



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Office of the Fair Work Ombudsman
(AG2024/909)

OFFICE OF THE FAIR WORK OMBUDSMAN ENTERPRISE AGREEMENT 2024 – 2027

Commonwealth employment

DEPUTY PRESIDENT MASSON

MELBOURNE, 17 APRIL 2024

Application for approval of the Office of the Fair Work Ombudsman Enterprise Agreement 2024-2027

[1] An application has been made for approval of an enterprise agreement known as the *Office of the Fair Work Ombudsman Enterprise Agreement 2024-2027* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by the Office of the Fair Work Ombudsman. The Agreement is a single enterprise agreement.

[2] The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) (Amending Act) made a number of changes to enterprise agreement approval processes in Part 2-4 of the Fair Work Act, which commenced operation on 6 June 2023. By reason of the transitional arrangements for the Amending Act and the *notification time* for the Agreement of 27 February 2023, the *genuine agreement* requirements for agreement approval in Part 2-4 of the Fair Work Act, as it was just before 6 June 2023 apply to the present application. Further, as the Agreement was *made* on 11 March 2024 the *better off overall test* provisions in Part 2-4 of the Fair Work Act as amended on 6 June 2023 apply.

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

[4] The Applicant has raised that a typographical error was made in clause 410.1 of the Agreement, which has inadvertently omitted the ‘f’ in the word ‘for’. The Applicant has sought that the Commission exercise its discretion pursuant to s.218A of the Act to amend an obvious error, defect or irregularity. I am satisfied that the typographical error is an obvious error, defect or irregularity and I will amend the Agreement accordingly pursuant to s. 218A of the Act.

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

[6] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 24 April 2024. The nominal expiry date of the Agreement is 28 February 2027.



DEPUTY PRESIDENT

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Fair Work
OMBUDSMAN

Office of the Fair Work Ombudsman

Enterprise Agreement 2024-2027



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Section 1: Technical matters

Title

1. This agreement will be known as the Office of the Fair Work Ombudsman Enterprise Agreement 2024 – 2027.

Parties to the agreement

2. This agreement covers:
 - 2.1. the Fair Work Ombudsman, for and on behalf of the Commonwealth of Australia as the employer;
 - 2.2. all employees in the Office of the Fair Work Ombudsman (OFWO) employed under the PS Act other than Senior Executive Service employees or equivalent; and
 - 2.3. subject to notice being given in accordance with section 183 of the FW Act, the Community and Public Sector Union who were a bargaining representative for this agreement.

Operation of the agreement

3. This agreement will commence operation seven days after approval by the Fair Work Commission.
4. This agreement will nominally expire on 28 February 2027.

Delegations

5. The Fair Work Ombudsman may delegate to or authorise any person to perform any or all of the Fair Work Ombudsman's powers or functions under this agreement, including the power of delegation, and may do so subject to conditions.

National Employment Standards (NES) precedence

6. The terms of this agreement are intended to apply in a manner that does not derogate from the NES. The NES will continue to apply to the extent that any term of this agreement is detrimental to an employee of the OFWO in any respect when compared with the NES.

Closed comprehensive agreement

7. This agreement states the terms and conditions of employment of employees covered by this agreement, other than terms and conditions applying under relevant Commonwealth laws.
8. This agreement will be supported by policies and guidelines, as implemented and varied from time to time.

9. Policies and guidelines are not incorporated into and do not form part of this agreement. To the extent that there is any inconsistency between policies and guidelines and the terms of this agreement, the terms of this agreement will prevail.

Individual flexibility arrangements

10. The OFWO and an employee covered by this agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
 - 10.1 the agreement deals with one or more of the following matters:
 - 10.1.1 arrangements about when work is performed;
 - 10.1.2 overtime rates;
 - 10.1.3 penalty rates;
 - 10.1.4 allowances;
 - 10.1.5 remuneration;
 - 10.1.6 leave and leave loading; and
 - 10.2 the arrangement meets the genuine needs of the OFWO and employee in relation to one or more of the matters mentioned in **clause 10.1**; and
 - 10.3 the arrangement is genuinely agreed to by the OFWO and employee.
11. The OFWO must ensure that the terms of the individual flexibility arrangement:
 - 11.1 are about permitted matters under section 172 of the FW Act;
 - 11.2 are not unlawful terms under section 194 of the FW Act; and
 - 11.3 result in the employee being better off overall than the employee would be if no arrangement was made.
12. The OFWO must ensure that the individual flexibility arrangement:
 - 12.1 is in writing;
 - 12.2 includes the name of the OFWO and employee;
 - 12.3 is signed by the OFWO and employee and, if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
 - 12.4 includes details of:
 - 12.4.1 the terms of the enterprise agreement that will be varied by the arrangement;
 - 12.4.2 how the arrangement will vary the effect of the terms;
 - 12.4.3 how the employee will be better off overall in relation to the terms and conditions of their employment as a result of the arrangement; and
 - 12.5 states the day on which the arrangement commences.

13. The OFWO must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
14. The OFWO or employee may terminate the individual flexibility arrangement:
 - 14.1. by giving no more than 28 days written notice to the other party to the arrangement; or
 - 14.2. if the OFWO and employee agree in writing – at any time.
15. The OFWO and employee are to review the individual flexibility arrangement at least every 12 months.

Definitions

16. The following definitions apply to this agreement:

APS agency means an agency whose employees are employed under the PS Act, including an agency as defined in section 7 of the PS Act whose employees are employed under that Act.

APS consultative committee means the committee established by the APS Commissioner to consider matters pertaining to the (APS) employment relationship and of interest to the APS as a whole.

Agency Head means the Fair Work Ombudsman of the Office of the Fair Work Ombudsman or the Fair Work Ombudsman's delegate.

Agreement means the Office of the Fair Work Ombudsman Enterprise Agreement 2024-2027.

APS means the Australian Public Service.

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

Bandwidth means the span of hours during which an employee can perform ordinary hours.

Broadband refers to the allocation of more than one approved classification by the Fair Work Ombudsman to a group of duties involving work value applying to more than one classification under sub-rule 9(4) of the *Public Service Classification Rules 2000*. A broadband encompasses the full range of work value of the classifications contained within it.

Casual employee (irregular or intermittent employee) means an employee engaged under section 22(2)(c) of the PS Act who:

- a. is a casual employee as defined by the FW Act; and
- b. works on an irregular or intermittent basis.

Classification or classification level means the approved classifications as set out in rule 5 of the *Public Service Classification Rules 2000*.

Child means a biological child, adopted child, foster child, stepchild, or ward.

De facto partner means a person who, regardless of gender, is living in a common household with the employee in a bona fide, domestic, interdependent partnership, although not legally married to the employee. This includes a former de facto partner.

Delegate means someone to whom a power or function has been delegated.

Dependant means the employee's spouse or de facto partner, a child, parent or aged relative of the employee or the employee's spouse or de facto partner, who ordinarily lives with the employee and who is substantially dependent on the employee. Dependant also includes a child of the employee who does not ordinarily live with the employee but for whom the employee provides substantial financial support. 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.

Employee means an employee of the Commonwealth engaged under section 22(2) of the PS Act who is covered by this agreement (whether full-time, part time or casual, ongoing or non-ongoing).

Employee representative means a person (whether an employee or not) elected or chosen by an employee or elected or chosen by a group of employees in a workplace, to represent the individual and/or collective views of those employees in relation to a matter under this agreement.

Family means:

- a. a person who is related by blood, marriage, adoption or fostering including:
 - a spouse, former spouse, de facto partner or former de facto partner of the employee;
 - a child, parent, grandparent, grandchild, or sibling of the employee;
 - a child, parent, grandparent, grandchild, or sibling of a spouse, former spouse, de facto partner or former de facto partner of the employee;
 - a member of the employee's household;
- b. a person who has a strong affinity with the employee; or
- c. a person with whom the employee has a relationship of traditional kinship where there is a relationship or obligation, under customs and traditions of the community or group to which the employee belongs.

Family and domestic violence has the same meaning as in section 106B(2) of the FW Act.

Full-time employee means an employee employed to work an average of 37 hours and 30 minutes per week in accordance with this agreement.

FW Act means the *Fair Work Act 2009* as amended from time to time.

Manager means an employee's direct manager who is usually the person to whom an employee reports to on a day-to-day basis for work-related matters and may include a person referred to as a supervisor.

ML Act means the *Maternity Leave (Commonwealth Employees) Act 1973* as amended from time to time and any successor legislation.

NES means the National Employment Standards at Part 2-2 of the FW Act.

Non-ongoing employee means an employee engaged under section 22(2)(b) of the PS Act for a specified term or for the duration of a specified task, and consistent with the FW Act.

Nominal base salary means the base salary the employee would have received had they not been on paid leave.

Ongoing employee means an employee engaged under section 22(2)(a) of the PS Act.

Ordinary hours, duty or work means an employee's usual hours worked in accordance with this agreement and does not include additional hours.

Parliamentary service means employment under the *Parliamentary Service Act 1999*.

Partner means a spouse (including a former spouse) or de facto partner (including a former de facto partner).

Part-time employee means an employee whose ordinary hours are less than 37 hours and 30 minutes per week in accordance with this agreement.

Primary caregiver for the purposes of the parental leave clause means a pregnant employee with an entitlement under the ML Act, or an employee other than a casual employee who has primary care responsibility for a child who is born to them or who is adopted or in long-term foster care as per the clauses on adoption and long-term foster care in this agreement.

PS Act means the *Public Service Act 1999* as amended from time to time.

Relevant employee means an affected employee.

Secondary caregiver for the purposes of the parental leave clause means an employee, other than a pregnant employee or casual employee, who has secondary care responsibility for a child who is born to them, or for a child who is adopted or in long-term foster care as per the clauses on adoption and long-term foster care in this agreement.

Settlement period means the 20 consecutive working days from payday Thursday to the Wednesday before payday, 4 weeks following.

Usual location of work means the office location identified in the employee's letter of offer or other engagement documentation. If no designated office location was specified on engagement, the Fair Work Ombudsman may specify a designated office location by advising the employee in writing. The usual location of work may be varied by agreement between the Fair Work Ombudsman and employee on a temporary or permanent basis.

Section 2: Remuneration

Salary

17. Salary rates will be as set out in Attachment A – Base salaries of this agreement.
18. The base salary rates in Attachment A – Base salaries include the following increases:
 - 18.1 4.0 per cent from the first full pay period on or after 1 March 2024 (the 14 March 2024);
 - 18.2 3.8 per cent from the first full pay period on or after 1 March 2025 (the 13 March 2025); and
 - 18.3 3.4 per cent from the first full pay period on or after 1 March 2026 (the 12 March 2026).
19. In recognition of a common alignment date of the first full pay period on or after 1 March each year, the base salary rates in Attachment A – Base salaries were calculated based on base salary rates as at 31 August 2023.

Payment of salary

20. Employees will be paid fortnightly in arrears by electronic funds transfer into a financial institution account of the employee's choice, based on their annual salary using the following formula:

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

Note: This formula is designed to achieve a consistent fortnightly pay rate without significant variability year-to-year. It reflects that the calendar year is not neatly divisible into 26 fortnightly periods. There are 313 fortnightly pay cycles within a 12-year period.

Salary setting

21. Where an employee is engaged, moves to, or is promoted in the OFWO, the employee's salary will be paid at the minimum of the salary range of the relevant classification, unless the Fair Work Ombudsman determines a higher salary within the relevant salary range under these salary setting clauses.
22. The Fair Work Ombudsman may determine the payment of salary at a higher value within the relevant salary range of the relevant classification and the date of effect at any time.
23. In determining a salary under these salary setting clauses, the Fair Work Ombudsman will have regard to relevant factors including the employee's experience, qualifications and skills.
24. Where an employee commences ongoing employment in the OFWO immediately following a period of non-ongoing employment in the OFWO for a specified term or task, the Fair Work Ombudsman will determine the payment of the employee's salary within the relevant salary

range of the relevant classification which recognises the employee's prior service as a non-ongoing employee in the OFWO.

25. Where an employee commences ongoing employment in the agency immediately following a period of casual employment in the OFWO, the Fair Work Ombudsman will determine the payment of the employee's salary within the relevant salary range of the relevant classification which recognises the employee's prior service as a casual employee in the OFWO.
26. Where an APS employee moves to the OFWO at the same classification level from another APS agency, and their salary is below the maximum of the salary range of the relevant classification but not aligned with a pay point in the range, their salary will be paid at the next highest pay point in the salary range for the classification.
27. Where an APS employee moves to the OFWO at the same classification level from another APS agency, and their salary is above the maximum of the salary range for their classification, the Fair Work Ombudsman will maintain the employee's salary at that level, until it is absorbed into the salary range for that classification.
28. Where the Fair Work Ombudsman determines that an employee's salary has been incorrectly set, the Fair Work Ombudsman may determine the correct salary and the date of effect.

Incremental advancement

29. Incremental advancement (movement to a higher pay point within a classification) will occur for eligible ongoing and non-ongoing employees from 1 July each year. The actual payment of salary at the higher pay point will generally commence from the beginning of the first full pay period commencing on or after 1 August each year, back paid to 1 July.
30. To be eligible for incremental advancement an employee must:
 - 30.1 achieve a rating of 'Meets / Exceeds Expectations' in the Performance Rating Scale at the end of the performance cycle; and
 - 30.2 complete 3 months of aggregate eligible service at or above the relevant classification within the OFWO, within the performance cycle ending 30 June.
31. Eligible service for incremental advancement will include:
 - 31.1. periods of paid leave and unpaid parental leave;
 - 31.2. periods of unpaid leave that count as service; and
 - 31.3. service while employed on a non-ongoing basis.
32. When an ongoing or non-ongoing employee has been temporarily reassigned to duties at a higher classification for a period of 3 months of aggregated eligible service or longer during the performance cycle, the employee will be eligible for incremental advancement at this higher classification for the period of higher duties from 1 July onwards. Any further period of higher duties will be paid at the higher increment regardless of elapsed time.

33. Where an employee received incremental advancement under **clause 32** and subsequently moves to a higher classification due to promotion or advancement via broadbanding, their base salary will be the increment in the higher classification attained under **clause 32**.
34. Where an employee has less than 3 months aggregate eligible service and is not eligible for incremental advancement under **clause 30**, the Fair Work Ombudsman may determine a higher salary under the salary setting provisions in this Agreement.
35. During a period of unpaid parental leave employees will be eligible to advance a maximum of one increment, regardless of the length of the unpaid parental leave.

Salary packaging

36. Employees may choose to sacrifice part of their salary for a range of specified non-cash benefits. Participation in salary packaging will not affect salary for superannuation purposes or any other purpose.

Superannuation

37. The OFWO will make compulsory employer contributions as required by the applicable legislation and fund requirements.
38. Employer superannuation contributions will be paid on behalf of employees during periods of paid leave that count as service.
39. The OFWO will make employer superannuation contributions to any eligible superannuation fund, provided that it accepts payment by fortnightly electronic funds transfer (EFT) using a file generated by the OFWO's payroll system.

Method for calculating superannuation salary

40. The OFWO will provide an employer contribution of 15.4 per cent of the employee's Ordinary Time Earnings (OTE) for employees in the Public Sector Superannuation Accumulation Plan (PSSap) and employees in other accumulation funds.
41. Employer contributions will be made for all employees covered by this agreement.
42. Employer contributions will not be reduced by any other contributions made through salary sacrifice arrangements.

Payment during unpaid parental leave

43. Employer contributions will be paid on periods of unpaid parental leave at the employee's nominal base salary for periods of leave up to a maximum of 52 weeks.

Overpayments

44. An overpayment occurs if the Fair Work Ombudsman (or the OFWO) provides an employee with an amount of money to which the employee was not entitled (including but not limited to salary, entitlements, allowances, travel payment and/or other amount payable under this agreement).

45. Where the Fair Work Ombudsman considers that an overpayment has occurred, the Fair Work Ombudsman will provide the employee with notice in writing. The notice will provide details of the overpayment.
46. If an employee disagrees that there has been an overpayment including the amount of the overpayment, they will advise the Fair Work Ombudsman in writing within 28 calendar days of receiving the notice. In this event, no further action will be taken until the employee's response has been reviewed.
47. If after considering the employee's response (if any), the Fair Work Ombudsman confirms that an overpayment has occurred, the overpayment will be treated as a debt to the Commonwealth that must be repaid to the OFWO in full by the employee.
48. The Fair Work Ombudsman and the employee will discuss a suitable recovery arrangement. A recovery arrangement will take into account the nature and amount of the debt, the employee's circumstances and any potential hardship to the employee. The arrangement will be documented in writing.
49. The OFWO and employee may agree to make a deduction from final monies where there is an outstanding payment upon cessation of employment.
50. Interest will not be charged on overpayments.
51. Nothing in **clauses 44 - 50** prevents:
 - 51.1 the OFWO from pursuing recovery of the debt in accordance with an Accountable Authority Instruction issued under the *Public Governance, Performance and Accountability Act 2013*;
 - 51.2 the OFWO from pursuing recovery of the debt through other available legal avenues;
or
 - 51.3 the employee or the OFWO from seeking approval to waive the debt under the *Public Governance, Performance and Accountability Act 2013*.

Supported wage system

52. An employee can get a percentage of the relevant pay rate for their classification in line with their assessed capacity to do the work if they:
 - 52.1 have a disability;
 - 52.2 meet the criteria for a Disability Support Pension; and
 - 52.3 are unable to perform duties to the capacity required.
53. Specific conditions relating to the supported wage system are detailed in Attachment B – Supported Wage System.

Section 3: Allowances and reimbursements

Higher duties allowance

54. Where a role needs to be filled, higher duties allowance will be paid to any employee temporarily occupying the role acting at a classification level higher than their substantive classification level.
55. Higher duties allowance will be equal to the difference between the employee's current salary and the salary that would be payable if they were promoted to the higher classification level, or a higher amount determined by the Fair Work Ombudsman.
56. Where an employee is found to be eligible for salary progression at their acting classification level, they will receive an appropriate increase in the rate of higher duties allowance. The employee's salary level will be retained for all future periods of acting regardless of elapsed time.
57. Where an employee is assigned only part of the higher duties, the Fair Work Ombudsman will determine the amount of allowance payable.
58. Higher duties allowance will be payable while an employee is acting at a higher classification level as part of a job-sharing arrangement.
59. A non-SES employee who is temporarily reassigned duties at an SES classification, will be paid at a rate determined by the Fair Work Ombudsman for the period of the temporary reassignment.
60. An employee in receipt of a higher duties allowance who is granted paid leave or who observes a public holiday will continue to receive the higher duties allowance having regard to the provisions of this agreement during their absence. Higher duties allowance will not be paid beyond the date on which the employee would have ceased the period of temporary reassignment had they not been absent. Where the period of leave is paid at less than full pay, payment of the higher duties allowance will be made on a pro rata basis.

Motor vehicle allowance

61. When the Fair Work Ombudsman authorises an employee to use a private motor vehicle for official purposes, the employee will receive a motor vehicle allowance of 80 cents per kilometre.

Additional costs assistance

62. The Fair Work Ombudsman may reimburse additional costs arising from operational requirements, and other costs borne by the employee in the course of their employment.

Transition to retirement

63. 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 payment up to a total maximum of \$500 (inclusive of GST) to obtain financial advice from a registered financial advisor. This financial assistance is not available to excess employees.
64. Employees aged 54 years and over who are approaching retirement may elect to work on a part-time basis until retirement.

Workplace responsibility allowances

65. An allowance of \$30.51 per fortnight will be paid to appointed or elected employees for undertaking the following workplace roles:
 - 65.1. First Aid Officer
 - 65.2. Chief, Floor or Area Emergency Warden
 - 65.3. Health and Safety Representative
 - 65.4. Harassment and Discrimination Contact Officer and
 - 65.5. Mental Health First Aid Officer.
66. This allowance will be increased in line with general remuneration increases so that fortnightly total amounts are:
 - 66.1. From 13 March 2025 \$31.67
 - 66.2. From 12 March 2026 \$32.75
67. An employee is not to receive more than one workplace responsibility allowance unless approved by the Fair Work Ombudsman due to operational requirements. The full allowance is payable regardless of flexible work and part-time arrangements.
68. An employee's physical availability will be considered where attendance at the workplace is necessary to undertake the duties of the role, such as the emergency warden or first aid officer.
69. Casual employees who are eligible to receive a workplace responsibility allowance will be paid the full amount, as varied from time to time, provided they engage in work during any given pay cycle, irrespective of the frequency and duration of the work undertaken.

Community language allowance

70. A community language allowance will be paid where the Fair Work Ombudsman determines that an employee is regularly required to use their ability to communicate in Braille or a language other than English (including First Nations languages and AUSLAN) in the course of their work, and the employee meets the required level of competency set by the Fair Work Ombudsman. Further information is included in policy.

71. The allowance is paid in accordance with the employee’s level of competency:

Table 1: Community language allowance rates

Rate	Standard	Rate from commencement of the agreement	Rate from 13 March 2025	Rate from 12 March 2026
1	An employee who has adequate language skills, as determined by an individual or body approved by the Fair Work Ombudsman, for simple communication.	\$1,435 per annum	\$1,490 per annum	\$1,541 per annum
2	An employee who is certified by the National Accreditation Authority for Translators and Interpreters (NAATI) as a Translator or Interpreter at any level; or is assessed to be at the equivalent level by an individual or body approved by the Fair Work Ombudsman.	\$2,870 per annum	\$2,979 per annum	\$3,080 per annum

72. The allowance is calculated annually and paid fortnightly.
73. The full allowance is payable regardless of flexible work and part-time arrangements.
74. The allowance is payable during periods of paid leave.
75. The allowance counts as salary for superannuation purposes and for calculating retirement and redundancy entitlements.

Section 4: Classifications and broadbands

Work Level Standards

76. The APS Work Level Standards continue to operate and describe the work at each of the classification levels in this agreement, consistent with the *Public Service Classification Rules 2000*, made in accordance with section 23 of the PS Act.

Broadbanding

77. Broadbanding supports the retention of employees within the OFWO and assists in streamlining the filling of core positions.
78. The OFWO has established a broadband for the APS3 to APS6 classifications known as the General Broadband.
79. A decision as to whether to implement movement through the General Broadband or go to an open merit selection exercise remains at the discretion of the Director or Executive Director. Generally, the first option to be considered to fill a vacant position is movement through the broadband.
80. Movement through the broadband to a higher classification will only be available to ongoing employees whose performance has been assessed as 'Meets / Exceeds Expectations' under the Performance Policy.
81. Movement through the General Broadband is not automatic and can occur when:
 - 81.1. there is an ongoing position available at the higher classification; and
 - 81.2. there has been an assessment of the employee's work-related qualities, including the necessary qualifications, skills, behaviour and experience to undertake the higher-level work; or
 - 81.3. an employee has undertaken a mandatory training or development programme where progression is subject to the programme's outcomes; or
 - 81.4. an employee is successful in an open merit selection process consistent with paragraph 10A(1)(c) and 10A(2) of the PS Act.
82. All employment decisions, including any movement in classification made under broadbanding arrangements, will be based on merit. This means any broadbanding decision must be:
 - 82.1. made on the basis of an assessment of the candidate's work-related qualities (work-related qualities include experience, qualifications, skills required to undertake the work); and
 - 82.2. transparent and free of patronage, favouritism and unlawful discrimination.
83. All movements between classifications in the broadbands will take effect within 4 weeks of the decision.
84. All broadband outcomes will be notified on the intranet.

85. Where an employee is unsuccessful in advancing within a broadband, they will be offered feedback on the reasons, within 21 days of the decision being made.
86. Managers and employees will discuss the feedback provided and agree on a plan to support the employee to achieve their desired career progression.
87. An employee may seek a review of decisions relating to Broadbanding as outlined in the Review of Action Policy.
88. During the life of this agreement the Fair Work Ombudsman may establish additional broadbands consistent with the *Public Service Classification Rules 2000*.

Section 5: Working hours and arrangements

Recruitment and mobility

89. OFWO's recruitment and selection arrangements reflect the APS employment principles and merit-based decision making.
90. Where an ongoing position has been substantively vacant for a period of 12 months, the OFWO will endeavour to fill the position on an ongoing basis as soon as practicable.

Job security

Commitment to ongoing employment and rebuilding APS capacity

91. The APS is a career-based public service. In its engagement decisions, the OFWO recognises that the usual basis for engagement is as an ongoing APS employee.

Reporting

92. The OFWO will report to the Agency Consultative Forum on an annual basis, or more frequently if agreed, on the number, duration, classification and location of ongoing, non-ongoing and casual employees engaged by the OFWO.

Pathways to permanency

93. The OFWO and the APS will comply with the casual conversion provision(s) of the FW Act. In addition, the OFWO recognises that a proactive approach, including regularly reviewing casual and non-ongoing arrangements, is both a fair and efficient approach to supporting ongoing employment as the usual form of employment.

Casual (irregular or intermittent) employment

94. A casual (irregular or intermittent) employee is defined in the definitions section.
95. A decision to expand the use of casual employees is subject to **clause 411 - 427** of this agreement.
96. The OFWO will regularly review the working arrangements of casual employees to assess if they are genuinely performing irregular or intermittent duties and report de-identified outcomes to the Agency Consultative Forum.
97. Remuneration for casual employees is on an hourly basis. A casual employee will receive a 25 per cent loading on the base hourly rate of their classification as set out in this agreement.
98. The casual loading is paid in lieu of payment for public holidays not worked, notice of termination of employment, redundancy benefits and all paid leave entitlements, other than leave required by legislation including long service leave in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976* and leave for family and domestic violence support.

99. A casual employee will be engaged for a minimum of 3 hours per engagement or shall be paid for a minimum of 3 hours at the appropriate casual rate.
100. A casual employee who is eligible for a Workplace Responsibility Allowance will be paid the full amount.

Non-ongoing employment

101. A non-ongoing employee is defined in the definitions section.
102. Non-ongoing employees will generally have the same terms and conditions of employment as ongoing employees under this agreement's terms, except:
 - 102.1. personal/carer's leave accrual at **clause 216**, subject to **clause 218**; and
 - 102.2. redundancy provisions at **clauses 461 - 489**, subject to **clause 103**.
103. If the non-ongoing employee's contract is not permitted by section 333E of the FW Act, then the redundancy provisions at **clauses 461 - 489** will apply.
104. If the redundancy provisions apply to an employee under **clause 103**, the agency must adhere to the consultation requirements at **clauses 411 - 427** and **clauses 465 - 467**.

Working hours

The standard day

105. The standard day is defined as being worked from 8.30 am to 12.30 pm and 1.30 pm to 5.00 pm (7 hours 30 minutes per day).
106. All employees covered by this agreement are required to record their working hours.
107. A manager and employee may agree to a different pattern of hours by which the employee will meet their ordinary hours of duty.
108. When determining working patterns, managers and employees should consider:
 - 108.1. the period of time in which all employees are required to attend, for the team or work area
 - 108.2. any other relevant issues for the team or work area
 - 108.3. the personal circumstances of the employees, with the intent of helping employees balance their work and personal lives.
109. An employee will not normally be expected to work more than:
 - 109.1. 10 hours ordinary time on any day or
 - 109.2. 5 consecutive hours without a meal break of at least 30 minutes.
110. Where this does occur, overtime, Time Off In Lieu (TOIL) and meal allowances may apply in accordance with the provisions applicable to the relevant employee.

111. If employees are required to work in excess of their ordinary hours over a settlement period, the manager will consult with the affected employees about appropriate recompense through TOIL and overtime provisions.
112. The bandwidth of hours in which an employee may work their ordinary hours are 7.00 am to 7.00 pm Monday to Friday, or as otherwise agreed on an individual basis between the Fair Work Ombudsman and the employee.

Flex for APS 1-6 classifications

Principles

113. Flextime is available to all employees at the APS 1 – 6 classifications.
114. Flextime is a system of flexible working arrangements that enables employees and managers to agree to vary working hours, patterns and arrangements by agreement. The intention of the flextime scheme is to provide flexibility, in order to meet personal needs and support operational requirements.
115. An employee's workload should be designed to be achievable within their standard hours. There may, however, be occasions where operational requirements result in additional (or fewer) hours being worked. Flextime provisions recognise this and ensure that any additional hours worked are recognised.
116. Flextime provisions are not to be used as an alternative to overtime.
117. All employees at APS 1 – 6 classifications are required to accurately record their working hours, including start, finish and break times and any leave.
118. APS Level 1-6 employees are eligible to accrue flextime for duties performed in excess of their ordinary hours of work (over the settlement period), but which do not attract overtime, where it is operationally feasible to do so and is agreed by the manager.
119. Flextime credits can be accessed as part or full day and in conjunction with other forms of leave, subject to approval by the manager. Requests will not be unreasonably refused.
120. Where an employee is unwell on an approved flex day and provides acceptable evidence, the flex day will be recredited.

Insufficient work

121. An employee cannot work hours in addition to their standard hours to accrue flextime credit where there is insufficient work.

Flextime credit balance

122. Employees may carry over a maximum credit of 37 hours and 30 minutes (pro rata for part-time employees) of flextime accumulated in any settlement period into the next settlement period.

Flextime credit exceeding 37 hours 30 minutes

123. Where flextime credits exceed the maximum credit of 37 hours 30 minutes at the end of a settlement period (excess flextime credits), the Fair Work Ombudsman may approve either

the cashing out of excess flextime credits at ordinary time rates or the carryover of excess flextime credits into the next settlement period.

124. Where flextime credits are carried over into the next settlement period, the employee and their manager will agree on a plan to reduce the credit to the maximum credit. Where this is not practicable, the excess flextime credits will be cashed out in the following pay period.
125. Monthly reports of employees in each Branch who have accrued excess flextime credits will be forwarded to the relevant Executive Director for review.

Flextime debit balance

126. Employees may carry over a maximum debit of 10 hours of flextime into the next settlement period.
127. In circumstances where the maximum debit is exceeded at the end of a settlement period, the manager and employee will endeavour to reduce the debit to the maximum allowable (or lower) over the next settlement period.
128. Should this not occur, the amount by which the maximum is exceeded shall be treated as leave without pay and deducted from the employee's salary. Alternatively, with their manager's approval, an employee may use accrued annual leave to offset any flextime debit.

Flextime balances at cessation

129. Where any flextime credits are outstanding at cessation of employment with the OFWO, these will be paid to the employee at ordinary rates. Where any flextime debits are outstanding at cessation, these will be recovered from any termination payment.

Reversion to standard day

130. When an employee has failed to comply with the provisions of flextime, the Fair Work Ombudsman may remove access to flextime provisions for that employee for a specified period and the employee will revert to working the standard day. Access to flextime will be restored where the Fair Work Ombudsman is satisfied that the employee will maintain satisfactory attendance patterns.

Executive Level Time Off in Lieu (EL TOIL)

131. Executive level (EL) employees are sometimes required to work reasonable additional hours. Consistent with the NES, employees may refuse to work unreasonable additional hours.
132. EL employees seeking to access time off in lieu (TOIL) are required to keep records of their working hours using a method determined by the OFWO.
133. A manager is to grant TOIL in recognition of reasonable additional hours worked. TOIL granted to employees can be taken as whole or part days.
134. The working arrangements for an EL employee should be agreed through discussion between the manager and the EL employee. The discussion should include consideration of the work requirements that will safely get the job done and reasonably allow the employee to balance their work and personal life.

135. An EL employee's working arrangements and actual hours worked should be discussed on at least a quarterly basis between the EL employee and their manager.
136. The pattern of hours is to be flexible enough to accommodate short-term peaks and troughs in workload and include expected reasonable additional hours. The agreed pattern of hours is to be recorded.
137. Requests from EL employees to access flexible time off which are consistent with their agreed working arrangements are to be supported, subject to operational requirements.

Overtime and TOIL

APS Level 1-6

138. On occasion, and with provision of reasonable notice, employees may be required to work overtime. An employee may refuse to work unreasonable additional hours. Section 62(3) of the FW Act sets out the factors which must be taken into account in determining whether additional hours are reasonable or unreasonable.
139. Overtime is work performed:
 - 139.1. in excess of 10 hours on any one day
 - 139.2. outside the bandwidth (except when travelling, refer to **clause 399**)
 - 139.3. on a Saturday, Sunday or public holiday
 - 139.4. outside a part-time employee's ordinary hours of work
140. APS Level 1-6 employees will be entitled to payment of overtime in accordance with **clause 145** where they are required to perform work and pre-agreement from their manager has been attained.
141. Where an employee is directed to perform overtime, the Fair Work Ombudsman may approve access to overtime for all work performed outside the employee's ordinary hours on any one day.
142. An employee may elect to take TOIL at the equivalent overtime rate instead of payment of overtime as calculated according to **clause 145**.

Executive Level employees

143. Executive level (EL) employees are not generally entitled to overtime, however, the Fair Work Ombudsman may approve overtime payments for excess hours worked in exceptional circumstances.

Part-time employees

144. A part-time employee directed to perform work in excess of the agreed hours of duty over the settlement period and who has not elected to receive flextime for such will be eligible for overtime in accordance with the provisions applicable to the relevant employee.

Calculation

145. Overtime is calculated at the following rates:

Monday to Saturday	Time and one half for the first 3 hours each day, and double time thereafter
Sunday	Double time
Public Holidays	Double time and one half

Non-continuous duty

146. Where a period of overtime is not continuous with ordinary duty, the minimum overtime payment is 4 hours at the relevant rate. Where the period of overtime is greater than 4 hours, payment will be made for the actual period worked at the relevant rate.

Continuous duty

147. 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.

Call in allowance

148. An employee, up to and including an EL1 employee, who is called to work to meet an emergency outside the ordinary (or agreed) bandwidth 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 2 hours at double time.

Meal allowance

149. Where an employee is directed to work overtime for a continuous period to the completion of, or beyond, a meal period, they will be paid a meal allowance of \$26. An employee who performs overtime at home is not eligible for a meal allowance.

Rest period after overtime

150. An employee is entitled to an 8 hour break, plus reasonable travelling time, between ceasing overtime and commencing their ordinary work the next day, without loss of pay for any ordinary working time involved.

151. Where an employee is required to resume or continue work without an 8 hour rest break plus reasonable travelling time, they must be paid double time for this period until released from duty. The employee will then be entitled to an 8 hour rest break, plus reasonable travelling time, without loss of pay for any ordinary working time involved.

Flexible working arrangements

152. The OFWO, employees and their union recognise:
- 152.1. the importance of an appropriate balance between employees' personal and working lives, and the role flexible working arrangements can play in helping to achieve this balance;
 - 152.2. access to flexible work can support strategies to improve diversity in employment and leadership in the APS;
 - 152.3. access to flexible work supports APS capability, and can assist in attracting and retaining the employees needed to deliver for the Australian community, including employees located at a wider range of locations;
 - 152.4. that flexibility applies to all roles in the OFWO, and different types of flexible working arrangements may be suitable for different types of roles or circumstances; and
 - 152.5. requests for flexible working arrangements are to be considered on a case-by-case basis, with a bias towards approving requests.
153. The OFWO is committed to engaging with employees and their union to build a culture that supports flexible working arrangements across the OFWO at all levels. This may include developing and implementing strategies through the Agency Consultative Forum.
154. Flexible working arrangements include, but are not limited to, changes in hours of work, changes in patterns of work and changes in location of work.

Requesting formal flexible working arrangements

155. The following provisions do not diminish an employee's entitlement under the NES.
156. An employee may make a request for a formal flexible working arrangement.
157. The request must:
- 157.1. be in writing;
 - 157.2. set out details of the change sought (including the type of arrangement sought and the proposed period the arrangement will operate for); and
 - 157.3. set out the reasons for the change, noting the reasons for the change may relate to the circumstances set out at section 65(1A) of the FW Act.
158. The Fair Work Ombudsman must provide a written response to a request within 21 days of receiving the request.
159. The response must:
- 159.1. state that the Fair Work Ombudsman approves the request and provide the relevant detail in **clause 160**; or
 - 159.2. if following discussion between the OFWO and the employee, the OFWO and the employee agree to a change to the employee's working arrangements that differs from that set out in the request – set out the agreed change; or

- 159.3. state that the Fair Work Ombudsman refuses the request and include the following matters:
 - 159.3.1. details of the reasons for the refusal; and
 - 159.3.2. set out the OFWO's particular business grounds for refusing the request, explain how those grounds apply to the request; and
 - 159.3.3. either:
 - 159.3.3.1. set out the changes (other than the requested change) in the employee's working arrangements that would accommodate, to any extent, the employee's circumstances outlined in the request and that the agency would be willing to make; or
 - 159.3.3.2. state that there are no such changes; and
 - 159.3.4. state that a decision to refuse the request, or failure to provide a written response within 21 days is subject to the dispute resolution procedures of the enterprise agreement, and if the employee is an eligible employee under the FW Act, the dispute resolution procedures outlined in sections 65B and 65C of the FW Act.
- 160. Where the Fair Work Ombudsman approves the request this will form an arrangement between the OFWO and the employee. Each arrangement must be in writing and set out:
 - 160.1. any security and work health and safety requirements;
 - 160.2. a review date (subject to **clause 164**); and
 - 160.3. the cost of establishment (if any).
- 161. The Fair Work Ombudsman may refuse to approve the request only if:
 - 161.1. the OFWO has discussed the request with the employee; and
 - 161.2. the OFWO has genuinely tried to reach an agreement with the employee about making changes to the employee's working arrangements to accommodate the employee's circumstances (subject to any reasonable business grounds for refusal); and
 - 161.3. the OFWO and the employee have not reached such an agreement; and
 - 161.4. the OFWO has had regard to the consequences of the refusal for the employee; and
 - 161.5. the refusal is on reasonable business grounds.
- 162. Reasonable business grounds include, but are not limited to:
 - 162.1. the new working arrangements requested would be too costly for the OFWO;
 - 162.2. there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested;

- 162.3. it would be impractical to change the working arrangements of other employees, or to recruit new employees, to accommodate the new working arrangements requested;
 - 162.4. the new working arrangements requested would be likely to result in a significant loss in efficiency or productivity;
 - 162.5. the new working arrangements requested would be likely to have a significant negative impact on customer service; and
 - 162.6. it would not be possible to accommodate the working arrangements without significant changes to security requirements, or where work health and safety risks cannot be mitigated.
163. For First Nations employees, the OFWO must consider connection to country and cultural obligations in responding to requests for altering the location of work.
164. Approved flexible working arrangements will be reviewed by the OFWO and the employee after 12 months, or a shorter period, if agreed by the employee. This is to ensure the effectiveness of the arrangement.

Varying, pausing or terminating flexible working arrangements

165. An employee may request to vary an approved flexible working arrangement in accordance with **clause 157**. An employee may request to pause or terminate an approved flexible working arrangement.
166. The Fair Work Ombudsman may vary, pause or terminate an approved flexible working arrangement on reasonable business grounds, subject to **clause 168**.
167. The OFWO must provide reasonable notice if varying, pausing or terminating a flexible working arrangement without the agreement of the employee, having regard to the circumstances of the employee. Exceptions to this requirement are urgent and critical operational circumstances or an employee's demonstrated and repeated failure to comply with the agreed arrangements.
168. Prior to the Fair Work Ombudsman varying, pausing or terminating the arrangement under **clause 166**, the OFWO must have:
- 168.1. discussed with the employee their intention to vary, pause or terminate the arrangement with the employee;
 - 168.2. genuinely tried to reach an agreement with the employee about making changes to the employee's working arrangements to accommodate the employee's circumstances (subject to any reasonable business grounds for alteration);
 - 168.3. had regard to the consequences of the variation, pause or termination for the employee;
 - 168.4. ensured the variation, pause or termination is on reasonable business grounds; and
 - 168.5. informed the employee in writing of the variation, pause or termination to the approved flexible working arrangement, including details set out in **clause 159.3**.

Working from home

169. The OFWO will not impose caps on groups of employees on the time that may be approved to work from home or remotely, with each request to be considered on its merits.
170. The OFWO may provide equipment necessary for, or reimbursement, for all or part of the costs associated with establishing a working from home arrangement.
171. Upon request and subject to an approved working from home agreement, employees will be provided with a computer monitor, keyboard and mouse to facilitate regular working from home. All equipment remains the property of the OFWO and must be returned when the employee ceases employment.
172. An employee working from home is covered by the same employment conditions as an employee working at an office site under this agreement.
173. The OFWO will provide employees with guidance on working from home safely.
174. Employees will not be required by the OFWO to work from home unless it is lawful and reasonable to do so. This may include where circumstances prevent attendance at an office during a pandemic or natural disaster. In these situations, the OFWO will consider the circumstances of the employees and options to achieve work outcomes safely.

Ad-hoc arrangements

175. Employees may request ad-hoc flexible working arrangements. Ad-hoc arrangements are generally one-off or short-term arrangements for circumstances that are not ongoing.
176. Employees should, where practicable, make the request in writing and provide as much notice as possible.
177. Requests for ad-hoc arrangements are not subject to the request and approval processes detailed in **clauses 155 - 164**.
178. The OFWO should consider ad-hoc requests on a case-by-case basis, with a bias to approving ad-hoc requests, having regard to the employee's circumstances and reasonable business grounds.
179. Where a regular pattern of requests for ad-hoc arrangements from an employee emerges, the OFWO should consider whether it is appropriate to seek to formalise the arrangement with the employee.

Altering span of hours

180. An employee may request to work an alternative regular span of hours (bandwidth hours). If approved by the Fair Work Ombudsman, hours worked on this basis will be treated as regular working hours and will not attract overtime payments. The OFWO will not request or require that any employee alter their regular span of hours (bandwidth hours) under these provisions.

Rostered environments

181. If an area is rostered, the OFWO will engage with employees to:
 - 181.1. maximise employee flexibility and work-life balance
 - 181.2. maximise resources to meet expected demand

- 181.3. support employees with a flexible approach to taking reasonable and regular breaks during rostered work periods, using leave and flex leave, and
 - 181.4. access routine and ad hoc coaching, training and development.
182. Rostering arrangements will include, to the extent possible:
- 182.1. consistent start and end times over a week
 - 182.2. alterations in rostered hours for staff with specific needs
 - 182.3. changes to rosters to accommodate ad-hoc work/life balance needs (e.g. medical appointments, school attendances).
183. Employees should take appropriate additional breaks, not to be deducted from working hours or flextime, following a stressful situation.

Job sharing

184. The Fair Work Ombudsman may approve job sharing arrangements between 2 or more employees subject to operational requirements. The details of any job-sharing arrangement, including the duration, will be agreed in writing between the manager and the employees involved.

Part-time work

185. Employees engaged on a full-time basis will not be compelled to convert to part-time employment.
186. Employees engaged on a part-time basis will not be compelled to convert to full-time employment.
187. Employees engaged on a part-time basis are required to work at least 3 hours on any agreed working day, unless otherwise agreed between the employee and their manager.
188. Where the hours of a part-time employee are to be varied for a short period, flextime or other flexible working arrangements, as agreed between the employee and their manager, are to be used.
189. Leave and other entitlements of part-time employees (unless otherwise provided for by legislation or within this agreement) will be calculated on a pro rata basis, based on the proportion of hours worked in comparison to full-time hours. This 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.

Annual closedown

190. Employees will be provided paid time off from 12.30 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 **clause 145**.

191. If an employee elects to work on the next normal working day after the Boxing Day holiday (previously known as the public service holiday) an employee may elect to receive TOIL or payment of overtime in accordance with **clause 145**.
192. Part-time employees normally not working on the days of the week on which the annual closedown occurs will not be entitled to alternative time off duty.

Public holidays

193. Employees are entitled to the following holidays each year as observed at their usual location of work in accordance with the FW Act:
 - 193.1. 1 January (New Year's Day);
 - 193.2. 26 January (Australia Day);
 - 193.3. Good Friday and the following Monday;
 - 193.4. 25 April (Anzac Day);
 - 193.5. the King's birthday holiday (on the day on which it is celebrated in a State or Territory or a region of a State or Territory);
 - 193.6. 25 December (Christmas Day);
 - 193.7. 26 December (Boxing Day); and
 - 193.8. 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 2009* from counting as a public holiday.
194. If a public holiday falls on a Saturday or Sunday, and 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.
195. The Fair Work Ombudsman 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.
196. The Fair Work Ombudsman and an employee may agree to substitute a cultural or religious day of significance to the employee for any day that is a prescribed holiday. If the employee cannot work on the prescribed holiday, the employee will be required to work make-up time at times to be agreed. This substitution does not impact or reduce an employee's entitlement to First Nations ceremonial leave, NAIDOC leave or cultural leave.
197. Where an employee substitutes a public holiday for another day, they will not be paid penalty rates for working their normal hours on the public holiday.
198. Where a public holiday falls during a period when an employee is absent on leave (other than annual leave, paid personal/carer's leave or defence service sick leave) there is no entitlement

to receive payment as a public holiday. Payment for that day will be in accordance with the entitlement for that form of leave (e.g. if on long service leave on half pay, payment is at half pay.)

199. If under a law of a State or Territory every Sunday is declared or prescribed by or under that law to be a public holiday, there is no entitlement to receive payment as a public holiday if the employee would have worked, or does perform work, on that day. In these circumstances, payment will only be made at the public holiday rate if the employee performs work on that day, and the Sunday would otherwise be a public holiday under **clause 193.1 – 193.8**.
200. An employee, who is absent on a day or part day that is a public holiday in their normal work location, is entitled to be paid for the part or full day absence as if that day or part day was not a public holiday, except where that person would not normally have worked on that day.
201. Where a full-time employee, including but not limited to employees on compressed hours, has a regular planned day off which would fall on a public holiday, the Fair Work Ombudsman may allow the employee to change their planned day off so that it does not fall on a public holiday. If it is not possible to change their planned day off, the employee will be credited an equivalent amount of time to their regular hours for the day in flex credits or EL TOIL in recognition of their planned day off.

Section 6: Leave

Annual leave

202. Employees, other than casual employees, are entitled to 4 weeks (20 days) paid annual leave per year of service, accruing daily and credited monthly. Annual leave for part-time employees accrues on a pro rata basis.
203. An employee must obtain their manager's approval prior to taking annual leave. Requests for annual leave will not be unreasonably refused.
204. Where an employee accrues in excess of 8 weeks paid annual leave, the Fair Work Ombudsman may, after providing at least 4 weeks' notice, direct the employee to take up to 2 weeks of paid annual leave. The Fair Work Ombudsman will not direct an employee to take leave where the employee agrees to appropriate arrangements to reduce the leave balance within an agreed timeframe.
205. Employees may take annual leave at either full or half pay, except where they have in excess of 8 weeks paid annual leave credit where annual leave may only be taken at half pay with the approval of the Fair Work Ombudsman. Where an employee takes annual leave at half pay, annual leave credits will be deducted for half the duration of the leave.
206. Where annual leave is cancelled at the request of OFWO or the employee is recalled to duty, the employee will be reimbursed travel costs not recoverable from insurance or other sources. Evidence of costs may be required.
207. On separation from the APS, the employee will be paid in lieu of any unused annual leave credits in accordance with the FW Act.

Annual leave cash out

208. An employee may cash out accrued annual leave subject to the following conditions:
 - 208.1. the employee must have at least 4 weeks annual leave remaining
 - 208.2. the employee has taken a minimum of 5 days annual leave during the last 12 month period
 - 208.3. the Fair Work Ombudsman and the employee must make a separate agreement in writing for each cashing out of a particular amount of annual leave.
209. Where an employee cashes out accrued annual leave, they will be paid at least the full amount that would have been payable to the employee had the employee taken the leave.

Purchased leave

210. Once in any 12 month period an employee may elect to purchase from 1 to 8 weeks leave.
211. Purchased leave will count as service for all purposes.
212. The employee's salary for superannuation purposes continues to be their salary as if they had not purchased leave.

213. A reconciliation of purchased leave deductions will be undertaken at the conclusion of the purchased leave period.

Personal/carer's leave

214. An employee may access paid personal/carer's leave in the following circumstances:

214.1. due to personal illness or injury;

214.2. to attend appointments with a registered health practitioner;

214.3. to manage a chronic condition; and/or

214.4. to provide care or support for a family member (including a household member) or a person they have caring responsibilities for, because:

214.4.1. of a personal illness or personal injury affecting the other person; or

214.4.2. of an unexpected emergency affecting the other person.

215. A person that an employee has caring responsibilities for may include a person who needs care because they:

215.1. have a medical condition, including when they are in hospital;

215.2. have a mental illness;

215.3. have a disability;

215.4. are frail or aged; and/or

215.5. are a child, not limited to a child of the employee.

216. Employees will be entitled to 18 days paid personal leave for every 12 months of service (pro rata for part-time employees).

217. For an ongoing employee, 18 days personal/carer's leave will be credited upon the employee's commencement with the APS. In subsequent years, the employee's leave will accrue daily, credited monthly.

218. For a non-ongoing employee, the personal/carer's leave will be credited upon the employee's commencement with the OFWO. This will be 18 days leave pro-rated based on the employee's initial contract period, and is capped at 18 days. After the initial contract period or 12 months, whichever is shorter, or where the employee has an existing entitlement to personal/carer's leave, leave will accrue daily, credited monthly.

219. The Fair Work Ombudsman may allow an employee to take paid personal/carer's leave in advance of accruing an entitlement to paid leave in exceptional circumstances and where current personal/carer's leave has been exhausted. Any leave taken in advance of its accrual will be offset against future accruals.

220. Where personal/carer's leave has been taken in advance of its accrual and the employee ceases employment with the OFWO, the value of any paid leave that has been taken but not accrued by the employee will be treated as an overpayment of entitlements.

- 221. Leave at half pay may be approved by the Fair Work Ombudsman.
- 222. A casual employee may be absent without pay when not fit for work due to personal illness or injury. A casual employee may access 2 days unpaid carer's leave per occasion, consistent with the NES.
- 223. Unused personal/carer's leave will not be paid out on termination of employment.
- 224. Employees must advise their manager as soon as practicable of their absence or their intention to be absent.
- 225. Evidence may be requested:
 - 225.1. for personal/carer's leave of more than 3 consecutive working days; and/or
 - 225.2. for any personal/carer's leave in excess of a total of 10 days without evidence in any calendar year.
- 226. Acceptable evidence includes:
 - 226.1. a certificate from a registered health practitioner;
 - 226.2. a statutory declaration; and
 - 226.3. another form of evidence approved by the Agency Head.
- 227. A certificate from a registered health practitioner may be used as evidence of a chronic condition for up to 12 months for both personal and carer's leave.
- 228. An employee, including a casual 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:
 - 228.1. a personal illness, or personal injury, affecting the member or
 - 228.2. an unexpected emergency affecting the member.
- 229. 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 Fair Work Ombudsman agree.

Portability of leave

- 230. Where an employee moves into the OFWO from another APS agency where they were an ongoing employee, the employee's unused accrued annual leave and personal/carer's leave will be transferred, provided there is no break in continuity of service.
- 231. Where an employee is engaged in the OFWO 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/carer's leave will be recognised unless the employee received payment in lieu of those entitlements on cessation of employment.
- 232. Where an employee is engaged as an ongoing employee in the OFWO, and immediately prior to the engagement the person was employed as a non-ongoing APS employee (whether in the

agency or another), at the employee's request, any unused accrued annual leave (excluding accrued leave paid out on separation) and personal/carer's leave will be recognised.

233. Where an employee is engaged as a non-ongoing APS employee, and immediately prior to the engagement the person was employed as a non-ongoing APS employee (whether in the agency or another) at the employee's request, any unused accrued annual leave (excluding accrued leave paid out on termination of employment) and personal/carer's leave will be recognised.
234. Where an employee is engaged as an ongoing employee in the OFWO, and immediately prior to the engagement the person was employed by a Commonwealth employer (other than in the Parliamentary Services which are covered in **clause 231**), the Fair Work Ombudsman will recognise any unused accrued personal/carer's leave at the employee's request. The Fair Work Ombudsman will advise the employee of their ability to make this request.
235. Where an employee is engaged as an ongoing employee in the OFWO, and immediately prior to the engagement the person was employed by a State or Territory Government, the Fair Work Ombudsman may recognise any unused accrued personal/carer's leave, provided there is not a break in continuity of service.
236. For the purposes of **clauses 230 - 235**, an employee with a break in service of less than 2 months is considered to have continuity of service.
237. The Fair Work Ombudsman may, in exceptional circumstances, recognise a period of service for personal/carer's leave purposes not specified in **clauses 230 - 236**.

Re-crediting of leave

238. When an employee is on:
 - 238.1. annual leave;
 - 238.2. purchased leave;
 - 238.3. defence reservist leave;
 - 238.4. First Nations ceremonial leave;
 - 238.5. NAIDOC leave;
 - 238.6. cultural leave; or
 - 238.7. long service leave; andbecomes eligible for, under legislation or this agreement:
 - 238.8. personal/carer's leave;
 - 238.9. compassionate or bereavement leave;
 - 238.10. jury duty;
 - 238.11. emergency services leave;
 - 238.12. leave to attend to family and domestic violence circumstances; or

238.13. parental leave, premature birth leave, stillbirth leave or pregnancy loss leave;
the affected period of leave will be re-credited.

239. When an employee is on personal/carer's leave and becomes eligible for parental leave, premature birth leave, stillbirth leave or pregnancy loss leave, the affected period of leave will be re-credited.

240. Re-crediting is subject to appropriate evidence of eligibility for the substituted leave.

Long service leave

241. An employee is eligible for long service leave in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976* (LSL Act).

242. The minimum period for which long service leave will be granted is 7 calendar days (whether taken at full or half pay). Long service leave cannot be broken with other periods of leave, except as otherwise provided by legislation or provided for in the re-crediting of leave clause at **clause 238** of this agreement.

Miscellaneous leave

243. Miscellaneous leave may be granted by the Fair Work Ombudsman, having regard to the operational needs of the OFWO, including for purposes that the Fair Work Ombudsman considers to be in the interests of the OFWO.

244. Miscellaneous leave may be granted:

244.1. for the period requested or for another period;

244.2. with or without pay; and

244.3. subject to conditions.

245. Miscellaneous leave is available to casual employees to provide for paid family and domestic violence leave and otherwise by Government directive.

246. In order for absence on miscellaneous leave without pay to count as service for personal/carer's leave, the employee must resume duty with the OFWO at or before the expiration of the leave.

247. Further information is contained in the relevant policy.

Cultural, ceremonial and NAIDOC leave

NAIDOC leave

248. Employees may access up to one day of paid leave per calendar year to participate in NAIDOC week activities.

249. NAIDOC leave can be taken in part days.

First Nations ceremonial leave

- 250. First Nations employees may access up to 6 days of paid leave over 2 calendar years to participate in significant activities associated with their culture or to fulfil ceremonial obligations.
- 251. The Fair Work Ombudsman may approve additional leave for cultural or ceremonial purposes as miscellaneous leave, with or without pay.
- 252. First Nations ceremonial leave can be taken as part days.
- 253. First Nations ceremonial leave is in addition to compassionate and bereavement leave.

Cultural leave

- 254. The Fair Work Ombudsman may grant up to 3 days of paid leave per calendar year for the purpose of attending significant religious or cultural obligations associated with the employees' particular faith or culture.
- 255. The Fair Work Ombudsman may approve additional leave for cultural purposes as miscellaneous leave, with or without pay.
- 256. Cultural leave can be taken as part days.
- 257. For the avoidance of doubt, this leave does not cover cultural purposes or obligations which are eligible for paid leave under **clause 250**.

Parental leave

- 258. Primary caregiver, secondary caregiver and ML Act are defined in the definitions section.
- 259. An employee who is a **primary caregiver** or **secondary caregiver** is entitled to parental leave up until 24 months from the date of the child's birth or placement (**parental leave period**). For the avoidance of doubt, this is inclusive of all legislated leave entitlements. The parental leave period does not extend non-ongoing employment where the employment period remaining is less than 24 months. An employee is only eligible for parental leave with pay as either a primary caregiver or a secondary caregiver for the particular parental leave period, and cannot switch roles for the purpose of accessing additional paid leave.
- 260. For the pregnant employee, the parental leave period starts on commencement of maternity leave as per ML Act requirements and ceases 24 months from the date of birth. Medical certification requirements for the pregnant employee will be as required by the ML Act.
- 261. Conditions in this agreement will continue to apply in circumstances where successor legislation to the ML Act does not provide parental leave conditions included in this agreement.

Payment during parental leave

- 262. An employee is entitled to parental leave with pay as per **clauses 264 and 265** below within the parental leave period. Any further parental leave during the parental leave period is without pay. Unused paid parental leave remaining at the end of the employee's parental leave period will lapse. An employee may choose to use their accrued paid leave entitlements

in accordance with usage and eligibility requirements in this agreement during the parental leave period that would otherwise be without pay.

263. Employees newly engaged in the agency or who have moved to OFWO from another APS agency are eligible for the paid parental leave in **clauses 264 and 265** where such paid leave had not already been provided by another APS agency or Commonwealth employer in the 24 months since the child’s date of birth or placement. If the paid leave used by the employee with the previous Commonwealth employer or APS agency is less than the limits specified in **clauses 264 and 265**, the balance is available to the employee.
264. An employee who is a primary caregiver is entitled to parental leave with pay during the parental leave period to a maximum of 18 weeks as provided in Table 2 below.

Table 2: Primary caregivers - circumstances for paid parental leave

Paid leave entitlement under the ML Act	Additional parental leave with pay under this agreement for the primary caregiver
12 weeks’ paid maternity leave, including any reduced paid maternity leave period due to ML Act qualifying period rules	Paid leave to bring the total period of paid parental leave to 18 weeks
No ML Act eligibility or coverage	18 weeks

265. An employee who is a secondary caregiver is entitled to parental leave with pay during the parental leave period as provided in Table 3 below.

Table 3: Secondary caregivers - circumstances for paid parental leave

Period which coincides with the parental leave period for the secondary caregiver	Parental Leave with pay under this agreement
Date of commencement of this agreement to 28 February 2025	8 weeks, or top up to 8 weeks where a lesser period of parental leave has already been provided
1 March 2025 to 28 February 2026	11 weeks, or top up to 11 weeks where a lesser period of parental leave has already been provided
1 March 2026 to 27 February 2027	14 weeks, or top up to 14 weeks where a lesser period of parental leave has already been provided
On and from 28 February 2027	18 weeks, or top up to 18 weeks where a lesser period of parental leave has already been provided

266. **Flexibility:** Parental leave with pay, whether provided as maternity leave under the ML Act or under this agreement, can be accessed flexibly during the parental leave period and does not have to be taken in a single block. For the avoidance of doubt, parental leave can be used to replicate a part time work arrangement and can be taken concurrently with another parent in relation to the same child.

267. **Rate of payment** during paid parental leave is the same as for an absence on personal/carer's leave and based on the employee's weekly hours at the time of the absence.
268. **Half-pay option:** The payment of any paid parental leave may be spread over a maximum period of 36 weeks at the rate of, no less than, half the normal rate of salary. All paid parental leave counts as service for all purposes, where permitted by legislation.

Adoption and long-term foster care

269. An employee who is a primary caregiver or secondary caregiver is entitled to parental leave in accordance with this agreement for adoption or long-term foster care, provided that the child:
- 269.1. is under 16 as at the day (or expected day) of placement;
 - 269.2. has not lived continuously with the employee for a period of six months or more as at the day (or expected day) of placement; and
 - 269.3. is not (otherwise than because of the adoption) a child of the employee or the employee's spouse or de facto partner.
270. Documentary evidence of approval for adoption or enduring parental responsibilities under formal fostering arrangements must be submitted when applying for parental leave for adoption or long-term foster carer purposes.
271. Adoption and foster care leave is available from one week prior to the date of placement of the child.

Pre adoption and foster leave

272. Employees in the process of adopting or fostering a child may take up to 2 days leave without pay to attend any interview or examinations required to obtain approval for the adoption of foster arrangements.

Stillbirth

273. Parents of a stillborn child remain eligible for parental leave, except for paid leave for the secondary caregiver which is two weeks.
274. A stillborn child is a child:
- 274.1. who weighs at least 400 g at delivery or whose period of gestation was 20 weeks or more; and
 - 274.2. who has not breathed since delivery; and
 - 274.3. whose heart has not beaten since delivery.

Pregnancy loss leave

275. A pregnant employee who experiences, or an employee whose spouse or partner experiences, pregnancy loss is entitled to one weeks' paid leave. Pregnancy loss is a miscarriage or other loss of pregnancy that occurs between 12 and 20 weeks' gestation that is not a stillbirth.
276. Pregnancy loss leave is in addition to entitlements to compassionate leave for miscarriage provided under the FW Act and this agreement.

Premature birth leave

277. In circumstances of a live birth before 37 weeks' gestation a pregnant employee, or an employee whose spouse or partner has given birth prematurely, is entitled to paid premature birth leave from the date of the child's birth up to just before 37 weeks' gestation. Parental leave with pay is then available from what would have been 37 weeks' gestation in accordance with Parental leave in this agreement, noting the parental leave period commences on the child's date of birth.

Transitional provisions

278. Employees eligible for paid leave under the ML Act are required under legislation to use their paid maternity leave first. In this circumstance, the employee may postpone their paid premature birth leave otherwise payable under **clause 277** until after the legislated paid maternity leave is used.

Return to work from parental leave

279. An employee returning to duty from parental leave and who is the primary caregiver of the child will be provided with access to part-time work, upon application, up until the child reaches school age.

Compassionate leave

280. Employees will be eligible for 3 days paid compassionate leave on each occasion when:
- 280.1. a member of their family (including a member of their household) or someone they have a close personal relationship with contracts, develops or sustains a life-threatening illness or injury; or
 - 280.2. the employee or their partner has a miscarriage.
281. An employee may be asked to provide evidence to support their absences on compassionate leave.
282. Compassionate leave for an occasion may be taken as 3 consecutive days or in separate periods totalling 3 days. This can include part days.
283. For casual employees, compassionate leave is unpaid.

Bereavement leave

284. Employees will be eligible for 3 days paid bereavement leave on each occasion when:
- 284.1. a member of their family (including a member of their household) or someone they had a close personal relationship with dies; or
 - 284.2. a child is stillborn, where the child was a member of their family (including a member of their household).
285. An employee may be asked to provide evidence to support their absences on bereavement leave.

- 286. Bereavement leave for an occasion may be taken as 3 consecutive days or in separate periods totalling 3 days. This can include part days.
- 287. For casual employees, bereavement leave is unpaid.
- 288. The Fair Work Ombudsman may approve additional bereavement leave on the occasion of the death of a member of an employee's family or household. Discretion also exists for the Fair Work Ombudsman to approve applications for miscellaneous 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 death.

Sabbatical leave

- 289. The Fair Work Ombudsman may approve an application from an ongoing employee to work for a 4 year period followed by a 1 year sabbatical leave period.
- 290. An employee whose sabbatical leave application is approved will receive 1 years' 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 one years' sabbatical leave.
- 291. 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.
- 292. Should an employee cease employment with the OFWO or otherwise leave the scheme, the OFWO will pay the employee the balance of any amount forgone during the 4-year period.
- 293. Sabbatical leave does not count as service for any purpose.
- 294. Sabbatical leave does not break the continuity of service.

Emergency response leave

- 295. In line with section 108 of the FW Act, an employee who engages in an eligible community service activity is entitled to emergency response leave to volunteer for emergency management duties for:
 - 295.1. the time engaged in the activity;
 - 295.2. reasonable travelling time; and
 - 295.3. reasonable recovery time.
- 296. Full-time and part-time employees will be able to access 20 working days of paid emergency response leave at their full rate of pay per year if required.
 - 296.1. Where the 20 days of paid leave is exhausted in one year, a further 4 days paid leave per emergency call out will be provided if required.
 - 296.2. For the purpose of this clause, full rate of pay is to be as if the employee was at work.
- 297. The Fair Work Ombudsman may provide additional emergency response leave with or without pay.

- 298. Paid leave may be refused where the employee's role is essential to the OFWO's response to the emergency.
- 299. An employee must provide evidence that the organisation requests their services. Employees can provide evidence before or as soon as practical after their emergency service activity.
- 300. The Fair Work Ombudsman may approve reasonable paid or unpaid leave for ceremonial duties and training.
- 301. Emergency response leave, with or without pay, will count as service.

Jury duty

- 302. Employees who are required by a court to attend either for jury selection, or to act as a juror, will be released from duty for the required period, without the need to apply for leave.
- 303. Full and part-time employees will be released from duty on their full rate of pay. Payment for casuals will be as per the relevant state legislation.
 - 303.1. For the purposes of this clause, full rate of pay is to be as if the employee was at work.
- 304. The employee is required to inform their manager before they are released from duty and provide evidence of the need to attend.
- 305. If the employee receives a payment from the court for attendance (which are not expense related such as allowances and reimbursements), they must repay that amount to the OFWO for the period of absence. This will be administered in accordance with the overpayments clause.

Defence reservist leave

- 306. The Fair Work Ombudsman will give an employee leave with or without pay to undertake:
 - 306.1. Australian Defence Force (ADF) Reserve and continuous full-time service (CFTS); and
 - 306.2. Australian Defence Force Cadet obligations.
- 307. An employee who is a Defence Reservist can take leave with pay for:
 - 307.1. up to 4 weeks (20 days) in each financial year (pro rata for part-time employees); and
 - 307.2. an extra 2 weeks (10 days) in the first year of ADF Reserve service (pro rata for part-time employees).
- 308. Leave can be built up and taken over 2 consecutive years. This includes the extra 2 weeks in the first year of service.
- 309. An employee who is an Australian Defence Force Cadet officer or instructor can get paid leave up to 3 weeks in each financial year to perform their duties. Australian Defence Force Cadets means:
 - 309.1. Australian Navy Cadets;

- 309.2. Australian Army Cadets; and
- 309.3. Australian Air Force Cadets.
- 310. In addition to the entitlement at **clause 307**, paid leave may be granted to an employee to attend an interview or medical examination in connection with the enlistment of the employee in a Reserve Force of the Defence Force.
- 311. Paid defence reservist leave counts for service.
- 312. Unpaid defence reservist leave for 6 months or less counts as service for all purposes. This includes periods of CFTS.
- 313. Unpaid leave taken over 6 months counts as service, except for annual leave.
- 314. An employee will not need to pay their tax free ADF Reserve salary to their agency for any reason.

Defence service sick leave

- 315. An employee is eligible for defence service sick leave credits when the Department of Veterans Affairs (DVA) has certified that an employee's medical condition is as a result of either:
 - 315.1. warlike service; or
 - 315.2. non-warlike service.
- 316. An eligible employee can get 2 types of credits:
 - 316.1. an initial credit of 9 weeks (45 days) defence service sick leave will apply as at the following dates, whichever is later:
 - 316.1.1. they start employment with the APS; or
 - 316.1.2. DVA certifies the condition; and
 - 316.2. an annual credit of 3 weeks (15 days) defence service sick leave.
- 317. An employee can use their defence service sick leave when a recognised medical practitioner provides a certificate that says they were away due to their DVA certified medical condition.
- 318. Unused annual credits can be built up to 9 weeks.
- 319. An employee cannot use annual credits until the initial credit is exhausted.
- 320. Defence service sick leave is paid and counts as service for all purposes.

Leave to attend proceedings

- 321. An employee giving evidence before a Court, Tribunal or Royal Commission on behalf of the Commonwealth or a Commonwealth party in the course of their duties, will be considered on duty.

322. An employee who is not covered under **clause 321**, and is required to give evidence to, appear before or attend to instruct a representative at a Court, Tribunal or Royal Commission in relation to their duties will be released from duty without loss of pay. This includes in proceedings relating to a dispute between the employee and the OFWO.
323. An employee may otherwise be granted paid or unpaid miscellaneous leave by the Fair Work Ombudsman if required to give evidence to a Court, Tribunal or Royal Commission for any other reason. Where approval for unpaid leave is given, the employee may elect to use accrued annual leave, flex leave or time off in lieu.
324. The Fair Work Ombudsman may refuse to release an employee from duty having regard to business requirements and whether the employee's attendance is necessary for the Court, Tribunal or Royal Commission hearing.

Maintaining contact on extended absences

325. In support of genuine career development and a seamless transition to work, employees on a period of extended leave can agree with their manager about being notified of career development opportunities (such as expressions of interest, professional development, training) and/or workplace changes whilst they are on leave.

Unauthorised absences

326. 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.
327. 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.

Section 7: Employee support and workplace culture

Blood donation

- 328. An employee can take reasonable time away from duty during their ordinary work hours to donate blood, plasma or platelets. It includes reasonable travel time and employers will consider employees on duty.
- 329. The employee must inform their manager in advance of when they will be away from work before donating blood, plasma or platelets.

Vaccinations

- 330. The OFWO will offer annual influenza vaccinations at no cost to all employees.
- 331. Where the OFWO requires an employee performing a role to be vaccinated for a particular condition, this vaccination will be offered at no expense to the employee.

Employee Assistance Program

- 332. Employees, their partners, and their dependants/children will have access to a confidential, professional counselling service to assist employees to manage personal and work issues. This service will be provided at no cost to employees by the OFWO and will be accessible on paid time. Each employee may access up to 6 sessions per year. These 6 sessions include any sessions attended by the employee's partner, children or other dependants. The Fair Work Ombudsman may approve additional sessions in exceptional circumstances.

Respect at work

Principles

- 333. The OFWO values a safe, respectful and inclusive workplace free from physical and psychological harm, harassment, discrimination and bullying. The OFWO recognises that preventing sexual harassment, sex discrimination, sex-based harassment and victimisation in the workplace is a priority.
- 334. The OFWO recognises that approaches to prevent sexual harassment, sex discrimination, sex-based harassment and victimisation in the workplace should be holistic and consistent with the Australian Human Rights Commission's guidance, including the *Good Practice Indicators Framework for Preventing and Responding to Workplace Sexual Harassment*.

Consultation

- 335. The agency will consult with employees and their unions in developing, reviewing and evaluating approaches to prevent sexual harassment, sex discrimination, sex-based harassment and victimisation in the workplace.

Family and domestic violence support

336. The OFWO will provide support for employees affected by family and domestic violence, depending on the employee's circumstances.
337. The OFWO recognises that a holistic approach should be taken to support the employee, appropriate for the employee's individual circumstances.
338. Family and domestic violence support, including paid leave, are available to all employees covered by this agreement.
339. An employee experiencing family and domestic violence is able to access paid miscellaneous leave. Reasons an employee experiencing family and domestic violence may access this leave include, but are not limited to:
- 339.1. illness or injury affecting the employee resulting from family and domestic violence;
 - 339.2. providing care or support to a family member (including a household member) who is also experiencing family and domestic violence, and is ill or injured as a result of family and domestic violence;
 - 339.3. providing care or support to a family member (including a household member) who is also experiencing family and domestic violence, and is affected by an unexpected emergency as a result of family and domestic violence;
 - 339.4. making arrangements for the employee's safety, or the safety of a close relative;
 - 339.5. accessing alternative accommodation;
 - 339.6. organising alternative care and educational arrangements for children;
 - 339.7. accessing police services;
 - 339.8. attending court hearings;
 - 339.9. attending counselling; and
 - 339.10. attending appointments with medical, financial or legal professionals; and
 - 339.11. engaging with other relevant support services.
340. This entitlement exists in addition to an employee's existing leave entitlements and may be taken as consecutive days, single days or part days and will count as service for all purposes.
341. Given the emergency context in which leave may need to be accessed, employees can proceed to take the leave and seek approval at a later date, as soon as practicable.
342. These family and domestic violence support clauses do not reduce an employee's entitlement to family and domestic violence leave under the NES.
343. Paid miscellaneous leave available under this clause is paid for ongoing and non-ongoing employees at their full rate as if they were at work.
344. Paid leave for casual employees under this clause is paid at their full pay rate for the hours they were rostered to work in the period they took leave.

345. Evidence may be requested to support the OFWO in approving leave. In most cases, this will not be required. Where it is required, this will be discussed with the employee and a statutory declaration is the only form of evidence the OFWO will require, unless the employee chooses to provide another form of evidence.
346. An employee may also choose to provide other forms of evidence, including a medical certificate, or document issued by the Police Service, a Court, a Doctor, district Nurse, a Family Violence Support Service or Lawyer.
347. The OFWO will take all reasonable measures to treat information relating to family and domestic violence confidentially. The OFWO will adopt a 'needs to know' approach regarding communication of an employee's experience of family and domestic violence, subject to steps the OFWO may need to take to ensure the safety of the employee, other employees or persons, or mandatory reporting requirements.
348. Where the OFWO needs to disclose confidential information for purposes identified in **clause 347**, where it is possible the OFWO will seek the employee's consent and take practical steps to minimise any associated safety risks for the employee and/or privacy breaches.
349. The OFWO will not store or include information on the employee's payslip in relation to the employee's experience of family and domestic violence; any leave accessed for the purposes of family and domestic violence; or support(s) provided by the employer, unless otherwise required by legislation.
350. Other available support may include, but is not limited to, flexible working arrangements, additional access to EAP, changes to their span of hours or pattern of hours and/or shift patterns and/or location of work where reasonably practicable.
351. The OFWO will acknowledge and take into account an employee's experience of family and domestic violence if an employee's attendance or performance at work is affected.
352. Further information about leave and other support available to employees affected by family and domestic violence may be found in the relevant policy.

Integrity in the APS

353. The OFWO understands that procedural fairness is essential in building and maintaining trust with APS employees, and that it requires fair and impartial processes for employees affected by APS-wide or OFWO decisions.
354. Employees are to give advice that is frank, honest, timely and based on the best available evidence. This includes scientific and engineering advice based on evidence-based facts guided by the best available science and data. Employees will not be disadvantaged or discriminated against because they have given advice in accordance with their expertise or professional qualifications and in accordance with the APS Code of Conduct in the PS Act.
355. Employees can, during their ordinary work hours, take time to:
 - 355.1. access an APS-wide ethics advisory service or another similar service provided by a professional association such as a law society or in the agency; and
 - 355.2. attend OFWO mandated training about integrity.

First Nations cultural competency training

356. The Fair Work Ombudsman will take reasonable steps to ensure all substantive, ongoing EL2 employees employed at the commencement of this agreement or any new substantive, ongoing EL2 employees who commence within the first 6 months of this agreement will complete relevant First Nations cultural competency training within 12 months of the commencement of the agreement.
357. Any new substantive, ongoing EL2 employee who commences after 6 months of the commencement of this agreement will be required to complete a relevant First Nations cultural competency training course within 6 months of their engagement or promotion.

Diversity and Inclusion

358. The OFWO is committed to promoting and supporting workplace diversity and to creating an environment that values and utilises the contributions of people with different backgrounds, experiences and perspectives.

Lactation and breastfeeding support

359. Reasonable paid time during work hours will be provided for lactation breaks for breastfeeding, expressing milk and other associated activities.
360. The OFWO will provide access to appropriate facilities for the purpose of breastfeeding or expressing milk, subject to **clause 361**. In considering whether a space is appropriate, an agency should consider whether:
- 360.1. there is access to refrigeration;
 - 360.2. the space is lockable; and
 - 360.3. there are facilities needed for expressing, such as appropriate seating.
361. Where it is not practicable for an OFWO site to have a designated space, a flexible approach will be taken so that the employee can access the support required.
362. The OFWO will facilitate discussion between individual employees and their managers about accommodating the employee's lactation needs and practical arrangements to meet these needs.
363. The manager and employee shall discuss any flexible working arrangements that may be needed to support lactation. This may include consideration of arrangements such as working from home and/or remote working or varying work hours on an ad-hoc or regular basis. Wherever possible, requests by an employee will be accommodated, noting these needs may change over time.
364. Further information is contained in the relevant policy.

Disaster support

365. Where an official disaster or emergency is declared and this prevents an employee from reasonably attending work, or where it impacts their household or home, the Fair Work Ombudsman will consider flexible working arrangements to assist the employee to perform their work.
366. Where flexible working arrangements are not appropriate, the Fair Work Ombudsman may grant paid miscellaneous leave to an employee with regard to the scale and nature of the emergency. This leave counts as service and may be approved retrospectively.
367. In considering what period of leave is appropriate, the Fair Work Ombudsman will take into account the safety of the employee, their family (including their household) and advice from local, State and Commonwealth authorities.

Section 8: Performance and development

Performance management

368. Employees and managers have a shared responsibility to genuinely and actively participate in all aspects of the performance management process.
369. Managers have a responsibility to lead and manage for performance and will be supported in the development of these skills.
370. A manager and employee should work together to develop a performance plan that sets out clear expectations and aligns with the Purpose and Priorities of the OFWO.
371. Performance expectations will be holistic and will balance both qualitative and quantitative measures.
372. Employees will be provided with feedback in a timely, constructive and respectful manner, and have the opportunity to provide informal upwards feedback.
373. High performing employees will be recognised in a timely and meaningful manner.
374. Additional duties that do not form part of an employee's primary role (e.g. First Aid Officers, Committee work and location related activities) will be considered in evaluating performance.
375. At the end of the performance cycle, all employees will receive a performance rating which will reflect an assessment of their performance in achieving key outcomes and observable behaviours over the performance period.
376. Consideration will be given to circumstances that may impact an employee's performance, such as absences from work, health and well-being and disability.

Managing underperformance

377. Where underperformance is identified, the affected employee(s) will be notified as soon as practicable and will work with their manager(s) to attain and sustain the standards required.
378. The principles of procedural fairness will be applied in all performance management practices.
379. An employee may be supported by a person of their choice and may appoint a representative of their choice. A representative may include a CPSU workplace delegate.
380. An employee may provide formal feedback if they disagree with the management of their underperformance.
381. An employee may seek a review of decisions that relate to performance management as outlined in the Review of Action Policy.
382. An application that is made for a review of action does not prevent the OFWO from proceeding with an action in relation to performance improvement.
383. The rights and remedies of an employee in relation to termination of employment include:
 - 383.1. under Part 3-1 and Part 3-2 of the FW Act
 - 383.2. under other Commonwealth laws (including the Constitution)

383.3. at common law.

384. Further information is contained in the relevant policy.

Reassignment of duties

Temporary reassignment of duties

385. The Fair Work Ombudsman may temporarily reassign an employee to other duties as set out in the PS Act.

386. Requests to participate in internal temporary transfers as a result of a successful Expression of Interest process will be genuinely considered. Where a request is refused, a written response will be provided, upon request, including reasons for the refusal.

Reassignment to a lower classification

387. Where an employee temporarily or permanently moves to a lower classification level at their own request, by consent or at the direction of the Fair Work Ombudsman, the Fair Work Ombudsman will determine a salary within the lower classification salary range, having regard to the experience, qualifications and skills of the employee, and the circumstances under which the reduction occurred. Normally, the salary will be at the top of the salary range of the lower classification. In the case of a temporary reassignment to a lower classification, such determination will specify the period for which the lower salary will apply.

Workloads

388. The OFWO recognises the importance of employees balancing their work and personal life. While it is acknowledged that at times it may be necessary for some extra hours being worked by some employees, this should be regarded as the exception rather than the rule.

389. When determining workloads for an employee or group of employees, the OFWO will consider the need for employees to strike a balance between their work and personal life.

390. Where an employee or group of employees raise that they have experienced significant workload pressures over a prolonged period of time, the OFWO and employee/s together must review the employees' workloads and priorities, and determine appropriate strategies to manage the impact on the employee or group of employees.

Key Performance Indicators

391. Managers will consult with employees in determining individual and team Key Performance Indicators (KPIs) before they are set in a performance year.

392. Where KPIs are used, they will be:

392.1. reasonably achievable by the majority of staff, the majority of the time, with consideration of actual hours worked

392.2. clear on the standard of performance required

392.3. quantifiable

392.4. aligned with the Purpose and Priorities of the OFWO.

393. KPIs will not be the sole basis on which an employee's performance is assessed.

Study assistance

394. An employee undertaking studies relevant or beneficial to the employee's current role or likely future role within the OFWO or APS may be eligible for study assistance in the form of:

394.1. reimbursement of relevant course fees of up to a maximum of \$1,000 per unit of study; and/or

394.2. paid study leave, that can be used weekly or accumulated to use flexibly and taken as whole or part days.

395. Further information is contained in the relevant policy.

Professional qualifications

396. The OFWO will pay for professional practice, membership or other fees for those employees in positions where the Fair Work Ombudsman has determined that those professional skills, qualifications and memberships are required.

Section 9: Travel and location-based conditions

Travel

397. An employee who is required to travel on official business will not be out of pocket for the reasonable costs of accommodation, meals, incidentals and other travel expenses incurred.
398. Work-related travel, where possible, should be undertaken during the normal bandwidth, and time recorded according to flextime (APS Level 1-6) or TOIL (EL 1-2) arrangements. An employee's personal circumstances will be considered when organising and approving work-related travel.
399. If the Fair Work Ombudsman 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, or the only means of travel is outside the normal bandwidth, TOIL will be granted to the employee using the same calculation as would be used for the calculation of overtime pay. For Executive Level 1-2, this will be in accordance with TOIL arrangements for Executive Level 1-2 at **clauses 131 - 137**.
400. Where an employee is required to undertake travel for less than one day, but is absent from their usual location of work for 5 hours or more or commences before 7.00 am or concludes after 7.00 pm in their usual location of work, they:
- 400.1. Will be eligible for a non-acquittable cash payment of \$20 per day; or
 - 400.2. May use their travel card to purchase the meals (breakfast, lunch or dinner) for which the employee is away from their usual location of work, to the value of those specified in the relevant policy. The purchase of the meal must be accompanied by a receipt or statutory declaration and the expenditure must be acquitted.
401. The provisions of **clause 400** will not apply where a meal is provided at no cost to the employee.
402. Further information is contained in the relevant policy.

Relocation assistance

403. Where an existing employee is required to relocate at the request of the OFWO (such as a promotion), the employee will be provided with financial relocation assistance. Employees who relocate on a temporary basis to take up higher duties are entitled to removal expenses if they relocate for a period of 13 weeks or more.
404. Where an existing employee is required to relocate at the request of the OFWO on a temporary basis, and that relocation is for at least 8 weeks, the employee is eligible for one return airfare to the usual location of work during that period, and during any further 8 week period. If an employee with dependants is accompanied by all 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.

405. Where an employee is required to relocate on engagement with the OFWO, the employee will be provided with financial relocation assistance.
406. Reasonable expenses associated with the relocation include:
- 406.1. the cost of transport of the employee, their dependents and partner by the most economical means;
 - 406.2. removal expenses, namely the reimbursement of reasonable incurred costs of the removal of furniture and household effects of the employee, dependants and partner;
 - 406.3. the reimbursement of the cost of the insurance premium based on a reasonable replacement value; and
 - 406.4. the reasonably incurred expenses in kennelling and transport of pets, up to the amount specified in the APS Award.
407. Additional relocation assistance may be considered by the Fair Work Ombudsman.

Legacy remote localities assistance

408. Employees who are in receipt of remote localities assistance on the commencement of this agreement will continue to receive the remote localities assistance until they are no longer employed in the Darwin office.
409. Where an employee who was eligible for remote localities assistance ceases to be eligible for this assistance, they cannot become eligible again at a later date.
410. The remote localities assistance payable on a fortnightly basis, is:
- 410.1. for employees with dependants, \$10,000 per annum
 - 410.2. for employees without dependants, \$6,000 per annum.

Section 10: Consultation, representation and dispute resolution

Consultation

Principles

- 411. Genuine and effective consultation with employees and the relevant union(s), taking into account the diverse needs of employees, fosters a positive and inclusive workplace, enabling the views of employees to be considered.
- 412. The OFWO recognises:
 - 412.1. the importance of inclusive and respectful consultative arrangements;
 - 412.2. employees and the relevant union(s) should have a genuine opportunity to influence decisions;
 - 412.3. the nature and extent of consultation will vary depending on the proposed change and the likely impact on employees. Consultation on agency policies may occur over at least 2 weeks, whereas a major change is likely to require a more extensive consultation process;
 - 412.4. consultation with employees and relevant unions(s) on workplace matters that significantly affect or materially impact them is sound management practice; and
 - 412.5. the benefits of employee and union involvement and the right of employees to be represented by their union.
- 413. Genuine and effective consultation involves:
 - 413.1. providing employees and the relevant union(s) with a genuine opportunity to influence the decision prior to a decision being made;
 - 413.2. providing all relevant information to employees and the relevant union(s) in a timely manner to support consideration of the issues;
 - 413.3. considering feedback from employees and the relevant union(s) in the decision-making process; and
 - 413.4. advising employees and the relevant union(s) of the outcome of the process, including how their feedback was considered in the decision-making process.

When consultation is required

- 414. Consultation is required in relation to:
 - 414.1. changes to work practices which materially alter how an employee carries out their work;
 - 414.2. changes to or the introduction of policies or guidelines relevant to workplace matters (unless the changes are minor or procedural);

- 414.3. major change that is likely to have a significant effect on employees;
 - 414.4. implementation of decisions that significantly affect employees;
 - 414.5. changes to employees' regular roster or ordinary hours of work (subject to any other relevant provisions in this agreement); and
 - 414.6. other workplace matters that are likely to significantly or materially impact employees.
415. The OFWO, employees and the relevant union(s) recognise that consultation prior to a decision may not be practicable where a decision is made by Government or is required due to matters beyond the reasonable control of the agency. In these circumstances, consultation regarding the implementation of the decision will occur as early as is reasonably practicable.

Provisions for consultation on major change and introduction of a change to regular roster or ordinary hours of work of employees

416. This clause applies if the OFWO:
- 416.1. proposes to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or
 - 416.2. proposes to introduce a change to the regular roster or ordinary hours of work of employees.

Representation

417. Employees may appoint a representative for the purposes of the procedures in this clause. A representative for the purpose of this clause may be a union representative.
418. The OFWO must recognise the representative if:
- 418.1. a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - 418.2. the employee or employees advise the employer of the identity of the representative.

Major change

419. In this clause, a major change is **likely to have a significant effect on employees** if it results in, for example:
- 419.1. the termination of the employment of employees; or
 - 419.2. major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
 - 419.3. the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
 - 419.4. the alteration of hours of work; or
 - 419.5. the need to retrain employees; or

- 419.6. the need to relocate employees to another workplace; or
- 419.7. the restructuring of jobs.
- 420. The following additional consultation requirements in **clauses 421 - 427** apply to a proposal to introduce a major change referred to in **clause 414.3**.
- 421. Consultation with employees and the relevant union(s) and/or recognised representatives will occur prior to a decision being made, subject to **clause 415**.
- 422. Where practicable, an OFWO change manager or a primary point of contact will be appointed and their details provided to employees and the relevant union(s) and/or their recognised representatives.
- 423. The OFWO must notify employees and relevant union(s) and/or recognised representatives of the proposal to introduce the major change as soon as practicable.
- 424. As soon as practicable after proposing the change, or notifying of the change in circumstances described at **clause 415**, the OFWO must:
 - 424.1. discuss with affected employees and relevant union(s) and/or other recognised representatives:
 - 424.1.1. the proposed change:
 - 424.1.2. the effect the proposed change is likely to have on the employees; and
 - 424.1.3. proposed measures to avert or mitigate the adverse effect of the proposed change on the employees; and
 - 424.2. for the purposes of the discussion – provide, in writing, to employees and the relevant union(s) and/or other recognised representatives:
 - 424.2.1. all relevant information about the proposed change, including the nature of the change proposed; and
 - 424.2.2. information about the expected effects of the proposed change on the employees; and
 - 424.2.3. any other matters likely to affect the employees.
- 425. The OFWO must give prompt and genuine consideration to matters raised about the major change by employees and the relevant union(s) and/or other recognised representatives.
- 426. However, the OFWO is not required to disclose confidential or commercially sensitive information to employees and the relevant union(s) and/or other recognised representatives.
- 427. If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the OFWO, the requirements set out in **clauses 421 - 425** are taken not to apply.

Change to regular roster or ordinary hours of work

- 428. The following additional consultation requirements in **clauses 429 - 432** apply to a proposal to introduce a change referred to in **clause 414.5**.

429. The OFWO must notify affected employees and the relevant union(s) and/or other recognised representatives of the proposed change.
430. As soon as practicable after proposing to introduce the change, the OFWO must:
- 430.1. discuss with employees and the relevant union(s) and/or other recognised representatives:
 - 430.1.1. the proposed introduction of the change; and
 - 432.2 for the purposes of the discussion – provide to the employees and relevant union(s) and/or other recognised representatives:
 - 430.1.2. all relevant information about the proposed change, including the nature of the proposed change; and
 - 430.1.3. information about what the employer reasonably believes will be the effects of the proposed change on the employees; and
 - 430.1.4. information about any other matters that the employer reasonably believes are likely to affect the employees; and
 - 432.3 invite employees and the relevant union(s) and/or other recognised representatives to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities). However, the OFWO is not required to disclose confidential or commercially sensitive information to the relevant employees and the relevant union(s) and/or other recognised representatives.
431. The OFWO must give prompt and genuine consideration to matters raised about the proposed change by the employees and the relevant union(s) and/or other recognised representatives.

Interaction with emergency management activities

432. Nothing in this term restricts or limits the ability of a designated emergency management body to undertake activities provided at section 195A(1) of the FW Act.

Agency consultative forum

433. The Fair Work Ombudsman may establish an agency consultative forum to discuss relevant workplace matters.
434. The Agency Consultative Forum will operate subject to an agreed terms of reference and structure for the term of the agreement. Representation on the committee will be in accordance with the terms of reference.

APS consultative committee

435. The Fair Work Ombudsman will support the operation of the APS consultative committee to the extent possible. This includes providing information requested by the Australian Public Service Commission to support the operation of the APS consultative committee, subject to legislative requirements.

Dispute resolution

436. If a dispute relates to:
- 436.1. a matter arising under the agreement; or
 - 436.2. the National Employment Standards;
- this term sets out procedures to settle the dispute.
437. An employee or union who is covered by this agreement may initiate and/or be a party to a dispute under this term.
438. An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term. Representatives will be recognised and dealt with in good faith.
439. Parties to the dispute must attempt to resolve the dispute at the workplace level, by discussion between the employee or employees and relevant managers. Parties to the dispute will notify higher level managers to assist in the resolution of the dispute. Parties will give genuine consideration to proposals to resolve the dispute.
440. If a dispute about a matter arising under this agreement is unable to be resolved at the workplace level, and all appropriate steps under **clause 439** have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.
441. The Fair Work Commission may deal with the dispute in 2 stages:
- 441.1. the Fair Work Commission will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
 - 441.2. if the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:
 - 441.2.1. arbitrate the dispute; and
 - 441.2.2. make a determination that is binding on the parties.

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

442. While the parties are attempting to resolve the dispute using the procedures in this term:
- 442.1. an employee must continue to perform their work as they would normally in accordance with established custom and practice at the OFWO that existed immediately prior to the dispute arising unless they have a reasonable concern about an imminent risk to their health or safety; and
 - 442.2. subject to **clause 442.1**, an employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace, unless:
 - 442.2.1. the work is not safe; or

- 442.2.2. applicable work health and safety legislation would not permit the work to be performed; or
- 442.2.3. the work is not appropriate for the employee to perform; or
- 442.2.4. there are other reasonable grounds for the employee to refuse to comply with the direction.

443. The parties to the dispute agree to be bound by a decision made by the Fair Work Commission in accordance with this term.
444. Any disputes arising under the Fair Work Ombudsman Enterprise Agreement 2019-2022 as maintained by the Public Service (Section 24(1) – Fair Work Ombudsman Non-SES Employees) Determination 2022/01 or the National Employment Standards that were formally notified under clause 293 of that agreement before the commencement of this agreement, that remain unresolved at the date of commencement of this agreement, will be progressed under the dispute resolution procedures in this agreement.

Leave of absence to attend proceedings

445. Where the provisions of **clauses 436 - 440** have been complied with, and to assist in the resolution of the matter, the employee, and/or the union delegate or other employee representative referred to in **clause 437**, or employee required to provide evidence, will be granted paid time to attend dispute resolution processes and proceedings in the Fair Work Commission arising from referral of the matter in **clause 440**.

Delegates' rights

446. Union delegates play an important and legitimate role in the workplace. This includes representing their members and supporting employee access to union officials and providing employee views to the OFWO.
447. The role of union delegates is to be respected and supported.
448. The OFWO and union delegates will work together respectfully and collaboratively.

Supporting the role of union delegates

449. The OFWO respects the role of union delegates to:
- 449.1. provide information, consult with and seek feedback from employees in the workplace on workplace matters;
 - 449.2. consult with other delegates and union officials, and get advice and assistance from union officials;
 - 449.3. represent the interests of members to the employer and industrial tribunals; and
 - 449.4. represent members at relevant union forums, consultative committees or bargaining.
450. The OFWO and union delegates recognise that undertaking the role of a union delegate is not the primary purpose of an employee's engagement, and must work with and not

unreasonably impact their regular duties. Honorary officials may request additional time and facilities from time to time.

451. Union delegates will be provided with reasonable paid time during their normal working hours to perform their union delegate role. The paid time provided should not result in disruption to critical services or operational requirements.
452. To support the role of union delegates, the OFWO will, subject to legislative and operational requirements, including privacy and security requirements:
 - 452.1. provide union delegates with reasonable access to agency facilities and resources, including for paid or unpaid meetings between employees and their unions and to communicate with union officials;
 - 452.2. advise union delegates and other union officials of the agency facilities and resources available for their use, which may include telephone, photocopying, internet, and email;
 - 452.3. allow reasonable official union communication appropriate to the agency from union delegates with employees, including through email, intranet pages and notice boards. This may include providing a link to a union website for employees to access union information. Any assistance in facilitating email communications does not include an agency vetoing reasonable communications;
 - 452.4. provide access to new employees as part of induction; and
 - 452.5. provide reasonable access to union delegates to attend appropriate paid time training in workplace relations matters, during normal working hours.
453. Where APS employees are elected as officials of a trade union or professional association, they are not required to seek permission from the workplace or OFWO before speaking publicly in that capacity, subject to the APS Code of Conduct and legislative requirements.

Section 11: Separation and retention

Termination at the OFWO's initiative

- 454. Notice of termination will be as provided for under the NES.
- 455. Where an ongoing employee is to have their employment terminated, the provisions of s29 of the PS Act will apply.

Resignation

- 456. An employee with less than 1 year of continuous service may resign from their employment by giving the Fair Work Ombudsman at least 7 calendar days' notice.
- 457. An employee with at least 1 year of continuous service may resign from their employment by giving the Fair Work Ombudsman at least 14 calendar days' notice.
- 458. At the instigation of the Fair Work Ombudsman, the resignation may take effect at an earlier date within the notice period. In such cases, the employee will receive paid compensation in lieu of the notice period which is not worked.
- 459. The Fair Work Ombudsman has the discretion to agree to a shorter period of notice or waive the requirement to give notice.

Payment on death of an employee

- 460. When an employee dies, or the Fair Work Ombudsman has directed that an employee is presumed to have died on a particular date, subject to any legal requirements, the Fair Work Ombudsman must authorise payments to the partner, dependants or legal representative of the former employee, the amount to which the former employee would have been entitled had they ceased employment through resignation or retirement, or where legislation provides specifically for amounts calculated based on the death of the employee, those amounts. If payment has not been made within a year of the former employee's death, it should be made to their legal representative.

Redeployment, retraining, redundancy

- 461. The OFWO is committed to assisting employees to pursue redeployment opportunities within the OFWO or other APS agencies.
- 462. The following redeployment, and redundancy provisions will apply to ongoing employees and non-ongoing employees who are excess to the needs of OFWO and if the non-ongoing employee's contract is not permitted by section 333E of the FW Act. These provisions do not apply to non-ongoing employees whose employment is ending because of a specified task or specified timeframe has lapsed, a casual employee and those employees on probation.
- 463. An employee is excess if:
 - 463.1. the employee is included in a class of employees employed in the OFWO which class comprises a greater number of employees than is necessary for the efficient and economical working of the OFWO

- 463.2. the services of the employee cannot be effectively used because of technological or other changes in the work methods of the OFWO or changes in the nature, extent or organisation of functions of the OFWO; or
- 463.3. where the duties usually performed by the employee are to be performed at a different locality, the employee is not willing to perform duties at the locality, and the Fair Work Ombudsman has determined that these provisions will apply to that employee.

Notification of potentially excess status

- 464. Employees who are likely to become excess will be advised in writing by the Fair Work Ombudsman at the earliest practicable time.

Consultation period

- 465. A period of consultation of up to 4 weeks will occur with the employee and if requested by the employee, their representative, to consider:
 - 465.1. actions that might be taken to reduce the likelihood of the employee becoming excess
 - 465.2. redeployment opportunities for the employee within the OFWO or another APS agency
 - 465.3. the availability of job swaps within the OFWO or another APS agency.
- 466. This consultation period may be foreshortened with the written agreement of the employee.
- 467. As close to the beginning of this consultation period as possible, and at the latest by the commencement of the consideration period, the employee will also be given information on:
 - 467.1. the amount payable as redundancy pay, pay in lieu of notice and accrued annual and long service leave credits
 - 467.2. the taxation rules applicable to the various payments made by the OFWO, and
 - 467.3. available outplacement assistance including financial advice, career counselling or training relevant to the employee's career prospects are available for the employee. The total maximum amount payable will be \$5,000. This payment is subject to the employee providing receipts or invoices from the provider(s) to demonstrate that the service(s) has been provided.

This information is provided for guidance purposes only and is not an offer capable of forming a binding contract.

Voluntary redundancy

- 468. Only one offer of voluntary redundancy will be made to an employee in any excess or potentially excess situation.

Consideration period

- 469. Where the Fair Work Ombudsman offers an employee a voluntary redundancy, the employee will have a four week consideration period within which to accept or reject the offer. An

employee and the Fair Work Ombudsman can agree to reduce this four week consideration period if the employee has received the information outlined in **clause 467**.

Redundancy payments

470. An excess employee who agrees to be made voluntarily redundant and whose employment is terminated by the Fair Work Ombudsman on the grounds that they are excess to the requirements of the OFWO, is entitled to be paid redundancy pay as follows:

470.1. the sum equal to 2 weeks' salary for each completed year of continuous service, and

470.2. a pro rata payment for completed months of service since the last completed year of service.

This is subject to a minimum payment of 4 weeks and a maximum of 48 weeks' salary. The redundancy payment will be made in accordance with the entitlement in the NES, where it provides a more generous entitlement.

471. In addition, where the consideration period is reduced, the employee will be paid:

471.1. the unexpired portion of the consideration period as at the date of termination, and

471.2. any leave credits which would have accrued had the employee worked for the entire consideration period.

472. If the employee accepts the offer, the Fair Work Ombudsman will give the employee the required notice of termination of 4 weeks (or 5 weeks for an employee over 45 years of age) or a lesser period agreed with the employee. If the employee ceases employment at the commencement of, or within the notice period, the employee will be paid for the unexpired portion of the notice period.

473. Redundancy payments will be calculated on:

473.1. the employee's salary on the date of termination

473.2. the employee's higher duties allowance, where the employee has received the loading for a continuous period of at least 12 months immediately preceding the date on which the employee is given notice of termination of employment, and

473.3. 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.

474. 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 the employee has less than 24 years full-time service, subject to any minimum amount the employee is entitled to under the NES.

Calculating service for redundancy pay purposes

475. Subject to **clauses 476 and 477**, service for the purposes of calculating redundancy payments means:

475.1. service in the OFWO

475.2. Government service as defined in section 10 of the LSL Act

- 475.3. 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
 - 475.4. service with the Australian Defence Force
 - 475.5. 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.
476. For earlier periods of service to count, there must be no breaks between the periods of service, except where the break in service is less than one month and occurs where an offer of employment in relation to the second period of service was made and accepted by the employee before the first period of service ended (whether or not the 2 periods of service are with the same employer or agency). Absences from work which do not count as service for any purpose will not count as service for redundancy pay purposes.
477. Periods of service that will not count as service for redundancy pay purposes are periods of service that ceased by way of:
- 477.1. termination under section 29 of the PS Act or
 - 477.2. prior to the commencement of the PS Act, by way of redundancy, retirement on the grounds of invalidity, inefficiency or loss of qualifications, forfeiture of office, dismissal or termination of probationary appointment for reasons of unsatisfactory service or
 - 477.3. voluntary retirement at or above the minimum retiring age applicable to the employee or
 - 477.4. payment of a redundancy benefit or similar payment or with the payment of an employer financed retirement.

Relocation assistance following offer of voluntary redundancy

478. Where an ongoing employee has been relocated to a remote locality at the initiative of the OFWO and is subsequently offered and accepts an offer of voluntary redundancy, the Fair Work Ombudsman may approve payment or reimbursement of reasonable costs incurred in the employee's return to their previous location.

Retention period

479. The purpose of the retention period is to provide an employee with a specific period of time that may allow them to secure alternative employment.
480. The Fair Work Ombudsman will take all reasonable steps, consistent with efficient operational requirements, to avoid involuntary redundancy or compulsory redeployment. It is also the employee's responsibility to take all reasonable steps to identify and apply for suitable vacancies at their substantive level.
481. If an employee decides not to accept the offer of voluntary redundancy per **clause 468**, this earlier date will be regarded as being the expiry of the consideration period. The retention period will be:

- 481.1. 13 months for employees over 45 years of age or employees with over 20 years of service
 - 481.2. 7 months for other employees.
482. If an employee is entitled to a redundancy payment in accordance with the NES, the relevant period in **clause 481** is reduced by the number of weeks redundancy pay that the employee will be entitled to under the NES on termination, as at the expiration of the retention period (as adjusted by this clause).

Redeployment during the retention period

483. During the retention period the employee:
- 483.1. will be assisted with attempts to find alternative employment; and/or
 - 483.2. may, on request, be provided with assistance in meeting reasonable travel costs and incidental expenses incurred in seeking alternative employment where these expenses are not met by the prospective employer; and/or
 - 483.3. may be moved to a suitable position, after being given 4 weeks' notice, at the current or a lower classification as a means of securing alternative employment. If this occurs, the employee will be paid their salary at the higher classification level for the remainder of the retention period.
484. Employees over 45 years of age and employees in regional and remote areas may be eligible for additional outplacement assistance (up to the value of \$3,075) during the retention period.
485. Where the Fair Work Ombudsman is satisfied that there is insufficient productive work available for the employee during the remainder of their retention period and that there are no reasonable redeployment prospects in the APS, the Fair Work Ombudsman may terminate their employment under section 29(3)(a) of the PS Act. Upon termination the employee will be paid a lump sum comprising:
- 485.1. the balance of the retention period less the number of weeks redundancy pay that the employee will be entitled to under the NES and this payment will be taken to include the payment in lieu of notice of termination of employment, and
 - 485.2. an amount of redundancy pay as per the NES.

Extension of the retention period due to absence from work

486. A retention period will only be extended by leave where the Fair Work Ombudsman is satisfied that an employee is substantially incapacitated and unfit for work, based on the opinion of a registered health practitioner nominated by the Fair Work Ombudsman. Unless exceptional circumstances exist, a retention period will not be extended on these grounds beyond an additional 8 weeks.

Termination of employment

487. Excess employees 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.

488. An excess employee's employment will be terminated under section 29 of the PS Act when their retention period ceases.
489. Where the employee is to be terminated involuntarily, the Fair Work Ombudsman will give 4 weeks' notice of termination, or five weeks for an employee over 45 years of age, or a lesser period agreed with the employee. As far as practicable, the period of notice will be served concurrently with the retention period. If the employee ceases employment at the commencement of or within the notice period, the employee will be paid for the unexpired portion of the notice period.

Attachment A – Base salaries

		As at 31 August 2023	From the later of commencement of the agreement or 14 March 2024	From 13 March 2025	From 12 March 2026
		Base Salary	4%	3.80%	3.40%
EL2	Exec 2.5	\$159,580	\$165,963	\$172,270	\$178,127
	Exec 2.4	\$154,510	\$160,690	\$166,796	\$172,467
	Exec 2.3	\$146,681	\$152,548	\$158,345	\$163,729
	Exec 2.2	\$141,500	\$147,160	\$152,752	\$157,946
	Exec 2.1	\$136,421	\$141,878	\$147,269	\$152,276
EL1	Exec 1.3	\$127,756	\$132,866	\$137,915	\$142,604
	Exec 1.2	\$123,037	\$127,958	\$132,820	\$137,336
	Exec 1.1	\$118,379	\$123,114	\$127,792	\$132,137
APS6	APS 6.5	\$107,015	\$111,296	\$115,525	\$119,453
	APS 6.4	\$102,287	\$106,378	\$110,420	\$114,174
	APS 6.3	\$98,335	\$102,268	\$106,154	\$109,763
	APS 6.2	\$95,698	\$99,526	\$103,308	\$106,820
	APS 6.1	\$93,090	\$96,814	\$100,493	\$103,910
APS5	APS 5.3	\$91,102	\$94,746	\$98,346	\$101,690
	APS 5.2	\$88,590	\$92,134	\$95,635	\$98,887
	APS 5.1	\$85,987	\$89,426	\$92,824	\$95,980
APS4	APS 4.4	\$83,715	\$87,064	\$90,372	\$93,445
	APS 4.3	\$81,538	\$84,800	\$88,022	\$91,015
	APS 4.2	\$79,508	\$82,688	\$85,830	\$88,748
	APS 4.1	\$77,180	\$80,267	\$83,317	\$86,150
APS3	APS 3.4	\$74,767	\$77,758	\$80,713	\$83,457
	APS 3.3	\$72,808	\$75,720	\$78,597	\$81,269
	APS 3.2	\$71,049	\$73,891	\$76,699	\$79,307
	APS 3.1	\$69,365	\$72,140	\$74,881	\$77,427
APS2	APS 2.4	\$67,520	\$70,221	\$72,889	\$75,367
	APS 2.3	\$65,099	\$67,703	\$70,276	\$72,665
	APS 2.2	\$63,360	\$65,894	\$68,398	\$70,724
	APS 2.1	\$61,695	\$64,163	\$66,601	\$68,865
APS1	APS 1.2	\$56,582	\$58,845	\$61,081	\$63,158
	APS 1.1	\$54,449	\$56,627	\$58,779	\$60,777

Attachment B – Supported Wage System

1. This schedule defines the condition which will apply to employees because of the effects of a disability, and are eligible for a supported wage under the terms of this agreement.

Definitions

2. In this schedule:

Approved assessor means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual's productive capacity within the supported wage system.

Assessment instrument means the tool provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system.

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

Relevant minimum wage means the minimum wage prescribed in this agreement for the class of work for which an employee is engaged.

Supported Wage System (SWS) means the Commonwealth Government system to promote employment for people who cannot work at full agreement wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the JobAccess website (www.jobaccess.gov.au).

SWS wage assessment agreement means the document in the form required by the Department of Social Services that records the employee's productive capacity and agreed wage rate.

Eligibility criteria

3. Employees covered by this schedule will be those who are unable to perform the range of duties to the competence level required within the classification for which the employee is engaged under this agreement, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.
4. The schedule does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this agreement relating to the rehabilitation of employees who are injured in the course of their employment.

Supported wage rates

5. Employees to whom this clause applies shall be paid the applicable percentage of the relevant minimum wage according to the following schedule:

Table 4 Applicable percentage of relevant minimum wage paid to applicable employees

Assessed capacity	Percentage of agreement rate
10 per cent	10 per cent
20 per cent	20 per cent
30 per cent	30 per cent
40 per cent	40 per cent
50 per cent	50 per cent
60 per cent	60 per cent
70 per cent	70 per cent
80 per cent	80 per cent
90 per cent	90 per cent

6. Provided that the minimum amount payable to an employee to whom the SWS applies is not less than the amount prescribed in the National Minimum Wage Order. Note: The minimum amount payable is reviewed every year in July.
7. Where an employee's assessed capacity is 10 per cent, they must receive a high degree of assistance and support.

Assessment of capacity

8. For the purposes of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the Supported Wage System by an approved assessor, having consulted the employer and the employee, and if the employee so desires, a union which the employee is eligible to join.
9. Assessment made under this schedule must be documented in a SWS wage assessment agreement, and retained by the employer as a time and wages record in accordance with the FW Act.

Lodgement of SWS wage assessment agreement

10. All SWS wage assessment agreements under the conditions of this schedule, including the appropriate percentage of the relevant minimum wage to be paid to the employee, must be lodged by the employer with the Fair Work Commission.
11. All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment. Where a union which has an interest in the agreement is not a party to the assessment, the assessment will be referred by the Fair Work Commission to the union by certified mail and the agreement will take effect unless an objection is notified to the Fair Work Commission within 10 working days.

Review of assessment

12. The assessment of the applicable percentage should be subject to annual review or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the supported wage system.

Other terms and conditions of employment

13. Where an assessment has been made, the applicable percentage will apply to the relevant wage rate only. Employees covered by the provisions of the schedule will be entitled to the same terms and conditions of employment as all other workers covered by this agreement paid on a pro rata basis.

Workplace adjustment

14. An employer wishing to employ a person under the provisions of this schedule must take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve redesign of job duties, working time arrangements and work organisation in consultation with other workers in the area.

Trial period

15. In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a Trial Period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
16. During that Trial Period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.
17. The minimum amount payable to the employee during the Trial Period must be no less than the current weekly rate, as determined by the Fair Work Commission.
18. Work trials should include induction or training as appropriate to the job being trialled.
19. Where the employer and employee wish to establish a continuing employment relationship following the completion of the Trial Period, a further contract of employment will be entered into based on the outcome of assessment under clause 8 and 9 on assessment of capacity.

Signatories

This agreement is made under Section 172 of the *Fair Work Act 2009*.

Employer

Signed for and on behalf of the Commonwealth of Australia



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Date: 18 March 2024

Anna Booth
Fair Work Ombudsman
Office of the Fair Work Ombudsman
Level 13, 175 Liverpool Street
Sydney NSW 2000

Bargaining representative: Community and Public Sector Union

Signed for and on behalf of the Community and Public Sector Union



.....
Date: 18 March 2024

Beth Vincent-Pietsch
Deputy National President
Community and Public Sector Union
4/224 Bunda St
Canberra ACT 2601