

**HUMAN RIGHTS AND EQUAL
OPPORTUNITY COMMISSION
AGREEMENT
2008-2011**

**HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION
AGREEMENT 2008-2011**

This Agreement is to be referred to the Australian Industrial Relations Commission for certification pursuant to Division 2 of Part VIB of the Workplace Relations Act 1996. This Agreement comprises the following Parts:

- Part 1 Technical and General Matters**
Part 2 Objectives and Principles
Part 3 Employment Conditions
- A. Performance Management and Learning & Development
 - B. Classification, Pay Rates and Remuneration
 - C. Flexible Work Arrangements and Work Life Balance
 - D. Leave and Public Holidays
 - E. Separation Procedures
 - F. Safe and Supportive Working Environment
 - G. Review of Employment Decisions and Procedures
 - H. Allowances
- Part 4 Appendices**

Arrangement

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PART 1

TECHNICAL AND GENERAL MATTERS

1. TITLE

- 1.1. This Agreement shall be known as the Human Rights and Equal Opportunity Commission Certified Agreement 2008-2011.
- 1.2. This Agreement was made under Section 170LJ of the pre-reform *Workplace Relations Act 1996*, and was varied under Clause 2A of Schedule 7 to the *Workplace Relations Act 1996*.

2. PARTIES BOUND

- 2.1 This Agreement is made and approved between the:
- President of the Human Rights and Equal Opportunity Commission and
 - employees of the Human Rights and Equal Opportunity Commission subject to clause 3, and
 - the Community Public Sector Union (CPSU).
- 2.2 The parties to this Agreement are bound by its terms.

3. APPLICATION

- 3.1 This Agreement does not apply to:
- (i) members of the Senior Executive Service;
 - (ii) employees on secondment arrangements whose salaries are payable by organisations other than the Human Rights and Equal Opportunity Commission; and
 - (iii) employees of the Human Rights & Equal Opportunity Commission who are parties to an Australian Workplace Agreement .

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4. DURATION

- 4.1 This Agreement commenced operation on 23 December 2005 and has a nominal expiry date of [3 years from the date of the order]. The original expiry date of 23 December 2008 was extended under Clause 2A of Schedule 7 to the *Workplace Relations Act*.
- 4.2 Consultations between the Commission and its employees on a replacement agreement will commence prior to the expiry date of this Agreement.

5. COMPREHENSIVE AGREEMENT AND RELEVANT EMPLOYMENT LEGISLATION

5.1 It is agreed that this Agreement displaces the following:

- (i) *Human Rights and Equal Opportunity Commission Certified Agreement 1998 - 1999;*
- (ii) *Human Rights and Equal Opportunity Commission Certified Agreement 2000-2002;*
- (iii) *Human Rights and Equal Opportunity Commission Certified Agreement 2002-2005; and*
- (iv) *(iv) Continuous Improvement in the Australian Public Service Enterprise Agreement 1995 - 1996.*
- (v) *Australian Public Service Award 1998, as varied from time to time.*

5.2 It is acknowledged that employment is subject to the provisions of the following Acts (and regulations or instruments made under Acts) amongst others:

- (i) *Workplace Relations Act 1996;*
- (ii) *Long Service Leave (Commonwealth Employees) Act 1976;*
- (iii) *Maternity Leave (Commonwealth Employees) Act 1973;*
- (iv) *Superannuation Act 1976;*
- (v) *Superannuation Act 1990;*
- (vi) *Superannuation Productivity Benefit Act 1988;*
- (vii) *Superannuation Benefits (Supervisory Mechanisms) Act 1990;*
- (viii) *Safety, Rehabilitation and Compensation Act 1988;*
- (ix) *Occupational Health and Safety (Commonwealth Employment) Act 1991;*
- (x) *Public Employment (Consequential and Transitional) Amendment Act 1999;*
- (xi) *Public Service Act 1999.*

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5.3 Subject to Clause 6, this Agreement constitutes a closed agreement in the settlement of all matters for its duration. The parties to this Agreement agree that for the life of the agreement there will be no further claims, except where consistent with the terms of this Agreement.

6. SUPPLEMENTATION OF CONDITIONS (Flexibility Agreement)

6.1 The Commission in consultation with an employee or employees and their representatives may supplement pay and conditions of staff employed under this Agreement on either an individual or group basis to meet special workplace or operational circumstances and/or flexibilities. The President, or the Executive Director as their delegate, will approve any supplementation agreement and there will be no restriction on an employee disclosing their supplementation agreement to any party.

7. VARIATIONS OF AGREEMENT

7.1 Any variations to this Agreement will be made pursuant to Clause 2A of Schedule 7 of the *Workplace Relations Act* or sections 113(2A), 170MD(6)(a) or 298Z of the pre-reform *Workplace Relations Act* .

8. INTERPRETATIONS

"Action" includes a refusal or failure to act.

"AIRC" means the Australian Industrial Relations Commission.

"APS" means the Australian Public Service.

"Commission" means the Human Rights and Equal Opportunity Commission and shall include any person with an appropriate delegation to act on its behalf.

"Employee" means an "employee" whether full-time or part-time employed by the Human Rights and Equal Opportunity Commission under and within the meaning of the *Public Service Act 1999*.

"Family for the purpose of ceremonial leave" means the members of an Aboriginal or Torres Strait Islander employee's family or important community member.

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

"Maternity Leave" is a period of absence of up to 52 weeks in accordance with the *Maternity Leave (Commonwealth Employees) Act 1973*.

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

"Medical service provider" means a medical service provider recognised by a private health fund or by Comcare.

"Pre-Reform WR Act" means the WR Act as it stood immediately before the commencement of Sch 1 to the Workplace Relations Amendment (Work Choices) Act 2005.

"President" means the President of the Human Rights and Equal Opportunity Commission.

"Salary" is the employee's rate of salary/pay (in accordance with the salary/pay rates at Appendix A) will be salary for all purposes. Specifically, where salary sacrifice arrangements (and purchased leave options, or other relevant arrangements) are in place, the employee's salary for purposes of superannuation, severance and termination payments will be determined as if the salary sacrifice (or other) arrangement had not been entered into.

"Supervisor" means the employee responsible for a section or team within the Commission.

"WR Act" means the Workplace Relations Act 1996.

9. PROCEDURES FOR PREVENTING AND SETTLING DISPUTES

9.1 The parties to this Agreement shall observe the following procedures towards preventing and settling disputes arising generally and in the interpretation and/or implementation of the terms of this Agreement.

- 9.2 (i) Without prejudice to the position of any party to a dispute and except where a bona fide safety issue is involved, work shall continue normally and work practices shall be in accordance with agreements at the workplace.
- (ii) Where a bona fide safety issue exists, an employee shall not work in an unsafe environment but shall accept reassignment to alternative suitable work in the meantime.

9.3 The parties to a dispute shall take reasonable and genuine steps to prevent or settle disputes by discussion and, where necessary, by negotiation. Where disputes arise, the following procedures shall be observed:

- (i) the employee(s) will discuss the matter which is the subject of the dispute with the supervisor or manager. Where the matter relates to the

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behaviour of the supervisor or manager, the employee(s) may initially discuss the matter with more senior levels of management; and

(ii) where the dispute is unresolved, further discussions will be arranged between senior management, the employee(s) and, where an employee chooses, their representative which may include, the relevant employee organisation.

(iii) In the event that the parties to the dispute are unable to resolve a dispute in a manner consistent with this clause, the specific matter or matter(s) in dispute may be referred to the AIRC.

9.4 In the event that the parties to the dispute are unable to resolve a dispute in a matter consistent with clause 9.3 above, either or both parties to a dispute acting together (including through a chosen representative) may refer the specific matter or matter(s) in dispute to the AIRC.

9.5 Unless the parties to the dispute agree to the contrary, the AIRC shall, in responding to the matter, have regard to whether a party to a dispute has applied these procedures.

9.6 The AIRC is empowered to settle disputes over the application of this agreement and the parties to the dispute shall abide by the terms of any decision of the AIRC arising from such a dispute.

10. DELEGATIONS

10.1 The President may delegate any or all of his or her powers and functions under this Agreement, including the power of delegation and may do so subject to conditions but no such delegation shall prevent the personal exercise by the President of a power or function so delegated.

PART 2

OBJECTIVES AND PRINCIPLES

11. OBJECTIVES

11.1 This Agreement is to assist the Commission in performing the following main functions:

- Promote awareness, knowledge and understanding of human rights in their totality.
- Promote acceptance by private, public and community organisations of their responsibilities for human rights.
- Investigate, endeavour to conciliate and provide remedies and /or make recommendations for breaches of human rights.
- Recommend and review laws, policies, programs and activities to promote and protect human rights.
- Undertake other specific functions as required by legislation.

11.2 The Commission will facilitate a co-operative and consultative workplace by:

- Recognising the Freedom of Association provisions of the *Workplace Relations Act 1996*. The employer recognises that employees are free to choose to join or not join a union. Irrespective of that choice, employees will not be disadvantaged or discriminated against in respect of their employment under this Agreement. Employees who choose to be members of a union have the right to participate in union activities and have their industrial interests represented by that union.
- Consulting with all employees and their representatives on significant matters affecting the operations of the Commission or employment conditions.
- Senior Management meeting regularly with all employees and their representatives.
- Senior Management meeting with employees in smaller groups, particular work sections or branches or with individuals, their representatives.

11.3 The Commission undertakes to establish ad-hoc Workplace Committees comprising representatives of Management and employees to oversee and/or implement significant matters arising from the Agreement. Any Committee formed

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will ensure that employees have opportunity to input into matters relating to their employment.

11.4 Right of entry to the Commission applies, subject to permit holders complying with the *Australian Workplace Relations Act 1996*.

11.5 Employees who perform a role as an employee representative will be provided with appropriate training and facilities to perform their function and the Commission agrees that the representative will not suffer any employment related detriment as a result of performing the representative function

11.6 In any matter arising under this agreement, an employee may have a representative, assist or represent them, and all relevant persons will deal with any such representative in good faith. To avoid doubt, this assistance includes acting as an advocate.

12. ANTI-DISCRIMINATION AND WORKPLACE DIVERSITY

12.1 The Commission is an organisation, which values fairness, equity and diversity. As the body with a statutory responsibility to ensure the observance of human rights in Australia it is important that respect and acceptance of diversity is an integral part of our own workplace. Consistent with that aim, the Commission is committed to preventing and eliminating discrimination on the basis of race, colour, gender, sexual preference, age, disability, marital status, family responsibilities, pregnancy, religion, political opinion, irrelevant criminal record, national extraction, membership or non membership of a trade union or social origin.

12.2 The Commission has a **Workplace Diversity Program** which recognises and values diverse skills, cultural values and backgrounds within its employees. The Program includes strategies to remedy employment related disadvantages of women, Aboriginal and Torres Strait Islander people, people of non-English speaking background and people with disabilities.

12.3 The Commission recognises the need for a supportive and flexible workplace to enable employees to combine work and family responsibilities. The Agreement contains clauses that support and promote flexible family friendly practices and includes access to part time work, homebased work, parental leave and personal/carers leave which assist employees balance their family and work responsibilities.

13. CODE OF CONDUCT and APS VALUES

13.1 The Commission is committed to delivering high quality professional public service. In implementing this Agreement the Commission will act ethically and lawfully as an employer. In implementing this Agreement and in undertaking his or her duties, an employee shall comply with *Australian Public Service Values* and

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Codes of Conduct and shall not behave in a manner contrary to the interests of the Commission.

13.2 In addition to the *APS Code of Conduct*, employees:

(a) who participate in a private capacity in public discussions must:

- (i) ensure that the audience is clear that the public comment is being made in a private capacity and that the employee is not speaking on behalf of the Commission or the Government; and
- (ii) ensure that the public comment cannot be seen as compromising his or her ability to continue to carry out his or her official duties in an unbiased and apolitical manner; and
- (iii) not make public comment in circumstances where the employee's status or other reasons will make it difficult for the audience to believe that the comments are being made in a private capacity.

(b) must comply with Commission policies and use the resources, equipment and facilities of the Commission in a proper and lawful manner, recognising the particular nature of the Commission's role and functions.

(c) must seek approval if they wish to engage in outside employment. Any outside employment must not pose a conflict of interest with their employment in the Commission.

13.3 Breaches of the Code of Conduct:

(i) Matters concerning possible breaches of the *Code of Conduct* as specified at 13.1 and 13.2 above, will be dealt with in accordance with the procedures established by the President pursuant to relevant provisions of the *Public Service Act 1999, Public Service Commissioner's Directions and the Public Service Regulations 1999* and principles governing the application of natural justice.

(ii) Non ongoing employees and employees on probation are excluded from the provisions of clause 13.3 as this is dealt with under the terms of their engagement.

PART 3

EMPLOYMENT CONDITIONS

Part 3A Performance Management and Learning and Development

14. PERFORMANCE MANAGEMENT FRAMEWORK.

14.1 The purpose of the Commission's Performance Management Scheme is to strengthen and support the Commission in performing its functions by providing regular and formal assessment of employees' work performance and to provide employees with skill development and career advancement opportunities.

14.2 Participation in, and operation of, the Scheme will be in accordance with the ***Performance Management Guidelines***.

14.3 Annual assessment of an employee's performance will be the basis of salary progression within the pay points assigned to their classification and may also be taken into account:

- (i) when considering an employee for temporary reassignment of duties or promotion ; or
- (ii) as a basis to commence proceedings in relation to the unsatisfactory performance of duties or misconduct.

14.4 If the Commission introduces performance-based pay, it will be allocated on the basis of the performance assessment under this scheme.

14.5 Employees and supervisors will develop a performance agreement and employees will have their work performance assessed and rated by their immediate supervisors using a four point scale. Employees will be eligible to advance by one salary point in the relevant classification pay range subject to meeting the performance standard rating of "effective" or better, as set out in the ***Performance Management Guidelines***. Employees rated "not effective" will not be eligible for salary progression and may be subject to proceedings noted at Clause 16 on "Managing Underperformance".

14.6 Employees who are not satisfied with the supervisor's assessment may request a review of the supervisor's assessment by following the Commission's procedures in respect to review of actions contained in clause 53.8.

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14.7 The parties agree to a review of the Commission's Performance Management Scheme to link in with the strategic planning process by 30 June 2009.

15. LEARNING AND DEVELOPMENT

15.1 In recognition that training and development can enhance an employee's potential to contribute to the implementation of the strategic plan and to encourage employees to pursue their career aspirations, the parties to this agreement commit to providing opportunities for all employees to participate in relevant learning and development activities.

15.2 The parties to this Agreement will emphasise learning and development activities that:

- (i) have a clear connection with the work of the Commission; *and*
- (ii) have a direct link to individuals' work responsibilities; and
- (iii) assist ongoing career development.

15.3 The Commission will provide employees with support to access those learning and development activities that will provide the most effective outcomes. These activities may include on and off the job training and formal study and will be specified in an annual learning and development plan for each employee.

15.4 The parties to this Agreement are committed to adequate learning support to accompany changes, innovations or improvements to work arrangements.

15.5 Studies Assistance

The Commission supports the principle of life long learning and subject to the ***Studies Assistance Guidelines***, employees will be encouraged to undertake tertiary study to improve their career development opportunities.

- (i) Approval for studies assistance is not an automatic entitlement but may be granted subject to operational requirements of the Commission and equity with other employees of the Commission.
- (ii) In considering approval for studies assistance, the relevance of the proposed studies to the needs of the Commission (as per 15.2 and 15.3), operational priorities and resource capacity will be taken into account.
- (iii) Employees who have been unable to complete schooling or commence tertiary studies due to personal circumstances will be encouraged to apply for assistance.
- (iv) Where an employee undertakes approved formal studies, the Commission's ***Studies Assistance Guidelines*** will apply.

15.6 Reimbursement of Reasonable Expenses When Attending Training

The Commission will, subject to prior approval of such arrangements including the cost, reimburse reasonable additional expenses arising from additional care arrangements when the employee is required to attend a particular training activity outside normal hours of work or away from his or her normal work location.

16. MANAGING UNDERPERFORMANCE

16.1 There may be occasions when an employee's performance is consistently falling below the expected standard, even though the employee's supervisor has taken measures to overcome the problems as part of his or her day-to-day management responsibilities. It is important that these matters be addressed promptly and fairly rather than waiting until the next formal performance management feedback session and any relevant matters must be included in the next formal feedback session if ongoing action is required. The procedure for handling poor performance set out below applies to all employees except for the following, who are dealt with under the terms of their engagement:

- (i) an ongoing employee who is on probation;
- (ii) a non-ongoing employee who is employed for a specified term or for the duration of a specified task; and
- (iii) a non ongoing employee engaged on an irregular or intermittent basis.

16.2 This clause sets out the procedure to be observed when, despite attempts to improve performance through the performance feedback scheme and/or other measures, performance still consistently falls below the expected standard.

- (i) A written warning to the relevant employee is to be provided if a performance issue is identified.
- (ii) After the warning is provided the Commission will assess the employee's performance. A regard for natural justice processes must be observed, including the employee's right to be accompanied by a person of the employee's choosing, and a structured work plan will be developed with the employee. The structured work plan will be observed over a 2 month period.
- (iii) At the end of the 2 month period the Commission's assessment of whether the employee's performance has met the expected standard of performance and other relevant supporting papers will be given consideration within 7 days.
- (iv) No further action is needed if the assessment is satisfactory.

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- (v) If the assessment is unsatisfactory the Commission will write to the employee asking him or her to, within seven days, show cause why further action should not be taken against him or her.
- (vi) The Commission will then consider any cause shown by the employee and the options available. These options include termination of employment, involuntary termination (retirement) and other actions.
- (vii) An employee, who has received a written warning pursuant to subclause 16.2(i), may voluntarily request in writing to be retired at any time during this process. The Commission will decide whether or not to retire the individual on receiving such a request. The entitlement of an individual who voluntarily requests termination of employment (retirement) and is voluntarily retired is the same as voluntary retrenchment without the severance pay.
- (viii) This procedure does not prevent an employee from pursuing an appropriate claim before the Australian Industrial Relations Commission or any other tribunal established by law.

Part 3B Classification, Pay Rates and Remuneration Arrangements

17. INCREASES IN RATES OF PAY

17.1 The remuneration framework established in this Agreement provides for the following average percentage increases to the rates of pay applying prior to the certification of this Agreement:

- (i) 4% from 8 January 2009, or from certification whichever is the later;
- (ii) 4% from 7 January 2010.
- (iii) 4% from 6 January 2011

17.2 The percentage increases stipulated in subclause 17.1 are payable in recognition of an ongoing commitment and co-operation of employees to a process of continuous improvement to enhance productivity and efficiency in the Commission, including:

- Alignment of the Commission's units to a unified strategic and business planning cycle incorporating a review of the Performance Management Scheme.
- Cross Commission collaborative working arrangements enabling the Commission to harness valuable specialist expertise and to use that to improve or enhance projects or activities.
- Increased flexibility in work practices including extension of the bandwidth, introduction of broadbanding and the development of workplace flexibility principles.

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- Implementation of an electronic travel diary to streamline the interstate travel arrangements of the Complaint Handling Unit.
- Rationalisation of the Commissions contracts for art work.

17.3 Additional salary increases outlined below may be paid if:

- (a) additional net revenue increases are received through the budget cycle for the relevant financial year which are sufficient to fund the additional salary increases; and
 - (b) productivity savings are delivered through the implementation of 2008-2011 Strategic Plan resulting in the reduction of duplication and increased efficiency in streamlining the Commission's operations and activities.
- 0.5% from 1 July 2009;
 - 0.5% from 1 July 2010; and
 - 0.5% from 1 July 2011.

These salary increases will only be delivered if they are within the Commission's budgetary capacity to pay without sustaining employee losses and expected productivity savings are achieved.

In the event, due to budgetary constraints, an increase is unable to be delivered on any of the July pay dates, the Commission will review its capacity to deliver that increase in addition to the subsequent increase at the following 1 July date. These increases will not be backdated.

18. CLASSIFICATION STRUCTURE AND REMUNERATION

18.1 The range of duties assigned to each position, and the employees engaged to perform them, shall be allocated an approved APS classification within classification structure included at Appendix A.

18.2 Where an employee commences employment with the Commission, or is moved or promoted to a position in the Commission, salary will be payable at the minimum salary point applicable to the employee's position classification unless the Commission authorises payment above the minimum point in that salary range having regard to the skills, qualifications, experience, market considerations and equity with other employees. The Commission may authorise payment above the maximum point of the salary range, where immediately prior to commencing with the Commission, the employee was in receipt of salary above the maximum point in the current salary range.

18.3 The Commission may approve the movement from APS1 to APS2 and APS3 to APS4 as a broadband following the successful completion of performance competency assessment in conjunction with the Commission's Performance Management Scheme and subject to work availability.

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18.4 Advancement subject to the Performance Management Scheme:

Advancement through the pay points of the employee's position classification shall be in accordance with the provisions of the performance management scheme.

18.5 Incorrect Salary Point: Where, at the time of engagement, an employee's salary is set at an incorrect salary point within the applicable salary scale the Commission may authorise in writing the payment of the correct salary point.

18.6 Reversion: Where an employee requests in writing to perform work at a lower work value level the Commission may determine in writing that the employee shall be paid a rate of salary applicable to the lower work value position classification.

18.7 Irregular or Intermittent Employees: Non-ongoing employees who are employed on an irregular or intermittent basis for less than full time hours per week may be paid an additional loading of 20% of salary in lieu of an entitlement to conditions specified for other employees. Irregular and intermittent employees are entitled to long service leave under the *Long Service Leave (Commonwealth Employees) Act 1976*.

19. METHOD FOR PAYMENT OF SALARY AND SALARY PACKAGING

19.1 An employee shall be paid fortnightly in arrears and by electronic funds transfer into a financial institution account of his or her choice. In the event of an overpayment of salary or allowances monies will be recovered from future pays.

19.2 The fortnightly pay shall be based upon the following formula:

$$\text{fortnightly pay} = \text{remuneration} \times \frac{12}{313}$$

19.3 Salary Packaging:

- (i) A remuneration packaging scheme is available to employees.
- (ii) An employee may opt to receive a mix of cash and specified non-cash items up to the total value of his or her current salary.
- (iii) The remuneration packaging scheme shall be undertaken by a bureau service on behalf of the Commission and participating employees.
- (iv) The total cost of an employee's participation in the scheme, including the cost of cash, non-cash items, taxation and administration / bureau fees, shall be met by the participating employee.
- (v) The implementation and operation of the remuneration packaging scheme shall be budget neutral for the Commission.

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- (vi) The salary which would have been used for superannuation purposes and severance and termination payments but for the employee electing the option of remuneration packaging is the salary to be used to determine salary for superannuation purposes and severance and termination payments.

20. JUNIOR RATES OF PAY AND SUPPORTED WAGE FOR EMPLOYEES WITH A DISABILITY

20.1 **Junior rates of pay** as a percentage of the APS Level 1 classification component shall apply as follows:

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

20.2 **Supported wage rates** as set out in Appendix B shall apply to an employee with a disability who is eligible for consideration under the Supported Wage System.

20.3 **Traineeship:** This clause applies to employees undertaking a traineeship which is approved under Part VIE of the *Workplace Relations Act 1996*. Notwithstanding anything to the contrary in this Agreement, the pay rate applying to an employee undertaking such a traineeship shall be calculated in accordance with s170XC of the Act where the benchmark rate is the pay rate which would apply to the employee under this Agreement for the work being performed by the employee, if the employee was not undertaking the traineeship.

21. REMUNERATION FOR HIGHER DUTIES

21.1 Where an employee is temporarily assigned duties at a higher classification, remuneration will be paid at the minimum rate applicable to the higher classification, unless otherwise determined to be at a higher rate by the Commission. The employee shall only be eligible for further salary progression under the Commission's Performance Management Scheme.

21.2 An employee shall not be considered to be temporarily assigned duties at a higher classification except where the period exceeds 5 days or in the case of operational type positions such lesser period as determined by the Executive Director.

21.3 Where an employee is temporarily assigned duties and the full range of duties is not performed the Commission may determine the remuneration to be paid to the employee.

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21.4 An employee temporarily assigned duties at a higher classification level shall be entitled to receive the rate applicable for the higher position during a period of paid leave or public holiday provided that the employee would have received the rate applicable for the higher position if he or she had not been absent from the workplace for the period of the paid leave or the public holiday.

21.5 An employee who has been temporarily assigned duties at a higher level and has been assessed under the Commission's Performance Management Scheme to receive a salary increase within the higher classification level may retain that salary point on promotion. The delegate will take into account the length of the period of higher duties and how recent the higher duties were performed.

21.6 The filling of short term vacancies by higher duties will only occur where essential to the operational requirements of the Commission.

21.7 Where non-Senior Executive Service employees are temporarily assigned duties in Senior Executive Service jobs for short periods, they will be paid additional salary. The amount of additional salary will be determined by the President or his or her delegate.

22. PAYMENT OF OVERTIME

22.1 An employee who may be directed by the Commission to work outside of standard hours shall be working overtime and shall be entitled to be paid or to receive time off in lieu in accordance with this clause.

22.2 The hourly rate for overtime payment will be ascertained by applying the following formulae:

Time and a half rate:

$$\frac{\text{annual salary}}{313} \times \frac{6}{36 \frac{3}{4}} \times 1.5$$

Double time rate:

$$\frac{\text{annual salary}}{313} \times \frac{6}{36 \frac{3}{4}} \times 2$$

Double time and a half rate:

$$\frac{\text{annual salary}}{313} \times \frac{6}{36 \frac{3}{4}} \times 2.5$$

22.3 For the purpose of calculating the formula at 22.2 prescribed weekly hours before overtime is payable will be 36 ³/₄.

22.4 **Executive Level employees:** Except with the approval of the Commission, an Executive Level 1 or Executive Level 2 shall not be subject to the provisions of clause 22. Where, the Commission has approved payment to employees at the

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Executive Level 1 or 2, payment shall be made at the rate applicable to an APS Level 6.

22.5 Time-off-in-lieu: Where the Commission and an employee agree, time off in lieu of payment for overtime may be taken, with the time off accrued at the overtime multiplier, within four weeks or such other agreed period from the time of working the overtime. Where the time off is not taken within four weeks or such other agreed period then payment for the overtime shall be made.

22.6 Monday to Saturday: Overtime worked Monday to Saturday will be paid at time and a half for the first 3 hours each day and double time thereafter.

22.7 Sunday: Overtime worked on a Sunday will be paid at the rate of double time.

22.8 Public holiday: Overtime on a Public Holiday will be paid at time and a half during standard hours and double time and a half outside of standard hours (as defined in Clause 27).

22.9 Eight hour break: An employee who works so much overtime that the employee has not had at least 8 consecutive hours off duty plus reasonable travelling time:

- (i) between the termination of the employee's ordinary duty on any day or shift, and the commencement of the employee's ordinary work on the next day or shift; or
- (ii) on a Saturday, Sunday or a public holiday, not being an ordinary working day, or on a rostered day off, in the 24 hours preceding the employee's ordinary commencing time on the employee's next ordinary day or shift;

will be granted time off under subclause 22.10.

22.10 An employee who is compelled to work so much overtime that the employee fails to meet the requirements of subclause 22.9 will:

- (i) be allowed to leave work after such overtime for a period of 8 consecutive hours off duty, plus reasonable travelling time, and will suffer no loss of pay for ordinary working time occurring during the employee's absence;
- (ii) provided that if an employee is required to resume or continue work on the specific written instruction of the Commission, without having had 8 consecutive hours off duty plus reasonable travelling time in accordance with the employee will be paid at double ordinary time rates (for time worked) until the employee has had 8 consecutive hours off duty plus reasonable travelling time; and

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- (iii) the employee is to suffer no loss of pay for ordinary working time occurring during the employee's absence.

22.11 Overtime not continuous with ordinary duty: Subject to this clause, where an employee is required to perform overtime duty and such duty is not continuous with ordinary duty, the minimum overtime payment for each separate overtime attendance will be four hours at the prescribed overtime rate.

22.12 Where more than one attendance is involved, the minimum overtime payment provision will, subject to the prescribed minimum payment, not operate to increase an employee's overtime remuneration beyond that to which the employee would have been entitled had the employee remained on duty from the commencing time of duty on one attendance to the ceasing time of duty on a subsequent attendance.

22.13 For the purposes of determining whether an overtime attendance is or is not continuous with ordinary duty, or is or is not separate from other duty, meal periods will be disregarded.

22.14 Where an overtime attendance, not continuous with ordinary duty, involves duty both before and after midnight, the minimum payment provisions of this subclause will be satisfied when the total payment for the whole of the attendance equals or exceeds the minimum payment applicable to one day. Where a higher overtime rate applies on one of the days, the minimum payment will be calculated at the higher rate.

22.15 Meal Allowance: Where an employee is required to work overtime for periods of 3 or more hours a meal allowance shall be paid in accordance with the ATO Reasonable Allowances rates. Payment will be made through the payroll system. An additional amount may be paid for overtime worked in excess of 10 hours. In exceptional circumstances the delegate may consider a further payment

22.16 Reimburse Reasonable Expenses: Where an employee agrees or is directed to work overtime the Commission will, subject to prior approval of such arrangements including the cost, reimburse reasonable additional expenses arising from any additional care arrangements due to the requirement to work overtime.

23. SUPERANNUATION

23.1 Superannuation entitlements and their administration are provided for in legislation.

23.2 In accordance with clause 23.1, the Commission will provide an employer contribution of no less than the rate applicable to the Public Sector Superannuation Accumulation Plan for all new and existing employees. This contribution will be paid to an approved superannuation fund in accordance with the agreed superannuation choice arrangements.

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23.3 Superannuation funds are approved at the Commission's discretion. The factors taken into account are:

- (i) The requirement to be a complying superannuation fund and registered with APRA.
- (ii) The fund must make satisfactory arrangements to accept payments from the Commission and for information transfer between the payroll and the fund.
- (iii) The funds must accept contributions fortnightly via electronic funds transfer and not impose a minimum contribution likely to cause administrative difficulty for the Commission.

24. FACILITATING MOBILITY IN THE APS

At the discretion of the President or delegate a person moving to the Commission whose salary in their previous agency (current salary) exceeds the current maximum of the relevant classification level in this agreement, will be maintained on their current salary until such time as their salary is absorbed by the Commission pay increases.

Part 3C Flexible Work Arrangements and Work Life Balance

25. WORK/LIFE BALANCE

The Commission acknowledges that employees have to balance their working life with other commitments, including family and the community. This is recognised through the provision of a range of flexible attendance arrangements, leave provisions and assistance programs. When applying flexible attendance arrangements and other employment conditions, the Commission and its employees will consider the operational needs of the Commission and any effect on other employees to ensure equitable outcomes.

The Commission's **Workplace Flexibility Principles** support flexible working arrangements across the agency. (Appendix C)

Employees may request flexible working conditions subject to the Commission's **Workplace Flexibility Principles**. Where a request is not agreed to, the Commission will consider other alternatives where possible, and outline reasons where a request is not supported.

26. PART-TIME REQUESTS

26.1 The Commission is committed to providing equitable outcomes for all employees and any part-time requests from ongoing employees have to be balanced with the operational needs of the Commission and those of other employees in the work area. Employees agree to be flexible in implementing part-

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time requests.

26.2 The Commission may support part -time requests from ongoing employees for a range of different circumstances, including:

- i. return from maternity/parental leave and additional leave under Clause 40.8 of this agreement;
- ii. pre retirement transition; and
- iii. short term requests such as personal illness, carer needs and study.

26.3 All applications for part-time work must be in writing and are subject to the Commission's ***Part-time Work Policy***.

26.4 Proposals for part-time work may be initiated by managers.

26.5 A part-time employee shall accrue all entitlements under this Agreement, other than entitlements to reimbursement, on a pro rata basis.

27. HOURS OF WORK

27.1 The Commission recognises the importance of having a balance between work and personal/family responsibilities and will not require an employee to work unreasonable hours of work. No employee is expected to work excessive hours as a matter of course. It is recognised that some employees will need to work extra hours from time to time in order to meet deadlines and deal with unexpected contingencies. The working of excessive hours in such circumstances should be discussed with the supervising manager before doing so, so as to confirm the operational necessity for working excessive hours. Managers and employees will use available working arrangements to minimise the working of excessive hours.

27.2 **Standard hours:** Standard hours of work shall be 147 hours in each four week settlement period.

27.3 **Standard Hours and Bandwidth:** Standard hours shall be worked within the bandwidth of 7:30am to 6.30pm, Monday to Friday. A standard day is 8.30am to 4.51pm with an hour for lunch between 12.30pm and 1.30pm.

27.4 Notwithstanding subclause 27.3, standard hours may be worked outside of the bandwidth stipulated where an employee and the Commission so agree and where operational requirements may be met. The Commission recognises the importance of employees achieving a balance between work and personal life and acknowledges that many employees have carer responsibilities. Where operational and security requirements permit, the Commission will favorably consider requests to work standard hours outside the bandwidth. Supervisors at the EL 2 level may approve their employees to work outside the bandwidth hours subject to the above requirements and in consultation with the Personnel Manager. Supervisors and employees should agree on a mutually beneficial arrangement regarding hours of work that recognises operational considerations. Agreement should be reviewed on

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a regular basis to ensure they are operating effectively. Where agreement cannot be reached over a request to work outside the bandwidth times it may be referred to the Personnel Manager or Executive Director for resolution.

27.5 Core hours: Core hours will be 10.00am to 12.00pm and 2.00pm and 4.00pm unless varied by agreement by an employee and their supervisor based on operational needs. Employees shall ordinarily be present at work during core hours.

27.6 Unpaid meal breaks: An employee must not work for longer than five hours without an unpaid break for a meal of a minimum of thirty minutes and no longer than 2 hours.

27.7 Start and finish times: Starting and finishing times within the bandwidth are to be determined by the Commission, after consultation with employee/s. To optimise effective client service supervisors may require employees (including part-time employees where this is consistent with their ordinary hours) to attend at specific times during general business hours of 8.30am to 5pm. It is understood that these arrangements should provide employees flexibility to balance work and personal obligations subject to operational requirements of the Commission, the need for appropriate supervisory arrangements to be in place and Occupational Health and Safety principles.

27.8 Reimbursement for Family Care Arrangements: Where the Commission requires employees to be away from home outside bandwidth hours (including normal travel time) or to work outside their regular hours managers will approve payment or reimbursement of the reasonable cost of additional family care arrangements on the production of receipts.

27.9 Scheduling Meetings: To assist employees balance their work and family/personal life responsibilities, workplace meetings will generally not be scheduled before 9am and will conclude by 4.30pm unless previously agreed.

27.10 Flexleave: Employees classified as APS 1 – 6 and Executive Level 1 shall have access to flexleave provisions. Flextime credits accrue only for time worked within the bandwidth or where there is an agreement to work outside the bandwidth. Executive Level employees may choose not to access flexleave and be covered by the provisions at clause 27.12 of the Agreement.

In accessing flexleave:

- (i) An employee may not have an accrual in excess of 25 hours flexleave at the conclusion of any settlement period. Excess flex leave should be utilised in the period that it accrues. Any excess will be reduced automatically to 25 hours at the end of the settlement period. The purpose of flex leave is to provide flexibility in work patterns over a regular period and not to build up excessive credits to be used in conjunction with annual leave. Where there are periods of high workloads, Managers will retain the discretion to allow accrual in

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excess of 25 hours as long as this additional carryover is used within the next settlement period.

- (ii) An employee may not have a debit of flexleave in excess of 10 hours at the conclusion of any settlement period.
- (iii) Periods of absence shall be taken at such times and in such periods as are agreed between the employee and the Commission.
- (iv) Managers must ensure that they manage the hours their team members work so that excessive flextime credits are not accrued without the opportunity for employees to access their flextime leave. If a manager identifies that an employee is working excessive hours, they will review staffing and work arrangements in the relevant area to establish whether alternative arrangements are available (eg overtime).

27.11 Where an employee fails to comply with the provisions of flextime a supervisor may recommend to the Executive Director or delegate that the employee be removed from the flextime scheme for a specified period. The employee would revert to working standard hours for the specified period.

27.12 Executive Level Employees

(i) Executive Level 2 employees shall have access to flexleave where agreed with their direct supervisor and the Executive Director. Executive Level 1 employees where they have chosen not to access flexleave shall be covered by this clause. The parties to this agreement acknowledge that the remuneration for Executive Level employees incorporates a component to compensate for the extra demands which may be placed on such employees, including working beyond standard hours. It is expected that Executive level employees will negotiate flexibility in working hours to balance work and personal requirements with the Commission.

(ii) In the interest of achieving a balance between work and personal life the Commission does not expect that employees at the Executive Level work unreasonable hours. It is agreed that managers have a responsibility to minimise the extent to which Executive Level employees are required to work excessive hours. Strategies to reduce the need to work unreasonable hours include reviewing workloads, priorities and work practices.

(iii) Executive Level employees also have the flexibility to manage their own workloads in consultation with their managers. The Commission expects that Executive Level employees will be able to responsibly manage their hours to meet operational requirements.

(iv) It is acknowledged that there may be variations in workloads for Executive Level employees through the year. It is recognised that at times Executive Level employees may be required to work extended hours during peak workload periods during the week and weekends but that this should not be for lengthy periods.

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Where it is foreseen that there will be an increase in workload this is to be raised with the supervisor as early as possible and in advance to address any issues including work priorities and appropriate time off in lieu (TOIL) . It is expected that any TOIL arrangements be agreed to at the time of the increased work load but it is acknowledged that there may be unforeseen circumstance that arise . It is desirable that Executive Level employees be able to access TOIL as soon as possible, subject to operational requirements. Where agreement cannot be reached between an employee and their manager it may be referred to the Personnel Manager or Executive Director to resolve.

27.13 Absences without approval: Where an employee is absent from duty without approval, all pay and other benefits provided under this agreement, eg flextime, will cease to be available until the employee resumes duty or is granted leave. Where flextime no longer applies, employees will revert to standard hours (as defined in this clause).

27.14 Domestic Travel time during bandwidth hours: Employees who are on flextime under clause 27.10 may claim domestic business related travel time during the bandwidth hours as flextime.

28. HOME-BASED WORK

28.1 Where consistent with client service and other operational requirements, an employee may request the Commission to approve home based work on either an on-going or temporary basis.

28.2 Guidelines for on-going arrangements, including criteria for approval, security and OH&S requirements, will provide for a simple and cost effective scheme that does not compromise excellence in service and confidentiality to clients and employees. Approval for an on-going home based work arrangement may be conditional upon an employee's willingness to meet costs associated with necessary modifications to the home based site.

28.3 Approval for home-based work shall be subject to client service and operational needs being met after consideration of the effect of the proposal on individual workloads and the work area as a whole.

28.4 A temporary arrangement may only be approved where it is agreed at the outset that it is for a short and fixed period only. The arrangement may only be approved where it is capable of implementation at minimal or no cost to the Commission. Any request for remote access at home or other locations is to be approved by the Executive Director.

28.5 Any on-going or temporary arrangement may be terminated by the Commission for reasons such as ineffectiveness of the arrangement, or failure of the employee to comply with requirements. Where the Commission has decided to terminate an arrangement, the employee concerned shall be given reasonable notice of the termination.

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28.6 Working from home is not a child care option and arrangements will not be approved where it is more appropriate for the employee to use personal leave or work part-time. However, an arrangement may be approved by the Commission in exceptional circumstances for an employee to work from home while recovering from an injury or having responsibility for another person who needs care.

29. ANNUAL TRANSPORT PASS ASSISTANCE

29.1 The Commission will provide assistance to employees, subject to meeting eligibility criteria to purchase discounted annual public transport travel passes.

29.2 Employees will repay the cost over 12 months through fortnightly salary deductions from after tax salary. Any balance owing on cessation of employment will be repaid to the Commission from final monies.

29.3 This purchasing arrangement is subject to being provided on a cost-neutral basis and may be reviewed annually to evaluate any administrative impact and ensure compliance with any ATO rulings. Separate guidelines will be developed to aid the administration of the arrangements.

30. HEALTHY LIFESTYLE

30.1 The Commission encourages its employees to consider healthy lifestyle activities as a means to develop and maintain work and life balance. The Commission will maintain its commitment to providing annual influenza injections for interested employees. In addition, financial support of up to \$200 per financial year will be reimbursed for approved health and well being activities subject to the *Healthy Lifestyle Program Guidelines*.

31. FAMILY SUPPORT SERVICES

31.1 The Commission acknowledges the family and carer responsibilities managed by their employees and that that these responsibilities can impact on their productivity and capacity to operate effectively at work. To support employees in these responsibilities the Commission will engage the services of a family support service. These services will assist employees with information and resources across a range of family and carer matters.

32. CAREER BREAK SCHEME

32.1 Employees will be eligible to apply for a three month unpaid career break scheme after they have been employed for 5 years and for a further three months unpaid for each subsequent 5 year period. The three month period is in calendar days and will be non-cumulative. All approvals will be subject to operational requirements and the negotiation of a mutually agreeable period of absence. Where it is of direct benefit to the work of the Commission and the career development of the employee it will count as service.

33. RETIREMENT TRANSITION

- 33.1 Employees who have stated an intention to retire from the workforce within 2 years are able to participate in a retirement transition arrangement. Financial assistance of up to \$500 will be provided for access to retirement seminars and/or superannuation and financial advice. Transition arrangements may vary between individuals as both individual and operational needs are considered but may include access to part-time work (refer clause 26 for part-time provisions) and/ or changes in work level or responsibilities by agreement. Part-time work will be subject the Commission's ***Part-Time Work Policy***.

Part 3D Leave Provisions and Public Holidays

34 ANNUAL LEAVE

34.1 **Credit:** A full-time employee shall accrue 20 days paid annual leave per completed year of service. Annual leave accrues and is credited fortnightly.

34.2 **Access to Pro-rata leave:** A pro rata accrual of annual leave may be accessed prior to the completion of a year of service (eg. an employee with six months completed service may apply for and be granted 10 days leave).

34.3 Annual leave shall be taken at such a time or times and in such a period or periods as may be agreed between the employee and the employee's supervisor. Annual leave will not be prepaid.

34.4 To provide an equitable work/life balance the Commission recognises that it is important for both the employee and the organisation for employees to access annual leave on a regular basis.

34.5 Employees are encouraged to take their annual leave credits in the year when the credits accrue and are expected to take at least 2 weeks (or 50%) of those annual leave credits in the year when the credits accrue.

34.6 **Maximum Leave Credit:**

(i) The maximum annual leave credit an employee may accumulate is 6 weeks (inclusive of accrued and pro-rata entitlements). Annual leave credits are not to be in excess of 6 weeks (or part-time equivalent) on 1 May of any year. Employees with excess leave on that date will be deemed to be on leave until the excess credit is cleared. This is also in the interests for the Commission to better manage its accrued leave liability.

(ii) The maximum leave credit that the Commission will pay out when an employee ceases employment is 6 weeks (or part-time equivalent).

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34.7 Cash out of leave:

(i) An employee who has accessed at least fifteen days annual leave in any twelve month period and has an accrual of at least five further days annual leave may, at the request of the employee, be paid out five days annual leave in lieu of absence from the workplace. The delegate may approve a further cash out if circumstances warrant approval and where the employee has accessed a reasonable amount of annual leave over the previous 12 months.

34.8 Absences less than one day: Absences for a period below one day shall, where flextime arrangements apply and credits are available, be taken as flextime.

35. PURCHASED LEAVE SCHEME

35.1 An employee may, with the approval of the Commission, purchase from one to six additional weeks of annual leave from the Commission.

35.2 (i) The leave shall be purchased for the amount the employee would have received for the period of leave purchased, if he or she had taken ordinary annual leave for that period, as estimated at the time of applying for participation in the purchased leave scheme.

(ii) The purchase price of the leave shall be deducted from the fortnightly pay of the purchasing employee in equal instalments over the stipulated period prior to the leave being taken:

4-6 weeks purchased leave 26 pay periods
3 weeks purchased leave 20 pay periods
2 weeks purchased leave 13 pay periods
1 week purchased leave 7 pay periods

35.3 (i) All such leave purchased shall be taken within a twelve month period from the commencing date of accrual or shall be forfeited and the purchase price of the leave refunded.

(ii) Purchased leave shall be taken in accordance with the rules applying to annual leave at clause 34.

35.4 Approval for entry into the purchased leave scheme is subject to the operational requirements of the Commission.

35.5 Purchased leave shall count as service for all purposes.

35.6 Entry into the purchased leave scheme shall not affect the superannuation obligations of the Commission and / or the employee involved.

36. PERSONAL / CARER'S LEAVE

36.1 **Grant:** Personal / carer's leave may be taken only in the event of personal illness or the illness of a member of the employee's family or household. The Commission acknowledges the varying carer roles that employees may need to undertake over their life cycle.

36.2 Entitlement:

- (i) **Ongoing Employees:** An employee shall be entitled to 15 days paid personal / carer's leave upon engagement and shall accumulate a further 15 days paid personal / carer's leave per completed year of service.
- (ii) **Non-Ongoing employees:** A non ongoing employee shall accumulate one days paid personal / carer's leave after one months employment and shall accumulate 1 day of paid personal / carer's leave per further month of employment. An employee whose employment extends beyond 9 months will be entitled to the full 15 days personal leave. Future accruals will accumulate in line with clause 36.2(i).
- (iii) If a non-ongoing employee is then engaged on an ongoing basis, they shall be credited with a full entitlement to personal/ carers leave as if they had accrued from the date of their commencement in the Commission.
- (iv) An employee in receipt of compensation for more than 45 weeks will accrue personal/carer's leave on the basis of the hours actually worked.
- (v) An employee will not be entitled to paid personal/carer's leave while also entitled to paid leave under the *Maternity Leave (Commonwealth Employees) Act 1973*.
- (vi) The maximum period of personal/carer's leave for carer purposes that can be taken is 15 days in an accrual year subject to clause 36.3. The Commission recognises that caring arrangements may include supporting ill family members interstate or in hospital and caring for grandchildren where a primary carer is unable to do so.

36.3 Documentary Evidence

- (i) An application for personal / carer's leave for a period of three or more consecutive days shall be accompanied by a certificate from a registered health practitioner or a statutory declaration made by the employee.
- (ii) There will be no requirement to produce a certificate or a statutory declaration to support an application for personal / carers leave (less than 3 days) for the first 15 days taken in any accrual year. However, the Commission may request an employee to provide a certificate from a registered health practitioner when any future absence on personal/carer's

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leave occurs.

(iii) Where there are reasonable grounds for the Commission to hold concerns for an employee's health and wellbeing, the Commission may request the employee to provide a certificate from a medical service provider when any absence on personal/carers leave occurs.

(iv) **Re-credit:** An employee who is certified unfit for one day or longer on annual leave or long service leave and who produces satisfactory documentary evidence, may apply for personal leave. Annual leave will be re-credited to the extent of the period of personal leave granted.

36.4 Notification: An employee absent from the workplace on account of illness shall inform his or her immediate supervisor or relevant workplace manager before the normal commencing time of work.

36.5 Other leave: Absences from the workplace on account of illness for a period below one day shall, where flextime arrangements apply and credits are available, should be taken as flextime.

36.6 Conversion: Any existing entitlements to half-pay sick leave shall be converted to full-pay personal / carer's leave on a 2:1 ratio. An employee may access personal / carer's leave on half-pay where personal circumstances require.

36.7 Invalidity: An employee will not, without the employee's consent, be retired on invalidity grounds before the employee's personal leave credit has expired subject to the maximum leave condition specified at Clause 42.3.

37. BEREAVEMENT LEAVE

37.1 Up to three days paid leave may be granted to an employee upon the death of a family member.

38. MATERNITY LEAVE

38.1 Employees covered by this agreement are entitled to the provisions set down in the *Maternity Leave (Commonwealth Employees) Act 1973*.

38.2 Access to paid maternity leave is subject to a qualifying period of 12 months continuous employment as specified in the Maternity Leave Act.

38.3 Under the Maternity Leave Act eligible employees may access up to 12 weeks paid leave, inclusive of public holidays. An employee who is on a period of paid or unpaid maternity leave under the Maternity Leave Act will also have access to a further **six weeks** paid leave to be taken in conjunction with maternity leave. In total, 18weeks paid leave may be accessed for maternity leave purposes.

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38.4 Under the Maternity Leave Act eligible employees may access a period of up to 52 weeks, including approved paid and unpaid leave. An employee may request in writing to return to work during this period on a date earlier than previously approved. The granting of such a request will be at the discretion of the Executive Director in accordance with s. 7A of the *Maternity Leave (Commonwealth Employees) Act 1973*. Employees resuming duty full time following their period of maternity leave will return to the position they held prior to their maternity leave or, if the position no longer exists, a position that is nearest in status and remuneration. Any request to resume work on part-time basis will be in writing and in accordance with Clause 26 of this Agreement.

38.5 An employee who is pregnant is required to absent herself from duty six weeks before the expected date of confinement until six weeks after the actual date of birth of the child, unless a doctor's certificate is provided declaring her fit to either continue or return to duty.

38.6 Periods of paid leave during maternity leave will count as service for all purposes.

38.7 In order to provide a more flexible administration of maternity leave an employee may elect to receive payment for their maternity leave (including the additional **six weeks** leave under clause 38.3) at half pay. Only the equivalent full pay period will count as service.

39. PARENTAL LEAVE

39.1 Primary Carers Leave:

- (i) An employee who is not covered by the Maternity Leave provision but who has been employed by the Commission for at least 12 months and who has primary parental responsibility caring for a newborn or recently adopted child is entitled to 18 weeks paid primary carers leave from the birth or adoption of the child.
- (ii) Up to two weeks of this paid leave can be taken by the employee, prior to the date of adoption, to assist in finalising administrative arrangements associated with the adoption.
- (iii) An employee accessing primary carers leave may request a period or periods of up to 52 weeks, including paid and unpaid leave. Employees resuming full time duty following their period of approved leave will return to their previously held position, or if that position no longer exists, a position that is nearest in status and remuneration. Any request to resume work on a part-time basis will be in writing and in accordance with Clause 26 of this Agreement.
- (iv) Periods of paid leave under this clause will count as service for all purposes. Paid leave may be accessed at half pay. Only the equivalent full pay period will count as service.

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- (v) The Commission may request reasonable proof in support of an application, which may include a statutory declaration.
- (vi) Where a partner has accessed, or intends to access, paid maternity or primary carer leave; the employee may only access primary carer leave on a non-concurrent basis and so that the combined period of paid leave does not exceed 18 weeks.

39.2 Supporting Parent Leave:

- (i) Six weeks paid supporting parent leave will be granted to an employee following the birth, adoption or long-term fostering of a child.
- (ii) The Commission recognises that a parent may include a person who is in a demonstrated parental relationship to the child. The Commission may request reasonable proof in support of an application, which may include a statutory declaration.
- (iii) This period of supporting parent leave will count as service and may be taken in one block or, subject to operational requirements, as part of a flexible work arrangement within 12 months of the birth, adoption or fostering of the child.
- (iv) This leave is not available to employees covered by paid Maternity or Primary Carers leave provisions.
- (v) Paid leave may be accessed at half pay. Only the equivalent full pay period will count as service.

39.3 Where both parents are employees, the combined maximum period of leave without pay for both maternity and parental leave, including primary and supporting parent leave will not exceed 66 weeks from the date of birth or adoption of the child. Unpaid leave will not count as service.

40. REQUEST FOR ADDITIONAL LEAVE FOLLOWING MATERNITY OR PARENTAL LEAVE

40.1 An employee may request additional unpaid leave up to a further 52 weeks following their maternity leave or parental leave where they are the primary carer. This leave will not count as service.

40.2 For operational planning purposes requests for this additional leave should be made, where possible, at the commencement of the maternity or parental leave

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period. Otherwise, employees requesting additional leave under this clause are to provide at least 2 months notice of their request.

40.3 An employee may request in writing to return to work during this period on a date earlier than previously approved. The granting of such a request will be at the discretion of the Executive Director and subject to 2 months notice for planning purposes.

40.4 Employees resuming duty after this period of leave will return to the same classification level they held prior to their maternity or parental leave. Any request to resume work on part-time basis will be in writing and in accordance with Clause 26 of this Agreement.

41. JURY LEAVE

41.1 An employee is entitled to paid leave to attend jury service. An employee will continue to be paid by the Commission in lieu of any other payment for jury leave. An employee shall be required to pay to the Commission the amount received for jury service except payments relating to meals, accommodation or fares.

42. OTHER LEAVE

The Commission acknowledges there may be extraordinary personal circumstances where existing paid or unpaid leave does not provide adequate coverage to meet an employee's personal situation. At the discretion of the Executive Director, additional paid or unpaid leave may be provided in such circumstances.

42.1 Miscellaneous leave with pay may be granted by the Commission in, but not limited to, the following circumstances:

- (i) study leave;
- (ii) Defence Force Reservist training requirements;
- (iii) A day for National Aboriginal and Islander Day Observance Committee Week;
- (iv) war service sick leave;
- (v) participation in State Emergency Service activities and disasters such as bushfires, floods, and earthquake;
- (vi) special leave, including one day per year leave to move house, leave to attend funerals, and leave to allow an employee or an employee's partner to attend routine medical appointments, associated with pregnancy.

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- (vi) workplace relations training leave
- (vii) community volunteer leave of one day per calendar year to undertake voluntary work for a not-for-profit community organisation. The timing of the leave must be approved by the Supervisor. Additional unpaid leave of up to 4 days per calendar year may be approved based on operational requirements.

42.2 Employees may apply for leave without pay in, but not limited to, the following circumstances. Applications will be considered subject to the operational requirements of the Commission and equity with other employees.

- (i) for other purposes where paid leave has been exhausted, particularly for compassionate and family/personal reasons;
- (ii) approved full-time study commitments;
- (iii) work in other Commonwealth agencies; and
- (iv) days of cultural or religious significance;

42.3 (i) The maximum continuous period of personal leave which may be granted for absences due to personal illness or injury is 78 weeks, of which no more than 52 weeks may be paid. Personal leave beyond 78 weeks will be treated as if the employee has been granted additional personal leave without pay, subject to satisfactory medical evidence. This period of leave will not count as service for any purpose, excluding long service leave.

(ii) Any periods of approved full-time study under the studies assistance scheme, will not count as service for any purpose.

43. LONG SERVICE LEAVE

43.1 Employees covered by this Agreement are entitled to the provisions set down in the *Long Service Leave (Commonwealth Employees) Act 1976*.

43.2 Under the Act, employees are generally entitled to three months long service leave on full pay after 10 years qualifying service with a rate of accrual of 3/10 month per year of service.

43.3 Long Service Leave may be taken on half pay.

43.4 Part time employees accrue long service leave on a pro rata basis.

43.5 Long service leave is to be utilised on a calendar day basis and the minimum amount of long service leave that can be taken is seven calendar days.

44. PORTABILITY OF ACCRUED ANNUAL LEAVE AND SICK LEAVE ENTITLEMENTS

44.1 Where an employee joins the Commission on or after the certification date from an employer staffed under the *Public Service Act 1999*, the *Parliamentary Service Act 1999* or from the ACT Government Service, accrued annual leave and personal/carer's leave (however described) will be transferred, provided that there is no break in continuity of service.

45. PUBLIC HOLIDAYS

45.1 This agreement provides for employees to observe the following public holidays each year without loss of pay for standard hours:

- (i) 1 January (New Year's Day or, if that day falls on a Saturday or Sunday, the following Monday;
- (ii) 26 January (Australia Day) or, if that day falls on a Saturday or Sunday, the following Monday;
- (iii) Good Friday and the following Saturday and Monday;
- (iv) 25 April (Anzac Day) or a day substituted by a State or Territory;
- (v) in each State and Territory, the day observed to celebrate the anniversary of the birthday of the Sovereign;
- (vi) the day variously called 'Eight Hour Day', 'Labour Day', or 'May Day' as proclaimed by State or Territory governments;
- (vii) 25 December (Christmas Day) or, if that day falls on a Saturday or Sunday, 27 December; and
- (viii) 26 December (Boxing Day) or, if that day falls on a Saturday or Sunday, 28 December; and
- (ix) an additional 3 days within the Christmas/New Year period.

45.2 Public Holidays in conjunction with Leave

(i) No payment is made for public holidays occurring during leave without pay. However, employees on leave without pay either before or after a public holiday (or consecutive public holidays) are to be paid for those holidays.

(ii) Where the employee is receiving two different rates of pay either side of

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the public holiday (for any leave type), the employee is entitled to receive the higher rate of pay for the holiday.

(iii) Public holidays occurring during periods of long service leave or paid maternity leave are included as part of, and not additional to that leave.

45.3 Christmas and New Year Closedown : The Commission will be closed for business during the period between the Christmas Day and New Year's Day public holidays.

45.4 An employee in a state or territory may also observe up to 2 local public holiday(s) each year when:

- (i) those days are declared under State or Territory law and gazetted in the Government Gazette; and
- (ii) they are observed by the whole of the community in the State or Territory, (or relevant part of the State or Territory).

Part 3 E Separation Procedures

46. RESIGNATION

46.1 Notice Periods:

The Commission expects that employees would provide reasonable notice of their intention to resign. This notice period should be a minimum of two weeks where possible.

47. REDUNDANCY

47.1 Legislation

The legislative basis for certain action relating to the management of excess employees may be found in the *Public Service Act 1999*, specifically:

- s.23, relating to reducing an employee's classification;
- s.25, assignment of duties;
- s.27, the Public Service Commissioner's power to move an excess employee to another Agency; and
- s.29 , termination of employment

47.2 Excess Employee

(a) The procedure for handling excess employees set out below applies to all employees except:

- (i) an ongoing employee who is on probation;
- (ii) a non-ongoing employee.

(b) When the Commission is aware that an employee is likely to become excess,

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the Commission will advise the employee of the situation at the earliest practicable time. An employee is an excess employee if:

- (i) the Commission has a greater number of employees than is necessary for the effective performance of a particular role or function within the Commission;
- (ii) the services of the employee cannot be effectively used because of technological or other changes in the work methods of the Commission or changes in the nature, extent or organisation of the functions of the Commission; or
- (iii) 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 Commission has determined that the provisions of this clause will apply to that employee.

47.3 Consultation Process

The Commission will hold discussions with an excess employee. The maximum period allowed for such consultations should not exceed 4 weeks. Discussions will be held to consider:

- (i) Measures that could be taken to resolve the situation, including redeployment opportunities for the employee, at or below level, within or outside the Commission;
- (ii) Whether termination of employment (voluntary redundancy) might be appropriate;
- (iii) Where the employee chooses a representative, the Commission will hold the discussions with the employee's representative.
- (iv) Where 15 or more employees are likely to become excess the Commission will comply with the provisions of sections 170CL and 170GA of the *Workplace Relations Act 1996*.

47.4 Early Separation

- (i) Where an employee is likely to be the subject of action under these provisions, the Commission may provide to that employee an early separation opportunity.
- (ii) This option provides for separation to occur within 14 days of the employee being advised that they are excess under clause 47.2.
- (iii) It attracts an additional payment of 8 weeks salary (or 10 weeks for an employee over 45 years of age with at least 5 years continuous service), over and above any other amount paid on separation in accordance with clause 47.6.

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(iv) The payment is in lieu of the time that may have reasonably been expected to elapse for the purposes of the consultation, consideration periods and notice periods.

47.5 Separation With Consent

(i) Where an employee is advised in writing that they are excess and that it is proposed to terminate the employee in accordance with s.29 of the *Public Service Act 1999*, the employee will have a maximum period of one month to consider their position and provide their consent to the termination of their employment or request redeployment assistance.

(ii) The Commission will not give an employee notice of termination of their employment under s.29 of the *Public Service Act 1999* until the expiration of that one-month period (unless the employee requests an earlier termination of employment date within that one-month period).

(iii) Within that month, unless agreed otherwise, an employee consenting to termination of employment must be given all the relevant financial information, including:

- (a) amount of redundancy pay, pay in lieu of notice and cashable leave credits;
- (b) amount of accumulated superannuation contributions;
- (c) options open to the employee concerning superannuation;
- (d) taxation rules applying to the various payments; and
- (e) level of assistance up to a maximum of \$800 for financial advice and career counselling, reimbursed on production of receipts.

47.6 Redundancy Benefit:

(i) An employee who agrees to be voluntarily retrenched (including with an early separation offer) and whose employment is terminated by the delegate under s.29 of the *Public Service Act 1999* on the grounds he/she is excess to requirements is entitled to be paid a sum equal to two weeks' salary for each completed year of continuous service, plus a pro rata payment for completed months of service since the last completed year of service.

(ii) The minimum sum payable will be 4 weeks salary and the maximum will be 48 weeks salary.

(iii) The redundancy benefit 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.

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- (iv) For the purpose of calculating payment, salary and allowances will be in accordance with the classification levels at Appendix A and include:
 - (a) the employee's salary; or
 - (b) the salary including higher duties, where the employee has been receiving higher duties allowance 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,
 - (c) other 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.

47.7 Period of Notice:

- (i) Where the excess employee agrees to be voluntarily retrenched the Commission may terminate the employment of the employee by giving the required notice of termination of employment under s.29 of the *Public Service Act 1999*. The period of notice will be 4 weeks (or 5 weeks for an employee over 45 years of age with at least 5 years of continuous service).
- (ii) Where an employee whose employment is terminated at the beginning of or within the notice period, the employee will receive payment in lieu of notice as set out in the *Workplace Relations Act 1996* for the unexpired portion of the notice period. This amount is additional to any redundancy benefit payment.

47.8 Periods of Service:

(a) For earlier periods of service to count there must be no breaks between the periods of service, except where:

- (i) the break in service is less than 1 month and occurs where an offer of employment with the new employer was made and accepted by the employee before ceasing employment with the preceding employer; or
- (ii) the earlier period of service was with the APS and ceased because the employee was deemed to have resigned from the APS on marriage under the then section 49 (as repealed in 1966) of the repealed *Public Service Act 1922*.

(b) Subject to 47.8 (a) service for redundancy pay purposes means:

- (i) service with the Commission;
- (ii) Government service as defined in section 10 of the *Long Service Leave Act 1976*;

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- (iii) service with the Commonwealth (other than service with a joint Commonwealth-State body corporate in which the Commonwealth has a controlling interest) which is recognised for long service leave purposes;
- (iv) service with the Australian Defence Forces;
- (v) APS service immediately preceding deemed resignation under the then section 49 (as repealed in 1966) of the repealed *Public Service Act 1922*, if the service has not previously been recognised for severance pay purposes; and
- (vi) 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. (note: transfer means the movement to a new agency under the *Public Service Act*.)

(c) Any period or service which ceased through termination of employment on the following grounds will not count as service for redundancy pay purposes:

- (i) the employee lacks, or has lost an essential qualification for performing his or her duties;
- (ii) non-performance, or unsatisfactory performance of duties;
- (iii) inability to perform duties because of physical or mental incapacity;
- (iv) failure to satisfactorily complete an entry level training course;
- (v) failure to meet a condition imposed under subsection 22(6) of the *Public Service Act*, including probation;
- (vi) a breach of the Code of Conduct;
- (vii) for a reason equivalent to a reason listed above at 47.8 (i) to (vi) under the repealed *Public Service Act 1922*
- (viii) any other ground prescribed by the *Public Service Regulations*;
- (ix) through voluntary retrenchment at or above the minimum retiring age applicable to the employee; or
- (x) with the payment of a redundancy benefit or similar payment or an employer financed retirement benefit.

(d) Absences from work which do not count as service for long service leave purposes will not count as service for severance pay purposes.

47.9 Redeployment

- (i) The Commission will assist employees throughout the redeployment process by providing, amongst other things, reasonable expenses and time off to attend necessary employment interviews.
- (ii) If an excess employee wishes to be redeployed rather than consent to termination of employment, the Commission will take all reasonable steps,

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consistent with the efficient management of the Commission, to assign duties to that employee in accordance with s. 25 of the *Public Service Act*.

- (iii) In the first instance, this placement will be handled within the Commission.
- (iv) The Commission may also choose to offer the services of a selected outplacement/career management provider at any point in the process (on and from the point the employee is advised that they are likely to become excess).
- (v) The redeployment process commences from the date the employee is advised, in writing, that they are an excess employee.
- (vi) Where the Commission is satisfied that there is insufficient productive work available for the employee within the Commission during the remainder of his or her redeployment period, the Commission may, with the agreement of the employee, terminate the employee's employment under s.29 of the *Public Service Act 1999* and pay an agreed lump sum not greater than the salary which would be payable for the balance of the redeployment period.
- (vii) It remains open to an employee to consent to termination at the end of two months, in preference to continuing redeployment action. If an employee consents to termination of employment at this point and this employment is terminated by the Commission under s.29 of the *Public Service Act 1999* on the grounds he/she is excess to requirements they will be eligible to receive the full redundancy benefit.

47.10 Salary Maintenance

Where the Commission reduces the classification of an employee under s.23 of the *Public Service Act 1999*, salary maintenance will be applied from the date of reduction in classification for a period of 6 months. Salary maintenance will be calculated on the basis of the employee's regular and ongoing salary.

47.11 Involuntary Termination of Employment

- (i) If after 3 months from the date an employee has been identified as an excess employee:
 - (a) the Commission has been unable to assign duties to the employee (at or below level) despite having taken all reasonable steps to do so; and
 - (b) the employee has not consented to termination of employment, the Commission may decide to involuntarily terminate the employment of the excess employee under s.29 of the *Public Service Act 1999*.
- (ii) An excess employee cannot have their employment terminated involuntarily unless they have rejected the opportunity to provide their consent to their termination of employment.

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(iii) employees whose employment has been terminated involuntarily by the Commission under s.29 of the *Public Service Act 1999* will receive the same entitlements on termination as employees who consent to termination of employment except that the redundancy benefit will be reduced to account for salary payments received during the redeployment period. The reduction in the amount of the redundancy benefit cannot be more than half the amount the employee would have received if they had provided their consent to termination of their employment.

47.12 Where a separate payment would facilitate the speedy resolution of major organisational change, and it can be demonstrated that special circumstances exist, the Commission may, with the agreement of the responsible Minister and the Public Service Minister or the Minister for Employment and Workplace Relations, make a separate financial payment in addition to and separate from the entitlements prescribed in this Section for excess employees.

48. PAYMENT ON DEATH

48.1 Where an employee has died or the Commission has directed that an employee will be presumed to have died on a particular date, the Commission may authorise the payment of the amount to which the former employee would have been entitled had the employee ceased employment as if the employee had resigned or retired. Payment may be made to dependents or the partner of the former employee or the former employee's legal personal representative. If a payment has not been made within 12 months of the former employee's death, it shall be paid forthwith to the legal personal representative.

48.2 On the death of an employee, any monies owing to the Commission as a result of advanced annual leave credits will be waived.

49. ABANDONMENT OF EMPLOYMENT

49.1 The absence of an employee from work for a continuous period exceeding two weeks without the consent of the Commission and without notification to the local supervisor shall be prima facie evidence that the employee has abandoned employment.

49.2 Provided that if, within a period of three weeks from the employee's last attendance at work or the date of his/her last absence in respect of which notification has been given or consent has been granted, an employee has not established to the satisfaction of the Commission that the absence was for reasonable cause, the employee shall be deemed to have abandoned employment.

49.3 Termination of employment by abandonment in accordance with this sub-clause shall operate as from the date of the last attendance at work or the last day's

absence in respect of which consent was granted, or the date of the last absence in respect of which notification was given to the Commission, whichever is the latter.

49.4 Where an employee is considered to have abandoned their employment the Commission will take action under s.29 (3) (c) of the *Public Service Act 1999* to terminate their employment.

Part 3F Safe and Supportive Working Environment

50. OCCUPATIONAL HEALTH AND SAFETY

50.1 The parties to this Agreement are committed to effective co-operation between the Commission and its employees on OH&S matters. The Commission and its employees aim to create and maintain a safe working environment and to fulfil their requirements under the *Occupational Health and Safety (Commonwealth Employment) Act 1991 (OH&S Act)*.

50.2 **Employer Responsibilities:** The Commission recognises that it has a legal responsibility to provide a healthy and safe work place and work methods. To meet its obligations under the *OH&S Act*, the Commission will:

- (i) hold all levels of management responsible and accountable for the health, safety and rehabilitation matters in the areas under their control;
- (ii) develop and maintain health, safety and welfare policies that are consistent with the *OH&S Act* and the Regulations;
- (iii) facilitate and support the activities of Health and Safety Representatives;
- (iv) provide funds and paid leave for Health and Safety Representatives to attend training courses accredited in accordance with subsection 27(1) of the *OH&S Act*;
- (v) as appropriate, ensure that expert advice is available on OH&S matters affecting employers, employees and contractors;
- (vi) provide ongoing education for employees on the basic principles of OH&S and their rights, responsibilities and obligations under the *OH&S Act*;
- (vii) place the safety of employees and the public ahead of the protection of equipment and services;
- (viii) provide and maintain safe plant, equipment and systems of work including safe storage and handling of substances; and

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- (ix) consult with employees and where they choose, their representatives about OH&S issues.

50.3 Employee Responsibilities: At work employees must take all reasonable practicable steps to ensure that they:

- (i) do not risk their own health and safety, or that of any other person - whether an employee or not;
- (ii) co-operate with the Commission to allow the Commission to meet its duties as an employer under the *OH&S Act*, and
- (iii) use the safety equipment provided to them by the Commission in accordance with any instructions about its safe and proper use.

50.4 Under the *Safety, Rehabilitation and Compensation Act 1988*, the Commission has an ongoing responsibility to manage workers' compensation claims and provide rehabilitation and return to work programs for injured employees. Supervisors and colleagues of injured employees will cooperate with case managers to provide the necessary work environment and duties to enable employees to achieve the objectives set down in their rehabilitation plan.

51. EMPLOYEE ASSISTANCE

51.1 The Commission will continue to provide employees with access to a confidential, professional counselling service to help them resolve both personal and work related problems. On commencement employees will be advised of the availability of the service.

51.2 There will be no initial cost to employees who contact the counselling service however if the counselling service refers the employee to another service or agrees to provide services in addition to those under contract to the Commission then the employee will be responsible for any costs which may arise.

52. REASONABLE ADJUSTMENT

The Commission is committed to providing any essential work related aids and equipment to ensure that employees are provided with the opportunity to work as efficiently and effectively as possible. The Commission will make workplace adjustments to accommodate the needs of employees wherever it is necessary, possible, and reasonable.

Part 3G Review of Employment Decisions

53. REVIEW OF EMPLOYMENT DECISIONS

53.1 The entitlements of employees to a review of actions affecting them in the course of their employment are established under the *Public Service Act 1999*

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(section 33 - "Review of Actions") and Part 5 of the *Public Service Regulations 1999*.

53.2 Promotions: Ongoing employees may seek reviews of certain promotion decisions in accordance with Division 5.2, Part 5 of the *Public Service Regulations 1999*. Applications for such reviews must be made to the Merit Protection Commissioner.

53.3 Termination of employment:

(i) The sole and exhaustive rights and remedies of an employee in relation to termination of employment are those that the employee has under:

- (a) the *Workplace Relations Act 1996*;
- (b) other Commonwealth laws (including the Constitution); and
- (c) at common law.

(ii) Termination of, or a decision to terminate employment, cannot be reviewed under Procedures for Preventing and Settling Disputes (Clause 9) or procedures for the Review of Actions and Other Decisions (sub-clauses 53.5 to 53.10 inclusive) of this Agreement.

(iii) Nothing in this Agreement prevents the Agency Head from terminating the employment of an employee for serious misconduct, without further notice or payment in lieu, consistent with the *Workplace Relations Act 1996*, and subject to compliance with the procedures established by the Agency Head for determining whether an employee has breached the Code of Conduct under section 15 of the *Public Service Act 1999*.

53.4 Unsatisfactory Performance of Duties ('Underperformance'):

Where an employee is aggrieved about an action or decision related to the unsatisfactory performance of their duties, these matters will be addressed under the provisions at clause 16 of this Agreement for managing underperformance and, if necessary, under 53.3 above concerning termination of employment.

53.5 Review of Other Actions and Decisions: An employee aggrieved by an action or decision concerning other matters affecting them in the course of their employment are entitled to seek a review of such actions or decisions in accordance with Division 5.3, Part 5 of the *Public Service Regulations 1999*. Pursuant to the Regulations an application for a primary review may be made to the President or delegate or in certain circumstances to the Merit Protection Commissioner. Secondary reviews may be sought from the Merit Protection Commissioner under subsection 5.3.3 of the Regulations.

53.6 Where, for the purposes of 53.5 above, an employee has been unable to resolve the matter in discussion with his or her supervisor or, where it is not appropriate to discuss the matter with his or her supervisor, the employee may request an internal (primary) review of the matter.

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53.7 Where a primary review is to be conducted by Commission, the following procedures and principles shall apply:

53.8 (a) A request from an employee for an internal review of a matter must:

- (i) be in writing;
- (ii) be made while the employee is still employed by the Australian Public Service;
- (iii) describe the matter;
- (iv) set out the reasons why the employee is aggrieved;
- (v) be addressed to the Commission.

(b) A request from an employee for an internal review of a matter should also:

- (i) be made within 12 months of the action occurring or it coming to the attention of the employee;
- (ii) specify the outcome sought from the review

53.9 (i) As soon as practicable after receiving a request pursuant to subclause 53.8, the Commission shall appoint a suitably qualified person who is not involved in or affected by the matter as a review officer to inquire into and where appropriate attempt to conciliate the matter.

(ii) The review officer will as soon as practical discuss the matter with the aggrieved employee to assess and if possible agree on the appropriate course of action to be followed and the limits of the inquiry.

(iii) The review officer will attempt to resolve the matter by conciliation unless he or she considers it is inappropriate to do so in the circumstances.

(iv) If conciliation is not successful or is considered inappropriate the review officer may, having regard to the principles of natural justice, confidentiality and privacy, inquire into the matter in any lawful manner he or she thinks fit.

(v) The review officer will ensure that all parties to the review know the case against them and have the opportunity to comment on material which may result in findings adverse to them.

(vi) The standard of proof to apply will be the balance of probabilities.

(vii) Full investigation of alleged incidents, statements and events will only be conducted if preliminary consideration shows that this would achieve some useful purpose.

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53.10 (i) The review officer shall advise, in writing, the aggrieved employee and the Commission of the findings of the internal inquiry, including the reasons for any recommendations arising from the findings of the internal inquiry.

(ii) As soon as possible after being advised of the findings of the internal inquiry, the Commission shall inform the aggrieved employee of the outcome of the internal inquiry, including any action to be taken in respect of the matter which was the subject of the internal inquiry.

Part 3H Allowances

54. FIRST AID CERTIFICATE ALLOWANCE

54.1 Where the Commission is satisfied that an employee possesses a current first aid certificate and continuing ability commensurate with that qualification and the employee has first aid responsibilities, the employee will be appointed as a first aid officer and paid an allowance of \$40.00 per fortnight.

54.2 For the purpose of clause 54.1 a first aid certificate issued by either the St John's Ambulance Association or the Australian Red Cross is recognised.

55. HEALTH AND SAFETY REPRESENTATIVE ALLOWANCE

55.1 An employee who has attended an approved and accredited Health and Safety course and who performs the duties of a Health and Safety Representative (HSR) shall be paid an allowance of \$20.00 per fortnight. Payment of the allowance will be conditional on the HSR attending OH& S meetings.

56. FIRE WARDEN ALLOWANCE

56.1 An employee who has a recognised responsibility as a Fire Warden and who has attended fire warden training shall be paid an allowance of \$20.00 per fortnight. Payment of the allowance will be conditional on the employee attending regular training as required and participating in fire drills.

57. MOTOR VEHICLE ALLOWANCE

57.1 Where the Commission considers that it will result in greater efficiency or involve less expense, it may authorise an employee to use a private motor vehicle owned or hired by that employee at their own expense for official purposes.

57.2 Motor vehicle allowance will be payable in accordance with the ATO Reasonable Allowance rates, as varied from time to time.

58. TRAVELLING ALLOWANCE

58.1 A travelling allowance shall be payable to an employee who undertakes travel on official business and is required to be absent overnight.

58.2 Travelling allowances are in addition to the cost of conveyance.

58.3 An employee who is travelling to a place of work in anticipation of a permanent move to that place of work, and who has been advised in writing that the move is to be made permanent, will not be eligible to receive travelling allowance during employment at that place of work.

58.4 Travelling Allowance Rates:

(i) An employee who is required to be absent overnight from the employee's usual place of work on official business, under clause 58.1 will be paid, prior to undertaking the travel, in accordance with the Australian Taxation Office rulings on reasonable daily travel allowance amounts (equivalent non-SES rates). These rates are contained in the Commission's **Official Business Travel Rates Guidelines** and updated annually in accordance with the ATO ruling.

(ii) **Private Non-Commercial rate:** Where commercial accommodation is not required the employee is not eligible to receive a payment under clause 58.4(i). The employee will be eligible to receive a payment for every overnight absence in accordance with Australian Taxation Office rulings for reasonable daily travel allowance (equivalent non-ses) amounts for meals and incidentals (for capital cities) published annually.

58.5 **Reviewed travelling allowance** - after an employee has resided in the one locality for a period of 21 days, the employee will be paid an allowance equal to the amount actually expended on accommodation, meals and incidentals, or an amount which the Commission considers to be reasonable in the circumstances.

58.6 **Part Day Travelling Allowance:** It is recognised that employees may be required to be absent for more than a standard day when travelling to attend meetings in regional areas or interstate. To compensate an employee for time spent travelling and additional costs, an employee who is required to be absent from the employee's usual place of work on official business for a period of not less than 10 hours but is not absent overnight, may be paid, \$80.

58.7 **Approval of Additional Expenses:** Where proof is provided to the satisfaction of the Commission that the allowance payable to an employee under 58.1, 58.4 and 58.6 is either insufficient to cover, or in excess of, expenses which have been, or may be, incurred, the Commission may direct the payment in lieu of that allowance as is necessary to meet those expenses.

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58.8 Repayment when travel not undertaken: An employee who fails to undertake the anticipated travel, or who undertakes the travel for a lesser period than anticipated, will repay either the full travel allowance, or the difference between the allowance paid and the amount that would have been payable for the actual absence.

58.9 Accommodation/Meals Provided by the Commonwealth: Where an employee is provided with either accommodation or adequate meals, or both, at Commonwealth expense:

(i) the employee will not be paid those components of the allowance under subclause 58.1 in respect of any accommodation or meals provided; and

(ii) payment will be made in respect of incidental expenses during the period as the Commission directs.

58.10 Where an employee who is absent on duty from the employee's usual place of work takes personal / carer's leave for a condition for which the employee is not at fault and is unable to return home, the employee is entitled to be reimbursed an amount equal to the costs incurred by the employee up to the amount that would be payable under subclause 58.1.

58.11 Reimbursement for carer's costs: Where an employee is required to travel for the purpose of official duty away from his or her usual place of work the employee will, subject to prior approval of the arrangements and the cost, be entitled to be reimbursed for any additional costs associated with additional care arrangements.

58.12 Airline Lounge Membership

Employees who undertake work related travel and are not eligible to be considered under the Commission's corporate business lounge membership may enter into a salary sacrifice arrangement. Employees must certify that their travel is predominately work related for Fringe Benefit Tax purposes.

58.13 Overseas Travel:

(i) An employee required to travel on official business overseas will be provided with a recoverable cash advance to meet reasonable accommodation, meal and incidental expenses. The cash advance will be administered on a case by case basis having regard to the costs associated with the country being visited. The rates in accordance with the Australian Taxation Office Rulings will be used as a basis for determining reasonable expenses.

(ii) An employee will be required to comply with the conditions for overseas travel set out in the Commission's overseas travel diary and acquit any payments.

59. DISRUPTION ALLOWANCE

59.1 The objective of these procedures is the prevention, avoidance and resolution of disruptions associated with construction or building or alterations or refurbishment activities (building activities). These measures are based on the provision of information, explanation, consultation, co-operation and negotiation.

59.2 For the purposes of this subclause:

- (i) disruption means the detrimental effects on the working conditions of employees caused by a variety of factors including one or generally more of the following: dust, noise, fumes, heat, vibrations, cold, wet, dirt, loss of amenities, general inconvenience; and
- (ii) building activities means any building activities which may cause disruption at any Commission location.

59.3 The following procedures will apply to ensure that proper consultation and negotiation between the Commission and the relevant employees and where they choose their representatives will occur.

59.4 As soon as practicable after the Commission becomes aware that building activities either undertaken by the Commission or by another party independently from the Commission may cause disruption at a particular Commission location, the Commission will provide, in writing, relevant details to the employees concerned and where they choose their representatives.

59.5 Range of measures: discussions between the Commission and the relevant employees and where they choose their representatives on a range of measures, including temporary relocation, to prevent employees from being subjected to any disruptions.

59.6 **Relevant details:** relevant details for the purposes of subclause 59.4 will include, but not be limited to:

- (i) the details of the proposed building activities including the proposed timing of such activities;
- (ii) the number and location of employees likely to be affected; and
- (iii) the measures proposed to be taken. These may include suitable temporary accommodation, temporary provision of equipment or facilities to improve conditions and other suitable and appropriate measures.

59.7 Where employees are to be relocated to suitable temporary accommodation for an agreed period, the Commission will provide the employees affected with details of the proposed relocation as soon as practicable so that adequate

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consultation with the employees and where they choose their representatives on the relocation will occur.

59.8 If the suitable temporary accommodation is in a number of different locations, the Commission will consult with the employees affected and where they choose their representatives as to which of the other locations individual employees may be attached, having regard to operational requirements, and the minimisation of travel in excess of that the employee ordinarily undertakes to and from the employee's home.

59.9 Where employees are temporarily relocated, relevant provisions in relation to excess travelling time and fares will apply, if applicable, for the duration of temporary relocation.

59.10 In situations where, following the operation of the procedures in this subclause and/or due to unavoidable or other particular circumstances, "disruption" exist at a particular Commission location, the Commission and the relevant employees and where they choose their representatives will negotiate without delay on the payment of an appropriate disruption allowance. Where no agreement can be reached, the matter may be referred to the AIRC for conciliation and/or arbitration.

60. CLASS OF AIR TRAVEL

60.1 An employee is entitled to economy class where required to travel on official business within Australia.

60.2 An employee is entitled to business class where required to travel on official business overseas.

61. RELOCATION EXPENSES

61.1 The Commission may determine the extent of any financial assistance for relocation from one locality to another upon promotion, engagement or movement of an employee.

62. LOSS, DAMAGE AND INDEMNITY

62.1 The Commission may approve reimbursement to an employee for loss or damage to clothing or personal effects which occurred in the course of the employee's work.

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APPENDIX A

*Refer to Clause 17- Increases in Rates of Pay

Classification	Current	8 January 2009 4% or from the date of certification whichever is the later	7 January 2010 4%	6 January 2011 4%	
Broadband	APS 1	34,434	\$35,811	\$37,244	\$38,734
		35,591	\$37,015	\$38,495	\$40,035
		36,555	\$38,017	\$39,538	\$41,119
		38,057	\$39,579	\$41,162	\$42,809
Broadband	APS 2	40,043	\$41,645	\$43,311	\$45,043
		41,093	\$42,737	\$44,446	\$46,224
		42,161	\$43,847	\$45,601	\$47,425
		43,215	\$44,944	\$46,741	\$48,611
Broadband	APS 3	44,387	\$46,162	\$48,009	\$49,929
		45,540	\$47,362	\$49,256	\$51,226
		46,698	\$48,566	\$50,509	\$52,529
		47,907	\$49,823	\$51,816	\$53,889
Broadband	APS 4	49,470	\$51,449	\$53,507	\$55,647
		51,045	\$53,087	\$55,210	\$57,419
		52,371	\$54,466	\$56,644	\$58,910
		53,714	\$55,863	\$58,097	\$60,421
Broadband	APS 5	55,178	\$57,385	\$59,681	\$62,068
		56,907	\$59,183	\$61,551	\$64,013
		58,510	\$60,850	\$63,284	\$65,816
		59,596	\$61,980	\$64,459	\$67,037
Broadband	APS 6	\$61,079	\$63,522	\$66,063	\$68,706
		\$62,751	\$65,261	\$67,871	\$70,586
		\$65,906	\$68,542	\$71,284	\$74,135
		\$68,458	\$71,196	\$74,044	\$77,006
Executive 1 (EL1)		\$76,401	\$79,457	\$82,635	\$85,941
		\$79,082	\$82,245	\$85,535	\$88,956
		\$82,498	\$85,798	\$89,230	\$92,799
		\$83,782	\$87,133	\$90,619	\$94,243
Executive 2 (EL2)		\$88,116	\$91,641	\$95,306	\$99,119
		\$91,857	\$95,531	\$99,353	\$103,327
		\$95,872	\$99,707	\$103,695	\$107,843
		\$101,483	\$105,542	\$109,764	\$114,155
		\$105,879	\$110,114	\$114,519	\$119,099

APPENDIX B

SUPPORTED WAGE FOR EMPLOYEES WITH A DISABILITY

1 Employees eligible for a supported wage

This Appendix defines the conditions which will apply to employees who, because of the effects of a disability, are eligible for a supported wage. In the context of this appendix, the following definitions will apply:

"Supported Wage System" means the Commonwealth Government system to promote employment for people who cannot work at full salary because of a disability, as documented in the Department of Health and Family Services Supported Wage System Handbook.

"Accredited Assessor" means a person accredited by the managing unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.

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

"Assessment instrument" means the form 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.

2. Eligibility Criteria

Employees covered by this appendix will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged, because of the effects of a disability on their productive capacity and who meet the impairment criteria test for a Disability Support Pension.

This appendix 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 provisions of this agreement relating to the rehabilitation of employees who are injured in the course of their employment.

3. Supported Wage Rates

Employees to whom this appendix applies shall be paid the applicable percentage of the relevant salary rates under this agreement, according to the following schedule:

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Assessed Capacity	% of Relevant Salary Rate
10%	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

4. Assessment of Capacity

For the purpose of establishing the percentage of the relevant salary rate to be paid to an employee under this agreement, the productive capacity of the employee will be assessed in accordance with the Supported Wage System and documented in an assessment instrument.

5. Lodgement of Assessment Instrument

5.1 All assessment instruments under the conditions of this appendix, including the appropriate percentage of the relevant salary rate to be paid to the employee, shall be lodged by the Commission with the Industrial Registrar of the Australian Industrial Relations Commission.

5.2 All assessment instruments shall be agreed and signed by the parties to the assessment.

6. Review of Assessment

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

7. Other Terms and Conditions of Employment

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

8. Workplace Adjustment

The Commission shall take all 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 employees in the area.

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9. Trial Period

9.1 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 appendix for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.

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

9.3 The minimum amount payable to the employee during the trial period shall be no less than \$69 per week.

9.4 Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under clause 4 of this appendix.

Workplace Flexibility Principles

The Commission will commit to workplace flexibility arrangements guided by the following overarching principles:

- An employee has the right to request flexible working arrangements.
- All flexibility proposals will be considered in the context of operational and team requirements.
- Generally, approved flexibility proposals will have a neutral effect on staffing levels.
- OHS implications of flexibility proposals will be assessed.
- Approved flexibility proposals will be linked to performance management agreements.
- Flexibility proposals will address supervisory arrangements.
- Implemented flexibility proposals will be set for agreed periods, evaluated annually and reported to the Commission.
- Successful models will be promoted.

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Catherine Branson
President

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Date

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Stephen Jones
National Secretary
Community Public Sector Union

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Date