



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Legal Aid Commission (ACT)
(AG2022/856)

LEGAL AID COMMISSION (ACT) ENTERPRISE AGREEMENT 2021-2022

Australian Capital Territory

DEPUTY PRESIDENT EASTON

SYDNEY, 29 APRIL 2022

Application for approval of the Legal Aid Commission (ACT) Enterprise Agreement 2021-2022.

[1] Legal Aid Commission (ACT) (**the Employer**) has made an application for the approval of the *Legal Aid Commission (ACT) Enterprise Agreement 2021-2022 (the Agreement)*. The application was made under s.185 of the *Fair Work Act 2009 (the Act)*. The Agreement is a single enterprise agreement.

[2] The Employer has provided written undertakings, a copy of which are attached as Annexure A to this decision. The undertakings can be accepted under s.190 of the Act because I am satisfied that they will not cause financial detriment to any employee covered by the Agreement and will not result in substantial changes to the Agreement. The undertakings are taken to be a term of the agreement pursuant to s.191 of the Act.

[3] Subject to the Employer's undertakings, I am satisfied that each relevant requirement in sections 186, 187, 188 and 190 of the Act has been met.

[4] I note that Clause 69.7 – Annual Leave is potentially inconsistent with the National Employment Standards (NES). Noting the undertaking provided by the Employer, I am satisfied that the more beneficial entitlements of the NES will prevail where there is an inconsistency between the Agreement and the NES.

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

[2022] FWCA 1455

[6] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 6 May 2022. The nominal expiry date of the Agreement is 31 October 2022.



DEPUTY PRESIDENT

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Annexure A

IN THE FAIR WORK COMMISSION	<i>Fair Work Act 2009</i> (Cth) ("FW Act")
Matter number:	AG2022/856
Employer:	Legal Aid Commission (ACT) (Employer)
Application:	Section 185 – Application for approval of a single enterprise agreement, namely the Legal Aid Commission (ACT) Enterprise Agreement 2021-2022 (Agreement)
Authorised representative:	Sharyn Giles Human Resources Manager

Undertaking-Section 190

For and on behalf of the Employer I, Dr John Boersig:

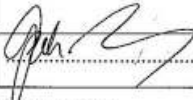
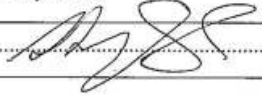
1. declare that I have:
 - a. authority to give this undertaking on behalf of the Employer,
 - b. sought the views of all bargaining representatives for this undertaking pursuant to s 190(4) of the FW Act,
2. understand that each undertaking is to be taken to be a term of the Agreement,
 - a. At the beginning of clause 16 of the Agreement the following is to be included:

"The terms of the Australian Capital Territory Public Sector Enterprise Award 2016 [MA000146] and the Legal Services Award 2020 [MA000116], or successor award(s), as varied from time to time, are incorporated into this Agreement, except where this Agreement provides for a more favourable outcome, in which case the Agreement provision shall supplement the Award entitlement."
 - b. With respect to the clause 69.7 in the Agreement – Annual Leave – the clause will be taken to read as follows,

An annual leave credit will accrue to an employee if the employee is absent from duty on paid leave for specified defence service, or full-time defence

service. Paid leave granted will count as service for all purposes. Unpaid leave will count as service for long service leave purposes only.

- c. Legal Aid ACT will comply with the requirements of s 324 of the Fair Work Act 2009 (Cth) prior to seeking to deduct any monies pursuant to clauses 45.13(a) and 45.15 of the enterprise agreement.

Date signed:	6 April 2022
For and on behalf of the Employer by: [In accordance with s.190(5) of the FW Act]	Dr John Boersig
Signature:	
Witness name:	Sharyn Giles
Witness signature:	

Legal Aid Commission (ACT) Enterprise Agreement 2021-2022

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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 2021-2022*.

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.
- 2.2. The further purpose of this Agreement is to provide an interim Agreement for a period of 12 months in recognition of the added burdens imposed because of the Covid pandemic. The Agreement provides a mechanism for continuing existing terms and conditions while providing for further wage increases during the 12-month period.

Retaining our people

- 2.3. 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.
- 2.4. 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.
- 2.5. 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.
- 2.6. These strategies and initiatives may include any of the following:
 - (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

- 2.7. The Commission will consult with the 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.

- 2.8. 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

- 2.9. The Commission will consult with the 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 consult 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.
- 2.10. 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.
- 2.11. It is acknowledged that performance management is important to employee development and to ensuring that the relationship between corporate, team and individual responsibilities is aligned to individual team and organisational objectives.
- 2.12. All employees are to participate in formal Development and Performance discussions.
- 2.13. Any performance management schemes in the Commission will not include performance pay.

Recognising our people

- 2.14. 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.
- 2.15. Any outcomes of this consultation will only be implemented by agreement of the Commission and the union(s).

Ensuring fairness

- 2.16. 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.
- 2.17. 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

- 2.18. The Commission is committed to providing employees with a work/life balance that recognises the family and other personal commitments of employees.
- 2.19. The Commission acknowledges the commitment and responsibilities that Aboriginal and Torres Strait Islander employees have to their community, and that Aboriginal or Torres Strait Islander identity is not left at the door when entering the workplace. The Commission recognises that Aboriginal and Torres Strait Islander employees have the capacity to make a unique and important contribution and bring a strength to the operations of the Commission.
- 2.20. This Enterprise Agreement provides a number of entitlements specific to Aboriginal and Torres Strait Islander employees in recognition of their community and cultural responsibilities, and in this statement expressly recognises the roles that Aboriginal and Torres Strait Islander employees may be required to undertake as part of their community. Involvement in community is an on-going function for Aboriginal and Torres Strait Islander peoples and is not tied to 'office hours'.

- 2.21. It is recognised that commitment to community can result in expectations being placed on Aboriginal and Torres Strait Islander employees that may not be expected of other employees, and that Aboriginal and Torres Strait Islander employees may be culturally bound to the performance of specific functions for their community. It is also recognised that Aboriginal and Torres Strait Islander employees may be impacted in their lives by a variety and accumulation of cultural factors.
- 2.22. Within and subject to operational requirements, supervisors and managers should seek to work with Aboriginal and Torres Strait Islander employees to support utilising the appropriate entitlements contained in this agreement and achieve an appropriate balance between cultural and community responsibilities, and workplace duties.

Promoting a healthy and safe working environment

- 2.23. The Commission is committed to promoting, achieving and maintaining the highest levels of health and safety for all employees.
- 2.24. 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*.
- 2.25. Further, given the clear evidence of the benefits and cost effectiveness of workplace health initiatives for both employers and employees, the Commission will develop workplace 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, training and education programs that promote healthy lifestyles, assistance to employees to identify 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 (CPSU) subject to Fair Work Commission (FWC) noting in its decision to approve this Agreement that it covers this union.

4 Commencement and Duration

- 4.1. This Agreement will commence operation seven days after it is approved by FWC.
- 4.2. The nominal expiry date of this Agreement is 31 October 2022.
- 4.3. The Chief Executive and unions covered by this Agreement agree to commence bargaining for a new replacement Agreement no later than eight months prior to the nominal expiry date of this Agreement.
- 4.4. Copies of this Agreement will be made available, in paper or electronic form, to all employees covered by the Agreement.

5 Operation of the Agreement

- 5.1. 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* (LA Act);
 - (b) *Fair Work Act 2009* (Cth) (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) *Financial Management Act 1996* (ACT) (FM Act);
 - (f) *Work Health and Safety Act 2011* (WHS Act);
 - (g) *Holidays Act 1958* (Holidays Act);
 - (h) *Territory Records Act 2002* (TR Act);
 - (i) *Safety, Rehabilitation and Compensation Act, 1988* (Cth) (SRC Act); and
 - (j) *Superannuation Guarantee (Administration) Act 1992* (Cth)
 - (k) *Integrity Commission Act 2018* (ACT) (IC Act)
 - (l) *Public Interest Disclosure Act 2012* (ACT) (PID 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. This clause does not limit the rights to vary an agreement under the FW Act.
- 5.3. This Agreement prevails over ACT Legislation, including the PSM Act and the PSM Standards and any policy statements and guidelines to the extent of any inconsistency.
- 5.4. This Agreement will be read and interpreted in conjunction with the National Employment Standards (NES) of the FW Act. If there is inconsistency between this Agreement and the NES, and the NES provides greater benefit, the NES provision will apply to the extent of the inconsistency.

6 Authority of the Chief Executive

- 6.1. 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.
- 6.2. This does not limit the power of the Chief Executive to authorise a person to act for and on the Chief Executive's behalf.
- 6.3. The powers conferred through the operation of clause 6.1 will not be sub-delegated.
- 6.4. 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 6.1.

7 Flexibility Term

- 7.1. 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).
- 7.2. The Chief Executive and an individual employee may agree to vary, through an individual flexibility arrangement, any of the following provisions of this Agreement:
- (a) vacation childcare subsidy (clause 59) and
 - (b) family care costs (clause 60); and
 - (c) emergency duty (clause 38)

- 7.3. The Chief Executive must ensure that the terms of an individual flexibility arrangement meet all of the following:
- (a) they would be permitted if the arrangement were an enterprise agreement;
 - (b) they do not include a term that would be an unlawful term if the arrangement were an enterprise agreement; and
 - (c) they will result in the employee being better off overall than the employee would have been if no individual flexibility arrangement were agreed to.
- 7.4. The Chief Executive must ensure that an individual flexibility arrangement meets all of the following:
- (a) identifies the clause in 7.2 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.
- 7.5. An individual flexibility arrangement made under this clause must be genuinely agreed to by the Chief Executive and the individual employee.
- 7.6. Except as provided in paragraph 7.7(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.
- 7.7. The Chief Executive must ensure that an individual flexibility arrangement made under this clause is made in writing and signed by the following:
- (a) in all cases - by the employee and the Chief Executive; and
 - (b) if the employee is under 18 – by a parent or guardian of the employee.
- 7.8. The Chief Executive must give the employee a copy of an individual flexibility arrangement made under this clause within 14 days after it is agreed to.
- 7.9. The Chief Executive or the employee may terminate the individual flexibility arrangement:
- (a) by giving written notice of no more than 28 days to the other party to the arrangement; or
 - (b) both parties agree in writing – at any time.
- 7.10. 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.

8 Work Organisation

- 8.1. 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.
- 8.2. 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.
- 8.3. 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.
- 8.4. The Union may seek and be provided with details of all new employees engaged by the Commission on or after the commencement of this Agreement, provided the employee has given consent for this information being provided.

- 8.5. The details of the new employee's employment which the Commission may provide to the Union is limited to the new employee's first name, surname and the work contact information for the new employee (email address and contact phone number).

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. The Commission provides an essential service to the ACT Community and its surrounds.

10.2. 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.

10.3. 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.

- 10.4. 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.

- 10.5. 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) casual temporary 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 unless specifically stated elsewhere in this Agreement.
- 11.3. For the purpose of clauses 17, 18, 30 and 32 of this Agreement, a Legal 4, 5 & 6 is a Senior Officer Grade B equivalent and above and a Legal 1,2 & 3 is a Senior Officer Grade C equivalent and below.
- 11.4. Persons engaged as eligible casual employees who have been engaged on a regular and systematic basis for at least 12 months and who have a reasonable expectation that such arrangements will continue, may, by application in writing to their manager or supervisor, request an examination of their employment status.
- Note: This is in addition to the FW Act right to request conversion.
- 11.5. Having considered the request at subclause 11.4, the Manager/Supervisor will respond in writing, giving reasons, within a six week timeframe.

12 Probation

- 12.1. Where an officer person is appointed on probation under the *Legal Aid Act 1977*, the period of probation will ordinarily be no more than six months.
- (a) The probation period can only be longer than six months where the period of probation has been extended following an assessment of performance.
- 12.2. The Chief Executive will, at the time the officer is appointed on probation, inform the officer in writing of the period of probation and the criteria and objectives to be met for the appointment to be confirmed.
- 12.3. Probation will provide a supportive process for the officer during which mutual evaluation and decisions about permanent appointment can be made.
- 12.4. There must be at least two formal assessments of an officer's performance at appropriate and reasonable points of the probationary period. The Chief Executive must provide the officer with a copy of each assessment report and provide the officer an opportunity to respond within seven working days.
- (a) If the assessment warrants the manager/supervisor's recommendation that the Chief Executive terminate the officer's employment, that recommendation will be included in the assessment report.
- 12.5. If the period of probation is extended following any concern in the assessment of performance, the Chief Executive will inform the officer in writing of the period of the extension, the reasons for the extension, and what the officer must do by the end of the period of extension for their permanent appointment to be confirmed.
- 12.6. A period of extension will not be longer than six months unless it is for extraordinary circumstances and has been approved by the Chief Executive.

- 12.7. A decision of the Chief Executive to accept the recommendation to terminate the appointment of an officer on probation, as per clause 12.4, is excluded from the Internal Review Procedures (Section I) and Appeal Mechanism (Section J) of this Agreement.
- 12.8. 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 to act in the position; and
 - (b) the vacant position was initially advertised for a minimum period of six 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 Legal 2 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 Legal 3 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 consist of a minimum of:
- (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.

For every JSC the relevant union(s) must be contacted to ascertain the union nominee and to seek agreement for the third JSC member.

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 21 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 (28 calendar days), or a longer period of no more than 12 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. 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.
- 16.6. The span of hours worked in a day (subclause 16.5) may be varied by agreement between the manager/supervisor and a majority of employees concerned in a workplace.
- 16.7. At the request of an employee and with the agreement of the Chief Executive, the employee may work outside the span of hours stipulated at subclause 16.5. This provision is designed to add flexibility in exceptional circumstances and is not to be used to replace normal overtime provisions.
 - (a) Where an employee requests to work outside the span of hours in accordance with subclause 16.7, 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 Chief Executive prior to the work being performed.

Meal Break

- 16.8. An employee will not be required to work for more than five hours without a meal break of at least 30 minutes duration. Meal breaks will not count as time worked unless specifically provided for in this Agreement.

- 16.9. The provisions of subclause 16.5 may be varied by agreement between the manager 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, 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. Flextime will provide the framework for an 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.
- 17.3. Flextime is not available to:
- (a) casual employees;
 - (b) employees above the Senior Officer Grade C level (or equivalent classification, including Legal Officer 4, 5 & 6)
 - (c) part-time employees, except where agreed and expressed in their part-time work agreement in accordance with subclause 50.5 or 52.5
- 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 must 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. 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.
- 17.7. An employee may have a maximum flextime credit equal to 20 hours per fortnight.
- 17.8. 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.
- 17.9. The maximum flextime debit that may accrue is ten hours. Part time employees that have access to flextime in accordance with their part time agreement may accrue a flex debit on a pro-rata basis. Any debit in excess of the maximum debit, will be considered leave without pay and deducted in accordance with the overpayment process at clause 45.
- 17.10. Any flextime debits an employee has if the employee ceases employment with the Commission will be treated as a debt in accordance with clause 45. The employee may nominate to use any available annual leave credits to cover the debt, or the debt will be recovered from any termination payment owing to the employee, except in the case of death.
- 17.11. Accrued flextime 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 flextime. It is the responsibility of both the employee and the relevant manager/supervisor to take steps to ensure that accrued flextime credits can be taken as time off, in accordance with this clause.

- 17.12. An employee not complying with these flextime provisions may be directed by the Chief Executive 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 25% of the ordinary hourly rate of pay set out in Annex A to this Agreement in lieu of paid leave entitlements, other than long service leave, and in lieu of payment for public holidays on which the employee did not work.

Overtime

- 19.3. A casual employee is eligible to receive payment for overtime in accordance with clause 32.
- 19.4. 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.
- 19.5. The loading paid under subclause 19.2 is not taken into account in the calculation of overtime payments.

Overtime Meal Allowance

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

Payment for Public Holidays

- 19.8. A casual employee is not eligible for payment in respect of public holidays, unless the employee works on a public holiday.
- 19.9. Where a casual employee does work on a public holiday, the casual employee is entitled to the appropriate overtime payments described in subclause 32.15.

Leave

- 19.10. 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 four 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.
- 23.3. Where an employee's employment will not be renewed at the end of their long term employment contract, the employer will be provided four weeks written notice of the decision to not re-engage.
- 23.4. Where an employee's employment is to be terminated at the initiative of the Chief Executive, other than in accordance with subclause 108.1 the notice periods set out in the FW Act will apply.

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, unless specifically stated elsewhere in this Agreement.

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) 1.35% is payable from the first pay period on or after 1 December 2021;
 - (b) 1.35% is payable from the first pay period on or after 1 June 2022;
- 25.3. The increase and relevant back pay will be made to all staff employed in the Commission as at the date of approval of the Agreement by the Fair Work Commission.

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 is based on the following formula:

$$\text{Fortnightly pay} = \text{annual rate of pay} \times 12 / 313$$
- 26.4. A part-time employee is 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 or the employee, 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.

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. Despite subclause 28.1 the Delegate may approve a person who is engaged by the Commission, or an employee who is promoted or approved to receive higher duties allowance 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 12 months higher duties within a 24 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 eligible employee is entitled (subject to there being no Underperformance or Discipline action undertaken in accordance with Section H – Workplace Values & 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 12 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 12 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, e.g. conducting training sessions, mentoring.

29 Graduate and Cadet Programs

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

30 Higher Duties Allowance

- 30.1. Higher Duties Allowance (HDA) is payable to an officer who is directed to temporarily perform the duties of a position with a higher classification.
- 30.2. An officer who is acting in a position with up to a maximum pay of an ASO6 or equivalent, for a period of one day or more, will be paid HDA for that period.
- 30.3. An officer 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 officer 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 officer is performing only part of the duties of the higher position and the higher position is at least two levels above the officer's current substantive level, payment of partial HDA may be agreed between the manager/supervisor and the officer, 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 officer is to perform.
- 30.7. An officer receiving HDA is entitled to normal incremental progression for the officer's substantive position. This increment gained while performing HDA is maintained upon the officer 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 12 months. If after 12 months the position is nominally vacant it will be advertised unless there are exceptional circumstances.

31 Payment of Duty Lawyer Allowance

- 31.1. An eligible employee holding an ACT Practising Certificate, who provides duty lawyer services on a Saturday, or a public holiday is entitled to be paid an allowance for the total time spent at court and/or at other duty requested attendances on each such day.
- 31.2. Where an attendance for duty lawyer extends beyond four hours, the employee may choose to replace the allowance with overtime in accordance with Clause 32 of the Agreement.
- 31.3. The allowance payable is:
- (a) payable from 1 December 2021 - \$350
 - (b) payable from 1 June 2022 - \$354
- 31.4. The allowance prescribed by this clause is payable in lieu of overtime for the rostered work day and is not to be taken into account in the determination of any allowance or entitlement based upon salary.

32 Overtime

Eligibility for Payment of Overtime

- 32.1. 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.
- 32.2. 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 16.6); 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 16.6) but beyond the employee's ordinary daily hours, and which is not worked under the flextime provisions at clause 17.
 - (c) outside of the ordinary daily hours a part time employee is rostered to work which is not worked under the flextime provisions at subclause 17.3 (c) or flexible working conditions at clause 18.
- 32.3. 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.
- 32.4. Subclauses 32.1 to 32.3 apply to employees up to and equivalent to the top incremental point of the AS06 classification or equivalent.
- 32.5. 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.
- 32.6. Overtime approved under subclause 32.5 for Senior Officers will be calculated at the maximum hourly overtime rate for an AS06 for any Senior Officer, or other employee whose substantive pay exceeds the highest pay point of the AS06 classification. 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

- 32.7. 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.
- 32.8. For the purposes of subclause 32.7 meal periods do not break continuity of duty.
- 32.9. 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.
- 32.10. Where an employee is on call or close call situation as provided for in clause 35 or clause 36, the minimum payment for overtime will be three hours or one hour in accordance with subclauses 35.6 or 36.8 or 35.10 or 36.12 respectively.

Payment of Overtime

- 32.11. For the purposes of calculating overtime payments, each day or shift will stand-alone.
- 32.12. 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.
- 32.13. 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

- 32.14. 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

- 32.15. An employee who works overtime on a public holiday or on a substituted public holiday as defined in clause 72 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

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

33 Rest Relief after Overtime

- 33.1. In this clause employee refers to employees other than casual employees.
- 33.2. Unless the Chief Executive directs an employee to report for duty earlier, the employee must have a continuous period of eight hours, plus reasonable travel time, off duty between ceasing overtime duty following ordinary hours of work and commencing ordinary hours of work the following day.
- 33.3. 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.
- 33.4. 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.
- 33.5. The provisions of this clause do not apply to overtime worked in the circumstances covered by clause 38 unless the actual time worked (excluding travel time) is at least three hours on each call.

34 Payment for Public Holiday Duty

- 34.1. An employee, 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 150% of the employee's ordinary hourly rate of pay.

35 On-Call Allowances

- 35.1. 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.
- 35.2. 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.
- 35.3. Employees at the ASO6 (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.
- 35.4. Where approval has been made for payment under subclause 35.3 to an employee above the ASO6 (or equivalent) classification, the maximum hourly allowance paid will be equivalent to the allowance paid to the ASO6 (or equivalent) classification.
- 35.5. 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.
- 35.6. 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.
- 35.7. The provisions of clause 38 will not apply where an employee is recalled to duty while on on-call.
- 35.8. 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.
- 35.9. "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.
- 35.10. 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.
- 35.11. 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 35.6 and 35.10, from the commencement of the recall to duty that attracts the overtime payment.

36 Close Call Allowance

- 36.1. 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.
- 36.2. 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.
- 36.3. 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.
- 36.4. 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.
- 36.5. Employees at the ASO6 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.
- 36.6. Where approval has been made for payment under subclause 36.5 to an employee above the ASO6 (or equivalent) classification, the maximum hourly allowance paid will be equivalent to the allowance paid to the ASO6 (or equivalent) classification.
- 36.7. 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.
- 36.8. 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.
- 36.9. The provisions of clause 38 will not apply where an employee is recalled to duty while on on-call.
- 36.10. 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.
- 36.11. "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.
- 36.12. 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.
- 36.13. 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 36.8 and 36.12, from the commencement of the recall to duty that attracts the overtime payment.

37 Rest Relief for Restricted or Close Restricted Situations

- 37.1. Where an employee in a restricted or close restricted situation under clause 35 or clause 36 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.
- 37.2. 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.

- 37.3. 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 37.1, plus reasonable travel 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 travel time, without loss of pay for any ordinary working time occurring during that absence.
- 37.4. There is a need for appropriate roster management processes to enable the effective implementation of subclause 37.1.

38 Emergency Duty

- 38.1. Where an employee is called on duty by the Chief Executive Officer 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.
- 38.2. Employees who are in on-call or close-call situations are not eligible to receive payment under this clause.
- 38.3. The time for which payment will be made under this clause will include time necessarily spent travelling to and from duty.
- 38.4. The minimum payment under this clause will be two hours.
- 38.5. The rate of payment for emergency duty will be double time of the employee's ordinary hourly rate of pay.
- 38.6. At any time following the finalisation of the initial period of emergency duty, the Chief Executive may place an employee on to on-call or close-call duty in accordance with clause 35 or 36.
- 38.7. 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.

39 Other Allowances

- 39.1. The Chief Executive Officer may approve the payment of expense and skill related allowances as provided for in this Agreement at Annex C.
- 39.2. The rates for all allowances provided for in Annex C of this Agreement will be adjusted by the same percentage amounts and on the same dates as the pay increases set out in subclause 25.2, unless the contrary intention is stated for a specific allowance in Annex C.
- 39.3. 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.
- 39.4. 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.
- 39.5. Allowances payable to casual employees under this Agreement are not subject to the loading prescribed in subclause 19.2.
- 39.6. The following allowances, detailed in Annex C, may apply to any Commission employee:
- (a) Overtime Meal allowance
 - (b) First Aid allowance
 - (c) Community Language allowance
 - (d) Motor Vehicle allowance and Additional Rates of Motor Vehicle allowance

Excess travel time

- 39.7. An employee who is travelling or on duty away from the employee's usual place of work will be paid for time necessarily spent in travel or on duty (exclusive of overtime duty) in excess of:
- (a) the employee's usual hours of duty for the day; and
 - (b) the time necessarily spent travelling to and from home and the usual place of work.
- 39.8. Payment under subclause 39.7 is subject to:
- (a) the employee's annual salary not exceeding the rate of \$36,180 per annum;
 - (b) the additional travel time being at least 30 minutes in travel in any one day, or two and one half hours in any fortnight; and
 - (c) the payment not exceeding five hours in any one day.
- 39.9. The rate of payment under subclause 39.7 will be single time on Mondays to Saturdays and time and a half on Sundays and Public Holidays.
- 39.10. Where an employee's normal place of work is variable within a specified district, the director-general will determine the usual place of work. In this case a minimum of 20 minutes travelling time each way will apply where an employee is directed to work at another location before an employee is entitled to payment for the excess travel time.

Excess fares

- 39.11. 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.

40 Reimbursement of Reasonable Relocation Expenses

- 40.1. 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.
- 40.2. The Chief Executive may approve a reimbursement payment to a new employee as the Chief Executive considers is reasonable in the new 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

- 40.3. In order for a new employee to be reimbursed costs, valid receipted tax invoices must be provided.
- 40.4. 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.
- 40.5. The Chief Executive may approve payment in excess of the approved amount or ceiling in exceptional circumstances.
- 40.6. In the event that the employee terminates their employment with the Commission within two years of the date of engagement, the employee may be required by the Chief Executive to repay:

- (a) in the case the employee terminates employment within 12 months from the date of engagement – 100% of the relocation reimbursement; or
- (b) in the case the employee terminates employment more than 12 months and less than two years from the date of engagement – 50% of the relocation reimbursement.

Section D - Pay Related Matters

41 Salary Sacrifice Arrangements

- 41.1. Voluntary access to salary sacrifice arrangements are available to employees in accordance with policies and guidelines issued by the Chief Executive.
- 41.2. The employee will meet all costs incurred as a result of the salary sacrifice arrangements under these provisions.
- 41.3. 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.
- 41.4. Changes to salary sacrifice arrangements, including taxation changes, will not be a cause for further claims against the Commission.
- 41.5. The Chief Executive will continue to provide appropriate information to employees concerning salary sacrifice arrangements.

42 Special Employment Arrangements

- 42.1. 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.
- 42.2. The framework under which special employment arrangements may apply during the life of this Agreement is set out in Annex B of this Agreement.

43 Classification/Work Value Review

- 43.1. An employee, or a group of employees, or the union(s) or other employee representatives ("the applicant"), may present a case to request the Chief Executive to undertake a classification/work value review of a position or group of positions.
- 43.2. The Chief Executive will undertake the review in consultation with the employee(s) and/or the union(s) or other employee representatives.
- 43.3. If the Chief Executive determines that the case presented under subclause 43.1 is frivolous or vexatious, the Chief Executive will refuse to undertake the review.
- 43.4. If the Chief Executive determines that the case presented under subclause 43.1 does not contain enough information for the Chief Executive to make an assessment on whether the review is warranted, the Chief Executive will provide the applicant an opportunity to make further submissions. If, following such further submissions, or if no such submissions are made, the Chief Executive still does not have enough information to make an assessment on whether or not the review is warranted, the Chief Executive may refuse to undertake the review.
- 43.5. Any classification/work value review will take into account relevant work level standards, position descriptions, market and other relevant comparators, including comparators that are considered pertinent to the skills, competencies and general responsibilities required of the position(s).

- 43.6. These provisions do not affect the right of the Chief Executive to undertake a classification/work value review at their own initiative.
- 43.7. 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.

44 Supported Wage System

- 44.1. Employees who are assessed as eligible to receive a supported wage under subclause 44.2 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 ASO1 pay range.
- 44.2. The Commission will arrange for an assessment of the productive capacity of an employee in accordance with the processes contained in the National Minimum Wage Order issued annually by the FWC, except that the minimum rate payable will be as set out in subclause 44.1

45 Overpayments

- 45.1. An overpayment is any payment in respect of pay, allowance or leave, whether the overpayment is by accident or otherwise, to which the employee is not entitled.
- 45.2. An overpayment is a debt owed to the Commission.
- 45.3. In the event that an employee has received an overpayment, the Commission will recover the overpayment in accordance with this clause.
- 45.4. Where the Chief Executive Officer believes that an overpayment has occurred, the Chief Executive will work with the employee to establish the:
- (a) pay period(s) the overpayment occurred; and
 - (b) nature of the overpayment; and
 - (c) reasons why the overpayment occurred
 - (d) gross and net components of the overpayment.
- 45.5. Once the overpayment has been established in accordance with subclause 45.4 the Chief Executive Officer will provide the details of the overpayment, as per subclause 45.4, to the employee in writing and will consider whether it would be appropriate in the circumstances to waive part or all of the overpayment in accordance with section 131 of the FM Act.
- 45.6. Subsequent to the decision of whether to waive the overpayment or not in accordance with subclause 45.5 the Chief Executive Officer will advise the employee in writing, as soon as practicable, of the:
- (a) decision as to what if any part of the overpayment will be waived;
 - (b) amount of the overpayment that is to be recovered, if any
 - (c) process for recovery of the overpayment, if any; and
 - (d) proposed recovery rate, if any.
- 45.7. The Chief Executive and the employee will agree on a reasonable recovery rate having regard for all of the circumstances prior to any recovery being made. Where agreement cannot be reached subclause 45.10 will apply.
- 45.8. Any such agreement in accordance with subclause 45.7 may include recovery of the overpayment by the Commission:
- (a) as a lump sum; or
 - (b) by payroll deduction from pay.
- 45.9. 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, provided that the employee cannot be worse off in terms of their leave entitlements than had they requested payment in lieu of annual leave in accordance with subclause 69.29 or long service leave in accordance with subclause 87.7(b).

- 45.10. Where the Chief Executive Officer and the employee cannot agree about the arrangements for recovery of an overpayment, the overpayment will be recovered in accordance with an arrangement as determined by the Chief Executive Officer under section 246 of the PSM Act.
- 45.11. Where recovery occurs in accordance with subclause 45.10 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 Officer having regard for all of the circumstances.
- 45.12. Despite subclauses 45.7 and 45.10, the recovery period will not usually exceed 26 pay periods.
- 45.13. Where an employee is paid an amount to which he or she is not entitled as a result of an amendment to, or late submission of, a time sheet, evidence, material or other forms, the amount paid (the "discrepancy"):
 - (a) may be deducted in the following pay period, provided it is no greater than 10% of the employee's gross fortnightly pay; and
 - (b) will not be considered an overpayment for the purposes of this clause 45, provided that the employee is notified accordingly.
- 45.14. Further to subclause 45.13, if more than two pay periods have passed since the discrepancy was paid, or the discrepancy exceeds 10% of the employee's gross fortnightly pay, the discrepancy will be considered a debt and the provisions of this clause 45 will apply, unless the employee agrees in writing to the adjustment being made.
- 45.15. 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. 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.
- 45.16. Where the Chief Executive Officer determines that an overpayment cannot be recovered, the provisions of the relevant directorate's Financial Instructions, relating to the waiver and write off of monies, will apply.

Note: Any disputes about the application of these provisions should be addressed through the Dispute Avoidance/Settlement Procedures outlined at clause 96. Unless the employee agrees, recovery of overpayments will not occur while a dispute is on foot.

46 Underpayments

- 46.1. 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 business days of the Chief Executive receiving the written request.
- 46.2. Where an overtime payment, duty lawyer 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 business days of the Chief Executive receiving the written request.

47 Superannuation

- 47.1. The Commission will provide employer superannuation contributions in accordance with the relevant legislative requirements.
- 47.2. The Commission's default fund is the Public Sector Superannuation Accumulation Plan (PSSap).
- 47.3. The rate of superannuation payable for 'choice of fund' will be fixed in an exchange of letters between the Commission and the relevant Union. Where the Commission consults with the Union and staff to vary the rate of superannuation payable to a rate other than the rate fixed in the exchange of letters, and a majority

of the staff agrees with the proposed variation, the new rate will be implemented during the life of this Agreement through an exchange of letters.

- 47.4. The salary for superannuation purposes will be calculated on the employee's Ordinary Time Earnings (OTE) within the meaning of the Superannuation Guarantee (Administration) Act 1992.
- 47.5. An employee may choose any approved superannuation fund as long as the fund can accept employer contributions through the Commissions disbursement arrangements.
- 47.6. Employer contributions will not be reduced by any other contributions made through salary sacrifice arrangements.
- 47.7. This clause does not apply to preserved members of other superannuation plans, including CSS and PSS. Employees covered by those superannuation plans will receive the employer contributions specified by the fund rules for the relevant superannuation plan.

48 Payment on Death

- 48.1. Where an employee dies, or the Chief Executive has directed that an employee will be presumed to have died on a particular date, the Chief Executive may make a payment or partial payment for unused leave credits and other entitlements directly to the dependants or the domestic partner, or to the legal personal representative, or to the estate, of the former employee of an amount that would have been paid had the employee ceased employment otherwise than because of the employee's death. The payment in respect of unused LSL will be calculated in accordance with subclause 87.11.

Section E - Flexible Working Arrangements and Employee Support

49 Work and Life Balance

- 49.1. The Commission is committed to providing flexible working arrangements that allow employees to manage their work and personal commitments. This must be balanced against the operational requirements for the Commission to deliver services to the Canberra and surrounding communities.
- 49.2. The Commission recognises the need to provide sufficient support and flexibility at the workplace to assist employees in achieving work and life balance and to meet their caring responsibilities. While family friendly initiatives are important aspects of work and life balance, it is also important that all employees, at all stages in their working lives, are supported through this Agreement.

50 Request for Flexible Working Arrangements

- 50.1. An employee may apply to the Chief Executive Officer for flexible working arrangements to support their work and life balance. The Chief Executive Officer must give the employee a written response to the request within twenty-one calendar days of receiving the request, stating whether the request is approved and the reasons if the request is refused.
- 50.2. Nothing in this clause diminishes any provisions expressed elsewhere in this Agreement, where those entitlements are entitlements in their own right.
- 50.3. An employee may request flexible working arrangements, in accordance with the FW Act, in the following circumstances. If the employee:
 - (a) seeks working arrangements to suit their personal circumstances; or
 - (b) has a parental or other caring responsibility for a child of school age or younger; or
 - (c) has a caring responsibility for an individual with a disability, a terminal or chronic medical condition, mental illness or is frail and aged; or
 - (d) has a disability; or

- (e) is over the age of 55; or
 - (f) is experiencing family violence; or
 - (g) is providing personal care, support and assistance to a member of their immediate family or household because they are experiencing family violence.
- 50.4. To assist employees in balancing work and personal commitments, flexible working arrangements are provided throughout this Agreement. Examples of these flexible working and leave arrangements include, but are not limited to:
- (a) flexible starting and finishing times (including at clause 17);
 - (b) ability to take a few hours off work, and make it up later;
 - (c) home based work on a short or long term basis (clause 55);
 - (d) part-time work (clauses 52 & 54);
 - (e) job sharing (clause 53);
 - (f) purchased leave (clause 71);
 - (g) annual leave (clause 69);
 - (h) long service leave (clause 87);
 - (i) leave without pay (clause 86); and
 - (j) leave not provided for elsewhere (clause 86).
- 50.5. The flexible working arrangement will be recorded in writing and run for a specified duration of up to three years. At the end of the flexible working arrangement's period of operation, unless a new flexible working arrangement is entered into, the default will be that the employee returns to their nominal status.
- 50.6. Approved flexible working arrangements may be reviewed annually at which time the circumstances under which the flexible working arrangements were originally granted will be examined and reassessed.
- 50.7. Employees that have an existing flexible working arrangement at the commencement of this Agreement will have that arrangement reviewed within 12 months of commencement of this Agreement.
- 50.8. The Chief Executive Officer may only deny an employee's request for flexible working arrangements or a variation to existing flexible working arrangements where there are reasonable business grounds for doing so.
- 50.9. Reasonable business grounds to deny a request include, but are that not limited to the following:
- (a) the new working arrangements requested by the employee would be too costly to implement, or would likely result in a significant loss in efficiency or productivity, or would likely have a significant negative impact on service;
 - (b) there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested by the employee;
 - (c) it would be impractical to change the working arrangements of other employees or recruit new employees to accommodate the new working arrangements requested by the employee;
 - (d) it would be a genuine risk to the health and safety of an employee (s); or
 - (e) demonstrable exceptional circumstances have arisen that mean the request cannot be approved.
- 50.10. Where a request is not approved the Chief Executive will consult with the employee to explore alternative arrangements.

51 Management of Excessive Hours

- 51.1. 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. This subclause should be read in conjunction with subclause 17.4 and clause 18.
- 51.2. 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 of staffing levels and/or classifications within the work group.
- 51.3. 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.

52 Regular Part-Time Employment

Conversion to Part-Time Employment

- 52.1. 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 clause 16.
- 52.2. Proposals to reduce hours below full-time employment may be initiated by the Chief Executive Officer for operational reasons.
- 52.3. The Chief Executive will obtain the written agreement of a full-time officer before the officer converts to part-time.
- 52.4. 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.
- 52.5. The agreed period, 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.

Note: An employee who wishes to work part-time may apply for a flexible working arrangement in accordance with subclause 50.1.

Variation to Part-Time Hours

- 52.6. 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.
- 52.7. 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.
- 52.8. The Chief Executive will obtain the written agreement of the officer before the officer's hours are varied.
- 52.9. No pressure will be exerted on an officer to vary the officer's hours of employment or to transfer to another position to make way for part-time employment.
- 52.10. 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.

53 Job Sharing

- 53.1. In this clause employee refers to employees other than casual employees.
- 53.2. 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 job and will be considered to be part-time with each working part-time on a regular, continuing basis.
- 53.3. An 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.

- 53.4. 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 no less than three consecutive hours.
- 53.5. 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.
- 53.6. In the event that either employee ceases to participate in the job sharing arrangement, the arrangement will terminate.

54 Permanent Part Time Employment Following Birth Leave, Primary Caregiver Leave, Adoption or Permanent Care Leave or Parental Leave

- 54.1. Subject to this clause, the Chief Executive will approve an application by an employee who returns to work after accessing birth leave, primary caregiver leave, adoption or permanent care leave or parental leave, to work on a part-time basis up until the date which is three years from the birth or adoption of a child or the granting of parental responsibility of a foster child long term.
- 54.2. If the Chief Executive Officer deems that an application by an officer to access part time work under this clause can only be accommodated if the officer agrees to become unattached, then the application will only be approved where the officer so agrees.
- 54.3. The maximum aggregate period of part-time employment that may be approved for an employee under subclause 54.1 is seven years.
- 54.4. Either the employee who accesses primary care giver leave under clause 78, or adoption and permanent care leave under clause 82, or the employee who is entitled to and accesses birth leave under clause 76 will be entitled to access permanent part-time employment as provided in subclause 54.1
- 54.5. 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.

55 Home Based Work

- 55.1. The diverse nature of work conducted in the Commission lends itself to a range of working environments. From time to time workplaces may include work undertaken remotely, at other worksite or in the home.
- 55.2. 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.
- 55.3. In determining appropriate home based work arrangements, the Chief Executive Officer and the 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.
- 55.4. 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.
- 55.5. An employee may terminate home-based work arrangements at any time by giving reasonable notice to the Chief Executive.

- 55.6. 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.
- 55.7. 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.

56 Engaging in Outside Employment

- 56.1. 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 may be used to undertake any outside paid employment.

57 Employee Assistance Program

- 57.1. 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.

58 Scheduling of Meetings

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

59 Vacation Childcare Subsidy

- 59.1. 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 12 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) 52 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.
- 59.2. An accredited school holiday program is a program approved and/or subsidised by a State, Territory or Local Government.
- 59.3. The payment will apply only on the days when the employee is at work.
- 59.4. The payment will apply only where reasonable notice has been provided and the employee has an accrued leave credit available.
- 59.5. 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.
- 59.6. An employee whose domestic partner receives a similar benefit from the partner's employer is not eligible for the payment.

60 Family Care Costs

- 60.1. 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.

61 Nursing Employees

- 61.1. 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.
- 61.2. Where practicable the Commission will establish and maintain a room for nursing employees. Where there is no room available another appropriate space may be used.
- 61.3. Up to one hour, per day/shift, paid lactation breaks will be available for nursing employees.
- 61.4. Lactation breaks are non-cumulative.

62 Transfer of Medically Unfit Staff

- 62.1. This clause does not apply to casual employees.
- 62.2. A medically unfit employee is an employee who is considered by the Chief Executive, in accordance with paragraph (a), sub-section 115 of 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.
- 62.3. Despite the provisions of section 27 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%. For clarity this allows transfer between alternate classification streams, but does not allow for the transfer of an officer within the same classification stream e.g. a SOGB transfer to a SOGA.
- 62.4. An employee will not be redeployed in accordance with subclause 62.3 unless there is no suitable vacant position at the employee's substantive classification within the Commission.

Section F – Leave

63 Part Time Employees

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

64 Non-approval of Leave

- 64.1. 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.

65 Leave Below One Day

- 65.1. 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.

66 Personal Leave

Purpose

- 66.1. 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.
- 66.2. Personal leave supports the Commissions commitment to a healthy workplace and workforce.

Eligibility

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

Entitlement

- 66.4. An employee may be granted personal leave up to their available credit from the first day of service.
- 66.5. Personal leave is cumulative and there is no cap on the personal leave balance an employee may accrue.
- 66.6. 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 66.7.
- 66.7. 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).
- 66.8. 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.
- 66.9. 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.
- 66.10. 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.

Other Provisions

- 66.11. An employee in receipt of workers compensation for more than forty-five weeks will accrue personal leave on the basis of hours actually worked.
- 66.12. Unused personal leave credit will not be paid out on cessation of employment.

Evidence and Conditions

- 66.13. An employee should discuss with their manager/supervisor, as soon practicable, their intention to be absent on personal leave.

- 66.14. The Chief Executive may grant personal leave if they are satisfied there is sufficient cause, having considered any requested or required documentary evidence.
- 66.15. 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.
- 66.16. 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.
- 66.17. 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.
- 66.18. Days without a medical certificate for non standard hours is calculated as follows:
- $A / B \times C = (D) \text{ days}$
- 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 $\times 7.35$ = hours available without a medical certificate in a calendar year
- 66.19. A change to an employee's working hours in a calendar year will not change the equivalent days already accessed without a medical certificate in accordance with subclause 66.17.
- 66.20. 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.
- 66.21. Paid personal leave may be granted up to an employee's available personal leave credit.
- 66.22. 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.
- 66.23. 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.
- 66.24. 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.
- 66.25. 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.
- 66.26. 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

- 66.27. Personal leave will be granted with pay except where it is granted without pay under subclauses:
- (a) 66.9; or
 - (b) 66.22.
- 66.28. 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.
- 66.29. Any personal leave taken must be deducted from the employee's credit.

Effect on Other Entitlements

- 66.30. Personal leave with pay will count as service for all purposes.
- 66.31. Personal leave without pay, other than provided for at subclause 66.22, will count as service for all purposes.
- 66.32. 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.
- 66.33. Where the personal leave under subclause 66.31 is without pay both sides of the public holiday or Christmas shutdown period, the public holiday, or the Christmas shutdown period, will also be without pay.
- 66.34. 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 66.22.

Interaction with Other Leave Types

- 66.35. 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 birth leave; or
 - (e) unpaid parental leave; or
 - (f) grandparental leave; and
- who produces a certificate from a registered medical practitioner or a registered health professional operating within their scope of practice, or in the case of an unexpected emergency other satisfactory evidence, may apply for personal leave.
- 66.36. Where an employee is on a form of leave specified in subclause 66.35 and:
- (a) the employee is subsequently granted personal leave in accordance with subclause 66.35; 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.
- 66.37. An employee cannot access paid personal leave while on paid birth leave or primary care giver's leave, but can apply for personal leave during unpaid birth leave or parental leave.
- 66.38. If the employee has exhausted all paid personal leave, personal leave without pay cannot be substituted for unpaid maternity leave.
- 66.39. If an employee exhausts the employee's paid personal leave entitlement and produces documentary evidence, as per subclause 66.16, as evidence of continuing personal illness or injury, or the requirement

to care or provide support to a member of the employee's immediate family or household, 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 66.22.

67 Personal Leave in Extraordinary Circumstances

- 67.1. Employees, other than casual employees, are eligible for personal leave in extraordinary circumstances.
- 67.2. Personal leave in extraordinary circumstances, is non-cumulative and if granted is deducted from the employees personal leave balance.
- 67.3. 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 or requires support 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 66.18.
- 67.4. While personal leave in extraordinary circumstances does not normally require documentary evidence, the Chief Executive may request reasonable evidence before granting the leave.
- 67.5. Personal leave in extraordinary circumstances will be granted with pay up to an employee's available personal leave credit.

68 Infectious Disease Circumstances

- 68.1. 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.
- 68.2. The employee may also apply for the absence or a part of it to be deducted from their annual leave credit.

69 Annual Leave

Purpose

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

Eligibility

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

Entitlement

- 69.3. An employee may be granted annual leave up to their available credit from the first day of service.
- 69.4. Annual leave is cumulative.
- 69.5. An employee's annual leave credit accrues on a daily basis according to the formula set out below:

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

- 69.6. For the purpose of subclause 69.5 the basic leave entitlement is, in the case of a 36.75 hour worker, 4 weeks (147 hours) annual leave for each full year worked.
- 69.7. 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.

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

Evidence and Conditions

- 69.9. 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.
- 69.10. An employee must make an application to the Chief Executive to access their annual leave entitlement.
- 69.11. Having considered the requirements of this clause the Chief Executive may approve an employee's application to access annual leave.
- 69.12. The Chief Executive should approve an employee's application to take annual leave, subject to operational requirements.
- 69.13. 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.
- 69.14. 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.
- 69.15. 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.
- 69.16. 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.
- 69.17. 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.
- 69.18. 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 enough annual leave to reduce the accrued leave to the equivalent of two years' 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.
- 69.19. 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.
- 69.20. An employee may not be directed under subclause 69.18 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 69.18 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.
- 69.21. Annual leave may be granted at half pay with credits to be deducted on the same basis.

Rate of Payment

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

- 69.23. 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

- 69.24. Annual leave will count as service for all purposes.
- 69.25. 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.

Interaction with other Leave Types

- 69.26. If personal leave is granted to the employee, annual leave will be re-credited for the period of paid personal leave granted.
- 69.27. 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.
- 69.28. 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

- 69.29. 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.
 - (d) the payment in lieu will not result in a reduction in the balance of an employee's remaining annual leave credit below one year's accrued entitlement.
- 69.30. An employee may only cash out annual leave in accordance with subclause 69.29 once during each twelve-month period.
- 69.31. 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.

70 Annual Leave Loading

Purpose

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

Eligibility

- 70.2. Employees who accrue annual leave under clause 69 are entitled to an annual leave loading. Part time employees will be paid the annual leave loading on a pro rata basis.

Entitlement

- 70.3. An eligible employee's 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.

- 70.4. 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

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

Rate of Payment

- 70.7. The amount of an employee's entitlement under subclause 70.2 will be based on whichever is the greater of the following:
- (a) subject to subclause 70.3, 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.

71 Purchased Leave

Purpose

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

Eligibility

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

Entitlement

- 71.3. 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.
- 71.4. An employee may apply, at any time, to the Chief Executive for approval to participate in the purchased leave scheme.
- 71.5. The application must specify the amount of leave to be purchased in whole weeks up to a maximum of twelve weeks in a financial year, the period over which the additional leave is to be acquitted.
- 71.6. 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.
- 71.7. 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.
- 71.8. 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 birth or primary care giver leave.

Evidence and Conditions

- 71.9. An employee should discuss with their manager/supervisor, as soon as practicable, their intention to be absent on purchased leave.
- 71.10. An employee must make an application to the Chief Executive to access their purchased leave entitlement.
- 71.11. 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 64.1.
- 71.12. 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.
- 71.13. A minimum of one week of purchased leave, or pro rata equivalent for part time employees, 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.
- 71.14. Purchased leave must be used within the agreed financial year acquittal period, not exceeding twelve months from the date of commencement in the scheme. Purchased leave not taken within the agreed financial year 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

- 71.15. 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.
- 71.16. Purchased leave will be paid for by a fortnightly deduction from the employee's pay over the agreed acquittal period not exceeding twelve months from the date the employee commences participation in the scheme.
- 71.17. 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.
- 71.18. Despite 71.17, if the employee's pay changes during the acquittal period, approval for the deduction to be recalculated may be sought.
- 71.19. Cessation of employment with the Commission will result in recovery of acquitted monies or payment of unused purchased leave through the final entitlements.
- 71.20. Fortnightly tax deductions will be calculated on the employee's gross pay after the deduction has been made for purchased leave.
- 71.21. 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

- 71.22. Leave taken as purchased leave will count as service for all purposes.
- 71.23. 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.
- 71.24. Purchased leave will not affect the payment and timing of pay increments or the accrual of other forms of leave.

- 71.25. The purchase of additional leave under this clause will not affect the superannuation obligations of the Commission and/or the employee involved.

Interaction with other Leave Types

- 71.26. 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 or injury for the purposes of providing care or support for a member of the employee's immediate family who is ill or injured 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.
- 71.27. An employee participating in the scheme who proceeds on paid birth 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 71.28, remain in the scheme and have pay deductions continue during the period of paid birth or primary care giver's leave.
- 71.28. Purchased leave taken during an employee's absence on birth or primary care giver's leave will not extend the employee's total period of birth leave or primary care giver's leave.
- 71.29. 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.

72 Public Holidays

Eligibility

- 72.1. Public holidays are available to employees other than casual employees.
- 72.2. Employees are eligible to be absent from duty on a day, or part of a day, that is a public holiday, in accordance with the FW Act.

Entitlement

- 72.3. The following days will be observed as public holidays under this Agreement:
- (a) 1 January (New Year's day), and, if that day falls on a Saturday or Sunday, the following Monday;
 - (b) 26 January (Australia Day), and, 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), and, if that day falls on a Saturday or Sunday, the following Monday;
 - (h) 27 May (Reconciliation Day), or, if that day is not a Monday, the following Monday;
 - (i) the 2nd Monday in June (the day for the observance of the anniversary of the birthday of the Sovereign);
 - (j) the 1st Monday in October (Labour Day);
 - (k) 25 December (Christmas Day), and;
 - i. if that day falls on a Saturday, the following Monday; or
 - ii. If that day falls on a Sunday, the following Tuesday
 - (l) 26 December (Boxing Day), and
 - i. if that day falls on a Saturday, the following Monday; or
 - ii. if that day falls on a Sunday or Monday, the following Tuesday;
- 72.4. In addition to the public holidays provided for under clause 72.3, employees are entitled to be absent from duty on:
- (a) the next business day after Boxing Day; or where;
 - i. Boxing Day falls on a Saturday, the following Tuesday; or

- ii. Boxing Day falls on a Sunday, the following Wednesday;
 - (b) any other day, or part of any day, that the Minister declares to be a public holiday in the ACT under the *Holidays Act 1958* (the Holidays Act).
- 72.5. Where an identified public holiday in clause 72.3 is replaced by another day through an amendment to the Holidays Act, the replacement day will be observed as the public holiday in its place.

Rate of Payment

- 72.6. Subject to subclause 72.7 and 72.8, where an employee who is entitled to be absent from duty on a day, or a part of a day, that is a public holiday, and the employee is absent from duty, the employee will be paid at the employee's ordinary hourly rate for the employee's ordinary hours of work on that day or part-day. A part-time employee will be entitled to observe a public holiday without loss of pay if the employee would usually have been required to work on the day of the week on which the public holiday falls. To remove any doubt, a part time employee whose regular part time hours do not fall on a public holiday will not be paid for that public holiday.
- 72.7. An employee will not be paid for a public holiday which occurs during a period of leave without pay.
- 72.8. 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

- 72.9. Public holidays count as service for all purposes.
- 72.10. 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.

73 Christmas Shutdown

Purpose

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

Eligibility

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

Entitlement

- 73.3. Employees are entitled to two days of leave during the Christmas shutdown period, which are the business days between 28 December and 31 December inclusive.
- 73.4. 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.
- 73.5. Employees who work during the Christmas shutdown period will, in addition to the entitlement under subclause 73.3 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.
- 73.6. 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.
- 73.7. Notwithstanding subclause 73.6, part time employees whose regular part time hours do not fall during the Christmas shutdown period, but who are directed to work during the Christmas shutdown period, will be entitled to either:

- (a) the payment of overtime at the appropriate rate for the time worked; or
- (b) elect to take paid absence, equivalent to the time worked, at a time agreed between the employee and the relevant manager/supervisor.

Rate of Payment

- 73.8. Christmas shutdown leave is granted with pay.

Effect on Other Entitlements

- 73.9. Christmas shutdown leave counts as service for all purposes.
- 73.10. 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.

74 Compassionate Leave

Purpose

- 74.1. 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, including where a child is stillborn.
- 1.2. Compassionate leave is available to employees to enable them to be absent from duty when the employee or the employee's domestic partner experience a miscarriage.

Eligibility

- 74.2. Compassionate leave is available to all employees.

Entitlement

- 74.3. An employee may be granted compassionate leave from the first day of service.
- 74.4. Compassionate leave is non-cumulative.
- 74.5. 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.
- 74.6. 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

- 74.7. The employee should discuss with their manager/supervisor, as soon as practicable, their absence or intention to be absent on compassionate leave.
- 74.8. An employee must make an application to the Chief Executive to access compassionate leave.
- 74.9. 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 74.1.
- 74.10. Having met the requirements of this clause, the Chief Executive will approve an employee's application to access compassionate leave.
- 74.11. If the employee has not provided the evidence requested under subclause 74.9, a decision not to approve the leave may be taken.

Rate of Payment

- 74.12. Compassionate leave will be granted with pay, except for casual employees and except where it is granted without pay under subclause 74.5 or 74.6.
- 74.13. Compassionate leave is paid at the employee's base rate of pay, including relevant allowances for the ordinary hours the employee would have worked during the leave.

Effect on Other Entitlements

- 74.14. Compassionate leave with pay will count as service for all purposes.
- 74.15. 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.

Interaction with Other Leave Types

- 74.16. 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.

75 Community Service Leave

Purpose

- 75.1. 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

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

Evidence and Conditions

- 75.3. 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
- 75.4. The employee should discuss with their manager/supervisor their intention to be absent on community service leave for jury service.

Rate of Payment

- 75.5. Community service leave for jury service will be granted with pay to employees other than casual employees.
- 75.6. 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

- 75.7. Community service leave for jury service will count as service for all purposes.
- 75.8. 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

75.9. An 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.

75.10. 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

75.11. 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.

75.12. Eligible employees, other than casual employees, are eligible for up to four days paid community service leave for voluntary emergency management per emergency.

75.13. Community service leave for voluntary emergency management is non-cumulative.

Evidence and Conditions

75.14. An employee should discuss their intention to be absent on paid or unpaid community service leave 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.

75.15. An employee must make an application to the Chief Executive to access their paid community service leave entitlement for voluntary emergency management.

75.16. The employee must, if requested by the Chief Executive, provide sufficient documentary evidence of the reason for the absence.

75.17. 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.

75.18. 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 64.1.

Rate of Payment

75.19. 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

75.20. A period of approved community service leave for voluntary emergency management will count as service for all purposes.

75.21. 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

75.22. 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

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

Entitlement

- 75.24. 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.
- 75.25. Community service leave for voluntary community service is non-cumulative.
- 75.26. 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

- 75.27. 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.
- 75.28. An employee must make an application to the Chief Executive to access their community service leave for voluntary community service entitlement.
- 75.29. The Chief Executive may request sufficient documentary evidence of the reason for the absence.
- 75.30. 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 benefits the local community; and/or
 - (b) the community organisation or project is an acceptable organisation or project as defined in the Commission's guidelines or ACT Whole of Government Policy; and
 - (c) there is a risk the activity would place the employee in a real or perceived conflict of interest.
- 75.31. 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 that does not have a community focus.
- 75.32. 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.
- 75.33. A decision not to approve the leave will be taken in accordance with subclause 64.1.

Rate of Payment

- 75.34. 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

- 75.35. 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.
- 75.36. 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.

- 75.37. 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.

Interaction with Other Leave Types

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

76 Birth Leave

Purpose

- 76.1. Birth leave is available to pregnant employees to enable them to be absent from duty to:
- (a) support their 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

- 76.2. An employee who is pregnant is eligible to be absent on birth leave.
- 76.3. An employee is eligible for birth leave where any of the following apply:
- (a) the employee gives birth to a newborn;
 - (b) The employee's pregnancy ends within 20 weeks of the estimated date of delivery of the child, including where a child is stillborn.
- 76.4. Where an employee's pregnancy ends by miscarriage, any birth leave that has been prospectively approved will be cancelled. In this circumstance, the employee may become eligible for compassionate leave in accordance with clause **Error! Reference source not found.** and special birth leave in accordance with clause **Error! Reference source not found.**

Eligibility – Paid Birth Leave

- 76.5. An employee, other than a casual employee, who is eligible for birth leave and who has completed 12 months of continuous service, including recognised prior service, immediately prior to commencing a period of birth leave is eligible for paid birth leave.
- 76.6. An employee, other than a casual employee, who is eligible for birth leave and who completes 12 months of continuous service within the first 18 weeks of birth leave is eligible for paid birth leave for the period between completing 12 months of continuous service and the end of the first 18 weeks of birth leave.
- 76.7. An employee who is eligible for birth leave and who is on approved leave without pay is eligible for paid birth leave for the period between completing the approved period of leave without pay and the end of the first 18 weeks of birth leave.

Entitlement

- 76.8. An eligible employee is entitled to be absent for up to 52 weeks birth leave for each pregnancy. To avoid doubt, the entitlement under this clause does not increase in cases of multiple births.
- 76.9. Subject to subclause 76.5 an employee who is eligible for paid birth leave is entitled to be paid for the first 18 weeks of birth leave. This entitlement is in addition to the Federal paid parental leave scheme.
- 76.10. Birth leave is non-cumulative.
- 76.11. Subject to subclauses 76.13 and 76.14, an employee who is eligible for birth leave must absent themselves from duty for a period commencing six weeks prior to the estimated date of delivery of the child and ending six weeks after the actual date of birth of the child.
- 76.12. An eligible employee's period of birth leave will commence:

- (a) subject to subclause 76.13, six weeks prior to the estimated date of delivery of the child; or
 - (b) on the birth of the child (including where this occurs earlier than six weeks prior to the estimated date of delivery of the child); or
 - (c) on the date the pregnancy ends if that occurs within 20 weeks of the estimated date of delivery of the child; or
 - (d) for all other eligible employees, on the first day of paid birth leave.
- 76.13. An employee who produces medical evidence from a registered medical practitioner that they are fit for duty until a date less than six weeks prior to the estimated date of delivery of the child may continue to work up until a date recommended by the medical practitioner, subject to the approval of the Chief Executive and remaining fit for duty.
- 76.14. An employee who has given birth to a child and produces medical evidence from a registered medical practitioner that they are 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.
- 76.15. 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 birth leave subject to the approval of the Chief Executive.
- 76.16. 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

- 76.17. An employee must give notice to their manager/supervisor as soon as practicable of their intention to be absent on birth leave.
- 76.18. Birth leave is deemed to be approved; however an employee must submit an application to the Chief Executive for any period of birth leave. Having considered the requirements of this clause the Chief Executive will approve an employee's application to access birth leave.
- 76.19. Prior to commencing birth leave an employee will provide the Chief Executive with evidence of the pregnancy and the estimated date of delivery from a registered medical practitioner or registered health professional who is operating within their scope of practice.
- 76.20. An employee will provide the Chief Executive with evidence of the birth and the date of the birth of the child as soon as possible after the birth of the child. 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

- 76.21. The rate of payment to be paid to the employee during a paid period of birth leave is the same rate as would be paid if the employee was granted paid personal leave.
- 76.22. Despite subclause 76.21, where an employee varies their ordinary hours of work, either from part time to full time, from part time to different part time, or from full time to part time, during the 12 month period directly preceding birth leave, the rate of payment for the paid component of their birth leave, which will be capped at full time rates, will be calculated by using the average of their ordinary hours of work, excluding any periods of leave without pay, for the 12 month period immediately before the period of birth leave commences.
- 76.23. To avoid doubt, an employee's status and all other entitlements remain unaltered by the operation of subclause 76.22
- 76.24. Paid birth leave may be taken as full or half pay, in any combination of full and half pay, with credits to be deducted on the same basis. The maximum paid period is up to 36 weeks at half pay.

- 76.25. The Chief Executive may approve, subject to a medical certificate from a registered medical practitioner, an employee taking paid birth 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 birth leave entitlement.
- 76.26. A period of paid birth leave does not extend the maximum 52 week period of birth leave available to an eligible employee
- 76.27. An employee's period of absence on birth leave between the paid period of birth leave and the maximum 52 week period of birth leave will be without pay, unless other paid leave entitlements are accessed.

Effect on Other Entitlements

- 76.28. Birth leave with pay will count as service for all purposes.
- 76.29. Any period of unpaid birth leave taken by an employee during the period commencing six weeks prior to the estimated date of delivery of the child and ending six weeks after the actual date of birth of the child will count as service for all purposes.
- 76.30. Subject to subclause 76.29 any period of unpaid birth leave taken by an employee will not count as service for any purpose but does not break continuity of service.
- 76.31. Public holidays for which the employee would otherwise have been entitled to payment that fall during periods of absence on birth leave will not be paid as a normal public holiday.

Interaction with Other Leave Types

- 76.32. An application by an employee for long service leave or annual leave during a period that would otherwise be an unpaid period of birth leave will be granted to the extent of available entitlements.
- 76.33. Subject to subclause 66.35, an application by an employee for personal leave during a period that would otherwise be an unpaid period of birth 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

- 76.34. At any time after six weeks from the child's date of birth, an employee on invitation by an authorised person, 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.).
- 76.35. The employee will be paid at their ordinary hourly rate of pay for the hours they attend the workplace in accordance with subclause 76.34 during unpaid birth 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 birth leave.
- 76.36. For the purpose of subclause 76.34, a medical certificate is not required.

77 Special Birth Leave

Purpose

- 77.1. Special birth 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 28 of the estimated date of delivery, other than by the birth of a living child.

Note: If a pregnancy ends within 20 weeks of the expected date of birth of the child the employee may be entitled to paid or unpaid birth leave as per subclauses 76.3 and 76.5.

Eligibility

- 77.2. Special birth leave is available to all employees and eligible casual employees.

Entitlement

- 77.3. An employee is entitled to a period of unpaid special birth leave for the duration certified by a registered medical practitioner or registered health professional operating within their scope of practice as necessary.

Evidence and Conditions

- 77.4. The employee must provide the Chief Executive with notice that they are taking special birth leave. 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.
- 77.5. An employee must submit an application to the Chief Executive for any period of special birth leave. Having considered the requirements of this clause the Chief Executive will approve an employee's application to access special birth leave.
- 77.6. An employee who has given notice that special birth 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 or a registered health professional operating within their scope of practice.

Rate of Payment

- 77.7. Special birth leave is granted without pay.

Effect on Other Entitlements

- 77.8. Special Birth leave does not count as service for any purpose.
- 77.9. Special birth leave does not break continuity of service.
- 77.10. Special birth leave accessed due to pregnancy related illness is deducted from the entitlement for unpaid birth leave accessed after the birth of the child/ren.

Interaction with Other Leave Types

- 77.11. Special birth leave is in addition to any accrued personal leave entitlement.
- 77.12. Special birth leave is in addition to compassionate leave.
- 77.13. Special birth leave will not reduce an employee's entitlement to unpaid parental leave.

78 Primary Care Giver Leave

Purpose

- 78.1. Primary care giver leave is available to employees to enable them to be absent from duty to:
- (a) care for and bond with a newborn child; and
 - (b) support the protection of the family and children under the *Human Rights Act 2004*.

Eligibility

- 78.2. Primary care giver leave is available to employees other than casual employees who are the primary care giver of a newborn child.
- 78.3. An employee who has completed at least 12 months service, including recognised prior service, immediately prior to commencing a period of primary care giver leave, is eligible for primary care giver leave.
- 78.4. An employee who is eligible for paid birth leave, foster and short-term care leave, or adoption or permanent care leave is not eligible for primary care giver leave.

- 78.5. An employee who completes 12 months of continuous service within 18 weeks of becoming the primary care giver for a child is eligible for primary care giver leave for the period between completing 12 months of qualifying service and the end of the first 18 weeks of becoming the primary care giver of the child.

Entitlement

- 78.6. An eligible employee is entitled to 18 weeks of paid leave in relation to each birth and this entitlement is in addition to the Federal paid parental leave scheme. 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.
- 78.7. Primary care giver leave is non-cumulative.
- 78.8. 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

- 78.9. An employee should discuss with their manager/supervisor, as soon practicable, their intention to be absent on primary care giver leave.
- 78.10. An employee must make an application to the Chief Executive to access the primary care giver leave.
- 78.11. 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.
- 78.12. In all cases details of leave being taken by other persons in relation to the same child (or children in the case of multiple births) must be provided.
- 78.13. Before granting primary care giver leave, the Chief Executive must be satisfied that the employee demonstrates that they are the primary care giver.
- 78.14. For the purposes of this clause a newborn is considered to be a baby of up to 14 weeks old. In extenuating circumstances, the Chief Executive may approve primary care giver leave when a newborn is more than 14 weeks old.
- 78.15. Having considered the requirements of this clause the Chief Executive will approve an employee's application to access primary care giver leave.
- 78.16. The total combined entitlement under this clause and the birth leave clause and equivalent clauses in this enterprise agreement, is 18 weeks of paid leave in relation to the birth.
- 78.17. Primary care giver leave may be taken in any combination with birth 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

- 78.18. Primary care giver leave will be granted with pay.
- 78.19. 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.
- 78.20. Despite subclause 78.19, where an employee varies their ordinary hours of work, either from part time to full time, from part time to different part time, or from full time to part time, during the twelve-month period directly preceding primary care giver leave, the rate of payment for the paid component of their primary care giver leave, which will be capped at full time rates, will be calculated by using the average of their ordinary hours of work, excluding any periods of leave without pay, for the 12 month period immediately before the period of primary care giver leave commences.

- 78.21. To avoid doubt, an employee's status and all other entitlements remain unaltered by the operation of subclause 78.20.
- 78.22. Primary care giver leave may be granted as full or half pay, or a combination of full and half pay, with credits to be deducted on the same basis. The maximum paid period is up to 36 weeks at half pay.

Effect on Other Entitlements

- 78.23. Primary care giver leave will count as service for all purposes.
- 78.24. 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.

Interaction with Other Leave Types

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

Keep in Touch Arrangements

- 78.26. An employee on primary care giver leave may, on invitation by an authorised person, 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).
- 78.27. The employee will be paid at their ordinary hourly rate of pay for the hours they attend work in accordance with clause 78.26 during unpaid primary care giver 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 primary care giver leave.

79 Parental Leave

Purpose

- 79.1. Parental leave is in addition to the provisions available in birth 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 commencement of a permanent caring arrangement for a child.

Eligibility

- 79.2. 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 commencement of a permanent caring arrangement for a child.

Entitlement

- 79.3. An employee is entitled to up to two years of parental leave following the child's birth, adoption or the commencement of a permanent caring arrangement for a child. less any period of birth leave or primary care giver leave which the employee has taken in relation to the same birth or child.
- 79.4. 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.
- 79.5. 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.
- 79.6. 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 the commencement of a permanent caring arrangement for a child.

Evidence and Conditions

- 79.7. An employee should discuss with their manager/supervisor, as soon as practicable, their intention to be absent on parental leave.

- 79.8. An employee must make an application to the Chief Executive to access their unpaid parental leave entitlement.
- 79.9. Having considered the requirements of this clause the Chief Executive will approve an employee's application to access parental leave.
- 79.10. 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 permanent caring arrangement.
- 79.11. The Chief Executive will not grant parental leave if the employee's domestic partner is on concurrent birth or primary care giver leave following the birth or adoption of a child or the commencement of a permanent caring arrangement for a child.

Rate of Payment

- 79.12. Parental leave will be granted without pay.

Effect on Other Entitlements

- 79.13. Parental leave does not count as service for any purpose.
- 79.14. Parental leave does not break continuity of service.
- 79.15. 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.

Interaction with Other Leave Types

- 79.16. An employee on parental leave may access annual and long service leave on full or half pay to the extent of available entitlements.
- 79.17. 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

- 79.18. An employee may, following an invitation by an authorised person, 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 birth or primary caregiver leave as per subclauses 76.34 or 78.26.
- 79.19. The employee will be paid at their ordinary hourly rate of pay for the hours that they attend the workplace in accordance with 79.18 . 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.

80 Bonding Leave

Purpose

- 80.1. Bonding leave is available to employees to enable them to be absent from duty to:
- (a) bond with their newborn child, adopted child or a foster child for whom the employee's domestic partner has commenced a primary care giving role under a permanent caring arrangement.
 - (b) support the protection of the family under the *Human Rights Act 2004*.

Eligibility

- 80.2. Bonding leave is available to employees other than casual employees at the time of the child's birth, adoption, or the commencement of a permanent caring arrangement when the employee is not the primary care giver to the child.
- 80.3. An employee who is eligible for paid birth leave, adoption or permanent care leave or primary care giver leave is not entitled to bonding leave.
- 80.4. 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

- 80.5. 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 66.24.
- 80.6. 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 12 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.
- 80.7. The entitlement under subclause 80.7 will be reduced by the extent of the entitlement accessed by an employee under sub-clause 80.5.
- 80.8. To avoid doubt, the entitlement under this clause does not increase in cases of multiple births, adoptions or permanent caring arrangements that apply to more than one child at the one time.
- 80.9. Bonding leave is non-cumulative.
- 80.10. Bonding leave must be taken within 14 weeks from the date of birth, adoption or commencement of the permanent caring arrangements, unless there are exceptional circumstances, and the Chief Executive agrees to a longer period.
- 80.11. The one week (five days) of personal leave accessed as per subclause 66.24 may be taken at any time up to 14 weeks from the date of the birth, adoption, or permanent caring arrangement.
- 80.12. Where an employee's domestic partner is also a Commission employee this leave may be taken concurrently with the domestic partner receiving birth leave, adoption or permanent care leave or primary care giver leave.

Evidence and Conditions

- 80.13. An employee should discuss with their manager/supervisor, as soon as practicable, their intention to be absent on bonding leave.
- 80.14. 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.
- 80.15. 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 estimated date of delivery 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 a permanent caring arrangement until the child reaches the age of 18.
- 80.16. 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 14 weeks (not applicable in cases of adoption or permanent caring arrangements); or

- (b) an adopted adult or an adult who is the subject of a permanent care arrangement over the age of 18 on the day of placement.

Rate of Payment

- 80.17. Bonding leave will be granted with or without pay.
- 80.18. 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

- 80.19. 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.
- 80.20. 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.

81 Grandparental leave

Purpose

- 81.1. 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

- 81.2. Grandparental leave is available to employees other than casual employees and employees on probation.
- 81.3. 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

- 81.4. An eligible employee may be granted up to 52 weeks of grandparental leave, in relation to each grandchild under care. This leave may be taken over a period not exceeding five years.
- 81.5. Grandparental leave is available up until the fifth birthday of the grandchild for whom the employee is the primary care giver.
- 81.6. Grandparental leave is non-cumulative.
- 81.7. 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 12 months.

- 81.8. 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 81.10.

Evidence and Conditions

- 81.9. An employee should discuss with their manager/supervisor, as soon as practicable, their intention to be absent on grandparental leave.
- 81.10. 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.

- 81.11. 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 64.1.
- 81.12. The Chief Executive should not approve an application for grandparental leave where an employee has an annual leave balance in excess of eight weeks.
- 81.13. 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 estimated date of the delivery 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.
- 81.14. 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

- 81.15. Grandparental leave will be granted without pay.

Effect on Other Entitlements

- 81.16. Employees cannot engage in outside employment during a period of grandparental leave without the prior approval of the Chief Executive.
- 81.17. Grandparental leave will count as service for all purposes except the accrual of annual leave and personal leave.
- 81.18. Grandparental leave will not break continuity of service.
- 81.19. 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.

Interaction with Other Leave Types

- 81.20. An employee on grandparental leave may access annual leave, purchased leave or long service leave.
- 81.21. 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.

Unattachment

- 81.22. During an employee's absence on grandparental leave, the Chief Executive may, with the employee's written consent, declare the employee unattached.

82 Adoption or Permanent Care Leave

Purpose

- 82.1. Adoption or Permanent Care leave is available to employees to enable them to be absent from duty to:
- (a) care for and bond with an adopted child or a child for whom the employee has a permanent caring responsibility, including kinship arrangements, where the child is under the age of 18; 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

- 82.2. Paid adoption or permanent care leave is available to an employee other than a casual employee who is the primary care giver of:
- (a) an adopted child; or
 - (b) a child for whom the employee has a permanent caring responsibility, where the child is under the age of 18.
- 82.3. An employee providing foster care under a Concurrency Care Foster Care Program described in clause 84 will be treated as having a permanent caring responsibility and be eligible for adoption or permanent care leave subject to the terms of this clause.
- 82.4. An employee who:
- (a) is granted adoption or permanent care leave in respect of a child being cared for under a Concurrency Care Foster Care Program; and
 - (b) subsequently enters into an adoption or permanent care arrangement for that child will not be eligible for any further grant of adoption or permanent care leave for that child.
- 82.5. An employee who has completed at least 12 months continuous service, including recognised prior service, immediately prior to commencing a period of adoption or permanent care leave is eligible for adoption or permanent care leave.
- 82.6. An employee who is eligible for paid primary care giver leave is not eligible for adoption or permanent care leave.
- 82.7. An employee who completes 12 months of continuous service within 18 weeks of becoming the primary care giver for an adopted child or a child for whom the employee has a permanent caring responsibility is eligible for adoption or permanent care leave for the period between completing 12 months of qualifying service and the end of the first 18 weeks of becoming the primary care giver of the child.

Entitlement

- 82.8. An eligible employee is entitled to 18 weeks of paid leave in relation to each occasion of adoption or commencement of a permanent caring responsibility, less any leave taken in accordance with clause 83 in the same 12 month period in relation to the same child.
- 82.9. A casual employee is entitled to unpaid pre-adoption leave in accordance with the provisions of the National Employment Standards.
- 82.10. To avoid doubt, the entitlement under subclause 82.8 does not increase when the adoption or permanent caring responsibility involves more than one child at the time of application.
- 82.11. Adoption and permanent care leave is non-cumulative.
- 82.12. An employee is entitled to return to work in accordance with the provisions in the National Employment Standards.

Evidence and Conditions

- 82.13. An employee should discuss with their manager/supervisor, as soon practicable, their intention to be absent on adoption or permanent carer leave.
- 82.14. An employee must make an application to the Chief Executive to access their adoption or permanent care leave.
- 82.15. The employee must provide the Chief Executive with appropriate evidence concerning the reasons for and circumstances under which the adoption or permanent care leave application is made, which may include:
- (a) documents from an adoption authority concerning the adoption; or

- (b) an authorisation as a kinship carer made under the *Children and Young Peoples Act 2008*; or
 - (c) documents confirming that an arrangement consistent with the terms set out in clause 84 applies.
- 82.16. In all cases details of leave being taken by other persons in relation to the same child must be provided.
- 82.17. Leave under this clause will not be approved for employees in circumstances where the child has lived continuously with the employee for a period of six months or more at the date of placement or in cases where the child is a child of the employee or employee's spouse or partner.
- 82.18. Before granting leave the Chief Executive must be satisfied that the employee is the primary care giver.
- 82.19. Adoption or permanent care leave may commence up to one week prior to the date the employee assumes permanent caring responsibility for the child but not later than the formal commencement of the adoption or permanent caring responsibility unless exceptional circumstances apply.
- 82.20. In all cases, the child must be under the age of 18 on the date the employee assumes permanent responsibility for the child for leave to be approved.

Rate of Payment

- 82.21. Adoption or permanent care leave will be granted with pay, except for unpaid pre-adoption leave for casual employees.
- 82.22. The rate of payment to be paid to the employee during a paid period of adoption or permanent care leave is the same rate as would be paid if the employee was granted personal leave.
- 82.23. Despite subclause 82.22 where an employee varies their ordinary hours of work, either from part time to full time, from part time to different part time, or from full time to part time, during the twelve month period directly preceding adoption or permanent caring leave, the rate of payment for the paid component of their adoption or permanent care leave, which will be capped at full time rates, will be calculated by using the average of their ordinary hours of work, excluding any periods of leave without pay, for the twelve month period immediately before the period of adoption or permanent care leave commences.
- 82.24. To avoid doubt, an employee's status and all other entitlements remain unaltered by the operation of subclause 82.23.
- 82.25. Leave may be granted with full, or half pay, or a combination of full and half pay, with credits to be deducted on the same basis. The maximum paid period is up to 36 weeks at half pay.

Effect on Other Entitlements

- 82.26. Paid adoption or permanent care leave will count as service for all purposes.
- 82.27. Public holidays for which the employee would otherwise have been entitled to payment that fall during periods of absence on adoption or permanent care leave will not be paid as a normal public holiday.

Interaction with Other Leave Types

- 82.28. Adoption or permanent care leave does not extend the maximum period of unpaid parental leave available to an employee.

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 and respite care, that has not been determined to be permanent; 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 12 months continuous service, immediately prior to commencing a period of Foster and Short-Term Care leave, 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, up to a maximum of two weeks (10 days) per calendar year.
- 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 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:
 - (a) documents relating to current and previous court orders granting responsibility for a foster child; or
 - (b) documents from a registered health professional or registered medical practitioner.

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.

Interaction with Other Leave Types

- 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 Concurrency Care Entitlement to Adoption of Permanent Care Leave

- 84.1. For the purpose of subclause 84.2, a Community Organisation is an organisation involved with out of home care and adoption of children and young people, for example:
- (a) a member of the ACT Together consortium.
 - (b) Mary mead; or
 - (c) A similar organisation based outside the ACT.
- 84.2. For the purposes of subclause 84.3, a Concurrency Care Foster Care Program involves a Community Organisation placing a child with foster carers while restoration to the birth family is explored. If restoration is not achieved, the foster carers have an opportunity to care for the child permanently. The Primary Care Giver in such an arrangement is required by the Community Organisation to take a minimum of 12 month leave to stabilise the placement of the child.
- 84.3. Notwithstanding clause 83, an employee who provides foster care under a Concurrency Care Foster Care Program, in accordance with arrangements approved by the Community Services Directorate, will be entitled to apply for Adoption or Permanent Care Leave under clause 82, as if they had a permanent caring responsibility. Such employees will not be entitled to leave under clause 83.

85 Leave for Family Violence Purposes

Purpose

- 85.1. Leave for family violence purposes is available to employees who are experiencing family violence to allow them to be absent from the workplace to attend counselling appointments, legal proceedings and other activities related to, and as a consequence of, family violence.

Eligibility

- 85.2. Leave for family violence purposes is available to all employees with the exception of casual employees.
- 85.3. Casual employees are entitled to access leave without pay for family violence purposes.

Entitlement

- 85.4. An employee experiencing family violence will have access up to a maximum of 20 days/shifts per calendar year paid leave, subject to the provision of appropriate evidence. Leave for family violence purposes is non-accumulative.
- 85.5. Leave for family violence purposes is in addition to other leave entitlements and is not to be used as a substitute for personal leave. However, where supporting evidence is not immediately available the Chief Executive will, grant paid leave under clause 67 of this Agreement (Personal Leave in Extraordinary Circumstances), subject to available credit. If the employee subsequently produces supporting evidence, the personal leave will be re-credited and the leave taken will be converted to leave for family violence purposes.
- 85.6. Leave for family violence purposes is to be used for but not limited to the following actions required as a result of family violence occurring to:
- (a) Attend appropriate medical appointments for referral to other appropriate counselling or support services;
 - (b) obtain legal advice;
 - (c) attend counselling appointments;
 - (d) seek assistance from other relevant support services;

- (e) attend court proceedings;
- (f) attend prosecution appointments;
- (g) attend police appointments;
- (h) attend to Protection Order matters and Domestic Violence Order matters however termed;
- (i) attend to issues arising through urgent property damage that is a consequence of family violence;
- (j) seek veterinary assistance for pets injured through family violence;
- (k) access alternative accommodation;
- (l) access alternative childcare or schooling for children.

Note: It may be necessary under this provision for the employee to use additional time to the duration of appointments, proceedings etc in order to facilitate travel and recovery.

- 85.7. Leave for family violence purposes may be taken as consecutive or single days, or as part days.
- 85.8. For confidentiality and privacy reasons, leave for family violence purposes will be attributed as coming under "where leave cannot be granted under any other provision" which is included and identified within "Other Leave Types" in Annex D of this Agreement.

Evidence and Conditions

- 85.9. Employees wishing to access leave for family violence purposes should discuss making an application with their manager/supervisor or the Human Resources Manager as soon as reasonably practical.
- 85.10. As a general rule, a leave application should be submitted by an employee for approval by the Chief Executive before the commencement of the leave. However, retrospective applications may be approved provided that appropriate evidence is provided as soon as reasonably practicable upon the employee's return to the workplace.
- 85.11. Evidence of the occurrence of family violence will be required to access leave for family violence purposes.
- 85.12. Evidence may include:
 - (a) a document issued by the Police;
 - (b) a written referral, issued by a registered medical practitioner or registered nurse, to a counsellor trained in providing support in family violence situations;
 - (c) a document issued by a Court, or a counsellor trained in providing support to people experiencing the effects of family violence;
 - (d) written confirmation from an Employee Assistance Program provider or from a family violence support service that the employee is experiencing family violence issues.
- 85.13. Managers are to keep all information concerning the leave application strictly confidential. This includes, after sighting any supporting documentation, returning that documentation to the employee.

Rate of Payment

- 85.14. Leave for family violence purposes is granted with pay. Casual employees are entitled to access leave without pay for family violence purposes.
- 85.15. Leave for family violence purposes will not be granted at half pay, unless there are extenuating circumstances.

Effect on Other Leave Types

- 85.16. Leave with pay for family violence purposes will count as service for all purposes. Leave without pay for family violence purposes will not count as service for any purpose, but will not break an employee's continuity of service.

Interaction with Other Leave Types

- 85.17. Where leave for family violence purposes credits have been exhausted the Chief Executive may grant an employee leave without pay or other forms of paid leave, such as annual leave or long service leave.

- 85.18. Employees should utilise personal leave for an illness or injury, or to seek treatment for an illness or injury, caused by family violence.
- 85.19. Leave entitlements under clause 67 of this Agreement (Personal Leave in Extraordinary and Unforeseen Circumstances) may be used by an employee who is seeking leave to support a person who is experiencing family violence.

86 Other Leave

Purpose

- 86.1. Other leave is available to employees to enable them to be absent from duty for a variety of purposes as set out in Annex D.
- 86.2. 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

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

Entitlement

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

Evidence and Conditions

- 86.5. 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.
- 86.6. An employee must make an application to the Chief Executive to access a form of other leave.
- 86.7. 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 64.1.
- 86.8. The employee must, if requested by the Chief Executive, provide sufficient documentary evidence supporting the reason for the absence.
- 86.9. 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

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

Effect on Other Entitlements

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

- 86.12. 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.

Interaction with Other Leave Types

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

Unattachment

- 86.14. Where the leave is without pay for a period of more than twelve months the Chief Executive may, with the employee's written consent, declare the employee unattached.

87 Long Service Leave

Purpose

- 87.1. Long service leave is available to employees to enable them to be absent from duty in recognition of their length of service in the public sector.

Eligibility

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

Entitlement

- 87.3. Employees will accrue long service leave at the rate of three months for each ten years of completed eligible employment, or an equivalent period of employment for casual employees.
- 87.4. A period without pay not to count as service of one day or more will not count towards long service accrual but does not break a period of employment for the purpose of determining an employee's eligibility for long service leave.
- 87.5. Employees accrue long service leave according to the employee's ordinary hours of work.
- 87.6. 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 of completed eligible employment.
- 87.7. To encourage the flexible use of long service leave:
- (a) 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; or
 - (b) an employee may, in writing, request the approval of the Chief Executive to the partial or full payment in lieu (cash out) of their accrued long service leave credit. The payment in lieu is subject to a minimum payment of one week and will be based on the rate of pay the employee would have received had the employee taken the leave.
- 87.8. If the employee is on higher duties at the time of taking, or cashing out, long service leave, payment for the leave at the higher duties rate will only be approved if the higher duties would have continued for the entire period of the leave taken, or the entire period of the leave cashed out.
- 87.9. Employees will receive payment on separation of any pro-rata long service leave entitlements after seven years of completed eligible employment.
- 87.10. Where an employee whose period of eligible employment is less than seven years but not less than one year ceases to be an employee:
- (a) otherwise than because of the employee's death, on, or after, the employee attaining the minimum retiring age; or
 - (b) because of the employee's redundancy; or

- (c) 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 subclause in accordance with Part 4.3 of the PSM Standards..

- 87.11. If an employee whose period of employment is not less than one year dies, the Chief Executive may authorise payment of an amount equal to 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.

Effect on Other Entitlements

- 87.12. Long service leave will count as service for all purposes.
- 87.13. When applying for long service leave an employee must seek approval if they propose to engage in outside employment during the leave.

88 Disability Leave

Purpose

- 88.1. Disability leave is available to employees to enable them to be absent from duty for the purposes of activities associated with an employee's diagnosed permanent or ongoing physical or psychological disability.
- 88.2. Disability leave supports the Commission's commitment to being an equitable employer and to support employees with disability to balance their work commitments with appointments or activities associated with their disability.

Eligibility

- 88.3. Disability leave is available to employees, other than casual employees, who have a disability. For the purposes of this clause, disability is defined as a permanent or ongoing physical or psychological disability attributable to one or more intellectual, cognitive, neurological, sensory or physical impairments or to one or more impairments attributable to a psychiatric condition.

Entitlement

- 88.4. Employees eligible for disability leave will be entitled up to a maximum of 5 days/shifts of disability leave per calendar year, subject to the provision of appropriate evidence. Disability leave is non-cumulative.
- 88.5. An employee may be granted disability leave from the first day of service.
- 88.6. The use of disability leave is restricted to activities associated with an employee's disability and is not to be used as a substitute for personal leave entitlements available under clause 66.
- 88.7. Disability leave is to be used for activities or appointments associated with the employee's disability, including, but not limited to the following:
 - (a) attend appointments with medical practitioners.
 - (b) attend treatment, rehabilitation, therapy or counselling.
 - (c) attend tests or assessments.
 - (d) receive delivery of, fitting, repairing, maintaining and undergoing training in use of orthoses, prostheses, adaptive equipment, or other aids.
 - (e) obtain wheelchair or other equipment maintenance or replacement.

Evidence and conditions

- 88.8. Employees wishing to access disability leave should discuss their intention to take leave with their manager or supervisor as soon as practical.
- 88.9. An employee must make an application to the Chief Executive to access disability leave accompanied by supporting documentary evidence.

- 88.10. Evidence may include any of the following as requested by the Chief Executive:
- (a) medical certificate from a registered medical practitioner or registered health professional operating within their scope of practice
 - (b) written referral, issued by a registered medical practitioner
 - (c) statutory declaration
 - (d) other reasonable forms of documentation.
- 88.11. Having considered the requirements of this clause the Chief Executive may approve an employee's application to access disability leave, subject to operational requirements in the workplace.
- 88.12. If the Chief Executive does not approve an employee's application for disability 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.

Management of the disability

- 88.13. An employee may initiate a request to establish an individual disability management plan.
- 88.14. Following a request made under 88.13, the manager and employee will jointly prepare and agree to a disability management plan.

Rate of payment

- 88.15. Disability leave is granted with pay.
- 88.16. The rate of payment to be paid to the employee during a paid period of disability leave is the same rate as would be paid if the employee was granted paid personal leave.

Effect on other entitlements

- 88.17. Employees who are unable to attend work due to illness related to their disability may utilise personal leave.
- 88.18. Disability leave will count as service for all purposes.
- 88.19. Public holidays for which the employee would otherwise have been entitled to payment that fall during periods of absence on disability leave will be paid as a normal public holiday.

Interaction with other leave entitlements

- 88.20. Where an employee has exhausted their disability leave entitlement, they may apply for approval to take personal leave, or other forms of paid leave such as annual leave or long service leave.

89 Surrogacy Leave

Purpose

- 89.1. Surrogacy leave is available to pregnant employees who have entered into a valid surrogacy arrangement to enable them to be absent from duty to:
- (a) support their own wellbeing, and.
 - (b) support the employee's right to continuity of service.

Eligibility

- 89.2. An employee who is pregnant as part of a valid Australian surrogacy agreement is eligible to be absent on surrogacy leave.
- 89.3. An employee who is eligible for surrogacy leave is not entitled to birth leave under clause 76.
- 89.4. An employee is eligible for surrogacy leave where:
- (a) the employee gives birth to a newborn child as part of a valid surrogacy agreement.
 - (b) the employee's pregnancy as part of a valid surrogacy agreement ends at within 20 weeks of the estimated date of delivery other than by the birth of a living child (including stillbirth).

- 89.5. Where an employee's pregnancy ends more than 20 weeks before the estimated date of delivery of the child any surrogacy leave that has been prospectively approved must be cancelled. In this circumstance the employee may become eligible for compassionate leave in accordance with clause 74 and/or special birth leave in accordance with clause 77.

Eligibility – paid surrogacy leave

- 89.6. An employee, other than a casual employee, who is eligible for surrogacy leave and has completed 12 months of continuous service, including recognised prior service, immediately prior to commencing a period of surrogacy leave is eligible for paid surrogacy leave.
- 89.7. An employee, other than a casual employee, who is eligible for surrogacy leave and completes 12 months of continuous service within the first 12 weeks of surrogacy leave is eligible for paid surrogacy leave for the period between completing 12 months of service and the end of the first 12 weeks of surrogacy leave.
- 89.8. An employee who is eligible for paid surrogacy leave and is on approved leave without pay is eligible for paid surrogacy leave for the period between completing the approved period of leave without pay and the end of the first 12 weeks of surrogacy leave.

Entitlement

- 89.9. Subject to subclause 89.6, an employee who is eligible for paid surrogacy leave is entitled to 12 weeks of paid leave in relation to each birth.
- 89.10. To avoid doubt, the entitlement under this clause does not increase in cases of multiple births.
- 89.11. Surrogacy leave is non-cumulative.
- 89.12. Subject to subclauses 89.13 and 89.14, a surrogate who is eligible for surrogacy leave must absent themselves from duty for a period commencing 6 weeks prior to the estimated date of delivery of the child and ending 6 weeks after the actual date of birth of the child.
- 89.13. A surrogate who produces medical evidence from a registered medical practitioner stating they are fit for duty until a date less than 6 weeks prior to the estimated date of delivery of the child may continue to work up until a date recommended by the medical practitioner, subject to the approval of the Chief Executive and remaining fit for duty.
- 89.14. A surrogate who has given birth to a child and produces medical evidence from a registered medical practitioner stating they are fit for duty from a date less than 6 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.
- 89.15. A surrogate who has given birth to a child may resume duty following the end of the 6 week period after the birth of the child, and earlier than the end of the approved period of surrogacy leave subject to the approval of the Chief Executive.
- 89.16. An employee who has given birth to a child is entitled to return to work in accordance with the provisions in the National Employment Standards of the FW Act.

Evidence and conditions

- 89.17. An employee must give notice to their manager or supervisor as soon as practicable of their intention to be absent on surrogacy leave.
- 89.18. Surrogacy leave is deemed to be approved; however, an employee must submit an application to the Chief Executive for any period of surrogacy leave.
- 89.19. Having considered the requirements of this clause the Chief Executive must approve an employee's application to access surrogacy leave.
- 89.20. Prior to commencing surrogacy leave an employee will provide the Chief Executive with documentary evidence of both the following:
- (a) pregnancy and the estimated date of delivery from a registered medical practitioner or registered health professional who is operating within their scope of practice.

(b) evidence of the valid surrogacy arrangement.

89.21. If requested by the Chief Executive, an employee must provide the Chief Executive with documentary evidence of the birth and the date of the birth of the child as soon as possible after the birth of the child. Such documentary 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

89.22. The rate of payment to the employee during a paid period of surrogacy leave is the same rate as would be paid if the employee was granted paid personal leave.

89.23. Despite 89.22, where an employee varies their ordinary hours of work, either from part time to full time, from part time to different part time, or from full time to part time, during the 12-month period directly preceding surrogacy leave, the rate of payment for the paid component of their surrogacy leave, which will be capped at full time rates, will be calculated by using the average of their ordinary hours of work, excluding any periods of leave without pay, for the 12-month period immediately before the period of surrogacy leave commences.

89.24. To avoid doubt, an employee's status and all other entitlements remain unaltered by the operation of subclause 89.23.

Effect on other entitlements

89.25. Surrogacy leave with pay will count as service for all purposes.

89.26. Any period of unpaid surrogacy leave taken by an employee during the period commencing 6 weeks prior to the estimated date of delivery of the child and ending 6 weeks after the actual date of birth of the child will count as service for all purposes.

89.27. Public holidays for which the employee would otherwise have been entitled to payment that fall during periods of absence on surrogacy leave will not be paid as a normal public holiday.

Interaction with other leave entitlements

89.28. An employee who is eligible for surrogacy leave is not entitled to birth leave under clause 76.

90 Gender transition leave

Purpose

90.1. Gender transition leave is available to employees to enable them to be absent from duty for the purposes of activities associated with affirming an employee's gender.

Eligibility

90.2. Gender transition leave is available to employees, other than casual employees, who are undergoing transition to another gender.

Entitlement

90.3. Gender transition leave is available to an employee for the first 52 weeks after commencement of living as a member of another gender.

90.4. An employee undergoing gender transition is entitled, subject to the provision of appropriate evidence, to:

- (a) up to four weeks (20 days) full paid leave, or
- (b) up to eight weeks (40 days) half pay leave, or
- (c) a combination of 90.4a and 90.4b, and
- (d) up to 48 weeks unpaid leave.

90.5. Leave for gender transition purposes is in addition to other leave entitlements, and is for activities associated with affirming an employee's gender to enable them to be absent from duty to:

- (a) attend appropriate medical or psychological appointments.
- (b) attend counselling appointments.
- (c) obtain legal advice.
- (d) obtain hormonal treatments.
- (e) undergo gender transition surgery or attending surgery-related appointments.

Note: it may be necessary under this provision for the employee to use additional time to the duration of appointments in order to facilitate travel and recovery.

90.6. Leave for gender transition purposes may be taken as consecutive, single or part days up to the 20 day entitlement.

Evidence and conditions

90.7. Employees wishing to access gender transition leave should discuss their intention to take leave with their manager or supervisor, or the HR Manager, as soon as practical.

90.8. An employee must make an application to access gender transition leave. As far as practicable an employee will provide at least four weeks' written notice of their intended commencement date together with supporting documentary evidence.

90.9. Evidence may include any of the following as requested by the Chief Executive:

- (a) medical certificate from a registered medical practitioner or registered professional operating within their scope of practice.
- (b) written referral, issued by a registered medical practitioner, to a counsellor.
- (c) document issued by a counsellor.
- (d) legal or other document issued by a state, territory, or federal government organisation.
- (e) statutory declaration.

90.10. Having considered the requirements of this clause the Chief Executive may approve an employee's application to access gender transition leave.

Rate of payment

90.11. Gender transition leave will be granted with pay for the first four weeks, eight weeks at half pay.

90.12. Paid gender transition leave may be taken with full or half pay, or a combination of full and half pay, with credits to be deducted on the same basis. The maximum paid period is up to eight weeks at half pay.

90.13. The rate of payment to be paid to the employee during a paid period of gender transition leave is the same rate as would be paid if the employee was granted paid personal leave.

Effect on other entitlements

90.14. Leave with pay for gender transition purposes will count as service for all purposes. Leave without pay for gender transition purposes will not count as service for any purpose but will not break an employee's continuity of service.

90.15. Public Holidays for which the employee is entitled to payment that fall during periods of absence on paid gender transition leave will be paid as a normal public holiday at the full or half pay rate and will not be considered an absence on gender transition leave.

Interaction with other leave entitlements

90.16. An application by an employee for long service leave or annual leave during a period that would otherwise be an unpaid period of gender transition leave will be granted to the extent of available entitlements.

90.17. An application by an employee for personal leave during a period that would otherwise be an unpaid period of gender transition 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.

Section G - Communication and Consultation

91 Consultation

- 91.1. There will be effective consultation with an employee/s and their representatives, including union representatives, on workplace matters. The Commission recognises that consultation and employee participation in decisions that affect them is essential to the successful management of change.
- 91.2. Where there are proposals by the Commission to introduce changes that would have a significant effect on an employee or a group of employees, the Chief Executive will consult with the affected employees and the union. Consultation means a genuine opportunity to contribute to and influence the decision making process prior to decisions being made.
- 91.3. Significant effect includes, but is not limited to, effects of proposals that deal with:
- (a) the termination of the employment of employees through redundancy; or
 - (b) changes to the composition, operation or size of the directorate workforce or the skills required of employees; or
 - (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
 - (d) the alteration of hours of work; or
 - (e) the need to retrain employees; or
 - (f) the need to physically relocate employees; or
 - (g) the restructuring of job-roles, positions, structures or directorates; or
 - (h) changes to employment policies; or
 - (i) anything likely to materially affect workloads; or
 - (j) any other matter deemed relevant by parties covered by this Agreement
- 91.4. An employee/s and/or their representatives may also initiate consultation on any matters or proposals if such consultation hasn't already been initiated under subclause 91.3
- 91.5. The Chief Executive will provide relevant information to assist the employee/s and the representation or unions, if any, to understand the reasons for the proposed changes and the likely impact of these changes so that employee/s are able to contribute to the decision making process.
- 91.6. In addition to the consultation outlined in clauses 91.1 to 91.3.
- (a) a 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 comprising representatives of:
 - i. the Chief Executive; and
 - ii. the union.
 - (b) adequate time will be provided to employees and the union to consult with the Commission.
 - (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.
- 91.7. The purpose of the Commission Consultative Committee is to:
- (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) consult on workplace matters significantly affecting employees.

Consultation on Changes to Regular Rosters or Ordinary Hours of Work

- 91.8. 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).
- 91.9. However, the Chief Executive is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 91.10. The Chief Executive must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- 91.11. Relevant employees means the employees who may be affected by a change referred to in subclause 91.8 and 91.10.
- 91.12. These provisions are to be read in conjunction with other consultative obligations detailed in the Agreement.

92 Freedom of Association

- 92.1. 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.
- 92.2. Employees in negotiations of any kind are entitled to negotiate collectively where they so choose.
- 92.3. 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.

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

- 93.1. The Commission acknowledges the rights of its employees to be represented on any workplace relations matter 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).
- 93.2. 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.
- 93.3. 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.

- 93.4. For the avoidance of doubt, nothing in subclause 93.3 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.

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

- 94.1. 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.
- 94.2. 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.
- 94.3. In addition to the Commission facilities outlined in subclause 94.2, 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.
- 94.4. The use of Commission facilities will be in accordance with the Commission's policies and for matters other than for industrial action.
- 94.5. A union or other employee representative who is an employee of the Commission will be provided with adequate paid time off their usual working hours, to undertake duties to represent other employees.
- 94.6. While the representative 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.
- 94.7. The role of union workplace delegates and other recognised union representatives is to be respected and facilitated. The Commission and union workplace delegates must deal with each other in good faith.
- 94.8. In addition to other provisions in this Agreement, in discharging their representative roles at the workplace level, the rights of union workplace delegates include, but are not limited to:
- (a) the right to be treated fairly and perform their role as workplace delegate without any discrimination in their employment;
 - (b) recognition by the Commission that endorsed workplace delegates speak on behalf of their members in the workplace;
 - (c) the right to participate in collective bargaining on behalf of those who they represent, as per the FW Act;
 - (d) the right to reasonable paid time off from their usual working hours to:
 - i. provide information and seek feedback from employees in the workplace on workplace relations matters in the Commission during normal working hours;
 - ii. represent the interests of members to the employer and industrial tribunals;
 - iii. consult with other delegates and union officials in the workplace, and receive advice and assistance from union staff and officials in the workplace;
 - (e) the right to email employees in their workplace to provide information to and seek feedback, subject to individual employees exercising a right to 'opt out';
 - (f) the right to consultation, and access to relevant information about the workplace and the Commission, subject to privacy legislation and other relevant legislation;
 - (g) the right to undertake their role as union representatives on consultative committee(s);
 - (h) reasonable access to Commission facilities (including internet and email facilities, meeting rooms, lunch rooms, tea rooms and other areas where employees meet) for the purpose of carrying out work as a delegate and consulting with members and other interested employees and the union;
 - (i) the right to address new employees about union membership at the time they enter employment in their workplace;
 - (j) the right to access appropriate training in workplace relations matters including training provided by a union in accordance with clause 94.6.

- 94.9. In exercising their rights, workplace delegates and unions will adhere to Commission policies and guidelines and consider operational issues and the likely effect on the efficient operation of the Commission and the provision of services.

95 Attendance at Industrial Relations Courses and Seminars

- 95.1. For the purpose of assisting employees in gaining a better understanding of industrial relations issues relating to this Agreement, the Chief Executive will grant leave to employee representatives 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.
- 95.2. If the employee has applied for leave under subclause 95.1 and the Chief Executive has rejected the application because of operational requirements, approval of any subsequent application for leave by the employee under subclause 95.1 will not be withheld unreasonably, provided that the employee gives the Chief Executive at least fourteen days/shifts notice in writing.
- 95.3. 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 95.1 applies.
- 95.4. Leave granted for this purpose will count as service for all purposes.

96 Dispute Avoidance/Settlement Procedures

- 96.1. 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 this Agreement; and
 - (b) the application of the National Employment Standards of the FW Act.
- 96.2. For the purposes of this clause, except where a contrary intention appears, the term 'parties' refers to 'parties to the dispute'.
- 96.3. All persons covered by this Agreement agree to take reasonable internal steps to prevent, and explore all avenues to seek resolution of disputes.
- 96.4. 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.
- 96.5. In the event there is a dispute, the following processes will apply.
- 96.6. 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.
- 96.7. 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.
- 96.8. If the dispute remains unresolved after this procedure, a party to the dispute may refer the matter to FWA.
- 96.9. 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.
- 96.10. FWA may exercise any powers it has under the FW Act as are necessary for the just resolution or determination of the dispute.
- 96.11. 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.
- 96.12. All persons involved in the proceedings under subclause 96.9 will participate in good faith.
- 96.13. 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.
- 96.14. The parties agree to be bound by a decision made by FWA in accordance with this clause.
- 96.15. Notwithstanding clause 96.14, any party may appeal a decision made by FWA in accordance with the FW Act.
- 96.16. 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*.
- 96.17. 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.

97 Privatisation

- 97.1. 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.
- 97.2. 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.
- 97.3. 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.

Section H -Workplace Values and Behaviours

98 Introduction

- 98.1. All employees have a common interest in ensuring that workplace behaviours are consistent with, and apply the values and general principles set out in Division 2.1 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 all employees act responsibly and are accountable for their actions and decisions. Bullying, harassment and discrimination of any kind will not be tolerated in the Commission. It is recognised that bullying, harassment and discrimination in the workplace has both emotional and financial costs and that both systemic and individual instances of bullying and harassment are not acceptable.
- 98.2. The following provisions of Section H contain procedures for managing workplace behaviours that do not meet expected standards, including the management of cases of unsatisfactory work performance and misconduct.
- 98.3. These procedures for managing workplace behaviours and values promote the values and general principles of the Commission and are set out in Division 2.1 of the PSM Act 1994 and account for the principles of natural justice and procedural fairness.
- 98.4. 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.
- 98.5. Noting that the provisions of this Section H are in identical terms to Section H (however described) of ACTPS enterprise agreements. If an employee moves from the Commission to an ACTPS Enterprise Agreement on a permanent or temporary basis while a misconduct process is on foot, and irrespective of whether this Agreement or another ACTPS Enterprise Agreement applied to the employee at the time the misconduct process commenced, the misconduct process will continue and the employee is required to continue to participate in the process.
- (a) Any disciplinary action and sanction which is determined to be applied under clause 108 will be applied to the employee in their new position, where the relevant ACTPS head of service and the Chief Executive determines it is appropriate and necessary and having due regard to the nature of the misconduct and the changes in employment circumstances including any material bearing on the employee's duties and responsibilities in their new position.
- 98.6. If an employee resigns from the Commission while a misconduct process is on foot, the Chief Executive may:
- (a) determine to complete the misconduct process under Section H of this Agreement, including inviting the employee to participate in the process, such that the outcome of the process can be taken into account with any application by the former employee to re-enter the Commission or other ACTPS employment; or
- (b) determine to stay the process upon the employee's resignation and communicate to the employee that the misconduct process may recommence if the former employee subsequently re-enters, or seeks to re-enter, the Commission or other ACTPS employment. Any disciplinary action and sanction which is determined as a consequence of a resumed misconduct process may be imposed on the employee in their new position in accordance with subclause 98.5 (a) or taken into account with any application by the former employee to subsequently re-enter the Commission or other ACTPS employment.

99 Preliminary Assessment

- 99.1. In cases where an allegation of inappropriate behaviour or alleged misconduct is made or an incident occurs which may be deemed to be inappropriate behaviour or alleged misconduct, the appropriate manager/supervisor will undertake an assessment to determine whether the matter can be resolved or whether further action is required or not.

- 99.2. The manager/supervisor may inform and/or seek advice from an appropriate Human Resources adviser, however the manager/supervisor will be responsible for undertaking the assessment unless an actual or perceived conflict of interest exists.
- 99.3. The assessment will be done in an expedient manner and generally be limited to having discussions (either verbal or written) about the allegation or incident, with relevant employees, and, if requested, their representatives.
- 99.4. Although the principles of procedural fairness apply, this assessment is not a formal investigation (as this may occur after the assessment is undertaken) and is designed to enable a manager/supervisor to quickly determine whether formal investigation or other action is needed or not to resolve the issues. The manager/supervisor will communicate the outcomes to relevant employees and their representatives if any.
- 99.5. If the manager/supervisor determines that the allegations require investigation the manager/supervisor will recommend to the Chief Executive that the matter be investigated.
- 99.6. The Chief Executive may determine that no investigation is necessary where the employee admits to the alleged misconduct and the employee agrees that there is no need for an investigation. The employee must fully understand the misconduct they are admitting to and make an admission statement.
- 99.7. Where an employee makes an admission in accordance with subclause 99.6 the Chief Executive may determine the appropriate disciplinary action/sanction in accordance with clause 108 . 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 service record and performance to enable a fair and reasonable determination under clause 108 to be made.

100 Counselling

- 100.1. Counselling may happen outside of the misconduct and underperformance processes. This is an opportunity for the employee and manager to discuss possible causes and remedies for identified workplace problems. All parties have an obligation to participate in counselling in good faith.
- 100.2. In cases where counselling is considered to be appropriate, the employee will be informed what the discussion will be about and 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.
- 100.3. 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, the time frames within which these changes or improvements must occur and may include a written direction about future expectations, standards and behaviours.
- 100.4. 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.
- 100.5. 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 in relation to continued and/or subsequent behaviour, following a preliminary assessment being undertaken in accordance with clause 96.

101 Underperformance

- 101.1. Under this clause, procedures are established for managing underperformance of an employee.
- 101.2. This clause applies to all employees, except casual employees who are not eligible casual employees. In applying these procedures to officers on probation, temporary employees or eligible casual employees, the Chief Executive may determine that procedures and practices throughout this clause 101 may be applied on a proportionate basis according to the circumstances of the case, and in accordance with the principles of procedural fairness and natural justice.

- (a) If the process is to be applied on a proportionate basis in accordance with this clause the content of that process, along with any estimated timeframes, will be communicated to the employee when the process commences.

101.3. The objectives of these procedures are to:

- (b) provide advice and support to an employee whose performance is below the standard required; and
- (c) to provide a fair, prompt and transparent framework for action to be taken where an employee continues to perform below expected standard.

Underperformance Discussions

- 101.4. 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 or are identified. The manager should offer advice and support to the employee to overcome these concerns. The manager should inform the employee that the underperformance procedures in clauses 101.7 to 101.20 might be invoked if the work performance continues to be unsatisfactory.
- 101.5. 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. This includes making a record of all relevant discussions under this clause, to be signed by both the manager/supervisor and the employee. The employee must be given the opportunity to comment on any records before signing them. In circumstances where the employee refuses to sign such a record, the refusal will be noted on the relevant record.
- 101.6. All parties have an obligation to participate in underperformance processes in good faith.

Underperformance Process

Step One: Action Plan

- 101.7. Where a manager/supervisor assesses that an employee's work performance is demonstrated as being below expected standards after having previously discussed concerns with the employee in line with 101.4 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.
- 101.8. After taking into account the comments from the employee, the manager/supervisor must prepare an action plan in consultation with the employee.
- 101.9. 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.
- 101.10. 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 expected standard; and
 - (e) specify the assessment criteria to be measured within the action plan period.
- 101.11. 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

- 101.12. 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.
- 101.13. 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

- 101.14. 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.
- 101.15. 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

- 101.16. 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 101.17) 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).
- 101.17. At any time after seven calendar days from the date the Chief Executive advised the employee under subclause 101.16, 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 incremental advancement
 - (c) reduce the employee's incremental point
 - (d) temporarily or permanently reduce the employee's classification and pay;
 - (e) remove any benefit derived through an existing Special Employment Arrangement; or
 - (f) terminate the employee's employment.
- 101.18. If an employee's incremental point is reduced in accordance with subclause 101.17 (c), or the employees classification is permanently reduced in accordance with subclause 101.17 (d) the date the sanction takes effect will become the new anniversary date for the purpose of future incremental advancement. Any higher duties worked prior to the date of sanction will not count towards incremental advancement at a higher level.
- 101.19. The Chief Executive will inform the employee in writing of the decision made under 101.17, the reason for the decision and the appeal mechanisms available under this Agreement.
- 101.20. At any time in these procedures, the employee may elect to be retired on the grounds of inefficiency.

102 Appeal Rights

- 102.1. The employee has the right under Section J to appeal any underperformance action taken under subclause 101.17, except action to terminate the employee's employment.
- 102.2. 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.

103 Misconduct & Discipline

Objectives and Application

- 103.1. This clause establishes procedures for managing misconduct or alleged misconduct by an employee.
- 103.2. This clause applies to all employees, except casual employees who are not eligible casual employees. In applying these procedures to officers on probation, temporary employees or eligible casual employees, the Chief Executive may determine that procedures and practices throughout clauses 104 to 108 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.
- (a) If the process is to be applied on a proportionate basis in accordance with this subclause the content of that process, along with any estimated timeframes, will be communicated to the employee when the process commences.
- 103.3. The objective of these procedures is to encourage the practical and expeditious resolution of misconduct issues in the workplace.
- 103.4. All parties have an obligations to participate in misconduct processes in good faith.

What is Misconduct

- 103.5. 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*;
- (b) the employee engages in conduct that the Chief Executive is satisfied may bring, or has brought 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 found guilty of, or 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 109;
- (f) the employee makes a vexatious 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 is defined within the Fair Work Regulations.

104 Dealing with Allegations of Misconduct

- 104.1. Where the Chief Executive becomes aware of a matter of alleged misconduct and after receiving a recommendation from an appropriate manager/supervisor under clause 99.5, the Chief Executive determines that investigation is required, 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 or engage an independent external investigator (the investigating officer) to investigate the alleged misconduct in accordance with clause 106; and
- (c) inform the employee in writing of the alleged misconduct and that matter is to be investigated.

- 104.2. At any stage of dealing with the alleged misconduct, the Chief Executive may in accordance with clause 105:
- (a) transfer the employee to other duties; or
 - (b) re-allocate duties away for the employee; or
 - (c) suspend the employee with pay; or
 - (d) suspend the employee without pay where serious misconduct is alleged.
- 104.3. The Chief Executive may determine that no investigation is necessary where the employee admits to the alleged misconduct and the employee agrees that there is no need for an investigation. The employee must fully understand the misconduct they are admitting to and make an admission statement.
- 104.4. Where an employee makes an admission in accordance with subclause 99.6 the Chief Executive may determine the appropriate disciplinary action/sanction in accordance with clause 108 . 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 service record and performance to enable a fair and reasonable determination under clause 108 to be made.
- 104.5. The Chief Executive may at any time decide to instigate an investigation of alleged misconduct, in the absence of an assessment from a manager/supervisor under subclause 99.5, if satisfied that the matter warrants investigation.
- 104.6. Notwithstanding the provisions of this section, the Chief Executive may summarily terminate the employment of an employee without notice for serious misconduct as defined in the Fair Work Regulations.

105 Suspension, Reassignment or Transfer

- 105.1. This clause applies to all employees including eligible casual employees and employees on probation.
- 105.2. In accordance with clause 104.2 , the Chief Executive may suspend an employee with or without pay, re-assign 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 being dealt with.
- 105.3. The requirements under sub-clauses 105.4, 105.5 and 105.10 will also apply in circumstances where an employee has been reassigned or transferred with pay to other duties following an allegation of misconduct, to the extent that the employee is no better off financially than if they had not been reassigned or transferred.
- 105.4. The Chief Executive will not normally suspend, re-assign 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.
- 105.5. 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.
- 105.6. Where a decision is made to suspend an employee with pay no appeal or review of that decision is available.
- 105.7. Unless an employee is on authorised leave, an employee who is suspended must be available to attend work and participate in the disciplinary process within 48 hours of receiving notice.
- 105.8. 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.

- 105.9. A period of suspension without pay will not be for more than thirty calendar days unless exceptional circumstances apply.
- 105.10. If the period of suspension without pay extends beyond thirty calendar days as per subclause 105.9, the suspension should be reviewed every thirty calendar days unless the Chief Executive considers that, in the circumstances, a longer period is appropriate.
- 105.11. Whilst suspended without pay:
- (a) 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. Any such permission given to an employee is granted on the condition that the employee remains available to attend work and participate in the disciplinary process as per clause 105.7;
 - (b) in cases of demonstrated hardship, the Chief Executive may determine that the employee may cash out accrued long service leave and/or annual leave;
 - (c) the employee may apply to the Chief Executive for the suspension to be with pay on the grounds of demonstrated hardship.
- 105.12. An employee suspended without pay and who is later acquitted of the criminal offence (which is the subject of the allegation(s) of misconduct that caused the employee to be suspended), or is 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 cashed out in accordance with subclause 105.11 (b).
- 105.13. 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 whose employment is terminated 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.

106 Investigations

- 106.1. 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.
- 106.2. 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, which the employee may do in writing and/or at a scheduled interview or in a different manner as agreed with the investigating officer, before making a finding of fact; and
 - (c) for written responses the timeframe for response will be as communicated by the investigator and be reasonable under the circumstances; and
 - (d) where the response includes an interview provide the employee with at least 24 hours written notice prior to conducting an interview and advise the employee if the interview is to be recorded electronically; and
 - (e) advise the employee that the employee may have a second person 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
 - (f) provide a record of the interview to the employee; and
 - (g) give the employee an opportunity to supplement the record of an interview with a written submission, if the employee so chooses; and
 - (h) as soon as practicable take any further steps considered necessary to establish the facts of the allegations; and
 - (i) provide a written report to the Chief Executive setting out the investigating officer's findings of fact.

- 106.3. If the employee fails to, or chooses not to, respond to the allegations in accordance with subclause 106.2 within a reasonable timeframe, the investigating officer will prepare the report and set out the findings of fact on the information available.
- 106.4. The investigating officer's findings of fact will be made on the balance of probabilities.
- 106.5. 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 the investigating officer requires access in order to establish the facts of the allegations.

107 Findings of Misconduct

- 107.1. 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.
- 107.2. 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.
- 107.3. If the Chief Executives determination is that misconduct has occurred in accordance with subclause 107.1 the Chief Executive will:
- (a) advise the employee in writing of the proposed determination that misconduct has been found to have occurred; and
 - (b) provide written reasons for arriving at this proposed determination; and
 - (c) provide a copy of the investigation report unless this would be inappropriate in the circumstances; and
 - (d) advise the employee of the period during which the employee has to respond to the proposed determination that misconduct has occurred. This period must be no less than fourteen calendar days.
- 107.4. After considering the employee's response or, if the employee has not responded, at any time after the period outlined in subclause 107.3 has lapsed, the Chief Executive will make a final determination as to whether or not misconduct has occurred and will:
- (a) inform the employee in writing of the final determination of whether or not misconduct has occurred; and if the determination is that misconduct has occurred:
 - (b) consider whether or not disciplinary action is to be taken in accordance with clause 108.

108 Disciplinary Action and Sanctions

- 108.1. 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 reprimand;
 - (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. require the employee to fully or partially reimburse the employer for damage that the employee has 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 benefit derived through an existing SEA; or
 - (e) termination of employment.
- 108.2. Nothing in this section limits the ability of the Chief Executive to require an employee to participate in formal remedial programs/sessions aimed at assisting the employee with addressing the behaviour that was the subject of the misconduct process.

- 108.3. In relation to sub clause 108.1(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.
- 108.4. 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.
- 108.5. If the employee has moved to a new position in the Commission or ACT Public Sector Agency, other than as a result of a decision in accordance with clause 105 during the course of the misconduct process, the changes in employment circumstances will be taken into account as appropriate in accordance with subclause 98.5(a).
- 108.6. 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 will be a minimum of seven calendar days).
- 108.7. 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 108.6(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 Section J of this Agreement.

109 Criminal Charges

- 109.1. An employee must advise the Chief Executive in writing within 48 hours where practicable, but no longer than seven calendar days, 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.
- 109.2. 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 105.
- 109.3. If an employee is found guilty of, or convicted of a criminal offence (including if a non conviction order was made) 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.
- 109.4. 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 108.6.

110 Right of Appeal

- 110.1. An employee has the right under Section J to appeal against any finding of misconduct under clause 107, or against any decision to take disciplinary action or to apply a sanction under clause 108, or against any decision taken under clause 105 to suspend the employee without pay, or to transfer the employee at reduced pay, except action to terminate the employee's employment.
- 110.2. 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.
- 110.3. The appeal procedures under Section J apply to the exclusion of the rights of appeal and review under the PSM Act 1994 and the internal review procedures contained in Section I of this Agreement.

Section I - Internal Review Procedures

111 Objectives and Application

- 111.1. Under this Section, procedures are established for employees to seek a review of management actions that affect their employment with the Commission.
- 111.2. The procedures in this section promote the values and general principles of the Commission and account for the principles of natural justice and procedural fairness.
- 111.3. These procedures apply to all employees covered by this Agreement.
- 111.4. For the purposes of this Section, an action includes a decision and a refusal or failure to make a decision.

112 Decisions and Actions Excluded

- 112.1. The following decisions and actions are excluded from the rights of an employee to seek a review under procedures set out in this Section:
 - (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 43 of this Agreement for reviews on classifications);
 - (g) any action to which the employee has an appeal or review right under Section K of this Agreement;
 - (h) any action arising from the preliminary assessment process under clause 99
 - (i) actions arising from the misconduct procedures of this Agreement;
 - (j) actions arising from the underperformance procedures of this Agreement;
 - (k) any decisions under subclauses 117.2 and 118.6 of this Agreement;
 - (l) 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));
 - (m) decisions to appoint or not appoint a person as an officer to a vacant position;
 - (n) decisions that another employee perform the duties of a higher office for periods up to and including six months;
 - (o) 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; and
 - (p) actions arising from the internal review procedures or appeal panel procedures of this Agreement.

113 Initiating a Review

- 113.1. 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.
- 113.2. 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 directly affects the employee's employment, unless the action or decision is specifically excluded under this Section.
- 113.3. 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) is made no more than 28 days after the employee was advised of the decision that is the subject of the application for review, unless the Chief Executive agrees that extenuating circumstances exist; and
 - (c) identifies the action which the employee seeks a review of, and
 - (d) does not include a decision or action that is excluded under clause 112; and
 - (e) 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
 - (f) outlines the extenuating circumstances, if any, where the application is made outside the timeframe specified in sub clause 113.3 (b); and
 - (g) describes the outcome sought.
- 113.4. If the review relates to a failure or refusal to make a decision in accordance with sub clause 111.4, the 28 day time period outlined in sub clause 113.3 will be taken to commence on the day it was apparent that there was a failure or refusal to make a decision.
- 113.5. The Chief Executive will, provided that the requirements under sub clause 113.3 have been met, refer the matter for review in accordance with clause 114.

114 Review Process

- 114.1. Notwithstanding subclause 113.5, where appropriate, and agreed by the employee who made the application under subclause 113.3 (for the purposes of Section I "the applicant"), or the applicant's union or other employee representative on the applicant's behalf, the Chief Executive must consider mediation as an option before arranging for a review under subclause 114.3. The mediator will be agreed between the applicant and the Chief Executive.
- 114.2. 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 applicant and the Chief Executive.
- 114.3. Subject to subclauses 114.1 and 114.2, the Chief Executive must arrange for an application made under subclause 113.3 to be reviewed by an independent person (the reviewer) who may be:
 - (a) a suitably skilled person whose was not involved in the original action; or
 - (b) a person chosen from a panel of providers.
- 114.4. The reviewer will be provided with all relevant information and evidence that was available to the delegate in making of the original decision or in taking the original action.
- 114.5. 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 112.1; or
 - (b) the applicant 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
 - (c) 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

- 114.6. The Chief Executive must either confirm a recommendation made by the reviewer under subclause 114.5 that an application should not be considered or arrange for another reviewer to consider the application.
- 114.7. The Chief Executive will inform the applicant in writing, within 14 days of the date of any decision under subclause 114.6, including, the reasons for any decision not to consider the application.
- 114.8. If the reviewer does not make a recommendation under subclause 114.5, 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 they 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.
- 114.9. 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, or that significant information or evidence was not considered in the making of the original decision or action, the reviewer will inform the Chief Executive of that doubt and the reasons for it in the written report in accordance with 114.10
- 114.10. After reviewing any action or decision the reviewer will, subject to clause 114.15, make a written report to the Chief Executive recommending that:
- (a) the original decision/action be confirmed; or
 - (b) the original decision/action be varied; or
 - (c) other action be taken.
- 114.11. A copy of the report under clause 114.10 will be provided to the applicant and the applicant will be given the opportunity to provide a response.
- 114.12. The applicant may respond to any aspects of the report. Such a response must be in writing and be provided to the Chief Executive within 14 calendar days of the applicant receiving the report.
- 114.13. The Chief Executive, after considering the report from the reviewer and any response by the applicant 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.
- 114.14. The Chief Executive will inform the applicant in writing, within 14 days, of any action under subclause 114.13, including the reasons for the action.

Review of Chief Executive decision

- 114.15. 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 applicant.
- 114.16. 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.
- 114.17. 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.
- 114.18. If the Chief Executive does not accept any one of the recommendation(s) of the independent arbiter under subclause 114.16, the Chief Executive will:

- (a) provide written reasons to the independent arbiter for not accepting the recommendation(s); and
- (b) provide the applicant, within fourteen days, with written reasons for not accepting the recommendation(s).

114.19. If the Chief Executive does not accept any one of the recommendation(s) of the independent arbiter under subclause 114.16, the independent arbiter may report on this outcome to the Commission.

115 Right of External Review

- 115.1. The applicant, or the applicant's union or other employee representative on the applicant's behalf, may seek a review of a decision or action of the Chief Executive under subclause 114.13 or subclause 114.16 by an external tribunal or body, including the FWC.
- 115.2. The FWC will be empowered to resolve the matter in accordance with the powers and functions set out in clause 96 of this Agreement. The decision of FWC will be binding, subject to any rights of appeal against the decision to a Full Bench of the FWC in accordance with clause 96.

Section J - Appeal Mechanism

116 Objective and Application

- 116.1. 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.
- 116.2. The Chief Executive (in person) will nominate a person, or position, to be the Convenor of the Appeals ("the Convenor")
- 116.3. This appeal mechanism will apply to:
 - (a) decisions to suspend the employee without pay under Section 105 of this Agreement;
 - (b) decisions relating to findings of misconduct under clause 107, provided that such an appeal can only be made after a decision about disciplinary action under clause 108 has been made;
 - (c) decisions to take disciplinary action under Section H of this Agreement, except a decision to terminate the person's employment
 - (d) decisions to take underperformance action under Section H, clause 101 of this Agreement, except a decision to terminate the employee's employment;
 - (e) decisions taken in relation to an employee's eligibility for benefits under clauses 127 and the amount of such benefits, the amount payable by way of income maintenance under clause 132, and the giving of a notice of involuntary redundancy under clause 131;
 - (f) decisions about promotion or temporary transfer to a higher office or role (for periods greater than six months) affecting the officer where the officer was an applicant for the position, except decisions made on the unanimous recommendation of a joint selection committee in accordance with subclause 14.4;
 - (g) decisions to promote an officer after acting for a period of 12 months or more in a position at or below Administrative Service Officer Class 6 (or equivalent classification).
 - (h) any other decision that is subject to appeal under the PSM Act 1994.
- 116.4. In relation to appeals about misconduct findings and disciplinary action in accordance with subclauses 116.3 (a) and 116.3 (c) only one application for appeal can be made in relation to the same misconduct matter and the application needs to state whether the application relates to:
 - (a) the finding of misconduct under clause 107
 - (b) the disciplinary action under clause 108
 - (c) both the finding of misconduct under clause 107 and the disciplinary action under clause 108

- 116.5. For the purposes of subclause 113.3 (f), an appeal may only be made in relation to promotions or temporary transfer to a higher office or role 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 Administrative Service Officer Class 6 (or equivalent classification) an application may be made for an internal review of the process (see section I of this Agreement).
- 113.2. For appeals concerning promotion or transfer to a higher office or role, the only ground on which the Appeal Panel can review the decision is that the officer making the appeal would be more efficient in performing the duties of the position than the person promoted or selected for temporary transfer.
- 116.6. 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.

117 Initiating an Appeal

- 117.1. The appellant, or the appellant's union or other employee representative on the appellant's behalf, may initiate an appeal under these procedures by making an application to the Convenor:
- (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 within 14 days of being notified, or the appellant becoming aware of the decision to take the action, and
 - (d) seeks to appeal an appealable decision as set out in subclause 116.3.
- 117.2. Notwithstanding any other provisions in this section, the Convenor has the authority to dismiss an appeal if the appellant obstructs, unreasonably delays or fails to co-operate with the process.

118 Composition of the Appeal Panel

- 118.1. 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.
- 118.2. Where an application is received by the Convenor in accordance with the requirements set out in subclause 117.1 and 117.2 the Convenor will set up an Appeal Panel.
- 118.3. The Appeal Panel will comprise a panel member of the Commission, a panel member of the employee nominated by the union and a chairperson, where:
- (a) the chairperson will be chosen from suitably skilled and trained staff of the Commission or a panel of providers approved by the Public Sector Standards Commissioner
- 118.4. The Convenor may only be a member of an Appeal Panel with the agreement of the appellant.
- 118.5. 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 or if there is any other perceived or actual conflict of interest.
- 118.6. Where a panel member fails to comply with a provision in this section in a manner that affects the effective operation of the appeal process, the Convenor can disqualify the member from the panel. Where that occurs the panel is dissolved and a new one will be convened in accordance with clause 118.2.

119 Powers and Role of the Appeal Panel

- 119.1. 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 and consistent with a fair and proper consideration of the issues.
- 119.2. The Convenor will invite the appellant to have a support person, who may be the appellant's union or other employee representative, present at any meetings held between the Appeal Panel and the appellant and will allow reasonable opportunity for this to be arranged.

- 119.3. The Appeal Panel will 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.
- 119.4. 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 Appeal Panel:
- (a) the application is frivolous or vexatious, or not made in good faith; or
 - (b) the appellant making the appeal may apply to another person or authority about the application who may more appropriately deal with the application; or
 - (c) further review of the application is not warranted.

Conducting an appeal

- 119.5. Where the Appeal Panel determines that an application for appeal should proceed, the Appeal Panel will conduct a procedural review on the papers provided under clause 119.3 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.
- 119.6. Where the Appeal Panel is satisfied that a fundamental piece of evidence was not considered in the original process, the Appeal Panel may request that the Convenor refer the matter back to the Chief Executive for further investigation or assessment.
- 119.7. The Chief Executive after considering the referral from the Convenor under subclause 119.6, will:
- (a) as soon as possible, arrange for a further investigation or assessment to be conducted, in line with the referral of the Convenor, and will provide any further information, evidence of outcomes of the further investigation or assessment to the Appeal Panel in order that they may complete their review; or
 - (b) provide written reasons to the Appeal Panel, within 14 calendar days, for not accepting their referral for further investigation.
- 119.8. After reviewing any application under this section, the Appeal Panel will, subject to subclause 119.7, make a written determination of the appeal and either:
- (a) confirm the original decision; or
 - (b) vary the original decision; or
 - (c) prescribe that other action be taken.
- 119.9. The Appeal Panel will provide a report to the Chief Executive which will include the determination and the reasons for the determination. A copy of the report will also be provided to the appellant.
- 119.10. The Chief Executive after considering the report from the Appeal Panel 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.
- 119.11. If the Chief Executive does not accept the recommendations of the Appeal Panel under subclause 119.10, the Chief Executive will:
- (a) provide written reasons to the Appeal Panel for not accepting the recommendations; and
 - (b) provide the appellant, within fourteen calendar days, with written reasons for not accepting the recommendations.
- 119.12. If the Chief Executive does not accept the recommendations of the Appeal Panel under subclause 119.8, the Convenor may report on this outcome to the Commission.

120 Costs

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

121 Right of External Review

- 121.1. The employee or the employee's union or other representative on the employee's behalf, may seek a review of a decision under subclause 114.13 or subclause 114.17 by an external tribunal or body, including the FWC.
- 121.2. The FWC will be empowered to resolve the matter in accordance with the powers and functions set out in clause 96 of this Agreement. The decision of FWC will be binding, subject to any rights of appeal against the decision to a Full Bench of the FWC in accordance with subclause 96.15.

Section K - Redeployment and Redundancy

122 Application

- 122.1. 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.

123 Definitions

- 123.1. 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.
- 123.2. Potentially excess officer means an officer who is formally notified they are likely to become actually an excess officer in a foreseeable space of time.

124 Consultation

- 124.1. Where it appears to the Chief Executive that a position is likely to be either potentially excess or excess to the Commission's requirements, and prior to any individual officer(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.
- 124.2. The discussions under subclause 124.1 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 redundancy 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).
- 124.3. The Chief Executive will comply with the notification and consultation requirements for the union and Centrelink about terminations set out in the FW Act.
- 124.4. 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.
- 124.5. Where a redundancy situation affects a number of officers engaged in the same work at the same level, elections to be made voluntarily redundant may be invited.
- 124.6. 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/or excess officers who do not wish to accept voluntary redundancy.

125 Notification

- 125.1. 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 124.1, be invited to volunteer for retirement nor be advised in writing that he or she is excess to the Commission's requirements.

Potentially Excess Officers

- 125.2. 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 124.1 (a) through (i) (as appropriate in each case).
- 125.3. Potentially excess officers who have not been invited to be voluntarily retired, or who have declined to elect to be voluntarily retired, will be subject to the redeployment provisions in clause 126.

Excess Officers

- 125.4. Subject to subclause 125.1 the notification of an officer's excess status will only be given when the consultation required under subclause 124.1 has taken place. Following such consultation, where the Chief Executive is aware that an officer is excess, the Chief Executive will advise the officer in writing.
- 125.5. An excess officers is subject to the redeployment provisions in clause 126.
- 125.6. An excess officer who is offered a voluntary redundancy, but who does not accept the offer, is entitled to a seven month retention period in accordance with clause 129.

126 Redeployment

- 126.1. 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.
- 126.2. The Chief Executive will consider a potentially excess or excess officer from the Commission in isolation for vacancies at the officer's substantive level.
- 126.3. An excess officer (or potentially excess) has absolute preference for transfer to positions at the officer's substantive level and must be considered in isolation from other applicants for any vacancy, which is to be advertised for permanent filling or for a temporary period of six months or more. For the purposes of this

clause substantive level means the same classification or an alternative equivalent classification in another classification stream where the maximum pay does not exceed the top increment of the officer's current classification by more than 10%. For clarity this does not allow for the transfer of an officer within the same classification stream e.g a SOGB to transfer to a SOGA.

- 126.4. Under this clause an excess officer will be given preference over a potentially excess officer.
- 126.5. An excess officer need only be found suitable, or suitable within a reasonable time (generally three to six months) to be transferred to a position in accordance with subclause 126.3.
- 126.6. The Chief Executive will make every effort to facilitate the placement of an excess officer in the Commission.
- 126.7. The Chief Executive will arrange reasonable training that would assist the excess officer's prospects for redeployment.
- 126.8. The Chief Executive will provide appropriate internal assistance and career counselling and assist as necessary with the preparation of job applications.

127 Voluntary Redundancy

- 127.1. Subject to clause 125, at the completion of the discussions in accordance with clause 124, the Chief Executive may invite officers to elect to be made voluntarily redundant under this clause.
- 127.2. Where the Chief Executive invites an officer to elect to be made voluntarily redundant, the officer will have a consideration period of a maximum of one 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 consideration period.
- 127.3. 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.
- 127.4. 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.
- 127.5. 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.
- 127.6. Subject to subclause 127.7, where the Chief Executive approves an election to be made redundant and gives the notice of retirement, the period of notice will be one month, or five weeks if the officer is over 45 years of age and has completed at least two years continuous service.
- 127.7. 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 127.6, and the officer will be paid in lieu of pay for the unexpired portion of the notice period.

128 Severance Benefit

- 128.1. 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) 26 weeks pay.

- 128.2. For the purpose of calculating any payment instead of notice or part payment, the pay an officer would have received had they been on annual leave during the notice period, or the unexpired portion of the notice period as appropriate, will be used.
- 128.3. For the purpose of calculating payment under subclause 128.1
- (a) where an officer has been acting in a higher position for a continuous period of at least 12 months immediately preceding the date on which they receive notice of retirement, the pay level will be the officer's pay in such higher position at that date;
 - (b) the inclusion of other allowances, being allowances in the nature of pay, will be subject to the approval of the Chief Executive.

129 Retention Period for Excess Officers

- 129.1. An excess officer who does not accept voluntary redundancy is entitled to a seven month retention period.
- 129.2. The retention period will commence:
- (a) on the day the officer is advised in writing by the Chief Executive that they are an 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.
- 129.3. At the end of the retention period, if the officer has not been redeployed at level, the officer will be offered a choice of:
- (a) a suitable vacant position at the officer's substantive level, to be transferred to in accordance with the PSM Act; or
 - (b) retiring from the Commission with a severance payment which will be the equivalent to what the officer would have received had the officer accepted the voluntary redundancy, less the amount of salary that the officer received during the retention period.
- 129.4. To be transferred to a suitable position in accordance with subclause 129.3 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.

130 Reduction in Classification

- 130.1. Where efforts to redeploy at level have failed and where the officer has refused the offer of voluntary redundancy agrees, the Chief Executive with the agreement of the officer may reduce the officer in classification and place the officer in a specific position.
- 130.2. Reduction in classification is to occur in accordance with the PSM Act.

131 Involuntary Retirement

- 131.1. An excess officer may be made involuntarily redundant, subject to the agreement of the union(s). This clause applies to excess officers who are not:
- (a) retired with consent;
 - (b) redeployed to another position; or
 - (c) reduced in classification.
- 131.2. 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; 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.

- 131.3. 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.
- 131.4. An excess officer will not be involuntarily retired if they have 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.
- 131.5. 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 45 years of age 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.

132 Income Maintenance Payment

- 132.1. An officer who has been receiving a higher rate of pay for a continuous period of at least 12 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.
- 132.2. 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.
- 132.3. The income maintenance pay exists for the retention period or the balance of the retention period.
- 132.4. 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.
- 132.5. 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.
- 132.6. All allowances in the nature of pay will be included in determining the income maintenance pay rate.

133 Leave and Expenses to Seek Employment

- 133.1. At any time after the officer has been advised under subclause 125.2, 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.
- 133.2. The officer will be entitled to any reasonable fares and other incidental expenses if these are not met by the prospective employer.

134 Use of Personal Leave

- 134.1. 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.
- 134.2. 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.

135 Appeals

- 135.1. 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 126 and 127, the amount of such benefits, or the amount payable by way of income maintenance under clause 132.
- 135.2. An excess officer has the right under Section J to appeal against the giving, in accordance with clause 131 of a notice of involuntary redundancy or clause 130 notice of reduction in classification.

136 Agreement Not To Prevent Other Action

- 136.1. 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.

137 Re-engagement of Previously Retrenched Officers

- 137.1. Officers who are involuntarily retired from the Commission can be re-engaged at any time by the Chief Executive.
- 137.2. Officers who elect to be made voluntarily redundant under clause 127 cannot be re-engaged in the Commission, including the ACTPS or any Territory Instrumentality in accordance with the PSM Act, until a period has expired, which is equivalent in weeks and days to the termination payment received under clause 127 or 129.2 (b), except with the written consent of the Chief Executive.

Annex A - Classifications and Rates of Pay

	Pay Rates as at 27.5.2021	1.35% from 25.11.2021	1.35% from 26.5.2022
Administrative Service Officer Class 1	\$52,442	\$53,150	\$53,867
	\$54,114	\$54,845	\$55,585
	\$55,516	\$56,265	\$57,025
	\$57,690	\$58,469	\$59,258
Administrative Service Officer Class 2	\$59,015	\$59,812	\$60,619
	\$60,569	\$61,387	\$62,215
	\$62,095	\$62,933	\$63,783
	\$63,636	\$64,495	\$65,366
	\$65,165	\$66,045	\$66,936
Administrative Service Officer Class 3	\$66,866	\$67,769	\$68,684
	\$68,539	\$69,464	\$70,402
	\$70,206	\$71,154	\$72,114
	\$71,963	\$72,935	\$73,919
Administrative Service Officer Class 4	\$74,235	\$75,237	\$76,253
	\$76,512	\$77,545	\$78,592
	\$78,433	\$79,492	\$80,565
	\$80,382	\$81,467	\$82,567
Administrative Service Officer Class 5	\$82,505	\$83,619	\$84,748
	\$85,005	\$86,153	\$87,316
	\$87,330	\$88,509	\$89,704
Administrative Service Officer Class 6	\$88,902	\$90,102	\$91,319
	\$91,055	\$92,284	\$93,530
	\$93,477	\$94,739	\$96,018
	\$98,047	\$99,371	\$100,712
	\$101,745	\$103,119	\$104,511
	Pay Rates as at 27.5.2021	1.35% from 25.11.2021	1.35% from 26.5.2022
Senior Officer Grade C	\$111,884	\$113,394	\$114,925
	\$120,437	\$122,063	\$123,711

Senior Officer Grade B	\$131,773	\$133,552	\$135,355
	\$138,584	\$140,455	\$142,351
	\$148,344	\$150,347	\$152,376
Senior Officer Grade A	\$153,040	\$155,106	\$157,200
Graduate Administrative Assistant	\$74,235	\$75,237	\$76,253
	\$76,511	\$77,544	\$78,591
Cadet - Practical Training	\$52,442	\$53,150	\$53,867
	\$54,115	\$54,846	\$55,586
	\$55,516	\$56,265	\$57,025
	\$64,707	\$65,581	\$66,466
Cadet - full time study (57% of practical training)	\$29,892	\$30,296	\$30,705
	\$30,845	\$31,261	\$31,683
	Pay Rates as at 27.5.2021	1.35% from 25.11.2021	1.35% from 26.5.2022
Legal 1	\$69,607	\$70,547	\$71,499
	\$72,103	\$73,076	\$74,063
	\$75,621	\$76,642	\$77,677
	\$79,073	\$80,140	\$81,222
Legal 2	\$82,860	\$83,979	\$85,112
	\$85,199	\$86,349	\$87,515
	\$90,311	\$91,530	\$92,766
	\$94,665	\$95,943	\$97,238
Legal 3	\$100,669	\$102,028	\$103,405
	\$104,689	\$106,102	\$107,535
	\$111,527	\$113,033	\$114,559
	\$117,496	\$119,082	\$120,690
Legal 4	\$122,731	\$124,388	\$126,067
	\$130,304	\$132,063	\$133,846
	\$138,584	\$140,455	\$142,351
	\$143,557	\$145,495	\$147,459
Legal 5	\$150,569	\$152,602	\$154,662
	\$156,757	\$158,873	\$161,018
	\$161,488	\$163,668	\$165,878
Legal 6	\$165,943	\$168,183	\$170,454

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 be applied.
- (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

- (a) gaining 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

Allowance	Overtime Meal Allowance								
Employee Type	<p>(All employees) Meal Period: For the purpose of this allowance a meal period will mean the following periods:</p> <p>a) 7.00am to 9.00am; b) 12 noon to 2.00pm; c) 6.00pm to 7.00pm; and d) midnight to 1.00am.</p> <p>Exceptions: Where an appropriate meal is obtainable by the employee at a canteen, cafeteria or dining room conducted, controlled, or assisted by the Agency, the amount of meal allowance will be the maximum amount for which an appropriate meal is obtainable at the canteen, cafeteria or dining room. This rate is in substitution for the rate opposite.</p>								
Description	<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 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; 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; will be paid an allowance.</p>								
Rate/Frequency	Allowance is paid per occasion (extending over a meal period).								
Date Effective							28.5.2021	25.11.2021	26.5.2022
Rate							\$30.76	\$31.18	\$31.60
Payment while on Leave			Not paid during any type of paid or unpaid leave.						

Allowance		First Aid Allowance							
Employee Type		First Aid Officers see Note (1) below							
Description		<p>An employee who is suitably qualified and who is designated as the primary contact for First Aid and who performs the duties of a First Aid Officer in a workplace or a work group will be paid an allowance determined by their current level of qualification.</p> <p>(1) A Base Level qualification is a nationally recognized Statement of Attainment in providing First Aid issued by a Registered Training Organisation that is accredited to deliver First Aid Training and to issue qualifications for nationally endorsed First Aid unit/s of competency. This would normally provide competencies required to recognise and respond to common life threatening injuries or illnesses including: life support using Cardiopulmonary resuscitation (CPR) and management of the casualty and incident until the arrival of medical or other assistance, as well as treatment of minor illnesses or injuries.</p> <p>(2) An Advanced Level qualification provides additional competencies required to apply Advanced First Aid procedures and Advanced First Aid response in a workplace environment.</p> <p>(3) An Occupational or Specialist level required to meet this level will include the ability to completely render first aid in the workplace in the context of Work Health and Safety legislation.</p>							
Rate/Frequency		<p>Allowance is payable on a fortnightly basis</p> <p>Part-Time employees: These rates should be paid in full to part-time employees.</p>							
Date Effective							28.5.2021	25.11.2021	26.5.2022
(1) Base Level) –							\$28.54	\$28.93	\$29.32
(2) Advanced Level							\$35.75	\$36.23	\$36.72
(3) Occupational or Specialist Level							\$42.42	\$42.99	\$43.57
Payment while on Leave		<p>The allowance is payable during:</p> <p>(a) long service leave, paid maternity or primary care giver's leave or annual leave;</p> <p>(b) paid personal leave or other leave with pay for up to one month.</p> <p>Where leave is on reduced pay, or without pay, the allowance must be proportionately reduced or withdrawn accordingly.</p> <p>The allowance is included in salary for payment in lieu of long service leave and annual leave.</p>							

Allowance		Community Language							
Employee Type		(All employees) see Note (2) below							
Exclusion		Employees who are classified as an Interpreter or Translator are not eligible for the allowance.							
Description		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 National Accreditation Authority for Translators and Interpreters (NAATI) level, as follows:							
Rate/Frequency		Allowance will be paid per annum in equal fortnightly instalments Part-Time employees: Eligible part-time employees are entitled to receive the allowance on a pro-rata basis.							
Date Effective							28.5.2021	25.11.2021	26.5.2022
National Accreditation Authority for Translators and Interpreters Level 1:							\$1254	\$1271	\$1288
National Accreditation Authority for Translators and Interpreters Level 2 or higher:							\$2505	\$2539	\$2573
Payment while on Leave		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.							

Allowance		Motor Vehicle Allowance
Employee Type		(All employees). see Note (3) below
Description		<p>The Chief Executive may authorise an employee to use a motor vehicle they own or hire:</p> <ol style="list-style-type: none"> For official purposes, where the Chief Executive is satisfied this use would: <ol style="list-style-type: none"> result in greater efficiency; or involve the Commission in less expense than if public transport or a vehicle owned by the Commission were used. For specified journeys, where the Chief Executive is satisfied that: <ol style="list-style-type: none"> the use will not result in the employee taking more time on the journey than they would otherwise take; or it would not be contrary to the interest of the Commission. 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: <ol style="list-style-type: none"> there is no public transport available for travel to the temporary station; or although public transport is available, the work program makes its use impossible.
Rate/Frequency		The rate is per kilometer
Date Effective	25.11.2021	
Per km (1) Small car – 1600cc non-rotary 800cc rotary	\$0.78	
Per km (2) Medium car – 1601 to 2600 cc non-rotary 801 – 1300cc rotary	\$0.90	
Per km (3) Large car – 2601+ cc non-rotary 1301+ cc rotary	\$0.91	
Payment while on Leave		Not paid during any type of paid or unpaid leave

(1) First Aid Allowance (FAA):

- (a) FAA 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) FAA 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 FAA.
- (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) Community Language Allowance (CLA):

- (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 CLA
- (c) The Chief Executive should arrange accreditation testing, and pay any associated fees, for employees being considered for CLA. 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 CLA Level 1 to an employee on the certification of the employee's supervisor.
- (e) CLA 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 CLA 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 (MVA):

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 MVA that would otherwise be payable, then no MVA may be authorised.
2. If an employee satisfies the relevant Chief 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.

ANNEX D – OTHER LEAVE

Leave to:	1. 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	Does not count for any purpose.
Leave to:	2. 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 10 days in any two year period, in addition to bereavement leave.
Conditions	-
Rate of payment	Without pay.
Effect on other entitlements	Does not count for any purpose.

Leave to:	3. 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	Does count as service for all purposes.
Leave to:	4. 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 does count as service for all purposes. Without pay does not count as service for any purpose.

Leave to:	5. 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	<p>With pay where the employee is to give evidence:</p> <ul style="list-style-type: none"> (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. <p>Without pay where the leave to give evidence is for any other purpose.</p>
Effect on other entitlements	Does count as service for all purposes.

Leave to:	6. Attend NAIDOC week activities
Purpose	To enable an employee to attend and participate in NAIDOC Week activities.
Eligibility	An employee, other than a casual employee.

Entitlement	This leave may be granted for one complete day or for varying periods over the week's activities, totalling the equivalent of one complete day.
Conditions	Subject to operational requirements.
Rate of payment	Full pay.
Effect on other entitlements	Does count as service for all purposes.
Leave to:	7. Attend proceedings at the Fair Work Commission
Purpose	To enable the employee to give evidence on behalf of a staff organisation in proceedings at the Fair Work Commission.
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 the Fair Work Commission, 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 or Without pay.
Effect on other entitlements	With pay does count as service for all purposes. Without pay does not count as service for any purpose, but does not break continuity of service for long service leave purposes.
Leave to:	8. 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 approved 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	Does not count as service for any purpose.
Leave to:	9. Cope with a 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 associated with 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	Does count as service for all purposes.

Leave for:	10. Defence Reserve
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 Chief Executive 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</p>

	<p>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 Commission 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 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 Reserve Leave, including documentary evidence.
Rate of payment	With pay or without pay.
Effect on other entitlements	As per entitlement.
Leave to:	11. 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	Does count as service for all purposes.
Leave to:	12. 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	Does count as service for all purposes.
Leave to:	13. 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	Does count as service for all purposes.
Leave to:	14. 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	<p>The first 12 months count as service for all purposes.</p> <p>Subsequent leave does count as service for all purposes except annual leave.</p> <p>If an employee does not return to duty with the Commission the leave does not count as service for any purpose.</p>
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Leave to:	15. Engage in employment in the interests of the Commission
Purpose	To enable an employee to engage in work or employment outside the Commission where the Chief Executive is satisfied that the employment is in the interests of the Commission.
Eligibility	<p>An employee, other than an employee:</p> <p>(a) who is a probationary employee; or</p> <p>(b) who has six months or less continuous employment.</p>
Entitlement	A maximum period of five years.
Conditions	-
Rate of payment	Without pay.
Effect on other entitlements	<p>Does counts as service for all purposes except for annual leave.</p> <p>If an employee does not return to duty with the Commission the leave will not count as service for any purpose.</p>
Leave to:	16. 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 Commission, the ACTPS or in the Australian Public Service for at least four years, at the date 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 Commission.

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 do not count as service for any purpose other than ongoing eligibility to access birth leave as provided by clause 76.

Leave for:	17. 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	Does count as service for all purposes.

Leave for:	18. Operational Service Personal Leave
Purpose	To enable officers and employees who have rendered operational service to be absent from duty when they are unfit for work because of war-caused injuries or diseases.
Eligibility	An officer or employee, other than a casual employee, who has rendered operational service.
Entitlement	Operational service personal leave is cumulative and is additional to personal leave entitlements contained in clause 66. Officers: On appointment, an eligible officer is entitled to nine weeks operational service personal leave. An eligible officer is entitled to receive an additional credit of three weeks operational service personal leave: 12 months after the date of appointment; and

	<p>24 months after the date of appointment; and 36 months after the date of appointment.</p> <p>The maximum operational service personal leave balance that an eligible officer may have is eighteen weeks.</p> <p>Employees other than Officers:</p> <p>On engagement, an eligible employee is entitled to nine days operational service personal leave.</p> <p>An eligible employee is entitled to receive an additional credit of three days operational service personal leave: 12 months after the date of engagement; and 24 months after the date of engagement; and 36 months after the date of engagement.</p> <p>The maximum operational service personal leave balance that an eligible employee may have is eighteen days.</p> <p>Where operational service personal leave credits have been exhausted, the Chief Executive may grant an employee personal leave or a period of unpaid operational service personal leave.</p>
Evidence and Conditions	<p>An eligible officer or employee should discuss with their manager/supervisor, as soon as practicable, of their absence or intention to be absent on operational service personal leave.</p> <p>An eligible officer or employee must make an application to the Chief Executive to access their operational service personal leave entitlement.</p> <p>Having considered the requirements of this clause the Chief Executive may approve an eligible officer or employee's application to access operational service personal leave. A decision not to approve the leave will be taken in accordance with subclause 64.</p>
Leave for:	18. Operational Service Personal Leave (cont)
	<p>Operational service personal leave may be granted by the Chief Executive:</p> <p>(a) to cover absences resulting from war-caused injury or diseases; and</p> <p>(b) following a written request from an eligible officer or employee, which must include documentary evidence that the absence is due to the war-caused injury or disease, including evidence that the injury or disease is a the war-caused injury or disease in accordance with the requirements of the <i>Veterans' Entitlement Act 1986 (Commonwealth)</i>.</p>
Rate of payment	<p>With pay. The rate of payment to be paid to the employee during a period of operational service personal leave is the same rate as would be paid if the employee was granted personal leave, except where it is granted without pay.</p>

Effect on other entitlements	Operational service personal leave with pay will count as service for all purposes. Operational service personal leave without pay will not count as service.
Interpretation	operational service has the same meaning as in the <i>Veterans' Entitlement Act 1986</i> (Commonwealth). war-caused injuries or diseases has the same meaning as in the <i>Veterans' Entitlement Act 1986</i> (Commonwealth).
Leave for:	19. 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	Does not count as service for any purpose.

Leave for:	20. 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	Does count as service for all purposes.
Leave to:	21. 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	<p>Without pay, except where the Chief Executive determines there are special circumstances, having regard to:</p> <p>(a) the purpose for which the leave is being taken; and</p> <p>(b) the length of service of the employee; and</p> <p>(c) the length of the period for which the leave is being taken.</p> <p>In special circumstances the Chief Executive determines whether leave is at full pay or half pay.</p>
Effect on other entitlements	Leave without pay does not count as service for any purpose. However where the Chief Executive determines there are special circumstances and that the period of leave granted is to be with pay then the paid leave does count as service for all purposes.

Dictionary

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

Agreement means the Legal Aid Commission (ACT) Enterprise Agreement 2021-2022 and includes all Annexes and Schedules.

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

Appointed means an appointment into a permanent role in the Commission under the *Legal Aid Act 1977*.

Business Day means any day of the week that is Monday to Friday that is not a public holiday.

Business/Work Unit means any particular work area in the Commission eg. Practice, Section, Project Team or Administrative Unit.

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 persons who are sick or ageing, have an injury, have a physical or mental illness or a disability.

Casual Employee means a person temporarily engaged by the Commission to perform work for a short period on an irregular or non-systematic basis with no commitment to continuing and indefinite work.

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.

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.

Disability means a permanent or ongoing physical or psychological disability attributable to one or more intellectual, cognitive, neurological, sensory or physical impairments or to one or more impairments attributable to a psychiatric condition.

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 12 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).

Family Violence is as defined under the *Family Violence Act (ACT) 2016*.

FW Act means the *Fair Work Act 2009*.

FWA means Fair Work Australia.

FWC means Fair Work Commission.

FW Regulations mean the *Fair Work Regulations 2009*.

Head of Service means a person engaged under Sections 23C or 23J of the PSM Act as the head of an ACT Government Directory or Territory Instrumentality.

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 who is subject of a permanent caring arrangement.
- (e) an adopted child.

'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 12 months or more.

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

Miscarriage is as defined under the Fair Work Act 2009 (Cth).

National Employment Standards means Part 2-2 of the *Fair Work Act 2009* (Cth), as amended from time to time

Officer refers to a person who is appointed to a permanent role in the Commission.

Permanent Caring Responsibility means an out of home care placement for a child until the child turns 18 as defined by the *Children and Young People Act 2008*.

Primary Care Giver is a person who is the primary carer of a child in the person's reference period if the child is in the person's care in that period and the person meets 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.

Public Sector Standards Commissioner means a person appointed under Section 142 of the PSM Act.

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.

Regular Casual Employee means a casual employee who has in the preceding 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, could be performed as a full time or part time employee.

Service or ACT Public Service means the ACT Public Service established by the PSM Act

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 for a period of less than 12 months.

Stillbirth/Stillborn child is as defined under the *Fair Work Act 2009 (Cth)*

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

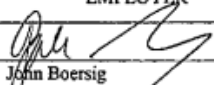
Temporary Employee means a person engaged by the Commission under the *Legal Aid Act 1977* for a specific period of time or for a specified task.

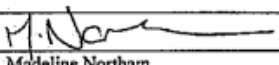
Union(s) means the Community and Public Sector Union.

SIGNATORY PAGE

LEGAL AID COMMISSION (ACT) ENTERPRISE AGREEMENT 2021 – 2022

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

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

REPRESENTATIVE OF EMPLOYEES	
SIGNATURE	
NAME	Madeline Northam
ADDRESS	Level 4, 224 Bunda St, Canberra City, ACT, 2601
AUTHORITY TO SIGN THE AGREEMENT	Signatory holds the office of ACT Regional Secretary, Community and Public Sector Union