



**Australian Government**

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**Department of Foreign Affairs and Trade**

# **ENTERPRISE AGREEMENT**

**Date of effect:** 17 December 2015

**Nominal expiry:** 16 December 2018

# Department of Foreign Affairs and Trade

## Enterprise Agreement

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## Technical and General Matters

### 1. Title

- 1.1. This Agreement will be known as the Department of Foreign Affairs and Trade Enterprise Agreement.

### 2. Interpretation/Definitions

- 2.1. 'adopted child' – means a child that is, or is to be placed with the employee for adoption that:
  - a) is, or will be under 16 as at the day of placement or the expected day of placement of the child;
  - b) has not, or will not have lived continuously with the employee for a period of six months or more as at the day of placement or the expected day of placement of the child; and
  - c) is not (otherwise than because of the adoption) a child of the employee or the employee's spouse or de facto partner.
- 2.2. 'Agreement' – means the Department of Foreign Affairs and Trade Enterprise Agreement;
- 2.3. 'APS' – means the Australian Public Service;
- 2.4. 'APS employee' – means an APS employee within the meaning of *Public Service Act 1999*;
- 2.5. 'casual employee' – means an APS employee engaged on an irregular or intermittent basis within the meaning of *Public Service Act 1999*;
- 2.6. 'CMD' – means Corporate Management Division;
- 2.7. 'crisis-related duty' – for the purposes of clause 36 of this Agreement, crisis-related duty refers to work performed by an employee in response to an overseas crisis as determined by the Secretary;
- 2.8. 'delegate' – means a person or class of persons delegated authority by the Secretary to make particular decisions as determined from time to time in the departmental Delegations Matrix or other relevant instrument;
- 2.9. 'department' – means the Department of Foreign Affairs and Trade;
- 2.10. 'employee' – means a person employed by the department as an APS employee and to whom this Agreement applies;
- 2.11. 'employee organisation' – means an organisation of employees registered under the *Fair Work (Registered Organisations) Act 2009*;
- 2.12. 'family' – for the purposes of the provisions on personal/carer's leave and compassionate leave set out in this Agreement, means:
  - a) a spouse or de facto partner (irrespective of gender or gender identity), child (including an adopted child, a step-child, a foster child, a child who is the subject of a Permanent Care Order or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee; and/or a child (including an adopted child, a step-child, a foster child, or an ex-nuptial child), parent,

- grandparent, grandchild or sibling of a spouse or de facto partner of the employee; and/or a
- b) traditional kinship where there is a relationship or obligation, under the customs and traditions of the community or group to which the employee belongs;
  - c) reference to a spouse or de facto partner also includes a former spouse or former de facto partner of the employee.
- 2.13. 'FWC' – means the Fair Work Commission or its replacement or successor;
  - 2.14. 'HOM' – means Head of Mission;
  - 2.15. 'HRM' – means Human Resource Manual;
  - 2.16. 'HOP' – means Head of Post;
  - 2.17. 'non-ongoing employee' – means an employee engaged for a specified term or task within the meaning of *Public Service Act 1999*;
  - 2.18. 'ongoing employee' – means an employee engaged as an ongoing APS employee within the meaning of *Public Service Act 1999*;
  - 2.19. 'Parliamentary Service' – refers to employment under the *Parliamentary Service Act 1999*;
  - 2.20. 'promotion' – has the same meaning as that given in the *Australian Public Service Commissioner's Directions 2013*;
  - 2.21. 'qualifying service' – means service that is recognised for redundancy pay purposes;
  - 2.22. 'Secretary' – means the Secretary of the Department of Foreign Affairs and Trade or his/her delegate;
  - 2.23. 'SES' – means the Senior Executive Service within the meaning of the *Public Service Act 1999*;
  - 2.24. 'standard day' – means 8:30 a.m. to 5:00 p.m. with one hour unpaid break from 12:30 p.m., or other pattern appropriate to the operational requirements of the work area;
  - 2.25. 'technical employees' – means ongoing employees in the Information Management and Technology Division, Diplomatic Security Branch and at overseas posts who provide technical support and services to the department;
  - 2.26. 'WRC' – means the Workplace Relations Committee established under this Agreement.

### 3. Coverage

- 3.1. This Agreement covers the Secretary and non-SES APS employees of the department employed under the *Public Service Act 1999*.

### 4. Commencement and Duration

- 4.1. In accordance with section 54 of the *Fair Work Act 2009* this Agreement commences operation at the beginning of the first full pay period, and no sooner than seven days, following approval of the Agreement by the FWC. The nominal

expiry date of this Agreement is three years after the date of commencement.

## **5. Relationship to Policies, Guidelines and Legislation**

- 5.1. The Human Resources Manual (HRM), Performance Management Framework (PMF) and any other policies or guidelines, as amended from time to time, referred to in this Agreement are not incorporated into and do not form part of this Agreement. If there is any inconsistency between the HRM, PMF or other policies or guidelines and the express terms of this Agreement, the express terms of this Agreement will prevail to the extent of any inconsistency unless contrary to legislation or common law.
- 5.2. This Agreement comprehensively states the terms and conditions of employment of the employees covered by this Agreement, other than terms and conditions applying under Commonwealth law (including determinations made pursuant to section 24(1) of the *Public Service Act 1999*).
- 5.3. It is acknowledged that employment in the department is in accordance with the provisions of legislation, including related regulations, directions, rules or instruments as may be amended from time to time.

## **6. Delegations**

- 6.1. The Secretary may delegate any or all of his or her powers under this Agreement and may do so subject to limitations on the extent of the delegation. No such delegation shall prevent the personal exercise by the Secretary of a power or function so delegated.

## **Classifications and Broadbands**

### **7. Classification Structure**

- 7.1. The department's classification structure, including Departmental Designations, is outlined in Annex 1.

### **8. Training Band**

- 8.1. The Training Band provides engagement and progression arrangements for entry level employees interested in making a long term commitment to the department. Employees engaged within the Training Band are required to undertake mandatory training and development programs and successfully complete that program as a condition of engagement.
- 8.2. In addition to the training classifications provided for in this Agreement, the Secretary may assign additional training classifications to the Training Band relevant to the work value and the training and development program being undertaken. Where a whole-of-government approach is being taken the provisions of the whole-of-government program will operate to the extent of any inconsistency with this Agreement.



### **Graduates**

- 8.3. The Graduate Program involves work placements and training and development over a 24 month period consistent with the relevant program guidelines.
- 8.4. Graduates will enter the department at the APS 3.2 level within the Training Band.
- 8.5. Graduates will enter into performance agreements with their supervisors at the beginning of each placement and will have their performance appraised at the conclusion of each placement.
- 8.6. At the completion of the first full performance cycle following their commencement, Graduates will be entitled to progress to the APS 4.1 level within the Training Band subject to:
  - a) successful completion of the probation period;
  - b) an individual performance rating of at least 'Performing Well'; and
  - c) completion of all mandatory training and development activities.
- 8.7. At the conclusion of the relevant program Graduates will be entitled to progress to the APS 4.2 level within the Training Band subject to:
  - a) an individual performance rating of at least 'Performing Well'; and
  - b) completion of all mandatory training and development activities.
- 8.8. Graduate performance ratings will be determined by the Secretary at the completion of each performance cycle.
- 8.9. Graduates will be transferred to the general APS classification structure at their substantive APS level following completion of the program.

### **Indigenous Cadetship Program**

- 8.10. The department will run an Indigenous Cadetship Program (ICP). Cadets will be engaged at the APS 2.1 level within the Training Band and be paid:
  - a) full salary while undertaking the 12 week on-the-job components of the program, usually during the break at the end of the academic year (December – February); or
  - b) 50 per cent salary during study components.
- 8.11. Cadets will not be entitled to salary progression while they are completing the ICP. At the conclusion of the program Cadets who are not selected for the department's Graduate Program (clauses 8.3 through 8.9 refer) will be allocated a position at the APS 3.2 level within the Training band as an Indigenous Cadet Program Graduate (ICPG) subject to:
  - a) an individual performance rating of at least 'Performing Well' in their final on-the-job component; and
  - b) graduation from the relevant course of study.
- 8.12. ICPGs will undertake work placements and training and development over a 24 month period consistent with the relevant program guidelines, except where otherwise agreed between the department and the ICPG.
- 8.13. ICPGs enter into performance agreements with their supervisors at the beginning of each placement and will have their performance appraised at the conclusion of

each placement.

- 8.14. At the completion of the first full performance cycle following their commencement, ICPGs will be entitled to progress to the APS 4.1 level within the Training Band subject to:
- a) successful completion of the probation period;
  - b) an individual performance rating of at least 'Performing Well'; and
  - c) completion of all mandatory training and development activities.
- 8.15. At the conclusion of the relevant program, ICPGs will be entitled to progress to the APS 4.2 level within the Training Band subject to:
- a) an individual performance rating of at least 'Performing Well'; and
  - b) completion of all mandatory training and development activities.
- 8.16. ICPG performance ratings will be determined by the Secretary at the completion of each performance cycle.
- 8.17. ICPGs will be transferred to the general APS classification structure at their substantive APS level following completion of the program.

#### **Indigenous Traineeship Program**

- 8.18. The department will run an Indigenous Traineeship Program (ITP). Trainees will be engaged at the APS 3.1 level within the Training Band, undertake a 15 month training program and undertake a diploma-level academic qualification through a registered training provider.
- 8.19. Trainees will take part in performance management through the course of the ITP and be eligible for salary progression in accordance with the Performance Management Framework.
- 8.20. At the conclusion of the program Trainees will be allocated a position at the APS 4.1 level within Broadband Two subject to:
- a) successful completion of the probation period;
  - b) an individual performance rating of at least 'Performing Well' in their final on-the-job component; and
  - c) achievement of a diploma-level academic qualification as outlined in clause 8.18.

## **Remuneration**

### **9. Payment of Salary**

- 9.1. Employees will be paid fortnightly in arrears based on the formula contained in Annex 3.
- 9.2. Annual salary rates, which are to apply from the commencement of this Agreement are set out in Annex 2.
- 9.3. In recognition of the productivities and efficiencies in this Agreement and reflecting the following pay increases, the pay scales that apply are set out in Annex 2:

- a) 2.0 per cent on the commencement of this Agreement;
- b) 2.0 per cent twelve months after commencement; and
- c) 2.0 per cent twenty four months after commencement.

## 10. Casual Employees

- 10.1. The Secretary may engage casual employees to undertake irregular or intermittent duties in accordance with section 22(2)(c) of the *Public Service Act 1999*. Casual employees will be entitled to a 20 per cent loading on the base salary rate in lieu of public holidays not worked and in lieu of all leave other than:
- a) long service leave;
  - b) unpaid parental leave (if the employee is an eligible casual employee as defined by the *Fair Work Act 2009*);
  - c) two days unpaid compassionate leave per each permissible occasion (as defined by the *Fair Work Act 2009*).
- 10.2. Casual employees will be paid for actual periods of duty in excess of four hours. Where they perform a period of duty of less than four hours they will be paid for four hours duty. Casual employees will also be entitled to overtime as provided for in this Agreement.

## 11. Salary on Engagement, Promotion or Transfer

- 11.1. Employees will be paid at the base pay point of the relevant classification unless otherwise approved by the Secretary at his or her discretion. This applies where the employee is:
- a) engaged by the department;
  - b) promoted within the department;
  - c) promoted or transferred into the department from another Agency.
- 11.2. Where at the time of engagement or promotion an employee's salary is set at an incorrect level the Secretary may determine in writing payment of the correct salary, including back pay.
- 11.3. Employees who transfer (or have transferred) into the department as a result of a determination under section 72(1)(a) of the *Public Service Act 1999* and whose annual salary rates exceed those at the top pay point of their band in Annex 2 will continue to receive that higher salary until such time that the top pay point of the relevant band matches or exceeds that higher salary.

## 12. Salary on Reduction

- 12.1. Where an employee agrees in writing to perform work at a lower classification, either temporarily or permanently, the Secretary will determine, in writing, the rate of salary to be paid to the employee within the relevant band.

## 13. Salary Advancement

- 13.1. At the beginning of the first full pay period following 1 April each year, employees

(except casual employees) will be entitled to advance to the next salary point within their band where:

- a) the employee has been rated as 'Performing Well' or higher in the previous performance cycle; and
  - b) meets other criteria in the PMF.
- 13.2. Employees who are at the top pay point of their band, who meet the eligibility criteria under clause 13.1 - and are not entitled to movement to the next band within Broadband One or Two - will instead be entitled to a performance bonus of 2.0 per cent of their annual base salary as at 1 April. Graduates and Indigenous Cadet Program Graduates at the APS 3.2 level in the Training Band will not be entitled to a performance bonus.
- 13.3. Employees who receive a performance rating that is lower than 'Performing Well' will not be entitled to salary advancement or a performance bonus.

#### **14. Movements within a Broadband**

- 14.1. Movement to a higher band as a result of salary advancement is possible for ongoing employees within Broadband One or Two.
- 14.2. Movement to a higher band within Broadband One or Two is not automatic and is subject to the following criteria:
- a) the employee must be at the top pay point of their band and receive ratings of 'Performing Well' or above for the preceding performance cycle;
  - b) the Secretary must determine that sufficient work is available at the higher Band; and
  - c) the Secretary must determine the employee has the necessary skills and experience to perform at the higher band.
- 14.3. Movement from Broadband One to Broadband Two, or to a higher band, is not possible through salary advancement. Movement of this nature constitutes a promotion and must be undertaken in accordance with the requirements of the *Public Service Act 1999*.

#### **15. Salary Increases**

- 15.1. Employees will receive increases to base salaries in accordance with the salary table at Annex 2. Increases will be payable from the date of commencement of this Agreement, then at the beginning of the first full pay period following the 12 and 24 month anniversaries of the commencement of the Agreement.

#### **16. Remuneration Supplementation**

- 16.1. The Secretary may from time to time supplement an employee's remuneration to meet particular workplace or operational requirements, or in recognition of additional responsibilities. This includes in relation to employees serving overseas on a long term posting who are covered by this Agreement.

## 17. Overseas Conditions of Service

- 17.1. The Secretary may determine conditions of service for employees working overseas on long-term posting.
- 17.2. The conditions regarding the official recognition of de facto relationships for the purposes of conditions of service under this Agreement apply regardless of sexual orientation, gender identity, or intersex status.

## 18. Superannuation

- 18.1. The department will make compulsory employer contributions as required by the applicable legislation and fund requirements.
- 18.2. Employer contributions to the Public Sector Superannuation Accumulation Plan (PSSap) will be 15.4 per cent of the employee's fortnightly contribution salary. Employer contributions for employees in other accumulation schemes will be at the same rate as for employees in PSSap. Employer contributions will not be reduced by any other contributions made through salary sacrifice arrangements. This clause does not apply where a superannuation fund cannot accept employer superannuation contributions (e.g. unable to accept contributions for people aged over 75).
- 18.3. Employer superannuation contributions will not be paid on behalf of employees during periods of unpaid leave that does not count as service, unless otherwise required under legislation.
- 18.4. The Secretary may choose to limit superannuation choice to complying superannuation funds that allow employee and/or employer contributions to be paid through fortnightly electronic funds transfer using a file generated by the department's payroll system.
- 18.5. An employee who is aged 70 years or older is entitled to superannuation contributions, at the relevant rate, if the contributions are accepted by the employee's superannuation fund.
- 18.6. An employee will receive an 'in-lieu-of-superannuation' allowance where the following conditions are satisfied:
  - a. the employee is aged 70 years or older; and
  - b. the department is not permitted under any Commonwealth law to pay all or part of an employer contribution to the employee's superannuation fund in respect of the employee.
- 18.7. The in-lieu-of-superannuation allowance that is payable to an employee is equivalent to the amount that the department would have paid as a superannuation contribution if the employee was under 70 years of age and was a member of PSSap, less any contribution amount accepted by the employee's superannuation fund.
- 18.8. The in-lieu-of-superannuation allowance will be paid as a taxable allowance in the employee's taxable fortnightly salary.
- 18.9. An employee who is currently a member of the Public Sector Superannuation

Defined Benefit (PSSdb) Scheme, and seeks financial advice on becoming a member of PSSap, will be eligible for reimbursement for that financial advice up to \$500.

## 19. Salary Packaging

- 19.1. Employees may elect to sacrifice salary for non-monetary benefits in accordance with the HRM. Any Fringe Benefits Tax and administrative costs incurred as a result of their salary packaging arrangements will be met by the employee. The employee's salary for all purposes other than tax liability will be calculated as if the salary packaging arrangement had not been in place.

## 20. Individual Flexibility Arrangements

- 20.1. The department and an employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the Agreement if:
- a) the arrangement deals with one or more of the following matters:
    - i. arrangements about when work is performed;
    - ii. overtime rates;
    - iii. penalty rates;
    - iv. remuneration;
    - v. allowances; and/or
    - vi. leave and leave loading;
  - b) the arrangement meets the genuine needs of the department and the employee in relation to one or more of the matters mentioned in subclause 20.1(a); and
  - c) the arrangement is genuinely agreed to by the department and the employee.
- 20.2. The department must ensure that the terms of the individual flexibility arrangement:
- a) are about permitted matters under section 172 of the *Fair Work Act 2009*; and
  - b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
  - c) result in the employee being better off overall than the employee would be if no arrangement was made.
- 20.3. The department must ensure that the individual flexibility arrangement:
- a) is in writing; and
  - b) includes the name of the employee and the Secretary; and
  - c) is signed by the Secretary and the employee, and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
  - d) includes details of:
    - i. the terms of this Agreement that will be varied by the arrangement; and
    - ii. how the arrangement will vary the effect of the terms; and
    - iii. how the employee will be better off overall in relation to the terms

and conditions of his or her employment as a result of the arrangement; and

- e) states the day on which the arrangement commences and, where applicable, when the arrangement ceases.
- 20.4. The department must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- 20.5. The department or the employee may terminate the individual flexibility arrangement:
- a) by giving no more than 28 days written notice to the other party to the arrangement; or
  - b) if the department and employee agree in writing — at any time.

## **Allowances**

### **21. Higher Duties Allowance**

- 21.1. Where an employee is selected to temporarily perform duties at a higher band or broadband (including SES duties) for a continuous period of 21 calendar days or more, the employee will be paid at a salary point at that higher band or broadband as determined by the Secretary.

### **22. Relocation within Australia**

- 22.1. If an employee is recruited or transferred at the department's initiative within Australia, he/she will receive reasonable relocation expenses as determined by the Secretary.

### **23. Departmental Liaison Officer Allowance**

- 23.1. An employee who performs the role of Departmental Liaison Officer (DLO) is entitled to be paid an allowance as set out in the HRM in recognition of the long hours of duty expected, and in lieu of restriction and overtime payments, flex-time, TOIL and meal allowances.
- 23.2. An employee who undertakes the duties of DLO in the absence of the substantive occupant will be entitled to be paid a pro-rated DLO allowance if the period of acting in the role extends beyond five continuous working days.

### **24. Other Allowances**

- 24.1. Where eligible, employees will be paid the following allowances as provided for in the HRM:
- a) workplace responsibility allowance;
  - b) motor vehicle allowance;
  - c) out-of-hours parliamentary, media, protocol, humanitarian and consular duties allowance;
  - d) language proficiency allowance;

- e) community language allowance; and
- f) remote localities allowance.

## **Working Hours**

### **25. Working Hours**

- 25.1. The department supports flexible working arrangements. An employee's pattern of hours is generally to be agreed between an employee and their manager, taking into consideration the operational needs of the department, client service requirements and bearing in mind an employee's personal commitments. Where agreement cannot be reached, the employee will work a standard day.

### **26. Standard Hours of Work**

- 26.1. The standard hours of work for full time employees will be 7 hours, 30 minutes per day, or 150 hours over a 4 week period.
- 26.2. Employees will not be required to work more than 5 hours without an unpaid meal break of at least 30 minutes.

### **27. Bandwidth**

- 27.1. Hours of work must fall within the working hours bandwidth which is from 7:00 a.m. to 7:00 p.m., Monday to Friday.
- 27.2. The bandwidth may differ at post to account for the local five day standard working week.

### **28. Flex-time**

- 28.1. Flex-time is only available to APS Level 1 to 6 employees, with the exception of shift workers and casual employees. Only work completed within the bandwidth will count towards flex-time credits.
- 28.2. Employees are responsible for recording hours of attendance accurately, including breaks and any absences, in the manner prescribed by the department. The settlement period for flex-time approvals is four weeks.
- 28.3. The maximum allowable carry over flex-time credit at the end of the settlement period is 37.5 hours (or one week equivalent for part-time employees) and the maximum allowable flex-time debit at the end of the settlement period is 15 hours (or two days equivalent for part-time employees).
- 28.4. Where operational requirements dictate or there are concerns about an employee's pattern of attendance, a supervisor may direct an employee to work a standard day.

### **29. Working Arrangements for Executive Level Employees**

- 29.1. Executive Level (EL) employees are entitled to compensatory time-off-in-lieu (TOIL) on an hour-for-hour basis for additional hours worked within the bandwidth. The



maximum allowable carry over TOIL credit at the end of the settlement period is 37.5 hours (or one week equivalent for part-time employees).

- 29.2. Any work performed outside the bandwidth does not count towards an EL employee's accrued TOIL credits. Only where employees are expressly directed by their supervisor to perform duties outside the bandwidth will they be entitled to take TOIL. In these circumstances TOIL will be on an hour-for-hour basis and should be taken as soon as practicable.
- 29.3. In exceptional circumstances only, and in accordance with clause 36.4 of this Agreement, the Secretary may approve overtime payments instead of TOIL for work performed outside the bandwidth.
- 29.4. Further details on the operation of TOIL are contained in the HRM.

### 30. Shift work

- 30.1. Employees may be requested to work specified shifts which fall outside the working hours bandwidth. The following will apply to the rostering and remuneration of employees undertaking shift work:
  - a) compensation for shift work will be provided as a fortnightly taxable allowance (shift allowance). The method for calculating shift allowances is contained in the HRM;
  - b) payment arrangements for shift allowances are managed by relevant program managers in consultation with affected employees. These may be updated, in consultation with affected employees, to reflect changing operational requirements;
  - c) shift allowance will cease during periods of leave other than annual leave, PCL or compassionate leave at full pay;
  - d) shift roster changes will be implemented in consultation with affected employees;
  - e) supervisors may remove employees from shift rosters for operational reasons or for unsatisfactory attendance or performance;
  - f) the shift allowance for ordinary duty will be:
    - i. **15 per cent** of base salary where any part of the rostered shift falls between 6:00 p.m. and 6:30 a.m., Monday to Friday;
    - ii. **30 per cent** of base salary where rostered shifts falling wholly within the hours of 6:00 p.m. and 8:00 a.m. are worked continuously for a period exceeding 4 weeks;
    - iii. **50 per cent** where a rostered shift is worked on a Saturday;
    - iv. **100 per cent** where a rostered shift is performed on a Sunday; and
    - v. **150 per cent** where a rostered shift is performed on a public holiday.
  - g) shift workers are eligible for payment of overtime where they are directed to work hours in excess of their rostered hours.
- 30.2. The department will fund annual health assessments for shift workers on a voluntary basis.

### 31. Flexible Work Arrangements

- 31.1. Employees may request flexible work arrangements. Access to flexible work arrangements in Canberra and State and Territory Offices should be presumed suitable, unless there are operational reasons as to why this may not be possible.
- 31.2. Where employees work part-time hours, remuneration and other benefits will be calculated on a pro rata basis while working part-time hours unless otherwise specified.
- 31.3. Flexible or part-time work arrangements must be approved in advance by the Secretary and these arrangements should be reviewed every 12 months.

### 32. Job Sharing

- 32.1. Supervisors may approve job sharing arrangements between two part-time employees. Individual arrangements must be approved in writing and provided to both employees.

### 33. Public Holidays

- 33.1. Employees are entitled to a minimum of 14 days holiday each calendar year consisting of public holidays, additional holidays and any days taken in lieu of a public holiday or additional holidays.
- 33.2. Employees based in Australia are entitled to the following public holidays:
  - a) New Year's Day (1 January);
  - b) Australia Day (26 January);
  - c) Good Friday;
  - d) Easter Monday;
  - e) ANZAC Day (25 April);
  - f) Queens' Birthday (on the day in which it is celebrated in a state, territory or region);
  - g) Christmas Day (25 December);
  - h) Boxing Day (26 December); and
  - i) any other day, or part-day, declared or prescribed by or under a law of a state or territory to be observed generally within that state or territory, or a region of the state or territory, as a public holiday, other than a day or part-day, that is excluded by the *Fair Work Regulations 2009* from counting as a public holiday.
- 33.3. If under a state or territory law, a day or part-day is substituted for one of the public holidays listed under clause 33.2, then the substituted day or part-day is the public holiday.
- 33.4. The Secretary and an employee may agree on the substitution of a day or part-day that would otherwise be a public holiday, having regard to operational requirements.
- 33.5. An employee that is absent on a day or part-day that is a public holiday in the place where the employee is based for work purposes, is entitled to be paid for the part

or full day absence as if that day were not a public holiday, except where that employee would not normally have worked on that day. Where a public holiday falls during a period when an employee is absent on leave (other than PCL or annual leave) there is no entitlement to receive payment as a public holiday. Payment for that day would be in accordance with the entitlement for that form of leave.

### **34. Additional Holidays**

- 34.1. Employees in Australia are entitled to the following additional holidays and will be paid salary as if that day were not an additional holiday and the employee had ordinarily worked on that day:
- a) three days in lieu of Christmas closedown observed around the Christmas Day and New Year's Day period as determined by the Secretary; and
  - b) such other additional holidays as are necessary to give effect to the terms of clause 33 as determined by the Secretary.

### **35. Holidays at Overseas Posts**

- 35.1. Employees at overseas posts are entitled to the same number of holidays that are observed in Canberra each year pursuant to clauses 33 and 34.

### **36. Overtime**

- 36.1. At times, APS Level 1 to 6 employees may be directed to work hours in excess of their agreed working hours. In cases where those duties are:
- a) outside the working hours bandwidth; or
  - b) in excess of 7 hours, 30 minutes for employees undertaking crisis-related duties within the working hours bandwidth, the employee will be entitled to an overtime payment or time-off-in-lieu.
- 36.2. Overtime cannot be self-initiated and must receive prior approval from the Secretary.
- 36.3. APS Level 1 to 6 employees are entitled to receive an overtime payment as follows:
- a) from Monday to Saturday, an hourly rate of time and a half for the first three hours and double time thereafter;
  - b) on a Sunday, an hourly rate of double time;
  - c) on a public holiday, in addition to payment of salary for that day:
    - i. the first 7 hours, 30 minutes of duty within the working hours bandwidth, an hourly rate of time and a half;
    - ii. for hours in excess of 7 hours, 30 minutes or work outside the working hours bandwidth, an hourly rate of double time;
    - iii. where there is no prior notice (emergency overtime), an hourly rate of double time;
  - d) part-time APS Level 1 to 6 employees will receive overtime payments in accordance with the HRM.

- 36.4. In exceptional circumstances only, such as crisis-related duty, the Secretary may approve payment of overtime to Executive Level 1 and 2 employees.
- 36.5. Employees having undertaken overtime will be entitled to a minimum rest break of eight hours, plus reasonable travelling time. Where the rest break occurs during an employee's normal working hours the employee will receive salary as if they were at work. This will not affect an employee's entitlement to an overtime payment or TOIL.
- 36.6. Employees are not entitled to a rest break unless the period of overtime was in excess of two hours and commenced more than two hours before the working hours bandwidth.
- 36.7. Where an employee is directed by the Secretary to return to work during a rest break, the employee will be entitled to payment of overtime or TOIL for work performed during the period in which the rest break would have occurred.
- 36.8. In extraordinary circumstances the Secretary may approve an additional one-off payment to an employee or group of employees where they worked under a period of sustained pressure. Any payment under this clause will not count as salary for superannuation purposes.

### **37. Restriction Allowance**

- 37.1. At times, the Secretary may direct an employee to be 'on call'. That is, the employee is to be contactable and available to perform duty outside of the working hours bandwidth for a continuous period of five days or more. Employees that are on call are entitled to receive a restriction allowance provided:
  - a) the employee is significantly limited in their activities during the restriction period;
  - b) the direction to be on call was given before the commencement of the restriction period, unless impractical to do so;
  - c) the employee remained contactable and available to perform duty for the whole restriction period; and
  - d) the employee was not on any form of leave.
- 37.2. Employees are not considered to be on call merely for carrying or being required to carry a mobile device.

### **38. Flexible Working Arrangements for Parents and Carers**

- 38.1. Eligible employees may request flexible working arrangements in accordance with the *Fair Work Act 2009*.

### **39. Childcare**

- 39.1. The department may reimburse additional childcare costs where employees are required by management to increase their hours of work to cover emergency situations or to meet short term work commitments, including short term missions. Further details are provided in the HRM.

- 39.2. Access to childcare facilities on the department's premises will be provided to employees where property leases and operational requirements allow. Where provided, departmental employees will have priority over other organisations or individuals in these centres.
- 39.3. Families of employees returning unexpectedly from post for operational reasons and at the department's initiative will receive higher priority access in accordance with the relevant centre's policies.

#### **40. Home-Based Work**

- 40.1. Employees may apply to work from home on a short or long term basis. In considering requests the Secretary will have regard to operational requirements and the hours of work provisions of this Agreement as well as security and work, health and safety considerations. Further guidance and details are contained in the HRM.

### **Leave**

#### **41. Annual Leave**

- 41.1. Employees are entitled to 22 days paid annual leave every 12 months, accruing progressively and credited fortnightly. Pro rata adjustments to accruals and credits will be made for part-time employees or employees accessing leave without pay that does not count for service.
- 41.2. Employees undertaking shift work where:
  - a) shifts are continuously rostered 24 hours a day, 7 days a week;
  - b) the employee is regularly rostered to work these shifts; and
  - c) the employee regularly works on Sundays and public holidaysare entitled to an additional 5 days paid annual leave every 12 months.
- 41.3. Annual leave may be taken at any time, subject to operational requirements and supervisor approval.
- 41.4. Employees with annual leave balances over 40 days (or the equivalent of two years accrual for part-time employees) on 1 July each year will be directed to take annual leave before 1 March of the next year in order to reduce their balance to 33 days or below (pro rata for part-time employees).
- 41.5. If on 1 March of that next year an employee still has an annual leave balance of more than 40 days (or the equivalent of two years accrual for part-time employees) they will again be directed to take leave to reduce their balance to 33 days (pro rata for part-time employees) by 1 July that year.
- 41.6. Where an employee has been directed to take annual leave the employee and supervisor will develop a plan to ensure compliance with the annual leave limits specified in clauses 41.4 and 41.5.
- 41.7. In exceptional circumstances, the Secretary may defer the direction to take annual

leave due to operational reasons. Applications to defer such a direction must be supported by the employee's Division Head/HOM/HOP/State or Territory Director.

#### **42. Annual Leave at Half Pay**

- 42.1. Employees may be granted up to half of their total annual leave entitlement each year (up to 11 days) at half pay. This will result in the period of leave for which the employee is absent being double the amount of leave deducted from the employee's credits. In approving applications supervisors will consider the operational needs of the department, client service requirements and the personal commitments of employees.
- 42.2. Employees who are posted overseas or who have accessed purchased leave in the same calendar year are not eligible to access any annual leave at half pay.

#### **43. Purchased Leave**

- 43.1. Employees may request to purchase between one and four weeks' additional leave per year. In considering requests for purchased leave the Secretary will consider the operational needs of the department, client service requirements and the employee's accrued leave balances.
- 43.2. Payments for purchased leave will be deducted from the employee's salary and be averaged over a period of time of no more than 12 months. Purchased leave will count as service for all purposes.
- 43.3. Employees who are posted overseas or who have accessed annual leave at half pay in the same calendar year are not eligible to access any purchased leave.

#### **44. Additional Hardship Leave**

- 44.1. Additional hardship leave (AHL) applies to some hardship posts overseas and remote localities within Australia. Details on access and accrual of AHL are in the HRM.
- 44.2. AHL credits are expected to be used in the year that they accrue. Employees with over 12 months' worth of AHL credits on 1 July each year will be directed to take AHL for a period equal to the excess credit.

#### **45. Long Service Leave**

- 45.1. Employees are eligible for long service leave in accordance with the *Long Service Leave Act (Commonwealth Employees) 1976*.
- 45.2. The minimum period during which long service leave may be taken is seven calendar days at full pay (or 14 days at half pay). Long service leave cannot be broken by other periods of leave, except as otherwise provided by legislation.

#### **46. Personal/Carer's Leave**

- 46.1. Ongoing employees will be entitled to 20 days per year paid personal/carer's leave (PCL) (pro rata for part-time employees) accrued progressively and credited fortnightly. Employees transferred or promoted from another Commonwealth

government agency will receive PCL upon their promotion or transfer in accordance with clause 47.

- 46.2. In their first 12 months of continuous service, non-ongoing employees will accrue PCL during periods of continuous service at the rate of ten days per calendar year (pro rata for part-time employees), credited daily. For the purposes of this clause, continuous service includes where a new contract is entered into with a break of no longer than five working days.
- 46.3. After 12 months continuous service a non-ongoing employee will be credited with ten days PCL (pro rata for part-time employee) and thereafter receive PCL consistent with ongoing employees.
- 46.4. There is no limit on the amount of PCL an employee can accrue.
- 46.5. An employee may take PCL for the following reasons:
  - a) they are not fit for work because of personal illness or injury;
  - b) to provide care or support to a member of their family, or a member of their household, who requires that care or support because of:
    - i. personal illness or injury; or
    - ii. an unexpected emergency.
- 46.6. Employees must provide a medical certificate from a registered health practitioner for absences that exceed three consecutive days or where an employee has accessed seven days PCL in an accrual year. Where it is not reasonably practicable for an employee to obtain a medical certificate, the employee may provide a statutory declaration which outlines the reason a medical certificate could not be provided and sufficient information to satisfy a reasonable person the leave is for a reason consistent with clause 46.5.
- 46.7. An employee, including a casual employee, may access two days unpaid PCL per occasion consistent with the National Employment Standards (NES) and the requirements under clauses 46.5 and 46.6.
- 46.8. Where the Secretary considers there are exceptional circumstances and all other forms of leave are exhausted, ongoing employees may also be granted additional paid personal carer's leave (beyond the 20 days provided under clause 46.1) at half-pay.

#### **47. Portability of Leave**

- 47.1. Where an employee moves (including on promotion or for an agreed period) from another agency where they were an ongoing APS employee, the employee's unused accrued annual leave and PCL (however described) will be recognised provided the break in service is no greater than two months.
- 47.2. Where an employee is engaged as either an ongoing or non-ongoing APS employee immediately following a period of ongoing employment in the Parliamentary Service or ACT Government Service, the employee's unused accrued annual leave and PCL (however described) will be recognised provided the break in service is no greater than two months.

- 47.3. Where PCL credits (however described) are recognised under this clause and the previous employer's accrual arrangements differed to that provided in the Agreement, PCL credits will be adjusted on commencement to align with this Agreement.

#### **48. Portability of Leave – Former Non-Ongoing Employees**

- 48.1. Where a former non-ongoing employee in the department is engaged as an ongoing employee immediately after the cessation of the non-ongoing employment period, the employee may request that unused accrued annual leave and PCL credits be recognised. Any recognised annual leave will exclude any leave credits paid out on separation.

#### **49. Compassionate Leave**

- 49.1. Employees are entitled to three days compassionate leave on each occasion where a member of the employee's family or household contracts a serious illness or sustains an injury that poses a serious threat to his or her life, or dies. For clarity, contracting an illness or sustaining an injury is a separate occasion to a person dying, attracting two separate periods of compassionate leave.
- 49.2. This leave will count as service for all purposes and be paid, except for casual employees.

#### **50. Maternity Leave**

- 50.1. Employees are entitled to maternity leave in accordance with the *Maternity Leave (Commonwealth Employees) Act 1973* (ML Act).
- 50.2. Where an employee has an entitlement to be paid maternity leave under the ML Act, the department will provide an additional two weeks' maternity leave to be taken immediately following the period of paid maternity leave provided by the ML Act. This additional paid maternity leave provided by the department will be administered in the same manner as paid maternity leave provided by the ML Act.
- 50.3. An employee may elect to spread the payment for maternity leave over a maximum period of 28 weeks at a rate no less than half normal salary. Under these administrative arrangements a maximum of 14 weeks' maternity leave will count as service.

#### **51. Adoption (and Foster Parent) Leave**

- 51.1. Where an employee with 12 months qualifying service adopts a child, and is assuming primary care responsibilities for the adopted child, the employee is entitled to take a total of 14 weeks' paid adoption leave from:
- a) the date of placement of the child; or
  - b) one week before the date of placement for an international adoption.
- 51.2. An employee may elect to spread the payment of the 14 weeks' paid adoption leave over a period of 28 weeks at half pay. Under these administrative



arrangements only the first 14 weeks' adoption leave will count as service.

- 51.3. An employee who fosters a child or who has been given responsibility for a child under a Permanent Care Order by a person or organisation with statutory responsibility for the placement of the child is entitled to access paid adoption leave where the child is not expected to return to their family.

## 52. Parental Leave without Pay

- 52.1. Employees are entitled to access up to 12 months parental leave without pay in accordance with the *Fair Work Act 2009*.
- 52.2. Employees may request, in writing, to extend a period of parental leave without pay for a further 12 months in accordance with the *Fair Work Act 2009*.

## 53. Parental Leave with Pay

- 53.1. Employees who are not entitled to paid maternity, adoption or foster parent leave are entitled to two weeks' parental leave with pay to:
  - a) attend the birth of their or their spouse or de facto partner's child;
  - b) give birth and recover from a birth where the employee is not eligible for paid maternity leave;
  - c) to care for an adopted child, or a child for whom the employee is a legal guardian, and for whom the employee has recently assumed primary care responsibilities and the employee is not entitled to paid adoption leave.
- 53.2. The Secretary may approve payment of parental leave pay to occur over four weeks at half pay. Under these administrative arrangements only the first two weeks will count as service.
- 53.3. An employee may access up to two weeks' PCL immediately following a period of parental leave with pay. A medical certificate from a registered health practitioner is not required when accessing PCL for this purpose.

## 54. Return from Parental Leave

- 54.1. The department will comply with section 84 of the *Fair Work Act 2009*.

## 55. Miscellaneous Leave

- 55.1. The Secretary may grant miscellaneous leave to an employee or group of employees to cover a variety of absences from the workplace. Miscellaneous leave may be granted:
  - a) for the period requested, or another period;
  - b) with or without pay; and
  - c) to count as service or not to count as service.
- 55.2. Employees will be entitled to miscellaneous leave with pay to count as service for eligible community service as defined in the *Fair Work Act 2009*. Eligible community service includes jury duty and all emergency service activities including regular training, reasonable travel time and ceremonial duties that must be

completed during agreed working hours.

- 55.3. Indigenous Australian employees will be entitled to miscellaneous leave with pay for up to three days per calendar year for ceremonial reasons, including for attendance at or participation in NAIDOC Week activities.
- 55.4. Other circumstances in which miscellaneous leave may be granted are outlined in the HRM.
- 55.5. For periods of three days or less supervisors can grant miscellaneous leave. The Secretary must approve any longer periods of miscellaneous leave or any period of miscellaneous leave for purposes not identified in this Agreement.

## **56. Leave for ADF Reserve and Continuous Full Time Service or Cadet Force Obligations**

- 56.1. The Secretary may grant leave (with or without pay) to enable an employee to fulfil Australian Defence Force (ADF) Reserve and Continuous Full Time Service (CFTS) or Cadet Force obligations. Details are contained in the HRM.

## **57. Effects of Leave without Pay**

- 57.1. Where an employee takes 30 calendar days or more leave without pay the whole period of leave without pay will not count for service for any purpose other than where required by legislation. For clarity, this includes leave accruals and eligibility for salary advancement or performance bonuses.
- 57.2. Where an employee takes 30 calendar days leave without pay within an accrual year for PCL purposes, the date of accrual for PCL will be deferred by the number of days leave without pay is taken in that accrual year.

## **58. Unauthorised Absence**

- 58.1. Where an employee is absent from work without approval all salary and entitlements provided to the employee will cease until the employee resumes duty or is granted leave. Any absence deemed to be unauthorised will not count as service for any purpose.
- 58.2. The department will make all reasonable efforts to contact an employee while absent from work without authorisation. If the employee does not return to work or contact cannot be made with the employee for three consecutive working days the Secretary may initiate action to terminate the employee's employment on the grounds of non-performance of duty.

# **Managing Performance**

## **59. Performance Management Framework**

- 59.1. The department's Performance Management Framework (PMF) will apply to eligible ongoing and non-ongoing employees as set out in the PMF, and provide:
  - a) a standardised probationary process;

- b) a robust performance appraisal process that focuses on both the achievement of business outcomes and the individual learning and development goals of employees; and
- c) clear policy, guidance and support for the management of underperformance.

## 60. Managing Underperformance

- 60.1. Where an employee is considered to be performing below expected standards the Secretary will initiate formal underperformance procedures as outlined in the PMF.
- 60.2. The formal underperformance procedures contained in the PMF will not apply to:
  - a) employees completing a probation period;
  - b) non-ongoing employees; or
  - c) cases of suspected breaches of the APS Code of Conduct.

## Travel

### 61. Class of Travel

- 61.1. The standard for official domestic travel is economy class. In cases where the flight time for domestic travel is in excess of three hours, the class of travel will be business class.
- 61.2. The standard for multi-sector official international travel is business class. For single sector official international travel with a flight time of less than two hours the class of travel will be economy class.
- 61.3. Where an employee is entitled to business class travel and that class is not available, the class of travel will be the next level below (i.e. premium economy or economy).

### 62. Travel Time

- 62.1. Where possible all travel should be undertaken within the working hours bandwidth. Travel time within the working hours bandwidth may be recognised as flex-time for APS Level 1 to 6 employees or TOIL for Executive Level 1 to 2 employees. Travel time for these purposes will commence one hour prior to scheduled departure.
- 62.2. Where travel time occurs outside the working hours bandwidth employees will be provided one hour time-off-in-lieu each way.

### 63. Travel Allowance

- 63.1. The HRM outlines the travel allowance (TA) rates that will be provided to employees required to travel and be away from home overnight. Where the amount of TA is insufficient to meet reasonable costs incurred for accommodation, meals or incidentals the Secretary may reimburse the difference or approve a higher TA amount where it is foreseeable that the TA amount will be insufficient.

- 63.2. The TA amounts will be adjusted from time to time consistent with the relevant subscription service. Where an employee travels to a location where subscription rates are unavailable, the Secretary will set the TA amount.
- 63.3. An employee who undertakes travel for a lesser period than anticipated must repay any excess TA advanced to the employee.
- 63.4. Comprehensive details of all travel provisions are contained in the HRM.

## **Workforce Management**

### **64. Probation**

- 64.1. All new ongoing APS employees engaged in the department will be required to successfully complete a probation period. The length and conditions will be outlined in their offer of employment and the HRM.

### **65. Professional Development Support**

- 65.1. The Secretary may approve reimbursement of reasonable costs associated with professional membership or accreditation where it is deemed necessary for the employee to effectively undertake his or her role. This may include membership/accreditation fees and/or training.
- 65.2. The Secretary may approve reimbursement of some of the costs associated with undertaking tertiary study in accordance with the HRM. The Secretary may also grant paid or unpaid leave for the purposes of completing tertiary study in accordance with the HRM.

### **66. Administrative Officer Development Programs**

- 66.1. The department conducts two Administrative Officer Development Programs (ADPs): One for Broadband One and Two employees; and one for APS Level 6 and Executive Level 1 employees.
- 66.2. ADP participants undertake a two year program with rotations in corporate and functional areas of the department. The ADP aims to equip participants with the necessary skills to fill administrative and management positions in Canberra and at overseas posts, including Senior Administrative Officer positions.
- 66.3. ADP participants will enter into performance agreements with their supervisors at the beginning of each placement and will have their performance appraised and rated at the conclusion of each placement, in accordance with the Performance Management Framework.

### **67. Resignation and Retirement**

- 67.1. An ongoing employee may resign or retire by giving the Secretary at least 14 days' notice. The Secretary may agree to waive this requirement or agree to a shorter notice period if requested.
- 67.2. The Secretary may give effect to a resignation at an earlier date within the notice

period. In such cases, the employee will be paid compensation in lieu of the notice period which is not worked.

## 68. Termination of Employment

- 68.1. Section 29 of the *Public Service Act 1999* sets out the grounds for termination of an ongoing APS employee. Notice of termination will be provided consistent with the *Fair Work Act 2009*.
- 68.2. The sole and exhaustive rights and remedies of an employee in relation to termination of employment are those applicable under:
  - a) the *Fair Work Act 2009*;
  - b) other Commonwealth laws (including the Constitution); and
  - c) at common law.
- 68.3. Termination of, or a decision to terminate employment, cannot be reviewed under the procedures for resolving disputes provided by this Agreement.
- 68.4. Nothing in this Agreement prevents the Secretary from terminating the employment of an employee for serious misconduct, without further notice or payment in lieu subject to compliance with the procedures established by the Secretary for determining whether an employee has breached the APS Code of Conduct under section 15 of the *Public Service Act 1999*.

## 69. Consultation

- 69.1. This clause applies if the department:
  - a) has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or
  - b) proposes to introduce a change to the regular roster or hours of a standard day for employees.
- 69.2. For a major change referred to in subclause 69.1(a):
  - a) the employer must notify the relevant employees of the decision to introduce the major change; and
  - b) clauses 69.3 and 69.9 apply.
- 69.3. The relevant employees may appoint a representative for the purposes of the procedures in this clause.
- 69.4. If:
  - a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
  - b) the employee or employees advise the employer of the identity of the representative;the employer must recognise the representative.
- 69.5. As soon as practicable after making its decision, the department will:
  - a) discuss with the relevant employees:
    - i. the introduction of the change; and

- ii. the effect the change is likely to have on the employees; and
    - iii. measures the department is taking to avert or mitigate the adverse effect of the change on the employees; and
  - b) for the purposes of the discussion—provide, in writing, to the relevant employees:
    - i. all relevant information about the change including the nature of the change proposed; and
    - ii. information about the expected effects of the change on the employees; and
    - iii. any other matters likely to affect the employees.
- 69.6. The department will not disclose confidential or commercially sensitive information to the relevant employees.
- 69.7. The department will give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- 69.8. Where this Agreement provides for a major change to occur the requirements set out in relation to that major change will apply to the exclusion of this clause.
- 69.9. For the purposes of this clause, a major change is likely to have a significant effect on employees if it results in:
- a) the termination of the employment of employees; or
  - b) major change to the composition, operation or size of the employer’s workforce or to the skills required of employees; or
  - c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
  - d) the alteration of hours of work; or
  - e) the need to retrain employees; or
  - f) the need to relocate employees to another workplace; or
  - g) the restructuring of jobs.
- 69.10. For a change referred to in subclause 69.1(b):
- a) the employer must notify the relevant employees of the proposed change; and
  - b) clauses 69.11 to 69.15 apply.
- 69.11. The relevant employees may appoint a representative for the purposes of the procedures in this term.
- 69.12. If:
- a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
  - b) the employee or employees advise the employer of the identity of the representative;
- the employer must recognise the representative.
- 69.13. As soon as practicable after proposing to introduce the change, the employer must:
- a) discuss with the relevant employees the introduction of the change; and

- b) for the purposes of the discussion—provide to the relevant employees:
  - i. all relevant information about the change, including the nature of the change; and
  - ii. information about what the employer reasonably believes will be the effects of the change on the employees; and
  - iii. information about any other matters that the employer reasonably believes are likely to affect the employees; and
- c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).

69.14. However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.

69.15. The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.

69.16. In this clause: ‘relevant employees’ means the employees who may be affected by a change referred to in clause 69.1

## **70. Designated Employee**

70.1. To facilitate effective consultation and workplace relations the Secretary will designate an employee who will provide a first point of contact for any matters arising out of the operation of this Agreement.

## **71. Workplace Relations Committee**

71.1. The WRC, the department’s peak consultative body, will be convened to:

- a) consider and develop means of improving the quality of the work environment;
- b) address matters of employment concern, including those arising from the implementation and operation of this Agreement; and
- c) handle such other responsibilities as are assigned to the WRC under the terms of this Agreement.

71.2. Administrative matters pertaining to the operation of the WRC are contained in the HRM.

## **72. Employee Representation**

72.1. The right for an employee to belong to an employee organisation will be respected, as will the right for an employee not to belong to an employee organisation.

## **Redeployment, Reduction or Redundancy**

### **73. Application**

73.1. The following redeployment, reduction and redundancy provisions apply to non-probationary, ongoing employees. Arrangements for non-ongoing employees are

contained in their contract of employment.

#### **74. Definition of Excess**

74.1. An employee is excess if:

- a) the duties performed by the ongoing employee are no longer necessary for the efficient and economical working of the department; or
- b) the services of the employee cannot be effectively used because of technological or other changes in the work methods of the department or structural or other changes in the nature, extent or organisation of the functions of the department; or
- c) the duties usually performed by the employee are to be performed at a different locality, the employee is not willing to perform duties at the new locality and no suitable alternative duties can be identified at the current locality and the Secretary has determined that the redeployment, reduction and redundancy provisions of the Agreement apply to the employee.

#### **75. Process**

75.1. If the Secretary identifies an employee potentially excess, the Secretary will hold discussions with the employee and, if they choose, a representative to consider the following options:

- a) redeployment within the department to a suitable vacancy at the employee's current classification;
- b) redeployment within the department to a suitable vacancy at a lower classification in accordance with clause 86 below;
- c) voluntary redundancy consistent with clause 79 below.

75.2. The maximum time within which these discussions are to take place (the 'discussion period') will be one month, or four weeks, whichever is the longer.

75.3. The Secretary may, prior to the conclusion of the discussion period, invite ongoing employees who are not potentially excess to express interest in voluntary redundancy where those redundancies permit the redeployment of employees who are potentially excess.

75.4. Employees who are advised they are potentially excess will be reimbursed, up to an amount specified in the HRM, to seek professional financial advice.

#### **76. Provision of Information**

76.1. During the discussion period a potentially excess employee who has been asked to consider voluntary redundancy under clause 75.1 will be given information on:

- a) the amount of redundancy pay, payment in lieu of notice and the value of leave credits to be paid out;
- b) the amount of accumulated superannuation contributions;
- c) the options open to the employee concerning superannuation; and
- d) the taxation rules applying to the various payments.



## 77. Decision by Secretary

- 77.1. Following the conclusion of the discussion period the Secretary may decide to take any of the actions specified in clause 75.1.
- 77.2. If the Secretary decides to offer a voluntary redundancy to an employee, he or she will do so in writing.

## 78. Timeframes

- 78.1. If it is determined that the employee will be redeployed the employee will be placed in a position determined by the Placements Committee in consultation with the employee and potential work areas. This will occur as soon as practicable after the cessation of the discussion period.
- 78.2. The employee will also be invited to seek redeployment through any whole of government redeployment mechanisms that may be in place from time to time.
- 78.3. An employee that is made an offer of voluntary redundancy under clause 77.2 will have one month from the date of the offer to decide to accept or decline the offer (the 'consideration period'). If an employee declines an offer of voluntary redundancy under clause 77.2 they will be considered excess from the end of the consideration period and may be subject to the involuntary redundancy provisions specified in clause 84.

## 79. Redundancy Pay

- 79.1. An employee who accepts an offer of voluntary redundancy, and whose employment is terminated under section 29 of the *Public Service Act 1999* on the grounds that he or she is excess to the requirements of the department, is entitled to redundancy pay of an amount equal to two weeks' salary for each completed year of continuous service, plus a pro rata payment for completed months of service since the last completed year of service.
- 79.2. The minimum sum payable will be four weeks' salary and the maximum will be 48 weeks' salary subject to any minimum amount the employee is entitled to under the National Employment Standards (NES).
- 79.3. Redundancy pay will be calculated on a pro rata basis for any period where an employee has worked part-time hours during his or her period of service and where the employee has less than 24 years full-time service.

## 80. Service for Redundancy Pay Purposes

- 80.1. Subject to clause 81, service for redundancy pay purposes means:
  - a) service in the department;
  - b) government service as defined in section 10 of the *Long Service Leave (Commonwealth Employees) Act 1976*;
  - c) service with the Australian Defence Forces where the ongoing employee is not in receipt of a service pension in respect of the relevant service;
  - d) APS service immediately preceding deemed resignation (under the repealed

- section 49 of the *Public Service Act 1922*), if the service has not previously been recognised for severance pay purposes; and
- e) service in another organisation where an ongoing employee was moved from the APS to that organisation due to an assignment of duties, or an ongoing employee engaged by that organisation on work within a function is appointed as a result of the movement of that function to the APS and such service is recognised for long service leave purposes.

## 81. Service Not to Count as Service for Redundancy Pay Purposes

- 81.1. Any period of service which ceased:
- a) through termination on the following grounds, or on a ground equivalent to any of the following grounds:
    - i. the ongoing employee lacks, or has lost, an essential qualification for performing his/her duties;
    - ii. non-performance, or unsatisfactory performance of duties;
    - iii. inability to perform duties because of physical or mental incapacity;
    - iv. failure to satisfactorily complete an entry level training course;
    - v. failure to meet a condition imposed under section 22(6) of the *Public Service Act 1999*; or
    - vi. a breach of the APS Code of Conduct.
  - b) on a ground equivalent to a ground listed in subclause 81.1(a) under the repealed *Public Service Act 1922*;
  - c) through voluntary retirement at or above the minimum retiring age applicable to the ongoing employee; or
  - d) with the payment of a redundancy benefit or similar payment or an employer- financed retirement benefit,
- will not count as service for redundancy pay purposes.
- 81.2. Absences from duty which do not count as service for any purpose will not count as service for redundancy pay purposes.

## 82. Earlier Periods of Service

- 82.1. For periods of service to count for redundancy pay purposes there must be no breaks between the periods of service, except where the break in service is less than one month and occurs where an offer of employment in relation to the second period of service was made and accepted by the employee before the first period of service ended (whether or not the two periods of service are with the same employer or agency).
- 82.2. Periods of service which ceased because the employee was deemed to have resigned from the APS on marriage under the repealed section 49 of the *Public Service Act 1922* will also count for service.

### 83. Rate of Payment – Redundancy Pay

- 83.1. For the purposes of calculating any payment under clause 79, salary will comprise the following only:
- a) the ongoing employee's salary; or
  - b) where the ongoing employee has been acting in a higher position for a continuous period of at least 12 months immediately preceding the date on which the ongoing employee is given notice of retrenchment, the salary of the higher position; and
  - c) other allowances in the nature of salary paid during periods of annual leave and on a regular basis, excluding performance bonuses, allowances which are a reimbursement for expenses incurred or payment for disabilities associated with the performance of duty.

### 84. Involuntary Redundancy

- 84.1. An excess employee who has declined an offer of a voluntary redundancy will be entitled to a period of retention as follows:
- a) 13 months where the employee has 20 years or more service or is over 45 years of age; or
  - b) 7 months for all other employees.
- 84.2. If an excess employee is entitled to a redundancy payment in accordance with the NES, the applicable retention period identified in clause 84.1 will be reduced by the number of weeks redundancy pay that the employee will be entitled to under the NES as at the expiration of the retention period (as adjusted by this clause).
- 84.3. The retention period will commence from the day the employee is notified in writing they are an excess employee, or one month after the day an employee is made an offer of a voluntary redundancy. The retention period will be extended by any approved periods of PCL evidenced by a medical certificate from a registered health practitioner.
- 84.4. During the retention period the Secretary will continue to take reasonable steps to find alternative employment for the excess ongoing employee including:
- a) potential excess employees being considered in isolation for any departmental vacancies;
  - b) referral to any whole of government redeployment mechanisms that may be in place from time to time or, where this is not available, an alternate redeployment service provider; and/or
  - c) reducing the excess employee's classification in accordance with clause 86.
- 84.5. The Secretary may, with the agreement of the employee, terminate the employee's employment under section 29 of the *Public Service Act 1999* where there is insufficient productive work available for an excess employee during the remainder of the retention period and there are no reasonable redeployment prospects in the APS. Upon termination, the employee will be paid a lump sum comprising:
- a) the balance of the retention period (as shortened for the NES under clause

- 84.2) and this payment will be taken to include the payment in lieu of notice of termination of employment; and
- b) the employee's NES entitlement to redundancy pay.
- 84.6. An excess employee will not be retrenched involuntarily if the ongoing employee has not been offered a voluntary redundancy.

## 85. Period of Notice

- 85.1. Where an employee accepts an offer of voluntary redundancy the Secretary may approve the employee's redundancy and, upon approval, will give four weeks' notice of termination (the 'notice period'). Where the employee is over 45 years of age with at least five years continuous service the notice period will be five weeks.
- 85.2. Where an employee separates or is terminated at the beginning of, or within, the notice period, the employee will receive payment in lieu of notice for the unexpired portion of the notice period.
- 85.3. An excess employee serving a period of retention will be given four weeks' notice of termination prior to the expiry of the retention period. Where the employee is over 45 years of age with at least five years continuous service the notice period will be five weeks. The notice period will be extended by any approved periods of PCL evidenced by a medical certificate from a registered health practitioner and taken within the notice period.

## 86. Reduction in Classification

- 86.1. During the discussion period, the Secretary may agree with a potentially excess employee to redeployment within the department at a lower classification. Where this occurs the employee will continue to be paid at his/her previous salary level for a period of time equal to that which would otherwise be payable as redundancy pay under clause 79. The salary payable following this period will be determined under clause 12 of this Agreement.
- 86.2. Where an employee agrees to redeployment at a lower classification during a retention period the employee will continue to be paid at his/her previous salary level for the balance of the retention period.

## Dispute Resolution

### 87. Disputes Arising Under this Agreement and the NES

- 87.1. If a dispute relates to:
- a) a matter arising under this Agreement; or
- b) the National Employment Standards (NES) in part 2-2 of the *Fair Work Act 2009*;
- this clause sets out procedures to settle the dispute.
- 87.2. An employee who is a party to the dispute may appoint a representative for the

purposes of these procedures.

- 87.3. In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the employee or employees and relevant supervisors and/or management.
- 87.4. If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to the Fair Work Commission (FWC).
- 87.5. The FWC may deal with the dispute in two stages:
  - a) the FWC will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
  - b) if the FWC is unable to resolve the dispute at the first stage, the FWC may then:
    - i. arbitrate the dispute; and
    - ii. make a determination that is binding on the parties.

Note: If the FWC arbitrates the dispute, it may also use the powers that are available to it under the *Fair Work Act 2009*. A decision that the FWC makes when arbitrating a dispute is a decision for the purpose of division 3 of part 5-1 of the *Fair Work Act 2009*. Therefore, an appeal may be made against the decision.

- 87.6. While the parties are trying to resolve the dispute using these procedures:
  - 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 department to perform other available work at the same workplace, or at another workplace, unless:
    - i. the work is not safe; or
    - ii. applicable work 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.
- 87.7. The parties to the dispute agree to be bound by a decision made by the FWC in accordance with these procedures.

## Annex 1 – Classification Structure

General APS Bands and Broadbands		Departmental Designations	
APS Level 1	Broadband One	ICP	Training Band
APS Level 2			
APS Level 3			
Promotion		ICPG <sup>1</sup> (1 <sup>st</sup> year) Graduates (1 <sup>st</sup> year)	Training Band
APS Level 4	Broadband Two		
APS Level 5		ICPG <sup>2</sup> (2 <sup>nd</sup> year) Graduates <sup>3</sup> (2 <sup>nd</sup> year)	
Promotion			
APS Level 6 Band			
Promotion			
Executive Level 1 Band			
Promotion			
Executive Level 2 Band			Medical Officer Band

<sup>1</sup> Subject to eligibility criteria outlined in clause 8.11.

<sup>2</sup> Subject to eligibility criteria outlined in clause 8.14.

<sup>3</sup> Subject to eligibility criteria outlined in clause 8.6.

## Annex 2 – Pay Scales

Broadband One, APS Level 1-3					
		2011-14 EA pay point	Pay point following 2015-16 EA salary adjustment	Pay point following 2016-17 EA salary adjustment	Pay point following 2017-18 EA salary adjustment
APS Level 1	1	43,368	44,235	45,120	46,022
	2	47,364	48,311	49,278	50,263
APS Level 2	1	50,206	51,210	52,234	53,279
	2	51,956	52,995	54,055	55,136
	3	54,218	55,302	56,408	57,537
APS Level 3	1	56,895	58,033	59,194	60,377
	2	62,012	63,252	64,517	65,808

Broadband Two, APS Level 4-5					
		2011-14 EA pay point	Pay point following 2015-16 EA salary adjustment	Pay point following 2016-17 EA salary adjustment	Pay point following 2017-18 EA salary adjustment
APS Level 4	1	63,755	65,030	66,331	67,657
	2	67,967	69,326	70,713	72,127
APS Level 5	1	70,302	71,708	73,142	74,605
	2	72,462	73,911	75,389	76,897
	3	75,122	76,624	78,157	79,720

APS Level 6 Band					
		2011-14 EA pay point	Pay point following 2015-16 EA salary adjustment	Pay point following 2016-17 EA salary adjustment	Pay point following 2017-18 EA salary adjustment
APS Level 6	1	77,511	79,061	80,642	82,255
	2	82,158	83,801	85,477	87,187
	3	87,154	88,897	90,675	92,489

<b>Executive Level 1 Band</b>					
		2011-14 EA pay point	Pay point following 2015-16 EA salary adjustment	Pay point following 2016-17 EA salary adjustment	Pay point following 2017-18 EA salary adjustment
Executive Level 1	1	96,524	98,454	100,424	102,432
	2	101,661	103,694	105,768	107,883
	3	105,148	107,251	109,396	111,584
	4	107,970	110,129	112,332	114,579

<b>Executive Level 2 Band</b>					
		2011-14 EA pay point	Pay point following 2015-16 EA salary adjustment	Pay point following 2016-17 EA salary adjustment	Pay point following 2017-18 EA salary adjustment
Executive Level 2	1	116,611	118,943	121,322	123,749
	2	124,063	126,544	129,075	131,657
	3	128,075	130,637	133,249	135,914
	4	131,700	134,334	137,021	139,761

<b>Medical Officer Band</b>					
		2011-14 EA pay point	Pay point following 2015-16 EA salary adjustment	Pay point following 2016-17 EA salary adjustment	Pay point following 2017-18 EA salary adjustment
Medical Officer 2	1	128,840	131,417	134,045	136,726
	2	132,493	135,143	137,846	140,603
Medical Officer 3	1	134,992	137,692	140,446	143,255
	2	139,278	142,064	144,905	147,803
Medical Officer 4	1	147,226	150,171	153,174	156,237
	2	152,968	156,027	159,148	162,331
	3	159,699	162,893	166,151	169,474



## Annex 3 – Formulas

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

## Annex 4 – Conditions for Employees Performing Specific Duties

### 1. Medical Officers

- 1.1. A loading in lieu of overtime of 15 per cent of base annual salary will be payable to medical officers as recognition of the requirement that they be 'on call' (i.e. available to perform duty) outside regular business hours.
- 1.2. Medical officers who receive an 'on call' allowance are not entitled to receive a restriction allowance.
- 1.3. Medical officers will be entitled to the following for their continuing professional development:
  - a) up to one week per annum paid attendance at approved professional development conferences or seminars, including:
    - i. return air fares;
    - ii. registration fees; and
    - iii. accommodation and meals.
- 1.4. In recognition of their unique specialist skills and importance to the health of staff at Australia's missions overseas, medical officers will be entitled to a \$15,000 allowance where they have a Fellowship (Specialist) qualification with one of the following:
  - a) Fellowship of the Royal Australian College of General Practitioners;
  - b) Fellowship of the College of Rural and Remote Medicine;
  - c) Fellowship of the Faculty of Occupation Medicine (Royal Australasian College of Physicians).
- 1.5. Medical officers will also be entitled to a second allowance of \$15,000 for a qualification in tropical medicine in recognition of the importance to our regional posts of medical officers' qualifications in this field. Details are set out in the HRM.

### 2. Passport Offices

- 2.1. Where Client Service levels, as outlined in the Passports Client Service Charter, have been exceeded, employees will be rewarded through a system developed by APO Management in consultation with passport office employees. Bonus payments will come from the Passports Productivity Fund which is capped at \$275,000 per annum. The maximum individual bonus will be \$1,700 in any 12 month period.
- 2.2. The Secretary may approve special overtime payments to enable a Passport Office to cope with increases in demand and other unforeseen circumstances.
- 2.3. Employees called out after-hours to attend requests for urgent passport issues will be paid overtime consistent with this Agreement. Reasonable travel time will also be paid where the travel time occurs outside the working hours bandwidth.
- 2.4. Where APS Level 1 to 6 Passport Office employees work on a day that is a public holiday for that Office, those employees are entitled to choose either payment for overtime or to take TOIL in accordance with the overtime provisions of this Agreement. Where an APS Level 1 to 6 Passport Office employee elects to take TOIL

rather than receiving payment for overtime, the subsequent use of TOIL will be subject to operational requirements.

### **3. Consular and Passports Services**

- 3.1. Employees working shifts in the Consular Emergency Centre will be eligible to be paid a fortnightly allowance in accordance with the shift work provisions of this Agreement.

### **4. Technical Services**

- 4.1. In addition to the provisions governing working arrangements and compensation for employees required to work long hours under difficult circumstances, technical employees are also entitled to receive a site allowance in situations, particularly overseas, where the working conditions are difficult. Details about this and other working arrangements specifically concerning technical employees are outlined in the HRM.

### **5. Employees Performing Classified Courier Services**

- 5.1. Specific arrangements for employees performing classified courier runs are detailed in the HRM. These include access to an annualised shift allowance for full-time couriers. The arrangements may be amended from time-to-time in consultation with employees to meet changing operational requirements.