

# **Attorney-General's Department Enterprise Agreement 2016**

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## **Part 1 Introduction**

### **Division 1.1 Name and coverage**

#### **1.01 Name of Agreement**

This Agreement is the *Attorney-General's Department Enterprise Agreement 2016*.

#### **1.02 Coverage**

This Agreement covers:

- (a) the Secretary of the Attorney-General's Department, on behalf of the Commonwealth; and
- (b) non-SES employees (within the meaning of the *Public Service Act 1999*) in the Attorney-General's Department.

### **Division 1.2 Interpretation**

#### **1.03 Interpretation**

- (1) In this Agreement:

**AGS** means the organisational element within the Department that is headed by the Australian Government Solicitor.

**AGS employee** means an employee assigned to perform the duties of a position in AGS, excluding an employee assigned to duties in the Corporate Support Unit of AGS.

**AGS fee earner** means an AGS employee eligible to earn a net production bonus or be eligible for consideration for a percentage of salary bonus under Schedule 3, Part 2.

**approved classification** means an approved classification under the Classification Rules.

**Classification Rules** has the same meaning as in the *Public Service Act 1999*.

**commencement date** means the date on which, under subclause 7.01(1), this Agreement commences.

**CSS** means Commonwealth Superannuation Scheme

**Department** means the Attorney-General's Department.

**employee** means an employee this Agreement covers and, unless a contrary intention is indicated, includes an AGS employee.

**former Agreement** means the *Attorney-General's Department Enterprise Agreement 2011*.

**former AGS Agreement** means the *Australian Government Solicitor Enterprise Agreement 2012*.



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

***FWC*** means the Fair Work Commission.

***LSL Act*** means the *Long Service Leave (Commonwealth Employees) Act 1976*.

***ML Act*** means the *Maternity Leave (Commonwealth Employees) Act 1973*

***non-ongoing APS employee*** has the same meaning as in the *Public Service Act 1999*.

***Non-SES employee*** means an employee who is allocated an approved classification contained at Schedules 1 or 2 in the Classification Rules, excluding classifications at groups 9, 10 and 11 of Schedule 1.

***NSH employees*** means employees engaged on an irregular or intermittent (casual) employment basis to perform functions associated with the operation of the National Security Hotline.

***ongoing APS employee*** has the same meaning as in the *Public Service Act 1999*.

***outpost employee*** means an AGS employee who works exclusively with or for a particular client for an agreed period either in the agency or from AGS.

***ordinary hours of work:***

- (a) for a full-time employee – has the meaning given by subclause 4.01(1); and
- (b) for a part-time employee – has the meaning given by subclause 4.01(2).

***ordinary span of work hours*** has the meaning given by subclause 4.01(3).

***ordinary working pattern*** is the pattern of work provided for by clause 4.02.

***part-time employee*** means:

- (a) for AGS employees – an employee whose ordinary hours of duty are less than 150 hours over the 4 week settlement period; and
- (b) for other employees – an employee whose ordinary hours of duty are less than 75 hours over the 2 week settlement period, other than an employee eligible for a loading under subclause 3.08(1) for performing duties that are intermittent or irregular.

***pay point***, for an employee (other than an AGS employee), means the pay point mentioned in Schedule 1 at which salary is payable to the employee.

***PS Act*** means the *Public Service Act 1999*.

***PSS*** means Public Sector Superannuation Scheme.

***PSSap*** means Public Sector Superannuation Accumulation Plan.

***public holiday*** has the meaning given by clause 4.11.

***salary*** has the meaning given by clause 1.04.

***salary barrier*** means:

- (a) for Subdivisions 3.2.2, 3.2.3 and 3.2.4 – the APS Level 6 classification; and
- (b) for clause 3.38

**Clause 1.04**

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- (i) for AGS employees – the APS Level 6 classification; and
- (ii) for other employees – the APS 4.2 pay point.

*Secretary* means the Secretary of the Department.

*SES employee* has the same meaning as in the *Public Service Act 1999*.

*Settlement period* has the meaning given by clause 4.01(1).

*shiftworker* means an employee who is rostered to perform ordinary duty outside the hours of 6:30 am to 6:00 pm for an ongoing or fixed period.

*transitional employee* means an employee who was covered by the former AGS Agreement immediately prior to commencement of this Agreement while they remain in continuous employment in AGS.

*WRC* means the Department’s Workplace Relations Committee.

**1.04 Meaning of salary**

The salary rate payable to an employee under Schedules 1 and 2 is the employee’s salary for all purposes of this Agreement and is not affected for any purpose by the employee’s participation in a variable purchased leave arrangement or an election to sacrifice salary for non-monetary benefits. Salary does not include employer superannuation contributions, allowances or bonuses.

*Note* In some circumstances, additional remuneration paid under an Individual Flexibility Arrangement, shift penalties, higher duties allowance and other allowances may count as salary for superannuation purposes in accordance with the rules of the employee’s superannuation scheme.

**Part 2 Performance management and development**

**Division 2.1 Study leave and assistance**

**2.01 Availability of study leave and assistance**

The Secretary may grant leave of absence or financial assistance to an employee for the purpose of study relevant to employment in the Department. For more information about study assistance, employees should consult:

- (a) for AGS employees – the AGS Employment Handbook; and
- (b) for other employees – the AGD Employee Relations Advice *Study Assistance Policy and Guidelines*.

## Division 2.2 Managing for better performance

### 2.02 Program for Performance Improvement

- (1) The Program for Performance Improvement (*PPI*) provides the basis for managing the performance of employees, particularly to improve work performance, consistent with the achievement of corporate objectives by:
  - (a) ensuring that every employee in a work team has a clear understanding of their role and responsibilities; and
  - (b) facilitating the early identification of employee underperformance based on objective work-related data; and
  - (c) identifying personal development opportunities for employees that are relevant to their professional and career goals and the Department's skill and knowledge requirements; and
  - (d) ensuring there are no 'surprises' for employees in appraisals of their work performance.
- (2) Employees will participate in the PPI. For more information about the PPI, employees should consult:
  - (a) for AGS employees – the AGS Employment Handbook; and
  - (b) for other employees – the AGD Employee Relations Advice *Program for Performance Improvement and Managing Underperformance*.
- (3) The emphasis of the PPI is on facilitating and positively reinforcing performance at least at a satisfactory level. However, performance that is assessed as being at lower than a satisfactory level may result in action under the Department's procedures for managing underperformance.
- (4) Under the procedures for managing underperformance that apply to ongoing employees:
  - (a) the employee will be afforded procedural fairness, including the right to be represented, if the employee chooses, by his or her chosen representative, in discussions with managers about the application of the procedures; and
  - (b) a formal assessment may be made of the employee's performance over a period of:
    - (i) at least 6 weeks; and
    - (ii) not more than 13 weeks.
- (5) Different procedures for managing underperformance may apply to employees on probation and non-ongoing employees.

**Clause 3.01**

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## **Part 3                      Job classification and remuneration**

### **Division 3.1              Job classification**

#### **3.01              Classification structure**

The classification structure, including training classifications:

- (a) for AGS employees – is set out in Schedule 2; and
- (b) for other employees – is set out in Schedule 1.

#### **3.02              Broadbanding within the 8 level classification structure**

- (1) APS Level 1 and APS Level 2 positions, other than in AGS, are covered by the APS Level 1–2 broadband.
- (2) APS Level 5 and APS Level 6 positions, other than in AGS, are covered by the APS Level 5–6 broadband.
- (3) The AGD Entry Level Programs Broadband structure applies to employees, other than AGS employees, who successfully complete the AGD Graduate Program, Pathways Trainee Program or Indigenous Australian Government Development Program, to enable their advancement in accordance with clauses 3.04 and 3.05.
- (4) APS Level 3, 4, 5 and 6 positions designated as Lawyer in AGS are covered by the APS 3–6 Lawyer broadband.
- (5) APS Level 4 and 5 positions designated as Paralegal in AGS are covered by the APS 4–5 Paralegal broadband.
- (6) APS Level 2 and 3 positions designated as Legal Practice Support in AGS are covered by the APS 2–3 Legal Practice Support broadband.
- (7) The AGS Entry Level Programs Broadband structure applies to AGS employees who successfully complete the AGD Graduate Program, Pathways Trainee Program or Indigenous Australian Government Development Program, to enable their advancement in accordance with clauses 3.04 and 3.05.
- (8) Where an employee is assigned duties within a broadband, the employee retains a single approved classification within that broadband which reflects the work value of the duties being performed.

#### **3.03              Treatment of positions requiring legal qualifications and skills**

A position that requires an AGS employee to hold a degree in law, be admitted in Australia as a legal practitioner, be on the roll of practitioners of a Supreme Court or the High Court of Australia, use professional legal skills and abilities, and provide legal services to clients must be:

- (a) a broadbanded position covering the APS Level 3, 4, 5 and 6 classifications at the Lawyer designation; or
- (b) a position classified as Executive Level 1 at the Lawyer designation; or

- (c) a position classified as Executive Level 2 at the Lawyer designation.

### **3.04 Graduate APS employees**

- (1) An employee who is classified as a Graduate APS employee must undertake a course of training decided by the Secretary.
- (2) If the Secretary is satisfied that the employee has successfully completed the course of training, the Secretary must:
  - (a) for an employee who is or is to be an AGS employee – allocate to the employee the approved classification of APS Level 3; and
    - (i) for an employee who successfully completes the course of training on or before 30 June 2017, subsequently assign the employee the duties of an AGS Entry Level Programs Broadband position, and then the duties of an APS Level 5 position at the Lawyer designation at a salary rate decided by the Secretary; or
    - (ii) for an employee who successfully completes the course of training after 30 June 2017, subsequently assign the employee the duties of an AGS Entry Level Programs position, and then duties of an APS Level 4 position at the Lawyer designation at a salary rate decided by the Secretary; and
  - (b) for other employees – allocate to the employee the approved classification of APS Level 3; and
    - (i) for an employee who successfully completes the course of training on or before 30 June 2017, subsequently assign the employee the duties of an AGD Entry Level Programs Broadband position, and then the duties of an APS Level 5 position at the APS 5.1 pay point within the APS 5–6 broadband; or
    - (ii) for an employee who successfully completes the course of training after 30 June 2017, subsequently assign the employee the duties of an AGD Entry Level Programs position, and then duties at the APS Level 4 classification at the APS 4.4 pay point.

### **3.05 Indigenous trainee programs**

- (1) An employee who is participating in the Pathways Trainee Program or Indigenous Australian Government Development Program must undertake a course of training decided by the Secretary.
- (2) If the Secretary is satisfied that the employee has successfully completed the course of training, the Secretary must:
  - (a) for an employee who is or is to be an AGS employee:
    - (i) for an employee who successfully completes the Pathways Trainee Program, subsequently assign the employee to the duties of an AGS Entry Level Programs Broadband position, and then the duties of an APS Level 3 position at a salary rate decided by the Secretary; or
    - (ii) for an employee who successfully completes the Indigenous Australian Government Development Program, subsequently

**Clause 3.06**

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assign the employee to the duties of an AGS Entry Level Programs Broadband position, and then the duties of an APS Level 4 position at a salary rate decided by the Secretary; or

- (b) for other employees:
  - (i) for an employee who successfully completes the Pathways Trainee Program, subsequently assign the employee to the duties of an AGD Entry Level Programs Broadband position, and then the duties of an APS Level 3 position at the APS 3.1 pay point; or
  - (ii) for an employee who successfully completes the Indigenous Australian Government Development Program, subsequently assign the employee to the duties of an AGD Entry Level Programs Broadband position, and then the duties of an APS Level 4 position at the APS 4.1 pay point.

**3.06 Advancement between classifications within a broadband**

Advancement from a classification within a broadband to a higher classification within the broadband is subject to:

- (a) the employee having received a performance rating of at least satisfactory (or equivalent) under the PPI; and
- (b) the employee having successfully completed probation (where relevant); and
- (c) there being sufficient work required to be performed at the higher classification within the broadband; and
- (d) the employee having been assessed as having the necessary skills and proficiencies to perform the higher level work.

**Division 3.2 Remuneration**

**Subdivision 3.2.1 Salary arrangements**

**3.07 Salary increases**

- (1) Subject to subclauses (2) to (7), salaries are increased by:
  - (a) 3% from commencement date;
  - (b) 2% 12 months after commencement date; and
  - (c) 1% 24 months after commencement date.

*Note* The salary ranges and rates are set out in the Schedules referred to in clause 3.09.

- (2) Subject to subclauses (3), (4) and (5), salary increases do not apply to salary treated as the maximum salary under clauses 3.13 and 3.14 and Schedule 4, Part 2.
- (3) Once the maximum salary otherwise payable under this Agreement exceeds the salary treated as the maximum salary under clause 3.13, an employee shall be paid the maximum salary under this Agreement. All subsequent salary increases shall apply, subject to subclauses (6) and (7).
- (4) Once the maximum salary otherwise payable under Schedule 1 exceeds the

salary treated as the maximum salary under clause 3.14 and Schedule 4, Part 2, an employee shall be paid the maximum salary under Schedule 1. All subsequent salary increases shall apply, subject to subclauses (6) and (7).

- (5) Where an employee moves from AGS to another part of the Department and then back to AGS, and has not been entitled to a salary increase that would have applied had the employee remained in AGS throughout the relevant period, then the Secretary may decide that a salary increase at subclause (1) is to apply. The Secretary may determine the date from which such an increase is to apply.
- (6) An AGS employee is not entitled to the salary increases at subclause (1) where they have achieved a performance rating under the PPI of less than satisfactory (or equivalent) for the immediately preceding formal performance appraisal and/or if the employee is subject to an underperformance process.
- (7) However, an employee who does not receive an increase in salary because of subclause (6) will be eligible to receive the salary increase at and from the date that their performance is next assessed overall as at least satisfactory (or equivalent), and all subsequent salary increases shall apply, subject to any further application of subclause (6).

### **3.08 Irregular or intermittent (casual) employment**

- (1) If an employee is employed for duties that are intermittent or irregular, the employee is to receive a 20% loading for the intermittent or irregular nature of the duties.
- (2) An employee who receives the 20% loading is not entitled to annual leave, personal leave (except unpaid carer's leave), paid compassionate leave, paid community service leave, paid parental leave, discretionary miscellaneous leave or payment for public holidays on which the employee is not rostered to work.
- (3) Remuneration rates for NSH employees, inclusive of the 20% loading, are set out in Schedule 1, Part 3.

### **3.09 Salary rates**

- (1) Salary ranges or rates payable (as the case may be) are:
  - (a) for AGS employees – set out in Schedule 2; and
  - (b) for other employees – set out in Schedule 1.
- (2) Supported wage rates as set out in Schedule 1, Part 4, will apply to an employee with disability who is eligible for consideration under the Supported Wage System.

**Clause 3.10**

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**3.10 Salary on starting in a new position**

- (1) The starting salary of an employee who is assigned a position on engagement or promotion, or on movement from another APS agency, is:
  - (a) for AGS employees – at the minimum rate for the classification; or
  - (b) for other employees – at the minimum pay point for the classification.
- (2) However, subject to clause 3.16, the Secretary may approve a starting salary at a higher salary rate for AGS employees, or higher pay point for other employees, within the classification.
- (3) If an employee is promoted within the Department, other than to duties within AGS, the employee's pay point must not be lower than the pay point at which the employee would be entitled to be paid if the employee were undertaking higher duties at the relevant classification.
- (4) If an employee is promoted within the Department to duties within AGS, the employee's salary must not be lower than the salary the employee was in receipt of at the lower classification.

**3.11 Ongoing assignment of new duties at approved classification**

An employee may be assigned new duties on an ongoing basis at their approved classification. The Secretary may approve advancement to a higher salary rate for an AGS employee, or higher pay point for another employee, for the employee's approved classification, subject to the employee having achieved an end of performance cycle rating under the PPI of at least satisfactory (or equivalent) for the immediately preceding performance cycle.

**3.12 Temporary performance at lower classification**

If an employee asks in writing to perform work at a lower classification level temporarily, the Secretary may decide that the employee be paid at a salary rate or pay point applying to the lower classification level for the period requested by the employee.

**3.13 Salary maintenance – movement from another agency**

- (1) This clause applies to a person moving to the Department from another department or agency if the salary the person was receiving in the other department or agency immediately before the movement (the *current salary*) exceeds the maximum salary payable under this Agreement for the classification level to which the person is moving (the *maximum salary*).
- (2) The Secretary may treat the maximum salary as an amount not less than the person's current salary.



**3.14 Salary maintenance – movement between AGS and other parts of the Department**

- (1) This clause applies to an employee moving at approved classification level within the Department from AGS to another part of the Department.
- (2) If the salary the employee was receiving immediately preceding the movement (the *current salary*) exceeds the maximum salary payable under Schedule 1 in this Agreement for the classification level at which the employee is moving (the *maximum salary*), the Secretary may treat the maximum salary as an amount not less than the employee's current salary.

**3.15 Salary on movement at approved classification level between AGS and another part of the Department**

- (1) This clause applies to an employee moving at approved classification level within the Department from AGS to another part of the Department, or from another part of the Department to AGS, where the salary received prior to the movement is less than the maximum salary payable under the Schedule to apply after the movement.
- (2) For an assignment:
  - (a) from AGS to another part of the Department – where the employee is not in receipt of a salary level equivalent to a pay point for the relevant classification at Schedule 1, the employee will commence the assignment at the next higher pay point above the pre-assignment salary, and will be eligible for future salary adjustment in accordance with clause 3.17; and
  - (b) from another part of the Department to AGS – the Secretary will decide the salary rate to apply at a rate no lower than applied preceding the assignment.
- (3) For a temporary assignment, subclause (2) only applies for the duration of the temporary assignment.

**3.16 Junior rates**

An employee who is aged under 21 and whose position is at the Cadet APS or APS Level 1 classification is to be paid a junior rate of pay, as a percentage of the Cadet APS or APS Level 1 adult rate of pay, as follows:

- (a) under 18 years – 60%;
- (b) at 18 years – 70%;
- (c) at 19 years – 81%;
- (d) at 20 years – 91%.

**3.17 Salary advancement**

- (1) This clause does not apply to AGS employees. Information regarding salary advancement for AGS employees is provided in Schedule 3.

**Clause 3.18**

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- (2) Subject to clause 3.16 and subclause 3.17(5) an employee is eligible for salary advancement if:
  - (a) the employee's performance has been rated as at least satisfactory (or equivalent) under the PPI at the end of a performance cycle; and
  - (b) the employee has at least 5 months service under a performance agreement at or above the employee's current classification in the performance cycle period.
- (3) If the employee is rated at least satisfactory (or equivalent), the employee is to be advanced 1 pay point.
- (4) The Secretary may, for a particular employee and in special circumstances, approve a different performance cycle or a different date of effect for advancement of the employee's salary.
- (5) For salary advancement between classifications within a broadband, advancement is also subject to clause 3.06.
- (6) For more information regarding salary advancement, employees should consult the AGD Employee Relations Advices *Program for Performance Improvement and Managing Underperformance and Salary Advancement*.

**3.18 Payment of salary**

- (1) An employee will be paid fortnightly.
- (2) The fortnightly rate of salary is:

$$\text{annual salary} \times \frac{12}{313}$$

**Subdivision 3.2.2 Overtime**

**3.19 Application**

Except as provided by subclauses 3.26(7) and 3.27(6), this Subdivision does not apply to duty under a restriction direction or emergency duty.

*Note* For duty under a restriction direction and emergency duty, see clauses 3.26 and 3.27.

**3.20 Overtime – general**

- (1) Overtime is work performed:
  - (a) for AGS employees:
    - (i) outside the period between 8:00am – 5:30pm except where the hours form part of an employee's ordinary working pattern, Monday to Friday; or
    - (ii) on a Saturday, Sunday or public holiday; and
  - (b) for other employees:
    - (i) outside the employee's ordinary span of work hours Monday to Friday; or

- (ii) within that ordinary span of work hours, but outside the number of ordinary hours of work the employee would work on a day (or is rostered to work on that day); or
  - (iii) on a Saturday, Sunday or public holiday.
- (2) Subject to section 62 of the FW Act, an employee may be directed to perform overtime.
- (3) For overtime there must be:
  - (a) a direction given to the employee to perform the work before the work is performed; or
  - (b) if circumstances do not permit a direction to be given before the work is performed, subsequent written approval.
- (4) An employee is entitled to overtime rates unless:
  - (a) the employee is at a classification level above the salary barrier; or
  - (b) the employee is an AGS fee earner.
- (5) However, the Secretary may authorise payment of overtime rates to an employee at a classification level above the salary barrier (unless they are an AGS fee earner).
- (6) For the purpose of determining whether overtime begins immediately after the end of ordinary hours of work, a meal period is to be disregarded.

*Note* For limitation on the application of this Subdivision in relation to shiftworkers, see clause 3.31.

### **3.21 Overtime rates**

- (1) Overtime rates are calculated as follows:
  - (a) for overtime performed on a day other than a Sunday or public holiday – time and a half for the first 3 hours and double time after that;
  - (b) for overtime performed on a Sunday – double time;
  - (c) for overtime performed on a public holiday:
    - (i) double time and a half; or
    - (ii) for duty within an employee's ordinary working pattern on the public holiday – time and a half additional to single time paid for the public holiday.
- (2) For overtime that does not:
  - (a) begin immediately after the end of ordinary hours of work; or
  - (b) end immediately before the beginning of ordinary hours of work;the employee is to be paid for at least 4 hours at the relevant overtime rate.
- (3) However, where more than 1 attendance is involved, the minimum overtime payment provision will not operate to increase an employee's overtime remuneration beyond the amount which would have been received had the employee remained on duty from the commencing time of duty on 1 attendance to the ceasing time of duty on a following attendance.

**Clause 3.22**

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- (4) Where an employee entitled to overtime rates requests, the Secretary may agree to give the employee paid time off (at the overtime rate) in lieu of an overtime payment.

**3.22 Part-time employees**

- (1) For a part-time AGS employee who is directed to perform extra duty (beyond the employee's scheduled ordinary hours for the day), the employee will be paid for the extra duty at the normal hourly rate. However, employees may choose to treat the additional hours as hours for flextime purposes, or as hours for flexible working hour arrangement purposes, as relevant to the employee, rather than receive payment.
- (2) For part-time employees, other than AGS employees, who are at a classification level above the salary barrier and for whom the Secretary has not authorised payment of overtime under subclause 3.20(5), the rate of salary payable for duty performed at direction in addition to the employee's ordinary hours of work is the normal hourly rate.
- (3) For subclauses (1) and (2), the total ordinary duty and extra duty at the normal hourly rate must not exceed:
  - (a) on any day:
    - (i) 7 hours and 30 minutes; or
    - (ii) if the employee's ordinary working pattern on that day is more than 7 hours and 30 minutes – those hours; and
  - (b) in any week – 37 hours and 30 minutes.

**3.23 Rest relief after overtime**

- (1) This clause does not apply to an employee at a classification level above the salary barrier or an AGS fee earner.
- (2) This clause applies if an employee performs overtime that would result in the employee not having at least 8 consecutive hours off duty (plus reasonable travelling time to and from work):
  - (a) between the end of the ordinary duty on any day or shift, and the start of the employee's ordinary hours of work on the next day or shift; or
  - (b) on a Saturday, Sunday or a public holiday (unless the day is an ordinary working day for the employee) or on a rostered day off, in the 24 hours preceding the time when the employee will next ordinarily begin duty.
- (3) The employee:
  - (a) may be absent from work, after performing the overtime, for 8 consecutive hours (plus reasonable travelling time); and
  - (b) is entitled to payment for any period of ordinary working time occurring in the employee's absence.
- (4) However, if the employee is not able to be absent from work because the employee is required to continue or resume work, the employee is entitled to be paid at the rate of double time until the employee has at least 8

consecutive hours off duty (plus reasonable travelling time).

### **3.24 Overtime meal allowance**

- (1) This clause applies to an employee who:
  - (a) works overtime after ordinary duty for a day to the end of, or after, a meal period without taking a meal break; or
  - (b) works overtime after ordinary duty for a day after a meal break, if the employee is not entitled to payment during the meal break; or
  - (c) works overtime before the start of ordinary hours of duty for a day and takes a meal break, if the employee is not entitled to payment during the meal break; or
  - (d) works overtime on a Saturday, Sunday or public holiday continuing after a meal break, if the employee is not entitled to payment during the meal break.
- (2) The employee is entitled to a meal allowance. At the commencement of this Agreement, the allowance is \$29.40.

*Note* For variation of the allowance, see clause 3.52.
- (3) For this clause, a *meal period* is:
  - (a) 7:00 am to 9:00 am; or
  - (b) 12 noon to 2:00 pm; or
  - (c) 6:00 pm to 7:00 pm; or
  - (d) midnight to 1:00 am.
- (4) The Secretary may agree with an employee to other meal periods for the purpose of this clause.
- (5) However, any agreement must provide for 4 meal periods in a 24 hour period.

### **Subdivision 3.2.3 Restriction**

#### **3.25 Restriction direction**

- (1) An employee may be directed to be contactable and available to perform duties outside the employee's ordinary hours of work (a *restriction direction*).
- (2) A restriction direction must be in writing, stating what the employee is directed to do and how that differs from the employee's normal work conditions.

#### **3.26 Restriction allowance**

- (1) An employee is entitled to an allowance (a *restriction allowance*) if the employee:
  - (a) is subject to a restriction direction; and
  - (b) is not at a classification level above the salary barrier or an AGS fee

**Clause 3.27**

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earner.

- (2) However, the Secretary may grant a restriction allowance to an employee at a classification level above the salary barrier (unless they are an AGS fee earner).
- (3) The allowance is to be paid for each hour or part of an hour restricted in accordance with the following table:

<b>Period of restriction</b>	<b>Allowance (% of employee's hourly rate of salary)</b>
Monday to Friday	7.5%
Saturday or Sunday	10%
Public holiday	15%

- (4) However, if the Secretary has granted a restriction allowance to an employee at a classification level above the salary barrier, the salary for working out the hourly rate of salary is taken to be the maximum salary payable to an employee at the APS Level 6 classification, or the employee's actual salary, whichever is lower.
- (5) Despite subclauses (3) and (4), the Secretary may approve another rate of restriction allowance for an employee, having regard to the circumstances of the restriction direction.
- (6) Restriction allowance is not payable for any period for which the employee receives another payment.
- (7) If an employee who is subject to a restriction direction is required to perform duty, the relevant overtime provisions apply to the duty, subject to the following:
  - (a) if the employee is not recalled to a place of work to perform the duty – a 1 hour minimum payment; and
  - (b) if the employee is recalled to a place of work to perform the duty – a 3 hour minimum payment.
- (8) Despite subclause (7), the total amount of overtime rates payable is limited to the period from the commencement of the overtime duty to when the employee would ordinarily commence duty under their ordinary pattern of work.

**Subdivision 3.2.4 Emergency duty**

**3.27 Emergency duty**

- (1) This clause applies if:
  - (a) an employee is directed to attend for duty to meet an emergency; and
  - (b) the employee would not ordinarily have been on duty at that time; and
  - (c) the employee was not given notice of the direction before ceasing ordinary duty; and
  - (d) the employee is not at a classification above the salary barrier or an

AGS fee earner.

- (2) However, the Secretary may decide that this clause applies to an employee at a classification above the salary barrier (unless they are an AGS fee earner).
- (3) For the time on duty, the employee is to be paid:
  - (a) at the rate of double time; and
  - (b) for at least 2 hours.
- (4) The time on duty is taken to include time necessarily spent in travelling to and from duty.
- (5) This clause does not apply if the employee is subject to a restriction direction.
- (6) Clause 3.23 (rest relief after overtime) does not apply to overtime worked in circumstances covered by this clause unless the actual time worked is at least 3 hours for each attendance.

### **Subdivision 3.2.5 Shiftwork**

#### **3.28 General**

- (1) The introduction of a shiftwork roster, or a new roster or arrangement of shift cycles, may be approved by the Secretary after consultation with the affected employees in accordance with clause 5.01.
- (2) A shift roster must specify the starting and finishing times of ordinary hours of duty for each shift.
- (3) An employee should not be required to work more than 1 shift in each 24 hours, except at the regular change-over of shifts.
- (4) Despite subclause (2), the rostered hours of duty for an employee may be changed:
  - (a) by agreement between the employee and the employee's supervisor; or
  - (b) by the employee's supervisor on 7 days' notice; or
  - (c) by the employee's supervisor on less than 7 days' notice, if the hours of duty outside the previously rostered hours of duty are treated as overtime.
- (5) However, overtime rates are not payable if the supervisor cannot give 7 days' notice because of the sickness or unanticipated absence of another employee.

*Note* Clause 3.31 of this Agreement details the circumstances under which work performed by shiftworkers will be treated as overtime.

#### **3.29 Shift penalties**

- (1) In addition to an employee's ordinary salary (including higher duties allowance), the employee is entitled to the highest penalty rate for shiftwork

**Clause 3.30**

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that applies to the performance of shiftwork set out in the following table:

<b>Rostered time of ordinary duty</b>	<b>Penalty rate (% of employee's hourly rate of salary)</b>
Ordinary duty, any part being between 6:00 pm and 6:30 am	15%
Ordinary hours worked continuously for a period exceeding 4 weeks on a shift falling wholly within the period from 6:00 pm to 8:00 am	30%
Ordinary duty, Saturday	50%
Ordinary duty, Sunday	100%
Ordinary duty, public holiday	150%

- (2) However, a part-time employee is entitled to the 30% penalty rate mentioned in subclause (1) only if:
  - (a) the employee's rostered ordinary duty involves working no fewer shifts each week, or no fewer shifts a week on average over the shift cycle, than an equivalent full-time employee; and
  - (b) the shift is part of a full-time shift that is wholly between 6:00 pm and 8:00 am.
- (3) Payments for shift penalty rates must not be taken into account in working out overtime or any allowance based on salary.
- (4) Shift penalty rates will not be paid for a shift for which another penalty payment is made.
- (5) An employee who regularly performs shiftwork is entitled, when the employee is on annual leave, to 50% of the penalties that would be attracted by working the employee's regular shift pattern over the period of the leave.

**3.30 Shiftwork and public holidays**

- (1) For ordinary duty performed on a public holiday, the employee is to be paid for at least 4 hours at the relevant rate for each attendance (other than for an attendance that is continuous with ordinary duty on the day before, or the day after, the public holiday).
- (2) However, if more than 1 attendance is involved, the payment must not be more than the amount that would have been paid if the employee had remained on duty from the commencing time of duty on 1 attendance to the ceasing time of duty on a following attendance.
- (3) For this clause, duty broken by a meal period is not more than 1 attendance.
- (4) If, for an employee who performs duty on each of the days of the week in a cycle of shifts on a regular roster of shiftwork, a public holiday occurs on a day when the employee is rostered off duty, the employee is entitled to:
  - (a) leave for a day instead of the public holiday; or
  - (b) an amount equal to salary for a day at the ordinary rate for the



employee.

- (5) If the employee is receiving an annualised penalty payment under clause 3.32, the employee may substitute, with the Secretary's approval, their entitlement under subclause (4)(a) or (b) for an amount of leave in hours calculated as follows:

$$\frac{A}{B}$$

where:

*A* is the number of additional hours of leave to which the shift workforce is entitled under subclause (4)(a).

*B* is the number of shiftworkers in the shift workforce.

- (6) For this clause duty performed on 25 December is taken to be duty performed on a public holiday even if another day has been declared as a substitute public holiday for that day.
- (7) For subclause (5):  
*shift workforce*, for an employee, means the shift workforce that is receiving the same annualised penalty payment under clause 3.32, as the employee.

### **3.31 Shiftwork and overtime**

- (1) Subject to this clause, shiftworkers are subject to the conditions for the payment of overtime in clause 3.20.
- (2) For a shiftworker, duty is overtime if:
- it is performed on any day that is outside the normal rostered ordinary hours of duty for the shiftworker on that day; or
  - it is performed in excess of the weekly hours of ordinary duty, or an average of the weekly hours of ordinary duty over a cycle of shifts.
- (3) For overtime performed on a Saturday, an employee must be paid at the rate of double time.
- (4) Unless there are exceptional circumstances:
- a shiftworker on 12 hour shifts should not be required to perform overtime within a period of 12 hours on either side of a normal day or night shift; and
  - a shiftworker should not be required to remain on duty for more than 14 hours.

### **Subdivision 3.2.6 Annualised penalty payments**

#### **3.32 Secretary may approve rate of allowance**

- (1) The Secretary may approve the payment to an employee of an allowance instead of some or all of the penalty payments or other remuneration benefits (including shiftwork penalties, overtime and restriction allowance)

**Clause 3.33**

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that would otherwise be payable for shiftwork.

- (2) If the Secretary approves the payment of an allowance under subclause (1), the Secretary must:
  - (a) determine the rate at which the allowance is to be paid, as a percentage of the employee's salary, in accordance with subclause (3); and
  - (b) specify which entitlements are incorporated into the allowance.
- (3) The rate of payment of the allowance:
  - (a) must be based on an average of the entitlements that would have been payable to the employee over a period that reasonably reflects the ordinary working patterns of the employee; and
  - (b) may include an additional component in recognition of the flexibility afforded to the Department in relation to the deployment of employees and non-standard hours of duty.
- (4) The allowance is payable fortnightly.

**Subdivision 3.2.7 Higher duties**

**3.33 Entitlement to higher duties allowance**

- (1) An employee may be assigned to perform temporarily all or part of the duties of a position at a higher classification.
- (2) Temporary assignments between classification levels within a broadband may apply where the employee's manager certifies that the duties of the temporary position are predominantly at the work value of the higher classification within the broadband.
- (3) If, because of an assignment, or consecutive assignments, under subclause (1), an employee performs all or part of the duties of a position at a higher classification (including an SES position) for a continuous period of at least 2 weeks:
  - (a) for AGS employees – the Secretary may approve payment of a higher duties allowance for the period; or
  - (b) for other employees – the employee is eligible for payment of higher duties allowance for the period.
- (4) For subclause (3), the term “a continuous period of at least 2 weeks” includes where, because of an assignment, or consecutive assignments, under subclause (1):
  - (a) a full-time employee performs the duties of a position at a higher classification on a regular part-time basis for a period of at least 2 weeks; or
  - (b) a part-time employee performs the duties of a position at a higher classification on a regular part-time basis for a period of at least 2 weeks.
- (5) An employee, other than an AGS employee, is eligible to be advanced to higher pay points for the higher classification only if the employee's

performance in the higher classified position has been assessed under the PPI for:

- (a) a continuous period of 5 months or more higher duties within an appraisal cycle if a performance agreement was in place for that assignment; or
  - (b) a total of 5 months or more higher duties in broken periods within an appraisal cycle, but involving at least 2 assignments covering periods of 2 months or more for which performance agreements were in place.
- (6) If an employee eligible for pay point advancement under subclause (5), receives an end of performance cycle rating of at least satisfactory (or equivalent), the employee must be advanced 1 pay point at the higher classification level.
- (7) For an employee who is a shiftworker, references in this subdivision to a period of at least 2 weeks are to be read as a period entailing at least 75 rostered hours.

### **3.34 Rates of higher duties allowance**

- (1) The Secretary will decide the rate of any higher duties allowance for an AGS employee approved to receive higher duties allowance under subclause 3.33(3).
- (2) Other employees performing all the duties of a position at a higher classification will, subject to subclauses (3), (4), and (5), receive payment at the minimum pay point for the higher classification.
- (3) If the employee's salary for their approved classification is at the Executive 1.4 pay point, the employee is to be paid higher duties allowance at a rate equal to the difference between:
  - (a) the Executive 1.4 pay point; and
  - (b) the Executive 2.2 pay point.
- (4) If the employee has previously attained a higher pay point through pay point advancement under the PPI for previous performance at the classification, the employee is to be paid at that rate.
- (5) The Secretary will decide the pay point to apply for an AGS employee who is to be temporarily assigned duties outside of AGS and at a higher classification.
- (6) An employee performing part of the duties of a position at a higher classification will receive payment at a rate decided by the Secretary.
- (7) For all employees, the amount of higher duties allowance payable is the difference between:
  - (a) the employee's salary for their approved classification; and
  - (b) the remuneration payable to the employee under this clause.
- (8) For all employees, an employee performing the duties of an SES position:
  - (a) is to be paid higher duties allowance at a rate (not less than \$2 500 a

**Clause 3.35**

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- year) decided by the Secretary; and
- (b) may be entitled to other benefits and subject to conditions, as decided by the Secretary.

**Subdivision 3.2.8      Allowances, expenses and contributions**

**3.35      Motor vehicle allowance**

- (1) If the Secretary considers that it will result in greater efficiency or involve less expense to the Department, the Secretary may authorise an employee to use a private vehicle for official purposes or for a relocation for which removal expenses are to be met by the Department.
- (2) An employee authorised to use a private vehicle for official purposes or relocation is entitled to a motor vehicle allowance. For more information about motor vehicle allowance, employees should consult:
- (a) for AGS employees – the AGS Employment Handbook; and
- (b) for other employees – the AGD Employee Relations Advice *Allowances*.

**3.36      Travelling expenses – domestic travel**

- (1) An employee who travels on official business and is required to be absent overnight is entitled to have reasonable accommodation, meal and incidental expenses met by the Department. For more information about travel expenses, employees should consult:
- (a) for AGS employees – the AGS Employment Handbook; and
- (b) for other employees – the AGD Employee Relations Advice *Official Travel*.
- (2) The Secretary may approve the payment of travelling allowance to an employee who travels on official business for at least 10 hours but is not required to be absent overnight (part-day travel allowance).
- (3) An employee who has meal expenses met under this clause is not entitled to overtime meal allowance provided under clause 3.24.
- (4) If the Secretary is satisfied that the standard travelling expenses rates are insufficient for, or in excess of, expenses incurred, the employee is entitled to an amount that the Secretary considers reasonable in the circumstances.
- (5) If an employee chooses to make private, non-commercial accommodation arrangements while travelling on official business, the employee is to be paid \$60 in respect of the accommodation arrangements.
- (6) If, for the purpose of official business, the employee has lived in 1 locality for at least 21 days, the employee is entitled to have expenses met equal to the amount of expenditure incurred on accommodation, meals and incidental items, or an amount that the Secretary considers reasonable in the circumstances.

**3.37 Travelling expenses – overseas travel**

If an employee is performing official duty overseas, the employee is entitled to fares, accommodation, and meals and incidental expenses being met by the Department. For more information about travel expenses and conditions, employees should consult:

- (a) for AGS employees – the AGS Employment Handbook; and
- (b) for other employees – the AGD Employee Relations Advice *Official Travel*.

**3.38 Allowance for excess travelling time**

- (1) An employee (other than an employee whose classification is above the salary barrier or an AGS fee earner) who is travelling or on duty away from the employee's usual place of work is entitled to be paid for time necessarily spent in travel or on duty (exclusive of overtime duty) in excess of:
  - (a) the employee's usual hours of duty for the day; and
  - (b) the time necessarily spent travelling to and from the employee's home and the usual place of work.
- (2) However:
  - (a) the employee is not entitled to payment unless the excess travelling time exceeds 0.5 hours in any 1 day or 2.5 hours in any fortnight; and
  - (b) the employee is not entitled to receive payment for more than 5 hours in any 1 day.
- (3) The rate of payment is:
  - (a) for Monday to Saturday (other than a public holiday) – single time; and
  - (b) for Sunday and public holidays – time and a half.
- (4) If the employee is performing duty temporarily at a place other than the usual place of work, the employee is entitled to be reimbursed for any amount of fares incurred that is greater than the cost of travel to and from the usual place of work.
- (5) This clause does not apply to:
  - (a) travel for which expenses are met under clauses 3.36 and 3.37; or
  - (b) travel to a place of work in anticipation of a permanent relocation to that place of work of which the employee has been told in writing.
- (6) If the employee is subject to a home-based work arrangement, the employee's office place of work is the usual place of work for working out the amount of travel time and the cost of travel.
- (7) If the usual place of work for the employee is variable, the Secretary is to decide the usual place of work for this clause.
- (8) The maximum hourly rate for excess travelling time is the hourly rate payable for the maximum pay point or pay range of the APS Level 3 classification, or the employee's actual salary, whichever is lower.

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**3.39 Departmental Liaison Officer allowance**

An employee who performs the duties of Departmental Liaison Officer and attends for duty at the office of a Minister or Assistant Minister for the whole of the employee's ordinary hours of duty on a day is entitled to an allowance for that day based upon the annual rate of allowance as follows:

Rate from commencement date	Rate from 12 months after commencement date	Rate from 24 months after commencement date
\$21 651	\$22 084	\$22 305

**3.40 Conditions for employees providing short-term relief for MoPS Act employees**

An employee who temporarily performs work in a position normally filled by an employee engaged under the *Members of Parliament (Staff) Act 1984* is entitled to an allowance and other conditions. For more information about the conditions, employees should consult the AGD Employee Relations Advice *Allowances*.

**3.41 Cadet APS employee – fees and book and equipment allowance**

An employee who is classified as a Cadet APS employee is entitled to reimbursement of compulsory fees associated with the cadetship and to be paid an annual allowance to provide for books and equipment. For more information about reimbursement and the allowance, employees should consult the AGD Employee Relations Advice *Allowances*.

**3.42 Relocation expenses**

- (1) The Secretary may make financial or other assistance available for relocation of a person from one locality to another on engagement or promotion to, or assignment within, the Department, or movement to the Department from another APS agency, or on cessation of employment by the Department.
- (2) For more information about the assistance that may be available, employees should consult:
  - (a) for AGS employees – the AGS Employment Handbook; and
  - (b) for other employees – the AGD Employee Relations Advice *Relocation Assistance for non-SES Employees*.

**3.43 Employee expenses**

- (1) The Secretary may approve payment of expenses associated with an employee's employment with the Department.
- (2) For more information about employee expenses, employees should consult:
  - (a) for AGS employees – the AGS Employment Handbook; and
  - (b) for other employees – the AGD Employee Relations Advice *Allowances*.

### 3.44 Contribution for home garaged Commonwealth owned or leased vehicles

If a Commonwealth owned or leased vehicle is made available to an employee under home garaging arrangements, the employee must make a contribution to the Department at a rate determined by the Secretary. For more information, employees should consult the AGD Employee Relations Advice *Allowances*.

### 3.45 First aid certificate allowance

- (1) The Secretary may assign incidental first aid responsibilities to an employee who holds a current first aid qualification.
- (2) The employee is entitled to an allowance for the responsibilities at the following rate:

Standard	Qualification	Weekly rate
Certificate Standard A	St John Ambulance Association Senior First Aid Certificate, Australian Red Cross Society Senior First Aid Certificate or equivalent qualification	from the commencement date – \$12.12
		from 12 months after commencement date – \$12.36
		from 24 months after commencement date – \$12.48
Certificate Standard B	St John Ambulance Association Advanced First Aid Certificate or Level 3 First Aid Certificate, Australian Red Cross Occupational First Aid Course Certificate or Level 3 First Aid Certificate	from the commencement date – \$14.91
		from 12 months after commencement date – \$15.21
		from 24 months after commencement date – \$15.36
Medallion Standard C	St John Ambulance Association Occupational First Aid or Level 4 First Aid Certificate or equivalent qualification	from the commencement date – \$18.27
		from 12 months after commencement date – \$18.64
		from 24 months after commencement date – \$18.83

**Clause 3.46**

**3.46 Health and safety representative allowance**

An employee who exercises the powers, or performs the duties of, a health and safety representative or deputy health and safety representative mentioned in the following table is entitled to an allowance at the following annual rate:

Office	Powers and duties	Annual rate
Health and safety representative	Receiving training in and conducting workstation assessments, in addition to exercising powers under the <i>Work Health and Safety Act 2011</i>	from the commencement date – \$716
		from 12 months after commencement date – \$730
		from 24 months after commencement date – \$737
Health and safety representative	Exercising powers under the <i>Work Health and Safety Act 2011</i> (with no training in or conducting of workstation assessments)	from the commencement date – \$356
		from 12 months after commencement date – \$363
		from 24 months after commencement date – \$367
Deputy health and safety representative	Receiving training in and conducting workstation assessments, in addition to exercising powers under the <i>Work Health and Safety Act 2011</i>	from the commencement date – \$356
		from 12 months after commencement date – \$363
		from 24 months after commencement date – \$367

**3.47 Allowance for office disabilities**

- (1) For this clause, *disability*, for an office-based employee, means a detrimental effect on the working conditions of the employee caused by any factor associated with building activities (including construction, alterations or refurbishment activities).

*Examples* Dust, noise, fumes, heat, vibrations, cold, wet, dirt, loss of amenities or general inconvenience.

- (2) If office-based employees in a workplace are subject to a disability, the Secretary may approve payment of an appropriate disability allowance to those employees
- (3) If an employee is temporarily relocated because of a disability, the temporary location is not the employee's usual place of work for the purpose of clause 3.38.

**3.48 Community language allowance**

- (1) An employee who possesses a level of language skills or qualifications mentioned in this clause is entitled to be paid community language allowance (*CLA*) at the appropriate rate set out in the table at the end of this clause if the Secretary determines there is an identifiable and continuing need to provide client or staff services in a language other than English.



- (2) The employee is entitled to be paid CLA at Rate 1 if:
- the employee has passed the Language Aide Test conducted by the National Accreditation Authority for Translators and Interpreters (*NAATI*); or
  - the employee is recognised by NAATI as having a proficiency equivalent to that mentioned in paragraph (a); or
  - the employee is assessed as being at a level equivalent to the level mentioned in paragraph (a) or (b) by an individual or body approved by the Secretary; or
  - the employee is waiting to be assessed by means of an assessment mentioned in paragraph (c), and the employee's supervisor certifies that the employee uses the language skills to meet operating requirements of the workplace.
- (3) The employee is entitled to be paid CLA at Rate 2 if:
- the employee is accredited or recognised by NAATI at the Paraprofessional Interpreter level or above; or
  - the employee is assessed as being at a level equivalent to that level by an individual or body approved by the Secretary.

Annual rate	Rate from commencement date	Rate from 12 months after commencement date	Rates from 24 months after commencement date
Rate 1	\$1 032	\$1 053	\$1 064
Rate 2	\$2 061	\$2 102	\$2 123

### 3.49 Health and wellbeing reimbursement

- The Secretary may approve reimbursement to an employee of up to \$295 each financial year in relation to expenditure on approved health and wellbeing related equipment.
- For more information about health and wellbeing reimbursement, employees should consult:
  - for AGS employees – the AGS Employment Handbook; and
  - for other employees – the AGD Employee Relations Advice *Health and Wellbeing Program*.

### Subdivision 3.2.9 Allowances and other conditions relating to remote localities

#### 3.50 Remote locality conditions

- For the purposes of this clause, a remote locality is a locality where eligibility for district allowance exists under the *Australian Public Service Enterprise Award 2015*.
- For an employee who works and lives in a remote locality, the Secretary and employee may enter into an individual flexibility arrangement for the

**Clause 3.51**

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payment of allowances and/or other employment conditions that enhance or supplement the conditions of this Agreement.

- (3) For more information about remote locality conditions, employees should consult the AGD Employee Relations Advice *Remote Locality Conditions*.

**Subdivision 3.2.10 Conditions for overseas posting**

**3.51 Conditions for overseas posting**

- (1) If an employee is deployed overseas on a posting the Secretary and employee may enter into an individual flexibility arrangement for the payment of allowances and/or other employment conditions that enhance or supplement the conditions of this Agreement.
- (2) In considering conditions for an overseas posting, the Secretary may have regard to the conditions of service extended to employees of the Department of Foreign Affairs and Trade.

**Subdivision 3.2.11 Adjustment of allowances and entitlements**

**3.52 Adjustment of allowances**

- (1) The rates of allowances mentioned in this Agreement (other than the allowances mentioned in subclause (2)) will be reviewed and may be adjusted by the Secretary from time to time during the life of this Agreement. For more information about adjustment of allowances, employees should consult:
- (c) for AGS employees – the AGS Employment Handbook; and
  - (d) for other employees – the AGD Employee Relations Advice *Allowances*.
- (2) For subclause (1), the allowances that will not be reviewed and subject to adjustment are as follows:
- (a) Departmental Liaison Officer Allowance;
  - (b) First Aid Certificate Allowance;
  - (c) Health and Safety Representative Allowance;
  - (d) Restriction Allowance;
  - (e) Higher Duties Allowance;
  - (f) Allowance for excess travelling time;
  - (g) Community Language Allowance;
  - (h) Bring Your Own Device Allowance.

**Division 3.3 Flexible remuneration packaging**

**3.53 Flexible remuneration packaging**

- (1) An employee may elect to sacrifice salary for non-monetary benefits.

- (2) The employee must pay fringe benefits tax and administrative costs incurred because of the election.
- (3) For more information about flexible remuneration packaging, employees should consult:
  - (a) for AGS employees – the AGS Employment Handbook; and
  - (b) for other employees – the AGD Employee Relations Advice *Salary Packaging Policy and Procedures*.

## **Division 3.4 Superannuation**

### **3.54 Superannuation arrangements**

- (1) The employer contribution rates for employees who are members of the PSSap will be 15.4% of the fortnightly contribution salary or such higher amount as may be set out in the PSSap Trust Deed.
- (2) Where an employee has chosen a superannuation fund other than the PSSap the employer contribution rates and arrangements will be the same as for members of the PSSap. Transitional provisions apply to specified employees. Refer Schedule 4, Part 4.
- (3) The Secretary may limit the superannuation funds to which an employee may choose to have employer superannuation contributions made to funds:
  - (a) that allow the Department to make a superannuation contribution for the benefit of the employee by means of an electronic funds transfer; and
  - (b) that accept a remittance advice in the form preferred by the Department.

## **Division 3.5 Individual flexibility arrangements**

### **3.55 Individual flexibility arrangements**

- (1) The Secretary and an employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
  - (a) the arrangement deals with 1 or more of the following matters:
    - (i) arrangements about when work is performed;
    - (ii) overtime rates;
    - (iii) penalty rates;
    - (iv) allowances;
    - (v) employer superannuation contributions
    - (vi) remuneration; and/or
    - (vii) leave; and
  - (b) the arrangement meets the genuine needs of the Department and employee in relation to 1 or more of the matters mentioned in paragraph (a); and

**Clause 4.01**

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

## **Part 4 Working hours and attendance arrangements**

### **Division 4.1 Working hours**

#### **4.01 Hours of work**

- (1) For a full-time AGS employee, *ordinary hours of work* are 150 hours over a 4 week period (the *settlement period*). For other full-time employees, *ordinary hours of work* are 75 hours over a 2 week period (the *settlement period*). A full-time shiftworker must work an average of 75 hours each fortnight over the shiftworker's regular cycle of shifts.
- (2) For a part-time employee, ordinary hours of work over the settlement period are the number of hours stated in the employee's part-time work agreement

or, for a management initiated part-time position, the hours decided by the Secretary for the employee's position.

- (3) The times when an employee (other than a shiftworker) may perform ordinary hours of work (the *ordinary span of work hours*) are:
  - (a) for AGS employees – 8:00 am to 6:00 pm Monday to Friday; and
  - (b) for other employees – 7:30 am to 7:30 pm Monday to Friday.
- (4) An employee may be required to perform reasonable additional hours of work. Payment of overtime rates for additional hours may apply in accordance with clause 3.21.
- (5) For each day an employee, other than an AGS employee not covered by flextime arrangements, works, the employee must record as soon as practicable, in a manner approved by the Secretary, the time when the employee starts and finishes work and the time of any breaks.

#### **4.02 Ordinary working patterns**

- (1) The pattern by which an employee (other than a shiftworker) performs their ordinary hours of work is as agreed between the employee and the Secretary, or, in the absence of agreement:
  - (a) for a full-time employee – 8:30 am to 12:30 pm and 1:30 pm to 5:00 pm, Monday to Friday; and
  - (b) for a part-time employee – the hours stated in the employee's part-time work agreement or, for a management initiated part-time position, the hours decided by the Secretary for the employee's position.
- (2) However:
  - (a) an employee must be available for reasonable direction to work outside their agreed pattern of work; and
  - (b) an employee must not be required to work more than 5 hours without a break of 30 minutes; and
  - (c) an employee who works more than 5 hours ordinary time in a day is expected to take a break of 30 minutes.

*Note* the National Employment Standards under the FW Act require that additional hours required to be worked above 38 hours in a week are to be reasonable.
- (3) An employee's ordinary hours and working pattern are used to work out:
  - (a) leave accrual and deductions; and
  - (b) deductions for unauthorised absences; and
  - (c) usual hours of work for excess travelling time purposes.

#### **4.03 Flextime**

- (1) An employee at the APS Level 1 to APS Level 6 classification (other than a shiftworker or an AGS fee earner) will work the employee's ordinary hours in accordance with the AGD flextime system. For more information about the AGD flextime system, employees should consult:
  - (a) for AGS employees – the AGS Employment Handbook; and
  - (b) for other employees – the AGD Employee Relations Advice *Flexible*

**Clause 4.04**

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*Working Arrangements, Flexitime and Attendance Recording.*

- (2) The maximum flexitime credit that an employee may carry over into the next settlement period is 40 hours.
- (3) The maximum flexitime debit that an employee may carry over into the next settlement period is 10 hours.
- (4) An employee may record time spent in transit while on official travel outside the ordinary span of work hours as time on duty for flexitime purposes.
- (5) Attendance outside an employee's normal pattern of work is subject to availability of work and the approval of the employee's supervisor.

**4.04 Flexible working hour arrangements – Time off in recognition of working additional hours**

- (1) Where an employee not entitled to work flexitime arrangements works hours that are in addition to their ordinary hours of work, the employee's supervisor may grant the employee fair and reasonable access to time off in recognition of the additional hours worked. Access to time off will be subject to operational requirements and does not apply on an hour for hour basis.
- (2) For more information about time off for employees in recognition of working additional hours, employees should consult:
  - (a) for AGS employees – the AGS Employment Handbook; and
  - (b) for other employees – the AGD Employee Relations Advice *Flexible Working Arrangements, Flexitime and Attendance Recording*.

**Division 4.2 Part-time work**

**4.05 Remuneration etc for part-time work**

- (1) Remuneration and other terms and conditions for a part-time employee are to be calculated proportionately to the remuneration and other conditions applying to a full-time employee of the same classification.
- (2) Expense related allowances for a part-time employee are the same as for a full-time employee of the same classification.

**4.06 Part-time work arrangements**

- (1) An employee may be employed as a regular part-time employee for an agreed number of regular hours each week that is less than ordinary hours of duty for a full-time employee.
- (2) However, if a full-time employee occupies a position:
  - (a) a part-time working arrangement may be implemented for the position only if the employee agrees to the arrangement; and
  - (b) an employee will not be required to agree to change to part-time work

- hours or to move to another position to facilitate the position's reclassification as a part-time position; and
- (c) the employee is entitled to return to full-time work at the end of any period of a part-time working arrangement agreed to; and
  - (d) the Secretary and the employee may agree that the employee return to full-time work before the end of any period of a part-time working arrangement agreed to.
- (3) An employee is entitled to work on a part-time basis during the following periods from the date of birth of a child or, in relation to the adoption of a child, from the date of placement of the child:
- (a) for AGS employees – within 2 years; and
  - (b) for other employees – within 3 years.
- (4) However, an employee will not be required to work less than 3 continuous hours in a day.
- (5) Employee-initiated part-time work arrangements must be reviewed at a frequency no longer than every 12 months.
- (6) The pattern of hours of a part-time employee must not be varied without the consent of the employee.
- (7) For more information about part-time work arrangements, employees should consult:
- (a) for AGS employees – the AGS Employment Handbook; and
  - (b) for other employees – the AGD Employee Relations Advice *Part-Time Work*.

## **Division 4.3 Home (or other)-based work**

### **4.07 Home (or other)-based work agreements**

- (1) The Secretary and an employee may agree that the employee is to perform all or part of the duties of the employee's position from the employee's home or elsewhere.
- (2) For more information about home-based work, employees should consult:
  - (a) for AGS employees – the AGS Employment Handbook; and
  - (b) for other employees – the AGD Employee Relations Advice *Home-Based Work*.

**Clause 4.09**

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**Division 4.4 Leave**

**Subdivision 4.4.1 General**

**4.08 Leave Policy**

For more information about leave arrangements employees should consult:

- (a) for AGS employees – the AGS Employment Handbook; and
- (b) for other employees – the AGD Employee Relations Advice *Leave Policy*.

**4.09 Unauthorised absences**

- (1) If an employee is absent from duty without approval, e.g. without the express approval of their supervisor, or not in accordance with a term of this Agreement, the absence will be treated as an ‘unauthorised absence’ and will not count as service for any purpose under this Agreement, including remuneration and leave accrual. All pay and other benefits provided under this Agreement, including flexible working arrangements, cease to be available until the employee resumes duty or is granted leave for the absence.

*Note* An absence is not an unauthorised absence if it involves the taking of personal, carer’s, compassionate or community service leave and notice of the taking of the leave is given as soon as is practicable in the circumstances.

- (2) Any amounts paid to an employee in respect of an unauthorised absence are overpayments and the Department will seek to recover those amounts.
- (3) Where an employee is overpaid an amount of salary or other benefits, the overpayment will be treated in accordance with the provisions of the Accountable Authority Instructions.

**4.10 Non-accrual of leave under suspension**

- (1) If an employee has been suspended without pay under the *Public Service Regulations 1999* because of suspected misconduct, the Secretary may decide that the period of suspension will not count as service for the accrual of annual leave and personal leave credits.
- (2) If an employee has ceased to accrue credits under subclause (1) and is not found to have breached the APS Code of Conduct, the employee will be credited with the leave credits which did not accrue.



## **Subdivision 4.4.2 Public holidays**

### **4.11 Public holidays to be observed**

- (1) Employees will be entitled to the following public holidays:
  - (a) New Year's Day (1 January);
  - (b) Australia Day (26 January);
  - (c) Good Friday;
  - (d) Easter Monday;
  - (e) Anzac Day (25 April);
  - (f) The Queen's birthday holiday (on the day in which it is celebrated in a State or Territory or a region of a State or Territory);
  - (g) Christmas Day (25 December);
  - (h) Boxing Day (26 December);
  - (i) Any other day, or part day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday, other than a day or part day, or a kind of day or part day, that is excluded by the *Fair Work Regulations 2009* from counting as a public holiday.
- (2) If under a state or territory law, a day or part day is substituted for one of the public holidays listed above, then the substituted day or part day is the public holiday.
- (3) The Secretary and an employee may agree on the substitution of a day or part day that would otherwise be a public holiday, having regard to operational requirements.
- (4) An employee, who is absent on a day or part day that is a public holiday in the place where the employee is based for work purposes, is entitled to be paid for the part or full day absence as if that day or part day was not a public holiday, except where that person would not normally have worked on that day.

*Note* Where a public holiday falls during a period when an employee is absent on a prevailing type of leave (such as discretionary miscellaneous leave without pay, long service leave, maternity leave) there is no entitlement to receive payment as a public holiday. Payment for that day will be in accordance with the entitlement for that form of leave (e.g., if on long service leave at half pay, payment is at half pay). Note that, in accordance with the National Employment Standards, an employee is not taken to be on annual leave or personal/carer's leave on a public holiday.

- (5) If an employee performs duty or is subject to a restriction direction under clause 3.25 on Easter Saturday in a jurisdiction where it is not recognised as a public holiday, the employee will receive overtime, shift penalty or restriction allowance payments as if the day was a public holiday.
- (6) If under a law of a State or Territory every Sunday is declared or prescribed by or under that law to be a public holiday, there is no entitlement to receive payment as a public holiday if the employee would have worked, or does perform work, on that day. In these circumstances, payment will only be

**Clause 4.12**

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made at the public holiday rate of pay if the employee performs work on that day, and the Sunday would otherwise be a public holiday under subclause (1).

**Subdivision 4.4.3 Annual close-down period**

**4.12 Department to shut down between Christmas and New Year**

- (1) The Department will close its normal operations, other than its rostered shiftwork operations, from close of business on the last working day before Christmas Day with business resuming on the first working day after New Year's Day.
- (2) Employees, other than shiftworkers rostered to perform duty over this period, will be provided with time off for the working days between Christmas Day and New Year's Day (closedown days) and will be paid in accordance with their ordinary hours of work. Where an employee is absent on leave, payment for the closedown days will be in accordance with the entitlement for that form of leave (e.g. if on long service leave half pay, payment is on half pay).
- (3) Employees engaged on an intermittent or irregular (casual) basis are not entitled to payment during the closedown period unless they have performed duty.
- (4) For all purposes of this Agreement, closedown days will be treated as public holidays.

**Subdivision 4.4.4 Annual leave**

**4.13 Entitlement**

- (1) Employees will accrue on a daily basis 4 weeks' annual leave credit for every year of service.
- (2) A part-time employee's annual leave entitlement will accrue on a pro rata basis.
- (3) If, in a year, an employee is absent for more than 22 working days on leave that does not count for service, the employee's annual leave credit is reduced proportionally.
- (4) A shiftworker is entitled to:
  - (a) if they are on a shift roster which operates on a 24 hours a day/7 day a week basis – 5 weeks' annual leave for every year of service (that is, for a full-time employee, 187.5 hours);
  - (b) if they are a full-time employee not on a shift roster which operates on a 24 hour a day/7day a week basis – an additional 3.75 hours annual leave credit for each Sunday rostered (not exceeding a total of 37.5 hours each year); or
  - (c) if they are a part-time employee not on a shift roster which operates on

a 24 hour a day/7day a week basis – an additional 10% of weekly ordinary hours annual leave credit for each Sunday rostered (not exceeding a total of 1 week each year of the employee's ordinary hours of duty).

#### **4.14 Taking annual leave**

- (1) An employee may, on application approved by the Secretary, take annual leave in either of the following ways:
  - (a) at full pay;
  - (b) at half pay (that is, by taking 2 days leave at the rate of one-half of the normal salary of the employee for every day of annual leave credit).
- (2) Where an AGS employee takes annual leave at half pay, any allowance will be paid at half pay rate during that leave.

#### **4.15 Direction to take annual leave**

An employee may be directed to take annual leave for up to 25% of their credit if they have an annual leave credit of more than:

- (a) for AGS employees – 10 weeks;
- (b) for other employees (excluding shiftworkers) – 12 weeks; and
- (c) for shiftworkers – 15 weeks.

#### **4.16 Cashing out annual leave**

- (1) An employee may, with the approval of the Secretary, cash out a portion of the employee's annual leave credit on 1 occasion each financial year.
- (2) Annual leave credit cannot be cashed out if the cashing out would result in the employee's remaining accrued annual leave entitlement being less than 4 weeks.
- (3) Each cashing out of a particular amount of annual leave credit must be by a separate agreement in writing between the Secretary and the employee.
- (4) If an employee cashes out annual leave, the employee will be paid the full amount that would have been paid to the employee had the employee taken the leave that the employee has forgone.

#### **4.17 Payment instead of unused leave**

If an employee's employment ends, and the employee's accumulated annual leave credit is not transferable, the employee is entitled to payment of an amount equal to the value of the credit based on the employee's salary.

### **Subdivision 4.4.5 Leave for parenting purposes**

#### **4.18 Maternity, maternal and parental leave**

- (1) Employees who are pregnant, or who have given birth, are covered by the

**Clause 4.18**

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provisions of the ML Act.

- (2) Employees with an entitlement to paid leave under the ML Act are provided with an additional 2 weeks paid maternal leave, to be taken continuous with a period of paid maternity leave provided by the ML Act.
- (3) Employees who adopt or permanently foster a child, and who have responsibility for the care of that child, are entitled to up to 52 weeks of parental leave. For primary caregivers, up to 14 weeks of this will be paid leave, commencing from the time of placement of the child, provided the employee satisfies the same qualifying requirements as those required to receive paid leave in accordance with the ML Act.
- (4) Employees are entitled to parental leave for adoption or permanent foster care when that child:
  - (a) is under 16 years of age;
  - (b) has not, or will not have, lived continuously with the employee for a period of 6 months or more as at the day (or expected day) of placement; and
  - (c) is not (otherwise than because of the adoption) a child of the employee or the employee's spouse/partner.
- (5) Documentary evidence of approval for adoption or enduring parental responsibilities under formal fostering arrangements must be submitted when applying for parental leave for adoption or permanent foster carer purposes.
- (6) Employees who are eligible for paid maternity, maternal or parental leave may elect to have the payment for that leave spread:
  - (a) over double the number of weeks at a rate of one-half of the normal salary for the employee; or
  - (b) over four times the number of weeks at a rate of one-quarter of the normal salary for the employee.
- (7) Where an employee chooses to spread a payment under subclause (6), only 14 weeks shall count as service.
- (8) On ending the initial period of up to 52 weeks of maternity or parental leave, employees may request an extension of unpaid parental leave for a further period of up to 52 weeks. The second period of unpaid leave is to commence immediately following the initial leave period.
- (9) Unpaid maternity or parental leave will not count as service for any purpose except for any unpaid leave taken during the first 12 weeks.
- (10) Maternity, maternal and parental leave is inclusive of public holidays and will not be extended because a public holiday or annual close-down period falls during a period of paid or unpaid maternity, maternal or parental leave. On ending maternity, maternal or parental leave, employees have the return to work guarantee and the right to request flexible working arrangements provided by (or the equivalent to those provided by) the FW Act.
- (11) An arrangement to spread the payment of maternity leave and/or maternal

leave under subclause (6) will end if an employee takes annual leave or long service leave in respect of the period over which the payment for maternity leave and/or maternal leave is spread. In those circumstances, the balance of the employee's entitlement to payment in respect of maternity leave and/or maternal leave will be paid to the employee as a lump sum.

#### **4.19 Supporting partner / other primary caregiver leave**

- (1) An employee, who is not otherwise entitled to paid maternity leave under the ML Act or paid parental leave under clause 4.18, is entitled to 2 weeks of paid leave on the birth, adoption or permanent foster care placement of a child or their partner's child.
- (2) This leave is to be taken within 3 months of the birth/placement of the child and is inclusive of public holidays and annual close-down, i.e. leave will not be extended because a public holiday or annual close-down period falls during a period of leave provided by this clause.
- (3) Documentary evidence as outlined in subclause 4.18(5), or a birth certificate following the birth of a child, must be submitted when applying for supporting partner / other primary caregiver leave.
- (4) This paid leave will count as service for all purposes.

#### **Subdivision 4.4.6 Personal leave**

##### **4.20 Entitlement**

- (1) An employee, other than an employee to whom clause 3.08 applies, who commences in the Department on engagement under s22 of the PS Act, will receive:
  - (a) 6 days personal leave credit on engagement; and
  - (b) An additional 14 days personal leave credit in the first year of service, accruing daily.
- (2) However, an employee who commences in the Department, and whose former personal leave credit is recognised by the Department under Subdivision 4.4.12, accrues on a daily basis 20 days cumulative personal leave credit for every year of service from the employee's date of commencement.
- (3) An employee accrues on a daily basis 20 days (that is, for a full-time employee, 150 hours) cumulative personal leave credit for every year of service after the first year of service.
- (4) For transitional provisions relating to personal leave credit, refer to Schedule 4, Part 7.

**Clause 4.21**

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**4.21 Taking personal leave**

- (1) Personal leave, on application approved by the Secretary, is available for:
  - (a) personal illness or injury of an employee; or
  - (b) the provision by an employee of care or support for a member of the employee's family, or a member of the employee's household who requires care or support because the member is ill or injured or has an unexpected emergency; or
  - (c) unexpected emergencies or exceptional circumstances applying to an employee.
- (2) Personal leave for the purposes mentioned in subclauses (1)(a) and (b) may be taken without producing a medical certificate, statutory declaration or other evidence that would satisfy a reasonable person that the leave is being used for its intended purpose for up to 5 days for each calendar year (that is, for a full-time employee, up to 37.5 hours).
- (3) Notwithstanding subclause (2), if an employee's supervisor holds reasonable concerns about an employee's use of personal leave, the supervisor may require an employee to produce a medical certificate to support future applications for personal leave for the purposes mentioned in subclauses (1)(a) and (b).
- (4) Personal leave taken for the purposes mentioned in subclause (1)(c) is limited to 3 days per calendar year.
- (5) In this clause, clause 4.23 and clause 4.24 *family* means:
  - (a) a spouse, former spouse, de facto partner, former de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
  - (b) a child, parent, grandparent, grandchild or sibling of a spouse, former spouse, de facto partner or former de facto partner of the employee; or
  - (c) a relation by traditional kinship or fostering.

**4.22 Exhaustion of paid personal leave credit**

- (1) The Secretary may grant discretionary miscellaneous leave without pay where an employee has exhausted paid personal leave credits and becomes ill or injured or is required to provide care or support for a member of the employee's family, or a member of the employee's household who requires care or support because the member is ill or injured or has an unexpected emergency.
- (2) Subject to subclause (3), discretionary miscellaneous leave without pay approved for purposes outlined at subclause (1) does not count as service for any purpose except for the purposes of the LSL Act.
- (3) Up to 26 weeks in aggregate, during an employee's period of continuous service, counts as service for accrual of annual leave and personal leave.

**4.23 Unpaid carer's leave**

- (1) An employee who has exhausted paid personal leave credits or who is

**Clause 4.25**

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engaged on an irregular or intermittent employment basis is entitled to up to 2 days unpaid carer's leave each time the employee is required to provide care or support to a member of the employee's family or household member who requires care or support because they are sick or injured or has an unexpected emergency.

- (2) Unpaid carer's leave may be taken in a single continuous period, as separate days, or in separate periods.

**4.24 Compassionate leave**

- (1) An employee is entitled, on application approved by the Secretary, to 3 days paid compassionate leave when a family member dies.
- (2) An employee is entitled to 2 days paid compassionate leave when:
  - (a) a household member dies; or
  - (b) a family or household member contracts a personal illness or sustains an injury that poses a serious threat to the family or household member's life.
- (3) For an employee engaged to perform duties on an intermittent or irregular basis (a casual employee) and who receives a 20% loading under clause 3.08, the employee is entitled to compassionate leave on an unpaid basis.
- (4) Compassionate leave may be taken in a single continuous period, as separate days, or in separate periods.

**4.25 War service sick leave**

- (1) Employees who are unfit for duty because of:
  - (a) war-caused or defence-caused injury as determined by the *Veterans' Entitlements Act 1986*;
  - (b) war-caused or defence-caused injury as determined by the *Safety, Rehabilitation and Compensation Act 1988*; or
  - (c) an illness or injury contracted during a period of warlike or non-war like service as declared under the *Veterans' Entitlements Act 1986* or the *Military Rehabilitation and Compensation Act 2004*;will be granted war service sick leave.
- (2) Employees who are eligible war veterans will accrue two separate credits of paid war service sick leave:
  - (a) Special credit – 9 weeks war service sick leave credited on commencement with the APS.
  - (b) Annual credit – 3 weeks annual credit on commencement and again following each 12 months of service. Unused credits accumulate up to a maximum credit balance of 9 weeks. This credit cannot be accessed until the special credit has been exhausted.

**Clause 4.26**

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- (3) Employees who rejoin the APS following an earlier period of APS employment in which they had been credited with war service sick leave will be credited with:
  - (a) any special credit that remained unused at the final day of the prior APS employment; and
  - (b) any annual credit held on the final day of the prior APS employment.

**Subdivision 4.4.7 Community service leave**

**4.26 Community service leave**

- (1) An employee may take community service leave for the purposes of:
  - (a) jury service;
  - (b) voluntary emergency activity with a recognised emergency management authority as defined in the FW Act; or
  - (c) an eligible community service activity prescribed under the *Fair Work Regulations 2009*.
- (2) For the purposes of paragraph (1)(b) voluntary emergency activity includes emergency service responses, regular training, reasonable recovery time and ceremonial duties.
- (3) Except for leave referred to in subclause (4), the Secretary may decide that all or part of a period of community service leave is leave with or without pay.
- (4) For leave referred to in paragraph (1)(a), an employee, other than an employee engaged on an intermittent or irregular (i.e. a casual) basis, is entitled to his or her base rate of pay for the first 10 days of the period of leave less any amount of jury pay to which he or she was entitled during that period.

**Subdivision 4.4.8 Long service leave**

**4.27 Long service leave**

- (1) An employee is eligible for long service leave in accordance with the LSL Act.
- (2) The minimum period for which long service leave will be granted is 7 calendar days at full pay (or 14 calendar days at half pay). Long service leave cannot be broken with other periods of leave, except as otherwise provided by legislation.

**Subdivision 4.4.9 Discretionary miscellaneous leave**

**4.28 Discretionary miscellaneous leave**

- (1) The Secretary may grant discretionary miscellaneous leave for a purpose not otherwise covered by:
  - (a) this Agreement; or



- (b) the ML Act; or
  - (c) the LSL Act; or
  - (d) the *Safety, Rehabilitation and Compensation Act 1988*.
- (2) The Secretary may decide that all or part of a period of discretionary miscellaneous leave is leave with full or part pay, or without pay.
  - (3) Discretionary miscellaneous leave may be granted for cultural or ceremonial purposes, or for preparation or participation in NAIDOC-related activities.
  - (4) A period of paid discretionary miscellaneous leave counts as service for all purposes.
  - (5) A period of discretionary miscellaneous leave without pay may count as service for any or all of the following purposes if the Secretary decides that it should count as service for any or all those purposes:
    - (a) accrual of credits for annual leave or long service leave;
    - (b) qualifying service for long service leave;
    - (c) accrual of credits for personal leave for clause 4.20.

*Note* Despite subclause 4.28(5) discretionary leave without pay granted on account of illness or for specified defence service or to occupy an executive office will count as service for the purposes of the LSL Act.

#### **Subdivision 4.4.10 Leave for defence service**

##### **4.29 Leave for defence service**

- (1) An employee is entitled to a grant of leave for defence service to enable the employee to fulfil Australian Defence Force (ADF) Reserve, Continuous Full Time Service (CFTS) or Cadet Force obligations.
- (2) An employee is entitled to leave for defence service with pay, for up to 4 weeks during each financial year for the purpose of fulfilling service in the ADF Reserve. These purposes include training and operational duty as required.
- (3) During the employee's first year of ADF Reserve service, a further 2 weeks paid leave may be granted to facilitate participation in additional ADF Reserve training, including induction requirements. Leave taken will be added to the total available leave credit for the financial year in which it is taken.
- (4) With the exception of the additional 2 weeks in the first year of service, leave can be accumulated and taken over a period of 2 financial years, to enable the employee to undertake training as a member of the ADF Reserves.
- (5) Employees are not required to pay their tax free ADF reserve salary to the Department in any circumstances.
- (6) Leave for defence service counts as service for all purposes, except for

**Clause 4.30**

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unpaid leave to undertake CFTS. Unpaid leave for the purpose of CFTS counts as service for all purposes except annual leave.

- (7) Employees may also apply for annual leave, long service leave or leave without pay, or use flextime, for the purpose of fulfilling ADF Reserve, CFTS or Cadet Force obligations.
- (8) Employees are to notify supervisors at the earliest opportunity once dates for ADF Reserve, CFTS or Cadet Force activities are known and/or changed.

**Subdivision 4.4.11 Variable purchased leave**

**4.30 Variable purchased leave arrangements**

- (1) An employee may, with the approval of the Secretary, participate in the variable purchased leave scheme. The scheme allows employees to access additional paid leave by reducing annual salary by:
  - (a) for AGS employees – a factor of up to 4/52 over an agreed period; and
  - (b) for other employees – a factor of up to 8/52 over an agreed period.
- (2) An employee may, on application approved by the Secretary, take paid leave under the variable purchased leave scheme.

**Subdivision 4.4.12 Portability of accrued paid leave entitlements**

**4.31 Portability of accrued paid leave entitlements**

- (1) Where an ongoing APS employee moves into the Department from another agency (including on promotion or for an agreed period) on or after the commencement of this Agreement, the employee's unused accrued annual leave and personal/carer's leave (however described) will be transferred, provided there is no break in continuity of service.
- (2) Where an employee is engaged in the Department immediately following a period of ongoing employment in the Parliamentary Service or the ACT Government Service, the employee's unused accrued annual leave and personal/carer's leave (however described) will be recognised unless the employee received payment in lieu of those entitlements on termination of employment.
- (3) Where a person is engaged as an ongoing employee in the Department, and immediately prior to the engagement the person was engaged as a non-ongoing employee in another APS agency, the Secretary may, at the employee's request, recognise any unused accrued annual leave (excluding accrued leave paid out on termination of employment) and personal/carer's leave (however described).
- (4) For the purposes of this clause;
  - (a) 'APS employee' has the same meaning as the PS Act;
  - (b) 'Parliamentary Service' refers to engagement under the *Parliamentary Services Act 1999*.

- (5) An employee may, with the approval of the Secretary, have personal leave credit with a former Australian Government or State Government employer not covered by subclauses (1) to (3) recognised for personal leave credit purposes. For more information about recognition of personal leave credit, employees should consult:
- (a) for AGS employees – the AGS Employment Handbook; and
  - (b) for other employees – the AGD Employee Relations Advice *Leave Policy*.

## **Part 5                      Managing change**

### **Division 5.1              Consultation about organisational change**

#### **5.01              Consultation about organisational change**

- (1) This term applies if the Department:
- (a) has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or
  - (b) proposes to introduce a change to the regular roster or ordinary hours of work of employees.
- (2) For a major change referred to in paragraph (1)(a):
- (a) the Department must notify the relevant employees of the decision to introduce the major change; and
  - (b) subclauses (3) to (9) apply.
- (3) The relevant employees may appoint a representative for the purposes of the procedures in this term.
- (4) If:
- (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
  - (b) the employee or employees advise the Department of the identity of the representative;
- the Department must recognise the representative.
- (5) As soon as practicable after making its decision, the Department must:
- (a) discuss with the relevant employees:
    - (i) the introduction of the change; and
    - (ii) the effect the change is likely to have on the employees; and
    - (iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and
  - (b) for the purposes of the discussion, provide, in writing, to the relevant employees:
    - (i) all relevant information about the change including the nature of the change proposed; and

**Clause 5.01**

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- (ii) information about the expected effects of the change on the employees; and
  - (iii) any other matters likely to affect the employees.
- (6) However, the Department is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (7) The Department must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- (8) If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the Department, the requirements set out in paragraph (2)(a) and subclauses (3) and (5) are taken not to apply.
- (9) In this term, a major change is *likely to have a significant effect on employees* if it results in:
  - (a) the termination of the employment of employees; or
  - (b) major change to the composition, operation or size of the Department's workforce or to the skills required of employees; or
  - (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
  - (d) the alteration of hours of work; or
  - (e) the need to retrain employees; or
  - (f) the need to relocate employees to another workplace; or
  - (g) the restructuring of jobs.
- (10) For a change referred to in paragraph (1)(b):
  - (a) the Department must notify the relevant employees of the proposed change; and
  - (b) subclauses (11) to (15) apply.
- (11) The relevant employees may appoint a representative for the purposes of the procedures in this term.
- (12) If:
  - (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
  - (b) the employee or employees advise the Department of the identity of the representative;

the Department must recognise the representative.
- (13) As soon as practicable after proposing to introduce the change, the Department must:
  - (a) discuss with the relevant employees the introduction of the change; and
  - (b) for the purposes of the discussion, provide to the relevant employees:
    - (i) all relevant information about the change, including the nature of the change; and
    - (ii) information about what the Department reasonably believes will be the effects of the change on the employees; and

- (iii) information about any other matters that the Department reasonably believes are likely to affect the employees; and
  - (c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- (14) However, the Department is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (15) The Department must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- (16) In this term:

*relevant employees* means the employees who may be affected by a change referred to in subclause (1).

## **Division 5.2          Redeployment, reduction and redundancy**

### **5.02          Application of Division**

- (1) This Division applies only to excess employees who are ongoing APS employees other than employees on probation.
- (2) An employee is an *excess employee* if the Secretary considers that:
- (a) the employee is of a kind of which there are more than are necessary for the efficient and economical working of the Department; or
  - (b) the services of the employee cannot be effectively used because of technological or other changes in the work methods of the Department or structural or other changes in the nature, extent or organisation of the functions of the Department; or
  - (c) if the duties usually performed by the employee are to be performed at a different locality:
    - (i) the employee is not willing to perform the duties at that locality; and
    - (ii) the Secretary decides that the employee is an excess employee.

### **5.03          Consultation process**

- (1) If the Secretary considers that an employee is likely to become an excess employee, the Secretary must tell the employee in writing as soon as practicable, and give the employee written reasons why the employee is likely to become excess.
- (2) The Secretary must discuss with the employee measures that might be taken to resolve the employee's potentially excess status, including:
- (a) redeployment opportunities for the employee at or below the employee's existing level; and
  - (b) referral to career advisory services; and
  - (c) whether voluntary redundancy might be appropriate.

**Clause 5.04**

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- (3) If the employee nominates a representative, the Secretary must hold the discussions with the employee's representative.
- (4) Before the discussions are over, the Secretary may ask an employee who is not an excess employee to express interest in voluntary redundancy if that would permit the redeployment of an employee who is excess and would otherwise be subject to redundancy.
- (5) The Secretary may identify an employee who is excess to the Department's requirements:
  - (a) after the discussions under subclause (2) have been held; or
  - (b) if the employee or the employee's representative declines to attend discussions – no less than 1 month after the Secretary has told the employee that the employee is likely to become an excess employee.
- (6) After identifying an excess employee, the Secretary must tell the employee in writing that the employee is excess.
- (7) The Secretary must establish, through consultation with identified employees, the employees who want to be offered voluntary redundancy immediately and the employees who seek redeployment.
- (8) The Secretary must, in writing, tell an employee seeking redeployment that the employee is excess (if this has not already happened) and that the employee may, at their request, be referred to career advisory services.
- (9) The Secretary must take reasonable steps, consistent with the interests of the efficient administration of the Department, to transfer an excess employee to a suitable vacancy at the same level within the Department.
- (10) Despite subclauses (2) to (9), if an AGS employee is told in writing the employee is likely to become excess under subclause (1), the employee may, with the approval of the Secretary, fast-track the redundancy process. In these circumstances, the employee may decide to take a voluntary redundancy effective no later than 2 weeks after the written advice they are likely to become excess.
- (11) Where an employee takes a voluntary redundancy under subclause (10), the employee will be paid additional severance payment equal to 8 weeks' salary above the severance pay entitlement provided for under clause 5.06.

**5.04 Voluntary redundancy**

- (1) If an employee:
  - (a) is told under clause 5.03(6) that they are an excess employee; or
  - (b) expresses interest in voluntary redundancy under subclause 5.03(4);the Secretary may invite the employee to accept voluntary redundancy.
- (2) The Secretary may invite an employee mentioned in paragraph (1)(b) to accept voluntary redundancy only if:
  - (a) an otherwise excess employee is redeployed to perform duties that would otherwise have been performed by the employee mentioned in paragraph (1)(b); and

- (b) as a result, the employee mentioned in paragraph (1)(b) becomes an excess employee.
- (3) If the Secretary invites an employee to accept voluntary redundancy under subclause (1), the Secretary must:
  - (a) allow the employee at least 1 month (the *acceptance period*) to accept the invitation; and
  - (b) give notice of termination of employment in accordance with section 29 of the PS Act before the end of the acceptance period only if the employee agrees.
- (4) Within the acceptance period, the Secretary must tell the employee in writing about the following matters:
  - (a) the amount of severance pay, pay in lieu of notice and paid up leave credits;
  - (b) for CSS and PSS members, options open to the employee for superannuation;
  - (c) taxation rules applying to payments to the employee;
  - (d) the level of assistance up to a maximum of \$750 for financial advice.
- (5) Only 1 invitation of voluntary redundancy is to be made to an employee.
- (6) If an employee declines an invitation of voluntary redundancy under paragraph (1)(a), or does not accept the invitation within 1 month, the Secretary must, as soon as possible and with the employee's consent, refer the employee to career advisory services.

#### **5.05 Period of notice**

- (1) If an employee agrees to be voluntarily retrenched under clause 5.04, the Secretary may retrench the employee by giving notice of termination of employment in accordance with section 29 of the PS Act.
- (2) The period of notice is 4 weeks or, for an employee over 45 with at least 5 years of continuous service, 5 weeks.
- (3) If the employee is retrenched at the beginning of, or within, the notice period, the employee must receive payment instead of notice as set out in the FW Act for the unexpired part of the notice period.

#### **5.06 Severance pay**

- (1) Subject to any minimum amount an employee is entitled to under the National Employment Standards, an employee to whom subclause 5.04(1) applies is entitled to be paid an amount equal to:
  - (a) 2 weeks' salary for each completed year of continuous service; and
  - (b) a proportionate payment for completed months of service since the last completed year of service.
- (2) However, the minimum amount payable is an amount equal to 4 weeks' salary and the maximum amount payable is an amount equal to 48 weeks'

**Clause 5.06**

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salary.

- (3) Severance pay is calculated on a proportionate basis for any period of service when an employee worked part-time hours if the employee has less than 24 years of full-time service.
- (4) For severance pay, *service* means any of the following:
  - (a) service in the Department;
  - (b) Government service as defined by section 10 of the LSL Act;
  - (c) service with the Commonwealth (other than service with a Joint Commonwealth-State body corporate in which the Commonwealth has a controlling interest) that is recognised for long service leave purposes;
  - (d) service with the Australian Defence Force;
  - (e) service in the Australian Public Service immediately before deemed resignation under section 49 of the *Public Service Act 1922* (as in force on 17 November 1966) if the service has not previously been recognised for severance pay purposes;
  - (f) service in another organisation that is recognised for long service leave purposes if:
    - (i) the employee was transferred from the Australian Public Service to the organisation with a transfer of a function; or
    - (ii) the employee was engaged by the organisation on work within a function, and was appointed because of the transfer of the function to the Australian Public Service.
- (5) Earlier periods of service count if:
  - (a) there is no break between the periods of service; or
  - (b) there is a break between the periods of service of less than 1 month, and the break happened when an offer of employment with the new employer had been made and accepted by the employee before ceasing employment with the previous employer; or
  - (c) the earlier period of service was with the Australian Public Service and ceased because the employee was deemed to have resigned from the Australian Public Service on marriage under section 49 of the *Public Service Act 1922* (as in force on 17 November 1966).
- (6) A period of service does not count as service for severance pay purposes if it ceased:
  - (a) with the payment of a redundancy benefit or similar payment or an employer financed retirement benefit; or
  - (b) for any of the following reasons:
    - (i) because the employee lacked, or had lost, an essential qualification for performing their duty;
    - (ii) because of non-performance, or unsatisfactory performance, of duties;
    - (iii) because of an 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 PS Act;
  - (vi) breach of the APS Code of Conduct;
  - (vii) under the *Public Service Act 1922* for a reason equivalent to a reason mentioned in paragraphs (i) to (vi);
  - (viii) through voluntary retirement at or above the minimum retirement age applicable to the employee;
  - (ix) any other ground prescribed by the *Public Service Regulations 1999*.
- (7) An absence from work that does not count as service for long service leave purposes does not count as service for severance pay purposes.

### **5.07 Rate of payment – severance pay**

In calculating severance pay, salary includes:

- (a) either:
  - (i) the employee's full-time salary, adjusted on a proportionate basis in accordance with subclause 5.06(3) for periods of part-time service; or
  - (ii) if the employee acted in a higher position for a continuous period of at least 1 year immediately before the employee was given notice of redundancy – the full-time salary of the higher position, adjusted on a proportionate basis in accordance with subclause 5.06(3) for periods of part-time service; and
- (b) if the employee undertook shiftwork and was entitled to shift penalties for at least half the pay periods in the 1 year before the employee was given notice of redundancy – a weekly average of shift penalties calculated over the year; and
- (c) other allowances in the nature of salary that were paid regularly and during annual leave, excluding allowances that were:
  - (i) a reimbursement for expenses incurred; or
  - (ii) a payment for disabilities associated with the performance of duty.

### **5.08 Retention periods**

- (1) If an excess employee has not accepted an offer of voluntary redundancy, the Secretary must not terminate their employment in accordance with section 29 of the PS Act without the employee's consent until the following retention periods have elapsed:
  - (a) for AGS employees – 6 weeks; and
  - (b) for other employees:
    - (i) if the employee has at least 20 years' service or is aged 45 years or older – 13 months;
    - (ii) for any other employee – 7 months.

**Clause 5.08**

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- (2) However, the retention period applying under paragraph (1)(b) is reduced by an amount equivalent to an employee's redundancy entitlement under the National Employment Standards calculated as at the end of the adjusted period.
- (3) The retention period starts on:
  - (a) the day the employee is told in writing in accordance with the consultation process that the employee is excess; or
  - (b) for an employee who expresses interest in voluntary redundancy under subclause 5.03(4) – the day the Secretary invites the employee to accept voluntary redundancy under clause 5.04.
- (4) For an employee other than an AGS employee, the retention period is extended by any period of certified personal leave for personal illness or injury taken during the retention period.
- (5) During the retention period, the Secretary:
  - (a) must continue to take reasonable steps to find alternative employment for the employee; and
  - (b) may transfer the employee to a job at a lower classification with 4 weeks' notice.
- (6) The notice period mentioned in paragraph (5)(b) must, as far as practicable, be concurrent with the retention period.
- (7) If the employee is transferred under paragraph (5)(b) before the end of the retention period, the employee is to be paid income maintenance to maintain the employee's salary at the previous higher level for the balance of the retention period.
- (8) An excess employee who, during the retention period, applies for assignment to duties within a classification group the same as, or lower than, the employee's current approved classification as a result of an advertised vacancy in the Department is entitled to be considered in isolation from, and not in competition with, an applicant who is not an excess employee.
- (9) An excess employee is entitled to reasonable leave with full pay to attend necessary employment interviews after the employee:
  - (a) is told in writing in accordance with the consultation process that the employee is excess; or
  - (b) has had an election to accept voluntary redundancy approved by the Secretary.
- (10) An excess AGS employee is entitled to reimbursement for expenses associated with redeployment, outplacement or career counselling. The maximum amount of financial assistance available under this subclause, including FBT and GST, is \$5 000.
- (11) An excess AGS employee is entitled to reasonable leave with full pay to attend outplacement or career counselling sessions. An excess employee, other than an AGS employee, is entitled to reasonable travel and incidental expenses, not met by the prospective employer, to attend an employment

interview.

- (12) An excess employee who has to move household to a new locality because of an ongoing assignment to duties within a classification group the same as, or lower than, the employee's approved classification before the assignment is entitled to reasonable expenses.
- (13) If an employee, other than an AGS employee, has been notified that they are excess and is not permanently redeployed to a suitable position within 3 months, and the employee has not previously been invited to accept voluntary redundancy, the Secretary must invite the employee to accept voluntary redundancy as soon as possible after the end of that period.
- (14) If an excess employee, other than an excess AGS employee, agrees, the Secretary may terminate the employee's employment in accordance with section 29 of the PS Act, and pay the balance of the employee's entitlement for the retention period, reduced by an amount equivalent to the employee's entitlement to redundancy pay under the National Employment Standards, as a lump sum, if:
  - (a) the employee has been invited to accept, and has declined, voluntary redundancy; and
  - (b) redeployment has not been achieved within 3 months of the employee being identified as excess; and
  - (c) the Secretary is satisfied that there is insufficient productive work available for the employee in the Department for the rest of the retention period; and
  - (d) for an employee who was referred to a career advisory service – the service has advised that the employee is unlikely to be redeployed to another Agency in the APS.
- (15) Payment under subclause (14) is taken to include payment in lieu of notice of termination.

### **5.09 Involuntary termination**

- (1) Subject to the consultation process under this Part, the Secretary may terminate, in accordance with section 29 of the PS Act, the employment of an excess employee at the end of the retention period, without the consent of the employee.
- (2) An excess employee, other than an excess AGS employee, must not have their employment terminated if the employee:
  - (a) has not been invited to accept an offer of voluntary redundancy; or
  - (b) has elected to be retrenched but the Secretary has refused to approve it.
- (3) An excess employee must not have their employment terminated involuntarily without being given notice of termination, or payment in lieu of notice, of at least 4 weeks or, for an employee over 45 with at least 5 years of continuous service, 5 weeks.
- (4) The notice period mentioned in subclause (3) must, as far as practicable, be concurrent with the retention period.

**Clause 5.10**

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- (5) An employee who is subject to involuntary termination under this clause is entitled to receive:
- (a) for AGS employees – severance pay as applies under clause 5.06; or
  - (b) for other employees – redundancy pay as applies under s119 of the FW Act.

**5.10 Redeployment and redundancy provisions not to prevent other action**

This Part does not prevent the reduction in classification, or the termination, of an employee because of a breach of the Code of Conduct, physical or mental incapacity, unsatisfactory performance or non-performance of duties, loss of an essential qualification or any other ground for termination of employment prescribed by the *Public Service Regulations 1999*.

**Part 6 Cooperative workplace relations**

**Division 6.1 Consultation**

**6.01 AGD Workplace Relations Committee**

- (1) The WRC will be established to be the primary forum for consultation between the Department and its employees in respect of matters covered by this Agreement and the National Employment Standards.
- (2) The WRC will operate in accordance with governance and administration arrangements, including Terms of Reference, established by the Chair, in consultation with, and as agreed by, the WRC.
- (3) The Department will consult with, and consider the views of, the WRC on issues concerning the implementation and operation of this Agreement and the National Employment Standards, where these affect the employment conditions of employees.

**Division 6.2 Dealing with conflict in the workplace**

**Subdivision 6.2.1 Resolution of industrial disputes**

**6.02 Dispute settlement procedures**

- (1) If a dispute relates to:
  - (a) a matter arising under the agreement; or
  - (b) the National Employment Standards;this term sets out procedures to settle the dispute.
- (2) An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.
- (3) In the first instance, the parties to the dispute must try to resolve the dispute

at the workplace level, by discussions between the employee or employees and relevant supervisors and/or management.

- (4) If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to the FWC.
- (5) The FWC may deal with the dispute in 2 stages:
  - (a) the FWC will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
  - (b) if the FWC is unable to resolve the dispute at the first stage, the FWC may then:
    - (i) arbitrate the dispute; and
    - (ii) make a determination that is binding on the parties.

*Note* If the FWC arbitrates the dispute, it may also use the powers that are available to it under the FW Act.

A decision that the FWC makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the FW Act. Therefore, an appeal may be made against the decision.

- (6) While the parties are trying to resolve the dispute using the procedures in this term:
  - (a) an employee must continue to perform their work as they would normally unless they have a reasonable concern about an imminent risk to their health or safety; and
  - (b) an employee must comply with a direction given by the Department to perform other available work at the same workplace, or at another workplace, unless:
    - (i) the work is not safe; or
    - (ii) applicable occupational health and safety legislation would not permit the work to be performed; or
    - (iii) the work is not appropriate for the employee to perform; or
    - (iv) there are other reasonable grounds for the employee to refuse to comply with the direction.
- (7) The parties to the dispute agree to be bound by a decision made by the FWC in accordance with this term.

### **Subdivision 6.2.2 Review of decisions to terminate employment**

#### **6.03 Review rights and remedies for termination of employment**

- (1) The only review rights and remedies for an employee in relation to termination of employment are those available under:
  - (a) the FW Act; and
  - (b) other Commonwealth laws (including the Constitution); and
  - (c) common law.
- (2) Subdivision 6.2.1 does not apply to the termination of, or a decision to terminate, an employee's employment.

**Clause 6.04**

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- (3) Nothing in this Agreement prevents the Secretary from terminating the employment of an employee for serious misconduct, without further notice, or payment instead, in accordance with paragraph 123(1)(b) of the FW Act, subject to compliance with the procedures established by the Secretary for determining whether the employee has breached the Code of Conduct under section 15 of the PS Act.

**Division 6.3                    Cooperative Workplace Relations Policy**

**6.04                    Cooperative Workplace Relations Policy**

For more information about cooperative workplace relations, employees should consult:

- (a) for AGS employees – the AGS Employment Handbook; and
- (b) for other employees – the AGD Employee Relations Advice *Cooperative Workplace Relations*.

**Division 6.4                    Employee Representation**

**6.05                    Employee Representation**

The Department will respect and facilitate an employee's right to representation in the workplace. The role of workplace representatives, including union representatives will be respected and facilitated, in accordance with the FW Act.

**Part 7                    General**

**Division 7.1                    Period of Agreement**

**7.01                    Commencement and expiry date**

- (1) This Agreement commences 7 days after it is approved by the FWC.
- (2) The nominal expiry date for the Agreement is 3 years after the commencement date.

**Division 7.2                    Employee Relations Advices and AGS Employment Handbook**

**7.02                    Status of Employee Relations Advices and AGS Employment Handbook**

- (1) The AGS Employment Handbook and Employee Relations Advices referred to in this Agreement are not incorporated into, and do not form part of, this Agreement. Any policy within the AGS Employment Handbook or any Employee Relations Advice referred to in this Agreement may be reviewed or amended from time to time by the Secretary after reasonable

consultation with the Workplace Relations Committee. A term of this Agreement prevails to the extent of any inconsistency with the AGS Employment Handbook or an Employee Relations Advice.

- (2) During the period of operation of this Agreement, the Secretary may decide to consolidate policies referred to in this Agreement in Employee Relations Advices. If this occurs all references to the AGS Employment Handbook are to be read as references to the relevant Employee Relations Advice.

## **Division 7.3          Delegation of Secretary's powers or functions**

### **7.03          Delegation**

- (1) The Secretary may delegate any of their powers or functions under this Agreement (other than under this clause).
- (2) A person exercising powers or functions under a delegation under this clause must comply with any directions of the Secretary.

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*Signatures*

**For the Commonwealth**

Chris Moraitis PSM  
Secretary,  
Attorney-General's Department  
3-5 National Circuit  
Barton ACT 2600  
for and on behalf of the Commonwealth

21 December 2016

**Bargaining Representative Signature**

Bethe Vincent-Pietsch  
Deputy Secretary  
Community and Public Sector Union  
1/40 Brisbane Avenue  
Barton ACT 2600

16 December 2016



**Schedule 1      Classification structure and salary rates – other than for AGS employees**

**Part 1            General**

<b>Classification</b>	<b>Pay points</b>	<b>Salary before commencement date</b>	<b>Salary on commencement date (3% increase)</b>	<b>Salary from 12 months after commencement date (2% increase)</b>	<b>Salary from 24 months after commencement date (1% increase)</b>
APS Level 1–2 <sup>1</sup>	APS 1.1	\$43 957	\$45 276	\$46 182	\$46 644
	APS 1.2	\$45 432	\$46 795	\$47 731	\$48 209
	APS 1.3	\$46 662	\$48 062	\$49 024	\$49 515
	APS 1.4	\$48 579	\$50 037	\$51 038	\$51 549
	APS 2.1	\$49 747	\$51 240	\$52 265	\$52 788
	APS 2.2	\$51 116	\$52 650	\$53 703	\$54 241
	APS 2.3	\$52 456	\$54 030	\$55 111	\$55 663
	APS 2.4	\$53 820	\$55 435	\$56 544	\$57 110
	APS 2.5	\$55 164	\$56 819	\$57 956	\$58 536
APS Level 3	APS 3.1	\$55 550	\$57 217	\$58 362	\$58 946
	APS 3.2	\$56 992	\$58 702	\$59 877	\$60 476
	APS 3.3	\$58 440	\$60 194	\$61 398	\$62 012
	APS 3.4	\$59 952	\$61 751	\$62 987	\$63 617

<sup>1</sup> The junior rates set out in clause 3.16 apply to APS 1 and Cadet APS classifications.

<b>Classification</b>	<b>Pay points</b>	<b>Salary before commencement date</b>	<b>Salary on commencement date (3% increase)</b>	<b>Salary from 12 months after commencement date (2% increase)</b>	<b>Salary from 24 months after commencement date (1% increase)</b>
APS Level 4	APS 4.1	\$61 910	\$63 768	\$65 044	\$65 695
	APS 4.2	\$63 878	\$65 795	\$67 111	\$67 783
	APS 4.3	\$65 542	\$67 509	\$68 860	\$69 549
	APS 4.4	\$67 220	\$69 237	\$70 622	\$71 329
APS Level 5	APS 5.1	\$69 056	\$71 128	\$72 551	\$73 277
	APS 5.2	\$73 224	\$75 421	\$76 930	\$77 700
APS Level 6	APS 6.1	\$78 532	\$80 888	\$82 506	\$83 332
	APS 6.2	\$82 479	\$84 954	\$86 654	\$87 521
	APS 6.3	\$87 601	\$90 230	\$92 035	\$92 956
Executive Level 1	Executive 1.1	\$95 154	\$98 009	\$99 970	\$100 970
	Executive 1.2	\$102 749	\$105 832	\$107 949	\$109 029
	Executive 1.3	\$109 262	\$112 540	\$114 791	\$115 939
	Executive 1.4	\$115 778	\$119 252	\$121 638	\$122 855
Executive Level 2	Executive 2.1	\$115 778	\$119 252	\$121 638	\$122 855
	Executive 2.2	\$124 424	\$128 157	\$130 721	\$132 029
	Executive 2.3	\$128 583	\$132 441	\$135 090	\$136 441
	Executive 2.4	\$131 869	\$135 826	\$138 543	\$139 929

## Part 2 Salary rates for training classifications

Classification (and local designation, if applicable)	Pay Points	Salary before commencement date	Salary on commencement date (3% increase)	Salary from 12 months after commencement date (2% increase)	Salary from 24 months after commencement date (1% increase)
Cadet APS (practical training) <sup>2</sup>	Cadet PT 1	\$43 095	\$44 388	\$45 276	\$45 729
	Cadet PT 2	\$44 541	\$45 878	\$46 796	\$47 264
	Cadet PT 3	\$45 746	\$47 119	\$48 062	\$48 543
	Cadet PT 4	\$47 626	\$49 055	\$50 037	\$50 538
Cadet APS (full-time study) <sup>2</sup>	Cadet FTS	\$23 511	\$24 217	\$24 702	\$24 950
Graduate APS	GAPS 1	\$55 139	\$56 794	\$57 930	\$58 510
	GAPS 2	\$56 515	\$58 211	\$59 376	\$59 970
AGD Entry Level Programs Broadband	ELPB 1 (APS 2.1)	\$49 747	\$51 240	\$52 265	\$52 788
	ELPB 2 (APS 2.2)	\$51 116	\$52 650	\$53 703	\$54 241
	ELPB 3 (APS 3.1)	\$55 550	\$57 217	\$58 362	\$58 946
	ELPB 4 (APS 4.1)	\$61 910	\$63 768	\$65 044	\$65 695
	ELPB 5 (APS 4.4)	\$67 220	\$69 237	\$70 622	\$71 329
	ELPB 6 (APS 5.1)	\$69 056	\$71 128	\$72 551	\$73 277

<sup>2</sup> The junior rates set out in clause 3.16 apply to APS 1 and Cadet APS classifications.

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### Trainee APS (Administrative)

A Trainee APS (Administrative) employee will be paid a percentage of the minimum salary for an adult APS Level 1, rounded to the nearest dollar, having regard to schooling completed and the predetermined average proportion of time to be spent in approved training. These rates will apply as follows:

Year of schooling completed	Year 10	Year 11	Year 12
School leaver	30% (50%)	0% (33%)	–
School leaver	40% (33%)	45% (25%)	56%
plus 1 year out of school	45% (25%)	56%	65%
plus 2 years	56%	65%	73%
plus 3 years	65%	73%	80%
plus 4 years	73%	80%	80%
plus 5 years or more	80%	80%	80%

*Note* Figures in brackets represent time to be spent in recognised training activities, if no bracketed figure, taken to be 20 per cent.

### Part 3 National Security Hotline employees - Rates of pay

(subclause 3.06(3))

- (1) An employee engaged on an irregular or intermittent (casual) employment basis to perform functions associated with the operation of the National Security Hotline is entitled to the hourly rate mentioned in Table 1 for the classification level mentioned in the following table for the duties performed by the employee.

Duties	Classification
National Security Hotline Operator	APS Level 4
National Security Hotline Shift Supervisor	APS Level 5-6

- (2) The hourly rates of pay include a 20% casual loading and, where relevant, the highest penalty rate mentioned in the following table that applies to the performance of duties.

When duties performed	Penalty rate (% of employee's hourly rate of salary)
Between midnight and 8:00 am on a non-public holiday Monday to Friday	15%
After the first 8 hours of duty each day, on a non-public holiday, Monday to Friday	50%
On a non-public holiday Saturday	50%
On a non-public holiday Sunday	100%
On a public holiday	150%

- (3) Remuneration is payable fortnightly in arrears based on the employee's record of attendance.

**Table 1: Hourly rates of pay for National Security Hotline employees  
From commencement date (3% increase)**

	Pay Point	Hourly Rate, including 20% loading	Hourly Rate including 20% loading and 15% penalty	Hourly Rate including 20% loading and 50% penalty	Hourly Rate including 20% loading and 100% penalty	Hourly Rate including 20% loading and 150% penalty
APS Level 4	APS 4.1	\$39.12	\$44.98	\$58.67	\$78.23	\$97.79
	APS 4.2	\$40.36	\$46.41	\$60.54	\$80.72	\$100.90
	APS 4.3	\$41.41	\$47.62	\$62.12	\$82.82	\$103.53
	APS 4.4	\$42.47	\$48.84	\$63.71	\$84.94	\$106.18
APS Level 5-6	APS 5.1	\$43.63	\$50.18	\$65.45	\$87.26	\$109.08
	APS 5.2	\$46.26	\$53.20	\$69.40	\$92.53	\$115.66
	APS 6.1	\$49.62	\$57.06	\$74.43	\$99.24	\$124.05
	APS 6.2	\$52.11	\$59.93	\$78.17	\$104.22	\$130.28
	APS 6.3	\$55.35	\$63.65	\$83.02	\$110.70	\$138.37

**From 12 months after commencement date (2% increase)**

	<b>Pay Point</b>	<b>Hourly Rate, including 20% loading</b>	<b>Hourly Rate including 20% loading and 15% penalty</b>	<b>Hourly Rate including 20% loading and 50% penalty</b>	<b>Hourly Rate including 20% loading and 100% penalty</b>	<b>Hourly Rate including 20% loading and 150% penalty</b>
APS Level 4	APS 4.1	\$39.90	\$45.88	\$59.85	\$79.80	\$99.75
	APS 4.2	\$41.17	\$47.34	\$61.75	\$82.33	\$102.92
	APS 4.3	\$42.24	\$48.58	\$63.36	\$84.48	\$105.60
	APS 4.4	\$43.32	\$49.82	\$64.98	\$86.64	\$108.30
APS Level 5-6	APS 5.1	\$44.51	\$51.18	\$66.76	\$89.01	\$111.26
	APS 5.2	\$47.19	\$54.27	\$70.79	\$94.38	\$117.98
	APS 6.1	\$50.61	\$58.20	\$75.92	\$101.22	\$126.53
	APS 6.2	\$53.16	\$61.13	\$79.73	\$106.31	\$132.89
	APS 6.3	\$56.46	\$64.92	\$84.68	\$112.91	\$141.14

**From 24 months after commencement date (1% increase)**

	<b>Pay Point</b>	<b>Hourly Rate, including 20% loading</b>	<b>Hourly Rate including 20% loading and 15% penalty</b>	<b>Hourly Rate including 20% loading and 50% penalty</b>	<b>Hourly Rate including 20% loading and 100% penalty</b>	<b>Hourly Rate including 20% loading and 150% penalty</b>
APS Level 4	APS 4.1	\$40.30	\$46.34	\$60.45	\$80.60	\$100.75
	APS 4.2	\$41.58	\$47.82	\$62.37	\$83.16	\$103.95
	APS 4.3	\$42.66	\$49.06	\$63.99	\$85.33	\$106.66
	APS 4.4	\$43.75	\$50.32	\$65.63	\$87.51	\$109.39
APS Level 5-6	APS 5.1	\$44.95	\$51.69	\$67.42	\$89.90	\$112.37
	APS 5.2	\$47.66	\$54.81	\$71.49	\$95.33	\$119.16
	APS 6.1	\$51.12	\$58.79	\$76.68	\$102.23	\$127.79
	APS 6.2	\$53.69	\$61.74	\$80.53	\$107.37	\$134.22
	APS 6.3	\$57.02	\$65.57	\$85.53	\$114.04	\$142.55

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## Part 4 Supported Wage System

(subclause 3.09(2))

- (1) This schedule defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this Agreement.
- (2) In this schedule:
  - **Approved assessor** means a person accredited by the management unit established by the Commonwealth under the Supported Wage System (SWS) to perform assessments of an individual's productive capacity within the SWS.
  - **Assessment instrument means the tool provided for under the SWS that records the assessment** of the productive capacity of the person to be employed under the SWS.
  - **Disability Support Pension** means the Commonwealth Government pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991* (Cth), as amended from time to time, or any successor to that scheme.
  - **Relevant minimum wage** means the minimum wage prescribed in this Agreement for the class of work for which an employee is engaged.
  - **SWS** means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in the Supported Wage System Handbook.
  - **SWS wage assessment agreement** means the document in the form required.

### Eligibility criteria

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

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**Supported wage rates**

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

<b>Assessed Capacity</b>	<b>% of prescribed salary rate</b>
10%	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

provided that the minimum amount payable must be not less than \$81 per week.

- (6) Where an employee's assessed capacity is 10%; they must receive a high degree of assistance and support.

**Assessment of capacity**

- (7) For the purposes of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the SWS by an approved assessor, having consulted the employer and the employee, and if the employee so desires, their representative.
- (8) Assessment made under this schedule must be documented in a SWS wage assessment agreement, and retained by the employer as a time and wages record in accordance with the *Social Security Act 1991*.

**Lodgement of SWS wage assessment agreement**

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

**Review of assessment**

- (11) The assessment of the applicable percentage should be subject to annual review or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the SWS.



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

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

### **Workplace adjustment**

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

### **Trial period**

- (14) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.
- (15) During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.
- (16) The minimum amount payable to the employee during the trial period must be no less than \$81 per week.
- (17) Work trials should include induction or training as appropriate to the job being trialled.
- (18) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment under subclauses (7) and (8).

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**Schedule 2      Classification structure and salary ranges – for AGS employees**

**Part 1              Salary ranges for the Lawyer designation**

<b>Classification</b>	<b>Minimum salary from commencement date</b>	<b>Maximum salary from commencement date</b>	<b>Minimum salary from 12 months after commencement date</b>	<b>Maximum salary from 12 months after commencement date</b>	<b>Minimum salary from 24 months after commencement date</b>	<b>Maximum salary from 24 months after commencement date</b>
APS Level 3	\$49 620	\$66 333	\$50 613	\$67 660	\$51 120	\$68 337
APS Level 4	\$58 500	\$75 000	\$59 670	\$76 500	\$60 267	\$77 265
APS Level 5	\$61 800	\$79 310	\$63 036	\$80 896	\$63 666	\$81 705
APS Level 6	\$79 310	\$123 600	\$80 896	\$126 072	\$81 705	\$127 333
Executive Level 1	\$90 743	\$139 202	\$92 558	\$141 986	\$93 484	\$143 406
Executive Level 2	\$118 450	\$195 700	\$120 819	\$199 614	\$122 027	\$201 610

## Part 2 Salary ranges for the Paralegal designation

Classification	Minimum salary from commencement date	Maximum salary from commencement date	Minimum salary from 12 months after commencement date	Maximum salary from 12 months after commencement date	Minimum salary from 24 months after commencement date	Maximum salary from 24 months after commencement date
APS Level 4	\$49 650	\$70 555	\$50 643	\$71 966	\$51 150	\$72 686
APS Level 5	\$64 314	\$113 300	\$65 601	\$115 566	\$66 257	\$116 722

## Part 3 Salary ranges for the Legal Practice Support designation

Classification	Minimum salary from commencement date	Maximum salary from commencement date	Minimum salary from 12 months after commencement date	Maximum salary from 12 months after commencement date	Minimum salary from 24 months after commencement date	Maximum salary from 24 months after commencement date
APS Level 1 <sup>3</sup>	\$40 642	\$50 037	\$41 455	\$51 038	\$41 870	\$51 548
APS Level 2	\$44 833	\$62 857	\$45 730	\$64 114	\$46 188	\$64 755
APS Level 3	\$48 695	\$66 656	\$49 669	\$67 990	\$50 166	\$68 669
APS Level 4	\$50 798	\$79 210	\$51 814	\$80 794	\$52 333	\$81 602
APS Level 5	\$62 833	\$100 158	\$64 090	\$102 161	\$64 731	\$103 183
APS Level 6	\$73 308	\$113 300	\$74 774	\$115 566	\$75 522	\$116 722
Executive Level 1	\$90 603	\$125 421	\$92 415	\$127 929	\$93 339	\$129 209
Executive Level 2	\$114 800	\$191 580	\$117 096	\$195 412	\$118 267	\$197 366

<sup>3</sup> The junior rates set out in clause 3.16 apply to APS 1 and Cadet APS classifications.

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**Part 4                    Salary ranges for training classifications**

<b>Classification</b>	<b>Minimum salary from commencement date</b>	<b>Maximum salary from commencement date</b>	<b>Minimum salary from 12 months after commencement date</b>	<b>Maximum salary from 12 months after commencement date</b>	<b>Minimum salary from 24 months after commencement date</b>	<b>Maximum salary from 24 months after commencement date</b>
Graduate APS	\$56 794	\$67 043	\$57 930	\$68 384	\$58 509	\$69 068
AGS Entry Level Programs Broadband	\$44 833	\$67 043	\$45 730	\$68 384	\$46 188	\$69 068

Rates for Trainee APS (Administrative) employees are as at Schedule 1, Part 4.

**Part 5                    Supported Wage System**

Rates for Supported Wage Systems are as at Schedule 1, Part 4.

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## **Schedule 3      Remuneration and other conditions that apply solely to AGS employees**

### **Part 1            Allowances**

#### **Business allowance**

- (1) The Secretary may approve a business allowance for an AGS employee who undertakes a special role or responsibilities, or performs particular and significant AGS business development activities.
- (2) Business allowances may have fixed and performance related components.
- (3) Business allowances are not considered part of salary and do not count for superannuation purposes.
- (4) A transitional employee who was in receipt of a business allowance under the former AGS Agreement immediately prior to the commencement of this Agreement shall continue to be paid the business allowance from the commencement of this Agreement. The rate of business allowance will be the rate that applied immediately prior to the commencement of this Agreement.
- (5) For more information about business allowance, employees should consult the AGS Employment Handbook.

#### **Bring your own device allowance**

- (1) A taxable allowance of \$300 a year will be paid to an AGS employee who is approved by the Secretary to use their personal smartphone or tablet for official purposes. Payment will only be made for 1 personal device for each employee and will be paid fortnightly.
- (2) Employees who are approved to access official information through Good technology on their personal devices are responsible for all aspects of the device, including its purchase, access, maintenance, security, connection to a telecommunications network and all data charges. The Secretary's responsibility is to enable access to official systems through Good technology and to pay the associated costs for the access.
- (3) The Secretary may decide to extend the arrangement to other devices (e.g. laptop computers) during the life of this Agreement.
- (4) For more information about bring your own device allowance, employees should consult the AGS Employment Handbook.

### **Part 2            Individual performance bonuses**

#### **General**

For more information about individual performance bonuses, employees should consult the AGS Employment Handbook.

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### **Net production bonus**

- (1) Employees designated as a Lawyer or Paralegal with a fee earning target are eligible to earn a net production bonus.
- (2) An eligible employee will receive a net production bonus equivalent to 20% of the employee's net production above their net production target.
- (3) The bonus will only be paid where the employee's overall performance is assessed as at least satisfactory (or equivalent) under the PPI.
- (4) Calculation of the bonus will take into account the guidelines on the calculation of net production and net production targets in the AGS Employment Handbook and the National Finance Standards.
- (5) Where an eligible employee is directed by the Australian Government Solicitor to undertake other roles and responsibilities, the Australian Government Solicitor will consider whether any level of fee relief is warranted. For more information, employees should consult the policy on fee relief.
- (6) If the Secretary considers the net production bonus is not appropriate, or is insufficient, for an employee's role and responsibilities, the Secretary may decide that the employee can be considered for a percentage of salary bonus, either instead of or in addition to the net production bonus.

### **Percentage of salary bonus**

- (1) Employees at the following designations or performing the following roles will be eligible for consideration for a percentage of salary bonus:
  - (a) Outpost employee;
  - (b) Graduate APS employee; and
  - (c) any other role determined by the Secretary.
- (2) The bonus will only be paid where the employee's overall performance has been assessed at a rating above satisfactory (or equivalent) under the PPI at the end of the performance cycle for the relevant year. The maximum bonus that may be awarded is up to the equivalent of 10% of the amount of salary earned for the relevant financial year, including any higher duties allowance.
- (3) When setting performance agreements, the employee and their appraiser may weight performance tasks according to their level of importance and express them as a percentage of the total potential bonus.
- (4) The appraiser will decide the percentage of bonus to be paid having regard to the employee's performance.
- (5) For outpost employees, performance tasks will be assessed against the broad categories of: client relationships, technical skills and corporate contribution.
- (6) In special circumstances, due to the nature of the role and responsibilities of an employee, the Secretary may decide to modify the basis or extent of an employee's percentage of salary bonus.

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## **Discretionary bonus**

The Secretary may award up to \$150,000 a year to employees who are eligible for a net production bonus. In deciding to award discretionary bonuses the Secretary will have regard to any other bonus the employee may be entitled to receive, the employee's responsibilities and their overall contribution to AGS.

## **Payment of individual performance bonuses**

- (1) To be eligible for consideration for an individual performance bonus an employee must be employed within AGS for a minimum continuous period of 12 weeks during the relevant financial year. An employee who is employed for less than the full relevant financial year who qualifies for a percentage of salary bonus will receive a pro-rated bonus payment.
- (2) Payment of individual performance bonuses to eligible employees will be made each year as soon as eligibility has been confirmed by the Secretary. Payment of individual performance bonuses will usually be in the first quarter of the financial year. However, if significant questions remain about the calculation of net production for a fee earner (e.g. in relation to the employee's work in progress or outstanding debt), a payment will be made as soon as practicable.

## **Part 3 Remuneration review arrangements**

### **Annual Remuneration Review**

- (1) The Secretary will review the base salary and, where relevant, business allowance and higher duties allowance, of all eligible employees each year as part of an annual remuneration review.
- (2) An employee is eligible for an annual remuneration review subject to having been assessed under the PPI as at least 'satisfactory' (or equivalent) at the end of the immediately preceding performance cycle appraisal.
- (3) In addition to the general increases in base salary provided for at clause 3.07, the annual remuneration review will consider an individual component for any adjustment to an employee's base salary and/or business allowance and/or higher duties allowance based on the remuneration review factors articulated at subclause (7).
- (4) An employee's base salary will not be reduced as a result of a remuneration review.
- (5) Remuneration changes as a result of the annual remuneration review will be effective from 1 August.
- (6) The Department will pay at least 1% of the AGS salary bill at the end of the preceding financial year for individual increases as part of this process.
- (7) The Secretary will have regard to the following factors when determining the outcome of a remuneration review:
  - (a) The performance and capability of the employee – including past and projected performance, the mix between fixed and variable pay, the

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application of skills and qualifications, capabilities, the likelihood of the employee regularly exceeding performance expectations and continuing contribution to AGS; and

- (b) AGS financial considerations – including affordability of any salary increase, the overall contribution of the employee to the team and the financial performance of the employee, the employee’s team and practice group or function; and
- (c) Client value considerations – including the value of the employee’s work in the relevant market and the quality of the employee’s internal and external client relationships; and
- (d) Relevant external employment markets and internal job relativities – including market comparisons taking into account superannuation cost, bonuses and other benefits, remuneration for comparable employees paid in the locality and across AGS for the relevant type of work, and job and salary relativities within AGS.

### **Additional remuneration reviews – APS 3-6 classified employees at the Lawyer designation**

- (1) The Secretary will review remuneration for APS 3-6 classified employees at the Lawyer designation following their mid-cycle performance review under the PPI.
- (2) The date of effect of any increase under subclause (1) will be 1 January of the relevant year.

## **Part 4 Career development**

### **Continuing Legal Education**

All AGS employees employed at the Lawyer designation are expected to participate in sufficient professional development activities to meet the expectations and requirements set in their performance agreement, and must undertake a minimum of 10 hours a year of Continuing Legal Education (CLE) unless the Secretary approves a lower level of CLE.

### **Mandatory Continuing Professional Development**

Where Mandatory Continuing Professional Development applies to AGS employees who are members of professions which have requirements for continuing education in the state or territory in which they are members, employees must ensure that their professional development activities are sufficient to meet those requirements.



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## **Schedule 4 Transitional provisions**

### **Part 1 Transition from Legal Officer designation**

An employee who, under the former Agreement held the designation of Legal Officer, Senior Legal Officer or Principal Legal Officer, will transition to the corresponding pay point for the relevant classification in Schedule 1 on commencement date.

### **Part 2 Former AGS employees – treatment of salary**

- (1) An employee who:
  - (a) immediately prior to commencement of this Agreement was covered by the former AGS Agreement; and
  - (b) does not remain an AGS employee on commencement of this Agreement; and
  - (c) was in receipt of salary at a rate in excess of the maximum salary provided for at Schedule 1 for the relevant classification;will have the salary rate received prior to the commencement of this Agreement treated as the maximum salary.
- (2) An employee who:
  - (a) is not covered by subclause (1); and
  - (b) immediately prior to commencement of this Agreement was covered by the former AGS Agreement; and
  - (c) does not remain an AGS employee on commencement of this Agreement; and
  - (d) was in receipt of salary level not equivalent to a pay point for the relevant classification at Schedule 1,will, on commencement date, have their salary increased to the next higher pay point in Schedule 1 that is above 103% of their pre-commencement salary.

### **Part 3 Employees formerly performing duty in parts of the Department other than AGS – treatment of salary**

Despite clause 3.07, the salary of an employee who:

- (a) immediately prior to commencement of this Agreement was covered by the former Agreement; and
  - (b) is an AGS employee on commencement of this Agreement
- will be the salary that applied immediately prior to the commencement of this Agreement, increased by 3% .

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## Part 4 Superannuation

For an employee who was covered by the former AGS Agreement immediately prior to commencement of this Agreement, and was covered by subclause 18.2 of that Agreement or was a non-ongoing employee (other than an employee to whom clause 3.08 of this Agreement applies), the salary for superannuation for the purposes of subclause 3.54(2) of this Agreement is, until the employee's next birthday, taken to be the salary rate the employee received immediately prior to the commencement of this Agreement.

## Part 5 Program for Performance Improvement

- (1) Where, for the purposes of this Agreement, the basis for an entitlement depends upon an employee's participation in the PPI, for the year ending 30 June 2017, the reference to PPI is, for AGS employees, to be read as a reference to the AGS performance management program.
- (2) However, an employee who:
  - (a) immediately prior to commencement of this Agreement was covered by the former Agreement; and
  - (b) is an AGS employee on commencement of this Agreement,
 will, for the year ending 30 June 2017, remain covered by the AGD PPI.
- (3) An employee who:
  - (a) immediately prior to commencement of this Agreement was covered by the former AGS Agreement; and
  - (b) does not remain an AGS employee on commencement of this Agreement,
 will, for the year ending 30 June 2017, remain covered by the AGS performance management program.
- (4) For subclauses (1), (2) and (3), and for the purposes of determining entitlements under this Agreement for the year ending 30 June 2017, the corresponding ratings between the AGD PPI and AGS performance management program are:

	AGD PPI	AGS performance management program
Satisfactory ratings	<i>Exceeds most performance targets</i>	<i>Exceeded requirements</i>
	<i>Meets all performance targets</i>	<i>Met requirements</i>
Unsatisfactory ratings	<i>Meets most performance targets</i>	<i>Not met requirements</i>
	<i>Does not meet performance targets</i>	

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## **Part 6 Bonus conversion allowance**

- (1) A transitional employee who was in receipt of a bonus conversion allowance at the commencement of this agreement will continue to receive that allowance as a non-superannuable allowance.
- (2) An employee who:
  - (a) immediately prior to commencement of this Agreement was covered by the former AGS Agreement and was in receipt of a bonus conversion allowance; and
  - (b) does not remain an AGS employee on commencement of this Agreement

will receive an adjustment to salary on commencement date before the provisions of Schedule 4, Part 2 are applied. The amount of adjustment will be the amount that, when increased by 15.4%, equals the amount of bonus conversion allowance previously received.

## **Part 7 Transitional arrangement for personal leave accrual**

- (1) A transitional employee who, immediately prior to commencement date, was covered by clause 58 of the former AGS Agreement, will receive, on commencement date, an adjustment to their personal leave credit. The amount of adjustment will be based on an accrual of personal leave at the rate of 18 days per annum from their last personal leave accrual date until the day before commencement date.
- (2) An employee who, immediately prior to commencement date, was covered by clause 58 of the former AGS Agreement, and who does not remain an AGS employee on commencement date, will receive an adjustment to their personal leave credit. The amount of adjustment will be based on an accrual of personal leave at the rate of 18 days per annum from their last personal leave accrual date until the day before commencement date.
- (3) Other employees covered by the former Agreement or the former AGS Agreement immediately prior to commencement date will receive personal leave credit at the rate of 20 days per annum, accruing daily, from commencement date.

## **Part 8 Continuation of redundancy processes under the former AGS Agreement**

An employee who, immediately prior to the commencement date, was subject to action under Part P of the former AGS Agreement, shall continue to be subject to that action under the terms of Part P of the former AGS Agreement until the employee is redeployed or their employment is terminated.

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## **Part 9                    Maternal leave for continuing AGS employees**

- (1) An employee who was covered by the former AGS Agreement immediately prior to commencement of this Agreement, who is entitled to paid leave under the ML Act and an additional 2 weeks paid maternal leave under subclause 4.18 (2) of this Agreement, is entitled to an additional 1 week paid maternal leave.
- (2) This provision ceases to apply to an employee assigned on an ongoing basis to duties in the department, other than in AGS.
- (3) Where an employee chooses to spread a payment under subclause 4.18 (6), only 15 weeks shall count as service.

## **Part 10                    Fire warden allowance for continuing AGS employees**

- (1) An employee who was covered by the former AGS Agreement immediately prior to commencement of this Agreement, and was in receipt of a health and safety allowance under subclause 36.1(c) of the former AGS Agreement for performance of fire warden duties, is entitled to an allowance at the rate of \$500 per annum, paid fortnightly, where they continue to perform fire warden duties.
- (2) This provision ceases to apply to an employee assigned on an ongoing basis to duties in the department, other than in AGS.



**Australian Government**

**Attorney-General's Department**

**Human Resources**

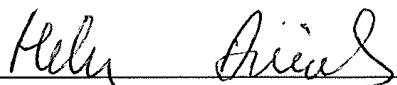
Deputy President Kovacic  
Fair Work Commission  
11 Exhibition Street  
MELBOURNE VIC 3001

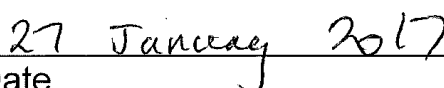
Dear Deputy President

**AG2016/7960 – Application for the approval of the Attorney-General's  
Department Enterprise Agreement 2016**

I, Helen Daniels, Assistant Secretary, Human Resources for the Commonwealth of Australia represented by the Attorney-General's Department ("the Department"), give the following undertakings with respect to the Attorney-General's Department Enterprise Agreement 2016 ("the Agreement"):

1. I have the authority given to me by the Secretary of the Department to provide this undertaking in relation to the application before the Fair Work Commission.
2. The Department undertakes that, notwithstanding the minimum salary rates provided for at Schedule 2, Part 2 and Part 3 of the Agreement, non-ongoing employees who are engaged for duties that are irregular or intermittent (casual) at the APS 4 classification in Schedule 2, Part 2, or at the APS 1 or at the APS 4 classifications at Schedule 2, Part 3, will be paid a rate of pay that is at least equivalent to what would have been payable under the Australian Public Service Enterprise Award 2015.
3. These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.

  
Signature

  
Date