditions are governed by the *Office of the Australian Building and Construction Commissioner Collective Agreement 2008-2010* (other than those employees to whom clauses 50 to 52 apply) will translate to the new salary structure based on Table 1, Attachment A.
43. Employees whose conditions are governed by an Office of the Australian Building and Construction Commissioner Australian Workplace Agreement (AWA) who choose to be covered by this Agreement, will, on commencement of this Agreement and termination of their AWA, translate to the new salary structure based on Table 1, Attachment A.
44. On commencement of this Agreement, the Agency will pay all non-SES employees a one off productivity improvement payment of 0.75% of an employee's substantive salary on commencement, with a minimum payment of \$500. There is no entitlement to this payment for employees who on commencement of the Agreement are undergoing a temporary transfer (under s.26 of the *Public Service Act 1999* or otherwise) to another Public Service Agency, Department or the like.

Method of translation to new salary structure

45. Clauses 46 to 49 set out how an employee (other than employees to whom clauses 50 to 52 apply) will translate to the new salary structure in Table 1, Attachment A.
46. For the purposes of clauses 46 to 49, the term "current salary" means the employee's BASE SALARY prior to commencement of this Agreement PLUS 43% of the maximum potential annual bonus they were entitled to prior to the commencement of this Agreement (**the Bonus Roll-in**) (nb. the maximum potential annual bonus in all cases is 20% of the employee's base salary).

For example, for an APS Level 3 (APS 3) employee whose base salary prior to the commencement of the Agreement is \$51,000:

- the employee's maximum potential annual bonus is \$10,200 (20% of \$51,000);
- the employee's current salary is: \$51,000 + (43% of \$10,200) = **\$55,386**

47. An employee's salary on translation is calculated as follows:

Step 1 - Calculate the employee's current salary in accordance with clause 46.

Step 2 - Look at the column entitled "Translation Column" in Table 1, Attachment A and find the nearest higher increment within the employee's APS classification that corresponds to the employee's current salary.

Note: If the employee's current salary exceeds the highest figure in the "Translation Column" for their APS classification, their salary is to be calculated in accordance with clause 48 or 49.

Step 3 - Find the corresponding pay point in the column entitled "ABCC increment levels on commencement" in Table 1, Attachment A. This will be the employee's salary on the commencement of this Agreement.

For example, for the APS 3 employee whose current salary is \$55,386:

- in the "Translation Column", the nearest highest increment within the APS 3 classification is \$55,698;
- the employee's ABCC increment level on commencement will be \$57,926.

48. On commencement of this Agreement, where an existing employee's current salary exceeds the maximum salary for their APS classification under the column entitled " Translation Column" in Table 1, Attachment A, but is below the maximum salary for their APS classification under the column entitled "ABCC increment level on commencement" in Table 1, Attachment A, the employee's salary on commencement will be the maximum pay point for their APS classification under the column entitled "ABCC increment level on commencement".

For example, for an APS Level 4 (APS 4) employee whose current salary is \$66,000:

- the maximum salary in the "Translation Column" for an APS 4 is \$65,694 which is below the employee's current salary;
- however, the employee's current salary is below the maximum salary for an APS 4 in the column entitled "ABCC increment level on commencement" which is \$68,322;
- accordingly, the employee's salary on commencement of this Agreement is \$68,322.

49. On commencement of this Agreement, where an existing employee's current salary exceeds the maximum salary for their APS classification under the column entitled "ABCC increment level on commencement" in Table 1, Attachment A, the employee's current salary will be maintained until such time as it is exceeded by the maximum salary for their APS classification in Table 1, Attachment A. From this time, the employee will be entitled to the maximum salary for their APS classification specified in Table 1, Attachment A and any relevant subsequent increases specified in the table. For the avoidance of doubt, the employee is not entitled to the salary increases referred to in clauses 36 and/or 37 where their current salary exceeds the maximum salary for their APS classification in Table 1, Attachment A as at 1 July 2012 and/or 1 July 2013.

For example, for an Executive Level 1 (EL 1) employee whose current salary is \$108,000:

- the employee's current salary is higher than the maximum salary for an EL 1 in the "ABCC increment level on commencement" column so the employee's salary on commencement will be \$108,000;
- on 1 July 2012 the employee will not be entitled to the salary increase specified in clause 36 as their salary exceeds the maximum salary for an EL 1 in the column entitled "ABCC increment salary as at 1 July 2012" in Table 1, Attachment A;
- the employee will remain on \$108,000 until 1 July 2013 at which time the maximum salary for an EL 1 increases to \$109,750 (see the column entitled "ABCC increment salary as at 1 July 2013" in

Table 1, Attachment A). From 1 July 2013 the employee's salary will be \$109,750.

Temporary Transfer Employees

50. Clauses 51 and 52 apply to employees (**Temporary Transfer Employees**) who, as at the commencement of this Agreement, are temporarily transferred to the Agency (under section 26 of the *Public Service Act 1999* or otherwise) from another Public Service Agency, Department or the like (**the Transferring Agency**).
51. On the commencement of this Agreement, Temporary Transfer Employees are not entitled to translate to the new salary structure in Table 1, Attachment A and are not entitled to the Bonus Roll-in referred to in clause 46. Rather, on the commencement of this Agreement, and subject to clause 52, a Temporary Transfer Employee will remain on the salary that they are currently being paid by the Agency and their salary is to be governed by the terms of any remuneration agreement between the Temporary Transfer Employee and the ABC Commissioner made at the time of the transfer (or otherwise the terms of any determination made by the ABC Commissioner under s 24(1) of the *Public Service Act 1999*).
52. If an industrial instrument (within the meaning of that term in s 4(1) of the *Building and Construction Industry Improvement Act 2005*) would apply to the Temporary Transfer Employee if they remained employed within the Transferring Agency, then the salary paid to the Temporary Transfer Employee during their employment with the Agency must not be lower than the salary that they would be entitled to receive under that industrial instrument.

Salary on engagement, promotion, movement

53. Where an employee commences in or is promoted to a higher classification in the Agency, the ABC Commissioner will determine their salary at a rate within the range of salaries that apply to the employee's classification, having regard to the experience, qualifications and skills of the employee. Normally this would be at the minimum pay point of the relevant salary range.
54. When an employee moves at level from another APS agency and their salary is:
- above the top pay point of the relevant range for their APS classification as stated at Table 1, Attachment A, they will be paid at the top pay point for their APS Classification unless a higher salary is agreed to by the ABC Commissioner; or
 - below the top pay point of the relevant range for their APS classification as stated at Table 1, Attachment A, but not aligned with a pay point in the range for their APS classification, their salary will be paid at the next highest pay point in that range for their APS classification.

Salary advancement

55. Salary advancement to a higher pay point will occur for eligible employees from 1 July each year. The actual payment of salary advancement will generally occur from the beginning of the first full pay period commencing on or after 1 August each year, back paid to 1 July. To be eligible for salary advancement, an employee must:
- complete the requirements of the Performance and Development Framework (PDF) with the exception of employees with reasonable cause; and
 - achieve a satisfactory rating or better on the PDF rating scale at the end of the PDF cycle; and
 - perform duties at the employee's substantive level or above, within the Agency for an aggregate of 3 months or more within the PDF planning cycle ended 30 June; and
 - where relevant, meet the following additional advancement provisions applying to specific groups of employees:
 - Salary advancement for probationary employees will commence on the date they satisfactorily complete their probation period, provided they commenced in the Agency prior to 1 April.
 - Non-ongoing employees will be eligible for salary advancement where they have been engaged at the same classification to perform the same duties continuously for 6 months during the PDF cycle.
 - When an ongoing employee has been temporarily reassigned to duties at a higher classification for a

period aggregating 3 months or longer during the PDF cycle and is performing duties of this higher classification on 1 July, then the employee will be eligible for salary advancement at this higher classification for the period of Temporary Performance Loading (TPL).

56. For the purposes of clause 55a), 'reasonable cause' refers to employees absent from duty due to the following circumstances:
- a) long term or frequent absence due to illness or injury (including affecting the employee or their immediate family or household); or
 - b) long service leave; or
 - c) compensation leave; or
 - d) maternity/adoption leave; or
 - e) as otherwise determined by the ABC Commissioner.
57. Employees who commence in the Agency after 1 April or who are not eligible for salary advancement in accordance with clause 55 will not be able to progress to another pay point within the classification salary range until salary advancement occurs in the following year. The relevant guide is the Performance and Development Framework.

Re-assignment to a lower classification

58. Where an employee temporarily or permanently reduces to a lower classification level at their own request, by consent or at the direction of the ABC Commissioner, the ABC Commissioner will determine salary within the lower classification level having regard to the experience, qualifications and skills of the employee, and the circumstances under which the reduction occurred. Normally this would be at the top of the salary range of the lower classification. Such determination will specify the period for which the lower salary will apply.
59. Clause 58 does not apply to decisions made by the ABC Commissioner in relation to breaches of the Code of Conduct or underperformance.

Salary packaging

60. Employees may choose to sacrifice part of their salary in accordance with the Salary Packaging Guide. Participation in salary packaging will not affect salary for superannuation purposes or any other purpose.

Overpayment of entitlements

61. Where an employee is overpaid an amount of salary or other remuneration, the employee authorises the ABC Commissioner to deduct the amount of the overpayment from the next salary instalment unless other arrangements are agreed. If the deduction would exceed 25% of the total salary instalment payable, the ABC Commissioner and the employee may agree, in writing, on deduction by instalment to recover the overpayment.

Superannuation

62. The Agency will make compulsory employer contributions as required by the applicable legislation and fund requirements.
63. The default fund for the Agency is the Public Sector Superannuation Accumulation Plan (PSSap). The employer superannuation contribution that will be paid to the PSSap will be in accordance with the PSSap deed. The amount of PSSap employer contribution on commencement of this Agreement is 15.4%.
64. The salary for superannuation purposes for PSSap members or those who choose another fund will be calculated based on the employee's Ordinary Time Earnings (OTE) within the meaning of the *Superannuation Guarantee (Administration) Act 1992*.
65. Where an employee has chosen an accumulation superannuation fund other than the PSS Accumulation Plan (PSSap), the employer contribution will be the same percentage of the fortnightly superannuation contribution salary as that required for employees who are members of PSSap. 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

superannuation contributions (e.g. unable to accept contributions for people aged over 75).

66. Employer superannuation contributions will not be paid on behalf of employees during periods of unpaid leave that does not count as service, unless otherwise required under legislation or as stated in this Agreement.
67. The ABC Commissioner 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 Agency's payroll system.
68. Existing Public Sector Superannuation (PSS) and Commonwealth Superannuation Scheme (CSS) arrangements will continue in accordance with the relevant legislation and requirements.
69. For employees who take paid or unpaid parental leave (which includes maternity, adoption, supporting partner, primary caregiver and foster care leave), employer contributions (based on the employer contribution amount in the full pay period immediately prior to commencing parental leave) will be made for a period equal to a maximum of 52 weeks, in accordance with the rules of the appropriate superannuation scheme. For employees in PSSap, the rules permit employer contributions to be made.

PART D -ALLOWANCES AND ASSISTANCE

70. The Agency provides eligible employees with particular allowances or payments that recognise:
- a) particular skills; or
 - b) additional costs borne by the employee in the course of his or her employment.
71. These allowances or payments include:
- a) corporate citizen allowance;
 - b) community language allowance;
 - c) professional payments assistance;
 - d) motor vehicle allowance;
 - e) additional costs assistance;
 - f) healthy lifestyle assistance; and,
 - g) transition to retirement assistance.
72. Additional costs assistance, healthy lifestyle assistance and transition to retirement assistance will be paid on a reimbursement basis.

Corporate citizen allowance

73. An allowance of \$27 will be paid to employees on a fortnightly basis for undertaking the following corporate citizen roles:
- a) First Aid Officers;
 - b) Chief Fire and Floor and Area Wardens;
 - c) Health and Safety Representatives; and
 - d) Harassment Contact Officers.

The relevant guide is the Corporate Citizen Allowance Guide.

74. Employees who are authorised by the Agency to undertake more than one of the above corporate citizen roles will only receive one payment of the allowance per fortnight.
75. To be eligible for payment of the corporate citizen allowance on the basis of undertaking the role of First Aid Officer, an employee must:
- a) possess the required qualifications for first aid at the minimum accreditation standard of Senior First Aid Certificate (Level 2 or equivalent); and
 - b) have continuing expertise commensurate with that training; and
 - c) be appointed as a First Aid Officer by the ABC Commissioner.
76. To be eligible for payment of the corporate citizen allowance on the basis of undertaking the role of Fire Warden or a Health and Safety Representative, an employee must:
- a) be appointed as a Fire Warden by the ABC Commissioner; or
 - b) be elected as a Health and Safety Representatives; and
 - c) have successfully undertaken relevant fire warden training.
77. To be eligible for payment of the Corporate Citizen allowance on the basis of undertaking the role of Harassment Contact Officers, an employee must be appointed as Harassment Contact Officer by the Agency.

Community language allowance

78. The ABC Commissioner may approve payment of a Community Language Allowance of \$700 per annum, paid on a fortnightly basis to an employee with the required level of competency, as determined by the Agency, where there is an identifiable and continuing need for particular skills in a language other than English.

Professional payments assistance

79. The Agency will pay for professional practice, membership or other fees for those employees in positions where the ABC Commissioner has determined that those professional skills, qualifications and memberships are required.

Motor vehicle allowance

80. When a manager authorises an employee to use a private motor vehicle for official purposes, the employee will receive a Motor Vehicle Allowance of 76 cents per kilometre or as prescribed by the Australia Taxation Office (ATO) where the ATO rate is higher.

Additional costs assistance

81. The ABC Commissioner may provide assistance for additional costs including, but not limited to, travel, living away from home allowance, additional child care costs arising from operational requirements, and other costs borne by the employee in the course of their employment.

Healthy lifestyle assistance

82. Healthy lifestyle assistance may be claimed by an ongoing employee as reimbursement for costs spent on healthy lifestyle initiatives up to the maximum amounts specified below:
- From commencement of Agreement – 30 June 2012: \$200
 - 1 July 2012 – 30 June 2013: \$300
 - 1 July 2013 – 30 June 2014: \$400
83. This allowance does not accumulate and claims are only to be for costs incurred within the relevant period. Information can be found in the Healthy Lifestyle Assistance Guide.

Study assistance

84. The Agency supports ongoing employees undertaking formal study and encourages eligible employees to apply for study assistance.

Work related travel

85. The following principles apply in relation to employees undertaking travel (as defined in Finance Direction 15 – Travel and other relevant travel related documents) on official business:
- a) employees will not be out of pocket for the reasonable costs of accommodation, meals, incidentals and other expenses incurred;
 - b) in organising and approving business travel, managers shall be flexible in accommodating the needs of individuals and should take into account family responsibilities, personal circumstances and other relevant factors that may affect an employee's ability to travel.
 - c) travel, where possible, should be undertaken during the normal bandwidth, and time recorded according to the flextime (APS 1-6) or Time Off in Lieu (Executive Level 1-2) arrangements.
86. If the manager and employee agree that the travel is to be undertaken outside the normal bandwidth, TOIL will be granted to the employee at ordinary time rates. If the employee is directed to undertake travel outside the normal bandwidth, TOIL will be granted to the employee at overtime rates. For Executive Level 1- 2 this will be in accordance with TOIL arrangements for Executive Level 1-2 at clauses 129-132.

87. Where an employee is required to undertake travel for less than 1 day, but commences before 7 am or concludes after 7pm in the State where they work, they:
- a) will be eligible for non-aquittable cash payment of \$20 per day;
OR
 - b) may use their travel card to purchase the meals (breakfast, lunch or dinner) for which the employee is away from the home locality to the value of those specified in the relevant policy or guide. The purchase of the meal must be accompanied by a receipt or Statutory Declaration and the expenditure must be acquitted.

Transition to retirement

88. To assist employees with retirement planning, employees aged 54 years and over who are approaching or genuinely considering retirement, may access financial assistance in the form of a one off reimbursement payment up to a total maximum of \$500 (inclusive of GST) to obtain financial advice from a registered financial advisor.
89. In addition, employees aged 54 and over who are approaching retirement may elect to work on a part time basis until retirement subject to ABC Commissioner approval.

PART E -FLEXIBLE WORKING ARRANGEMENTS

90. The Agency is committed to providing flexible working arrangements to assist employees in getting an appropriate balance between work and personal lives.
91. Managers and employees will work to ensure the flexible working arrangements in this Agreement are used to achieve working patterns which provide a balance between work and personal lives, identify opportunities for improved productivity, and minimise the need for employees, including Executive Level employees, to work hours in excess of their usual hours.
92. Workplace flexibilities that are available in this Agreement include but are not limited to:
- a) part time work (clauses 24 -29);
 - b) flexible working arranges for parents/carers (clauses 94-97)
 - c) working from home arrangements (clause 98);
 - d) job sharing (clause 99);
 - e) use of individual flexibility arrangements (clauses 100 to 105);
 - f) flextime arrangements (clauses 113 to 122); and
 - g) use of leave provisions (Part G).
93. If an employee applies to access any of the flexible working arrangement provisions of this Agreement and the request is denied, the manager must provide the employee with a reason for the decision in writing and consider and discuss with the employee any alternatives available under this Agreement that may address the employee's work life balance or carer responsibilities.

Flexible work arrangements for parents

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

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

96. A request made in accordance with clause 94 must be in writing and set out details of the change sought and the reasons for the change. The Agency Head 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.
97. For the purposes of this clause:
- 'qualifying service' means service that is recognised for redundancy pay purposes;
 - 'casual' means an employee engaged on a irregular or intermittent basis.

Working from home

98. An employee and manager may agree to the employee working from home on either a regular, temporary or intermittent basis.

Job sharing

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

Individual Flexibility Arrangement

100. The ABC Commissioner may use the flexibility term in clauses 101 to 104 for the purpose of recognising outstanding performance in exceptional circumstances.
101. An Agency Head and employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the Agreement if:
- a) the arrangement deals with 1 or more of the following matters:
 - arrangements about when work is performed;
 - overtime rates;
 - penalty rates;
 - allowances;
 - remuneration; and/or
 - leave; and
 - b) the arrangement meets the genuine needs of the Agency and employee in relation to 1 or more of the matters mentioned in clause 101(a); and
 - c) the arrangement is genuinely agreed to by the Agency Head and employee.
102. The Agency Head must ensure that the terms of the individual flexibility arrangement:
- a) are about permitted matters under section 172 of the *Fair Work Act 2009*; and
 - b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
 - c) result in the employee being better off overall than the employee would be if no arrangement was made.
103. The Agency Head must ensure that the individual flexibility arrangement:
- a) is in writing; and
 - b) includes the name of the employer and employee; and
 - c) is signed by the Agency Head and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
 - d) includes details of:
 - the terms of the Agreement that will be varied by the arrangement; and
 - how the arrangement will vary the effect of the terms; and
 - how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
 - e) states the day on which the arrangement commences and, where applicable, when the arrangement ceases.
104. The Agency Head must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
105. The Agency Head or employee may terminate the individual flexibility arrangement:
- a) by giving no more than 28 days written notice to the other party to the arrangement; or
 - b) if the Agency Head and employee agree in writing — at any time.

PART F -WORKING HOURS

106. Managers, team leaders, supervisors and employees have a mutual responsibility for managing their working hours and patterns, including leave planning, flextime arrangements, and minimising excessive hours where possible. The provisions below are designed to be sufficiently flexible for employees to meet business requirements and balance their personal needs.
107. If, in exceptional circumstances, employees are required to work in excess of their usual pattern of hours over a settlement period, managers will consult with the affected employees about:
- a) appropriate recompense (which may or may not be monetary and may include agreement by managers to compensatory time off for employees who do not have access to overtime), subject to clauses 129-132;
 - b) how the additional workload might be shared between employees;
 - c) the employee's responsibilities outside the workplace which may impact on their ability to change their usual pattern of work; and
 - d) the period over which additional hours will be required to be worked.

The standard day

108. The standard day is defined as being worked from 8.30 am to 12.30 pm and 1.30 pm to 5 pm (7 hours 30 minutes per day).

Bandwidth

109. The bandwidth of hours in which an employee may work their ordinary hours are 7 am to 7 pm Monday to Friday, or as otherwise agreed on an individual basis between the relevant manager and employee.

Pattern of hours

110. The pattern of hours by which employees meet their ordinary hours of duty is a matter for agreement between the manager and his or her employees. An employee will not normally be expected to work more than:
- a) ten hours ordinary time on any day; or,
 - b) five consecutive hours without a meal break of at least 30 minutes.
111. Where this does occur, overtime and time off in lieu provisions at clauses 126 to 138 and meal allowance provisions at clause 144 may apply.
112. In discussing working patterns, other issues on which managers and employees may reach agreement include:
- a) the period of time in which all employees are required to attend, if any, to apply to the team or work area; and
 - b) any other relevant issues for the team or work area.

Flextime scheme

113. Flextime is a system of flexible working hour arrangements that enables employees and managers to vary working hours, patterns and arrangements to provide maximum organisational flexibility with benefit to employees, clients and the Agency. A business unit may decide to implement the flextime entitlement by means of a scheduled accumulated day off. Accrual of flextime credits should only occur where there is sufficient workload to productively engage the employee, and only with approval of the manager. The relevant guide is the Working Arrangements Guide.
114. All employees covered by this Agreement are required to record their working hours.

115. APS 1-6 employees (and their equivalents) are eligible to accrue flextime for duty performed in excess of their ordinary hours of work (over the settlement period), but which does not attract overtime.

Flex credit balance

116. Employees may carry over a maximum credit of 37.5 hours flex accumulated in any settlement period into the next settlement period.

Flex debit balance

117. Employees may carry over a maximum debit of ten hours flex accumulated in any settlement period into the next settlement period.
118. In circumstances where the maximum debit is exceeded at the end of a settlement period, the employee will endeavour to reduce the debit to the maximum allowable (or lower) over the next settlement period.

Deduction of flex debit from salary

119. Should the employee not reduce the debit to the maximum allowable (or lower) over the next settlement period, the amount by which the maximum is exceeded shall be treated as leave without pay and an appropriate deduction made by the Agency from the employee's salary. Alternatively, with approval, an employee may use annual leave to offset any flex debit.

Flex balances at cessation

120. Prior to cessation of employment, managers should provide opportunities to enable employees to balance any flex credits or debits. Employees should also take all reasonable steps to balance their flex debit or credit. Where any flex credits are outstanding at cessation of employment with the Agency these should be paid to the employee at ordinary rates. Where any flex debits are outstanding at cessation these will be recovered by the Agency from any termination payment.

Reversion to standard day

121. When an employee has failed to comply with the provisions of flextime (outlined in the Working Arrangements Guide), a manager may remove that employee from flextime for a specified period and the employee will revert to working the standard day. Access to flexible working arrangements will be restored where the manager is satisfied that the employee will maintain satisfactory attendance patterns.

Insufficient work

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

Unauthorised absences

123. When an employee is absent from work without approval, reasonable efforts will be made to contact the employee and to establish the reason for the unauthorised absence.
124. When an employee is absent from work without approval, all salary and other benefits provided under this Agreement will cease to be available until the employee resumes work or is granted leave.
125. When the employee is absent from work without approval for three consecutive working days, action on the grounds of non-performance of duties may commence which may result in the employee's employment being terminated.

Overtime and time off in lieu (TOIL)

APS 1-6 (and equivalents)

126. Upon provision of reasonable notice, employees may be directed to work reasonable overtime. APS 1-6 level employees (and their equivalents) will be entitled to payment of overtime in accordance with clauses 134 and 135 where they are directed by their manager to perform work:
- a) outside the bandwidth (except when travelling, refer to clause 86);
 - b) on a public holiday;
 - c) in excess of 10 hours on any one day; or
 - d) outside a part time employee's ordinary hours of work.
127. In special circumstances, where an employee is directed to work overtime, the manager may approve access to overtime for all work performed outside the ordinary hours (plus any additional hours, if relevant) on any one day.
128. An employee may elect to take TOIL at the appropriate rate instead of payment of overtime.

Executive Level (and equivalents)

129. Executive Level employees often have extra, irregular and non-ongoing demands placed upon them, including working beyond ordinary hours. Their remuneration recognises the additional demands which may be placed upon them.
130. Managers of Executive Level employees will work with them to determine working arrangements and plan work to ensure that they do not work substantially in excess of ordinary hours or more than occasionally commence and finish outside the bandwidth.
131. Where an Executive Level employee has been required to work substantially in excess of ordinary hours, the employee's manager, in exceptional circumstances, can negotiate with the employee to provide reasonable time off in lieu for hours worked. This will not be on an hour-for-hour basis.
132. Executive Level employees (and their equivalents) are not generally entitled to overtime. However, the ABC Commissioner may approve overtime payments for excess hours worked in exceptional circumstances.

Part time employees

133. A part time employee directed to perform work in excess of the agreed hours of duty over the settlement period, who has not elected to receive flextime for such will be eligible for overtime in accordance with clauses 129 to 132.

Calculation

134. When overtime is worked, the overtime and TOIL are calculated at the following rates:

Monday to Saturday	Time and one half for the first three hours each day and double time thereafter
Sunday	Double time
Public Holidays	Double time and a half

135. In calculating the overtime entitlement, a divisor of 37.5 hours is to be used.

Payment for overtime

136. Payment of authorised overtime will be calculated using the rates set out in clauses 134 and 135.

Continuous duty

137. Overtime is considered to be continuous with ordinary duty when an employee does not have a break, other than a meal break, between the periods of ordinary duty and overtime.

Non-continuous duty

138. Except where clause 139 applies, where a period of overtime is not continuous with ordinary duty, the minimum overtime payment is four hours at the relevant rate. Where the period of overtime is greater than four hours, payment will be made for the actual period worked at the relevant rate.

Call in allowance

139. An employee not in receipt of restriction allowance, up to and including an Executive level 1 employee, who is called to work to meet an emergency outside the ordinary (or agreed) span of hours will be paid at double time for the period of work and any time necessarily spent in travelling to and from the work site. The minimum payment for such work will be two hours at double time.

Restriction allowance

140. A restriction allowance will be paid where a manager requires that an employee be contactable and available to work for a specified period outside the standard bandwidth. This payment would only be made to EL employees in exceptional circumstances.
141. The employee will be paid 10% of their hourly salary for each hour restricted, provided they remain contactable and ready to perform extra work.
142. Restriction allowance is payable whether or not the restricted employee is required to work. Where an employee who has been restricted is required to work, they will be paid overtime subject to:
- a) a minimum one hour payment when work is performed without the necessity to travel to the workplace;
 - b) a minimum three hour payment including travel time if work is required to be performed at the workplace;
 - c) restriction allowance will not be paid while on overtime.
143. Payment of restriction allowance will not be made to an employee who does not remain contactable or at the required degree of readiness to perform duties.

Meal allowance

144. Where an employee is required to work overtime for a continuous period to the completion of or beyond a meal period, he or she will be paid a meal allowance of \$22.05 except that an employee who performs overtime at home is not eligible for a meal allowance.

Recognised public holidays

145. Employees, other than casuals, will be entitled to the following public holidays:
- a) New Year's Day (1 January);
 - b) Australia Day (26 January);
 - c) Good Friday;
 - d) Easter Monday;
 - e) Anzac Day (25 April);
 - f) The Queen's birthday holiday (on the day on which it is celebrated in a State or Territory or a region of a State or Territory);
 - g) Christmas Day (25 December);
 - h) Boxing Day (26 December);

- i) Any other day, or part-day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday, other than a day or part-day, or a kind of day or part-day, that is excluded by the Fair Work regulations from counting as a public holiday.
146. 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.
147. The Agency Head and an employee may agree on the substitution of a day or part day that would otherwise be a public holiday, having regard to operational requirements.
148. In accordance with section 116 of the FW Act, where an employee, other than a casual, is absent from his or her normal place of employment on a day, or part-day, that is a public holiday, they will be paid at the employee's normal rate of pay for the employee's ordinary hours of work on the day or part-day.
149. Where an APS 1-6 (and equivalent) employee works on a public holiday, the employee will be entitled to overtime or flex, which will be calculated at double time and a half in accordance with clauses 126 to 138. An Executive level employee (and their equivalent) will be entitled to overtime subject to clause 132 or TOIL as per clauses 129 to 131.
150. Where a public holiday occurs in a period of annual or personal leave, the public holiday will not be deducted from the employee's annual or personal leave credits respectively.
151. Where an employee is on a period of leave without pay and a public holiday occurs, the employee will not be entitled to payment for the public holiday.

Public Holiday anomalies

152. The ABC Commissioner may issue an Agency Head determination under the PS Act to address any anomalies that may arise under these provisions.

Annual closedown

153. The Agency is minimally staffed over the Christmas/New Year period. Employees will be provided paid time off from 12.00 pm on the working day immediately prior to Christmas Day and for the days between Christmas and New Year's Day which would otherwise be working days. If an employee agrees to work following a call for volunteers over this period, for days other than public holidays, they will be provided with TOIL to be taken at an alternative time convenient to the employee and agreed with their manager. If an employee is directed to work, overtime will apply in accordance with clauses 126 to 138.
154. The relevant guide is the Working Arrangements Guide.

Part time employees

155. Part time employees normally not working on the days of the week on which annual closedown occur will not be entitled to alternative time off duty.

PART G -LEAVE

156. This part details a range of leave options available to employees covered by this Agreement, including:

- a) Annual leave;
- b) Personal/carer's leave;
- c) Compassionate / Bereavement leave;
- d) Long service leave
- e) Parental leave;
- f) Purchased leave;
- g) Sabbatical leave;
- h) Other leave;
- i) War service sick leave; and
- j) Defence reserve leave.

The relevant policy is the *Leave Policy*.

Annual leave

157. The purpose of annual leave is to provide employees with the opportunity for a reasonable break from work. It is also important for the health and wellbeing of employees, that leave is taken within a reasonable period of its accrual and that planning for leave is incorporated into workload management.
158. Full time employees are entitled to four weeks of paid annual leave per year.
159. Part time employees are entitled to paid annual leave on a pro-rata basis.
160. Casual employees are not entitled to paid annual leave.
161. Annual leave will be as provided for in The National Employment Standards (NES) found at part 2.2 of the *Fair Work Act 2009*.
162. Annual leave accumulates from year to year.
163. Managers are to ensure that in any 12 month period, employees are given the opportunity to use annual leave. An employee must obtain their manager's approval prior to taking any annual leave.
164. The Agency must not unreasonably refuse to agree to a request by the employee to take paid annual leave.
165. Employees should seek to use paid leave within 12 months of its accrual. Where an employee accrues in excess of eight weeks (40 days) paid annual leave, the ABC Commissioner may, after providing at least four weeks' notice, direct the employee to take up to two weeks of paid annual leave.
166. The ABC Commissioner will not direct an employee to take leave where the employee is able to demonstrate that particular circumstances exist and the employee agrees to appropriate arrangements to reduce the leave balance within an agreed timeframe.
167. Employees may take annual leave at either full or half pay. The minimum absence of leave on half pay is two working days, with further absences in multiples of two days.
168. If the period during which an employee takes paid annual leave includes a day that is a public holiday in the place where the employee is based for work purposes, the employee is taken not to be on paid annual leave on that public holiday.

169. If the period during which an employee takes paid annual leave includes a period of any other leave (other than unpaid parental leave), or a period of absence from employment under Division 8 of Part 2-2 of the FW Act (which deals with community service leave), the employee is taken not to be on paid annual leave for the period of that other leave or absence.
170. If, in accordance with this Division 8 of Part 2-2 of the FW Act, an employee takes a period of paid annual leave, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.
171. If, when the employment of an employee ends, the employee has a period of untaken paid annual leave, the employer must pay the employee the amount that would have been payable to the employee had the employee taken that period of leave.

Annual leave cash out

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

Personal/carer's leave

174. An employee (except a casual employee) may access paid personal/carer's leave in the following circumstances:
- a) where the employee is not fit for work due to personal illness or injury affecting the employee;
 - b) to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because of:
 - (i) a personal illness, or personal injury affecting the member; or
 - (ii) an unexpected emergency affecting the member.
175. Employees (excluding those engaged on an irregular and intermittent basis) will be entitled to 18 days personal leave for every 12 months of service. Personal/carer's leave will accrue progressively.
176. Subject to approval, employees who are newly engaged in the Australian Public Service can anticipate up to 4 days (pro-rata for part-time employees) of personal/carer's leave in the first 3 months of their employment. Any anticipated leave will be offset against future accruals.
177. The ABC Commissioner may approve additional anticipated personal/carer's leave in exceptional circumstances and where current personal/carer's leave credit has been exhausted. Any additional anticipated leave is to be offset by future leave accruals.
178. An employee who has received an annual grant of personal/carer's leave on the anniversary date of their employment during the 12 months prior to the commencement date of this Agreement, will transition to a monthly accrual at the next anniversary date after commencement of this Agreement.
179. Part-time employees are entitled to paid personal/carer's leave on a pro-rata basis.

180. Casual employees are not entitled to paid personal/carer's leave.
181. Personal/carer's leave accumulates from year to year.
182. Unused personal/carer's leave will not be paid out on termination of employment.
183. Where the employment of an ongoing employee terminates and the employee has taken leave in advance of such leave accruing, the value of the leave that has been taken but not accrued by the employee will be treated as an overpayment of entitlements.

Taking personal/carer's leave

184. Employees must advise their manager as soon as possible of their absence or their intention to be absent.
185. An employee's personal/carer's leave will not be debited where an employee is medically unfit for duty or required to undertake carer's responsibilities on a public holiday which the employee would otherwise have observed.
186. Unless otherwise agreed by the ABC Commissioner, no more than three consecutive days of personal leave may be taken without satisfactory medical or other evidence. However, a manager may, at any time with reason, request that an employee provide medical or other evidence for any future period of leave.
187. Medical certificates from registered health practitioners will be accepted for the purpose of personal illness or injury. Where it is not practicable to provide a medical certificate, a Statutory Declaration made by the employee will be accepted.

Reappointment after invalidity retirement

188. An employee who has his or her APS employment terminated on the grounds of invalidity, and is subsequently re-engaged as a result of action taken under section 75 of the *Superannuation Act 1976*, the *Superannuation Act 1990* and the *Superannuation Act 2005*, is entitled to be credited with personal leave equal to the balance of personal/carer's leave at the time of termination.

Use of personal leave during other forms of leave

189. Employees who are medically unfit while on annual or long service leave and who produce satisfactory medical evidence may apply for personal leave. Annual and long service leave will be re-credited to the extent of the period of personal leave granted.
190. An employee is unable to access personal leave while on paid supporting partner/paternity leave.

Unpaid carer's leave

191. An employee is entitled to 2 days of unpaid carer's leave for each occasion (a permissible occasion) when a member of the employee's immediate family, or a member of the employee's household, requires care or support because of:
- a) a personal illness, or personal injury, affecting the member; or
 - b) an unexpected emergency affecting the member.
192. An employee may take unpaid carer's leave for a particular permissible occasion as a single continuous period of up to 2 days or any separate periods to which the employee and the ABC Commissioner agree.
193. An employee cannot take unpaid carer's leave during a particular period if the employee could instead take paid

personal/carer's leave.

194. Medical certificates from registered health practitioners will be accepted for the purpose of personal illness or injury. Where it is not practicable to provide a medical certificate, a statutory declaration made by the employee will be accepted.

Compassionate / Bereavement leave

195. A full-time or part-time employee may take 3 days paid compassionate / bereavement leave, in accordance with s. 105 of the NES, on each occasion that a member of their family, or household:
- a) contracts or develops a personal illness that poses a serious threat to his or her life; or
 - b) sustains a personal injury that poses a serious threat to his or her life; or
 - c) dies.
196. The employee may take the period of leave as a single period of 3 days, 3 separate periods of 1 day each or any separate periods to which the ABC Commissioner and employee agree.
197. The ABC Commissioner may require the employee to provide evidence of the illness, injury or death in support of the request for leave.
198. A casual employee may also access compassionate leave. Such leave will be unpaid leave.

Long service leave

199. An employee is eligible for long service leave in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976*.
200. The minimum period during which long service leave can be taken is seven calendar days (at full or half pay). Long service leave cannot be broken with other periods of leave, except as otherwise provided by legislation.
201. Periods of long service leave cannot be broken with any other leave including absences on flextime leave (except as provided for by the *Maternity Leave (Commonwealth Employees) Act 1973* and the personal/carer's leave provisions of this Agreement).

Parental leave

202. The provisions regarding parental leave are in addition to entitlements under the *Paid Parental Leave Act 2010*.

Maternity leave

203. Employees covered by this Agreement may be entitled to Maternity Leave in accordance with the *Maternity Leave (Commonwealth Employees) Act 1973*.
204. The ABC Commissioner will approve spreading the payment for the period of absence over a maximum period of 24 continuous weeks at a rate no less than half normal pay. Where the payment is spread over a period of greater than 12 weeks, the additional period of paid leave beyond the mandatory absence of 12 weeks specified in the *Maternity Leave (Commonwealth Employees) Act 1973* will not count as service for any purpose.

Additional paid maternity leave

205. Full time and part time employees are entitled to take an additional four weeks paid leave to be taken immediately following the mandatory period of Maternity Leave provided for under the *Maternity Leave (Commonwealth Employees) Act 1973*.

206. The additional four weeks paid maternity leave will count as service for all purposes.
207. The ABC Commissioner may approve an employee's request to take the additional paid maternity leave over an eight week period, with payment at a rate no less than half normal pay.
208. Where additional paid maternity leave is taken at half pay only four weeks of the leave period will count as service.

Special maternity leave

209. Where a full time or part time employee who is an expectant mother experiences a pregnancy related illness, or if her pregnancy ends within 28 weeks of expected birth, she will be granted paid personal leave for the period of leave as set out in the medical certificate. If personal leave credits are exhausted, the remainder of leave will be unpaid.
210. Special maternity leave will operate in conjunction with entitlements under the Maternity leave (Commonwealth Employees) Act 1973.

Primary caregiver's leave

211. Primary caregiver means an ongoing employee with at least 12 months continuous service who:
- a) is the partner of a parent who has given birth; and
 - b) has the sole responsibility for providing care to a newborn baby within the family home during normal business hours.
212. The intention of primary caregiver's leave is to enable the partner of a parent who has given birth to access an entitlement equivalent to paid maternity/parental leave, where:
- a) the partner is the primary caregiver of the newborn baby; and
 - b) the partner of the primary caregiver (regardless of whether or how much employer-provided maternity/parental leave is granted), returns to employment within 16 weeks of the child's date of birth.
213. A primary caregiver is entitled to up to 16 weeks paid primary caregiver's leave.
214. Primary caregiver's leave may be taken at half pay.
215. Primary caregiver's leave is available for a maximum period of 16 weeks commencing from the date of birth of the child (or 32 weeks, if taken at half pay).
216. Where paid primary caregiver's leave is taken at half pay, only half of the total weeks of the leave period will count as service (e.g. 16 weeks if 32 weeks are taken at half pay). The other weeks that do not count as service do not break the employees' continuous service with the Agency.
217. Where a primary caregiver's partner has accessed, or intends to access, employer-provided maternity or parental leave, the primary caregiver may only access paid primary caregiver's leave on a non-concurrent basis (i.e. not whilst the parent who has given birth is accessing employer-provided maternity/parental leave) so that the combined period of maternity/parental and primary caregiver's leave does not exceed 16 weeks (or 32 weeks at half pay).
218. Applications for primary caregiver's leave must be supported by a signed Statutory Declaration which must include:

- a) a statement to the effect that the employee concerned is the primary caregiver for a child and the duration of the caring arrangements; and
- b) a statement that primary caregiver's leave for the employee concerned will only be accessed on a non-concurrent basis with any employer provided maternity/parental leave entitlements taken by the employee's partner.

219. References to "employer provided maternity/parental leave" refer to both paid and unpaid leave.

Paid supporting partner/paternity leave

220. A full-time or part-time employee is entitled to take 4 weeks paid leave within 6 months of the birth of the employee's child, the employee's partner's child, a newly adopted or newly fostered child (where the employee is not entitled to paid maternity leave under the *Maternity Leave (Commonwealth Employees) Act 1973* primary caregiver's leave, adoption leave or foster care leave).

221. This leave with pay counts as service for all purposes.

Unpaid parental leave

222. To enable an employee to care for a new born, newly adopted or newly fostered child under 16 years of age, all employees are entitled to up to 52 weeks of unpaid parental leave. An employee who takes unpaid parental leave may request the Agency to agree to an extension of unpaid parental leave for a further period of up to 12 months immediately following the end of the available parental leave period (in accordance with section 76 of the FW Act).

223. This provision does not apply to employees covered by the *Maternity Leave (Commonwealth Employees) Act 1973* to the extent that that Act is more beneficial.

224. The 52 weeks unpaid parental leave can be taken over a 68 week period, with the 68 week period commencing six weeks before the expected date of birth of the child or, in the case of an adopted or fostered child, on the day the employee assumes responsibility for the child.

225. Unpaid parental leave does not count as service for any other purpose except as provided in the *Maternity Leave (Commonwealth Employees) Act 1973* as amended from time to time.

Adoption leave

226. Full time or part time employees are entitled to up to 16 weeks paid (or 32 weeks at half pay) adoption leave where:

- a) the employee has at least 12 months continuous service in the APS; and
- b) is the primary caregiver for the adopted child under 16 years of age.

The ABC Commissioner will approve spreading the payment for the period of absence over a maximum period of 32 continuous weeks at a rate no less than half normal pay. Where additional paid adoption leave is taken at half pay only 16 weeks of the leave period will count as service

227. Adoption leave is available from one week prior to the date of placement of a child and must be taken within eight weeks of the child being adopted. Adoption leave with pay counts as service for all purposes.

Pre adoption leave

228. Full time or part time employees in the process of adopting a child may take up to two days leave without pay to attend any interviews or examinations required to obtain approval for the adoption.

Return to work from parental or adoption leave

229. An employee returning to work from parental, adoption or foster care leave and who is the primary caregiver of the child may elect to work on a part-time basis until the child has reached school age in accordance with clauses 94-97.
230. An employee returning to work from maternity leave will also be supported through the provision of paid lactation breaks.

Foster care leave

231. The provisions of clause 226 will also apply to long term (more than 12 months) formal fostering arrangements.

Purchased leave

232. Once in any 12 month period, an employee may elect to purchase from one to eight weeks leave.
233. Purchased leave will count for service for all purposes.
234. The employee's salary for superannuation purposes continues to be their salary as if they had not purchased leave.
235. A reconciliation of purchased leave deductions will be undertaken at the conclusion of the purchased leave period.

Sabbatical leave

236. The Agency may approve an application from an ongoing employee to work for a 4 year period followed by a 1 year sabbatical leave period.
237. An employee whose sabbatical leave application is approved will receive 1 year's sabbatical leave by agreeing to forgo 20% of their eligible salary on each payday in each of the 4 years immediately prior to going on 1 year's sabbatical leave.
238. During the sabbatical year, employees will be paid an amount equivalent to the total amount forgone from salary for the previous 4 years, in equal fortnightly instalments.
239. Should an employee cease employment with the Agency or otherwise leave the scheme, the Agency will pay the employee the balance of any amount forgone during the 4 year period.
240. Sabbatical leave does not count as service for any purpose.
241. Sabbatical leave does not break the continuity of service.

Other leave

242. The intention of Other Leave is to provide flexibility to the Agency and employees by providing leave that may be made available, either with or without pay.
243. The Agency provides a range of other forms of leave to support employees, including but not limited to leave:
- a) for short term caring purposes of an occasional and non-enduring nature, including:
 - i. caring for a child on pupil-free school days (excluding school holidays),
 - ii. essential requirements associated with birth, adoption or fostering
 - b) as a result of special or exceptional circumstances, including:
 - i. emergencies/unplanned events,

- ii. moving house (a maximum of 2 days per year),
- iii. attendance at a child's school or educational facility, where this is required or encouraged by the school or educational facility,
- iv. graduation.
- c) to provide support to a member of their family, including:
 - i. accompanying a family member to a legal, medical or dental appointment,
 - ii. provision of emergency interpreting for a family member,
 - iii. attending a ceremony of religious or cultural significance which involves a family member,
 - iv. accompanying a family member to court.
- d) to observe religious or culturally significant days/events;
- e) to undertake external studies;
- f) to accompany a partner on a posting;
- g) to undertake non APS employment in the interests of the Commonwealth;
- h) to engage in work or employment for humanitarian purposes;
- i) to undertake jury service;
- j) to participate in major international sporting events;
- k) to participate in State Emergency Service activities (as per the NES and sections 108 and 109 of the Fair Work Act 2009);
- l) to attend industrial proceedings when summonsed as a witness;
- m) to perform eligible short term community service or volunteer functions (as per the NES and sections 108 and 109 of the *Fair Work Act 2009* which provides for community service leave for all emergency services responses, regular training, reasonable travel and recovery time and ceremonial duties.); and
- n) to participate in NAIDOC Week activities or other cultural or ceremonial events.

244. There is discretion for additional bereavement leave to be granted if necessary. Discretion also exists for the ABC Commissioner to approve application for Other Leave with pay in circumstances where an employee has, because of his or her cultural traditions or religious beliefs, an obligation to fulfil responsibilities before and after a death.

245. Other leave may be granted by the ABC Commissioner, having regard to the operational needs of the Agency, including for purposes that the ABC Commissioner considers to be in the interests of the Agency.

246. Other Leave may be granted:

- a) for the period requested or for another period;
- b) with or without pay; and
- c) subject to conditions.

247. In order for absence on Other Leave without pay to count as service for personal and long service leave, the employee must resume duty with the Agency at or before the expiration of the approved leave period.

War service sick leave

248. Employees who qualify for benefits under the *Veterans' Entitlements Act 1986* will accrue a credit of nine weeks war service sick leave on commencement in the APS and an annual credit of three weeks for each year of APS service.

249. Unused credits will accumulate to a maximum of nine weeks.

250. Employees may be granted war service sick leave only when unfit for duty due to a war-caused condition.

251. A war-caused condition means an injury or disease that has been determined under the *Veterans' Entitlements Act 1986* to be war-caused or defence-caused to the particular employee.

Defence reserve leave

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

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

253. 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.

- During the employee's first year of ADF Reserve service, a further two weeks paid leave may be granted to facilitate participation in additional ADF Reserve training, including induction requirements.
- 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.
- Employees are not required to pay their tax free ADF Reserve salary to the Agency in any circumstances.

254. 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.

255. Defence Reserve leave counts as service for all purposes, except for unpaid leave to undertake Continuous Full Time Service (CFTS). Unpaid leave for the purpose of CFTS counts for all purposes except Annual leave.

256. Eligible employees may also apply for Annual leave, long service leave, leave without pay, top-up pay or they may use flextime or make up time for the purpose of fulfilling ADF Reserve, CFTS or Cadet Force obligations.

257. Employees are to notify supervisors at the earliest opportunity once the dates for ADF Reserve, CFTS or Cadet Force activities are known and/or changed.

258. Further information on Defence Reserve leave is available in the *Other Leave Policy*

Return to duty

259. On return to duty from leave without pay which counts as service, leave credits (except for personal/carer's leave) will be calculated and applied in accordance with this Agreement. In the case of personal/carer's leave, the Employee will accrue 18 days per year for the period of absence.

260. Further information on leave is available in the *Leave Policy*, *Other Leave Policy*, and *Supported Study Policy*.

Portability of leave

261. Where an employee moves (including on promotion or for an agreed period) from another agency where they were an ongoing APS employee, the employee's unused accrued Annual leave and Personal/carers leave (however described) will be recognised, provided there is no break in continuity of service.

262. Where an employee is engaged as either an ongoing or non-ongoing APS employee immediately following a period of ongoing employment in the Parliamentary Service or the ACT Government Service, the employee's unused accrued Annual leave and Personal/carers leave (however described) will be recognised.

263. For the purposes of this clause:

- 'APS employee' has the same meaning as the *Public Service Act 1999*
- 'Parliamentary Service' refers to employment under the *Parliamentary Service Act 1999*

Portability of leave – former non-ongoing employees

264. Where a person is engaged as an ongoing employee, and immediately prior to the engagement the person was employed as a non-ongoing APS employee, the Agency Head may, at the employee's request, recognise any accrued Annual leave and Personal/carers leave (however described), provided there is no break in continuity of service. Any recognised Annual leave excludes any accrued leave paid out on separation.

Recognition of prior service

265. Prior service with organisations where the employee was previously employed under the PS Act, the *Parliamentary Service Act 1999*, or from the ACT Government Service where there has been a break in service, for reasons other than redundancy, may be recognised for personal/carer's leave purposes if the break in service, is not more than 2 calendar months. Prior service will be recognised for long service leave purposes in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976* if the break in service is not more than 12 months.

Exceptional circumstances

266. The ABC Commissioner may, in exceptional circumstances, recognise a period of service for personal / carer's leave purposes that is not recognised under the *Long Service Leave (Commonwealth Employees) Act 1976*.

Return to work after parental leave

267. On ending parental or maternity leave, an employee is entitled to return to:
- a) the employee's pre-parental/maternity leave duties; or
 - b) if those duties no longer exists – an available position for which the employee is qualified and suited at the same classification and pay as applied pre-parental/maternity leave. Where this is not practical, other duties will be sought, with the redeployment, reduction and redundancy provisions applying to any placement.
268. For the purposes of this clause, duties means those performed:
- a) if the employee was moved to safe duties because of the pregnancy – immediately before the move; or
 - b) if the employee began working part-time because of the pregnancy – immediately before the part-time employment began; or
 - c) otherwise – immediately before the employee commenced maternity or parental leave.

PART H -PERFORMANCE MANAGEMENT

The Performance and Development Framework Guide

269. The Performance and Development Framework (PDF) is part of an overall framework to ensure the highest quality performance, leadership standards and practices throughout the ABCC, together with tailored learning, development and career planning for all employees.
270. The framework aims to:
- a) foster a culture that supports active performance management and high performance;
 - b) ensure that employees and managers are aware of what is expected of them individually and within teams with a balanced focus on achieving both key outcomes and demonstration of key Agency behaviours;
 - c) provide a fair and transparent process for managing any identified underperformance;
 - d) ensure that there is a common basis for performance management across the Agency, which is linked to business and workforce planning activities, key agency behaviours and work level standards;
 - e) provide a mechanism for regular two-way feedback on performance;
 - f) contribute to the ongoing development of employees and recognise that opportunities for learning and career development are a matter of joint responsibility between the employee and manager; and
 - g) demonstrate how employee's individual work contributes to the Agency's objectives.
271. All employees will be required to have a current performance agreement, except non ongoing employees engaged for a period of less than 3 continuous months.
272. All employees will receive a performance rating at the end of the performance cycle which will reflect their performance for key outcomes and observable behaviours.
273. The relevant guide is the Performance and Development Framework Guide.

Fairness in managing underperformance

274. Where underperformance is identified, the Agency will work with the affected employee/s and their manager/s to attain and sustain the standards required.
275. Underperformance is identified when a manager makes an assessment that an employee's performance is unsatisfactory, and this is notified to the employee.
276. The Agency shall have regard to the following during any underperformance process:
- a) streamlined and efficient processes;
 - b) working with the employee to restore performance of the employee to an acceptable level;
 - c) natural justice and procedural fairness;
 - d) learning and development assistance for improving performance;
 - e) active performance management as an integral part of the workplace culture; and
 - f) performance measures and standards to be clearly defined.
277. Any decision by the ABC Commissioner on action arising as a result of underperformance will not be made until the employee has been advised in writing of the proposed action and has had a reasonable opportunity to respond.
278. The employee may be supported by a person of their choice during the managing underperformance process and for any meetings that are relevant to the process.
279. The relevant guide is the *Managing Underperformance Guide*.

PART I -WORKFORCE MANAGEMENT AND PLANNING

Broadbanding

280. Broadbanding describes the action of combining two or more classification levels into a single broadband. A broadband encompasses the full range of work value of the APS classification levels it reflects. Broadbanding supports and encourages career progression between levels within the Agency and assists in streamlining the filling of core positions.
281. The Agency has established a broadband system. At the commencement of this Agreement, all employees will retain their existing APS classification.
282. Movement through the ABCC Broadband Scheme will only be available to ongoing employees whose performance has been assessed as satisfactory or higher under the Performance and Development Framework.
283. Movement through the ABCC Broadband Scheme is not automatic and can only occur when:
- a) there has been an assessment of the employee's work related qualities, including the necessary qualifications, skills and experience to undertake the higher level work and there is work available at the higher level; OR
 - b) an employee is successful in an open merit selection process consistent with clause 10(1)(b) of the PS Act.
284. The ABCC Broadband Scheme can also be used for employees required to undertake a mandatory training or development program and whose progression is subject to assessment against that program's outcomes.
285. Information on the ABCC Broadband Scheme can be found in the Broadband Guide.

Temporary reassignment of duties (temporary performance loading and temporary transfer "at level")

286. Information on the temporary reassignment of duties can be found in the Temporary Reassignment of Duties Guide.

Reassignment of duties

287. Having regard to individual circumstances, the ABC Commissioner may temporarily reassign an employee to other duties, including duties at a higher or lower classification, providing such duties are:
- a) within the limits of his or her training, skill and capability;
 - b) consistent with the PS Act and Public Service Classification Rules 2000; and
 - c) not designed to promote de-skilling.

Temporary vacancy considerations

288. Where a position in the Agency becomes temporarily vacant, the ABC Commissioner will consider whether:
- a) it is essential that the duties of the position be performed for the period of the vacancy;
 - b) it is reasonable for other employees to share the duties of the position for the period of the vacancy, provided the duties are within the training, skill and competence of employees;
 - c) there are delegations or statutory powers held by the position that cannot reasonably be exercised by another employee who holds those powers; and
 - d) the position is involved in public contact and has to be staffed to comply with client service standards.

Temporary performance loading (TPL) recommendation

289. To be recommended for payment of TPL, an employee must have been rated as "Satisfactory" on the PDF rating scale (or better) in his or her substantive position or above, under the most recent PDF assessment (i.e. the mid or end of cycle review), or where the manager otherwise certifies that the employee should fill the position, including for developmental purposes.

Period of TPL attracting payment

290. TPL is payable where an employee is engaged in and performs the duties at the higher classification for an approved period of temporary reassignment.

Level of payment

291. Where an employee is to be paid TPL, the employee will be paid at the pay point nominated by the ABC Commissioner or his delegate, in consultation with the relevant employee. Normally, this would be at the minimum pay point within the salary range of the higher position; however there is an opportunity for the employee to be paid above the minimum pay point within the salary range of the higher position in exceptional circumstances.
292. The pay point attained through salary advancement in previous periods of TPL at that classification level will be at least maintained.

Payment for partial performance

293. Where the full duties of the position at a higher classification are not being undertaken by the employee, the ABC Commissioner may determine a payment at a point in a classification below that of the higher position.

Short term temporary performance and the PDF

294. Where an employee has been temporarily assigned duties of a higher classification, including for short periods, the performance of those duties will be taken into account in an employee's annual PDF assessment.

Employees on TPL for 12 months or more

295. The Agency recognises the importance of filling vacant positions on a permanent basis. Where an employee has performed the duties in an ongoing vacant position for a continuous period of 12 months or more, the relevant manager will endeavour to fill the position as soon as practicable.

Public holidays or leave

296. An employee on TPL who is granted paid leave or who observes a public holiday will continue to receive TPL, payable having regard to the provisions of this section, during his or her absence. TPL will not be paid beyond the date on which the employee would have ceased the period of temporary reassignment had he or she not been absent. Where the period of leave is paid at less than full pay, payment of TPL will be made on a pro rata basis.

PART J - MANAGEMENT OF EXCESS EMPLOYEES

Principles

297. Where the ABC Commissioner has identified one or more employees who are likely to become excess, the ABC Commissioner will arrange for discussions to be held with the employee/s or, where an employee requests, with the employee's representative, to consider measures that could be taken to resolve the situation, including redeployment opportunities at or below the employee's substantive level.
298. This section only applies to an ongoing employee who is not on probation.

Excess employee

299. An employee is deemed 'excess' when:
- the employee works in a group or team comprising a greater number than is necessary for the efficient and economical working of the ABCC; or
 - due to technological or other changes in the work methods of the ABCC, or structural or other changes in the nature, extent or organisation of the functions of the ABCC, the services of the employee cannot be effectively used; or
 - the duties usually performed by the employee are to be performed at a different locality and the employee is not willing to perform those duties at the new locality, and the Commissioner has determined that the employee is excess to the ABCC's requirements

Notification of Potentially Excess Status

300. The Commissioner will advise an employee if they are likely to become excess at the earliest practicable time.

Voluntary Redundancy

301. Where the ABCC offers an employee a voluntary redundancy, the employee will have a consideration period within which to accept the offer. Employees will be provided with a two month consideration period from the date that the employee was formally offered the voluntary redundancy.
302. Within the two-month period, the employee will be provided with information on the amount of severance pay, pay in lieu of notice, paid up leave credits, accumulated superannuation contributions; options open to them concerning superannuation; and the amount of agreed financial assistance available so the employee may seek independent financial advice up to the value of \$1,000 and career counselling up to the value of \$1,000.
303. The two-month consideration period can be reduced by agreement between the employee and the Commissioner as long as the employee has received the advice outlined in clause 301 and 302. Unless the employee agrees to reduce the two-month period, notice of termination will not occur before the end of that two-month period.

Redundancy Payments

304. Where the two-month consideration period is reduced, an employee will be paid for the unexpired portion of the two-month period as at the date of termination. The employee will also receive payment in lieu of the relevant period of notice provided for in clause 301.
305. An employee who elects for retrenchment with a redundancy benefit and whose employment is terminated by the Agency Head under s.29 of the *Public Service Act 1999* (PS Act) on the grounds that he /she is excess to the requirements of the agency, is entitled to payment of a redundancy benefit of an amount equal to two weeks' salary for each completed year of continuous service, plus a pro-rata payment for completed months of service since the last completed year of service, subject to any minimum amount the employee is entitled to under the National Employment Standards (NES).
306. The minimum sum payable will be 4 weeks' salary and the maximum will be 48 weeks' salary.

307. The redundancy benefit will be calculated on a pro rata basis for any period where an employee has worked part-time hours during his or her period of service and the employee has less than 24 years full-time service, subject to any minimum amount the employee is entitled to under the NES.
308. If an employee accepts the offer, the Commissioner will give them the required notice of termination of 4 weeks (or 5 weeks for an employee over 45 with at least 5 years of continuous service) or a lesser period agreed with the employee. If the employee separates within the notice period, they will be paid for the unexpired portion of the notice period.

Calculating Redundancy Payments

309. Redundancy payments will be calculated on:
- an employee's salary on the date of termination; and
 - 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.
310. The redundancy payment will be calculated on a pro rata basis for any period where an employee has worked part-time hours during their period of service and have less than 24 years full time service.
311. Subject to clauses 312, 313 and 314 service for severance pay purposes means:
- service in the ABCC;
 - Government service as defined in section 10 of the *Long Service Leave (Commonwealth Employees) Act 1976*;
 - service with the Commonwealth (other than service with a joint Commonwealth-State body corporate in which the Commonwealth does not have a controlling interest) which is recognised for long service leave purposes;
 - service with the Australian Defence Forces;
 - APS service immediately preceding deemed resignation (as defined), if the service has not previously been recognised for severance pay purposes; and
 - service in another organisation where an employee was transferred from the APS to that organisation with a transfer of function or an employee engaged by that organisation on work within a function is appointed as a result of the transfer of that function to the APS and such service is recognised for long service leave purposes.
312. Periods of service that will not count as service for redundancy pay purposes are any periods of service that ceased by way of:
- termination under s29 of the PS Act;
 - redundancy; retirement on ground of invalidity; inefficiency or loss of qualifications; forfeiture of office; dismissal or termination of probationary appointment for reasons of unsatisfactory service; prior to the commencement of the PS Act; or
 - voluntary retirement at or above the minimum retiring age applicable to the employee, or with the payment of a redundancy benefit or similar payment, or an employer financed superannuation benefit.
313. 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 1 month and occurs where an offer of employment with the new employer was made and accepted by an employee before ceasing employment with the preceding employer.
314. Absences from work, which do not count as service for any purpose, will not count as service for redundancy pay purposes.

Involuntary Redundancy

315. An employee will not have their employment terminated involuntarily if they have not been invited to elect for voluntary redundancy or if their election to be made redundant voluntarily has been refused.
316. If an employee does not accept voluntary redundancy, they will not be terminated under section 29 of the PS Act without agreement for a period of 7 months.

Retention Period

317. A retention period of seven months commences on the day after the expiration of the consideration period.
318. The Commissioner may, with the employee's agreement, terminate their employment and pay the balance of the retention period as a lump sum (as shortened for the National Employment Standards under sub-clause 199(2)) plus the employee's NES entitlement to redundancy pay.
319. During the retention period managers:
 - a) will assist with attempts to find alternative employment; and/or
 - b) may, on request, provide assistance in meeting reasonable travel costs and incidental expenses incurred in seeking alternative employment where these are not met by the prospective employer;
 - c) may, after giving 4 weeks notice to an employee, reduce their classification as a means of securing alternative employment. If this occurs prior to the end of the retention period, an employee will continue to be paid at their previous level for the balance of the retention period
320. The retention period will not be extended by any periods of paid or unpaid leave. The Commissioner may consider extending a retention period where medical evidence indicates an employee is substantially incapacitated and is considered to be unfit for work by a medical practitioner nominated by the ABCC. It would only be in exceptional circumstances that the retention period would be extended beyond an additional 2 months.
321. An employee will be given 4 weeks notice (or 5 weeks notice for an employee over 45 with at least 5 years of continuous service) of termination to be served (as far as practicable) concurrently with the retention period.

PART K -SEPARATION

Termination at employer's initiative

322. Notice of termination will be as provided for in the NES (section 117 of the *Fair Work Act 2009*).
323. Where an ongoing employee is to have his or her employment terminated, the provisions of Section 29 of the PS Act will apply.
324. Where procedures outlined in this Agreement may lead to termination of employment on any of the allowable grounds under section 29 of the PS Act, those procedures must be followed before an ongoing employee's employment may be terminated.
325. Nothing in this Agreement prevents the Agency from terminating the employment of an employee for serious misconduct, without further notice or payment in lieu, in accordance with clause 123(1)(b) of the FW Act. However, such termination will be subject to compliance with the procedures established by the Agency for determining whether an employee has breached the Code of Conduct under section 15 of the PS Act.

Right of review

326. The sole and exhaustive rights and remedies in relation to termination of employment are under:
- Part 3-1 and Part 3-2 of the FW Act;
 - other Commonwealth laws (including the Constitution); and
 - common law.
327. To avoid doubt, this Agreement does not provide the employee with any rights or remedies in relation to the termination of, or a decision to terminate, their employment. Termination of employment, or a decision to terminate, employment, cannot be reviewed under the dispute resolution procedure contained in this Agreement or under the review of employment related action procedures.

Termination at employee's initiative

328. Where an employee terminates their employment, the notice of termination required to be given by an employee is the same as that required of an employer, except that there is no requirement on the employee to give additional notice based on the age of the employee concerned. The minimum period of notice is set out below:

Period	
Employee's period of continuous service with the employer at the end of the day the notice is given	Period
1 Not more than 1 year	1 week
2 More than 1 year but not more than 3 years	2 weeks
2 More than 3 years but not more than 5 years	3 weeks
4 More than 5 years	4 weeks

329. The obligation to provide notice by an employee may be waived by the ABC Commissioner.
330. Where an employee resigns on a public holiday, they will be deemed to have resigned on the last working day prior to the public holiday.

Payments on death

331. Where an employee dies or is presumed to have died on a particular date, the ABC Commissioner may authorise payment, to be made to the dependants or partner or the legal representative of the employee, of the amount that would

have been paid if the employee had ceased employment by resignation or retirement. Long service leave credits will be paid out in accordance with the *Long Service Leave Act (Commonwealth Employees) 1976*.

PART L - WORKING TOGETHER -CONSULTATION AND DISPUTE RESOLUTION

Consultation on major changes

332. 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 Agreement regarding a specific major change.
333. 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 Agency Head must notify the employees who are likely to be affected by the proposed changes and their representatives, if any.
334. **Significant effects** include:
- termination of employment;
 - major changes in the 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.

Agency Head to discuss major changes

335. The Agency Head must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 333, 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.
336. The discussions must commence as early as practicable after a definite decision has been made to make the changes referred to in clause 333.
337. For the purposes of such discussion, the employees concerned and their representatives, if any, are to be provided in writing all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees. The Agency Head is not required to disclose confidential or commercially sensitive information to the employees.

Consulting on workplace issues

338. The ABC Commissioner is committed to consulting directly with employees and, where employees choose, their representatives on issues relating to the implementation and operation of this Agreement and all issues affecting their entitlements and conditions of employment, including policies, procedures, guides and guidelines.
339. The ABC Commissioner uses a variety of mechanisms to communicate and consult with employees to ensure that they are kept informed of issues in the workplace. The key mechanisms for communication and consultation are:
- a) Executive, Group and Team Level meetings
 - b) the intranet for direct communication with all employees and for employee feedback

340. To ensure effective consultation:
- a) workplace related concerns will be discussed in a spirit of cooperation and trust;
 - b) employees will be provided with relevant information where possible (but not "employee records" as defined in the *Privacy Act 1988* except with the consent of the employee) on workplace matters that affect them and have the opportunity to provide input prior to a final decision; and
 - c) employees and, where employees choose, their representatives may raise workplace matters directly with the Agency management.
341. It is acknowledged that there may be circumstances where the ABC Commissioner is not able to consult with employees.
342. An individual employee's choice to be represented will be respected by all parties in the workplace.
343. The role of union and other workplace delegates will be respected and facilitated in accordance with the principals outlined in the *Australian Government Employment Bargaining Framework Supporting Guidance 2011*.
344. The Agency and workplace delegates will deal with each other in good faith.

Resolution of Agreement disputes

345. If a dispute relates to a matter under this 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 supervisor/manager.
346. The Agency or an employee who is a party to the dispute may appoint another person, organisation or association to accompany and/or represent them for the purposes of clauses 345 – 352 of this Agreement.
347. If a resolution to the dispute has not been achieved after discussions have been held in accordance with clause 345, 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.
348. If discussions at the workplace level do not resolve the dispute, and all appropriate steps have been taken in accordance with clauses 345 and 347, a party to the dispute may refer the matter to Fair Work Australia.
349. Fair Work Australia may deal with the dispute in 2 stages:
- Fair Work Australia will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
 - if Fair Work Australia is unable to resolve the dispute at the first stage, Fair Work Australia may then:
 - arbitrate the dispute; and
 - make a determination that is binding on the parties.

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

350. Resolution of disputes is to occur in good faith by following the same principles as the good faith bargaining requirements at section 228 of the *Fair Work Act 2009*.

351. While the parties are trying to resolve the dispute using the procedures in this term:
- an employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and
 - an employee must comply with a direction given by the Agency Head to perform other available work at the same workplace, or at another workplace, unless:
 - the work is not safe; or
 - applicable occupational health and safety legislation would not permit the work to be performed; or
 - the work is not appropriate for the employee to perform; or
 - there are other reasonable grounds for the employee to refuse to comply with the direction.
352. The parties to the dispute agree to be bound by a decision made by Fair Work Australia in accordance with this term.

PART M -REMOTE LOCALITIES

353. Remote localities assistance shall be provided on the basis of the following principles:
- a) ongoing employees in the agreed remote localities offices will be paid remote localities allowance on a fortnightly basis, at either the “without dependants” or “with dependants” rate.
 - b) the annual rate of remote localities allowance shall be not less than the rate applying on the day prior to the lodgement of this Agreement.
 - c) no office shall be removed from the list of remote locality offices.
 - d) an employee may make a representation to demonstrate disadvantage in exceptional circumstances not considered by the remote locality assistance and the ABC Commissioner may approve an additional payment.
354. An ongoing employee at a remote locality office may apply to the ABC Commissioner for transfer and in considering the application the employee's personal circumstances shall be taken into account.
355. Where the ABC Commissioner opens a new office in a locality considered to be remote by the ABC Commissioner, clause 354 shall apply and the rate of remote localities assistance shall be calculated consistent with the existing principles.
356. The relevant guide is the *Remote Localities Guide*.

PART N -RELOCATION

Relocation assistance

Assistance for temporary relocation

357. An employee who temporarily relocates (as opposed to undertaking travel on official business) at the request or direction of the Agency, may enter into discussions with their manager about a package of assistance to cover reasonable costs incurred in the course of that temporary relocation. Any such package is subject to approval by the ABC Commissioner.
358. If the temporary absence is for at least eight weeks, the employee is eligible for one return airfare to the usual work locality during that period, and during any further eight week period.
359. If an employee with dependants is accompanied by all their dependants, the fare will not be granted. The airfare is to be used in the employee's own time, and all other costs associated with the travel will be met by the employee.

Assistance for permanent relocation

360. Employees who are relocated permanently to a different geographic location at the Agency's initiative may discuss a package of assistance with the relevant manager, to be approved by the ABC Commissioner. The assistance must meet reasonable costs necessarily incurred, which may include payment or reimbursement of costs of sale and purchase of house, reasonable travel, transport, removal and temporary accommodation costs, as well as other expenses necessarily incurred through relocation.
361. At the discretion of the ABC Commissioner, employees who permanently relocate to a different geographic location at their own request may discuss a package of assistance with the relevant manager, to be approved by the ABC Commissioner.
362. Employees who relocate to take up employment with the Agency will discuss a package of assistance with the relevant manager, to be approved by the ABC Commissioner.

ATTACHMENTS

Classifications, the ABCC General Broadband and salary rates

Attachment A Table 1

ABCC Broadband	Government Lawyer Broadband	TRANSLATION COLUMN	Pay Point	ABCC increment level on commencement	ABCC Increment salary as at 1 July 2012	ABCC Increment salary as at 1 July 2013
Band 1.1	Band 1.1	42600	APS 1.1	44304	45633	46546
		44282	APS 1.2	46053	47435	48384
Band 1.2	Band 1.2	48317	APS 2.1	50250	51757	52792
		49632	APS 2.2	51617	53166	54229
		51004	APS 2.3	53044	54635	55728
		52914	APS 2.4	55031	56681	57815
Band 1.3	Band 2.1	54371	APS 3.1	56546	58242	59407
		55698	APS 3.2	57926	59664	60857
		57086	APS 3.3	59369	61151	62374
		58632	APS 3.4	60977	62807	64063
Band 2.1	Band 2.2	60537	APS 4.1	62958	64847	66144
		62374	APS 4.2	64869	66815	68151
		63975	APS 4.3	66534	68530	69901
		65694	APS 4.4	68322	70371	71779
Band 2.2	Band 2.3	67487	APS 5.1	70186	72292	73738
		69542	APS 5.2	72324	74493	75983
		71523	APS 5.3	74384	76615	78148
Band 2.3	Band 2.4	73092	APS 6.1	76016	78296	79862
		75149	APS 6.2	78155	80500	82110
		77230	APS 6.3	80319	82729	84383
		80348	APS 6.4	83562	86069	87790
		84079	APS 6.5	87442	90065	91867
Band 3.1	Band 3.1	93047	EL 1.1	96769	99672	101665
		96723	EL 1.2	100592	103610	105682
		100446	EL 1.3	104464	107598	109750
Band 3.2	Band 3.2	107284	EL 2.1	111575	114923	117221
		111292	EL 2.2	115744	119216	121600
		115380	EL 2.3	119995	123595	126067
		121558	EL 2.4	126420	130213	132817
		125558	EL 2.5	130580	134498	137188

DEFINITIONS and ACRONYMS

Attachment B

ABC Commissioner or ABCC (Agency Head)	means the Australian Building and Construction Commissioner appointed under section 9 of the <i>Building and Construction Industry Improvement Act 2005</i>
Agency	Means the Office of the Australian Building and Construction Commissioner
APS	The Australian Public Service.
Classification	An approved classification as defined in the Public Service Classification Rules. At date of lodgement, non-SES classifications in the ABCC are APS Levels 1 -6, Executive Levels 1 and 2. The ABCC Broadband Guide is a local title which groups the duties of some of these classifications.
Commencement in a job	<ul style="list-style-type: none"> a. an engagement into the APS; b. movement between APS agencies; c. assignment or reassignment of duties within agency (i.e., transfer); d. promotion; or e. movement to a higher classification in a broadband.
Consultation	Provision to employees and, where they choose, their representative of relevant information and a genuine opportunity to influence the decision and contribute to the decision making process.
Dependant	<p>In relation to an employee means:</p> <ul style="list-style-type: none"> a) the spouse of the employee; and/or b) a child or parent of the employee, or of the spouse of the employee, being a child or parent who ordinarily resides with the employee and who is wholly or substantially dependent upon the employee. <p>For the purposes of eligibility for Agency allowances or assistance, an adult dependant is a person for whom the employee is eligible to claim a tax offset from the Australian Tax Office. A child dependant is a child less than 18 years or a full time student less than 25 years.</p>
EA	Enterprise Agreement
Employees	All persons employed under the <i>PS Act 1999</i> who are covered by this Agreement.
Executive Level employees	Employees engaged as EL1 or EL2 employees
Family	<p>In relation to an employee family means:</p> <ul style="list-style-type: none"> a) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or (b) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee.
Manager	The person to whom an employee is responsible and who is authorised by the ABC Commissioner to exercise the powers and responsibilities of manager in relation to that employee.

Medical evidence	A certificate or report provided by: a) a registered health practitioner, including a doctor, dentist, optometrist, optician, radiographer, physiotherapist, chiropractor or podiatrist; or b) another health practitioner (e.g. naturopath, herbalist, homeopath, iridologist, osteopath, or acupuncturist) in circumstances where the employee has either been referred to that health practitioner by a registered health practitioner, or obtains a registered health practitioner's endorsement that the treatment provided was desirable. c) An employee may also provide a statutory declaration instead of a certificate, if it is not reasonably practicable to provide a certificate.
NES	National Employment Standards
Non-ongoing employee	Is an employee engaged for: • A specified term (subsection 22(2)(b) of the PS Act); • For the duration of a specified task (subsection 22(2)(b) of the PS Act); or • For duties that are intermittent (subsection 22(2)(c) of the PS Act).
Non-ongoing employees engaged for duties that are irregular or intermittent	An employee engaged on an hourly basis to work on an ad hoc or irregular basis, usually less than full time in any week. Each period of work is an episode and is a distinct period of service with no guarantee or expectation of work beyond the period of current employment. Also referred to as "casual" employees in this Agreement.
Ongoing employee	As per subsection 22(2) of the PS Act.
Ordinary Hours	Ordinary hours are 7 hours 30 minutes and are used to calculate leave accruals and deductions, deductions for unauthorised absences, deductions for participation in industrial action as defined in the FW Act and part time hours.
Partner	In relation to a person who is a member of a couple, the other member of the couple.
Policy, procedures, guides and guidelines	Where policies, procedures or guidelines are referenced in this Agreement, this will have the meaning of the Agency policies, procedures, guides and guidelines will apply where they have been developed and authorised.
PSAct	The <i>Public Service Act</i> 1999, as amended from time to time.
Redeployment	Reassignment of duties within the Agency or movement to another APS agency.
Salary	The employee's salary is the relevant rate at Attachment A or as determined by the ABC Commissioner from time to time. It is salary for all purposes, including superannuation (subject to relevant superannuation scheme rules), overtime, severance and termination and excludes loadings and allowances. Neither participation in salary sacrifice arrangements nor purchased leave affect salary as defined.
Salary Advancement	This means the movement through the pay points within the salary range for a classification. These increases are counted as salary for purpose of determining salary for superannuation purposes, in accordance with the relevant superannuation fund rules.
Settlement Period	A settlement period is 20 consecutive working days from payday Thursday to the Wednesday before payday, 4 weeks following. This is a total of 150 hours per 4 week settlement period.
the FW Act	The <i>Fair Work Act 2009</i>
SES	Senior Executive Service
the Regulations	The Fair Work Regulations 2009

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

The persons below sign this Agreement in accordance with Regulation 2.06A of the *Fair Work Regulations 2009*.

On behalf of the Minister for Tertiary Education, Skills, Jobs and Workplace Relations

Signed:

Leigh Andrew Hyland Johns
ABC Commissioner (employer)
2/553 St Kilda Road
Melbourne VIC 3004
Office of the Australian Building and Construction Commissioner

On behalf of the Community and Public Sector Union

Signed:

Name
Title
Address

Date: