



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Legal Aid Commission (ACT)
(AG2014/7106)

LEGAL AID COMMISSION (ACT) ENTERPRISE AGREEMENT 2013-2017

Australian Capital Territory

DEPUTY PRESIDENT KOVACIC

MELBOURNE, 5 SEPTEMBER 2014

Application for approval of the Legal Aid Commission (ACT) Enterprise Agreement 2013-2017.

[1] An application has been made for approval of an enterprise agreement known as the *Legal Aid Commission (ACT) Enterprise Agreement 2013-2017* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (Act) by the Legal Aid Commission (ACT). The Agreement is a single-enterprise agreement.

[2] Pursuant to s.190 of the Act I have accepted an undertaking from the employer. A copy of the undertaking is attached to this decision at Annexure A.

[3] Subject to the undertakings, which are taken to be terms of the agreement under s.191(3) of the Act, I am satisfied that each of the requirements of ss.186, 187 and 188 of the Act, as are relevant to this application for approval, have been met.

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

[5] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 12 September 2014. The nominal expiry date of the Agreement is 30 June 2017.


DEPUTY PRESIDENT

Annexure A

Legal Aid ACT

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Deputy President
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AG2014/7106 – Legal Aid Commission (ACT) Enterprise Agreement 2013 - 2017

I refer to your email concerning the Commission's Enterprise Agreement. The Commission adopts the ACT Government core template agreement. Accordingly, the concerns raised have been noted and have been discussed with both the ACT Government and with the Unions, who support our offer of undertakings. The undertakings given below will be adhered to when applying the provisions of the Legal Aid Commission (ACT) Enterprise Agreement 2013 – 2017.

Clause 47.6 - Overpayments

In respect to recovery action it may be agreed with the employee to adjust their leave credits instead of, or in combination with, a cash recovery.

Your concern that there is no reference to the qualification on cashing out is understood. No provision to cash out personal leave entitlements as a result of an overpayment recovery is provided for in the personal leave clauses. The only other leave that may be cashed out would be long service leave and purchased leave (if applicable) to cover an overpayment with the employees written consent.

Undertaking - The employer undertakes to apply clause 47.6 in accordance with the requirements set out in s.92-94 and s.100-101 of the FW Act.

Clause 70.29 – Annual Leave – Payment in lieu of Annual Leave

An employee may cash out up to two weeks of the employee's annual leave credit where that credit has exceeded the equivalent of two years accumulated leave subject to the following:.....

Clause 70.29 is consistent with the requirements of section 93(2)(a) of the FW Act because the terms of the clause provide that an employee can only elect to cash out up to two weeks of their annual leave credit if their annual leave credit has exceeded the equivalent of two years accumulated leave. Two years accumulated annual leave is equivalent to eight weeks. Accordingly, the practical effect of the clause is that an employee will always retain a minimum of 1.5 years / 6 weeks annual leave credit.

Clause 78.12 – Special Maternity Leave – Effect on other Entitlements

Special Maternity Leave accessed due to pregnancy related illness is deducted from the entitlement for unpaid maternity leave accessed after the birth of the child/ren.

The Agreement does not make mention of the parental leave entitlement being reduced by the special maternity leave but it does make mention of the unpaid maternity leave component being reduced. The Agreement provides a 52 week period where an employee has the ability to access a paid and unpaid maternity leave entitlement with Parental Leave in addition to this entitlement of up to a further two years.

Undertaking - The employer undertakes not to deduct any period of special maternity leave accessed due to pregnancy related illness from the employee's entitlement to unpaid maternity leave.

Clause 11.2 - Types of Employment & Clause 53 Regular Part Time Employment

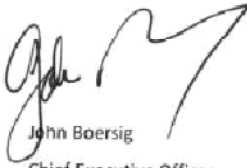
Clarification of overtime being payable for part time staff is as follows:

- Overtime for part time employees becomes available beyond the employee's ordinary daily hours as set out in clause 33.2 (b).
- A part time employees ordinary daily hours are those hours the employee is rostered to work for that day in accordance with their part time approval, for example some may be rostered from 8:30 – 13:30, therefore overtime is payable beyond 13:30, if not worked under the flextime provisions.

No employees were covered by an individual agreement prior to the making of this agreement.

Thank you for the opportunity to address these matters, and we look forward to your favourable consideration of our response.

Yours sincerely



John Boersig
Chief Executive Officer

5 September 2014

Note - this agreement is to be read together with an undertaking given by the employer. The undertaking is taken to be a term of the agreement. A copy of it can be found at the end of this agreement.

Legal Aid Commission (ACT) Enterprise Agreement 2013-2017

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Section A - Scope of Agreement

1 Title

- 1.1. This Agreement, made under section 172 of the *Fair Work Act 2009*, will be known as the *Legal Aid Commission (ACT) Enterprise Agreement 2013-2017*.

2 Main Purpose

- 2.1. The main purpose of this Agreement is to provide for terms and conditions that apply across the Legal Aid Commission (ACT) 'the Commission' and terms and conditions that reflect the particular operational and business requirements of the Commission.

Retaining our people

- 2.2. In order to promote permanent employment and job security for employees in the Commission, the Commission will endeavour to minimise the use of temporary and casual employment. The Commission agrees to the use of temporary employees only where there is no officer available in the Commission with the expertise, skills or qualifications required for the duties to be performed or the assistance of a temporary nature is required by the Commission for the performance of urgent or specialised work within the Commission and it is not practical in the circumstances to use the services of an existing officer.
- 2.3. In respect of casual employment, where regular and systematic patterns of work exist and where persons have a reasonable expectation that such arrangements will continue, consideration should be given to engaging the person on a different basis, including on a permanent or temporary basis.
- 2.4. The Commission will continue to consult with unions and employees on the development of strategies and initiatives that may assist in the successful recruitment and retention of mature age employees in the Commission. Such strategies and initiatives will be the subject of discussion and agreement between the employee and the relevant head of practice/manager/supervisor.
- 2.5. These strategies and initiatives may include:
- (a) developing flexible working arrangements, such as variable employment, part-year employment, job sharing and purchased leave;
 - (b) planning phased retirement arrangements for individual mature age employees who are considering retirement within four to five years, including through reducing the employee's management or higher level responsibilities during a phased retirement period;
 - (c) examining the implications of current superannuation legislation for using such flexible employment and working arrangements and informing affected employees how such implications may be addressed;
 - (d) arranging training to assist the employee in any changing roles the employee may have as part of the employee's phased retirement;
 - (e) developing arrangements to facilitate the return of former mature age employees, including by engaging such persons in the Commission for a short period in a mentoring capacity;
 - (f) at the discretion of the Chief Executive, contributing to the cost to an employee of financial advice received as part of planning for a phased retirement period.

Attracting future employees

- 2.6. The Commission will consult with union(s) through the Commission Consultative Committee to develop strategies to assist the Commission in attracting and retaining suitable employees. This will involve development of appropriate strategies and processes, including the conduct of surveys of staff, to assist this objective.
- 2.7. The Commission may run various entry programs in the light of operational needs and available resources. Entry to these programs will be by merit selection. All employment arrangements for entry level positions in the Commission should be fair and attractive.

Developing our people

- 2.8. The Commission will consult and agree with union(s) on the development and finalisation of Learning and Development Plans and on the annual key Commission learning and development priorities. The Commission and the union(s) will also agree on the equitable use of resources to address these priorities and strategies appropriate for the different categories of employees. For the purposes of this clause, "resources" includes but is not limited to employees, time, funding (where required) and equipment.
- 2.9. This Agreement supports a performance culture within the Commission that promotes ethical workplace conduct and rewards employees for their contribution towards the achievement of the Commission's objectives.
- 2.10. It is acknowledged that performance management is important to employee development and to ensuring the relationship between corporate, team and individual responsibilities are aligned to individual, team and organisational objectives.
- 2.11. Any performance management schemes in the Commission will not include performance pay.

Recognising our people

- 2.12. The Commission is committed to achieving an environment where employees feel valued for the contribution they make to achieving organisational goals. The most effective form of recognition is timely and appropriate feedback. The Commission will consult with the union(s) on other effective ways of recognising and rewarding the achievement of individuals and work groups.
- 2.13. Any outcomes of this consultation will only be implemented by agreement of the Commission and the union(s).

Ensuring fairness

- 2.14. The Commission recognises and encourages the contribution that people with diverse backgrounds, experiences and skills can make to the workplace. The Commission aims to ensure that this diversity is able to contribute to effective decision making and delivery of client services.
- 2.15. The Commission will work with employees to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, relationship or marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

Achieving a better work and life balance

- 2.16. The Commission is committed to providing employees with a work/life balance that recognises the family and other personal commitments of employees.

Promoting a healthy and safe working environment

- 2.17. The Commission is committed to promoting, achieving and maintaining the highest levels of health and safety for all employees.
- 2.18. The Commission will take all reasonable steps and precautions to provide a healthy, safe and secure workplace for the employee. The Commission and all employees will act in a manner that is consistent with the *Work Health and Safety Act 2011*.
- 2.19. Bullying and harassment and discrimination of any kind will not be tolerated in the workplace. It is recognised that bullying and harassment in the workplace has both emotional and financial costs and that both systemic and individual instances of bullying and harassment are not acceptable. Accordingly:
- (a) if the Commission is made aware of instances, or reported instances, of bullying and harassment or discrimination, the Commission will investigate the concerns as soon as possible in accordance with the Workplace Behaviours provisions in Section G of this Agreement; or
 - (b) if the Commission independently considers that inappropriate behaviour may be occurring, then the Commission will respond, as soon as possible, in a manner commensurate with the seriousness of this issue.
- 2.20. Further, given the clear evidence of the benefits and cost effectiveness of workplace health initiatives for both employers and employees, the Commission will develop health and wellbeing policies and programs that promote healthy lifestyles and help maintain a high standard of physical and mental health, along with supporting individual workplace safety and general wellbeing. Such policies and programs may include:
- (a) organisational/environmental policies and programs;
 - (b) awareness and education programs that promote healthy lifestyles and reduce risk factors; and
 - (c) traditional and non-traditional physical activity programs.

3 Application and Coverage

- 3.1. This Agreement applies to and covers:
- (a) the Chief Executive Officer of the Legal Aid Commission (ACT) on behalf of the Australian Capital Territory; and
 - (b) persons engaged under the *Legal Aid Act 1977* at any time when the Agreement is in operation in one of the classifications in Annex A, except persons engaged as the Chief Executive Officer or Assistant Executive Officer under section 17 of the *Legal Aid Act 1977*.
- 3.2. This Agreement covers the Community and Public Sector Union subject to FWA noting in its decision to approve this Agreement that it covers these unions.

4 Commencement and Duration

- 4.1. This Agreement will commence operation seven days after it is approved by Fair Work Australia.
- 4.2. The nominal expiry date of this Agreement is 30 June 2017.

5 Operation of the Agreement

This Agreement is comprehensive and provides the terms and conditions of employment of employees covered by this Agreement, other than terms and conditions applying under applicable legislation. This includes:

- (a) *Legal Aid Act 1977*;
- (b) *Fair Work Act 2009* (FW Act);
- (c) *Public Sector Management Act 1994* (PSM Act) where it is expressly incorporated by this Agreement;
- (d) *Public Sector Management Standards* (PSM Standards) where it is expressly incorporated by this Agreement;
- (e) *Work Health and Safety Act 2011* (WHS Act);
- (f) *Holidays Act 1958* (Holidays Act);
- (g) *Territory Records Act 2002* (TR Act); and
- (h) *Safety, Rehabilitation and Compensation Act, 1988* (SRC Act)

- 5.2. This Agreement constitutes a closed agreement in settlement of all claims for its duration. Therefore, during the life of this Agreement, there will be no further claims that affect the provisions of this Agreement, except where these claims are consistent with the terms of this Agreement.
- 5.3. This Agreement prevails over the PSM Act, the PSM Standards, and the Holidays Act and any policy statements and guidelines to the extent of any inconsistency.

6 Agreement Availability

- 6.1. Copies of this Agreement will be made available, in paper or electronic form, to all employees covered by the Agreement.

7 Authority of the Chief Executive

- 7.1. The Chief Executive may, in writing, delegate any power or function that the Chief Executive has under this Agreement to another person or position within the Commission, subject to directions, except for this power of delegation.
- 7.2. This does not limit the power of the Chief Executive to authorise a person to act for and on the Chief Executive's behalf.
- 7.3. The powers conferred through the operation of clause 7.1 will not be sub-delegated.
- 7.4. To avoid doubt, in this Agreement reference to the Chief Executive may be taken to mean delegate where the Chief Executive has delegated the particular power or function under clause 7.1.

8 Variation to Agreement

- 8.1. This Agreement may be varied in accordance with the FW Act.

9 Termination of Agreement

- 9.1. The Commission and the union(s) covered by this Agreement agree that the maintenance of, and adherence to, agreed terms and conditions of employment is a key component of good workplace relations and a dispute free workplace. They therefore agree that they will not exercise their right to terminate this Agreement under the FW Act.

Section B - Working in the Legal Aid Commission (ACT)

10 Commitment to Service

10.1.

EMPLOYEE RESPONSIBILITIES

All employees accept responsibility to contribute to achieving the Commission's outcomes by:

- carrying out their duties with reasonable care and diligence and in a way that promotes the values of the Commission and meets their obligations under Section 9 of the PSM Act.
- having an understanding of the principles and provisions of this Agreement and Commission Policies, Guidelines and Instructions (ie. Chief Executive Financial Instructions) and Plans.
- understanding where their contribution fits and the standard of work expected.
- engaging constructively in initiatives to enhance productivity and performance and progress change.
- actively participating in and taking responsibility for priority learning and development activities.
- maintaining all required employee records, eg. Attendance, leave and participation in professional development activities.
- maintaining full and accurate records of matters which influence any decision on business related matters and ensuring that all appropriate records are captured on the appropriate record keeping system.

MANAGER RESPONSIBILITIES

Managers will be:

- leading by example in promoting diversity, inclusion and respect for others in the workplace and modelling behaviours consistent with the Commission's Values, Policies and Guidelines.
- Upholding the principles and provisions of this Agreement and other supporting policies, guidelines, instructions and plans.
- providing employees with the tools they need to do their work efficiently, effectively, ethically and creatively.
- building organisational capability through encouraging employee access to learning and development and giving employees guidance and encouragement to transfer learning throughout the organisation.
- undertaking regular reviews with employees about their performance in order to assist employees to achieve to their full potential and to identify improvement opportunities.
- ensuring appropriate consultation on all workplace issues and initiatives that affect employees.

10.2. The Commission and its employees are committed to the provision of legal aid services that efficiently and effectively meet the needs of clients and the broader community.

10.3. During the life of this agreement the parties agree to work together through a consultative process to develop measures that demonstrate the efficiency and effectiveness of legal aid services and enable the Commission to meet obligations under funding agreements with government.

11 Types of Employment

11.1. A person will be engaged under the *Legal Aid Act 1977* in one of the following categories:

- (a) permanent employment on a full-time or permanent part-time basis, including appointment with or without probation (an officer); or

- (b) short term temporary employment for a period not exceeding twelve months on a full-time or part-time basis, engaged for a specified period of time or for a specified task or as a trainee or cadet (temporary employee); or
 - (c) long term temporary employment for a period greater than twelve months but not exceeding five years on a full-time or part-time basis, engaged for a specified period of time or for a specified task or as a trainee or cadet (temporary employee); or
 - (d) temporary casual employment (casual employee).
- 11.2. Persons engaged on a part-time basis will receive, on a proportionate basis, equivalent pay and conditions to those of full time employees.
- 11.3. For the purpose of clauses 17, 18, 30 and 33 of this Agreement, a Legal 3 is a Senior Officer Grade A equivalent a Legal 2 is a Senior Officer Grade B equivalent and a Legal 1 is a Senior Officer Grade C and below equivalent.

12 Probation

- 12.1. Where a person is appointed on probation under the *Legal Aid Act 1977*, the period of probation will be determined in advance and will be six months or less, or more than six months if this is reasonable, having regard to the particular circumstances of the employment.
- 12.2. At the time of an offer of employment on probation, the Chief Executive will inform the person in writing of the period of probation that will apply.
- 12.3. At the time a person is appointed on probation, the Chief Executive will inform the person in writing of the criteria and objectives to be met for the appointment to be confirmed.
- 12.4. Probation will provide a supportive process for the officer during which mutual evaluation and decisions about permanent appointment can be made.
- 12.5. There must be at least two formal assessments of an officer, at the two and four month dates, during the probationary period. The Chief Executive must provide the officer with a copy of the assessment report. The officer must be provided with an opportunity to respond within seven working days. If the assessment is sufficiently negative for the manager/supervisor to consider recommending that the Chief Executive terminate the employment, that opinion will be included in the assessment report.
- 12.6. A decision of the Chief Executive to accept the recommendation to terminate the appointment of an officer on probation, as per clause 12.5, is excluded from the Internal Review Procedures (Section I) and Appeal Mechanism (Section J) of this Agreement.
- 12.7. To avoid doubt, an officer on probation is able to seek a review of their probation under the Internal Review Procedures, (Section I), except in relation to a decision to terminate the officer's employment.

13 Promotion after Acting

- 13.1. The Chief Executive may approve the promotion of an officer into a nominally vacant position without an additional selection process where:
- (a) the officer has acted in the vacant position (or a position with identical selection criteria) for a period of more than 12 continuous months and has undergone a merit selection process in order to act in the position; and
 - (b) the vacant position was initially advertised for a minimum period of 6 months with the possibility of an extension; and

- (c) organisational requirements and financing for the position exists; and
 - (d) immediately before the promotion, the officer's manager assesses the officer against the selection criteria for the position as satisfactory; and
 - (e) there is no potentially or actually excess officer suitable to be placed in the position.
- 13.2. For the purposes of clause 13.1(a), the 12-months continuous acting may not be considered to have been broken where the officer performs the duties of another position at the same or higher level during the 12-month period.
- 13.3. For the purposes of clause 13.1(a), a merit selection process means a process of selection for filling a vacant position on the basis of the merit of the applicant(s), which includes:
- (a) advertisement of the position within the Commission; and
 - (b) comparative assessment of suitable applicants for the position, if there are more than one applicant; and
 - (c) selection based on the recommendation of a Selection Advisory Committee or a Joint Selection Committee.
- 13.4. The promotion of an officer in accordance with clause 13.1 will be notified as a promotion to a non-advertised vacancy to Commission employees. Any suitable qualified officer may lodge an appeal against the process for positions at or below an Administrative Service Officer Class 6 (or equivalent classification) in line with Section J of this Agreement, or may apply for an internal review of the process for positions at or above Senior Officer Grade C (or equivalent classification) in line with Section I of this Agreement.

14 Selection Committees

- 14.1. A selection committee will be formed following the advertising of a vacancy. The Chief Executive will determine whether the selection committee will be a:
- (a) Selection Advisory Committee (SAC); or
 - (b) Joint Selection Committee (JSC).

Selection Advisory Committee

- 14.2. A Selection Advisory Committee will be nominated by the Chief Executive and will be comprised of at least two members.
- 14.3. A Selection Advisory Committee will be chaired by the representative nominated as the Chairperson by the Chief Executive.

Joint Selection Committees

- 14.4. A Joint Selection Committee will normally comprise of, but not be limited to:
- (a) a chairperson who has appropriate skills and experience, nominated by the Chief Executive;
 - (b) a person who has appropriate skills and experience, nominated by the union(s); and
 - (c) a person who has appropriate skills and experience, nominated by the Chief Executive from a list of employees, and agreed by the Chief Executive and the union(s).

Note: Provisions relating to the use of Joint Selection Committees are located in the PSM Standards.

Operation of Selection Committees

- 14.5. A selection committee will not be convened except as prescribed by this Agreement.

- 14.6. A selection committee must make a recommendation based on the principles of merit as set out in the PSM Act and Standards.
- 14.7. A selection committee may, consistent with the application of the merit principles, decide not to conduct formal interviews and assess applicants on the basis of applications and referee reports only.

15 Lifespan of Merit Process

- 15.1. A selection committee's recommendations for filling a vacant position may be used for appointments, promotions, higher duties and transfers to that position or another position at the same level with the same selection criteria for a period of up to 12 months after the Chief Executive approves the recommendation. This period may be extended following consultation with the union.

16 Hours of Work

- 16.1. In this clause employee refers to an employee, other than a casual employee, who is employed in a position identified by the Chief Executive as having ordinary weekly hours of 36.75 hours per week.

Ordinary Hours of Work

- 16.2. The ordinary daily hours are seven hours and twenty one minutes for a full time employee.
- 16.3. Standard hours are from 8:30am to 12:30pm and from 1:30pm to 4:51pm Monday to Friday, unless otherwise agreed in writing by the employee and the manager/supervisor.
- 16.4. Ordinary weekly hours may be averaged over a period of up to four weeks (twenty eight calendar days), or a longer period of no more than twelve months as agreed in writing between the manager/supervisor and the employee.
- 16.5. A part-time employee will work less than the ordinary weekly hours of work for a full-time employee.

Span of Hours

- 16.6. Ordinary daily hours must be worked within the span of hour's limits of 7:00 a.m. to 7:00 p.m. Monday to Friday.
- 16.7. The span of hours worked in a day (subclause 16.6) may be varied by agreement between the manager/supervisor and a majority of employees concerned in a workplace.

Meal Break

- 16.8. An employee will not be required to work for more than five hours without a break for a meal of at least thirty minutes duration. Meal breaks will not count as time worked unless specifically provided for in this Agreement.
- 16.9. The provisions of subclause 16.6 may be varied by agreement between the manager/supervisor and a majority of employees concerned in a workplace.
- 16.10. The term 'meal break' does not require the employee to partake of a meal during the break period.
- 16.11. An employee who works up to six hours in a day, may, with the agreement of the manager/supervisor, work up to six hours without a meal break to accommodate the employee's personal circumstances and work/life balance.

17 Flextime

- 17.1. Flextime will be accessible to eligible employees who satisfy the requirements of clause 20 (Record Keeping).
- 17.2. Only employees at or below the Senior Officer Grade C level (or equivalent) may participate in flextime.
- 17.3. Flextime will provide the framework for an employee's, other than a casual employee's, pattern of attendance at work to be varied according to the needs of the employee and the requirements of the work unit. It is not a system that is designed to increase or reduce the total number of hours that must be worked.
- 17.4. For flextime arrangements to work effectively managers and employees have a responsibility to manage hours of work to ensure that individuals are not building up excessive flex credits without:
 - (a) the opportunity to access flextime accrued; and
 - (b) being productively employed i.e. a manager/supervisor may require an employee not to accumulate flex credits before 8.30am or after 4.51pm where there is insufficient work or an employee cannot be sufficiently managed.
- 17.5. Hours of work arrangements will be in accordance with operational requirements and workplace health and safety principles. This means that patterns of working hours that have the potential to impact on the health of an employee, such as working long hours in a condensed period or avoiding meal breaks so as to depart early from work, should be avoided.
- 17.6. As far as practicable, an employee will not be required to work for longer than five hours without a break of a minimum of thirty minutes duration.
- 17.7. The span of hours for employees eligible for flextime provisions will be from 7.00am to 7.00pm, Monday to Friday.
- 17.8. Employees may work outside the span of hours stipulated at subclause 17.7 where an employee and the manager/supervisor so agree. This provision is designed to add flexibility in exceptional circumstances and is not intended to replace normal overtime provisions.
- 17.9. Where an employee works outside the span of hours in accordance with subclauses 16.7 or 17.8, these hours will be considered normal hours of duty and will not attract overtime payments or time off in lieu provisions on an hour for hour basis, unless otherwise agreed between the employee and the manager/supervisor prior to the work being performed.
- 17.10. A settlement period will comprise two pay periods (i.e. four weeks).
- 17.11. Starting and finishing times within the span of hours are to be determined for individual work areas by the Chief Executive based on operational needs.
- 17.12. An employee may have a maximum flextime credit equal to the employee's normal weekly hours of duty, at the end of the settlement period. This may be varied by agreement between the manager/supervisor and the employee.
- 17.13. There is no provision to cash out flextime credits either during a period of employment with the Commission, or upon separation or transfer out of the Commission.
- 17.14. The maximum flextime debit that may accrue is ten hours in any settlement period. Any debit in excess of the maximum debit, at the end of the settlement period, will be considered leave without pay and deducted in accordance with the overpayment process at clause 47.

- 17.15. Any flexitime debits an employee has if the employee ceases employment with the Commission will be recovered from any termination payment owing to the employee, except in the case of death.
- 17.16. Accrued flexitime credits will be taken at such times and in such a period or periods as are agreed between the employee and the manager/supervisor and approved prior to taking accrued flexitime. It is the responsibility of both the employee and the relevant manager/supervisor to take steps to ensure that accrued flexitime credits can be taken as time off, in accordance with this clause
- 17.17. An employee not complying with these flexitime provisions may be directed to work standard hours or the employee's standard working pattern. Standard hours are 8.30am to 12.30pm and 1.30pm to 4.51pm Monday to Friday, unless otherwise agreed in writing by the employee and the manager/supervisor.

18 Flexible Working Arrangements for Senior Officer Grade A and B and Equivalent Employees

- 18.1. The Commission has a responsibility to minimise the extent that excessive hours are worked by its employees. As far as practicable, the Commission will develop strategies to try to reduce the incidence of excessive hours being worked.
- 18.2. However, the Commission and its employees recognise that there is an expectation that its employees at the Senior Officer Grade A and B (or equivalent) classification levels, because of the nature of the employee's duties and responsibilities, may be required to work additional hours in a standard working week.
- 18.3. The working arrangements (including additional hours) for an employee who is a Senior Officer Grade A or B (or equivalent) will be agreed between the employee and the manager/supervisor (but must be at least thirty-six hours and forty-five minutes per week). In considering these working arrangements, the employee and the manager/supervisor will take into account in particular:
- (a) the operational requirements and workload demands of the Commission; and
 - (b) the interests of the employee in achieving a reasonable balance of work and personal life.
- 18.4. In recognition of excessive hours that may be performed by employees, other than casual employees, who are at the Senior Officer Grade A and B (or equivalent) classification levels, the arrangements set out in subclauses 18.5 and 18.6 will apply.
- 18.5. An eligible employee will be able to access the credit hours under subclause 18.4 once the employee's manager/supervisor is satisfied that the employee has accumulated additional hours in excess of their normal hours of work in an accrual year.
- 18.6. Once an employee satisfies the requirements of subclause 18.5, the employee will be provided with a credit bank of their normal weekly hours as credit hours, under the following conditions:
- (a) the credit hours are to be taken within twelve months of the credit hours being granted, at a time agreed between the employee and the manager/supervisor; and
 - (b) the credit hours not taken by the employee within twelve months of the credit hours being granted will lapse; and
 - (c) the credit hours are granted on the basis that the employee satisfies the requirements of clause 20 (Record Keeping)
- 18.7. Employees will not receive payment of unused credit hours on separation from the Commission.

19 Casual Employment Arrangements

Minimum Attendance

- 19.1. The minimum payment on each occasion when a casual employee is called for and attends for duty will be three hours, whether or not the casual employee is required to work for those three hours.

Rate of Pay

- 19.2. A person engaged as a casual employee will be paid at the same rate of pay as would be applicable to an employee performing the duties and hours of that role. In addition the casual employee will receive a loading of the ordinary hourly rate of pay set out in Annex A to this Agreement instead of paid leave entitlements, other than long service leave, and instead of payment for public holidays on which the employee did not work.
- 19.3. The loading that will apply for the duration of this Agreement will be as follows:
- (a) 22.5% from the commencement of this Agreement until 30 June 2015; and then
 - (b) 25% from 1 July 2015.

Overtime

- 19.4. A casual employee is eligible to receive payment for overtime in accordance with clause 33.
- 19.5. A casual employee is eligible for payment of overtime in respect of all hours worked in excess of seven hours and twenty-one minutes on any day, if directed to work these additional hours.
- 19.6. The loading paid under subclause 19.2 is not taken into account in the calculation of overtime payments.

Overtime Meal Allowance

- 19.7. A casual employee is eligible to receive payment of overtime meal allowances in accordance with clause 34.
- 19.8. The term 'meal break' does not require the employee to partake of a meal during the break period.

Payment for Public Holidays

- 19.9. A casual employee is not eligible for payment in respect of public holidays, unless the employee works on a public holiday.
- 19.10. Where a casual employee does work on a public holiday, the casual employee is entitled to the appropriate overtime payments described in subclause 33.15.

Leave

- 19.11. Casual employee is not eligible for paid leave other than long service leave.

20 Record Keeping

- 20.1. The Commission will keep records relating to the employees' work, including records about attendance and pay, in accordance with the requirements of the FW Act and the FW Regulations.
- 20.2. Employees will record the time of commencing and ceasing duty for each day and leave accessed on the prescribed attendance record.
- 20.3. These records will be provided to the manager/supervisor for certification and stored appropriately in accordance with the *Territory Records Act 2002*

21 Outsourcing and Use of Contractors

- 21.1. The Commission is committed, within the scope of its resources, to promoting permanent employment and job security for employees and accordingly agrees to the provisions in this clause.
- 21.2. The Commission is committed wherever practicable to:
 - (a) minimising the use of consultants/contractors in the Commission; and
 - (b) minimising the use of sub-contractors and increase the use of direct employment.
- 21.3. The Commission will provide the Commission Consultative Committee (CCC) or equivalent with regular reports on the use of consultants/contractors in the Commission if requested.

22 Filling a Nominally Vacant Position Exceeding Twelve Months

- 22.1. Where a position has been nominally vacant for a continuous period exceeding twelve months, the Chief Executive will consult with the CCC on the circumstances for this and the feasibility of proceeding to fill the position on a permanent basis.

23 Notice of Termination

- 23.1. Where an employee's employment is to be terminated at the initiative of the employee, the employee will provide written notice of their resignation from the Commission to the Chief Executive at least two weeks prior to the proposed date of the resignation.
- 23.2. The period of notice required in subclause 23.1 may be reduced by agreement in writing between the employee and the Chief Executive.

Section C - Rates of Pay and Allowances

24 Part-Time Employment

- 24.1. Persons engaged on a part-time basis will receive, on a proportionate basis, equivalent pay and conditions to those of full time employees.

25 Pay Increases

- 25.1. Employees will be paid in accordance with the employee's classification and rates of pay set out in Annex A to this Agreement.
- 25.2. Pay increases for all classifications set out in Annex A of this Agreement will be:
 - (a) \$2090.00 or 2%, whichever is the greater, effective from 1 July 2013. This increase will be paid no later than the second pay day following the commencement of this Agreement; and any back pay will be paid as soon as possible; and
 - (b) Two 1.5% increases payable from the first pay period on or after 1 July 2014 and 1 April 2015; and
 - (c) Two 1.5% increases payable from the first pay period on or after 1 October 2015 and 1 April 2016; and
 - (d) Two 1.5% increases payable from the first pay period on or after 1 October 2016 and 1 April 2017.

- 25.3. A person who was an employee of the Commission on 1 July 2013 and who separated from the Commission before the commencement of this Agreement will be paid any difference between the rate of pay under clause 25 of this Agreement and the rate which the former employee was paid in the same classification on separation. Any monies paid to the employee by the Commission on separation will be adjusted in the same manner as the rate of pay.

26 Method of Payment

- 26.1. Employees will be paid fortnightly in arrears and by electronic funds transfer into a financial institution account of the employee's choice.
- 26.2. The Commission commits to paying employees their ordinary fortnightly pay and allowances on the appropriate payday. The Commission also commits to paying any overtime payments, higher duties allowance and other rostered allowances within two pay periods of the appropriate authorisation having been received by the relevant delegate.
- 26.3. The ordinary fortnightly pay will be based on the following formula:
- $$\text{Fortnightly pay} = \text{annual rate of pay} \times 12 / 313$$
- 26.4. A part-time employee will be paid pro-rata based on the employee's agreed ordinary hours.
- 26.5. An employee will, with the approval of the Chief Executive, be advanced the pay due for any period of approved paid annual or long service leave. Advancement of pay will be subject to payroll processing timeframes. The approval of the Chief Executive will not be unreasonably withheld.

27 Payroll Deduction for Union Fees

- 27.1. Upon request by the union, the Commission will facilitate arrangements for payroll deductions for union fees. The Commission agrees that it will not impose any limitations or impediments to an employee utilising payroll deductions for union fees that do not apply to other regular payroll deductions, such as health insurance.

28 Pay Points and Increments

- 28.1. A person who is engaged by the Commission, or an employee who is promoted or is approved to perform the duties of a higher office, is entitled to be paid at the first pay point for the classification level.
- 28.2. However, a person who is engaged by the Commission, or an employee who is promoted or approved to receive higher duties allowance, may be approved to be paid at a higher pay point within that classification level.
- 28.3. Increments apply to both an employee's permanent and higher duties classification. When an employee has completed twelve months higher duties within a twenty four month period an increment will be paid and all further instances of higher duties will be paid at this level.
- 28.4. Previous service at a higher duties pay must be considered when determining a pay point should the employee be promoted to that classification, and will be used to determine the date that increments fall due.
- 28.5. An employee is entitled (subject to there being no Underperformance or Discipline action undertaken in accordance with Section G – Workplace Behaviours) to be paid an annual increment on and from the relevant anniversary of the date of commencement in the position for the employee concerned.

- 28.6. Leave not to count as service will defer an incremental increase for every completed day of leave accessed.
- 28.7. Accelerated incremental advancement may occur as follows:
- (a) a person who is engaged by the Commission, or an employee who is promoted or approved to perform higher duties, may be paid at a higher pay point within that classification level.
 - (b) the Chief Executive may approve the payment of additional accelerated increments to an employee:
 - i. at the time annual incremental advancement is due: i.e., at the time an employee is eligible for annual incremental advancement (either in the substantive or higher duties position), or
 - ii. at any other time between periods of annual incremental advancement, subject to a maximum of two additional increments within the classification range being awarded to the employee in a twelve month period (excluding any additional increments awarded to the employee on commencement in the position in accordance with subclause 28.2).
 - (c) where an employee is awarded additional accelerated increments over the twelve month period between the payments of annual increments in accordance with paragraph 28.7(b), the employee is still eligible for the payment of an annual increment, and the date of effect of the annual increment will remain unchanged.
- 28.8. In considering whether to approve payment at a higher pay point (as per subclause 28.2), or accelerated advancement (as per subclause 28.7), the Chief Executive will take into account such factors as:
- (a) the employee's:
 - i. qualifications; and
 - ii. relevant work and personal experience; and
 - iii. current pay; and
 - iv. ability to make an immediate contribution.
 - (b) difficulties in attracting and retaining suitable employees.
- 28.9. Accelerated incremental advancement as per subclause 28.7 is recognising an advancement of skills and performance that exceeds what would normally be expected from an employee at that level and does not replace normal incremental advancement in accordance with subclause 28.3.
- 28.10. In considering whether to approve accelerated incremental advancement under subclause 28.7 the Chief Executive will also consider:
- (a) previous performance appraisals; and
 - (b) professional development, skills and contributions in the workgroup; and
 - (c) additional roles undertaken, ie. conducting training sessions, mentoring.

29 Graduate and Cadet Programs, Traineeships, and Apprenticeships

- 29.1. Rates of pay for employees engaged in Graduate and Cadet Programs, Traineeships, and Apprenticeships are set out at Annex A to this Agreement.

30 Higher Duties Allowance

- 30.1. Higher Duties Allowance (HDA) is payable to an employee who is directed to temporarily perform the duties of a position with a higher classification.

- 30.2. An employee who is acting in a position with up to a maximum pay of an ASO 6 or equivalent, for a period of one day or more, will be paid HDA for that period.
- 30.3. An employee acting in a position with a pay or maximum pay greater than the maximum pay of an ASO6 or equivalent will be paid HDA for a period of five consecutive days or more. This payment will occur from day one, provided the total period of higher duties is five days or more.
- 30.4. Where the employee on temporary transfer is to perform the full duties of the higher position, HDA is calculated as the difference between the staff member's current pay and a point in the pay range of the higher position determined by the Chief Executive in accordance with clause 28.
- 30.5. Where the employee is performing only part of the duties of the higher position and the higher position is at least two levels above the employee's current substantive level, payment of partial HDA may be agreed between the manager/supervisor and the employee, prior to the commencement of the temporary transfer.
- 30.6. The rate of payment for partial HDA will be a point in the pay range(s) of the intervening level(s). The Chief Executive's decision on the rate of payment of partial HDA will take into account the specified part of the duties of the higher position that the employee is to perform.
- 30.7. An employee receiving HDA is entitled to normal incremental progression for the employee's substantive position. This increment gained while performing HDA is maintained upon the employee ceasing the higher duties.
- 30.8. Previous higher duties service will be considered in determining the appropriate pay point for future periods of higher duties.
- 30.9. Where the vacancy period of higher duties is expected to exceed six months the vacancy will be advertised within the Commission.
- 30.10. Periods of higher duties should not normally extend beyond twelve months. If after twelve months the position is nominally vacant it will be advertised unless there are exceptional circumstances.

31 Payment of Duty Lawyer Allowance

- 31.1. An employee holding an ACT Practising Certificate, who provides duty lawyer services at court on Saturdays or a public holiday is entitled to be paid an allowance for the total time spent at court on each such day.
- 31.2. The allowance payable is \$279.
- 31.3. The allowance prescribed by this clause is payable in lieu of overtime and is not to be taken into account in the determination of any allowance or entitlement based upon salary.

32 Afterhours Telephone Allowance

- 32.1. An employee holding an ACT Practising Certificate, who is rostered on to provide afterhours telephone advice (via mobile telephone) is entitled to be paid an allowance for the duration of the roster period.
- 32.2. Afterhours telephone advice is provided outside of standard working hours on weekdays (5:00pm Monday to 8:30am Friday) and weekends (5:00pm Friday to 8:30am Monday).
- 32.3. Payment of the afterhours allowance is for a full week on roster: Monday 5:00pm to Monday 8:30am
- 32.4. An additional 10% of the allowance is payable for each public holiday during the roster period.
- 32.5. The weekly allowance payable is \$465 per completed week.

- 32.6. Rosters for incomplete weeks will attract a part/proportional payment of the allowance.
- 32.7. Employees must remain within mobile telephone reception range for the duration of the roster period and be available to answer calls to the afterhours number.
- 32.8. The allowance prescribed in this clause is payable in lieu of overtime and on call allowance and is not to be taken into account in the determination of any allowance or entitlement based upon salary.

33 Overtime

Eligibility for Payment of Overtime

- 33.1. An employee may be required or requested to work reasonable additional hours of duty at any time that the employee is required, subject to the payment for overtime in accordance with the conditions set out in this clause, and the reasonable additional hour provisions of the FW Act.
- 33.2. Overtime rates will be payable for duty that the Chief Executive requires an employee to perform on any day from Monday to Friday inclusive, which is worked:
 - (a) before 7.00 a.m. and/or after 7.00 p.m. (or such other span of hours as may have been agreed under subclause 16.7); or
 - (b) between 7.00 a.m. and 7.00 p.m. (or such other span of hours as may have been agreed under subclause 16.7) but beyond the employee's ordinary daily hours, and which is not worked under the flextime provisions at clause 17.
- 33.3. Overtime rates are payable for all duty that the Chief Executive requires an employee to perform on a Saturday, Sunday or Public Holiday that is in addition to the employee's ordinary weekly hours of work.
- 33.4. Subclauses 33.1 to 33.3 apply to employees up to and equivalent to the top incremental point of the ASO6 or equivalent.
- 33.5. Except with the approval of the Chief Executive, an employee who occupies a position with a classification having an annual pay of a Senior Officer Grade C (or equivalent), or higher, is not eligible to receive payment under this clause.
- 33.6. Overtime approved under subclause 33.5 for Senior Officers will be calculated at the maximum hourly overtime rate for an ASO6 for any senior officer, or other employee whose substantive pay exceeds the highest pay point of an ASO6. At the request of the employee, hours worked outside normal working hours may be taken as time in lieu on an hour for hour basis.

Minimum Attendance for Overtime

- 33.7. Where an employee is required to perform overtime duty that is not continuous with ordinary duty the minimum period of overtime payable for each separate overtime attendance is four hours.
- 33.8. For the purposes of subclause 33.7 meal periods do not break continuity of duty.
- 33.9. Where an overtime attendance that is not continuous with ordinary duty involves duty both before and after midnight and a higher overtime rate applies on one of the days covered by the overtime attendance, the minimum payment will be calculated at the higher rate.
- 33.10. Where an employee on a restricted or close restricted situation as provided for in clause 37 or clause 38, the minimum payment for overtime will be three hours or one hour in accordance with subclauses 37.6 or 38.8 or 37.10 or 38.12 respectively.

Payment of Overtime

- 33.11. For the purposes of calculating overtime payments, each day or shift will stand-alone.
- 33.12. An employee's annual pay for the purpose of calculating the overtime payment, will include higher duties allowance and/or any allowance that is payable for all purposes.
- 33.13. Overtime payment rates for overtime worked on any day from Monday to Saturday inclusive, are:

Time and a Half

$$\text{Annual Pay} \times \frac{12}{313} \times \frac{3}{2} \times \frac{1}{76}$$

for the first three hours worked on a day/shift; and

Double Time

$$\text{Annual Pay} \times \frac{12}{313} \times \frac{2}{1} \times \frac{1}{76}$$

for any further overtime worked on that day/shift.

Sunday Rate of Payment

- 33.14. An employee who works overtime on a Sunday will be paid a rate of double time at the employee's ordinary hourly rate of pay for all time worked.

Public Holiday Rate of Payment

- 33.15. An employee who works overtime on a public holiday or on a substituted public holiday as defined in clause 73 of this Agreement will be paid a total rate of double time and a half at the employee's ordinary hourly rate of pay for all time worked.

Alternatives to Payment of Overtime

- 33.16. Where agreed between the manager/supervisor and the employee, the employee will be granted time off instead of overtime.

34 Overtime Meal Allowance

Eligibility for Meal Allowance

- 34.1. An employee who works overtime is entitled to payment of overtime meal allowance where the overtime is worked:
- (a) after the end of ordinary duty for the day, to the completion of or beyond a meal period, and any subsequent meal period, without a break for a meal; or
 - (b) after the completion of the employee's ordinary hours of duty for the day, and after a break for a meal which occurs after that completion and where the employee is not entitled to payment for that break; or
 - (c) before the commencement of ordinary hours of duty, and before a break for a meal which occurs after that completion and where the employee is not entitled to payment for that break; or
 - (d) on a Saturday, Sunday or public holiday, in addition to the employee's normal weekly hours of duty, extending beyond a meal break and where the employee is not entitled to payment for that break.

Meal Periods

- 34.2. For the purposes of subclause 34.1 a meal period will mean the following periods:
- (a) 7.00 a.m. to 9.00 a.m.;
 - (b) 12 noon to 2.00 p.m.;
 - (c) 6.00 p.m. to 7.00 p.m.; and
 - (d) midnight to 1.00 a.m.
- 34.3. The rate of pay for overtime meal allowance is set out in Annex C.
- 34.4. Where an appropriate meal is obtainable by the employee at a canteen, cafeteria or dining room conducted, controlled, or assisted by the Commission, the amount of meal allowance will be the maximum amount for which an appropriate meal is obtainable at the canteen, cafeteria or dining room. The rate payable under this clause is in substitution for the rate in Annex C.

35 Rest Relief after Overtime

- 35.1. In this clause employee refers to employees other than casual employees.
- 35.2. Unless the Chief Executive directs an employee to report for duty earlier, the employee must have a continuous period of eight hours off duty between ceasing overtime duty following normal duty one day, and commencing normal daily hours of work the following day.
- 35.3. An employee is entitled to be absent from duty, without loss of pay, until the employee has been off duty for a continuous period of eight hours plus reasonable travel time.
- 35.4. If an employee is required by the Chief Executive to return to duty without having had eight consecutive hours off duty, plus reasonable travelling time, the employee must:
- (a) be paid at double the ordinary hourly rate of pay until the employee is released from duty for that period; and
 - (b) the employee will then be entitled to be absent until the employee has had eight consecutive hours off duty plus reasonable travelling time, without loss of pay for any ordinary working time occurring during that absence.
- 35.5. The provisions of subclauses 35.1 to 35.4 do not apply to overtime worked in the circumstances covered by clause 40 unless the actual time worked (excluding travelling time) is at least three hours on each call.

36 Payment for Public Holiday Duty

- 36.1. An employee, other than an employee receiving duty lawyer allowance, who works on a public holiday for a period that is:
- (a) not in excess of the employee's ordinary weekly hours; and
 - (b) not outside of the employee's limit of daily hours; and
 - (c) not in excess of the employee's ordinary daily hours
- will be entitled to an additional payment of 1 & 1/2 times the employee's ordinary hourly rate of pay.

37 On-Call Allowances

- 37.1. Where an employee is required or directed, prior to ceasing duty, by the employee's manager/supervisor to be contactable and available to be recalled to duty within a reasonable time outside the employee's ordinary hours of duty (a restricted situation), the employee will be entitled to be paid an on-call allowance of:
- (a) ten percent of the employee's hourly rate of pay for each hour restricted Monday to Friday;
 - (b) fifteen percent of the employee's hourly rate of pay for each hour restricted on Saturday and Sunday;
 - (c) twenty percent of the employee's hourly rate of pay for each hour restricted on public holidays and rostered days off.
- 37.2. An employee's pay for the purpose of calculation of payment under this clause will include higher duties allowance and other allowances in the nature of pay
- 37.3. Employees at the ASO 6 (or equivalent) classification and below will be eligible for payment of the on-call allowance. However, the Chief Executive may approve payment of the on-call allowance to employees above this level in exceptional circumstances.
- 37.4. Where approval has been made for payment under subclause 37.3 to an employee above the ASO6 (or equivalent) classification, the hourly rate of pay will be the maximum of the ASO6 (or equivalent) classification.
- 37.5. The on-call allowance is not payable for any period that the employee does not hold himself or herself at the required degree of readiness to be recalled to duty.
- 37.6. Where an employee who has been in a restricted situation is recalled to duty at the Commission's place of work, the employee will be paid at the applicable overtime rates, subject to a minimum payment of three hours overtime being made to the employee.
- 37.7. The provisions of clause 40 will not apply where an employee is recalled to duty while on on-call.
- 37.8. The on-call allowance is not payable for any period of time where overtime payments are made. Therefore, if the employee performs a period of duty for which overtime is payable, the on-call allowance is not paid for a period equal to the overtime period.
- 37.9. "Recalled to duty at the Commission's place of work" means a recall to perform duty at any designated place of work and is not limited to a recall to perform at the employee's usual place of work. For example, a tradesperson may have a usual place of work, but while the tradesperson is restricted the tradesperson might be recalled to perform duty at a number of different places of work.
- 37.10. Where an employee who has been in a restricted situation is recalled for duty, but is not required to be recalled to the Commission's place of work (for example, where an employee is able to access computer systems at home via remote access), the employee will be paid at the applicable overtime rates, subject to a minimum payment of one hour overtime being made to the employee.
- 37.11. If a recall to duty attracts a minimum overtime payment, subsequent recalls will attract a further minimum overtime payment(s) only if the employee commences after the minimum payment period has elapsed. For the purposes of this clause, the minimum payment period is either three hours or one hour, as set out in subclauses 37.6 and 37.10, from the commencement of the recall to duty that attracts the overtime payment.

38 Close Call Allowance

- 38.1. Where an employee is required or directed, prior to ceasing duty, by the employee's supervisor to be contactable and available for immediate recall to duty outside the employee's ordinary hours of duty (a close call situation), the employee will be entitled to be paid a close call allowance of:
- (a) twenty percent of the employee's hourly rate of pay for each hour of close call Monday to Friday; or
 - (b) thirty percent of the employee's hourly rate of pay for each hour of close call on Saturday and Sunday; or
 - (c) forty percent of the employee's hourly rate of pay for each hour of close call on public holidays and rostered days off.
- 38.2. An employee placed in a close call situation must:
- (a) remain within a radius of thirty minutes vehicle travelling time from the work site; and
 - (b) commence the return to work journey immediately on being recalled, being within five minutes from time of recall.
- 38.3. The Chief Executive may, in special circumstances, allow an employee who cannot meet these requirements to be deemed to be on close call if the employee is able to return to the worksite within forty-five minutes from the time of recall.
- 38.4. An employee's pay for the purpose of calculation of payment under this clause will include higher duties allowance and other allowances in the nature of pay.
- 38.5. Employees at the ASO 6 range (or equivalent) and below will be eligible for payment of the close call allowance. However, the Chief Executive may approve payment of the close call allowance to employees above this level in exceptional circumstances.
- 38.6. Where approval has been made for payment under subclause 38.5 to an employee above the ASO6 (or equivalent) classification, the hourly rate of pay will be the maximum of the ASO6 (or equivalent) classification.
- 38.7. The close call allowance is not payable for any period that the employee does not hold himself or herself at the required degree of readiness to be recalled to duty.
- 38.8. Where an employee who has been in a close call situation is recalled to duty at the Commission's place of work, the employee will be paid at the applicable overtime rates, subject to a minimum payment of three hours overtime being made to the employee.
- 38.9. The provisions of clause 40 will not apply where an employee is recalled to duty while on on-call.
- 38.10. Where the employee performs a period of duty for which overtime is payable, the close call allowance is not paid for a period equal to the overtime period.
- 38.11. "Recalled to duty at the Commission's place of work" means a recall to perform duty at any designated place of work and is not limited to a recall to perform at the employee's usual place of work. For example, a tradesperson may have a usual place of work, but while the tradesperson is restricted the tradesperson might be recalled to perform duty at a number of different places of work.
- 38.12. Where an employee who had been placed in a close call situation is recalled for duty, but is not required to be recalled to the Commission's place of work (for example, where an employee is able to access computer systems at home via remote access), the employee will be paid at the applicable overtime rates, subject to a minimum payment of one hour being made to the employee.

- 38.13. If a recall to duty attracts a minimum overtime payment, subsequent recalls will attract a further minimum overtime payment(s) only if the employee commences after the minimum payment period has elapsed. For the purposes of this clause, the minimum payment period is either three hours or one hour, as set out in subclauses 38.8 and 38.12 , from the commencement of the recall to duty that attracts the overtime payment.

39 Rest Relief for Restricted or Close Restricted Situations

- 39.1. Where an employee in a restricted or close restricted situation under clause 37 or clause 38 is recalled to duty, the employee must, other than in exceptional circumstances, be given a genuine opportunity for having eight continuous hours sleep in the twenty four hour period where there is a recall to duty.
- 39.2. In addition to the eight hours rest relief, the employee must be allowed reasonable time to travel to and from the employee's place of work.
- 39.3. In exceptional circumstances, if an employee is required by the Chief Executive to resume or continue ordinary work time without having the rest relief as set out in subclause 39.1, plus reasonable travelling time, the employee must:
- (a) be paid at 200% of the employee's ordinary hourly rate of pay until the employee is released from duty for that period; and
 - (b) the employee will then be entitled to be absent until the employee has had eight consecutive hours off duty plus reasonable travelling time, without loss of pay for any ordinary working time occurring during that absence.
- 39.4. There is a need for appropriate roster management processes to enable the effective implementation of subclause 39.1.

40 Emergency Duty

- 40.1. Where an employee is called on duty to meet an emergency at a time when the employee would not ordinarily have been on duty, and no notice of such call was given to the employee prior to ceasing ordinary duty, the employee will be paid for such emergency duty.
- 40.2. The time for which payment will be made under this clause will include time necessarily spent in travelling to and from duty.
- 40.3. The minimum payment under this clause will be two hours.
- 40.4. The rate of payment for emergency duty will be double time of the employee's ordinary hourly rate of pay.
- 40.5. This clause does not apply to employees whose duty for the day is varied by alteration of the commencement of the scheduled shift to meet an emergency.

41 Other Allowances

- 41.1. Expense and skill related allowances provided for in this Agreement are set out in Annex C.
- 41.2. The rates for all allowances provided for in Annex C of this Agreement will be adjusted by the rate of increases in pay in accordance with subclause 25.2.
- 41.3. Despite clause 24, part-time and casual employees who satisfy the requirements for payment of an expense-related allowance will receive the full amount of allowance or payment prescribed in Annex C.

- 41.4. Part-time and casual employees who satisfy the requirements for payment of a skill related allowance under this Agreement will receive the allowance on a proportional basis.
- 41.5. Allowances payable to casual employees under this Agreement are not subject to the loading prescribed in subclause 19.2.
- 41.6. The following allowances, detailed in Annex C, may apply to any Commission employee:
 - (a) Overtime Meal allowance
 - (b) First Aid allowance
 - (c) Linguistic Availability/Performance allowance
 - (d) Excess Fares and Travelling Time
 - (e) Motor Vehicle allowance and Additional Rates of Motor Vehicle allowance

42 Reimbursement of Reasonable Relocation Expenses

- 42.1. The purpose of this reimbursement is to provide financial assistance to employees recruited from interstate or overseas who are engaged on a permanent or long term temporary basis.
- 42.2. The Chief Executive may approve a reimbursement payment to a prospective employee as the Chief Executive considers is reasonable in the prospective employee’s circumstances. The relevant pre-determined ceiling is set out below:

Single with no dependants	\$12,000
Additional payment per dependant (first six dependants)	\$ 2,000
Additional payment per dependant (seventh and further dependants)	\$ 1,750

- 42.3. The Chief Executive will inform the prospective employee of the predetermined ceiling prior to the prospective employee’s relocation.
- 42.4. In order for a prospective employee to be reimbursed costs, valid receipted tax invoices must be provided.
- 42.5. For the purposes of this clause, dependant does not require actual financial dependency and includes members of the prospective employee’s immediate household including a domestic partner, parent, parent of domestic partner, brother, sister, guardian, foster parent, step-parent, step-brother, half-brother, step-sister, half-sister, child, foster child or step child residing with the employee at the time the offer is made.
- 42.6. The Chief Executive may approve payment in excess of the approved amount or ceiling in exceptional circumstances.
- 42.7. In the event that the employee terminates their employment with the Commission within two years of the date of appointment, the employee may be required by the Chief Executive to repay:
 - (a) in the case the employee terminates employment within twelve months from the date of appointment – 100% of the relocation reimbursement; or
 - (b) in the case the employee terminates employment more than twelve months and less than two years from the date of appointment – 50% of the relocation reimbursement.

Section D - Pay Related Matters

43 Salary Sacrifice Arrangements

- 43.1. Voluntary access to salary sacrifice arrangements will be made available to employees in accordance with policies and guidelines issued by the Chief Executive.
- 43.2. The employee will meet all costs incurred as a result of the salary sacrifice arrangements under these provisions.
- 43.3. The employee's pay for superannuation purposes and severance and termination payments will be the gross pay that the employee would receive if the employee were not taking part in salary sacrifice arrangements.
- 43.4. Changes to salary sacrifice arrangements, including taxation changes, will not be a cause for further claims against the Commission.
- 43.5. The Chief Executive will continue to provide appropriate information to employees concerning salary sacrifice arrangements.

44 Special Employment Arrangements

- 44.1. In some special circumstances it may be necessary for the Chief Executive to determine that an employee or group of employees who are covered by this Agreement and who occupy certain positions should have special employment arrangements that may differ from some of the terms and conditions under this Agreement.
- 44.2. The framework under which special employment arrangements may apply during the life of this Agreement is set out in Annex B of this Agreement.

45 Classification/Work Value Review

- 45.1. An employee, or a group of employees, or the union(s) or other employee representatives, may present a case to request the Chief Executive to undertake a classification/work value review of a position or group of positions.
- 45.2. Where the Chief Executive agrees to such a request, the Chief Executive will undertake the review in consultation with the employee(s) and the union(s) or other employee representatives.
- 45.3. Where agreement cannot be reached on the need to conduct the review then the disagreement may be resolved in accordance with the dispute resolution procedure.
- 45.4. Any classification/work value review will take into account market and other relevant comparators, including comparators that are considered pertinent to the skills, competencies and general responsibilities required of the position(s).
- 45.5. These provisions do not affect the right of the Chief Executive to undertake a classification/work value review at their own initiative.
- 45.6. Nothing in this Agreement prevents the Commission, following a classification/work value review from broadbanding the classification of the position or group of positions concerned.
- 45.7. A broadbanded position description must clearly articulate the duties and accountabilities of the position at each of the classification levels and the criteria to progress to the higher level. In a broadbanded position, progression through the hard barrier to the higher classification is not automatic. It is based upon development of the employee's skill and expertise in the position to the

standard required at the higher level, provided that this work is available. Progression requires the approval of the manager/supervisor through a performance appraisal and recommendation.

46 Supported Wage System

- 46.1. Employees who are assessed as eligible to receive a supported wage under subclause 46.2 are to be paid the percentage of pay that corresponds to the employee's assessed productive capacity and the class of work which the person is performing, provided that the minimum amount payable is not to be less than 10% of the second point of the ASO 1 pay range per week.
- 46.2. Assessment of productive capacity will be by a representative of the Commission and a representative nominated by the employee or an accredited assessor, in consultation with the employee. The assessment will be recorded in an assessment instrument. The Commission will lodge agreed assessment instruments with FWA. Reviews of assessment of an employee's productive capacity will be conducted annually or earlier on reasonable request consistent with the supported wage system.

47 Overpayments

- 47.1. Where the Chief Executive becomes aware that an employee has incurred an overpayment in respect of pay, allowance or leave, whether the overpayment is by accident or otherwise, to which the employee is not entitled, the Chief Executive will seek to recover the overpayment in accordance with this clause.
- 47.2. An employee who becomes aware of a potential overpayment will notify their manager/supervisor immediately, in writing, so as to prevent any further potential for an overpayment to continue.
- 47.3. Where an overpayment has occurred, the Chief Executive will advise the employee in writing, as soon as practicable, of the:
 - (a) pay period(s) in which the overpayment occurred; and
 - (b) nature of the overpayment; and
 - (c) gross and net components of the overpayment; and
 - (d) process for recovery of the overpayment; and
 - (e) proposed recovery rate.
- 47.4. The Chief Executive and the employee will agree on a reasonable recovery rate, in writing, having regard for all of the circumstances prior to any recovery being made. Where agreement cannot be reached subclause 47.7 will apply.
- 47.5. Any such agreement may include recovery of the overpayment by the Commission:
 - (a) as a lump sum; or
 - (b) by payroll deduction from pay.
- 47.6. In respect to recovery action it may be agreed with the employee to adjust their leave credits instead of, or in combination with, a cash recovery.
- 47.7. Where the Chief Executive and the employee cannot agree a reasonable recovery rate, the overpayment will be recovered at the rate of up to 10% of the employee's gross fortnightly pay, or such other rate determined by the Chief Executive having regard for all of the circumstances.
- 47.8. Despite subclauses 47.4 and 47.7, the recovery period will not usually exceed twenty six pay periods.
- 47.9. Any outstanding money owing to the Commission when an employee ceases employment is to be recovered by deduction from any final entitlements payable to the employee.

- 47.10. If a debt still exists further debt recovery action is to be taken unless the Chief Executive:
- (a) directs the recovery be waived, in part or in full, based on evidence provided by the employee of exceptional circumstance or that such recovery would cause undue hardship; or
 - (b) determines that an overpayment is not recoverable.
- 47.11. Where the Chief Executive determines that an overpayment is not recoverable, the provisions of the Chief Executive Financial Instructions, relating to the waiver and write off of monies, will apply.

48 Underpayments

- 48.1. Where the Chief Executive becomes aware that an employee has been underpaid on the employee's ordinary hourly rate of pay, and the employee requests, in writing, an offline payment for the amount owing, payment will be made to the employee within three working days of the Chief Executive receiving the written request.
- 48.2. Where an overtime payment, duty lawyer allowance, after hours telephone allowance or higher duties allowance is not made within two pay periods of the appropriate authorisation having been received by the relevant corporate area, and the employee requests, in writing, an offline payment for the amount owing, payment will be made to the employee within three working days of the Chief Executive receiving the written request.

Section E - Flexible Working Arrangements and Employee Support

49 Work and Life Balance

- 49.1. The Commission is committed to the concept of work and life balance and recognises the importance of employees balancing work and personal life.
- 49.2. All employees have commitments outside the workplace. These commitments may relate to family, to the community and to general health and wellbeing. Given the diverse nature of the workforce in the Commission, it is recognised that employees have different needs at different times.
- 49.3. The Commission recognises the need to provide sufficient support and flexibility at the workplace to assist employees in achieving work and life balance. While family friendly initiatives are important aspects of work and life balance, it is also important that all employees, at all stages in the employees' working lives, are supported through this Agreement.

50 Request for Flexible Working Arrangements

- 50.1. An employee may apply to their manager/supervisor for flexible working arrangements to support their work and life balance.
- 50.2. An employee may request flexible working arrangements, in accordance with the FW Act, in the following circumstances. If the employee
- (a) Has a parental or other caring responsibility for a child of school age or younger; or
 - (b) has a caring responsibility for an individual with a disability, a terminal or chronic medical condition, mental illness or is frail and aged; or
 - (c) has a disability; or

- (d) is over the age of 55; or
 - (e) is experiencing domestic violence; or
 - (f) is providing personal care, support and assistance to a member of their immediate family or household because they are experiencing domestic violence.
- 50.3. The request by the employee must set out, in writing, the details of the change sought and the reasons for that change.
- 50.4. The manager/supervisor must respond to the request in writing within twenty one days, providing the reasons for their decision.
- 50.5. The manager/supervisor will only deny an employee's request for variation to workplace arrangements provided for under this Agreement where there are operational reasons for doing so.
- 50.6. Where a request is not approved the manager/supervisor will consult with the employee to determine mutually convenient alternative arrangements.

51 Employees with Caring Responsibilities

- 51.1. Carers are employees who provide, in addition to the employees' normal family responsibilities, care and support on a regular basis to other family members or other persons who are sick or ageing, have an injury, have a physical or mental illness, or a disability.
- 51.2. Family members may include children, brothers or sisters, domestic partner, parents, grandparents and close relatives. In some cases, employees may be responsible for providing care to a neighbour or a friend who has no one to assist with day-to-day care.
- 51.3. The Commission recognises that carer responsibilities vary considerably, depending on the level of care and assistance required and may be suddenly imposed, or may increase gradually. The Commission also recognises that, generally, employees are able to provide care and assistance outside normal working hours. However, there are times that employees are required to provide more support or assistance because of illness, injury or disability.
- 51.4. To assist employees in balancing work and carer responsibilities flexible working and leave arrangements are provided in this Agreement. Examples of these flexible working and leave arrangements include, but are not limited to:
- (a) flexible starting and finishing times;
 - (b) ability to take a few hours off work, and make it up later;
 - (c) access to breast feeding facilities;
 - (d) access to personal leave for caring purposes for members of immediate family or household;
 - (e) home based work on a short or long term basis;
 - (f) part-time work;
 - (g) job sharing;
 - (h) purchased leave;
 - (i) annual leave;
 - (j) long service leave;
 - (k) leave without pay; and
 - (l) leave not provided for elsewhere.
- 51.5. Access to the leave entitlements listed in subclause 51.4 is as provided for in this Agreement and/or the PSM Act and PSM Standards.

52 Management of Excessive Hours

- 52.1. The Commission recognises the importance of employees balancing work and personal life. The appropriate balance is a critical element in developing and maintaining healthy and productive workplaces. While it is acknowledged that peak workload periods may necessitate additional hours being worked by some employees, this should be regarded as the exception rather than the rule.
- 52.2. Managers, supervisors and employees have a responsibility to minimise the extent to which excessive hours are worked. In the circumstances where work pressures result in the employee being required to work, or is likely to work, excessive hours over a significant period, the manager, supervisor and employee together must review workloads and priorities and determine appropriate strategies to address the situation. In doing so, the manager or supervisor will consider and implement one or more of the following strategies to reduce the amount of excessive hours being accumulated:
- (a) review of workloads and priorities;
 - (b) re-allocation of resources;
 - (c) consideration of appropriate arrangements for time off in lieu or other recompense;
 - (d) review staffing levels and/or classifications within the work group.
- 52.3. The Chief Executive will consult with the Commission Consultative Committee about the development and implementation of appropriate strategies to deal with issues associated with both paid and unpaid overtime.

53 Regular Part-Time Employment

Conversion to Part-Time Employment

- 53.1. A person may be employed in any classification as a permanent part-time officer for an agreed number of regular hours per week that is less than the ordinary weekly hours specified in this Agreement for that relevant classification over a four-week period.
- 53.2. Proposals to reduce hours below full-time employment may be initiated by the Chief Executive for operational reasons or by an officer for personal reasons.
- 53.3. Where an officer initiates a proposal the Chief Executive will have regard to the personal reasons put by the officer in support of the proposal and to the Commission's operational requirements.
- 53.4. The Chief Executive will obtain the written agreement of a full-time officer before the officer converts to part-time.
- 53.5. No pressure will be exerted on full-time officers to convert to part-time employment or to transfer to another position to make way for part-time employment.
- 53.6. The pattern of hours and days and commencement and cessation times for part-time work will be agreed between the officer and the officer's manager/supervisor and recorded in writing for an agreed period.

Variation to Part-Time Hours

- 53.7. Proposals to vary a part-time employment arrangement may be initiated by the Chief Executive for operational reasons or by an officer for personal reasons, for an agreed period.
- 53.8. Where an officer initiates a proposal the Chief Executive will have regard to the personal reasons put by the officer in support of the proposal and to the Commission's operational requirements.

- 53.9. The Chief Executive will obtain the written agreement of the officer before the officer's hours are varied.
- 53.10. No pressure will be exerted on a full-time officer to vary the officer's hours to part-time employment or to transfer to another position to make way for part-time employment.
- 53.11. The pattern of hours and days and commencement and cessation times for part-time work will be recorded in writing between the officer and the officer's manager/supervisor for an agreed period.

54 Job Sharing

- 54.1. In this clause employee refers to employees other than casual employees.
- 54.2. Job sharing arrangements may be introduced by agreement between the Chief Executive and the employee involved, subject to operational requirements. Employees working under job sharing arrangements share one full-time job and will be considered to be part-time with each working part-time on a regular, continuing basis.
- 54.3. A full-time employee must request in writing permission to work in a job sharing arrangement. The Chief Executive will agree to reasonable requests for regular job sharing arrangements, subject to operational requirements.
- 54.4. The pattern of hours for the job sharing arrangement will be agreed between the employee and the Chief Executive. However, any single attendance at the office-based worksite will be for not less than three consecutive hours.
- 54.5. The employee who is in a job sharing arrangement and who was previously working full-time may revert to full-time employment before the expiry of the agreed period of job sharing if all parties to the arrangement agree.
- 54.6. In the event that either employee ceases to participate in the job sharing arrangement, the arrangement will terminate.

55 Permanent Part Time Employment Following Maternity Leave, Primary Caregiver Leave or Parental Leave

- 55.1. Subject to this clause, the Chief Executive will approve an application by an employee who returns to work after accessing maternity leave, primary caregiver leave or parental leave, to work on a part-time basis for a period of up to three years from the birth, adoption of a child or granting of parental responsibility of a foster child long term.
- 55.2. The maximum aggregate period of part-time employment that may be approved for an employee under subclause 55.1 is seven years.
- 55.3. Either the employee who accesses primary care giver leave under clause 79, or the mother who is entitled to and accesses maternity leave under clause 77 will be entitled to access permanent part-time employment as provided in subclause 55.1
- 55.4. The pattern of hours and days and the commencement and cessation times for part-time work will be agreed between the employee and the employee's manager/supervisor and recorded in writing.

56 Home Based Work

- 56.1. The diverse nature of work conducted in the Commission lends itself to a range of working environments. From time to time workplaces will include work undertaken in the field and in the home.

- 56.2. Home-based work, on a regular basis, is a voluntary arrangement that requires the agreement of both the Chief Executive and the employee. The Chief Executive will consider requests by employees for home based work, having regard to operational requirements and the suitability of the work.
- 56.3. In determining appropriate home based work arrangements, the Chief Executive and employees will consider a range of matters, including:
- (a) appropriate and effective communication with office based employees; and
 - (b) the need to ensure adequate interaction with colleagues;
 - (c) the nature of the job and operational requirements;
 - (d) privacy and security considerations;
 - (e) health and safety considerations;
 - (f) the effect on clients; and
 - (g) adequate performance monitoring arrangements.
- 56.4. Home based work arrangements may be terminated by the Chief Executive on the basis of operational requirements, inefficiency of the arrangements, or failure of the employee to comply with the arrangements.
- 56.5. An employee may terminate home-based work arrangements at any time by giving reasonable notice to the Chief Executive.
- 56.6. There may also be occasions where it is appropriate for an employee to work from home on an ad hoc basis. In these circumstances, arrangements to work from home are to be negotiated on a case-by-case basis between the employee and the manager/supervisor.
- 56.7. The Commission will provide home computing facilities where an employee and the employee's manager/supervisor agree there is a need for such facilities. Provision of equipment by the Commission will be subject to workplace health and safety requirements and to an assessment of technical needs by the manager/supervisor.

57 Engaging in Outside Employment

- 57.1. Employees must obtain approval from the Chief Executive to engage in any outside paid employment or any outside work where:
- (a) a conflict of interest may exist or be perceived to exist; or
 - (b) the outside employment or work is likely to impact on the employee's availability for work. eg. State Emergency Service.
 - (c) the Commissions resources are being used to undertake any outside paid employment.

58 Employee Assistance Program

- 58.1. As a benefit to employees, the Commission will provide employees and employees' immediate families with access to an independent, confidential and professional counselling service at no cost to the employee.

59 Scheduling of Meetings

- 59.1. To assist employees to meet the employees' personal responsibilities, where possible, all meetings in the Commission are to be scheduled at times that take into account those responsibilities.

60 Vacation Childcare Subsidy

- 60.1. This clause applies to an employee (other than a casual employee or a temporary employee who has been engaged by the Commission for a period of less than twelve months) with school age children who makes an application with reasonable notice and consideration of operational requirements for annual leave, purchased leave or long service leave during school holidays that is rejected. In these circumstances the Chief Executive will make payment to the employee for each calendar year based on:
- (a) fifty two dollars per day towards the cost of each school child enrolled in an accredited school holiday program;
 - (b) up to a maximum of \$260 per child per five days;
 - (c) up to a maximum of ten days per child per year;
 - (d) up to a maximum of three children; and
 - (e) reimbursement on production of a receipted tax invoice.
- 60.2. An accredited school holiday program is a program approved and/or subsidised by a State, Territory or Local Government.
- 60.3. The payment will apply only on the days when the employee is at work.
- 60.4. The payment will apply only where reasonable notice has been provided and the employee has an accrued leave credit available.
- 60.5. The payment will be made regardless of the length of time the child is in the program each day, but it cannot exceed the actual cost incurred.
- 60.6. An employee whose domestic partner receives a similar benefit from the partner's employer is not eligible for the payment.

61 Family Care Costs

- 61.1. Where an employee is directed to work outside the employee's regular pattern of work, the Chief Executive will authorise reimbursement to the employee on receipt of tax invoices for some or all of the costs of additional family care arrangements.

62 Nursing Mothers

- 62.1. Employees who are breastfeeding will be provided with the facilities and support necessary to enable such employees to combine a continuation of such breastfeeding with the employee's employment.
- 62.2. Where practicable the Commission will establish and maintain a room for nursing mothers. Where there is no room available another appropriate space may be used.
- 62.3. Up to one hour, per day/shift, paid lactation breaks will be available for nursing mothers.
- 62.4. Lactation breaks are non cumulative.

63 Transfer of Medically Unfit Staff

- 63.1. This clause does not apply to casual employees.
- 63.2. A medically unfit employee is an employee who is considered by the Chief Executive, in accordance with the PSM Act, to be an employee who is unable to perform duties appropriate to the employee's classification because of physical or mental incapacity.

- 63.3. Despite the provisions of the PSM Act, a medically unfit employee may, by agreement with the employee, be transferred to any position within the employee's current skill level and experience, the classification of which has a maximum pay which does not vary from the top increment of the employee's classification by more or less than 10%.
- 63.4. An employee will not be redeployed in accordance with subclause 63.3 unless there is no suitable vacant position at the employee's substantive classification within the Commission.
- 63.5. In considering any proposed transfer under this clause, the employee may be represented by the union or other employee representative.

Section F – Leave

64 Part Time Employees

- 64.1. Part time employees are credited and debited leave on a pro-rata basis.

65 Non-approval of Leave

- 65.1. Where a request is not approved the manager/supervisor will, if so requested in writing by the employee, provide the reasons for that decision to the employee in writing. Where a request is not approved the manager/supervisor will consult with the employee to determine mutually convenient alternative arrangements.

66 Leave Below One Day

- 66.1. Employees with access to flextime (or TOIL) will use flextime (or TOIL) for all absences of less than one day wherever practicable; however personal leave may still be accessed for these absences.

67 Personal Leave

Purpose

- 67.1. Personal leave is available to employees to enable them to be absent from duty:
- (a) because the employee is unfit for work because of a personal illness, or personal injury;
 - (b) to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who is ill or injured;
 - (c) in extraordinary circumstances.
- 67.2. Personal leave supports the Commissions commitment to a healthy workplace and workforce.

Eligibility

- 67.3. Personal leave is available to employees other than casual employees.

Entitlement

- 67.4. An employee may be granted personal leave up to their available credit from the first day of service.
- 67.5. Personal leave is cumulative and there is no cap on the personal leave balance an employee may accrue.
- 67.6. On engagement under the *Legal Aid Act 1977*, an employee may at the discretion of the Chief Executive have any personal leave credit with an organisation that is recognised for prior service

purposes, added to the employee's personal leave credit. In order to be recognised for personal leave purposes, the previous service must have terminated no more than two months prior to the engagement. The employee will then receive personal leave in accordance with subclause 67.7.

- 67.7. From the day of commencement or effective date of this Agreement, an employee's personal leave accrues on a daily basis according to the formula set out below:

$(A \times B \times D) / C = \text{total hours of leave accrued per day}$

where:

A = number of ordinary hours per week worked; and

B = one where the day counts as service or zero where the day does not count as service;

C = number of calendar days in the year; and

D = number of weeks of personal leave an employee is entitled to a year (ie 3.6 weeks).

- 67.8. At the first 12 month anniversary of continuous service, employees will receive a further 3.6 weeks of personal leave with pay based on the accrual in the previous 12 months of continuous service. An employee in receipt of workers compensation for more than forty five weeks will accrue personal leave on the basis of hours actually worked.
- 67.9. Where credits have been exhausted, the Chief Executive may grant an employee a period of unpaid personal leave for personal illness or injury for the care of a member of the employee's immediate family or household who is sick where medical evidence is provided.
- 67.10. The Chief Executive may, where such treatment is justified, grant an employee who has completed ten years of service an additional period of paid personal leave for personal illness or injury. This leave may be at either full or half pay.
- 67.11. Unused personal leave credit will not be paid out on cessation of employment.

Evidence and Conditions

- 67.12. An employee should discuss with their manager/supervisor, as soon practicable, their intention to be absent on personal leave.
- 67.13. The Chief Executive may grant personal leave if they are satisfied there is sufficient cause, having considered any requested or required documentary evidence.
- 67.14. An employee will provide requested or required documentary evidence in a timely manner. To unduly withhold documentary evidence may result in the personal leave application not being approved.
- 67.15. The Chief Executive will accept the following documentary evidence as proof of personal illness or injury or the need to care for a member of the employee's immediate family or household who is sick:
- (a) a certificate from a registered medical practitioner or registered health professional who is operating within their scope of practice; or
 - (b) a statutory declaration made by the employee if it is not reasonably practicable for the employee to give the Chief Executive a certificate.
- 67.16. If documentary evidence is not produced when an employee applies for leave, the Chief Executive may grant personal leave up to the equivalent of three consecutive working days with pay, to a maximum of the equivalent of seven working days in a calendar year. Absences for personal leave without documentary evidence in excess of three consecutive days, or seven days, or the hourly

equivalents for part time employees in a calendar year are unauthorised and will be without pay not to count as service.

67.17. Days without a medical certificate for non standard hours is calculated as follows:

$A / B \times C = (D)$ days

A = working hours per week on 1 January

B = normal weekly hours (ie 36.75)

C = normal working days without a medical certificate available in calendar year

(D) days X 7.35 = hours available without a medical certificate in a calendar year

67.18. The Chief Executive may, with reasonable cause, request the employee to provide medical evidence for any absence from duty on personal leave at the time of notification of the absence.

67.19. Paid personal leave may be granted up to an employee's available personal leave credit.

67.20. Subject to the production of documentary evidence, a Chief Executive may grant an employee further absence for personal illness or injury provided the additional period of personal leave is granted without pay. However, any such leave without pay that goes beyond a maximum continuous period of combined paid and unpaid personal leave of 78 weeks will not count as service for any purpose.

67.21. The Chief Executive must not grant personal leave for an absence caused by the misconduct of the employee. The Chief Executive may determine that an absence caused by the misconduct does not count as service for any purpose.

67.22. A Chief Executive must approve an application for up to the equivalent of five days personal leave applied for in conjunction with a period of bonding leave.

67.23. The Chief Executive may refer an employee for a medical examination by a nominated registered medical practitioner at any time for reasons including where:

- (a) the Chief Executive is concerned about the wellbeing of an employee and considers that the health of the employee is affecting the employee's ability to adequately perform their duties;
- (b) the Chief Executive considers that documentary evidence supplied in support of an absence due to personal illness or injury is inadequate; or
- (c) the employee has been absent on account of illness for a total of thirteen weeks in any twenty six week period.

67.24. The Chief Executive may require the employee to take personal leave after considering the results of a medical examination requested by the Chief Executive.

Rate of Payment

67.25. Personal leave will be granted with pay except where it is granted without pay under subclauses:

- (a) 67.9; or
- (b) 67.20.

67.26. Subject to the approval of the Chief Executive, an employee may request to use personal leave at half pay for absences of at least one week. Such absences will be deducted from the employee's accrued credits at a rate of 50% of the period of absence.

67.27. Any personal leave taken must be deducted from the employee's credit.

Effect on Other Entitlements

- 67.28. Personal leave with pay will count as service for all purposes.
- 67.29. Personal leave without pay, other than provided for at subclause 67.20, will count as service for all purposes.
- 67.30. Where an employee is absent on paid personal leave and a public holiday for which the employee is entitled to be paid falls within that period of absence:
- (a) the employee will be paid as a normal public holiday for that day; and
 - (b) the public holiday will not be deducted from the employee's personal leave credits.
- 67.31. While personal leave will not be deducted over the Christmas shutdown period, the Christmas shutdown does not break continuity of the period of absence in relation to the maximum period/s of leave under subclause 67.20.

Access to Other Leave Entitlements

- 67.32. An employee who suffers personal illness or injury, or cares for a member of the employee's immediate family or household who is unfit for duty, for one day or longer while on:
- (a) annual leave; or
 - (b) purchased leave; or
 - (c) long service leave; or
 - (d) unpaid maternity leave; or
 - (e) unpaid parental leave; or
 - (f) grandparental leave; and
- who produces a certificate from a registered medical practitioner or registered health professional operating within their scope of practice, may apply for personal leave.
- 67.33. Where an employee is on a form of leave specified in subclause 67.32 and:
- (a) the employee is subsequently granted personal leave in accordance with subclause 67.32; and
 - (b) the personal leave falls within a part or all of the period of the other form of leave;
- then that other leave will be re-credited for that period of the personal leave that falls within the period of the other leave.
- 67.34. An employee cannot access paid personal leave while on paid maternity leave or primary care giver's leave, but can apply for personal leave during unpaid maternity leave or parental leave.
- 67.35. If the employee has exhausted all paid personal leave, personal leave without pay cannot be substituted for unpaid maternity leave.
- 67.36. If an ill or injured employee exhausts the employee's paid personal leave entitlement and produces documentary evidence, as per subclause 67.15, as evidence of continuing personal illness or injury, the employee may apply to the Chief Executive for approval to take annual leave or long service leave. If approved, this leave will not break the continuity of the 78 weeks under subclause 67.20.

68 Personal Leave in Extraordinary Circumstances

- 68.1. Employees, other than casual employees, are eligible to personal leave in extraordinary circumstances.
- 68.2. Personal leave in extraordinary circumstances, is non-cumulative and if granted is deducted from the employees personal leave balance.

- 68.3. The Chief Executive may grant a maximum of four days of personal leave, or the hourly equivalent for part time employees, other than for personal illness or the care of the employee's immediate household who is sick in extraordinary circumstances in a calendar year, in extraordinary, unforeseen or unexpected circumstances where it is essential that the employee have leave from the workplace. These four days are in addition to the seven days personal leave without documentary evidence and are calculated as per subclause 67.17.
- 68.4. While personal leave in extraordinary circumstances does not normally require documentary evidence, the Chief Executive may request reasonable evidence before granting the leave.
- 68.5. Personal leave in extraordinary circumstances will be granted with pay up to an employee's available personal leave credit.

69 Infectious Disease Circumstances

- 69.1. Where an employee is prevented from attending for duty under the *Public Health Act 1997*, the Chief Executive may grant that employee personal leave during that period.
- 69.2. The employee may also apply for the absence or a part of it to be deducted from their annual leave credit.

70 Annual Leave

Purpose

- 70.1. Annual leave is available to employees to enable them to be absent from duty for the purposes of rest and recreation.

Eligibility

- 70.2. Annual leave is available to employees other than casual employees.

Entitlement

- 70.3. An employee may be granted annual leave up to their available credit from the first day of service.

- 70.4. Annual leave is cumulative.

- 70.5. An employee's annual leave credit accrues on a daily basis according to the formula set out below:

$(A \times B \times D) / C = \text{total hours of leave accrued per day}$

where:

A = number of ordinary hours per week worked; and

B = one where the day counts as service or zero where the day does not count as service or is an unauthorised absence;

C = number of calendar days in the year; and

D = number of weeks of annual leave an employee is entitled to a year.

- 70.6. For the purpose of subclause 70.5 the basic leave entitlement is in the case of a 36.75 hour worker, 147 hours annual leave for each full year worked.

- 70.7. An annual leave credit does not accrue to an employee if the employee is absent from duty on leave for specified defence service, or full-time defence service. If the employee resumes duty after a period of specified defence service, annual leave will accrue from the date the employee resumes duty.

70.8. Employees will receive payment on separation from the Commission of any unused annual leave entitlement.

Evidence and Conditions

- 70.9. Employees are encouraged to use their annual leave in the year that it accrues, and to this end should discuss their leave intentions with their manager/supervisor as soon as practicable.
- 70.10. An employee must make an application to the Chief Executive to access their annual leave entitlement.
- 70.11. Having considered the requirements of this clause the Chief Executive may approve an employee's application to access annual leave.
- 70.12. The Chief Executive should approve an employee's application to take annual leave, subject to operational requirements.
- 70.13. If the Chief Executive does not approve an employee's application for annual leave because of operational requirements, the Chief Executive will consult with the employee to determine a mutually convenient alternative time (or times) for the employee to take the leave.
- 70.14. The Chief Executive must, unless there are exceptional operational circumstances, approve an application for annual leave if it would enable an employee to reduce their annual leave credit below two and a half years worth of annual leave credit. However, in the case of exceptional operational circumstances, the Chief Executive will consult with the employee to determine the time (or times) for the annual leave to be taken that is mutually convenient to both the administrative unit and the employee.
- 70.15. If an employee's annual leave is cancelled without reasonable notice, or an employee is recalled to duty from leave, the employee will be entitled to be reimbursed reasonable travel costs and incidental expenses not otherwise recoverable under any insurance or from any other source.
- 70.16. If the operations of the Commission, or part of the Commission, are suspended at Christmas or another holiday period, the Chief Executive may direct an employee to take annual leave at a time that is convenient to the working of the Commission, whether or not an application for leave has been made. However, this does not affect any other entitlements to leave under this Agreement.
- 70.17. If an employee has accrued the equivalent of two years worth of annual leave credits and unless exceptional operational circumstances exist, the employee and relevant manager/supervisor must agree, and implement an annual leave usage plan to ensure the employee's accrued leave credit will not exceed the equivalent of two and a half years worth of annual leave credit.
- 70.18. If an employee does not agree to a reasonable annual leave usage plan the Chief Executive may direct an employee who has accrued the equivalent of two and a half years worth of annual leave credit to take annual leave to the extent that the employee's annual leave credit exceeds the equivalent of the two and a half years worth of credit, subject to giving the employee one calendar month notice. This clause does not apply to an employee who is on graduated return to work following compensation leave.
- 70.19. An employee who has an annual leave credit in excess of 2.5 years of entitlement:
- (a) on joining, or returning to, the Commission; or
 - (b) on returning to duty from compensation leave
- will have twelve months to reduce the employee's annual leave balance to the equivalent of 2.5 years of entitlement or below.

70.20. An employee may not be directed under subclause 70.18 to take annual leave where the employee has made an application for a period of annual leave equal to or greater than the period specified in subclause 70.18 in the past six months and the application was not approved. The manager/supervisor and the employee may agree to vary an annual leave usage plan.

70.21. Annual leave may be granted at half pay with credits to be deducted on the same basis.

Rate of Payment

70.22. Annual leave may be granted at half or full pay with the credits to be deducted on the same basis..

70.23. Payment for the annual leave will be based on the employee's ordinary hourly rate of pay, including allowances that count for all purposes for the time the leave is taken. If an employee is being paid HDA before going on paid leave and would have continued to receive HDA had they not taken leave then the employee is entitled to payment of HDA during the leave.

Effect on Other Entitlements

70.24. Annual leave will count as service for all purposes.

70.25. Public holidays for which the employee is entitled to payment that fall during periods of absence on annual leave will be paid as a normal public holiday and will not be deducted from the employee's annual leave balance.

Access to other Leave Entitlements

70.26. If personal leave is granted to the employee, annual leave will be re-credited for the period of paid personal leave granted.

70.27. Subject to the approval of the Chief Executive, an employee who is on unpaid leave may be granted annual leave during that period, unless otherwise stated in this Agreement.

70.28. If an employee is prevented from attending for duty under the *Public Health Act 1997*, the Chief Executive may grant annual leave during that period.

Payment in Lieu of Annual Leave

70.29. An employee may cash out up to two weeks of the employee's annual leave credit where that credit has exceeded the equivalent of two years accumulated leave subject to the following:

- (a) the employee providing the Chief Executive with a written election to do so;
- (b) the Chief Executive authorising the election; and
- (c) the employee taking at least one week of annual leave in conjunction with this entitlement or the employee has taken at least one week of annual leave in the past six months.

70.30. An employee may only cash out annual leave in accordance with subclause 70.29 once during each twelve-month period.

70.31. Payment in lieu of annual leave will be based on the employee's ordinary hourly rate of pay, including allowances that count for all purposes at the date of application. The cash out payment will be based on the pay that the employee would have received for a notional period of leave equal to the credit being cashed out on the day the application is made.

71 Annual Leave Loading

Purpose

- 71.1. Annual leave loading is available to employees to provide monetary assistance while they are on annual leave.

Eligibility

- 71.2. Employees who accrue annual leave under clause 70 are entitled to an annual leave loading. Part time employees will be paid the annual leave loading on a pro rata basis.

Entitlement

- 71.3. Where an employee's entitlement is based on paragraph 71.7(a), the leave loading payable is subject to a maximum payment. This maximum payment is the equivalent of the Australian Bureau of Statistics' male average weekly total earnings for the May quarter of the year before the year in which the date of accrual occurs. Where the leave accrual is less than for a full year, this maximum is applied on a pro rata basis.
- 71.4. An employee whose employment ceases and who is entitled to payment of accumulated annual leave or pro rata annual leave will be paid any accrued annual leave loading not yet paid and leave loading on pro rata annual leave entitlement due on separation.

Evidence and Conditions

- 71.5. Annual leave loading accrued will be paid at such a time as the employee nominates, by making a written request to the Chief Executive.
- 71.6. Any unpaid annual leave loading accrued by employees will be paid on the first payday in December following its accrual.

Rate of Payment

- 71.7. The amount of an employee's entitlement under subclause 71.2 will be based on whichever is the greater of the following:
- (a) subject to subclause 71.3, 17.5 per cent of the employee's ordinary hourly rate of pay on 1 January multiplied by the number of hours of annual leave accrued during the preceding calendar year (excluding shift penalties); or
 - (b) any shift penalties that the employee would have received had the employee not been on approved annual leave.

72 Purchased Leave

Purpose

- 72.1. Purchased leave is available to employees to enable them to be absent from duty to support their work/life balance.

Eligibility

- 72.2. Employees, other than casual employees, are eligible to apply to purchase leave.

Entitlement

- 72.3. Employees may purchase leave in addition to the employee's usual annual leave entitlement, up to a maximum of twelve weeks in a twelve month period, subject to approval.
- 72.4. An employee may apply, at any time, to the Chief Executive for approval to participate in the purchased leave scheme.
- 72.5. The application must specify the amount of leave to be purchased in whole weeks up to a maximum of twelve weeks in a twelve month period, and the period over which the additional leave is to be acquitted.
- 72.6. Approval by the Chief Executive for an employee to purchase and use purchased leave, is subject to both the operational requirements of the workplace and the personal responsibilities of the employee.
- 72.7. Approval to purchase additional leave will not be given where an employee has an annual leave balance equivalent to two and a half years worth of annual leave credit or more, except where the employee intends to use all excess annual leave credit before taking purchased leave.
- 72.8. Once an employee commences participation in the scheme, the employee may only opt out of the scheme before the expiration of the agreed acquittal period, where:
- (a) the employee can demonstrate, in writing, that exceptional circumstances exist, such as unforeseen financial hardship, and the relevant manager agrees; or
 - (b) the employee's employment with the Commission ceases before the expiration of the agreed acquittal period; or
 - (c) the employee proceeds on paid maternity or primary care giver leave.

Evidence and Conditions

- 72.9. An employee should discuss with their manager/supervisor, as soon as practicable, their intention to be absent on purchased leave.
- 72.10. An employee must make an application to the Chief Executive to access their purchased leave entitlement.
- 72.11. Having considered the requirements of this clause the Chief Executive may approve an employee's application to access purchased leave. A decision not to approve the leave will be taken in accordance with subclause 65.1.
- 72.12. Approval by the Chief Executive to grant purchased leave will be subject to the operational requirements of the workplace, the personal responsibilities of the employee and appropriate periods of notice.
- 72.13. A minimum of one week of purchased leave must be applied for and taken at any one time unless the remaining balance is less than one week or the Chief Executive is satisfied, on evidence presented, there are exceptional circumstances that warrant purchased leave being taken in shorter periods.
- 72.14. Purchased leave must be used within the agreed acquittal period, not exceeding twelve months from the date of commencement in the scheme. Purchased leave not taken within the agreed acquittal period will be forfeited and the value of the leave refunded to the employee at the end of the acquittal period.

Rate of Payment

- 72.15. While an employee is on a period of purchased leave the employee will be paid at the rate of pay used to calculate the employee's deduction.
- 72.16. Purchased leave will be paid for by a fortnightly deduction from the employee's pay over an agreed acquittal period not exceeding twelve months from the date the employee commences participation in the scheme.
- 72.17. Fortnightly deductions, from the employee's pay, will commence as soon as practicable following approval of the employee's application to participate in the purchased leave scheme. The deductions will be calculated on the employee's pay at the date of commencement of participation in the scheme, the amount of leave to be purchased and the agreed acquittal period.
- 72.18. Despite 72.17, if the employee's pay changes during the acquittal period, approval for the deduction to be recalculated may be sought.
- 72.19. Cessation of employment with the Commission will result in recovery of unaquitted monies or payment of unused purchased leave through the final entitlements.
- 72.20. Fortnightly tax deductions will be calculated on the employee's gross pay after the deduction has been made for purchased leave.
- 72.21. Allowances in the nature of pay may be included in the calculation of purchased leave payments where:
- (a) the Chief Executive and the employee agree any or all of these allowances are appropriate; and
 - (b) there is the likelihood the allowance will continue to be received over the duration of the acquittal period.

Effect on Other Entitlements

- 72.22. Leave taken as purchased leave will count as service for all purposes.
- 72.23. Public Holidays for which the employee is entitled to payment that fall during periods of absence on purchased leave will be paid as a normal public holiday and will not be deducted from the employee's purchased leave balance.
- 72.24. Purchased leave will not affect the payment and timing of pay increments or the accrual of other forms of leave.
- 72.25. The purchase of additional leave under this clause will not affect the superannuation obligations of the Commission and/or the employee involved.

Access to other Leave Entitlements

- 72.26. Where an employee provides a certificate from a registered medical practitioner or registered health professional operating within their scope of practice for a personal illness occurring during a period of absence on purchased leave, the employee will have the purchased leave re-credited for that period covered by the certificate, and substituted by personal leave.
- 72.27. An employee participating in the scheme who proceeds on paid maternity or primary care giver's leave will elect to, either:
- (a) exit the purchased leave scheme and have any money owing refunded; or
 - (b) subject to subclause 72.28, remain in the scheme and have pay deductions continue during the period of paid maternity or primary care giver's leave.

- 72.28. Purchased leave taken during an employee's absence on maternity or primary care giver's leave will not extend the employee's total period of maternity leave or primary care giver's leave.
- 72.29. An employee participating in the scheme who is in receipt of paid workers' compensation will have pay deductions continued for purchased leave. Normal conditions for purchased leave will apply for employees on graduated return to work programs; however entry into the scheme should be discussed with the rehabilitation case manager.

73 Public Holidays

Eligibility

- 73.1. Public holidays are available to employees other than casual employees.

Entitlement

- 73.2. Employees are entitled to be absent from duty, in accordance with the *Holidays Act 1958*, on the following days:
- (a) 1 January (New Year's day), or, if that day falls on a Saturday or Sunday, the following Monday;
 - (b) 26 January (Australia Day), or, if that day falls on a Saturday or Sunday, the following Monday;
 - (c) the 2nd Monday in March (Canberra Day);
 - (d) Good Friday;
 - (e) the Saturday following Good Friday;
 - (f) the Monday following Good Friday;
 - (g) 25 April (Anzac Day), or, if that day falls on a Saturday or Sunday, the following Monday;
 - (h) the 2nd Monday in June (the day for the observance of the anniversary of the birthday of the Sovereign);
 - (i) Family and Community Day
 - (j) the 1st Monday in October (Labour Day);
 - (k) Christmas Day, or, if that day falls on a Saturday or Sunday, the following Monday;
 - (l) 26 December (Boxing Day), or—if that day falls on a Saturday—the following Monday; or if that day falls on a Sunday or Monday—the following Tuesday;
 - (m) any other day, or a part of any other day, declared to be a public holiday in the ACT in accordance with the *Holidays Act 1958*; and, in addition,
 - (n) the next working day after Boxing Day;
 - (o) any other day, or part of any day, declared to be a holiday by the Commissioner for Public Administration.

Rate of Payment

- 73.3. A public holiday is granted with pay.
- 73.4. A part time employee whose regular part time hours do not fall on a public holiday will not be paid for that public holiday.
- 73.5. An employee will not be paid for a public holiday which occurs during a period of leave without pay.
- 73.6. If a public holiday occurs on the day immediately before or immediately after an employee is on a period of leave without pay the employee is entitled to be paid for the public holiday.

Effect on Other Entitlements

- 73.7. Public holidays count as service for all purposes.

- 73.8. A public holiday will not count as service if it occurs while the employee is on a period of leave not to count as service.

74 Christmas Shutdown

Purpose

- 74.1. Christmas shutdown is provided for operational efficiency and the wellbeing of employees.

Eligibility

- 74.2. Christmas shutdown is available to employees other than casual employees.

Entitlement

- 74.3. Employees are entitled to two days of leave during the Christmas shutdown period, which are the working days between 28 December and 31 December inclusive.
- 74.4. Only those employees who are directed or have been given approval to work during this period may attend for work over the Christmas shutdown period.
- 74.5. Employees who are working during the Christmas shutdown period will be entitled to either:
- (a) take paid absence equivalent to the time worked at a time agreed between the employee and the relevant manager/supervisor; or
 - (b) elect to receive a payment equivalent to the time worked at a rate equal to the pay the employee received for working, or would have received had the employee worked.
- 74.6. Part time employees whose regular part time hours do not fall during the Christmas shutdown period will not be entitled to the additional two days of paid leave. Nothing in this clause is intended to reduce or increase a part time employee's pay entitlement for the pay period in which the Christmas shutdown period falls.

Rate of Payment

- 74.7. Christmas shutdown leave is granted with pay.

Effect on Other Entitlements

- 74.8. Christmas shutdown leave counts as service for all purposes.
- 74.9. Where an employee is required to work overtime on either of the Christmas shutdown days the employee will be entitled to receive payment. These days are not public holidays and therefore public holiday rates do not apply.

75 Compassionate Leave

Purpose

- 75.1. Compassionate leave is available to employees to enable them to be absent from duty when a member of an employee's immediate family or household:
- (a) has a personal illness or injury that poses a serious threat to the person's life; or
 - (b) dies.

Eligibility

- 75.2. Compassionate leave is available to all employees.

Entitlement

- 75.3. An employee may be granted compassionate leave from the first day of service.
- 75.4. Compassionate leave is non-cumulative.
- 75.5. Employees are entitled to up to the equivalent of five days of compassionate leave on each occasion of the death of a member of the employee's immediate family or household. The Chief Executive may grant an additional paid or unpaid period of compassionate leave for this purpose.
- 75.6. Employees are entitled to up to the equivalent of two days of compassionate leave on each occasion of personal illness or injury of a member of the employee's immediate family or household that poses a serious threat to the person's life. The Chief Executive may grant an additional paid or unpaid period of compassionate leave for this purpose.

Evidence and Conditions

- 75.7. The employee should discuss with their manager/supervisor, as soon as practicable, their absence or intention to be absent on compassionate leave.
- 75.8. An employee must make an application to the Chief Executive to access compassionate leave.
- 75.9. The Chief Executive may request evidence that would satisfy a reasonable person that an application for compassionate leave is for a purpose specified in subclause 75.1.
- 75.10. Having met the requirements of this clause, the Chief Executive will approve an employee's application to access compassionate leave.
- 75.11. If the employee has not provided the evidence requested under subclause 75.9, a decision not to approve the leave may be taken.

Rate of Payment

- 75.12. Compassionate leave will be granted with pay, except for casual employees and except where it is granted without pay under subclause 75.5 or 75.6.

Effect on Other Entitlements

- 75.13. Compassionate leave with pay will count as service for all purposes.
- 75.14. Public Holidays for which the employee is entitled to payment that fall during periods of absence on paid compassionate leave will be paid as a normal public holiday and will not be considered an absence on compassionate leave.
- 75.15. Compassionate leave that is granted under subclause 75.5 is not deducted from an employee's personal leave balance.
- 75.16. Compassionate leave that is granted under subclause 75.6 is deducted from an employee's personal leave balance.

Access to Other Leave Entitlements

- 75.17. If compassionate leave of at least one day is granted while an employee is absent on another type of leave, the other type of leave will be re-credited for the period of the absence on compassionate leave.

76 Community Service Leave

Purpose

- 76.1. Community service leave is available to employees to allow them to be absent from the workplace to engage in the following three distinct types of community service activities:
- (a) jury service (including attendance for jury selection) that is required by or under a law of the Commonwealth, a State or a Territory; or
 - (b) a voluntary emergency management activity; or
 - (c) other recognised voluntary community service activity.

Jury Service

Eligibility

- 76.2. Community service leave for jury service is available to all employees.

Entitlement

- 76.3. Community service leave for jury service is non-cumulative.

Evidence and Conditions

- 76.4. Although the granting of community service leave for jury service is deemed to be approved, an employee must:
- (a) submit a leave application for the period of the absence; and
 - (b) provide sufficient documentary evidence of the reason for the absence
- 76.5. The employee should discuss with their manager/supervisor their intention to be absent on community service leave for jury service.

Rate of Payment

- 76.6. Community service leave for jury service will be granted with pay to employees other than casual employees.
- 76.7. If the employee is paid jury fees, this amount must be deducted from the employee's pay less reasonable out-of-pocket expenses.

Effect on Other Entitlements

- 76.8. Community service leave for jury service will count as service for all purposes.
- 76.9. Public holidays for which the employee is entitled to payment that fall during periods of absence on paid community service leave for jury service will be paid as a normal public holiday and will not be considered to be community service leave for jury service.

Voluntary Emergency Management

Eligibility

- 76.10. A employee who is a member of a relevant emergency service, including:
- (a) a State or Territory Emergency Service;
 - (b) a fire-fighting service;
 - (c) a search and rescue unit; or
 - (d) other volunteer service performing similar functions

is eligible for community service leave for voluntary emergency management.

- 76.11. A casual employee who is a member of a relevant emergency service is eligible to unpaid community service leave for voluntary emergency management service.

Entitlement

- 76.12. Eligible employees are entitled to be absent on unpaid leave to engage in a voluntary emergency management activities, subject to operational requirements in the workplace.
- 76.13. Eligible employees, other than casual employees, are eligible for up to four days paid community service leave for voluntary emergency management per emergency.
- 76.14. Community service leave for voluntary emergency management is non-cumulative.

Evidence and Conditions

- 76.15. An employee should discuss their intention to be absent on paid or unpaid community service for voluntary emergency management with their manager/supervisor as soon as practicable, which may be at a time after the absence has started. The employee must advise the manager/supervisor of the period, or expected period, of the absence.
- 76.16. An employee must make an application to the Chief Executive to access their paid community service leave for voluntary emergency management entitlement.
- 76.17. The employee must, if requested by the Chief Executive, provide sufficient documentary evidence of the reason for the absence.
- 76.18. The Chief Executive may grant paid community service leave for voluntary emergency management to enable the employee to fulfil an obligation in the event of a civil emergency.
- 76.19. Having considered the requirements of this clause the Chief Executive may approve an employee's application to access paid community service leave for voluntary emergency management. A decision not to approve the leave will be taken in accordance with subclause 65.1.

Rate of Payment

- 76.20. Where paid leave is granted for community service leave for voluntary emergency management, it is paid at the employee's ordinary hourly rate of pay.

Effect on Other Entitlements

- 76.21. A period of approved community service leave for voluntary emergency management will count as service for all purposes.
- 76.22. Public holidays for which the employee is entitled to payment that fall during periods of absence on paid community service leave for voluntary emergency management will be paid as a normal public holiday and will not be considered to be community service leave for voluntary emergency management.

Additional Leave

- 76.23. Additional paid leave may be approved by the Chief Executive for any voluntary emergency management duties required to be performed by an employee who is a member of a State or Territory Emergency Service.

Voluntary Community Service

Eligibility

76.24. Community service leave for voluntary community service is available to all employees.

Entitlement

76.25. Employees, other than casual employees, are entitled to up to three days of paid leave for community service leave to engage in a recognised voluntary community service activity within a twelve month period.

76.26. Community service leave for voluntary community service is non-cumulative.

76.27. An employee may be granted unpaid community service leave to engage in a recognised voluntary community service activity, subject to operational requirements in the workplace.

Evidence and Conditions

76.28. An employee should discuss their intention to be absent on community service leave for voluntary community service, as soon as practicable, with their manager/supervisor.

76.29. An employee must make an application to the Chief Executive to access their community service leave for voluntary community service entitlement.

76.30. The Chief Executive may request sufficient documentary evidence of the reason for the absence.

76.31. In considering an application from an employee for paid leave to engage in a voluntary community service activity, the Chief Executive must consider whether:

- (a) the activity is a recognised voluntary activity; and
- (b) the community organisation or project is an acceptable organisation or project as defined in the Commission's guidelines; and
- (c) there is a risk the activity would place the employee in a real or perceived conflict of interest.

76.32. Leave for a voluntary community service activity must not be approved for activities which:

- (a) involve any payment in cash or kind for the duties performed by the employee; or
- (b) replace work ordinarily undertaken by a paid worker; or
- (c) are undertaken solely for direct personal benefit of the employee; or
- (d) place the employee in a conflict of interest situation; or
- (e) are primarily focussed on promoting particular religious or political views; or
- (f) involves work which does not have a community focus.

76.33. Having considered the requirements of this clause the Chief Executive may approve an employee's application to access paid or unpaid community service leave for voluntary community service.

76.34. A decision not to approve the leave will be taken in accordance with subclause 65.1.

Rate of Payment

76.35. Community service leave for voluntary community service is granted with pay for the first three days leave in a twelve month period to all employees except casual employees.

Effect on Other Entitlements

76.36. Community service leave for voluntary community service will count as service for all purposes up to a maximum of twenty three days in any twelve month period.

- 76.37. Where the Chief Executive has approved a request for unpaid community service leave for voluntary community service exceeding twenty days in a twelve month period, this leave in excess of twenty days will not count as service.
- 76.38. Public holidays for which the employee is entitled to payment that fall during periods of absence on paid community service leave for voluntary community service will be paid as a normal public holiday and will not be considered to be community service leave for voluntary community service.

Access to Other Leave Entitlements

- 76.39. Leave granted under this provision may be taken in combination with approved annual or long service leave.

77 Maternity Leave

Purpose

- 77.1. Maternity leave is available to pregnant employees to enable them to be absent from duty to:
- (a) support her own wellbeing and to care for and bond with a new born child; and
 - (b) support the protection of the family and children under the *Human Rights Act 2004*; and
 - (c) support the employee's right to continuity of service.

Eligibility

- 77.2. An employee who is pregnant is eligible to be absent on maternity leave.
- 77.3. An employee is eligible for maternity leave where termination of the pregnancy occurs within twenty weeks of the expected date of birth of the child. Where an employee's pregnancy terminates more than twenty weeks before the expected date of birth of the child any maternity leave which has been prospectively approved will be cancelled.

Eligibility – Paid Maternity Leave

- 77.4. An employee who is eligible for maternity leave and who has completed twelve months of continuous service, including recognised prior service, is eligible for paid maternity leave.
- 77.5. An employee who is eligible for maternity leave and who completes twelve months of continuous service within the first eighteen weeks of maternity leave is eligible for paid maternity leave for the period between completing twelve months of continuous service and the end of the first eighteen weeks of maternity leave.
- 77.6. An employee who is eligible for maternity leave and who is on approved leave without pay is eligible for paid maternity leave for the period between completing the approved period of leave without pay and the end of the first eighteen weeks of maternity leave.

Entitlement

- 77.7. An eligible employee is entitled to be absent for up to fifty two weeks maternity leave for each pregnancy.
- 77.8. Subject to subclause 77.4 an employee who is eligible for paid maternity leave is entitled to be paid for the first eighteen weeks of maternity leave. This entitlement is in addition to the Federal paid parental leave scheme.
- 77.9. Multiple births in a single pregnancy do not increase the paid maternity leave entitlement for the employee.

- 77.10. Maternity leave is non-cumulative.
- 77.11. Subject to subclauses 77.13 and 77.14, an employee who is eligible for maternity leave must absent herself from duty for a period commencing six weeks prior to the expected date of birth of the child and ending six weeks after the actual date of birth of the child.
- 77.12. An eligible employee's period of maternity leave will commence:
- (a) subject to subclause 77.13, six weeks prior to the expected date of birth of the child; or
 - (b) on the birth of the child if this occurs earlier than six weeks prior to the expected date of birth of the child; or
 - (c) on the date the pregnancy ends if that occurs within twenty weeks of the expected date of birth of the child; or
 - (d) for all other eligible employees, on the first day of paid maternity leave.
- 77.13. An employee who produces medical evidence from a registered medical practitioner that she is fit for duty until a date less than six weeks prior to the expected date of birth of the child may continue to work up until a date recommended by the medical practitioner, subject to the approval of the Chief Executive.
- 77.14. An employee who has given birth to a child and produces medical evidence from a registered medical practitioner that she is fit for duty from a date less than six weeks after the date of birth of the child may resume duty on a date recommended by the medical practitioner, subject to the approval of the Chief Executive.
- 77.15. An employee who has given birth to a child may resume duty following the end of the six week period after the birth of the child and earlier than the end of the approved period of maternity leave subject to the approval of the Chief Executive.
- 77.16. An employee is entitled to return to work in accordance with the provisions in the National Employment Standards of the FW Act.

Evidence and Conditions

- 77.17. An employee must give notice to their manager/supervisor as soon as practicable of their intention to be absent on maternity leave.
- 77.18. Maternity leave is deemed to be approved; however an employee must submit an application to the Chief Executive for any period of maternity leave. Having considered the requirements of this clause the Chief Executive will approve an employee's application to access maternity leave.
- 77.19. Prior to commencing maternity leave an employee will provide the Chief Executive with evidence of her pregnancy and the expected date of birth from a registered medical practitioner or registered health professional who is operating within their scope of practice.
- 77.20. As soon as possible after the birth of the child an employee will provide the Chief Executive with evidence of the birth and the date of the birth. Such evidence may include a copy of the birth certificate or documents provided by a registered medical practitioner or registered health professional who is operating within their scope of practice.

Rate of Payment

- 77.21. The rate of payment to be paid to the employee during a paid period of maternity leave is the same rate as would be paid if the employee was granted paid personal leave.
- 77.22. Paid maternity leave may be taken in any combination of full or half pay, with credits to be deducted on the same basis. The maximum paid period is up to thirty six weeks at half pay.

- 77.23. The Chief Executive may approve, subject to a medical certificate from a registered medical practitioner, an employee taking paid maternity leave in a non-continuous manner, provided any other form of paid leave will not be approved until the employee has used all of the employee's paid maternity leave entitlement.
- 77.24. A period of paid maternity leave does not extend the maximum fifty two week period of maternity leave available to an eligible employee
- 77.25. An employee's period of absence on maternity leave between the paid period of maternity leave and the maximum fifty two week period of maternity leave will be without pay, unless other paid leave entitlements are accessed.

Effect on Other Entitlements

- 77.26. Maternity leave with pay will count as service for all purposes.
- 77.27. Any period of unpaid maternity leave taken by an employee during the period commencing six weeks prior to the expected date of birth of the child and ending six weeks after the actual date of birth of the child will count as service for all purposes.
- 77.28. Subject to subclause 77.27 any period of unpaid maternity leave taken by an employee will not count as service for any purpose but does not break continuity of service.
- 77.29. Public holidays for which the employee would otherwise have been entitled to payment that fall during periods of absence on maternity leave will not be paid as a normal public holiday.

Access to Other Leave Entitlements

- 77.30. An application by an employee for long service leave or annual leave during a period that would otherwise be an unpaid period of maternity leave will be granted to the extent of available entitlements.
- 77.31. Subject to subclause 67.32, an application by an employee for personal leave during a period that would otherwise be an unpaid period of maternity leave will be granted subject to the employee providing a certificate from a registered medical practitioner or registered health professional operating within their scope of practice to the extent of available entitlements.

Keep in Touch Arrangements

- 77.32. At any time after six weeks from the child's date of birth, an employee may agree to attend the workplace on up to ten separate occasions of up to one day each so as to keep in touch with developments in the workplace (for meetings and training etc.).
- 77.33. The employee will be paid at their ordinary hourly rate of pay for this time during unpaid maternity leave. Keep in touch attendance will count as service for all purposes, but does not extend the period of leave and does not end or reduce the entitlement to maternity leave.
- 77.34. For the purpose of subclause 77.32, a medical certificate is not required.

78 Special Maternity Leave

Purpose

- 78.1. Special maternity leave is available to employees where:
- (a) the employee is not fit for work due to a pregnancy related illness, or
 - (b) the pregnancy of the employee ends within twenty eight weeks of the expected date of birth, other than by the birth of a living child.

Note: If a pregnancy ends within twenty weeks of the expected date of birth of the child the employee may be entitled to paid or unpaid maternity leave as per subclauses 77.3 and 77.4.

Eligibility

- 78.2. Special maternity leave is available to all employees and eligible casual employees.

Entitlement

- 78.3. An employee is entitled to a period of unpaid special maternity leave for the duration certified by a registered medical practitioner as necessary.

Evidence and Conditions

- 78.4. The employee must provide the Chief Executive with notice that they are taking special maternity leave.
- 78.5. The notice must be given as soon as practicable (which may be after the leave has started); and should include the period, or expected period, of the leave.
- 78.6. An employee must submit an application to the Chief Executive for any period of special maternity leave.
- 78.7. Having considered the requirements of this clause the Chief Executive will approve an employee's application to access special maternity leave.
- 78.8. An employee who has given notice that special maternity leave will be (or is being) taken must provide reasonable evidence of the purpose for taking leave. This evidence may include a medical certificate from a registered medical practitioner.

Rate of Payment

- 78.9. Special maternity leave is granted without pay.

Effect on Other Entitlements

- 78.10. Special Maternity leave does not count as service for any purpose.
- 78.11. Special maternity leave does not break continuity of service.
- 78.12. Special maternity leave accessed due to pregnancy related illness is deducted from the entitlement for unpaid maternity leave accessed after the birth of the child/ren.

Access to Other Leave Entitlements

- 78.13. Special maternity leave is in addition to any accrued personal leave entitlement.
- 78.14. Special maternity leave is in addition to compassionate leave.

79 Primary Care Giver Leave

Purpose

- 79.1. Primary care giver leave is available to employees to enable them to be absent from duty to care for and bond with a newborn, adopted or a foster child for whom the employee has enduring parental responsibility due to a care and protection order.

Eligibility

- 79.2. Primary care giver leave is available to employees other than casual employees who are the primary care giver of a newborn, adopted or foster child for whom the employee has enduring parental responsibility due to a care and protection order.
- 79.3. An employee who has completed at least twelve months service, including recognised prior service, is eligible for primary care giver leave.
- 79.4. An employee who is eligible for paid maternity leave is not eligible for primary care giver leave.
- 79.5. An employee who completes twelve months of qualifying service within eighteen weeks of becoming the primary care giver for a child is eligible for primary care giver leave for the period between completing twelve months of qualifying service and the end of the first eighteen weeks of becoming the primary care giver of the child.

Entitlement

- 79.6. An eligible employee is entitled to eighteen weeks of paid leave in relation to each birth, adoption or care and protection order.
- 79.7. Primary care giver leave is non-cumulative.
- 79.8. An employee is entitled to return to work in accordance with the provisions in the National Employment Standards of the FW Act.

Evidence and Conditions

- 79.9. An employee should discuss with their manager/supervisor, as soon practicable, their intention to be absent on primary care giver leave.
- 79.10. An employee must make an application to the Chief Executive to access the primary care giver leave.
- 79.11. The employee must provide the Chief Executive with appropriate evidence concerning the reasons for and circumstances under which the primary care giver leave application is made, which may include:
- (a) a certificate from a registered health professional operating within their scope of practice relating to the expected date of birth of a child; or
 - (b) a birth certificate; or
 - (c) documents from an adoption authority concerning the proposed adoption of a child; or
 - (d) documents relating to the court orders granting parental responsibility of a foster child until the child reaches the age of eighteen.
- 79.12. In all cases details of leave being taken by the employee's domestic partner must be provided.

- 79.13. Before granting primary care giver leave, the Chief Executive must be satisfied that the employee demonstrates that they are the primary care giver.

Example 1: The primary care giver may be the father of the newborn child.

Example 2: The primary care giver may be the domestic partner of the newborn child's mother.

Example 3: The primary care giver may be a kinship carer or foster carer with parental responsibility until the child reaches the age of eighteen years.

- 79.14. For the purposes of this clause a newborn is considered to be a baby of up to fourteen weeks old. In extenuating circumstances, the Chief Executive may approve primary care giver leave when a newborn is more than fourteen weeks old. For an adopted or fostered child, primary care giver leave may commence from the date the employee assumes responsibility for the child but not after fourteen weeks of the adoption or foster care placement. Additionally, the child must be under the age of eighteen on the day of adoption, kinship, or foster care placement for leave to be approved.
- 79.15. Having considered the requirements of this clause the Chief Executive will approve an employee's application to access primary care giver leave.
- 79.16. The total combined entitlement under this clause and the maternity leave clause and equivalent clauses in any other Commission enterprise agreement, is eighteen weeks of paid leave in relation to the birth, adoption or fostering arrangement.
- 79.17. Primary care giver leave may be taken in any combination with maternity leave provided that the mother and the other employee entitled to primary care giver leave do not take these forms of paid leave concurrently.

Rate of Payment

- 79.18. Primary care giver leave will be granted with pay.
- 79.19. The rate of payment to be paid to the employee during a paid period of primary care giver leave is the same rate as would be paid if the employee was granted personal leave. Primary care giver leave may be granted in any combination of full or half pay, with credits to be deducted on the same basis. The maximum paid period is up to thirty six weeks at half pay.

Effect on Other Entitlements

- 79.20. Primary care giver leave will count as service for all purposes.
- 79.21. Public holidays for which the employee would otherwise have been entitled to payment that fall during periods of absence on primary caregiver leave will not be paid as a normal public holiday.

Access to Other Leave Entitlements

- 79.22. Primary care giver leave does not extend the maximum period of unpaid parental leave available to an employee.

Keep in Touch Arrangements

- 79.23. An employee on primary care giver leave may agree to attend the workplace on up to ten separate occasions of up to one day each so as to keep in touch with developments in the workplace (for meetings and training etc).
- 79.24. The employee will be paid at their ordinary hourly rate of pay for this time. Keep in touch attendance will count as service for all purposes, but does not extend the period of leave and does not end or reduce the entitlement to primary care giver leave.

80 Parental Leave

Purpose

- 80.1. Parental leave is in addition to the provisions available in maternity and primary care giver leave and is available to employees to enable them to be absent from duty following the birth or adoption of a child or the placement of a child in accordance with a care and protection order.

Eligibility

- 80.2. Parental leave is available to an employee or an eligible casual employee who is the primary care giver of a child following the birth or adoption of a child or the placement of a child in accordance with a care and protection order.

Entitlement

- 80.3. An employee is entitled to up to two years of parental leave following the child's birth, adoption or placement of a child in accordance with a care and protection order less any period of maternity leave or primary care giver leave which the employee has taken in relation to the same birth or child.
- 80.4. To avoid doubt, the entitlement under this clause does not increase in cases of multiple births or placements that apply to more than one child at any one time.
- 80.5. At the end of this time the employee is entitled to return to work in accordance with the provisions in the National Employment Standards of the FW Act.
- 80.6. An employee is entitled to apply and will be granted an additional year of parental leave for two or more occasions of birth, adoption or placement in accordance with a care and protection order.

Evidence and Conditions

- 80.7. An employee should discuss with their manager/supervisor, as soon as practicable, their intention to be absent on parental leave.
- 80.8. An employee must make an application to the Chief Executive to access their unpaid parental leave entitlement.
- 80.9. Having considered the requirements of this clause the Chief Executive will approve an employee's application to access parental leave.
- 80.10. The employee must provide the Chief Executive with appropriate evidence concerning the reasons for and circumstances under which the unpaid parental leave application is made, which may include:
- (a) a birth certificate; or
 - (b) documents from an adoption authority concerning the adoption of a child; or
 - (c) documents relating to the court orders granting parental responsibility of a fostered child until the child reaches the age of eighteen.
- 80.11. The Chief Executive will not grant parental leave if the employee's domestic partner is on concurrent maternity or primary care giver leave following the birth or adoption of a child or the placement of a child in accordance with a care and protection order.

Rate of Payment

- 80.12. Parental leave will be granted without pay.

Effect on Other Entitlements

- 80.13. Parental leave does not count as service for any purpose.
- 80.14. Parental leave does not break continuity of service.
- 80.15. Public holidays for which the employee would otherwise have been entitled to payment that fall during periods of absence on parental leave will not be paid as a normal public holiday.

Access to Other Leave Entitlements

- 80.16. An employee on parental leave may access annual and long service leave on full or half pay to the extent of available entitlements.
- 80.17. An application by an employee for personal leave during a period that would otherwise be a period of parental leave will be granted subject to the employee providing a certificate from a registered medical practitioner or registered health professional operating within their scope of practice.

Keep in Touch Arrangements

- 80.18. An employee may agree to attend the workplace on up to ten separate occasions of up to one day each so as to keep in touch with developments in the workplace (for meetings and training etc.), less any Keep In Touch time approved during maternity or primary caregiver leave as per subclauses 77.32 or 79.23.
- 80.19. The employee will be paid at their ordinary hourly rate of pay for this time. Keep in touch attendance will count as service for all purposes, but does not extend the period of leave and does not end or reduce the entitlement to parental leave.

81 Bonding Leave

Purpose

- 81.1. Bonding leave is available to employees to enable them to be absent from duty to:
 - (a) bond with a newborn child, adopted child or a foster child for whom the employee's domestic partner has enduring parental responsibility due to a care and protection order.
 - (b) support the protection of the family under the *Human Rights Act 2004*.

Eligibility

- 81.2. Bonding leave is available to employees other than casual employees at the time of the child's birth, adoption or foster care granting enduring parental responsibility due to a care and protection order by the employee's domestic partner when the employee is not the primary care giver to the child.
- 81.3. An employee who is eligible for paid maternity leave or primary care giver leave is not entitled to bonding leave.
- 81.4. If bonding leave has been taken by the employee, and the employee later becomes entitled to primary care giver leave, the Chief Executive may agree to convert the bonding leave and any personal leave accessed under this clause to primary care giver leave.

Entitlement

- 81.5. Under this clause, an employee is entitled to be absent for a maximum of two weeks (ten days) at, or near, the time of the birth, adoption or care and protection order. The maximum absence may be

increased by a further one week (five days) of personal leave for bonding purposes as per subclause 67.22.

- 81.6. In accordance with the National Employment Standards, an eligible employee is entitled to be absent up to a maximum of eight weeks of concurrent unpaid bonding leave in the first twelve months following the birth, adoption or care and protection order for a child, subject to a minimum period of two weeks at a time unless a shorter period is agreed by the Chief Executive.
- 81.7. The entitlement under sub-clause 81.6 will be reduced by the extent of the entitlement accessed by an employee under sub-clause 81.5.
- 81.8. To avoid doubt, the entitlement under this clause does not increase in cases of multiple births, adoptions or care and protection orders that apply to more than one child at the one time.
- 81.9. Bonding leave is non-cumulative.
- 81.10. Bonding leave must be taken as a single continuous block. The one week (five days) of personal leave accessed as per subclause 67.22 may be taken at any time up to fourteen weeks from the date of the birth, adoption or care and protection order.
- 81.11. Where an employee's domestic partner is also a Commission employee this leave may be taken concurrently with the domestic partner receiving maternity or primary care giver leave.

Evidence and Conditions

- 81.12. An employee should discuss with their manager/supervisor, as soon as practicable, their intention to be absent on bonding leave.
- 81.13. Bonding leave will be approved subject to the eligibility requirements being met, however, an employee must submit an application to the Chief Executive for any period of bonding leave.
- 81.14. The employee must provide the Chief Executive with appropriate evidence concerning the circumstances under which the bonding leave application is made, which may include:
 - (a) a medical certificate relating to the expected date of birth of a child; or
 - (b) a birth certificate; or
 - (c) documents from an adoption authority concerning the proposed adoption of a child; or
 - (d) documents relating to the court orders granting parental responsibility of a fostered child until the child reaches the age of eighteen.
- 81.15. Unless the Chief Executive determines that exceptional circumstances apply bonding leave will not be approved to care for:
 - (a) a baby over the age of fourteen weeks; or
 - (b) an adopted child or fostered child who over the age of eighteen on the day of placement.

Rate of Payment

- 81.16. Bonding leave will be granted with or without pay.
- 81.17. The rate of payment to be paid to the employee during a period of bonding leave is the same rate as would be paid if the employee was granted personal leave.

Effect on Other Entitlements

- 81.18. Bonding leave will count as service for all purposes and unpaid bonding leave will not count as service for any purpose but will not break continuity of service.

- 81.19. Public holidays for which the employee is entitled to payment that fall during periods of absence on bonding leave will be paid as a normal public holiday and will not extend the maximum period of bonding leave.

82 Grandparental leave

Purpose

- 82.1. Grandparental leave is available to employees to enable them to be absent from duty to undertake a primary care giving role to their grandchild during normal business hours.

Eligibility

- 82.2. Grandparental leave is available to employees other than casual employees and employees on probation.
- 82.3. To be eligible for grandparental leave, the baby or child whom the employee is providing care for must be:
- (a) their grandchild; or
 - (b) their step-grandchild; or
 - (c) their adopted grandchild; or
 - (d) a child for whom the employee's child has parental or caring responsibility authorised under a law of a State or Territory.

Entitlement

- 82.4. An eligible employee may be granted up to fifty two weeks of grandparental leave, in relation to each grandchild under care. This leave may be taken over a period not exceeding five years.
- 82.5. Grandparental leave is available up until the fifth birthday of the grandchild for whom the employee is the primary care giver.
- 82.6. Grandparental leave is non-cumulative.
- 82.7. The length of a period of absence on grandparental leave must be agreed between the eligible employee and the Chief Executive.

Example 1: A day or part-day on an occasional basis.

Example 2: A regular period of leave each week, fortnight or month.

Example 3: A larger block of leave such as six or twelve months.

- 82.8. If an employee is absent on grandparental leave and becomes a grandparent to another grandchild, for whom they are the primary care giver, a new application must be made as per subclause 82.4.

Evidence and Conditions

- 82.9. An employee should discuss with their manager/supervisor, as soon as practicable, their intention to be absent on grandparental leave.
- 82.10. An employee must make an application to the Chief Executive to access their grandparental leave entitlement, and must include details of the period, or expected period, of the absence.
- 82.11. Having considered the requirements of this clause the Chief Executive may approve an employee's application to access grandparental leave. A decision not to approve the leave will be taken in accordance with subclause 65.1.

- 82.12. The Chief Executive should not approve an application for grandparental leave where an employee has an annual leave balance in excess of eight weeks.
- 82.13. An application for grandparental leave must include evidence in the form of:
- (a) a statutory declaration or a medical certificate confirming the birth or the expected date of the birth of the grandchild; or
 - (b) the grandchild's adoption certificate or a statutory declaration confirming the adoption of the grandchild; or
 - (c) a letter or a statutory declaration confirming that there is an authorised care situation.
- 82.14. If both grandparents are employees of the Commission either grandparent may be granted leave but the leave may not be taken concurrently.

Rate of Payment

- 82.15. Grandparental leave will be granted without pay.

Effect on Other Entitlements

- 82.16. Employees cannot engage in outside employment during a period of grandparental leave without the prior approval of the Chief Executive.
- 82.17. Grandparental leave will count as service for all purposes except the accrual of annual leave and personal leave.
- 82.18. Grandparental leave will not break continuity of service.
- 82.19. Public holidays for which the employee would otherwise have been entitled to payment that fall during periods of absence on grandparental leave will not be paid as a normal public holiday.

Access to Other Leave Entitlements

- 82.20. An employee on grandparental leave may access annual leave, purchased leave or long service leave.
- 82.21. An application by an employee for personal leave during a period that would otherwise be grandparental leave will be granted subject to the employee providing a certificate from a registered medical practitioner or registered health professional who is operating within their scope of practice.

83 Foster and Short Term Care Leave

Purpose

- 83.1. Foster and Short Term Care leave is available to employees to enable them to be absent from duty to:
- (a) care for a child in an emergency or other short term out of home care placement , including kinship arrangements, that has not been determined as eligible for Primary Care Giver leave; and
 - (b) support the protection of the family and children under the *Human Rights Act 2004* and the *Children and Young People Act 2008*.

Eligibility

- 83.2. Foster and Short Term Care leave is available to employees other than casual employees who are the primary care giver of a child in an emergency or other out of home care placement that has not been determined as eligible for Primary Care Giver leave.

- 83.3. An employee who has completed at least twelve months continuous service, including recognised prior service, is eligible for Foster and Short Term Care leave.

Entitlement

- 83.4. An eligible employee will be entitled to a period of paid leave proportionate to the duration of the caring arrangement per application and up to a maximum of two weeks (10 days) per calendar year.

Example 1: An emergency care placement of 48 hours will entitle an employee to up to two days of leave.

Example 2: A short term care placement of up to two years' duration will entitle an employee to up to two weeks (ten days) of leave.

- 83.5. Where the duration of the existing arrangement is subsequently altered, for example, a change from an emergency placement to a short term placement, the employee may, subject to further application and approval, have their leave extended up to a maximum period of two weeks (ten days) of leave.

- 83.6. An eligible employee will be entitled to access the paid leave in sub-clause 83.4 to undertake accreditation towards an enduring parental authority to care for the child (ren) to whom the current short term caring arrangement applies.

- 83.7. The entitlement under sub-clause 83.4 does not increase when the short term caring arrangement involves more than one child at the time of application.

- 83.8. Foster and Short Term Care leave is non-cumulative.

- 83.9. Where an employee exhausts their paid leave entitlement under this clause the employee may seek approval for further unpaid leave.

Evidence and Conditions

- 83.10. An employee should discuss with their manager/supervisor, as soon practicable, their intention to be absent on Foster and Short Term Care leave.

- 83.11. An employee must make an application, as soon as practicable, to the Chief Executive to access their Foster and Short Term Care leave.

- 83.12. The employee must provide the Chief Executive with appropriate evidence concerning the reasons for and circumstances under which each Foster and Short Term Care leave application is made, which may include:

- (c) documents relating to current and previous court orders granting responsibility for a foster child; or
- (d) documents from a registered health professional or registered medical professional.

Rate of Payment

- 83.13. Foster and Short Term Care leave will be granted with pay or without pay.

- 83.14. The rate of payment during absence on a period of paid Foster and Short Term Care leave is the same rate as would be paid if the employee was granted personal leave.

- 83.15. The approved leave period may be taken at full pay in a single block or as single or part days not exceeding the entitlement under sub-clause 83.4.

Effect on Other Entitlements

- 83.16. Paid Foster and Short Term Care leave will count as service for all purposes and unpaid Foster and Short Term Care leave will not count as service for any purposes but will not break continuity of service.
- 83.17. Public holidays for which the employee is entitled to payment that fall during periods of absence on paid Foster and Short Term Care leave will be paid as a normal public holiday and will not be considered to be Foster and Short Term Care leave.

Access to Other Leave Entitlements

- 83.18. An eligible employee will be required to have exhausted their entitlement under this leave clause before accessing their personal leave credit to care for a child, for whom they are responsible under a short term caring arrangement, who is ill or injured.

84 Other Leave

Purpose

- 84.1. Other leave is available to employees to enable them to be absent from duty for a variety of purposes.
- 84.2. Other leave may be granted in the interests of:
- (a) the Commission, a State, a Territory or the Commonwealth; or
 - (b) the community in general; or
 - (c) the employee.

Note: Separate provisions apply for community service leave which includes jury service, voluntary emergency management and voluntary community service.

Eligibility

- 84.3. An employee who meets the eligibility requirements specified in Annex D is eligible to apply for that form of other leave.

Entitlement

- 84.4. An employee may be granted other leave to the maximum period set out in Annex D.

Evidence and Conditions

- 84.5. An employee should discuss with their manager/supervisor, as soon as practicable, their intention to be absent on a form of other leave, including the reasons for the absence and the period, or expected period, of the absence.
- 84.6. An employee must make an application to the Chief Executive to access a form of other leave.
- 84.7. Having considered the requirements of this clause the Chief Executive may approve an employee's application to access a form of other leave. A decision not to approve the leave will be taken in accordance with subclause 65.1.
- 84.8. The employee must, if requested by the Chief Executive, provide sufficient documentary evidence supporting the reason for the absence.

84.9. When considering requests for other leave, the Chief Executive will take into account:

- (a) the employee's circumstances;
- (b) community norms and obligations;
- (c) the operational requirements of the workplace;
- (d) other available leave options;
- (e) any conditions on the entitlement as defined in Annex D.

Rate of Payment

84.10. Other leave may be granted with or without pay in accordance with Annex D.

Effect on Other Entitlements

84.11. A period of other leave will count as service in accordance with Annex D.

84.12. Public holidays for which the employee is entitled to payment that fall during periods of absence on other paid leave will be paid as a normal public holiday and will not reduce an entitlement of the employee to other leave under Annex D.

Access to Other Leave Entitlements

84.13. Leave will not be granted under this provision if another form of leave is more appropriate.

85 Long Service Leave

85.1. The eligibility requirements and entitlements for long service leave under the PSM Act and PSM Standards apply subject to the provisions of this clause.

85.2. The Chief Executive may grant long service leave to an employee to the extent of that employee's pro-rata long service leave credits after seven years eligible service.

85.3. Where an employee whose period of employment is less than seven years but not less than one year:

- (a) ceases to be an employee, otherwise than because of the employee's death, on, or after, the employee attaining the minimum retiring age; or
- (b) ceases to be an employee because of the employee's redundancy; or
- (c) ceases to be an employee and satisfies the Chief Executive that the employee so ceasing is due to ill health of such a nature as to justify the employee so ceasing

the Chief Executive will authorise payment to the employee under this subsection in accordance with Part 4.3 of the PSM Standards..

85.4. Employees will receive payment on separation of any pro-rata entitlements after seven years eligible service.

85.5. If an employee whose period of employment is not less than one year dies, the Chief Executive may authorise payment to a dependant of the employee of an amount equal to, or payments to two or more dependants of the employee of amounts aggregating, the amount that would have been payable to the employee under Part 4.3 of the PSM Standards if the employee had, on the day the employee died, ceased to be an employee otherwise than because of death, on or after, the employee attaining the minimum retiring age.

85.6. To encourage the flexible use of long service leave:

- (a) employees may be granted leave in blocks of not less than seven days, or equivalent if part time, if the employees so request.

- (b) long service leave may be taken on double, full or half pay when approved by the Chief Executive and subject to operational requirements, with credits to be deducted on the same basis.
- 85.7. Having considered work/life balance, an employee may, in writing, request the approval of the Chief Executive to the partial or full payment in lieu of their accrued leave credit. The payment in lieu will be based on the rate of pay the employee would have received had the employee taken the leave at the time the application was made. If the employee is on higher duties, payment at that rate will only be approved where the higher duties would have continued had the leave been applied for and taken.

Section G - Communication and Consultation

86 Consultation

- 86.1. There should be effective consultation and employee participation in decisions that affect an employee's employment. This is essential to the successful management of change.
- 86.2. Where there are proposals by the Commission to introduce major changes in the organisation or to existing work practices, the Chief Executive will consult with affected employees and their representation, if any.
- 86.3. The Chief Executive will provide relevant information to assist the employees and the representation, if any, to understand the reasons for the proposed changes and the likely impact of these changes so that employees are able to contribute to the decision making process.
- 86.4. For the purpose of providing effective consultation:
- (a) adequate time will be provided to employees and the representation to consult with the Commission;
 - (b) an Commission Consultative Committee (CCC) will be established, with membership to be agreed by the Chief Executive and the union(s) following commencement of this Agreement; and
 - (c) additional levels of consultation, such as a Workplace Consultative Committee, may be established with the agreement of the CCC to operate at the local level. Where established these levels of consultation will deal with workplace specific issues before such issues may be raised with the CCC and have membership agreed by the CCC.
- 86.5. The Commission Consultative Committee will:
- (a) monitor the operation and implementation of this Agreement;
 - (b) consider any proposed new or proposed significant changes to Commission policy statements and guidelines that relate to the provisions of this Agreement; and
 - (c) exchange information about workplace issues affecting employees; and
 - (d) consult on any existing performance management schemes, and on the development of any new performance management schemes, in the Commission;
 - (e) meet at least quarterly, unless otherwise agreed; and
 - (f) have terms of reference agreed to by the members of the CCC.

Consultation on Changes to Regular Rosters or Ordinary Hours of Work

- 86.6. Where the Commission proposes to introduce a change to the regular roster or ordinary hours of work of employees, the following will apply:
- (a) the Chief Executive must consult and notify the relevant employees of the proposed change;
 - (b) the Chief Executive must recognise the affected employee(s) union or other representative;
 - (c) as soon as practicable after proposing to introduce the change, the Chief Executive must:
 - i. discuss with the relevant employees the introduction of the change; and
 - ii. for the purposes of the discussion,-provide to the relevant employees:
 - all relevant information about the change, including the nature of the change; and
 - information about what the Chief Executive reasonably believes will be the effects of the change on the employees; and
 - information about any other matters that the Chief Executive reasonably believes are likely to affect the employees; and
 - iii. 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).
- 86.7. However, the Chief Executive is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 86.8. The Chief Executive must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- 86.9. Relevant employees means the employees who may be affected by a change referred to in subclause 86.6 and 86.8.
- 86.10. These provisions are to be read in conjunction with other consultative obligations detailed in the Agreement.

87 Dispute Avoidance/Settlement Procedures

- 87.1. The objective of these procedures is the prevention and resolution of disputes about:
- (a) matters arising in the workplace, including disputes about the interpretation or implementation of the Agreement; and
 - (b) the application of the National Employment Standards of the FW Act.
- 87.2. For the purposes of this clause, except where a contrary intention appears, the term 'parties' refers to 'parties to the dispute'.
- 87.3. All persons covered by this Agreement agree to take reasonable internal steps to prevent, and explore all avenues to seek resolution of disputes.
- 87.4. An employee who is a party to the dispute may appoint a representative, which may be a relevant union, for the purposes of the procedures of this clause.
- 87.5. In the event there is a dispute, the following processes will apply.
- 87.6. Where appropriate, the relevant employee or the employee's representative will discuss the matter with the employee's supervisor. Should the dispute not be resolved, it will proceed to the appropriate management level for resolution.
- 87.7. In instances where the dispute remains unresolved, the next appropriate level of management, the employee, the union or other employee representative will be notified and a meeting will be arranged at which a course of action for resolution of the dispute will be discussed.

- 87.8. If the dispute remains unresolved after this procedure, a party to the dispute may refer the matter to FWA.
- 87.9. FWA may deal with the dispute in two stages:
- (a) FWA 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 FWA is unable to resolve the dispute at this first stage, FWA may then:
 - i. arbitrate the dispute; and
 - ii. make a determination that is binding on the parties.
- 87.10. FWA may exercise any powers it has under the FW Act as are necessary for the just resolution or determination of the dispute.
- 87.11. A person may be assisted and represented at any stage in the dispute process in the FWA on the same basis as applies to representation before FWA under section 596 of the FW Act.
- 87.12. All persons involved in the proceedings under subclause 87.9 will participate in good faith.
- 87.13. Unless the parties agree to the contrary, FWA will, in responding to the matter, have regard to whether a party has applied the procedures under this term and acted in good faith.
- 87.14. The parties agree to be bound by a decision made by FWA in accordance with this clause.
- 87.15. However, any party may appeal a decision made by FWA in accordance with the FW Act.
- 87.16. Despite the above, the parties may agree to submit the dispute to a body or person other than FWA. Where the parties agree to submit the dispute to another body or person:
- (a) all of the above provisions apply, unless the parties agree otherwise; and
 - (b) references to FWA in the above provisions will be read as a reference to the agreed body or person;
 - (c) all obligations and requirements on the parties and other relevant persons under the above provisions will be complied with; and
 - (d) the agreed body or person must deal with the dispute in a manner that is consistent with section 740 of the *FW Act*.
- 87.17. While the parties are trying to resolve the dispute using procedures in this clause:
- (a) an employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and
 - (b) an employee must comply with a direction given by the Chief Executive to perform other available work at the same workplace, or at another workplace, unless;
 - i. the work is not safe; or
 - ii. applicable workplace 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.

88 Flexibility Term

- 88.1. The Chief Executive and an individual employee may agree to vary the application of certain provisions of this Agreement to meet the genuine needs of the Commission and of the individual employee (an individual flexibility arrangement).

- 88.2. The provisions of this Agreement that the Chief Executive and an individual employee may agree to vary through an individual flexibility arrangement are:
- (a) vacation childcare subsidy (subclause 60.1) and
 - (b) family care costs (subclause 61.1); and
 - (c) emergency duty (clause 40)
- 88.3. The Chief Executive must ensure that the terms of the individual flexibility arrangement:
- (a) are about matters that would be permitted if the arrangement were an enterprise agreement;
 - (b) does not include a term that would be an unlawful term if the arrangement were an enterprise agreement; and
 - (c) will result in the employee being better off overall than the employee would have been if no individual flexibility arrangement were agreed to.
- 88.4. The Chief Executive must ensure that the individual flexibility arrangement:
- (a) identifies the clause in 88.2 of this Agreement that the Chief Executive and the employee have agreed to vary;
 - (b) sets out details of how the arrangement will vary the effect of the clause;
 - (c) includes details of how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
 - (d) states the day the arrangement commences.
- 88.5. An individual flexibility arrangement made under this clause must be genuinely agreed to by the Chief Executive and the individual employee.
- 88.6. Except as provided in paragraph 88.7(b), an individual flexibility arrangement made under this clause must not include a provision that requires the individual flexibility arrangement to be approved, or consented to, by another person.
- 88.7. The Chief Executive must ensure that an individual flexibility arrangement made under this clause must be in writing and signed:
- (a) in all cases - by the employee and the Chief Executive; and
 - (b) if the employee is under eighteen – by a parent or guardian of the employee.
- 88.8. The Chief Executive must give the employee a copy of an individual flexibility arrangement made under this clause within fourteen days after it is agreed to.
- 88.9. The Chief Executive or the employee may terminate the individual flexibility arrangement:
- (a) by giving written notice of no more than twenty eight days to the other party to the arrangement; or
 - (b) if the Chief Executive and the employee agree in writing – at any time.
- 88.10. The right to make an individual flexibility arrangement under this clause is in addition to, and is not intended to otherwise affect, the right of the Chief Executive and an individual employee to make an agreement under any other provision of this Agreement.

89 Freedom of Association

- 89.1. The Commission recognises that employees are free to choose whether or not to join a union. Irrespective of that choice, employees will not be disadvantaged or discriminated against in respect of the employees' employment under this Agreement. The Commission recognises that employees who choose to be members of a union have the right to choose to have their industrial interests represented by the union.

- 89.2. Employees in negotiations of any kind are entitled to negotiate collectively where they so choose.
- 89.3. Employees engaging in negotiations of any kind are entitled to be represented by a representative of their choice. The Commission will deal with any such representative in good faith.

90 Work Organisation

- 90.1. An employee agrees to carry out all lawful and reasonable directions of the Chief Executive according to the requirements of the work and the employee's skill, experience and competence, in accordance with this Agreement, and without deskilling the employee.
- 90.2. An employee will not, unless this is done in the course of the employee's duties or as required by law or by the Commission, use or disclose to any person any confidential information about the Commission's business that becomes known to the employee during the employee's employment.
- 90.3. The Commission will not reveal to any person any medical, financial or personal details of the employee that the Commission may have obtained, except with the permission of the employee or where the Commission is under a legal obligation to do so.

91 Right of Existing and New Employees to Representation in the Workplace

- 91.1. The Commission acknowledges the rights of its employees to be represented and to meet with their representatives in the workplace. The Commission recognises the legitimate right of the union(s) to represent its employees who are members, or eligible to become members of the union(s).
- 91.2. The FW Act prescribes the purpose and manner under which the union(s) may exercise right of entry in the workplace. The Commission will grant the union(s) access in accordance with the FW Act.
- 91.3. In addition, the Commission will:
- (a) allow union officials and employees, who are permit holders, to enter Commission workplaces for normal union business or to represent employees, to meet with management or members and to distribute or post material, provided that work is not disrupted;
 - (b) allow the union(s) to meet with new Commission employees who are members, or who are eligible to become members, of the union(s), at a time during normal working hours which the union(s) and the Chief Executive agree upon, and of which the Chief Executive will advise the employees;
 - (c) provide all new Commission employees with some form of induction program, including an induction package containing information about the union(s) which the union(s) has given the Commission; and
 - (d) invite the union(s) to attend any face to face induction of new Commission employees, the details of which the Chief Executive will advise to the union(s) contract officer or other nominated person with reasonable notice. Such attendance will be included as an integral part of the induction process and be for the purpose of delivering an information presentation including recruitment information to new Commission employees.
- 91.4. For the avoidance of doubt, nothing in subclause 91.3 should be taken as conferring a right of entry that is contrary to, or for which there is otherwise, a right of entry under the FW Act.

92 Co-operation and Facilities for Unions and Other Employee Representatives

- 92.1. For the purpose of ensuring that union(s) and other employee representatives who are employees of the Commission can effectively fulfil their employee representative role under this Agreement, the following provisions will apply.
- 92.2. Reasonable access to Commission facilities, including the internal courier service, access to the Commission's communication systems, telephone, facsimile, photocopying, access to meeting rooms and storage space, will be provided to union(s) and other employee representatives to assist them to fulfil their representative obligations, duties and responsibilities having regard to the Commission's statutory obligations, operational requirements and resources.
- 92.3. In addition to the Commission facilities outlined in subclause 92.2, where available, a union or employee representative who is an employee of the Commission will be able to establish designated Outlook public folders which will provide a collaborative electronic workspace to improve the flow of information.
- 92.4. The use of Commission facilities will be in accordance with the Commission's policies and for matters other than for industrial action.
- 92.5. A union or other employee representative who is an employee of the Commission will be provided with adequate paid time, as required by the responsibilities of the position, to undertake duties to represent employees during normal working hours. While these duties would normally be expected to be performed within the workplace, on occasions the union or employee representative may be required to conduct these duties external to the workplace.

93 Attendance at Industrial Relations Courses and Seminars

- 93.1. For the purpose of assisting employees in gaining a better understanding of industrial relations issues relating to this Agreement, leave will be granted to employees to attend recognised short training courses or seminars on the following conditions:
- (a) that operating requirements permit the granting of leave;
 - (b) that the scope, content and level of the short courses contribute to the better understanding of industrial relations issues;
 - (c) leave granted under this clause will be with full pay, not including shift and penalty payments or overtime; and
 - (d) each employee will not be granted more than fifteen days/shifts leave in any calendar year.
- 93.2. If the employee has applied for leave under subclause 93.1 and the application was rejected because of operational requirements, approval of any subsequent application for leave by the employee under subclause 93.1 will not be withheld unreasonably, provided that the employee gives the manager/supervisor at least fourteen days/shifts notice in writing.
- 93.3. The Commission will accept any short course conducted or accredited by a relevant employee organisation (for example, union(s), the Australian Council of Trade Unions or the ACT Trades and Labour Council) as a course to which subclause 93.1 applies.
- 93.4. Leave granted for this purpose will count as service for all purposes.

94 Privatisation

- 94.1. In order to promote job security of employees, it is agreed that the privatisation of a Government entity may only occur where:
- (a) the entity does not perform a role central to the functions of Government; and
 - (b) disadvantaged groups would not be negatively affected by the privatisation; and
 - (c) a social impact statement has been completed which indicates that there is a demonstrated public benefit from the sale.
- 94.2. In the event that privatisation of the Commission or a service or services currently supplied by the Commission (other than services contracted out to the private sector under the provisions of the *Legal Aid Act 1977*) is under consideration, consultation will occur on the implications for employees and the Commission from these proposals.
- 94.3. Where such privatisation is under consideration, the Commission will provide the necessary reasonable resources to develop an in-house bid and this bid will be prepared either off site or on site as determined by the Chief Executive and subject to consideration on equal terms to any other bid. An independent probity auditor will be appointed by the Chief Executive to oversee the assessment of the in-house bid.

95 Superannuation

- 95.1. In the event of changes to superannuation legislation during the life of this Agreement, the Commission will consult with those affected regarding the changes.

Section H -Workplace Values and Behaviours

96 Introduction

- 96.1. Except where otherwise noted, this Section applies to officers, temporary employees engaged for over six months and 'eligible casual employees' as defined within the dictionary. The Section does not apply to 'casual employees' as defined within the dictionary, or employees on probation unless expressly stated.
- 96.2. Managers/supervisors and employees have a common interest in ensuring that workplace behaviours are consistent with, and apply the values and general principles set out in section 9 of the *PSM Act 1994 and the relevant Code of Conduct and Signature Behaviours*. This involves the development of an ethical and safe workplace in which managers/supervisors and employees act responsibly and are accountable for their actions and decisions.
- 96.3. The following provisions of Section G contain procedures for managing workplace behaviours, that do not meet expected standards, including the management of cases of unsatisfactory work performance and misconduct.
- 96.4. These procedures for managing workplace behaviours and values must be applied in accordance with the principles of natural justice and procedural fairness, and in a manner that promotes the values and general principles of the Commission and Section 9 of the *PSM Act 1994*.
- 96.5. Any misconduct, underperformance, internal review or appeal process commenced under the previous enterprise agreement that is not completed as at the date of commencement of this enterprise agreement will be completed under the previous enterprise agreement. Any right of appeal from that process will also be set out in the previous enterprise agreement.

97 Preliminary Assessment

- 97.1. In cases where an allegation of inappropriate behaviour is made, the manager/supervisor will initiate a preliminary assessment process to determine whether further action is required. The manager/supervisor may inform and/or seek the assistance of the Human Resources Manager.
- 97.2. Following this process if the manager/supervisor determines that the allegations:
- (a) require no further action, then no further action needs to be taken;
 - (b) can be resolved through counselling, other remedial action, or assistance to the employee then the manager/supervisor will implement such action;
 - (c) are better resolved through Internal Review procedures set out in this Agreement or appropriate external mechanisms the manager/supervisor will refer the matter appropriately;
 - (d) relate to underperformance processes the manager/supervisor will commence an underperformance process where this is warranted
 - (e) require investigation the manager/supervisor will recommend to the Chief Executive that the matter be investigated
 - (f) may be vexatious or knowingly false, the manager/supervisor will consider whether further action needs to be taken in relation to the person who made the allegations.
- 97.3. The manager/supervisor will inform the employee where a preliminary assessment process is commenced under sub clause 97.1 if it is appropriate to do so..
- 97.4. In performing the preliminary assessment the Chief Executive may authorise access to Commission information and communication technology (ICT) records including email, computer, work phone records or building access logs if, in the opinion of the Chief Executive, access is necessary to determine whether further action is necessary.

98 Counselling

- 98.1. Counselling may happen outside of the misconduct and underperformance processes. All parties have an obligation to participate in counselling in good faith.
- 98.2. In cases where counselling is considered to be appropriate, the employee will be invited to have a support person, who may be the employee's union or other employee representative, present at the counselling and will allow reasonable opportunity for this to be arranged.
- 98.3. The manager/supervisor or the Chief Executive will create a formal record of the counselling which will include details about the ways in which the employee's conduct needs to change or improve and the time frames within which these changes or improvements must occur.
- 98.4. The record of the counselling will be provided to the employee and the employee given an opportunity to correct any inaccuracies and provide comments before signing the record. The employee's signature is taken as representing their full agreement that the record accurately reflects the discussion. If the employee elects not to sign the record, then details of the offer and any reasons given will be clearly noted.
- 98.5. Where the manager/supervisor or the Chief Executive considers that the employee's conduct has not improved following counselling, an underperformance or misconduct process may be undertaken.

99 Underperformance

- 99.1. Under this clause, procedures are established for managing underperformance by an employee.
- 99.2. This clause applies to all employees, except casual employees. In applying these procedures to officers on probation, temporary employees who have been engaged for over six months, or eligible casual employees, the Chief Executive may determine that procedures and practices throughout clause 98 may be applied on an appropriate and proportionate basis according to the circumstances of the case, and in accordance with the principles of procedural fairness and natural justice.
- 99.3. The objectives of these procedures are to:
- (a) provide advice and support to an employee whose performance is below the standard required; and
 - (b) to provide a fair, prompt and transparent framework for action to be taken where an employee continues to perform below expected standard.
- 99.4. Consistent with good management practice, concerns about unsatisfactory work performance should be raised by the manager with the employee at the time that the concerns arise. The manager should offer advice and support to the employee to overcome these concerns. The manager should inform the employee that the following procedures might be invoked if the work performance continues to be unsatisfactory.
- 99.5. In order to ensure that these procedures operate in a fair and transparent manner, the manager/supervisor will be responsible for documenting all relevant discussions. The employee must be given the opportunity to comment on any records before signing them.
- 99.6. All parties have an obligation to participate in underperformance processes in good faith.

Step One: Action Plan

- 99.7. Where a manager/supervisor assesses that an employee's work performance continues to be below expected standards after having previously discussed concerns with the employee in line with 99.4 the manager/supervisor will inform the employee in writing of this assessment and the reasons for it. The employee will be invited by the manager/supervisor to provide written comments on this assessment, including any reasons that in the employee's view may have contributed to their recent work performance.
- 99.8. After taking into account the comments from the employee, the manager/supervisor must prepare an action plan in consultation with the employee.
- 99.9. The manager/supervisor will invite the employee to have a support person, who may be the employee's union or other employee, present at discussions to develop the action plan and will allow reasonable opportunity for this to be arranged.
- 99.10. The action plan will:
- (a) identify the expected standards of work required of the employee on an on-going basis;
 - (b) identify and/or develop any learning and development strategies that the employee should undertake;
 - (c) outline the potential underperformance actions that may be taken if the employee does not meet the expected work standards;
 - (d) specify the action plan period, which should not normally be less than one month and should not exceed six months to allow the employee sufficient opportunity to achieve the required standard; and
 - (e) specify the assessment criteria to be measured within the action plan period.

- 99.11. Any current performance agreement will be suspended during the period of the action plan. Any incremental advancement action for the employee and/or monetary benefit derived through an existing SEA will be suspended during the action plan period.

Step Two: Regular Assessment

- 99.12. During the action plan period, the manager/supervisor will make regular written assessments (desirably every fortnight) of the employees work performance under the action plan. The employee will be given an opportunity to provide written comments on these assessments.
- 99.13. If the manager/supervisor may extend the action plan period. However, the extended assessment time must not result in the action plan exceeding six months duration. The manager/supervisor will inform the employee in writing of the decision to extend the assessment time and the duration of the action plan.

Step Three: Final Assessment / Report

- 99.14. If at the end of the action plan period, the manager/supervisor assesses the work performance of the employee as satisfactory, no further action will be taken under these procedures at that time. The manager/supervisor will inform the employee in writing of this decision.
- 99.15. If at the end of the action plan period, the manager/supervisor assesses the work performance of the employee as not satisfactory, the manager/supervisor will provide a report including the assessment and reasons for the assessment to the Chief Executive.

Step Four: Underperformance Action

- 99.16. The Chief Executive will advise the employee in writing:
- (a) of the assessment and reasons for the manager's assessment;
 - (b) of the underperformance action/s (sub clause 99.17) proposed to be taken and the reason for proposing this action;
 - (c) of the employee's right to respond in writing to the proposed action within a period of not more than seven calendar days).
- 99.17. At any time after seven calendar days from the date the Chief Executive advised the employee under subclause 99.16, and after considering any response from the employee, the Chief Executive may decide to take one or more of the following underperformance actions:
- (a) transfer the employee to other duties (at or below current pay)
 - (b) defer the employee's increment
 - (c) reduce the employee's incremental point
 - (d) temporarily or permanently reduce the employee's classification and pay;
 - (e) remove any monetary benefit derived through an existing Special Employment Arrangement; or
 - (f) terminate the employee's employment.
- 99.18. The Chief Executive will inform the employee in writing of the decision made under 99.17, the reason for the decision and the appeal mechanisms available under this Agreement.
- 99.19. At any time in these procedures, the employee may elect to be retired on the grounds of inefficiency.

100 Appeal Rights

- 100.1. The employee has the right under Section J to appeal any underperformance action taken under subclause 99.17, except action to terminate the employee's employment.
- 100.2. The employee may have an entitlement to bring an action under the FW Act in respect of any termination of employment under this Agreement. This will be the sole right of review of such an action.

101 Misconduct & Discipline

Objectives and Application

- 101.1. This clause establishes procedures for managing misconduct or alleged misconduct by an employee.
- 101.2. In applying these procedures to an officer on probation, an eligible casual employee or a temporary employee who has been engaged for over six months, the Chief Executive may determine that procedures and practices throughout clauses 101 to 105 may be applied on an appropriate and proportionate basis according to the circumstances of the case.
- 101.3. All parties have an obligations to participate in misconduct processes in good faith.

What is Misconduct

- 101.4. For purposes of this Section, misconduct includes any of the following:
 - (a) the employee fails to meet the obligations set out in section 9 of the *PSM Act* (this includes bullying and harassment or discrimination);
 - (b) the employee engages in conduct that has, or is likely to, bring the Commission into disrepute;
 - (c) a period of unauthorised absence and the employee does not offer a satisfactory reason on return to work;
 - (d) the employee is convicted of a criminal offence or a court finds that an employee has committed an offence but a conviction is not recorded, taking into account the circumstances and seriousness of the offence, the duties of the employee and the interests of the Commission;
 - (e) the employee fails to notify the Chief Executive of criminal charges in accordance with clause 106;
 - (f) The employee makes a vexacious or knowingly false allegation against another employee;
 - (g) The employee does not meet the professional obligations arising from sections 13 or 22 of the *Legal Aid Act 1977*.

What is Serious Misconduct?

Serious misconduct means conduct that is so serious that it may be inconsistent with the continuation of the employee's employment with the Commission. Serious misconduct includes but is not limited to the kinds of serious misconduct defined within the Fair Work Regulations.

102 Dealing with Allegations of Misconduct

- 102.1. If, after receiving a recommendation from the manager/supervisor under clause 97.2, the Chief Executive is of the opinion that the alleged misconduct cannot be resolved without recourse to investigation, the Chief Executive will:
 - (a) inform the Human Resource Manager that an investigation is to take place;

- (b) make arrangements for an appropriately trained or experienced person (the investigating officer) to investigate the alleged misconduct in accordance with clause 104 ; and
 - (c) inform the employee in writing of the alleged misconduct and that matter is to be investigated.
- 102.2. Depending on the nature of the alleged misconduct the Chief Executive may immediately transfer the employee to other duties, re-allocate duties away from the employee or suspend the employee with pay in accordance with clause 103. Where serious misconduct is alleged the Chief Executive may suspend an employee without pay.
- 102.3. Notwithstanding the provisions of this section, the employment of an employee may be summarily terminated without notice for serious and wilful misconduct.
- 102.4. No investigation may be necessary where the employee fully admits to the alleged misconduct and the employee agrees that there is no need for an investigation. In such cases, the Chief Executive may determine the appropriate disciplinary action/sanction in accordance with clause 105. The Chief Executive must ensure that they have sufficient information concerning the nature and full circumstances of the misconduct, any mitigating factors, and details of the employee's prior record and performance to enable a fair and reasonable determination under clause 105 to be made.

103 Suspension, Reassignment or Transfer

- 103.1. This clause applies to all employees including eligible casual employees and employees on probation.
- 103.2. Subject to these procedures, the Chief Executive may suspend an employee with or without pay, reassign or transfer an employee where the Chief Executive is satisfied that it is in the public interest or the interests of the Commission to do so while the alleged misconduct is investigated.
- 103.3. The procedures applying under sub-clauses 103.4, 103.5 and 103.10 will also apply in circumstances where an employee has been reassigned or transferred with pay to other duties following an allegation of misconduct.
- 103.4. The Chief Executive will not normally suspend, reassign or transfer an employee without first informing the employee of the reasons for the proposed suspension, reassignment or transfer and giving the employee the opportunity to be heard. However the Chief Executive may suspend an employee first and then give the employee the reasons for the suspension and an opportunity to be heard, where, in the Chief Executive's opinion, this is appropriate in the circumstances.
- 103.5. Whilst suspended with pay an employee will be paid:
- (a) the employee's ordinary hourly rate of pay and any higher duties allowances that would have been paid to the employee for the period they would otherwise have been on duty; and
 - (b) overtime (but not overtime meal allowance) and shift penalty payments where there is a regular and consistent pattern of extra duty or shift work being performed over the previous six months which would have been expected to continue but for the suspension from duty; and
 - (c) any other allowance or payment (including under a Special Employment Arrangement entered into in accordance with Annex B to this Agreement) of a regular or on-going nature that is not conditional on performance of duties.
- 103.6. Where a decision is made to suspend an employee with pay no appeal or review of that decision is available.
- 103.7. An employee who is suspended must be available to attend work and participate in the disciplinary process as directed unless on authorised leave.

- 103.8. Suspension without pay is usually only appropriate where serious misconduct is alleged or where the employee is charged with a criminal offence that would in the opinion of the Chief Executive be incompatible with the continuation of the employee's employment.
- 103.9. Whilst suspended without pay:
- (a) the suspension will not be for more than thirty days, unless exceptional circumstances apply;
 - (b) the employee may apply to the Chief Executive for permission to seek alternate employment outside the Commission for the period of the suspension or until the permission is revoked;
 - (c) in cases of demonstrated hardship, the employee may access accrued long service leave and/or annual leave;
 - (d) the employee may apply to the Chief Executive for the suspension to be with pay on the grounds of demonstrated hardship.
- 103.10. The suspension without pay should be reviewed every thirty days unless the Chief Executive considers that, in the circumstances, a longer period is appropriate.
- 103.11. An employee suspended without pay and who is later acquitted of the criminal offence, or found not to have been guilty of the misconduct:
- (a) is entitled to be repaid the amount by which the employee's pay was reduced; and
 - (b) is entitled to be credited with any period of long service or annual leave that was taken.
- 103.12. Where an employee is suspended and later found guilty of a criminal offence (whether or not a conviction is recorded), or is found guilty of misconduct and is dismissed because of the offence or misconduct, a period of suspension under this clause does not count as service for any purpose, unless the Chief Executive determines otherwise.

104 Investigations

- 104.1. The role of the investigating officer is to establish the facts of the allegations and to provide a report of those facts to the Chief Executive.
- 104.2. The investigating officer will:
- (a) inform the employee in writing of the particulars of the alleged misconduct and details concerning the investigative process; and
 - (b) give the employee a reasonable opportunity to respond to allegations, in writing and/or at a scheduled interview, before making a finding of fact; and
 - (c) provide the employee with at least twenty four hours written notice prior to conducting an interview and advise the employee if the interview is to be recorded electronically; and
 - (d) advise the employee that the employee may have a second individual present during the interview, who may be the employees union representative or another individual acting as support person and reasonable opportunity for this to be arranged will be allowed for; and
 - (e) as soon as practicable take any further steps considered necessary to establish the facts of the allegations; and
 - (f) provide a record of the interview to the employee to correct any inaccuracies in the record and to provide any further response relative to the allegations before signing the record. If the employee elects not to sign the record, then details of the offer will be noted; and
 - (g) provide a written report to the Chief Executive setting out the investigating officer's findings of fact.
- 104.3. The investigating officer's findings of fact will be made on the balance of probabilities.

- 104.4. . The Chief Executive may authorise access to Commission information and communication technology (ICT) records including email, computer, work phone records, or building access logs if, in the opinion of the Chief Executive, the investigating officer requires access in order to establish the facts of the allegations.
- 104.5. After considering the report from the investigating officer, the Chief Executive will make a determination on the balance of probabilities as to whether misconduct has occurred.
- 104.6. If the Chief Executive determines that the misconduct has not occurred, the Chief Executive will notify the employee of this finding in writing and advise that no sanctions will be imposed.

105 Disciplinary Action and Sanctions

- 105.1. In circumstances where the Chief Executive, following an investigation or full admission by the employee determines that misconduct has occurred, and the Chief Executive considers that disciplinary action is appropriate, one or more of the following actions may be taken in relation to the employee:
- (a) a written warning and admonishment;;
 - (b) a financial penalty which can:
 - i. reduce the employee's incremental level;
 - ii. defer the employee's incremental advancement;
 - iii. impose a fine on the employee;
 - iv. fully or partially reimburse the employer for damage wilfully incurred to property or equipment.;
 - (c) transfer the employee temporarily or permanently to another position at level or to a lower classification level; ;
 - (d) remove any monetary benefit derived through an existing SEA; or
 - (e) terminate the employee's employment.
- 105.2. In relation to sub clause 105.1(c), if an employee's classification is reduced as a result of disciplinary action, service before the demotion is not counted towards an increment for any higher duties the employee performs after demotion.
- 105.3. Sanctions imposed under these procedures must be proportionate to the degree of misconduct concerned. In determining the appropriate sanction, the following factors must be considered:
- (a) the nature and seriousness of the misconduct;
 - (b) the degree of relevance to the employee's duties or to the reputation of the Commission;
 - (c) the circumstances of the misconduct;
 - (d) any mitigating factors, including any full admission of guilt; and
 - (e) the previous employment history and the general conduct of the employee.
- 105.4. Before taking disciplinary action, the Chief Executive will advise the employee in writing of:
- (a) the decision that misconduct has been found to have occurred; and
 - (b) the reasons for arriving at this decision; and
 - (c) the sanction proposed; and
 - (d) the period during which the employee has to respond to the proposed disciplinary action (which must be a minimum of fourteen calendar days).

- 105.5. After considering the employee's response to the proposed action, or if the employee has not responded at any time after the period outlined in sub clause 105.4(d) has lapsed, the Chief Executive may take disciplinary action. The Chief Executive will inform the employee in writing of:
- (a) the final decision regarding disciplinary action to be taken; and
 - (b) the date of effect and/or, if relevant, the cessation of the action; and
 - (c) the appeal mechanisms that are available under this Agreement.

106 Criminal Charges

- 106.1. An employee must advise the Chief Executive in writing of any criminal charges laid against the employee where a reasonably prudent person would believe that the interests of the Commission may be adversely affected, taking into account:
- (a) the circumstances and seriousness of the alleged criminal offence; and
 - (b) the employee's obligations under section 9 of the *PSM Act*; and
 - (c) the effective management of the employee's work area; and
 - (d) the integrity and good reputation of the Commission; and
 - (e) the relevance of the offence to the employee's duties.
- 106.2. Where criminal charges are laid against an employee and the interests of the Commission may be adversely affected, the Chief Executive may suspend the employee in accordance with the suspension arrangements under clause 103.
- 106.3. If an employee is convicted of a criminal offence the employee will provide a written statement regarding the circumstances of the offence to the Chief Executive within seven calendar days of the conviction or the finding.
- 106.4. Where an employee is convicted of a criminal offence and the conviction or finding has adversely affected the interests of the Commission, the Chief Executive may impose a sanction for misconduct against the employee in accordance with sub clause 105.1.

107 Right of Appeal

- 107.1. An employee has the right under Section J to appeal against any decision to take disciplinary action or to apply a sanction under sub clause 105.1, or against any decision taken under clause 103 to suspend the employee without pay, or to transfer the employee at reduced pay, except action to terminate the employee's employment.
- 107.2. An employee may have an entitlement to bring an action under the FW Act in respect of any decision under this Section to terminate the employee's employment. This will be the sole right of review of such a decision.
- 107.3. The appeal procedures under Section G apply to the exclusion of the rights of appeal and review under the PSM Act and the internal review procedures contained in Section I of this Agreement.

Section I - Internal Review Procedures

108 Objectives and Application

- 108.1. Under this Section, procedures are established for employees to seek a review of management actions that affect their employment with the Commission.
- 108.2. These procedures must be applied in accordance with the principles of natural justice and procedural fairness and in a manner that promotes the values and general principles of the Commission.
- 108.3. These procedures apply to all employees covered by this Agreement.
- 108.4. For the purposes of this Section, an action includes a decision and a refusal or failure to make a decision.

109 Decisions and Actions Excluded

- 109.1. The following decisions and actions are excluded from the rights of an employee to seek a review under procedures set out in this Section (note this does not preclude the right to seek review under other processes):
 - (a) actions regarding the policy, strategy, nature, scope, resourcing or direction of the Commission and agencies (see Section G of this Agreement for consultation on these actions)
 - (b) actions arising under Commonwealth or ACT legislation that concern domestic or international security matters;
 - (c) actions regarding superannuation (see relevant superannuation legislation for complaints and appeals, in particular the *Superannuation Industry Superannuation Supervision Act 1993* and the *Superannuation (Resolution of Complaints) Act 1993*);
 - (d) actions regarding workers' compensation (see the *Safety, Rehabilitation and Compensation Act 1988* for reviews and appeals);
 - (e) decisions to terminate the appointment of an officer on probation;
 - (f) decisions on classification of an office (see clause 45 of this Agreement for reviews on classifications);
 - (g) actions arising from the misconduct procedures of this Agreement (for appeals about decisions to take discipline action see subclause 113.2 of this Agreement);
 - (h) actions arising from the underperformance procedures of this Agreement (see subclause 113.2 of this Agreement for appeals on these decisions);
 - (i) actions regarding the setting of rates of pay or conditions of employment under an award or agreement made under the *FW Act*, the *Legal Aid Act 1977* or under the *PSM Act* or PSM Standards (this includes a Special Employment Arrangement (SEA));
 - (j) decisions that another employee perform the duties of a higher office for periods up to and including six months (see the *PSM Act*);
 - (k) decisions that another employee perform the duties of a higher classification (with a pay less than that of a Senior Officer Grade C or equivalent classification) for periods greater than six months if the vacancy was advertised (see subclause 113.2 of this Agreement for appeals on these decisions);
 - (l) decisions to promote an employee or to engage an employee on a temporary contract (see subclause 113.2 of this Agreement for appeals on promotion);
 - (m) decisions to appoint an employee or to engage an employee on a temporary contract;
 - (n) decisions to transfer another employee or promote another officer to an advertised vacancy where the officer or employee seeking the review was not an applicant;

- (o) decisions to transfer an employee; and
 - (p) actions arising from the internal review procedures or appeal panel procedures of this Agreement.
- 109.2. Employees may seek a review under this Section of the processes leading to decisions under (k), (l), (m) and (o).

110 Initiating a Review

- 110.1. An employee should first discuss their concerns about an action or decision with the relevant decision-maker with a view to resolving the matter within the workplace before initiating a review under these procedures.
- 110.2. An employee, or the employee's union or other employee representative on the employee's behalf, has the right to apply for a review of any action or decision that effects the employee's employment, unless the action or decision is specifically excluded under this Section.
- 110.3. An employee, or the employee's union or other employee representative on the employee's behalf, may initiate a review under this Section by making an application to the Chief Executive that:
- (a) is in writing; and
 - (b) identifies the action which the employee seeks a review of, and
 - (c) identifies the reasons the review is sought including, in the employee's view, the effect/s that the action or decision has or is having on the employee's employment; and
 - (d) describes the outcome sought.

111 Review Process

- 111.1. Where appropriate, and agreed by the employee who made the application under clause 110, or the employee's union or other employee representative on the employee's behalf, the Chief Executive must consider mediation as an option before arranging for a review under subclause 111.3. The mediator will be agreed between the employee and the Chief Executive.
- 111.2. In the event that mediation does take place and that it resolves the issues raised in the application, then no further action is required under these procedures. In that event, a formal written statement that the issue has been resolved must be signed by the employee and the Chief Executive.
- 111.3. Subject to subclauses 111.1 and 111.2, the Chief Executive must arrange for an application made under clause 110 to be investigated by an independent person (the nominee) who may be:
- (a) a suitably skilled Commission employee whose classification is Senior Officer Grade C or equivalent or higher who was not involved in the original action and who is agreed by the employee or the employee's union or other employee representative on the employee's behalf, such agreement not to be withheld unreasonably;
 - (b) a person agreed by the Commission Consultative Committee nominated from a panel of providers approved by the Commissioner for Public Administration; or
 - (c) a suitably skilled employee whose classification is Senior Officer Grade C or equivalent or higher, from another Commission or an ACTPS Agency or by a person nominated by the Law Society of the ACT and who is agreed by the employee or the employee's union or other employee representative on behalf of the employee, such agreement not to be withheld unreasonably.
- 111.4. The Chief Executive may determine the process under which an application is reviewed, subject to the principles set out in subclause 111.5.

- 111.5. The reviewer must have due regard to the principles of natural justice and procedural fairness and act as quickly as practicable consistent with a fair and proper consideration of the issues. This includes but is not limited to:
- (a) fully informing the employee of all relevant issues and providing access to all relevant documents; and
 - (b) providing reasonable opportunity for the employee to respond; and
 - (c) advising the employee of the employee's rights to representation.
- 111.6. The reviewer may recommend to the Chief Executive that an application should not be considered on any of the following grounds:
- (a) the application concerns a decision or action that is excluded under subclause 109.1; or
 - (b) a period of twenty-eight days has elapsed since the employee was advised of the decision except where extenuating circumstances exist; or
 - (c) the employee has made an application regarding the decision to a court or tribunal, or where the reviewer believes it is more appropriate that such an application be made; or
 - (d) the reviewer believes on reasonable grounds that the application:
 - i. is frivolous or vexatious; or
 - ii. is misconceived or lacks substance; or
 - iii. should not be heard for some other compelling reason
- 111.7. The Chief Executive must either confirm a recommendation made by the reviewer under subclause 111.6 that an application should not be considered or arrange for another reviewer to consider the application.
- 111.8. The Chief Executive will inform the employee in writing, within fourteen days of the date of any decision under subclause 111.7, including, the reasons for any decision not to consider the application.
- 111.9. If the reviewer does not make a recommendation under subclause 111.6, then the reviewer will conduct a procedural review on the papers to determine:
- (a) whether it was open to the Chief Executive to take the action that he or she did;
 - (b) whether the principles of procedural fairness and natural justice were complied with in taking the original action; and
 - (c) whether the final decision of the Chief Executive was fair and equitable in all of the circumstances.
- 111.10. The reviewer must be provided with all relevant information and evidence that was available to the delegate in the making of the original decision or in taking the original action. To ensure efficiency and timeliness, the reviewer should not undertake to collect the same information or new evidence which was not available at the time the original action or decision was made.
- 111.11. After reviewing any action or decision the reviewer will, subject to subclause 111.16, make a written report to the Chief Executive containing recommendations on whether the action that led to the application should be confirmed or varied or that other action be taken. A copy of this report will be provided at the same time to the employee.
- 111.12. In keeping with subclause 111.11 if the reviewer is of the view that there is doubt over the veracity and/or validity of the information or evidence or processes used in making the initial decision or action, the reviewer will inform the Chief Executive of that doubt and the reasons for it in the written report.

- 111.13. The employee may respond to any aspects of the report. Such a response must be in writing and be provided to the Chief Executive within fourteen calendar days of the employee receiving the report.
- 111.14. The Chief Executive, after considering the report from the reviewer and any response by the employee to the report of the reviewer, may:
- (a) confirm the original action; or
 - (b) vary the original action; or
 - (c) take any other action the Chief Executive believes is reasonable.
- 111.15. The Chief Executive will inform the employee in writing, within fourteen days, of any action under subclause 111.14, including the reasons for the action.
- 111.16. Where the subject of the application is a decision of the Chief Executive, the written report of the reviewer will be made to an independent arbiter agreed by the parties to this Agreement. A copy of this report will be provided to the employee.
- 111.17. The independent arbiter may, after considering the report from a reviewer, recommend to the Chief Executive that:
- (a) the original action be confirmed; or
 - (b) the original action be varied; or
 - (c) other action be taken that the independent arbiter believes is reasonable.
- 111.18. The Chief Executive, after considering the report from the independent arbiter, may:
- (a) accept any or all of the report's recommendation(s) and take such action as necessary to implement the recommendation(s); or
 - (b) not accept the report's recommendation(s) and confirm the original action.
- 111.19. If the Chief Executive does not accept any one of the recommendation(s) of the independent arbiter under subclause 111.17, the Chief Executive will:
- (a) provide written reasons to the independent arbiter for not accepting the recommendation(s); and
 - (b) provide the employee, within fourteen days, with written reasons for not accepting the recommendation(s).
- 111.20. If the Chief Executive does not accept any one of the recommendation(s) of the independent arbiter under subclause 111.17, the independent arbiter may report on this outcome to the Commission.

112 Right of External Review

- 112.1. The employee, or the employee's union or other employee representative on the employee's behalf, may seek a review of a decision or action of the Chief Executive under subclause 111.14 or subclause 111.18 by an external tribunal or body, including the FWC.
- 112.2. FWC will be empowered to resolve the matter in accordance with the powers and functions set out in clause 87 **Error! Reference source not found.** of this Agreement. The decision of FWC will be binding, subject to any rights of appeal against the decision to a Full Bench in accordance with clause 87.

Section J - Appeal Mechanism

113 Objective and Application

- 113.1. This Section sets out an appeal mechanism for an employee where the employee (referred to in this section as 'the appellant') is not satisfied with the outcome of decisions described in the following clause.
- 113.2. This appeal mechanism will apply to:
- (a) decisions about promotion or temporary performance (for periods in excess of six months) affecting the employee where the employee was an applicant for the position, except decisions made on the unanimous recommendation of a joint selection committee;
 - (b) decisions to promote an officer after acting for a period of twelve months or more in a position at or below Administrative Service Officer Class 6 (or equivalent classification);
 - (c) decisions to suspend the employee without pay under Section 103 of this Agreement
 - (d) decisions to take disciplinary action under Section 105 of this Agreement, except a decision to terminate the person's employment
 - (e) decisions to take underperformance action under Section 99.1 of this Agreement, except a decision to terminate the employee's employment;
 - (f) decisions taken in relation to an employee's eligibility for benefits under clauses 123, 124 and the amount of such benefits, the amount payable by way of income maintenance under clause 127, and the giving of a notice of involuntary redundancy or notice of reduction in classification under clauses 125 and 126;
 - (g) any other decision that is subject to appeal under the *PSM Act*.
- 113.3. For purposes of subsection 113.2(a) and 113.2(b) , an appeal may only be made in relation to promotions or higher duties decisions where the pay applicable is any classification with a maximum pay that is less than the minimum pay of a classification equivalent to a Senior Officer Grade C. For positions above ASO 6 (or equivalent classification) an application may be made for an internal review of the process (see subclause 109.2 of this Agreement).
- 113.4. An employee may have an entitlement to bring an action under the FW Act in respect of any termination of employment under this Agreement. This will be the sole right of review of such an action.

114 Initiating an Appeal

- 114.1. An employee, or the employee's union or other employee representative on the employee's behalf, may initiate an appeal under these procedures by making an application to the convenor of Appeal Panels that:
- (a) is in writing; and
 - (b) describes the decision or action taken or to be taken, the reasons for the application and the outcome sought; and
 - (c) is received by the convenor of Appeal Panels within fourteen days of being notified of the decision to take the action
- 114.2. For the purposes of paragraph 114.1(b), a decision must be an appealable decision as set out in subclause 113.2.

115 Composition of the Appeal Panel

- 115.1. The Chief Executive will nominate a person, or position, to be the convenor of the Appeal Panel, who may be from the Commission or an ACT Public Sector Agency.
- 115.2. Where an application is received by the convenor of the Appeal Panel in accordance with the requirements set out in subclause 114.1 and 114.2 the convenor of Appeal Panels will set up an Appeal Panel.
- 115.3. The Appeal Panel will comprise a nominee of the Commission, a nominee of the employee and a chairperson, where:
 - (a) the chairperson is chosen from a panel of providers approved by the Commissioner for Public Administration (in consultation with the Commission Consultative Committee), or, in the case of an appeal relating to a promotion decision, an agreed person; and
 - (b) a chairperson from the panel of providers is so chosen on a rotational basis, unless there is an identified conflict of interest, in which case the next person on the panel of providers would be chosen.
- 115.4. The Convenor may only be a member of an Appeal Panel with the agreement of the appellant.
- 115.5. A person is not eligible to be a member of an Appeal Panel if that person was involved in the decision or the process that is the subject of the application.

116 Powers and Role of the Appeal Panel

- 116.1. In considering an application, the Appeal Panel must have due regard to the principles of natural justice and procedural fairness. Proceedings of the Appeal Panel are to be conducted as quickly as practicable consistent with a fair and proper consideration of the issues.
- 116.2. The Convenor of the Appeal Panel will invite the appellant to have a support person, who may be the employee's union or other employee representative, present at any meetings held with the Appeal Panel and will allow reasonable opportunity for this to be arranged.
- 116.3. The Appeal Panel will have the discretion to decide not to conduct a review of the appeal application, or, if it has commenced reviewing the application, to decide not to proceed further if, in the opinion of the Panel:
 - (a) the application is frivolous or vexatious, or not made in good faith; or
 - (b) the employee making the appeal may apply to another person or authority about the application who may more appropriately deal with the action; or
 - (c) further review of the application is not warranted.

Appeals About Promotion and Temporary Transfer to a higher classification or role

- 116.4. For appeals concerning promotion or temporary transfer to a higher role under paragraph 113.2(a), the only ground on which the Appeal Panel can review the decision is that the employee making the appeal would be more efficient in performing the duties of the position than the person promoted or selected for temporary performance of higher duties.
- 116.5. After reviewing an application about promotion or temporary transfer to a higher role affecting the appellant, the Appeal Panel will either confirm the decision or make recommendations to the Chief Executive to substitute another decision. The Appeal Panel will inform the applicant of this decision and the reasons for the decision.

Other Matters

- 116.6. Where the Appeal Panel determines that an application for appeal requires further consideration, the Appeal Panel will conduct a procedural review on the papers to determine whether:
- (a) it was open to the Chief Executive to take the action that he or she did;
 - (b) the principles of procedural fairness and natural justice were complied with in taking the original action or decision; and
 - (c) the final decision of the Chief Executive was appropriate in all of the circumstances.
- 116.7. The Appeal Panel must be provided with all relevant information and evidence that was available to the decision-maker in the making of the original decision or in taking the original action. To ensure efficiency and timeliness, the Appeal Panel should not undertake to collect the same information or new evidence.
- 116.8. Where the Appeal Panel is satisfied that a fundamental piece of evidence was not considered in the original process, the Appeal Panel may recommend to the Chief Executive that the matter be referred back to the for further investigation.
- 116.9. The decision-maker after considering the referral from an Appeal Panel under subclause 116.8, will:
- (a) As soon as possible, arrange for a further investigation to be conducted, in line with the referral of the Appeal Panel, and will provide any further information, evidence of outcomes of the further investigation to the Appeal Panel in order that they may complete their review; or
 - (b) provide written reasons to the Appeal Panel, within fourteen calendar days, for not accepting their referral for further investigation.
- 116.10. After reviewing any application under this section, other than an appeal about promotion or temporary transfer to a higher role, the Appeal Panel will, subject to subclause 116.9, make a written report containing recommendations to the Chief Executive. A copy of this report will be provided to the appellant.
- 116.11. In making recommendations to the Chief Executive under clause 116.11 or an independent arbiter under sub clause 116.16 the Appeal Panel must provide the reasons for its recommendations.
- 116.12. The Chief Executive, after considering the report from an Appeal Panel under subclause 116.11, will make a decision on any recommendation in the report and inform the appellant in writing of the reasons for that decision, within fourteen days of receiving the report.
- 116.13. Where the subject of an application under this clause is a decision of the Chief Executive then the Appeal Panel, after reviewing the application will, subject to subclause 116.9 make a written report containing recommendations to the independent arbiter. A copy of the report will be provided to the appellant.
- 116.14. The independent arbiter, after considering the report from the Appeal Panel under subclause 116.16 will recommend to the Chief Executive that the decision that is the subject of the application:
- (a) be confirmed; or
 - (b) be varied; or
 - (c) other action taken.
- 116.15. The Chief Executive after considering the report from the independent arbiter may:
- (a) accept any or all of the report's recommendations and take such action as necessary to implement the recommendations; or
 - (b) not accept the report's recommendations and confirm the original action.

- 116.16. If the Chief Executive does not accept the recommendations of the independent arbiter under subclause 116.9, the Chief Executive will:
- (a) provide written reasons to the independent arbiter for not accepting the recommendations; and
 - (b) provide the appellant, within fourteen calendar days, with written reasons for not accepting the recommendations.
- 116.17. If the Chief Executive does not accept the recommendations of the independent arbiter under subclause 116.12, the independent arbiter may report on this outcome to the Commission.

117 Costs

- 117.1. The Commission will not be liable for any costs associated with representing an appellant in these procedures.

118 Right of External Review

- 118.1. The employee or the employee's union or other representative on the employee's behalf, may seek a review by FWC of a decision of the Chief Executive under subclause 116.12 or subclause 116.15.
- 118.2. FWC will be empowered to resolve the matter in accordance with the powers and functions set out in clause 86.6 of this Agreement. The decision of FWC will be binding, subject to any rights of appeal against the decision to a Full Bench in accordance with clause 87.15.

Section K - Redeployment and Redundancy

119 Application

- 119.1. The Commission recognises the need to make the most effective use of the skills, abilities and qualifications of its officers in a changing environment. When positions become excess, the Commission will seek to redeploy officers within the Commission in order to avoid or minimise an excess officer situation. Should redeployment not be possible, voluntary redundancy, reduction in classification and involuntary redundancy will be considered in that order. Throughout these procedures the Commission will, where practicable, take into consideration the personal and career aspirations and family responsibilities of affected officers.
- 119.2. These provisions do not apply to temporary and casual employees or officers on probation.

120 Definitions

- 120.1. Excess officer means an officer who has been notified in writing by the Chief Executive that he or she is excess to the Commission's requirements because:
- (a) the officer is included in a class of officers employed in the Commission, which class comprises a greater number of officers than is necessary for the efficient and economical working of the Commission; or
 - (b) the services of the officer cannot be effectively used because of technological or other changes in the work methods of the Commission or changes in the nature, extent or organisation of the functions of the Commission.

- 120.2. Potentially excess officer means an officer who is likely to become actually excess in a foreseeable space of time.

121 Consultation

- 121.1. Where it appears to the Chief Executive that a position is likely to be either potentially or actually excess to the Commission's requirements, and prior to any individual employee(s) being identified, the Chief Executive will, at the earliest practicable time, advise and discuss with the union(s), the following issues (as appropriate in each case):
- (a) the number and classification of officers in the part of the Commission affected;
 - (b) the reasons an officer is or officers are likely to be excess to requirements;
 - (c) the method of identifying officers as excess, having regard to the efficient and economical working of the Commission and the relative efficiency of officers;
 - (d) the number, classification, location and details of the officers likely to be excess;
 - (e) the number and classification of officers expected to be required for the performance of any continuing functions in the part of the Commission affected;
 - (f) measures that could be taken to remove or reduce the incidence of officers becoming excess;
 - (g) redeployment prospects for the officers concerned;
 - (h) the appropriateness of using voluntary retirement; and
 - (i) whether it is appropriate for involuntary retirement to be used if necessary.
- 121.2. No information that would identify any individual officers will be provided by the Chief Executive under this Section.
- 121.3. The discussions under subclause 121.1 will take place over such time as is reasonable, taking into account the complexity of the restructuring and need for potential excess officer situations to be resolved quickly. Any use of involuntary retirement will be agreed between the Chief Executive and the union(s) at this stage and will not be used without the written agreement of the Chief Executive and the union(s).
- 121.4. Except where a lesser period is agreed between the Chief Executive and the officer, the officer will not, within one month after the union(s) has been advised under subclause 121.1, be invited to volunteer for retirement nor be advised in writing that he or she is excess to the Commission's requirements.
- 121.5. The Chief Executive will comply with the notification and consultation requirements for union(s) and Centrelink about terminations set out in the FW Act.

122 Information Provided to the Officer

Informal Advice

- 122.1. At the point where individual employees can be identified, the Chief Executive will advise the officer(s) that a position(s) is likely to become excess and that the employee may be affected. In that advice the officer(s) will also be advised that the officer may be represented by a union or other employee representative at subsequent discussions. The Chief Executive will discuss with the officer(s) and, where chosen, the union or other employee representative(s) the issues dealt with in subclauses 121.1 (a) through (i) (as appropriate in each case).
- 122.2. The Chief Executive will, at the first available opportunity, inform all officers likely to be affected by an excess staffing situation of the terms and operation of this Section.

Formal Notification

- 122.3. The notification of an officer's potentially excess status will only be given when the consultation required under subclause 121.1 and the consultation required under subclause 122.1 has taken place. Following such consultation, where the Chief Executive is aware that an officer is potentially excess, the Chief Executive will advise the officer in writing.
- 122.4. To allow an excess officer to make an informed decision on whether to submit an election to be voluntarily retired, the Chief Executive must provide the officer with advice on:
- (a) the sums of money the permanent employee would receive by way of severance pay, pay instead of notice, and paid up leave credits; and
 - (b) the career transition/development opportunities within the Commission.
- 122.5. The officer should also seek independent advice on:
- (a) amount of accumulated Superannuation contributions;
 - (b) the options open to the permanent employee concerning superannuation; and
 - (c) the taxation rules applicable to the various payments.
- 122.6. The Commission will supplement the costs of independent, accredited financial counselling incurred by each officer who has been offered voluntary redundancy up to a maximum of \$1000. The Chief Executive will authorise the accredited financial counsellors to invoice the Commission directly.

123 Voluntary Redundancy

- 123.1. At the completion of the discussions in accordance with clause 121, the Chief Executive may invite officers to elect to be made voluntarily redundant under this clause.
- 123.2. Where the Chief Executive invites an excess officer to elect to be made voluntarily redundant, the officer will have a maximum of one calendar month from the date of the offer in which to advise the Chief Executive of the officer's election, and the Chief Executive will not give notice of redundancy before the end of the one month period.
- 123.3. Subject to subclause 123.4, where the Chief Executive approves an election to be made redundant and gives the notice of retirement in accordance with the PSM Act, the period of notice will be one month, or five weeks if the officer is over forty-five years old and has completed at least two years continuous service.
- 123.4. Where the Chief Executive so directs, or the officer so requests, the officer will be retired at any time within the period of notice under subclause 123.3, and the officer will be paid in lieu of pay for the unexpired portion of the notice period.

124 Severance Benefit

- 124.1. An officer who elects to be made redundant in accordance with this clause will be entitled to be paid either of the following, whichever is the greater:
- (a) a sum equal to two weeks of the permanent employee's pay for each completed year of continuous service, plus a pro rata payment for completed months of continuous service since the last year of continuous service. The maximum sum payable under this paragraph will be 48 weeks pay; or
 - (b) twenty-six weeks pay.

- 124.2. For the purpose of calculating any payment instead of notice or part payment, the pay an officer would have received had he or she been on annual leave during the notice period, or the unexpired portion of the notice period as appropriate, will be used.
- 124.3. For the purpose of calculating payment under subclause 124.1:
- (a) where an officer has been acting in a higher position for a continuous period of at least twelve months immediately preceding the date on which he or she receives notice of retirement, the pay level will be the officer's pay in such higher position at that date;
 - (b) where an officer has, during 50% or more of pay periods in the twelve months immediately preceding the date on which he or she receives notice of retirement, been paid a loading for shiftwork or are paid a composite pay, the weekly average amount of shift loading received during that twelve month period will be counted as part of "weeks pay";
 - (c) the inclusion of other allowances, being allowances in the nature of pay, will be subject to the approval of the Chief Executive.
- 124.4. Where a redundancy situation affects a number of officers engaged in the same work at the same level, elections to be made redundant may be invited.
- 124.5. Nothing in this Agreement will prevent the Chief Executive inviting officers who are not in a redundancy situation to express interest in voluntary redundancy, where such redundancies would permit the redeployment of potentially excess and excess officers who do not wish to accept voluntary redundancy.

125 Redeployment

- 125.1. Redeployment of potentially excess and excess officers will be in accordance with the officer's experience, ability and, as far as possible, the officer's career aspirations and wishes.
- 125.2. Excess officers (potential or actual) have absolute preference for transfer to positions at the officers' substantive level and must be considered in isolation from other applicants for any vacancy within the Commission. An excess officer need only be found suitable, or suitable within a reasonable time (generally three to six months) to be transferred to the position. For the purposes of this clause substantive level means the same classification or a classification where the maximum pay does not exceed the top increment of the officer's current classification by more than 10%.
- 125.3. The Chief Executive will make every effort to facilitate the placement of an excess officer.
- 125.4. The Chief Executive will arrange reasonable training that would assist the excess officer's prospects for redeployment.
- 125.5. The Chief Executive will provide appropriate internal assistance and career counselling and assist as necessary with the preparation of job applications.
- 125.6. An excess officer who does not accept voluntary redundancy is entitled to a seven month retention period.
- 125.7. The retention period will commence:
- (a) on the day the officer is advised in writing by the Chief Executive that he or she is an actually excess officer; or
 - (b) in the case of an officer who is invited by the Chief Executive to submit an election to be retired - one month after the day on which the election is invited;
 - (c) whichever is the earlier.

- 125.8. The Chief Executive may reduce the officer in classification and place the officer in a specific position within the Commission, where the officer:
- (a) was found unsuitable in a merit selection process for three separate positions; or
 - (b) has not applied for at least three separate positions, for which the officer could reasonably be expected to be qualified to perform, either immediately or in a reasonable time; and
 - (c) cannot be placed in gainful employment at the officer's substantive level at the end of the retention period, and
 - (d) the officer agrees.
- 125.9. The agreement of the officer to be reduced in classification as required in paragraph 125.8(c) will not be unreasonably withheld.
- 125.10. Despite the above, if, at the end of the retention period, the Chief Executive is of the opinion that there is insufficient productive work available for the excess officer, the Chief Executive may, subject to the agreement of the officer, such agreement not to be unreasonably withheld, reduce the officer in classification in order to place the officer in a specific position in the Commission.
- 125.11. An excess officer will not be reduced in classification if he or she has not been invited to elect to be voluntarily retired with benefits, or has made such an election and the Chief Executive refuses to approve it.
- 125.12. Where the Chief Executive proposes to reduce an excess officer's classification, the officer will be given no less than four weeks notice of the action proposed; or five weeks if the officer is over forty-five years old and has completed at least two years of continuous service. This notice period will, as far as practicable, be concurrent with the seven month retention period.

126 Involuntary Retirement

- 126.1. An excess officer may be made involuntarily redundant, subject to the agreement of the union(s).
- 126.2. This clause applies to excess officers who are not:
- (a) retired with consent;
 - (b) redeployed to another position; or
 - (c) reduced in classification.
- 126.3. An officer may be involuntarily retired subject to the agreement of the union(s), such agreement not to be withheld if, during or after six months from the date the officer was declared excess, the officer:
- (a) does not accept a transfer in accordance with the *PSM Act*; or
 - (b) has refused to apply for, or be considered for, a position for which the officer could reasonably be expected to be qualified to perform, either immediately or in a reasonable time.
- 126.4. Where the Chief Executive believes that there is insufficient productive work available for an excess officer during the retention period, the Chief Executive may make the officer involuntarily redundant before the end of the retention period.
- 126.5. An excess officer will not be involuntarily retired if he or she has not been invited to elect to be voluntarily retired with benefits, or has made such an election and the Chief Executive refuses to approve it.
- 126.6. Where the Chief Executive involuntarily retires an excess officer, the officer will be given no less than four weeks' notice of the action proposed; or five weeks if the officer is over forty-five years old and has completed at least two years of continuous service. This notice period will, as far as practicable, be concurrent with the seven month retention period.

127 Income Maintenance Payment

- 127.1. An officer who has been receiving a higher rate of pay for a continuous period of at least twelve months and who would have continued to receive that pay rate, except for the excess officer declaration, will be considered to have the higher pay rate.
- 127.2. This pay will be known as the income maintenance pay. The income maintenance pay, where applicable, will be used for the calculation of all conditions and entitlements under this clause.
- 127.3. The income maintenance pay exists for the retention period or the balance of the retention period.
- 127.4. If an officer is involuntarily retired, the entitlements, including paying out the balance of the retention periods, where applicable, will be calculated on the income maintenance pay rate. If an officer is involuntarily retired during the retention periods the officer's date of retirement is the date that the officer would have retired after the retention period ceased, not the date of the involuntary retirement. All final entitlements will be calculated from the latter date.
- 127.5. If an officer is involuntarily reduced in classification during the retention period, the officer will be entitled to be paid at the income maintenance pay rate for the balance of the retention period.
- 127.6. All allowances in the nature of pay will be included in determining the income maintenance pay rate.

128 Leave and Expenses to Seek Employment

- 128.1. At any time after the officer has been advised under subclause 122.3, of being potentially excess, the officer is entitled to paid leave to seek alternative employment. Leave granted under this clause will be for periods of time to examine the job and to attend interviews. Reasonable travelling time will also be granted.
- 128.2. The officer will be entitled to any reasonable fares and other incidental expenses if these are not met by the prospective employer.

129 Use of Personal Leave

- 129.1. The use of personal leave will not extend the retention periods of an officer unless these periods are supported by a medical certificate and/or are of such a nature as to make the seeking of employment during certificated personal leave inappropriate.
- 129.2. An officer who is receiving income maintenance will have those payments continued during certified personal leave periods of up to a total of six months.

130 Appeals

- 130.1. Without affecting the officer's rights under the FW Act, an excess officer has the right under Section J to appeal any decision taken in relation to the officer's eligibility for benefits under clauses 123, 124 and 125, the amount of such benefits, or the amount payable by way of income maintenance under clause 127.
- 130.2. An excess officer has the right under Section J to appeal against the giving, in accordance with clauses 125 and 126, of a notice of involuntary redundancy or notice of reduction in classification.

131 Agreement Not To Prevent Other Action

- 131.1. Nothing in this Agreement will prevent the reduction in classification of an officer or the retirement of an officer as a result of action relating to discipline, invalidity, inefficiency or loss of essential qualifications.

132 Re-engagement of Previously Retrenched Officers

- 132.1. Officers who are involuntarily retired from the Commission can be engaged at any time by the Chief Executive.
- 132.2. Officers who elect to be made voluntarily redundant under clause 123 cannot be re-engaged in the Commission within two years of the date of the officers' separation from the Commission.

Annex A – Classifications and Rates of Pay

Classification	Rates as at						
	1.7.2013 \$2090 or 2%	3.7.2014	9.4.2015	8.10.2015	7.4.2016	6.10.2016	6.4.2017
Administrative Services							
Officer Class 1	\$43,064	\$43,710	\$44,366	\$45,031	\$45,707	\$46,392	\$47,088
	\$44,437	\$45,104	\$45,780	\$46,467	\$47,164	\$47,871	\$48,589
	\$45,588	\$46,272	\$46,966	\$47,670	\$48,385	\$49,111	\$49,848
	\$47,373	\$48,084	\$48,805	\$49,537	\$50,280	\$51,034	\$51,800
Administrative Services							
Officer Class 2	\$48,462	\$49,189	\$49,927	\$50,676	\$51,436	\$52,207	\$52,990
	\$49,737	\$50,483	\$51,240	\$52,009	\$52,789	\$53,581	\$54,385
	\$50,990	\$51,755	\$52,531	\$53,319	\$54,119	\$54,931	\$55,755
	\$52,256	\$53,040	\$53,835	\$54,643	\$55,463	\$56,295	\$57,139
	\$53,512	\$54,315	\$55,129	\$55,956	\$56,796	\$57,648	\$58,512
Administrative Services							
Officer Class 3	\$54,908	\$55,732	\$56,568	\$57,416	\$58,277	\$59,152	\$60,039
	\$56,282	\$57,126	\$57,983	\$58,853	\$59,736	\$60,632	\$61,541
	\$57,651	\$58,516	\$59,394	\$60,284	\$61,189	\$62,107	\$63,038
	\$59,094	\$59,980	\$60,880	\$61,793	\$62,720	\$63,661	\$64,616
Administrative Services							
Officer Class 4	\$60,960	\$61,874	\$62,803	\$63,745	\$64,701	\$65,671	\$66,656
	\$62,829	\$63,771	\$64,728	\$65,699	\$66,684	\$67,685	\$68,700
	\$64,407	\$65,373	\$66,354	\$67,349	\$68,359	\$69,385	\$70,425
	\$66,007	\$66,997	\$68,002	\$69,022	\$70,057	\$71,108	\$72,175
Administrative Services							
Officer Class 5	\$67,750	\$68,766	\$69,798	\$70,845	\$71,907	\$72,986	\$74,081
	\$69,803	\$70,850	\$71,913	\$72,991	\$74,086	\$75,198	\$76,326
	\$71,713	\$72,789	\$73,881	\$74,989	\$76,114	\$77,255	\$78,414
Administrative Services							
Officer Class 6	\$73,003	\$74,098	\$75,210	\$76,338	\$77,483	\$78,645	\$79,825
	\$74,771	\$75,893	\$77,031	\$78,186	\$79,359	\$80,550	\$81,758
	\$76,760	\$77,911	\$79,080	\$80,266	\$81,470	\$82,692	\$83,933
	\$80,513	\$81,721	\$82,947	\$84,191	\$85,454	\$86,735	\$88,036
	\$83,550	\$84,803	\$86,075	\$87,366	\$88,677	\$90,007	\$91,357
Senior Officer Grade C	\$91,876	\$93,254	\$94,653	\$96,073	\$97,514	\$98,977	\$100,461
	\$98,899	\$100,382	\$101,888	\$103,417	\$104,968	\$106,542	\$108,140
Senior Officer Grade B	\$108,208	\$109,831	\$111,479	\$113,151	\$114,848	\$116,571	\$118,319
	\$113,801	\$115,508	\$117,241	\$118,999	\$120,784	\$122,596	\$124,435
	\$121,815	\$123,642	\$125,497	\$127,379	\$129,290	\$131,229	\$133,198
Senior Officer Grade A	\$125,672	\$127,557	\$129,470	\$131,412	\$133,384	\$135,384	\$137,415

Annex A – Classifications and Rates of Pay

Classification	Rates as at						
	1.7.2013 \$2090 or 2%	3.7.2014	9.4.2015	8.10.2015	7.4.2016	6.10.2016	6.4.2017
Graduate Administrative Assistant	\$60,960	\$61,874	\$62,802	\$63,744	\$64,700	\$65,671	\$66,656
	\$62,829	\$63,771	\$64,728	\$65,699	\$66,684	\$67,684	\$68,699
Cadet – practical training	\$43,064	\$43,710	\$44,366	\$45,031	\$45,706	\$46,392	\$47,088
	\$44,437	\$45,104	\$45,781	\$46,468	\$47,165	\$47,872	\$48,590
	\$45,588	\$46,272	\$46,966	\$47,670	\$48,385	\$49,111	\$49,848
	\$47,373	\$48,084	\$48,805	\$49,537	\$50,280	\$51,034	\$51,800
Cadet – full time study (57% of practical training)	\$24,546	\$24,915	\$25,289	\$25,668	\$26,052	\$26,443	\$26,840
	\$25,329	\$25,709	\$26,095	\$26,487	\$26,884	\$27,287	\$27,696
Legal 1	removed						
	\$59,208	\$60,096	\$60,998	\$61,913	\$62,841	\$63,784	\$64,741
	\$63,351	\$64,301	\$65,266	\$66,245	\$67,238	\$68,247	\$69,271
	\$67,413	\$68,424	\$69,451	\$70,492	\$71,550	\$72,623	\$73,712
	\$72,331	\$73,416	\$74,517	\$75,635	\$76,769	\$77,921	\$79,090
	\$76,613	\$77,762	\$78,929	\$80,113	\$81,314	\$82,534	\$83,772
Legal 2	\$80,837	\$82,050	\$83,280	\$84,530	\$85,797	\$87,084	\$88,391
	\$91,582	\$92,956	\$94,350	\$95,765	\$97,202	\$98,660	\$100,140
	\$98,745	\$100,226	\$101,730	\$103,256	\$104,804	\$106,376	\$107,972
	\$113,801	\$115,508	\$117,241	\$118,999	\$120,784	\$122,596	\$124,435
Legal 3	\$123,642	\$125,497	\$127,379	\$129,290	\$131,229	\$133,198	\$135,196
	\$128,724	\$130,655	\$132,615	\$134,604	\$136,623	\$138,672	\$140,752

Legal Officers 1 and 2 from the *Legal Aid Commission (ACT) Enterprise Agreement 2011 – 2013* will move from two classifications to three classifications (Legal Officer 1, Legal Officer 2 and Legal Officer 3).

- The previous Legal Officer 1 classification has been separated into Legal Officer 1 and Legal Officer 2 to recognise the difference between inexperienced and experienced lawyers.
- The previous Legal Officer 2 classification has been renamed a Legal Officer 3.
- The Legal Officer 1 classification will have salary levels (L1.1 to L1.5) commencing from the 2nd increment point of the previous Legal Officer 1 classification. The Legal Officer 2 classification will have salary levels (L2.1 to L2.4) comprising of the top four increment points of the previous Legal Officer 1.

Transitional arrangements for the new Legal Officer classifications are:

- Staff employed at a Legal Officer 1 classification from the commencement of this Agreement (FWA approval date) with less than 2 years post admission experience will become a Legal Officer 1.
- Staff employed at a Legal Officer 1 classification from the commencement of this Agreement (FWA approval date) with 2 years or more post admission experience will transition into the newly created

classifications of the Legal Officer 1 and Legal Officer 2 until the top of the Legal Officer 2 (the old Legal 1.7 to Legal 1.10) is reached.

- Higher duties will not break continuity or eligibility for progression under these arrangements.
- Staff who exit the Legal Officer classifications and re-enter, excluding higher duties arrangements, are considered new to the classification for the purposes of these transitional arrangements.
- Staff who are employed in the Legal 1 classification in the top 4 increment points will become a Legal 2 on approval of this Agreement.
- Staff will not automatically move into the Legal Officer 3 classification after reaching the top of the Legal Officer 2.
- The Legal Officer 3 classification will replace the Legal Officer 2 classification in the 2011-13 Agreement. Staff engaged in the Legal Officer 2 classification at the commencement of this Agreement will become a Legal Officer 3 on their current increment point.
- New legal staff employed under this Agreement will be engaged into the newly established classifications of a Legal Officer 1, Legal Officer 2 or Legal Officer 3 and will be subject to merit selection to progress into a higher classification. Transitional arrangements do not apply to staff engaged into a Legal Officer classification after approval of this agreement.

Annex B - Agreed Framework for Special Employment Arrangements

1. Introduction

1.1 This Framework applies to both individual Special Employment Arrangements (SEAs) and to SEAs for groups of employees.

1.2 This Framework may be accessible to all employees (other than casual employees) in all classifications covered by this Agreement, in accordance with the terms of this Framework.

1.3 The Chief Executive may also enter into a SEA with an employee for a specified period of time or for a specific project and the SEA may be varied by agreement between the Chief Executive and the employee.

1.4 In this Framework, a reference to position, employee, occupant or union includes positions, employees, occupants or unions.

2 Approval

2.1 A SEA may only be agreed and approved in accordance with this Framework.

2.2 The Chief Executive may only approve a SEA if the Chief Executive is satisfied that the position and the employee occupying the position meet the SEA eligibility criteria set out in clause 5.1 of this Framework.

2.3 Where the Chief Executive considers that a position and an employee meet the SEA eligibility criteria, the Chief Executive must consult with the relevant union about whether the position meets the criteria before entering into a SEA. In consulting with the union, the Chief Executive will:

- (a) provide the union with relevant information about the position used by the Chief Executive for this purpose (this information is to be provided to the union for the sole purpose of implementing this clause);
- (b) give the union a reasonable opportunity to consider this information and, if the union wishes, provide written views to the Chief Executive within seven days; and
- (c) take into account any views of the union and provide a written response before deciding to enter into a SEA.

Information that the Chief Executive provides to the union under paragraph 2.3 (a) will not include information that might directly or indirectly disclose the identity of a particular employee.

2.4 At any time following the conclusion of the consultation required under clause 2.3, the Chief Executive and an employee may agree on the terms of a SEA to apply to the position that the employee occupies.

2.5 Prior to any SEA being agreed, the Chief Executive must discuss the proposed terms of the SEA with the employee who is currently occupying the position or who has been promoted to or appointed to the position. In these discussions, the employee may invite a union or other employee representative to assist the employee.

2.6 A SEA must not be agreed where it would result, when assessed as a whole, in a reduction in the overall terms and conditions of employment provided for the employee under this Agreement or provide terms and conditions that are, in a particular respect, less favourable than the National Employment Standards of the FW Act or the rates of pay set in this Agreement for the same work at the same classification level.

2.7 The terms and conditions of employment of this Agreement will continue to form the principal basis for employees covered by this Agreement. Accordingly, where a SEA applies to an employee, the terms and conditions of the employee is a combination of:

- (a) the terms and conditions contained in this Agreement; and
- (b) the terms and conditions contained in the SEA.

2.8 The terms and conditions of employment contained in a SEA prevail over the terms and conditions of employment contained in this Agreement to the extent of any inconsistency.

3 Application

3.1 The SEA will commence from the date specified in the SEA.

3.2 The SEA will operate until this Agreement is replaced by a further enterprise agreement unless it ceases to operate in accordance with this Framework.

3.3 Subject to this Framework, the SEA will operate while the employee continues to be the occupant of the position identified in the SEA.

3.4 Subject to this Framework, the SEA will cease to apply to the employee where:

- (a) the Chief Executive determines, following a review provided for under clause 7 of this Framework, the SEA should no longer apply to the position; or
- (b) the employee vacates the position identified in the SEA.

3.5 Where an employee party to a SEA temporarily vacates the position and another employee is selected to act in the position, the Chief Executive may determine the SEA applies to the employee who is acting in the position.

3.6 Subject to paragraph 3.6 (b), a SEA will continue to operate under the enterprise agreement of the gaining

- (a) Commission where there is a transfer of a position arising from:
 - i. machinery of Government changes; or
 - ii. management initiated changes; or
 - iii. changes to the Administrative Arrangement Orders.
- (b) A SEA will continue to operate in accordance with paragraph 3.6 (a) only where the position and the occupant continue to meet the SEA eligibility criteria.

3.7 If following the Machinery of Government or management initiated changes, the position and the occupant do not meet the eligibility criteria, the SEA ceases to operate.

3.8 The Chief Executive must provide the employee with a minimum of 90 days (or less if agreed by the employee) written notice before the SEA ceases to operate under paragraph 3.4(a) or clause 3.7.

4 Deeming

4.1 Subject to clause 4.2, a SEA that applied to an employee in the Commission on the date this Agreement commences operation is deemed by this Agreement to continue in force under the terms of this Agreement, except that the rate of pay that applied to the employee under the SEA will be increased in accordance with the increases in pay rates provided for under clause 24 of this Agreement.

4.2 Despite clause 4.1, the Chief Executive and the employee to which a SEA applied under the previous enterprise agreement may agree in writing to enter into a SEA in accordance with this Framework. In that event, clause 4.1 will not apply to that employee.

5 Special Employment Arrangement Eligibility Criteria

5.1 In determining whether a SEA should apply to a position, the Chief Executive will take into account the following criteria:

- (a) the position is critical to the operation of the Commission or to a business unit in the Commission;
- (b) an employee who occupies the position requires specialist qualifications or specialist or high level skills;
- (c) the skills required by the employee who occupies the position are in high demand in the marketplace;
- (d) the position would incur significant costs to replace.

5.2 In considering paragraph 5.1(c), the Chief Executive must take into account relevant market data.

5.3 Where an Australian Workplace Agreement is terminated, the position that the employee who was a party to the Australian Workplace Agreement occupies will be deemed to have met the eligibility criteria at clause 5.1.

6 Scope of a Special Employment Arrangement

6.1 A SEA may contain:

- (a) enhanced pay rates, which must not exceed 50% of the existing pay of the occupant of the position under this Agreement;
- (b) provision for privately plated vehicles where the Chief Executive considers there is a clear, unambiguous and exceptional need;
- (c) other terms and conditions of employment where the Chief Executive considers there is a clear, unambiguous and exceptional need;
- (d) in the case where an Australian Workplace Agreement is terminated, the terms and conditions of employment that were contained in the Australian Workplace Agreement.

6.2 Should the Chief Executive consider that there is a compelling reason for the Commission to pay enhanced rates of pay in excess of the 50% cap of the existing pay of the position, the Chief Executive will apply to the Commissioner for Public Administration for approval to do so.

6.3 An application to the Commissioner must include relevant and appropriate market data as well as an explanation of why the Chief Executive considers that there is a need to pay above the 50% cap.

6.4 In assessing whether a rate of pay above the 50% cap should be paid to any employee, the Chief Executive should give particular consideration to the consequences the granting of the SEA may have on its ability to recruit and/or retain executive positions.

6.5 The rates of pay component of a SEA counts as pay for all purposes including superannuation and for the purposes of calculating annual leave, long service leave, paid personal leave, paid maternity leave, redundancy payments and other paid leave granted under this Agreement. If leave is on reduced pay or without pay, the pay component of the SEA must be reduced on a pro-rata basis.

6.6 Normal incremental advancement will continue to apply in relation to the existing pay of the employee.

6.7 The pay component of a SEA is payable fortnightly and is not available as a lump sum payment.

6.8 The terms of the SEA must contain provisions:

- (a) setting out the level of the employee's existing pay;
- (b) setting out the pay component and any other terms and conditions of employment that are to apply under the SEA;
- (c) stating that the terms and conditions of the employee will revert to the applicable rates of pay and terms and conditions of employment under this Agreement in the event the SEA ceases to operate or is

- terminated; and
- (d) containing the terms of this Framework.

7 Review of Special Employment Arrangement

7.1 The Chief Executive must review a SEA with a pay rate at or below the 50% cap at least once within the life of this Agreement to determine whether it should continue to operate.

7.2 The Chief Executive must review a SEA with a pay rate above the 50% cap at least annually from the date of the signing of the SEA to determine whether it should continue to operate.

7.3 In addition, the Chief Executive must also review a SEA where:

- (a) The position is no longer critical to the operation of the Commission or business unit in the Commission;
or
- (b) The employee no longer holds the required specialist qualifications.

7.4 In reviewing the SEA, the Chief Executive must consider whether the position and the employee who occupies the position continue to meet the SEA eligibility criteria. The Chief Executive must take into account relevant market data when reviewing a SEA.

7.5 The Chief Executive will consult with the employee party to the SEA when undertaking a review. In these consultations, the employee may invite a union or other employee representative to assist the employee.

7.6 The Chief Executive will also consult with the relevant union(s) when undertaking a review about whether the position meets the criteria. The Chief Executive will:

- (a) provide the union with relevant information about the position to be used by the Chief Executive for this purpose (this information is to be provided to the union for the sole purpose of implementing this clause);
and
- (b) give the union a reasonable opportunity to consider this information and, if the union wishes, provide written views to the Chief Executive within seven days; and
- (c) take into account any views of the union and provide a written response.

Note: Information that the Chief Executive provides to the union under paragraph 7.6 (a) will not include information that might directly or indirectly disclose the identity of a particular employee.

7.7 If, following the conclusion of the consultation required under clauses 7.5 and 7.6:

- (a) the Chief Executive concludes from the review that the position and employee who occupies the position continue to meet the SEA eligibility criteria, the SEA will continue to apply to the employee; or
- (b) the Chief Executive considers that the terms of the SEA should be varied to reflect relevant changes, the SEA will be varied accordingly.

7.8 If, following the conclusion of the consultation required under clauses 7.5 and 7.6 the Chief Executive concludes from the review that the position and the employee who occupies do not meet the SEA eligibility criteria, the SEA will cease to operate.

7.9 The Chief Executive must provide the employee with a minimum of 90 days written notice, or less if agreed by the employee, before the SEA ceases to operate under clause 7.8 or is varied under paragraph 7.7(b).

8 Salary Sacrifice Arrangements

8.1 Remuneration and conditions provided under a SEA may be used for the purposes of salary sacrifice arrangements in accordance with the Salary Sacrifice Arrangement provisions of this Agreement. Where an employee salary sacrifices any part of the terms of a SEA and in accordance with this Framework the SEA ceases to apply, the employee must notify the salary sacrifice arrangement provider that the terms of the SEA can no

longer be packaged.

9 Notification

9.1 The Commission will include in its annual report information about SEAs approved by the Chief Executive during the reporting year.

9.2 The Commission will provide reports to the union(s) on SEAs including details of the number, terms and classifications of all SEAs approved by the Commission.

10 Interpretation

10.1 In this Framework, unless the contrary intention appears:

‘remuneration consultant’ means an organisation external to the Commission that provides consultancy-based and training services in the field of job sizing assessments or market surveys.

‘existing pay’ in relation to an employee is the actual pay payable under this Agreement on the date the SEA commences, or for a review, on the date that the SEA is approved or varied following a review.

‘internal remuneration employee’ includes an employee who has successfully undertaken training from a remuneration consultant in relation to job sizing assessments or market surveys. The Chief Executive must approve an internal remuneration employee.

‘occupant’ means an employee who occupies a position in the Commission to which a SEA applies.

‘relevant market data’ includes but is not limited to job sizing assessments, recruitment experience, market surveys and job advertisements. Where a job sizing assessment or market survey is used as relevant market data, the assessment or survey must be undertaken by a remuneration consultant or internal remuneration employee.

Annex C - Expense and Skill Related Allowances

Commission Specific Allowances

Allowance	Employee Type	Description	Rate and frequency							Payment while on Leave
			1/7/2013	3/7/2014	9/4/2015	8/10/2015	7/4/2016	6/10/2016	6/4/2017	
Overtime Meal Allowance	(All employees)	<p>An employee who works overtime where the overtime is worked:</p> <p>a) after the end of ordinary duty for the day, to the completion of or beyond a meal period, and any subsequent meal period, without a break for a meal; or</p> <p>b) after the completion of the employee's ordinary hours of duty for the day, and after a break for a meal which occurs after that completion and where the employee is not entitled to payment for that break;</p> <p>c) before the commencement of ordinary hours of duty, and before a break for a meal which occurs after that completion and where the employee is not entitled to payment for that break; or</p> <p>d) on a Saturday, Sunday or public holiday, in addition to the employee's normal weekly hours of duty, extending beyond a meal break and where the employee is not entitled to payment for that break;</p> <p style="text-align: center;">will be paid an allowance.</p>	\$25.26 per occasion	\$25.63 per occasion	\$26.02 per occasion	\$26.41 per occasion	\$26.80 per occasion	\$27.21 per occasion	\$27.62 per occasion	Not paid during any type of paid or unpaid leave.

Allowance	Employee Type	Description	Rate and frequency							Payment while on Leave	
			1/7/2013	3/7/2014	9/4/2015	8/10/2015	7/4/2016	6/10/2016	6/4/2017		
First Aid	First Aid Officers Part-Time employees: These rates should be paid in full to part-time employees. see Note (1) below	An employee who is suitably qualified and who is selected and performs the duties of a First Aid Officer will be paid an allowance.									The allowance is payable during: (a) long service leave, paid maternity or primary care giver's leave or annual leave; (b) paid personal leave or other leave with pay for up to one month. Where leave is on reduced pay, or without pay, the allowance must be proportionately reduced or withdrawn accordingly. The allowance is included in salary for payment in lieu of long service leave and annual leave.
		(1) Base Level – A Certificate awarded by a Registered Training Organisation that is accredited to deliver First Aid training. This would normally be based on a minimum of 8 hours training and would include: Expired Air (EAR), Cardiopulmonary resuscitation (CPR), Life threatening emergencies and General minor first aid treatment.	\$23.44 per fortnight	\$23.79 per fortnight	\$24.15 per fortnight	\$24.51 per fortnight	\$24.88 per fortnight	\$25.25 per fortnight	\$25.63 per fortnight		
		(2) Advanced Level – Based on a minimum of 18 hours training and building on the base level training outlined above and provide training in first aid management and procedures in a workplace environment.	\$29.36 per fortnight	\$29.80 per fortnight	\$30.24 per fortnight	\$30.70 per fortnight	\$31.16 per fortnight	\$31.62 per fortnight	\$32.10 per fortnight		
		(3) Occupational or Specialist Level – Based on a minimum of 30 hours training and building on the advanced training outlined above. The training required to meet this level will include the ability to completely render first aid in the workplace in the	\$34.83 per fortnight	\$35.36 per fortnight	\$35.89 per fortnight	\$36.42 per fortnight	\$36.97 per fortnight	\$37.53 per fortnight	\$38.09 per fortnight		

		context of the OH & S legislation.							
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Allowance	Employee Type	Description	Rate and frequency							Payment while on Leave
			1/7/2013	3/7/2014	9/4/2015	8/10/2015	7/4/2016	6/10/2016	6/4/2017	
Linguistic Availability/ Performance (LAPA)	(All employees) Exclusion: Employees who are classified as an Interpreter or Translator are not eligible for the allowance. Part-Time employees: Eligible part-time employees are entitled to receive the allowance on a pro-rata basis. see Note (2) below	Employees whose duties involve communication on a regular basis in languages other than English, including Deaf Oral language, Deaf Sign language and Aboriginal languages, will be paid an allowance if their language competence meets the required level, as follows:								The allowance is payable during paid personal leave, annual leave and long service leave, pro-rata where appropriate, but not during any other period of leave.
		National Accreditation Authority for Translators and Interpreters Level 1:	\$1029.32 per annum	\$1044.76 per annum	\$1060.43 per annum	\$1076.34 per annum	\$1092.49 per annum	\$1108.87 per annum	\$1125.51 per annum	
		National Accreditation Authority for Translators and Interpreters Level 2 or higher:	\$2057.20 per annum	\$2088.06 per annum	\$2119.38 per annum	\$2151.17 per annum	\$2183.43 per annum	\$2216.19 per annum	\$2249.43 per annum	

Excess Fares and Travelling Time	(All employees)	<p>Excess Travelling Time:</p> <p>1. Subject to clause 2. an employee who is:</p> <p>(a) in receipt of an annual salary of less than \$36,180; and</p> <p>(b) travelling or on duty away from the employee's usual place of work</p> <p>will be paid for time necessarily spent in travel or on duty (exclusive of overtime duty) in excess of:</p> <p>(a) the employee's usual hours of duty for the day; and</p> <p>(b) the time necessarily spent travelling to and from home and the usual place of work.</p> <p>2. Payment of excess travelling times will be made for excess travelling time:</p> <p>(a) that is greater than one half hour in any one day; or</p> <p>(b) greater than two and a half hours in any fortnight;</p> <p>up to a maximum of five hours for any one day,</p> <p>3. Where an employee's usual place of work is variable within a specified district, the Chief Executive will determine the usual place of work. In this case a minimum of twenty minutes travelling time each way will apply</p> <p>Excess Fares:</p> <p>1. An employee will be entitled to the reimbursement of excess fares incurred by the employee performing duty temporarily at a place other than the employee's usual place of work, when the cost of travelling to and from the temporary place of work is greater than the cost of travelling to and from the employee's usual place of work.</p>	<p>The rate of payment for excess travelling time will be:</p> <p>(a) single time on Mondays to Saturdays; and</p> <p>(b) time and a half on Sundays and Public Holidays.</p>	Not paid during any type of paid or unpaid leave.
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Allowance	Employee Type	Description	Rate and frequency						Payment while on Leave	
			1/7/2013	3/7/2014	9/4/2015	8/10/2015	7/4/2016	6/10/2016		6/4/2017
Motor Vehicle Allowance	(All employees) see Note (3) below	The Chief Executive may authorise an employee to use a motor vehicle they own or hire: 1. For official purposes, where the Chief Executive is satisfied this use would: a) result in greater efficiency; or b) involve the Commission in less expense than if public transport or a vehicle owned by the Commission were used. 2. For specified journeys, where the Chief Executive is satisfied that: a) the use will not result in the employee taking more time on the journey than they would otherwise take; or b) it would not be contrary to the interest of the Commission. 3. Travel between normal headquarters and a temporary work station, or between the employee's home and a temporary work station, where the Chief Executive is satisfied that: a) there is no public transport available for travel to the temporary station; or b) although public transport is available, the work program makes its use impossible.								Not paid during any type of paid or unpaid leave.
		Per km (1) Small car – 1600cc non-rotary – 800cc rotary	\$0.71	\$0.72	\$0.74	\$0.75	\$0.76	\$0.77	\$0.78	
		Per km (2) Medium car – 1601 to 2600 cc non-rotary - 801 – 1300cc rotary	\$0.83	\$0.84	\$0.85	\$0.86	\$0.88	\$0.89	\$0.90	
		Per km (3) Large car – 1600cc non-rotary – 800cc rotary	\$0.84	\$0.85	\$0.86	\$0.87	\$0.89	\$0.90	\$0.91	
Payment on Leave	Not paid during any type of paid or unpaid leave									
Additional information	See Note 1. Below									
Additional rates of	(All employees)	Where an employee who is being paid a motor vehicle allowance, uses the motor vehicle to suit the convenience of								

Motor Vehicle Allowance		the Commission to: a) Transport a person or persons the cost of which would otherwise be borne by the ACT Government; or b) Transport equipment, tools or materials weighing more than 100kgs belonging to or hired by the Commission; or c) Haul a caravan or trailer belonging to or hired by the Commission; the employee is entitled to be paid an allowance in addition to the allowance payable above.								
		Rate per kilometre in addition to the above MVA rates	\$0.0071	\$0.0072	\$0.0074	\$0.0075	\$0.0076	\$0.0077	\$0.0078	Not paid during any type of paid or unpaid leave.

(1) First Aid Allowance:

- (a) The First Aid Allowance is based on possession of qualifications issued by a registered training organisation, or other recognised organisation, with an accredited course, that has the capacity to deliver, assess and issue qualifications for nationally recognised training in First Aid.
- (b) The First Aid Allowance is payable only if the relevant first aid qualification of an employee is current.
- (c) Where the qualification of an employee who is in receipt of the allowance is no longer current, the relevant Chief Executive may allow a short period to allow for re-qualification.
- (d) The relevant Chief Executive may reimburse fees for renewal of qualification and/or relevant courses incurred by an employee who is eligible to be paid a First Aid Allowance.
- (e) Where an employee holds more than one first aid certificate, the employee is entitled to be paid an allowance for only one of those certificates, being the certificate for which the higher rate of allowance is payable.
- (f) The allowance must not be included in salary for overtime or penalty payments.
- (g) Where an employee who normally undertakes first aid functions is absent and another employee who is qualified in first aid undertakes all the duties for which the allowance is paid, the relieving employee is entitled to be paid the allowance appropriate to that employee's qualifications.

(2) Linguistic Availability/Performance Allowance:

- (a) The required standard of language competence is accreditation at National Accreditation Authority for Translators and Interpreters (NAATI) Level 1.
- (b) Where assessment in a language is not offered by NAATI, the Chief Executive may approve assessment by another individual or body that has:
 - (i) the necessary expertise to assess the language skills; and
 - (ii) sufficient knowledge of NAATI levels and competencies required to determine the appropriate rate of LAPA.
- (c) The Chief Executive should arrange accreditation testing, and pay any associated fees, for employees being considered for LAPA. Accreditation is organised by NAATI.
- (d) Until such time as recognition by NAATI, or an alternative provider, is available, the Chief Executive may approve the payment of LAPA Level 1 to an employee on the certification of the employee's supervisor.
- (e) LAPA may be paid from the date of an employee's application for payment, or from the date at which the Chief Executive determines the need for the language has been demonstrated.
- (f) The Chief Executive should review the payment of LAPA annually, or whenever the employment status of a recipient changes, e.g. upon the recipient's promotion or temporary transfer. Such reviews should address whether there is a continuing need for communication in a language other than English.

(3) Motor Vehicle Allowance:

1. The amount of the allowance is to be reduced by the amount of any Isolated Establishments (or equivalent) allowance that is payable.

If the amount of any Isolated Establishments (or equivalent) allowance payable exceeds the amount of motor vehicle allowance that would otherwise be payable, then no motor vehicle allowance may be authorised.

2. If an employee satisfies the relevant Chef Executive that the allowance is insufficient to meet the amount of the expenses reasonably incurred and paid by the employee in using a motor vehicle for official purposes, the Chief Executive may grant an additional allowance equal to the amount by which those expenses exceed the amount of the allowance or allowances.

3. If, as a consequence of using a motor vehicle an employee is required to pay a higher insurance premium than would otherwise be the case, they are entitled to be reimbursed the additional cost.

4. Employees who use a private motor vehicle under the motor vehicle allowance conditions may be reimbursed parking fees, bridge and car-ferry tolls incurred whilst on duty, but not fines.

Annex D- Other Leave	
Leave to:	Accompany a domestic partner on a posting
Purpose	To enable an employee to accompany the employee's domestic partner for the period, or part of the period, of a posting
Eligibility	An employee
Entitlement	The maximum period is the period during which the domestic partner of the employee is required to perform duties overseas, or interstate.
Conditions	
Rate of payment	Without pay.
Effect on other entitlements	Will not count for any purpose.
Leave to:	Attend Aboriginal or Torres Strait Islander Ceremonies
Purpose	To attend a ceremony associated with the death of an immediate or extended family member or for other ceremonial obligations under Aboriginal and Torres Strait Islander law.
Eligibility	An employee who is of Aboriginal or Torres Strait Islander descent.
Entitlement	A maximum period of ten days in any two year period, in addition to bereavement leave.
Conditions	
Rate of payment	Without pay.
Effect on other entitlements	Will not count for any purpose.
Leave to:	Attend sporting events as an accredited competitor or official
Purpose	To enable an employee to attend sporting events as an accredited competitor or official.
Eligibility	An employee who is selected by an official sporting body to participate as an accredited official or competitor with national or international sporting status.
Entitlement	To attend training for, or to attend, a major national or international sporting or other recognised event in the capacity of an accredited official or competitor.
Conditions	Leave will be with pay unless otherwise agreed by the employee.
Rate of payment	With pay or without pay.

Effect on other entitlements	With pay will count as service for all purposes. Without pay will not count as service for any purpose.
Leave to:	Attend Aboriginal and Torres Strait Islander meetings
Purpose	For attending representative meetings in the capacity of an elected representative of the Aboriginal and Torres Strait Islander peak body.
Eligibility	An employee who is an elected representative of the ACT Aboriginal and Torres Strait Islander peak body.
Entitlement	Paid time to attend recognised meetings
Conditions	If an employee accepts any fee for attendance at the meeting, leave will be granted without pay. An employee may accept reimbursement for out-of-pocket expenses.
Rate of payment	Full pay.
Effect on other entitlements	Will count as service for all purposes.
Leave to:	Attend as a witness
Purpose	To enable an employee to give evidence before a body or person before whom evidence may be taken on oath
Eligibility	An employee
Entitlement	Refer to rate of payment
Conditions	If an employee is required to travel to give evidence, they may be reimbursed for reasonable travel expenses as if the employee had travelled in the course of the employee's duties, less any amount received as witnesses' expenses.
Rate of payment	With pay where the employee is to give evidence: (a) on behalf of a Territory, a State or the Commonwealth; or (b) on behalf of an authority established by or under a law of a Territory, State or the Commonwealth; or (c) in a judicial review or administrative review proceeding where the matter being reviewed relates to the work of the employee; or (d) before a Royal Commission appointed under a law of the Commonwealth; or (e) before a person conducting an inquiry under a law of a Territory, a State or the Commonwealth; or (f) before a person or authority exercising arbitral functions under a law of a Territory, a State or the Commonwealth. Without pay where the leave to give evidence is for any other purpose.
Effect on other entitlements	Will count as service for all purposes.
Leave to:	Attend NAIDOC week activities
Purpose	To enable an employee to attend and participate in NAIDOC Week activities.
Eligibility	An employee who is of Aboriginal or Torres Strait Islander descent.

Entitlement	This leave may be granted for one working day or for varying periods over the week's activities, totalling the equivalent of one working day.
Conditions	
Rate of payment	Full pay.
Effect on other entitlements	Will count as service for all purposes.
Leave to: Attend proceedings at Fair Work Australia	
Purpose	To enable the employee to give evidence on behalf of a staff organisation in proceedings at Fair Work Australia
Eligibility	An employee who is a representative of a staff organisation.
Entitlement	The time necessary to present a case or to give evidence or to attend inspections conducted by Fair Work Australia, plus reasonable travel time.
Conditions	Leave with pay cannot be granted to more than two representatives for the same period
Rate of payment	With pay Without pay
Effect on other entitlements	With pay will count as service for all purposes Without pay will not count as service for any purpose, but does not break continuity of service for long service leave purposes.
Leave to: Campaign for election	
Purpose	To enable the employee to campaign for election
Eligibility	An employee who is standing for election to the ACT Legislative Assembly, Commonwealth or State House of Parliament, or other legislative or advisory body approved by the Commissioner.
Entitlement	A maximum period of three months.
Conditions	
Rate of payment	Without pay.
Effect on other entitlements	Will not count for any purpose.
Leave to: Cope with an emergency or disaster	
Purpose	Where an employee is affected by a disaster which has destroyed or significantly damaged the employee's usual place of residence or its contents.
Eligibility	An employee whose home is wholly or partly uninhabitable for health or safety reasons.
Entitlement	A maximum period of three days in each consecutive period 12 months.

Conditions	
Rate of payment	Full pay.
Effect on other entitlements	Counts as service for all purposes.

Leave for:	Defence Service
Purpose	To enable an employee to undertake specified defence service and, also, enlistment, training and/or deployment with the Australian Defence Force Reserve (ADFR).
Eligibility	Available to employees other than casual employees.
Entitlement	<p>The entitlement to leave for Reserve Service is prescribed under the <i>Defence Reserve Service (Protection) Act 2001</i>.</p> <p>An employee may be granted leave (with or without pay) to enable the employee to fulfil Australian Defence Force (ADF) Reserve and Continuous Full Time Service (CFTS) or Cadet Force obligations.</p> <p>An employee is entitled to ADF Reserve Leave with pay, for up to four weeks during each financial year for the purpose of fulfilling service in the ADF Reserve. These purposes include training and operational duty as required.</p> <p>During an employee's first year of ADF Reserve service, a further two weeks paid leave may be granted by the head of service to facilitate participation in additional ADF Reserve training, including induction requirements.</p> <p>With the exception of the additional two weeks in the first year of service, leave can be accumulated and taken over a period of two years, to enable the employee to undertake training as a member of the ADF Reserves.</p> <p>Employees are not required to pay their tax-free ADF Reserve salary to the ACTPS in any circumstances.</p> <p>An employee who is an officer or instructor of cadets in a Cadet Force may be granted paid leave of up to three weeks each financial year to perform duties as an officer or instructor of Cadets. For these purposes 'Cadet Force' means the Australian Navy Cadets, Australian Army Cadets, or the Australian Air Force Cadets.</p> <p>Defence Reserve Leave counts as service for all purposes, except for unpaid leave to undertake CFTS. Unpaid leave for the purpose of CFTS counts for all purposes except Annual Leave.</p> <p>An eligible employee may also apply for Annual Leave, Long Service Leave, leave without pay, or they may use ADOs or flextime (where available) to make up time for the purpose of fulfilling ADF Reserve, CFTS or Cadet Force obligations.</p>
Conditions	An eligible employee must give notice to the Chief Executive as soon as practicable of their absence or intention to be absent for Defence Service Leave, including documentary evidence.
Rate of payment	With pay or without pay.
Effect on other entitlements	As per entitlement.

Leave to:	Donate an organ
Purpose	To enable an employee to donate an organ.
Eligibility	An employee who volunteers as an organ donor.
Entitlement	A maximum period of three months in any 12 month period.
Conditions	
Rate of payment	Full pay.
Effect on other entitlements	Will count as service for all purposes.
Leave to:	Donate blood
Purpose	To enable an employee to donate blood.
Eligibility	An employee, who volunteers as a blood donor.
Entitlement	The time necessary to attend to give blood, including travel and reasonable recovery time.
Conditions	
Rate of payment	Full pay.
Effect on other entitlements	Will count as service for all purposes.
Leave to:	Engage in employment associated with compensation
Purpose	To enable an employee to engage in employment outside the Commission as part of a rehabilitation process under the <i>Safety, Rehabilitation and Compensation Act 1988</i> .
Eligibility	An employee who is, or was, entitled to compensation leave under the <i>Safety, Rehabilitation and Compensation Act 1988</i> and the employment is part of a rehabilitation process under that Act.
Entitlement	A maximum period of three years.
Conditions	
Rate of payment	Without pay.
Effect on other entitlements	Will count as service for all purposes.
Leave to:	Engage in employment in the interests of defence or public safety
Purpose	To enable the employee to engage in work or employment that the Chief Executive considers is in the interests of the defence or public safety of the Commonwealth or the Territories.
Eligibility	An employee

Entitlement	A maximum period of two years.
Conditions	
Rate of payment	Without pay.
Effect on other entitlements	The first twelve months will count as service for all purposes. Subsequent leave will count as service for all purposes except annual leave. If an employee does not return to duty with the ACTPS the leave will not count as service for any purpose.
Leave for:	
Engage in employment in the interests of the Commission	
Purpose	To enable an employee to engage in work outside of the Commission where the CEO is satisfied that the employment is in the interests of the Commission.
Eligibility	An employee, other than an employee: (a) who is a probationary employee; or (b) who has six months or less continuous employment.
Entitlement	A maximum period of five years.
Conditions	
Rate of payment	Without pay.
Effect on other entitlements	Will count as service for all purposes except for annual leave. If an employee does not return to duty with the Commission the leave will not count as service for any purpose.
Leave to:	
Hold a full-time office in a staff organisation	
Purpose	To enable an employee to hold a full-time office in a staff organisation; council of staff organisations, or credit union, co-operative society, building co-operative or similar body.
Eligibility	An employee
Entitlement	The maximum period of leave that may be granted is the period for which the employee is elected to office, or in the case of a non-elected office, three years.
Conditions	To be eligible for leave to hold a non-elected office the employee must have been employed in the ACTPS or in the Australian Public Service for at least four years, at the date at which the leave is proposed to begin. Leave may only be granted for this purpose where the relevant body is incorporated and is conducted by, or on behalf of, a staff organisation for the benefit of the members of the staff organisation or all persons employed in the ACTPS.

Rate of payment	Without pay.
Effect on other entitlements	Will count as service for accruing personal leave and calculating the period of service for long service, except where the leave is to enable the employee to take up an honorary office. Where leave is granted to enable the employee to take up an honorary office, the first two months leave in each calendar year will count as service for all purposes. Leave in excess of two months in a calendar year will not count as service for any purpose other than ongoing eligibility to access maternity leave as provided by the <i>PSM Act</i> , Part 8 clause 172(1).
Leave for:	Local government purposes
Purpose	To enable the employee to attend formal meetings, in the capacity of an elected office holder, of a local government council.
Eligibility	An employee who is a duly elected office holder of a local government council.
Entitlement	A maximum period of: (a) in the case of an employee who is mayor or president of the council, five days in any 12 month period; or (b) in any other case three days in any 12 month period.
Conditions	
Rate of payment	Full pay.
Effect on other entitlements	Will count as service for all purposes.
Leave for:	Religious purposes
Purpose	To enable an employee to attend a ceremony integral to the practice of the employee's religious faith.
Eligibility	An employee who is an adherent to the particular religious faith and who is a practising member of that religious faith.
Entitlement	A maximum period of ten days in any two year period.
Conditions	Religious leave is only available for ceremonies that are of significant importance to the particular faith that are generally observed by the entire faith. Leave is not available for ceremonies that are only of significance to the individual member of the particular religious faith.
Rate of payment	Without pay.
Effect on other entitlements	Will not count for any purpose.
Leave for:	Returned soldiers for medical purposes
Purpose	To enable an employee to attend an appointment for treatment or review as a returned soldier under the <i>Veterans' Entitlement Act 1986</i> (Commonwealth).
Eligibility	An employee who is a returned soldier.
Entitlement	A maximum period of two weeks in any twelve month period.

Conditions	
Rate of payment	Full pay.
Effect on other entitlements	Will count as service for all purposes.
Leave to:	Take leave where leave cannot be granted under any other provision
Purpose	To enable an employee to be absent from duty where the leave cannot be provided for elsewhere
Eligibility	An employee
Entitlement	A maximum period of twelve months.
Conditions	
Rate of payment	Without pay, except where the Chief Executive determines there are special circumstances, having regard to: (a) the purpose for which the leave is being taken; and (b) the length of service of the employee; and (c) the length of the period for which the leave is being taken. In special circumstances the Chief Executive determines whether leave is at full pay or half pay.
Effect on other entitlements	Leave without pay will not count as service for any purpose except where the Chief Executive determines there are special circumstances that the period of leave granted is to be with pay.

Dictionary

ACTPS means the ACT Government Public Service established by the *PSM Act*.

Agreement means the Legal Aid Commission (ACT) Enterprise Agreement 2013-2017 and includes all Annexes and Schedules.

Appeal Panel means the panel established under the provisions at Section J.

Appointed means an appointment in accordance with Part 5 Division 5.3 of the *PSM Act*.

Broadbanding means classifying positions across two or more classification levels to provide a broader salary range. The purpose of broadbanding is to encourage the development of employee skills and provide an opportunity for career growth within identified broadbanded positions without the need for promotion.

Carer means an employee who provides in addition to the employee's normal family responsibilities, care and support on a regular basis to other family members or other person's who are sick or ageing, have an injury, have a physical or mental illness or a disability.

Casual Employee means a person engaged by the Commission under the *PSM Act* to perform work for a short period on an irregular or non-systematic basis.

CCC means the Commission Consultative Committee established under Section H of this Agreement.

Chief Executive means a person engaged under section 17 of the *Legal Aid Act 1977*, as the Chief Executive Officer of the Commission.

Commissioner for Public Administration means the person appointed under section 18(1) of the *PSM Act*.

Consultation means providing relevant information to employees and their union or other employee representatives. It means more than a mere exchange of information. For consultation to be effective the participants must be contributing to the decision-making process not only in appearance but in fact.

Domestic Partnership means a relationship between two people, whether of a different or the same sex, living together as a couple on a genuine domestic basis.

Eligible Casual Employee means:

- (a) an employee who has been employed as a casual employee; and
- (b) the employee has been employed by the Commission on a regular and systematic basis for a sequence of periods of employment during a period of at least twelve months; and
- (c) who has a reasonable expectation of continuing employment by the Commission on a regular and systematic basis.

Employee means (unless there is a clear intention in this Agreement to restrict the meaning) an officer or a casual employee or a temporary employee who is employed or engaged in the Commission in a classification set out in Annex A, excluding employees engaged as Chief Executives or Assistant Executive Officer under section 17 of the *Legal Aid Act 1977*.

Employee Representative means any person chosen by an employee, or a group of employees, to represent the employee(s).

FW Act means the *Fair Work Act 2009*.

FWA means Fair Work Australia.

FW Regulations mean the *Fair Work Regulations 2009*.

Household Member means a person (other than the employee's immediate family) residing in the employee's normal place of residence at the time of their illness, injury, emergency or death.

Immediate Family means a person who is:

- (a) a domestic partner (including a former domestic partner); or
- (b) a child or an adult child, parent, grandparent, grandchild or sibling of the employee or domestic partner of the employee; or
- (c) a person related to the employee by Aboriginal and/or Torres Strait Islander kinship structures; or
- (d) a child through a care and protection order.

'Immediate family' includes adopted, step, fostered or ex-nuptial immediate family where these circumstances exist.

Additionally, the Chief Executive may consider that the definition of 'immediate family' be extended for a particular decision involving an employee where exceptional circumstances exist. This might include other close family members or an employee who lives alone and has no-one to nominate as 'immediate family', may nominate one person, in similar circumstances, for the purpose of caring responsibilities.

Long-term Temporary means a person who is engaged under the *Legal Aid Act 1977* for a period of twelve months or more.

Manager means a person who has responsibility for planning, organising and leading a work unit or group activity.

Officer has the same meaning as in section 3 of the *PSM Act*. Note: Permanent employees are officers.

Primary Care Giver is a person who is the father or domestic partner and the primary carer of a child to meet the child's physical needs more than anyone else in that period.

PSM Act means the *Public Sector Management Act 1994* as varied.

PSM Standards means the Public Sector Management Standards made under the *PSM Act* as varied.

Registered Health Professional means a health professional registered, or licensed, as a health professional (or as a health professional of a particular type) under a law of a State or Territory that provides for the registration or licensing of health professionals (or health professionals of that type).

Registered Medical Practitioner means a person registered, or licensed as a medical practitioner under a law of a state or territory that provides for the registration or licensing of medical practitioners.

Short Term Care means an out of home care placement for a child (ren) of up to two years duration as defined by the *Children and Young People Act 2008*.

Short-term Temporary Employee means an employee engaged under the *PSM Act* for a period of less than twelve months.

Supervisor means a person who has direct supervisory responsibility for one or more employees in a work unit or group activity.

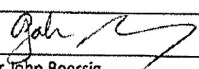
Temporary Employee means a person engaged by the Commission under section 20 of the *Legal Aid Act 1977* for a specific period of time or for a specified task .

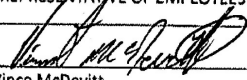
Union(s) means the Community and Public Sector Union.

SIGNATORY PAGE

LEGAL AID COMMISSION (ACT) ENTERPRISE AGREEMENT 2013 – 2017

This is a signed copy of the enterprise agreement defined above signed in accordance
with the requirements of the *Fair Work Act 2009*

EMPLOYER	
SIGNATURE	
NAME	Dr John Boersig
ADDRESS	2 Allsop Street, Canberra City, ACT, 2601
AUTHORITY TO SIGN THE AGREEMENT	Signatory holds the office of Chief Executive Officer

REPRESENTATIVE OF EMPLOYEES	
SIGNATURE	
NAME	Vince McDevitt
ADDRESS	Level 1, 40 Brisbane Avenue, Barton, ACT 2600
AUTHORITY TO SIGN THE AGREEMENT	Signatory holds the position of ACT Regional Director, Community and Public Sector Union

John Kovacic PSM
Deputy President
GPO Box 1994
Melbourne Victoria 3001

AG2014/7106 – Legal Aid Commission (ACT) Enterprise Agreement 2013 - 2017

I refer to your email concerning the Commission's Enterprise Agreement. The Commission adopts the ACT Government core template agreement. Accordingly, the concerns raised have been noted and have been discussed with both the ACT Government and with the Unions, who support our offer of undertakings. The undertakings given below will be adhered to when applying the provisions of the Legal Aid Commission (ACT) Enterprise Agreement 2013 – 2017.

Clause 47.6 - Overpayments

In respect to recovery action it may be agreed with the employee to adjust their leave credits instead of, or in combination with, a cash recovery.

Your concern that there is no reference to the qualification on cashing out is understood. No provision to cash out personal leave entitlements as a result of an overpayment recovery is provided for in the personal leave clauses. The only other leave that may be cashed out would be long service leave and purchased leave (if applicable) to cover an overpayment with the employees written consent.

Undertaking - The employer undertakes to apply clause 47.6 in accordance with the requirements set out in s.92-94 and s.100-101 of the FW Act.

Clause 70.29 – Annual Leave – Payment in lieu of Annual Leave

*An employee may cash out up to two weeks of the employee's annual leave credit where that credit has exceeded the equivalent of **two years accumulated leave** subject to the following:.....*

Clause 70.29 is consistent with the requirements of section 93(2)(a) of the FW Act because the terms of the clause provide that an employee can only elect to cash out up to two weeks of their annual leave credit if their annual leave credit has exceeded the equivalent of two years accumulated leave. Two years accumulated annual leave is equivalent to eight weeks. Accordingly, the practical effect of the clause is that an employee will always retain a minimum of 1.5 years / 6 weeks annual leave credit.

Clause 78.12 – Special Maternity Leave – Effect on other Entitlements

Special Maternity Leave accessed due to pregnancy related illness is deducted from the entitlement for unpaid maternity leave accessed after the birth of the child/ren.

The Agreement does not make mention of the parental leave entitlement being reduced by the special maternity leave but it does make mention of the unpaid maternity leave component being reduced. The Agreement provides a 52 week period where an employee has the ability to access a paid and unpaid maternity leave entitlement with Parental Leave in addition to this entitlement of up to a further two years.

Undertaking - The employer undertakes not to deduct any period of special maternity leave accessed due to pregnancy related illness from the employee's entitlement to unpaid maternity leave.

Clause 11.2 - Types of Employment & Clause 53 Regular Part Time Employment

Clarification of overtime being payable for part time staff is as follows:

- Overtime for part time employees becomes available beyond the employee's ordinary daily hours as set out in clause 33.2 (b).
- A part time employees ordinary daily hours are those hours the employee is rostered to work for that day in accordance with their part time approval, for example some may be rostered from 8:30 – 13:30, therefore overtime is payable beyond 13:30, if not worked under the flextime provisions.

No employees were covered by an individual agreement prior to the making of this agreement.

Thank you for the opportunity to address these matters, and we look forward to your favourable consideration of our response.

Yours sincerely



John Boersig

Chief Executive Officer

5 September 2014