



Clean Energy Regulator Enterprise Agreement

2024-2027





DECISION

Fair Work Act 2009

s.185 - Application for approval of a single-enterprise agreement

The Commonwealth Of Australia, As Represented By The Clean Energy Regulator T/A Clean Energy Regulator

(AG2024/770)

CLEAN ENERGY REGULATOR ENTERPRISE AGREEMENT 2024-2027

Commonwealth employment

COMMISSIONER PLATT

ADELAIDE, 11 APRIL 2024

Application for approval of the Clean Energy Regulator Enterprise Agreement 2024-2027

[1] An application has been made for approval of an enterprise agreement known as the *Clean Energy Regulator Enterprise Agreement 2024-2027* (the Agreement) pursuant to s.185 of the *Fair Work Act 2009* (the Act) by the Commonwealth Of Australia, As Represented By The Clean Energy Regulator T/A Clean Energy Regulator (the Applicant). The agreement is a single enterprise agreement.

[2] The matter was allocated to my Chambers on 22 March 2024.

[3] On 26 March 2024, I conducted a telephone conference with the parties to seek clarification about aspects of the Agreement and invited the Applicant to address these matters including through the provision of an undertaking.

[4] The Agreement contains a number of changes which when considered in isolation, are less advantageous than the Award. These include increased ordinary hours, an expanded spread of hours and some penalty rates. I note that the Agreement also confers benefits of universal application including paid leave between Christmas and New Year and increased Superannuation Contributions. I have not considered additional benefits which were conditional in their application and/or difficult to quantify in monetary terms. I find that the universal improvements offset the disadvantages referred to.

[5] The Applicant has submitted an undertaking in the required form dated 27 March 2024, a copy of which is attached to this Agreement. The undertaking deals with the following topics:

- Higher duties allowance will be paid to employees (APS1 pay point 1.1) after half a day where they occupy a role at a classification level higher than their substantive

classification level consistent with the *Australian Public Service Enterprise Award 2015*.

- A definition of ‘standard hours’ to prescribe the agreed part time hours of working including the start and finish times so as to determine when overtime is payable has been inserted, consistent with the *Australian Public Service Enterprise Award 2015*.

[6] A copy of the undertaking has been provided to the bargaining representatives and I have sought their views in accordance with s.190(4) of the Act. The bargaining representatives did not express any view on the undertaking.

[7] The undertaking appears to meet the requirements of s.190(3) of the Act and I have accepted it. As a result, the undertakings are taken to be a term of the Agreement.

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

[9] I am satisfied that each of the requirements of ss.186, 187, 188 and 190 of the Act as are relevant to this application for approval have been met.

[10] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 7 days after the date of approval of the Agreement. The nominal expiry date is 28 February 2027.



COMMISSIONER

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<AE524171 PR773374>

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

Clean Energy Regulator Enterprise Agreement 2024-2027

Formal acceptance of the Agreement

Employer

Signed for, and on behalf of, the Commonwealth by the Chief Executive Officer of the Clean Energy Regulator:



Full name: David Parker

Agency: Clean Energy Regulator

Address: 47 Bowes Street, Phillip ACT 2606

Bargaining Representative: Community and Public Sector Union

Signed for, and on behalf of, the Community and Public Sector Union by the Assistant National Secretary, National Secretariat:



Full name: Melissa Payne

Address: 54-58 Foveaux Street, Surry Hills NSW 2010

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Section 1: Technical matters

Title

1. This agreement is made under section 172 of the *Fair Work Act 2009* and will be known as the Clean Energy Regulator Enterprise Agreement 2024-2027 (this agreement).

Parties to the agreement

2. This agreement covers:
 - a) the Agency Head of the Clean Energy Regulator (the agency), for and on behalf of the Commonwealth of Australia as the employer;
 - b) all employees in the agency employed under the *Public Service Act 1999* other than:
 - i. Senior Executive Service (SES) employees or equivalent, and
 - c) subject to notice being given in accordance with section 183 of the *Fair Work Act 2009*, the following employee organisation which was a bargaining representative for this agreement:
 - i. Community Public Sector Union (CPSU).

Operation of the agreement

3. This agreement will commence seven days after approval by the Fair Work Commission.
4. This agreement will nominally expire on 28 February 2027.

Closed comprehensive agreement

5. This agreement states the terms and conditions of employment of employees covered by this agreement, other than terms and conditions applying under relevant Commonwealth laws.
6. This agreement will be supported by policies and guidelines, as implemented and varied from time to time.
7. Policies and guidelines are not incorporated into and do not form part of this agreement. To the extent that there is any inconsistency between policies and guidelines and the terms of this agreement, the terms of this agreement will prevail.

National Employment Standards (NES) precedence

8. The terms of this agreement are intended to apply in a manner that does not derogate from the National Employment Standards (NES). The NES will continue to apply to the extent that any term of this agreement is detrimental to an employee of the agency in any respect when compared with the NES.

Delegations

9. The Agency Head may delegate to or authorise any person to perform any or all of Agency Head's powers or functions under this agreement, including the power of delegation, and may do so subject to conditions.

Individual flexibility arrangements

10. The Agency Head 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 agreement deals with one or more of the following matters:
 - i. arrangements about when work is performed
 - ii. overtime rates
 - iii. penalty rates
 - iv. allowances
 - v. remuneration
 - vi. leave and leave loading, and
 - b) the arrangement meets the genuine needs of the agency and employee in relation to one or more of the matters mentioned in clause 10(a), and
 - c) the arrangement is genuinely agreed to by the agency and employee.
11. The Agency Head must ensure the terms of the individual flexibility arrangement:
 - a) are about permitted matters under section 172 of the *Fair Work Act 2009*
 - 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.
12. The Agency Head must ensure that the individual flexibility arrangement:
 - a) is in writing
 - b) includes the name of the agency and employee
 - c) is signed by the Agency Head and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee, and
 - d) includes details of:
 - i. the terms of the enterprise agreement that will be varied by the arrangement
 - ii. how the arrangement will vary the effect of the terms
 - iii. how the employee will be better off overall in relation to the terms and conditions of their employment as a result of the arrangement, and
 - e) states the day on which the arrangement commences.
13. The Agency Head must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
14. The Agency Head or employee may terminate the individual flexibility arrangement:
 - a) by giving no more than 28 days written notice to the other party to the arrangement, or
 - b) if the Agency Head and employee agree in writing – at any time.
15. The Agency Head and employee are to review the individual flexibility arrangement at least every 12 months.

Section 2: Remuneration matters

Salary increases

16. Salary rates will be as set out in Schedule A – Base salaries of this agreement.
17. The base salary rates in Schedule A – Base salaries include the following increases:
 - a) 4.0 per cent from the first full pay period on or after 1 March 2024 (14 March 2024)
 - b) 3.8 per cent from the first full pay period on or after 1 March 2025 (13 March 2025), and
 - c) 3.4 per cent from the first full pay period on or after 1 March 2026 (12 March 2026).
18. In recognition of a common alignment date of the first full pay period on or after 1 March each year, the payments in Schedule A – Base salaries were calculated based on base salary rates as at 31 August 2023.
19. If an employee's salary prior to the commencement of this agreement exceeds both the maximum pay point for that classification in Schedule A – Base salaries, the Agency Head may retain the employee's existing salary until it is overtaken by a pay point as identified in Schedule A – Base salaries, at which time they will be entitled to salary at that pay point.
20. If an existing CER employee is on a pay point identified in Schedule B – Base salaries prior to the commencement of this agreement, the employee will have their salary maintained on commencement of this agreement and will be entitled to the salary increases outlined in clause 17.

Payment of salary

21. Employees will be paid fortnightly, in arrears by electronic funds transfer (EFT) into a financial institution account of the employee's choice, based on their annual salary using the following formula:

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

Note: This formula is designed to achieve a consistent fortnightly pay rate without significant variability year-to-year. It reflects that the calendar year is not neatly divisible into 26 fortnightly periods. There are 313 fortnightly pay cycles within a 12 year period.

Payment of salary for part-time employees

22. Remuneration for part-time employees will be calculated on a pro-rata basis of the appropriate salary rate in Schedule A – Base salaries and Schedule B – Base salaries, based on the proportion of hours worked in comparison to full-time hours.

Salary packaging

23. Ongoing employees may access salary packaging through the agency's nominated provider in line with the relevant legislative requirements.
24. Any fringe benefits tax liability incurred by an employee as a result of salary packaging will be met by the employee.
25. Salary packaging arrangements will not reduce an employee's salary for superannuation or any other purpose.
26. Non-ongoing employees may access salary packaging for superannuation purposes only.

Salary setting (including salary on commencement and promotion)

27. Where an employee is engaged, moves to or is promoted in the agency, the employee's salary will be paid at the minimum of the salary range of the relevant classification, unless the Agency Head determines a higher salary within the relevant salary range under these salary setting clauses.
28. The Agency Head may determine the payment of salary at a higher value within the relevant salary range of the relevant classification and the date of effect at any time.
29. In determining a salary under these salary setting clauses, the Agency Head will have regard to relevant factors including the employee's experience, qualifications and skills.
30. Where an employee commences ongoing employment in the agency immediately following a period of non-ongoing employment in the agency for a specified term or task, the Agency Head will determine the payment of the employee's salary within the relevant salary range of the relevant classification which recognises the employee's prior service as a non-ongoing employee in the agency.
31. Where an employee commences ongoing employment in the agency immediately following a period of casual employment in the agency, the Agency Head will determine the payment of salary within the relevant salary range of the relevant classification which recognises the employee's prior service as a casual employee in the agency.
32. Where an APS employee moves to the agency at level from another APS agency, and their salary is above the maximum of the salary range for their classification, the Agency Head will maintain the employee's salary at that level, until it is absorbed into the salary range for that classification.
33. Where an employee moves at level from another APS agency and their salary is below the top pay point of the salary range for their classification as stated at Schedule A – Base salaries, but not aligned with a pay point in the salary range for that classification, their salary will be paid at the next highest pay point in that salary range.
34. Where the Agency Head determines that an employee's salary has been incorrectly set, the Agency Head may determine the correct salary and the date of effect.

Salary on reduction

35. Where the classification of an employee is reduced, on either a temporary or ongoing basis in accordance with the provisions of this agreement and/or the provisions of the *Public Service Act 1999*, the employee's salary will be determined by the Agency Head having regard to the:
 - a) experience, qualifications and skills of the employee
 - b) circumstances under which the reduction occurred, and
 - c) work level standards.

This determination will be in writing and include the period for which the lower salary will apply.

Incremental advancement (salary advancement)

36. Salary advancement to the next pay point within a classification is effective from 1 July each year and is subject to the employee:
 - a) having been employed in the agency for at least 6 months
 - b) having performed duties at or above their classification level for at least 6 months aggregate service during the relevant performance cycle including any periods of paid leave, unpaid parental leave or unpaid leave that counts for service
 - c) achieving at least a meets expectations end of cycle rating, and
 - d) not already having achieved the highest pay point for their classification.
37. Where an employee has less than 6 months of aggregate service, the Agency Head may determine a higher salary in accordance with clause 28 of this agreement.
38. Where an employee is performing duties at a higher classification, and has been receiving a higher duties allowance for at least 6 months aggregate service during the relevant performance cycle, and achieves a rating of at least meets expectations of the role, they will be eligible for salary advancement at both their substantive classification and the higher classification level for the purposes of any continuing higher duties.
39. Subject to clause 36, whilst acting at a higher classification, salary advancement will be retained for future periods of higher duties or subsequent promotion to that classification.
40. Employees will be eligible for salary advancement of a maximum of one increment whilst on periods of unpaid parental leave.
41. Employees who do not meet the requirements of the performance management framework in clause 36 in any one year will not be considered eligible for salary advancement until they meet the requirements outlined in clause 36 in any subsequent year.

Superannuation

42. The agency will make compulsory employer contributions as required by the applicable legislation and fund requirements.
43. Employer superannuation contributions will be paid on behalf of employees during periods of paid leave that count as service.
44. The agency will make employer superannuation contributions to any eligible superannuation fund, provided that it accepts payment by fortnightly electronic funds transfer (EFT) using a file generated by the agency's payroll system.

Method for calculating superannuation salary

45. The agency will provide an employer contribution of 15.4 per cent of the employee's Ordinary Time Earnings (OTE) for employees in the Public Sector Superannuation Accumulation Plan (PSSap) and employees in other accumulation funds.
46. Employer contributions will be made for all employees covered by this agreement.
47. Employer contributions will not be reduced by any other contributions made through salary sacrifice arrangements.

Payment during unpaid parental leave

48. Employer contributions will be paid on periods of unpaid parental leave at the employee's nominal base salary for periods of leave up to a maximum of 52 weeks.

Overpayments

49. An overpayment occurs if the Agency Head (or the agency) provides an employee with an amount of money to which the employee was not entitled (including but not limited to salary, entitlements, allowances, travel payment and/or other amount payable under this agreement).
50. Where the Agency Head considers that an overpayment has occurred, the Agency Head will provide the employee with notice in writing. The notice will provide details of the overpayment.
51. If an employee disagrees that there has been an overpayment including the amount of the overpayment, they will advise the Agency Head in writing within 28 calendar days of receiving the notice. In this event, no further action will be taken until the employee's response has been reviewed.
52. If after considering the employee's response (if any), the Agency Head confirms that an overpayment has occurred, the overpayment will be treated as a debt to the Commonwealth that must be repaid to the agency in full by the employee.
53. The Agency Head and the employee will discuss a suitable recovery arrangement. A recovery arrangement will take into account the nature and amount of the debt, the employee's circumstances and any potential hardship to the employee. The arrangement will be documented in writing.
54. The agency and employee may agree to make a deduction from final monies where there is an outstanding payment upon cessation of employment.
55. Interest will not be charged on overpayments.
56. Nothing in clauses 49 to 55 prevents:
 - a) the Agency Head from pursuing recovery of the debt in accordance with an Accountable Authority Instruction issued under the *Public Governance, Performance and Accountability Act 2013*
 - b) the Agency Head from pursuing recovery of the debt through other available legal avenues, or
 - c) the employee or the Agency Head from seeking approval to waive the debt under the *Public Governance, Performance and Accountability Act 2013*.

Supported wage system

57. An employee can get a percentage of the relevant pay rate in line with their assessed capacity to do the work if they:
 - a) have a disability
 - b) meet the criteria for a Disability Support Pension, and
 - c) are unable to perform duties to the capacity required.

58. Specific conditions relating to the supported wage system are detailed in Schedule C – Supported Wage System.

Section 3: Leave

General leave provisions

59. All leave is subject to approval by the Agency Head.
60. Where leave is planned, approval must be gained prior to the employee's absence from duty.
61. Where leave is not planned and the employee will not be attending work during their regular hours, the employee is required to notify their supervisor. Generally, this should be by 9.30am, wherever possible, unless there are circumstances beyond the employee's control.

Portability of leave

62. Where an employee moves into the agency from another APS agency where they were an ongoing employee, the employee's unused accrued annual leave and personal/carer's leave will be transferred, provided there is no break in continuity of service.
63. Where an employee is engaged in the agency immediately following a period of ongoing employment in the Parliamentary Services or the ACT Government Service, the employee's unused accrued annual leave and personal/carer's leave will be recognised unless the employee received payment in lieu of those entitlements on cessation of employment.
64. Where an employee is engaged as an ongoing employee in the agency, and immediately prior to the engagement the person was employed as a non-ongoing APS employee (whether in the agency or another), at the employee's request, any unused accrued annual leave (excluding accrued leave paid out on separation) and personal/carer's leave will be recognised.
65. Where an employee is engaged as a non-ongoing APS employee, and immediately prior to the engagement the person was employed as a non-ongoing APS employee (whether in the agency or another) at the employee's request, any unused accrued annual leave (excluding accrued leave paid out on termination of employment) and personal/carer's leave will be recognised.
66. Where an employee is engaged as an ongoing employee in the agency, and immediately prior to the engagement the person was employed by a Commonwealth employer (other than in the Parliamentary Services which is covered in clause 63), the Agency Head will recognise any unused accrued personal/carer's leave at the employee's request. The Agency Head will advise the employee of their ability to make this request.
67. Where an employee is engaged as an ongoing employee in the agency, and immediately prior to the engagement the person was employed by a State or Territory Government, the Agency Head may recognise any unused accrued personal/carer's leave, provided there is not a break in continuity of service.
68. For the purposes of clauses 62 to 67, an employee with a break in service of less than 2 months is considered to have continuity of service.

Re-crediting of leave

69. When an employee is on: annual leave, purchased leave, defence reservist leave, First Nations ceremonial leave, NAIDOC leave, cultural leave, or long service leave and becomes eligible for, under legislation or this agreement, personal/carer's leave, compassionate or bereavement leave, jury duty, emergency services leave, leave to attend to family and domestic violence circumstances, or parental leave, premature birth leave, stillbirth leave or pregnancy loss leave the affected period of leave will be re-credited.
70. When an employee is on personal/carer's leave and becomes eligible for parental leave, premature birth leave, stillbirth leave or pregnancy loss leave, the affected period of leave will be re-credited.
71. Re-crediting is subject to appropriate evidence of eligibility for the substituted leave.

Annual leave

72. Full-time employees are entitled to 4 weeks (20 working days) of paid annual leave for each completed year of service.
73. Part-time employees are entitled to paid annual leave on a pro-rata basis, in accordance with their ordinary hours of work.
74. Annual leave accrues progressively and is credited daily.
75. Where annual leave is cancelled or the employee is recalled to duty, the employee will be reimbursed travel costs not recoverable from insurance or other sources. Evidence of costs may be required.

Accessing annual leave

76. The Agency Head, having regard to operational requirements, will not unreasonably refuse a request by an employee to take paid annual leave.

Annual leave at half pay

77. An employee may be granted annual leave at half pay for periods of one day or more.
78. Where an employee takes annual leave at half pay, annual leave credits will only be deducted at half the duration of the leave.
79. Unless the Agency Head determines otherwise, where an employee has excess annual leave, they will not be able to apply for annual leave at half pay until their excess annual leave balance is less than 40 days.

Accessing annual leave for long term illness or injury

80. An employee may access annual leave where they have a long term illness or injury and have exhausted other paid leave entitlements.

Effect of leave without pay on annual leave

81. Where an employee is granted "leave without pay not to count as service" the following rules will apply to the accrual of annual leave:
 - a) where aggregated full day absences total 30 calendar days or less in a calendar year, the accrual is not affected

- b) where aggregated full day absences total more than 30 calendar days in a calendar year, the potential leave accrual will be reduced by any amount notionally accrued during the period of “leave without pay not to count as service”.

Cashing out of annual leave

- 82. An employee may, with approval from the Agency Head, cash out an amount of annual leave each year if:
 - a) the employee will have at least four weeks accrued paid annual leave entitlement remaining following the cashing out (equivalent pro-rata amount for part-time employees)
 - b) the employee has a minimum of 12 months continuous service with the agency
 - c) the employee has taken a minimum of two weeks annual leave during the previous 12 month period
 - d) each occasion of cashing out a particular amount of paid annual leave must be by separate agreement in writing between the employee and the Agency Head, and
 - e) the employee will be paid the full amount that would have been payable to them had they taken the leave that they have elected to cash out.

Excess annual leave

- 83. Where an employee has accrued annual leave of greater than 40 days, or the equivalent pro-rata amount for part-time employees the Agency Head may:
 - a) agree to a written leave management strategy to reduce the amount of leave, or
 - b) where a written leave management strategy cannot be agreed, direct the employee in writing to take an amount of annual leave at full pay to reduce the amount of their annual leave back to 30 days.

Purchased leave

- 84. The Agency Head may approve for an employee to purchase up to 4 weeks (20 days) or the part-time equivalent of additional leave per calendar year.
- 85. Purchased leave cannot be taken at half pay.
- 86. Purchased leave must be taken within 12 months of the purchased leave date.
- 87. Generally, repayments for purchased leave will be calculated and deducted over 26 pay periods, commencing from the next full pay period, unless a shorter period has been requested by the employee and agreed to by the Agency Head.
- 88. At the end of the repayment period, or when an employee ceases employment with the agency, purchased leave credits and payments will be reconciled on the basis of the value of leave taken.
- 89. Where an employee has paid for purchased leave, and has not accessed that leave prior to cessation of employment with the agency, the purchased leave will be reimbursed to the employee on cessation.

90. Where, on cessation of employment with the agency, an employee has accessed purchased leave but has not yet made all repayments, the employee may elect to pay the outstanding amount, or if no such election is made, the Agency Head may, in accordance with the relevant Accountable Authority Instruction, deduct an amount equal to the outstanding amount from monies otherwise payable to the employee or recover that amount as a debt due to the Commonwealth.
91. Purchased leave will count for service for all purposes. The employee's salary for superannuation purposes continues to be their salary as if they had not purchased leave.

Long service leave

92. An employee is eligible for long service leave in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976*.
93. The minimum period for which long service leave will be granted is 7 calendar days (whether taken at full pay or half pay).
94. Long service leave cannot be broken with other periods of leave, except as otherwise provided by legislation or provided for in the re-crediting of leave clauses at 69 to 71 of this agreement.

Personal/carer's leave

Accrual of personal/carer's leave

Transitional arrangements until 1 January 2026

95. An ongoing employee will be credited with personal/carer's leave of 20 days or the part-time equivalent on commencement with the agency and on each anniversary of the employee's commencement.
96. A non-ongoing employee will be credited with personal/carer's leave of a maximum of 20 days or the part-time equivalent on commencement with the agency pro-rated in accordance with their initial contract period.
97. Where an employee:
 - a) has, or cares for someone with, a chronic condition or other ongoing illness
 - b) is recovering from surgery
 - c) is pregnant, or
 - d) is returning from parental leave or has a child commencing day careand, as a result of the transition to daily accrual of personal/carer's leave, does not have sufficient credit to cover an absence for which they would otherwise be able to take personal/carer's leave, the Agency Head will advance the employee's accrual up to the 12 month anniversary when their leave would otherwise be credited.
98. If an ongoing employee with 12 months service has exhausted his or her personal/carer's leave credits, the Agency Head may allow the employee to anticipate and deduct from up to 10 days of the following year's personal/carer's leave credits. Any such arrangement will be by agreement and in writing.

Arrangements from 1 January 2026

99. From 1 January 2026 ongoing and non-ongoing employees who are not new to the APS will accrue personal/carer's leave progressively and be credited daily.

100. An ongoing employee who is new to the APS will, on commencement with the agency, be credited 20 days (or the part-time equivalent) of personal/carer's leave. After 12 months of service, an ongoing employee will accrue personal/carer's leave progressively and be credited daily in accordance with clause 99.
101. An ongoing employee who transfers to the agency from another APS employer with no break in continuity of service will not be entitled to upfront personal/carer's leave credits on commencement and instead will be subject to daily accruals in accordance with clause 99.
102. A non-ongoing employee who is new to the APS will, on commencement with the agency, receive a maximum of 20 days personal/carer's leave (or part-time equivalent) pro-rated in accordance with their initial contract period. After the initial contract period or 12 months, whichever is shorter, a non-ongoing employee will accrue personal/carer's leave progressively and be credited daily.
103. A non-ongoing employee who transfers to the agency from another APS employer with no break in continuity of service, will not be entitled to upfront personal/carer's leave credits on commencement and instead will be subject daily accruals in accordance with clause 99.

Accessing personal/carer's leave

104. An employee may take personal/carer's leave:
 - a) because they are not fit for duty because of a personal illness or injury
 - b) to attend appointments with a registered health practitioner
 - c) to manage a chronic condition, and/or
 - d) to provide care or support for a member of the employee's family, or a member of the employee's household, or for another person they have caring responsibilities for, because of:
 - i. a personal illness or injury affecting the person, or
 - ii. an unexpected emergency affecting the person.
105. A person that an employee has caring responsibilities for, may include a person who needs care because they:
 - a) have a medical condition, including when they are in hospital
 - b) have a mental illness
 - c) have a disability
 - d) are frail or aged, and/or
 - e) are a child not limited to the child of the employee.
106. Personal/carer's leave may be taken at half pay for absences of at least one full day. Personal/carer's leave credits will only be deducted at half the duration when half pay leave is taken.
107. Where an employee is granted "leave without pay not to count as service" the following rules will apply to the accrual of personal/carer's leave:
 - a) where aggregated full day absences total 30 calendar days in a calendar year or less, the accrual is not affected

- b) where aggregated full day absences total more than 30 calendar days in a calendar year, the potential leave accrual will be reduced by any amount notionally accrued during the period of "leave without pay not to count as service".
108. Employees (including casual employees) are entitled to 2 days unpaid carer's leave for each occasion when a member of the employee's family, or a member of the employee's household, requires care or support.
 109. Unpaid carer's leave may be taken as a single continuous period, or in separate periods.
 110. An employee cannot take unpaid personal/carer's leave if the employee could instead take paid personal/carer's leave, unless otherwise approved by the Agency Head.
 111. Employees, or their representatives, should advise their immediate supervisor as soon as possible or by 9.30am of that day if they are unable to attend work.
 112. The Agency Head may request that an employee provide the Agency Head satisfactory written evidence if the employee:
 - a) is taking or has taken personal/carer's leave for more than 3 consecutive working days, or
 - b) is taking or has taken personal/carer's leave of more than 10 days without evidence in a calendar year.
 113. Satisfactory written evidence includes:
 - a) a certificate from a registered health practitioner
 - b) a statutory declaration, and/or
 - c) another form of evidence approved by the Agency Head.
 114. A certificate from a registered health practitioner may be used as evidence of a chronic condition for up to 12 months for personal/carer's leave.
 115. An employee who exhausts their personal/carer's leave credits may use unpaid personal/carer's leave subject to the requirements in clauses 112.
 116. Unpaid personal/carer's leave counts for service for all purposes.
 117. Unless provided for by legislation an employee will not, without his or her consent (or in the case of mental incapacity the consent of the employee's legally authorised representative), be retired on invalidity grounds before the employee has exhausted their paid personal/carer's leave credits.
 118. Unused personal leave will accumulate from year to year but will not be paid out on termination of employment.

Unauthorised absence

119. When an employee is absent from work without approval, the absence will be treated as an 'unauthorised absence' and will not count as service for any purpose under this agreement, including remuneration and leave accrual until the employee resumes work or is granted leave.

Compassionate leave

120. Employees will be eligible for 3 days paid compassionate leave on each occasion when:
- a) a member of their family (including a member of their household) or someone they have a close personal relationship with contracts, develops or sustains a life-threatening illness or injury, or
 - b) the employee or their partner has a miscarriage.
121. An employee may be asked to provide evidence to support their absences on compassionate leave.
122. Compassionate leave for an occasion may be taken as 3 consecutive days or in separate periods totalling 3 days. This can include part days.
123. For casual employees, compassionate leave is unpaid.

Bereavement leave

124. Employees will be eligible for 3 days paid bereavement leave on each occasion when:
- a) a member of their family (including a member of their household) or someone they had a close personal relationship with dies, or
 - b) a child is stillborn, where the child was a member of their family (including a member of their household).
125. An employee may be asked to provide evidence to support their absences on bereavement leave.
126. Bereavement leave for an occasion may be taken as 3 consecutive days or in separate periods totalling 3 days. This can include part days.
127. For casual employees, bereavement leave is unpaid.

Parental leave

128. A primary caregiver, secondary caregiver and ML Act is defined in the definitions section.
129. An employee who is a primary caregiver or secondary caregiver is entitled to parental leave up until 24 months from the date of the child's birth or placement (parental leave period). For the avoidance of doubt, this is inclusive of all legislated leave entitlements. The parental leave period does not extend non-ongoing employment where the employment period remaining is less than 24 months. An employee is only eligible for parental leave with pay as either a primary caregiver or a secondary caregiver for the particular parental leave period, and cannot switch roles for the purpose of accessing additional paid leave.
130. For the pregnant employee, the parental leave period starts on commencement of maternity leave as per ML Act requirements and ceases 24 months from the date of birth. Medical certification requirements for the pregnant employee will be as required by the ML Act.
131. Conditions in this agreement will continue to apply in circumstances where successor legislation to the ML Act does not provide parental leave conditions included in this agreement.

Payment during parental leave

132. An employee is entitled to parental leave with pay as per clauses 134 and 135 within the parental leave period. Any further parental leave during the parental leave period is without pay. Unused paid parental leave remaining at the end of the employee’s parental leave period will lapse. An employee may choose to use their accrued paid leave entitlements in accordance with usage and eligibility requirements in this agreement during the parental leave period that would otherwise be without pay.
133. Employees newly engaged or who have moved to the agency from another APS agency are eligible for the paid parental leave in clauses 134 and 135 where such paid leave had not already been provided by another APS or Commonwealth employer in the 24 months since the child’s date of birth or placement. If the paid leave used by the employee with the previous Commonwealth or APS employer is less than the limits specified in clauses 134 and 135, the balance is available to the employee.
134. An employee who is a primary caregiver is entitled to parental leave with pay during the parental leave period to a maximum of 18 weeks as provided in Table 1.

Table 1: Primary caregivers – circumstances for paid parental leave

Paid leave entitlement under the ML Act	Additional parental leave with pay under this agreement for the primary caregiver
12 weeks’ paid maternity leave, including any reduced paid maternity leave period due to ML Act qualifying period rules	Paid leave to bring the total period of paid parental leave to 18 weeks
No ML Act eligibility or coverage	18 weeks

135. An employee who is a secondary caregiver is entitled to parental leave with pay during the parental leave period as provided in Table 2.

Table 2: Secondary caregivers – circumstances for paid parental leave

Period which coincides with the parental leave period for the secondary caregiver	Parental leave with pay under this agreement
Date of commencement of this agreement to 28 February 2025	8 weeks, or top up to 8 weeks where a lesser period of parental leave has already been provided
1 March 2025 to 28 February 2026	11 weeks, or top up to 11 weeks where a lesser period of parental leave has already been provided
1 March 2026 to 27 February 2027	14 weeks, or top up to 14 weeks where a lesser period of parental leave has already been provided
On and from 28 February 2027	18 weeks, or top up to 18 weeks where a lesser period of parental leave has already been provided

Flexibility

136. Parental leave with pay, whether provided as maternity leave under the ML Act or under this agreement, can be accessed flexibly during the parental leave period and does not have to be taken in a single block. For the avoidance of doubt, parental leave can be used to replicate a part-time work arrangement, and can be taken concurrently with another parent in relation to the same child.

Rate of payment

137. Rate of payment during paid parental leave is the same as for an absence on personal/carer's leave and based on the employee's weekly hours at the time of the absence.

Half-pay option

138. The payment of any paid parental leave may be spread over a maximum period of 36 weeks at the rate of, no less than, half the normal rate of salary. All paid parental leave counts as service for all purposes, where permitted by legislation.

Adoption and long-term foster care

139. An employee who is a primary caregiver or secondary caregiver is entitled to parental leave in accordance with clauses 134 to 135 of this agreement for adoption or long-term foster care, provided that the child:
- a) is under 16 as at the day (or expected day) of placement
 - b) has not lived continuously with the employee for a period of six months or more as at the day (or expected day) of placement, and
 - c) is not (otherwise than because of the adoption) a child of the employee or the employee's spouse or de facto partner.

140. Documentary evidence of approval for adoption or enduring parental responsibilities under formal fostering arrangements must be submitted when applying for parental leave for adoption or long-term foster carer purposes.

Stillbirth

141. Parents of a stillborn child remain eligible for parental leave, except for paid leave for the secondary caregiver which is two weeks.
142. A stillborn child is a child:
- a) who weighs at least 400 grams at delivery or whose period of gestation was 20 weeks or more, and
 - b) who has not breathed since delivery, and
 - c) whose heart has not beaten since delivery.

Pregnancy loss leave

143. A pregnant employee who experiences, or an employee whose partner experiences, pregnancy loss is entitled to one weeks' paid leave. Pregnancy loss is a miscarriage or other loss of pregnancy that occurs between 12 and 20 weeks' gestation that is not a stillbirth.
144. Pregnancy loss leave is in addition to entitlements to compassionate leave for miscarriage provided under the *Fair Work Act 2009* and this agreement.

Premature birth leave

145. In circumstances of a live birth before 37 weeks' gestation a pregnant employee, or an employee whose partner has given birth prematurely, is entitled to paid premature birth leave from the date of the child's birth up to just before 37 weeks' gestation. Parental leave with pay is then available from what would have been 37 weeks' gestation in accordance with parental leave in this agreement, noting the parental leave period commences on the child's date of birth.

Transitional provisions (premature birth leave)

146. Employees eligible for paid leave under the ML Act are required under legislation to use their paid maternity leave first. In this circumstance, the employee may postpone their paid premature birth leave otherwise payable under clause 145 until after the legislated paid maternity leave is used.

Defence reservist leave

147. The Agency Head will give an employee leave with or without pay to undertake:
- a) Australian Defence Force (ADF) Reserve and continuous full-time service (CFTS), and
 - b) Australian Defence Force Cadet obligations.
148. An employee who is a Defence Reservist can access leave with pay for:
- a) up to 4 weeks (20 days) in each financial year (pro-rata for part-time employees), and
 - b) an extra 2 weeks (10 days) in the first year of ADF Reserve service (pro-rata for part-time employees).

149. Leave can be built up and taken over 2 consecutive years. This includes the extra 2 weeks in the first year of service.
150. An employee who is an Australian Defence Force Cadet officer or instructor can access paid leave up to 3 weeks in each financial year to perform their duties. Australian Defence Force Cadet means:
 - a) Australian Navy Cadets
 - b) Australian Army Cadets, and
 - c) Australian Air Force Cadets.
151. In addition to the entitlement at clause 148, paid leave may be granted to an employee to attend an interview or medical examination in connection with the enlistment of the employee in a Reserve Force of the Defence Force.
152. Paid defence reservist leave counts for service.
153. Unpaid defence reservist leave for 6 months or less counts as service for all purposes. This includes periods of CFTS.
154. Unpaid leave taken over 6 months counts as service, except for annual leave.
155. An employee will not need to pay their tax free ADF Reserve salary to their agency for any reason.

Defence service sick leave

156. An employee is eligible for defence service sick leave credits when the Department of Veterans Affairs (DVA) has certified that an employee's medical condition is as a result of either:
 - a) war-like service, or
 - b) non-war like service.
157. An eligible employee can get 2 types of credits:
 - a) an initial credit of 9 weeks (45 days) defence service sick leave (pro-rata for part-time employees) will apply as at the following dates, whichever is later:
 - i. they start employment with the APS
 - ii. DVA certifies the condition, or
 - b) an annual credit of 3 weeks (15 days) defence service sick leave (pro-rata for part-time employees).
158. An employee can use their defence service sick leave when a recognised medical practitioner provides a certificate that says they were away due to their DVA certified medical condition.
159. Unused annual credits can be built up to 9 weeks.
160. An employee cannot use annual credits until the initial credit is exhausted.
161. Defence service sick leave is paid and counts as service for all purposes.

Miscellaneous leave

162. The Agency Head may approve miscellaneous leave with pay, with part pay or without pay for a purpose not provided for elsewhere in this agreement.
163. Miscellaneous leave without pay will not count for service for any purpose unless otherwise required by legislation. Unpaid leave for study purposes and leave for non-APS employment which the Agency Head determines is in the interest of the Commonwealth will count for service for personal/carer's leave purposes.

Cultural, ceremonial and NAIDOC leave

NAIDOC leave

164. First Nations employees may access up to one day of paid leave per calendar year to participate in NAIDOC week activities.
165. NAIDOC leave can be taken in part days.

First Nations ceremonial leave

166. First Nations employees may access up to 6 days of paid leave over 2 calendar years to participate in significant activities associated with their culture or to fulfil ceremonial obligations.
167. The Agency Head may approve additional leave for cultural or ceremonial purposes as miscellaneous leave, with or without pay.
168. First Nations ceremonial leave can be taken as part days.
169. First Nations ceremonial leave is in addition to compassionate and bereavement leave.

Cultural leave

170. The Agency Head may grant up to 3 days of paid leave per calendar year for the purpose of attending significant religious or cultural obligations associated with the employees' particular faith or culture.
171. The Agency Head may approve additional leave for cultural purposes as miscellaneous leave, with or without pay.
172. Cultural leave can be taken as part days.
173. For the avoidance of doubt, this leave does not cover cultural purposes or obligations which are eligible for paid leave under clause 166.

Blood donation

174. An employee can take reasonable time away from duty during their ordinary work hours to donate blood, plasma or platelets. It includes reasonable travel time and employers will consider employees to be on duty.
175. The employee must inform their manager in advance of when they will be away from work before donating blood, plasma or platelets.

Emergency response leave

176. In line with section 108 of the *Fair Work Act 2009*, an employee who engages in an eligible community service activity can access emergency response leave to volunteer for emergency management duties for:
- a) the time engaged in the activity
 - b) reasonable travelling time, and
 - c) reasonable recovery time.
177. Full-time and part-time employees will be able to access 20 working days of paid emergency response leave at their full rate of pay per year if required. The Agency Head may provide additional emergency response leave with pay.
- a) For the purposes of this clause 177, full rate of pay is to be as if the employee was at work.
178. Paid leave may be refused where the employee's role is essential to the agency's response to the emergency.
179. An employee must provide evidence that the organisation requests their services. Employees can provide evidence before or as soon as practicable after their emergency service activity.
180. The Agency Head may approve reasonable paid or unpaid leave for ceremonial duties and training.
181. Emergency response leave, with or without pay, will count as service.

Disaster support

182. Where an official disaster or emergency is declared and this prevents an employee from reasonably attending work, or where it impacts their household or home, the Agency Head will consider flexible working arrangements to assist the employee to perform their work.
183. Where flexible working arrangements are not appropriate, the Agency Head may grant paid miscellaneous leave to an employee with regard to the scale and nature of the emergency. This leave counts as service and may be approved retrospectively.
184. In considering what period of leave is appropriate, the Agency Head will take into account the safety of the employee, their family (including their household) and advice from local, state and Commonwealth authorities.

Jury duty

185. Employees who are required by a court to attend either for jury selection, or to act as a juror, will be released from duty for the required period, without the need to apply for leave.
186. Full and part-time employees will be released from duty on their full rate of pay. Payment for casuals will be as per the relevant state legislation.
- a) For the purposes of clause 186, full rate of pay is to be as if the employee was at work.
187. The employee is required to inform their manager before they are released from duty and provide evidence of the need to attend.

188. If the employee receives a payment from the court for attendance (which are not expense related such as allowances and reimbursements), they must repay that amount to the agency for the period of absence. This will be administered in accordance with clauses 49 to 56.

Leave to attend proceedings (witness leave)

189. An employee giving evidence before a court, tribunal or royal commission on behalf of the Commonwealth or a Commonwealth party in the course of their duties, will be considered on duty.
190. An employee who is not covered under clause 189, and is required to give evidence to, appear before or attend to instruct a representative at a court, tribunal or royal commission in relation to their duties will be released from duty without loss of pay. This includes in proceedings relating to a dispute between the employee and the agency.
191. An employee may otherwise be granted paid or unpaid miscellaneous leave by the Agency Head if required to give evidence to a court, tribunal or royal commission for any other reason. Where approval for unpaid leave is given, the employee may elect to use accrued annual leave, flex leave or time off in lieu.
192. The Agency Head may refuse to release an employee from duty having regard to business requirements and whether the employee's attendance is necessary for the court, tribunal or royal commission hearing.

Christmas closedown

193. The agency will close its normal operations from close of business on the last working day before Christmas, with business resuming on the first working day after New Year's Day.
194. Employees will be provided with time off for the working days between Christmas and New Year's Day and will be paid in accordance with their ordinary hours of work. There will be no deduction from any leave credits or requirement to use flex credits for the closedown days.
195. Part-time employees normally not working on the days of the week on which annual closedown occur will not be entitled to alternative time off duty.
196. An employee who is required to work during Christmas closedown will receive time off in lieu (Overtime TOIL) in accordance with clauses 298 to 308.

Public holidays

197. Employees are entitled to the following holidays each year as observed at their normal work location in accordance with the *Fair Work Act 2009*:
- a. 1 January (New Year's Day)
 - b. 26 January (Australia Day)
 - c. Good Friday and the following Monday
 - d. 25 April (Anzac Day)
 - e. the King's birthday holiday (on the day on which it is celebrated in a State or Territory or a region of a State or Territory)
 - f. 25 December (Christmas Day)
 - g. 26 December (Boxing Day), and

- h. any other day, or part day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday, other than a day or part day, or a kind of day or part day, that is excluded by the *Fair Work Regulations 2009* from counting as a public holiday.
198. If a public holiday falls on a Saturday or Sunday, and if under a State or Territory law, a day or part day is substituted for one of the public holidays listed above, then the substituted day or part day is the public holiday.
 199. The Agency Head 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.
 200. The Agency Head and an employee may agree to substitute a cultural or religious day of significance to the employee for any day that is a prescribed holiday. If the employee cannot work on the prescribed holiday, the employee will be required to work make-up time at times to be agreed. This substitution does not impact or reduce an employee's entitlement to First Nations ceremonial leave, NAIDOC leave or cultural leave.
 201. Where an employee substitutes a public holiday for another day, they will not be paid penalty rates for working their normal hours on the public holiday.
 202. Where a public holiday falls during a period when an employee is absent on leave (other than annual leave, paid personal/carer's leave or defence service sick leave) there is no entitlement to receive payment as a public holiday. Payment for that day will be in accordance with the entitlement for that form of leave (e.g. if on long service leave on half pay, payment is at half pay).
 203. If under a law of a State or Territory every Sunday is declared or prescribed by or under that law to be a public holiday, there is no entitlement to receive payment as a public holiday if the employee would have worked, or does perform work, on that day. In these circumstances, payment will only be made at the public holiday rate if the employee performs work on that day, and the Sunday would otherwise be a public holiday under clause 197(a)-(h).
 204. An employee, who is absent on a day or part day that is a public holiday in their normal work location, is entitled to be paid for the part or full day absence as if that day or part day was not a public holiday, except where that person would not normally have worked on that day.
 205. Where a full-time employee, including but not limited to employees on compressed hours, has a regular planned day off which would fall on a public holiday, the Agency Head may allow the employee to change their planned day off so that it does not fall on a public holiday. If it is not possible to change their planned day off, the employee will be credited an equivalent amount of time to their regular hours for the day in flex credits or EL TOIL in recognition of their planned day off.

Section 4: Working hours and flexible work arrangements

Hours of work

206. Ordinary hours of work per week for a full-time employee are 37.5 hours which are to be performed on the basis of 7 hours and 30 minutes per day Monday to Friday unless otherwise agreed.
207. Standard hours are from 8.30 am to 12.30 pm and 1.30 pm to 5.00 pm Monday to Friday.
208. For part-time employees, standard hours will be those specified in each individual part-time work agreement.
209. An employee may work a regular pattern of hours, alternate to standard hours. The Agency Head and an employee may agree to an alternate work pattern to standard hours.

Bandwidth

210. The bandwidth during which employees may work is 7.00 am to 7.00 pm Monday to Friday.

Record of attendance

211. All APS 1 – 6 employees must accurately record their attendance, including start times, breaks and finish times in the agency's Human Resource Management Information System, however named.
212. Executive Level employees must keep an accurate record of their hours using a method determined by the agency subject to clause 257.

Breaks

213. Employees should:
 - a) not work for a continuous period of more than 5 hours without taking a break of at least 30 minutes
 - b) not work for more than 10 hours in a day, unless the employee is working approved overtime, and
 - c) have a break of at least 8 hours between finishing work on one day and commencing duty on the next.

Flexible working arrangements

214. The agency, employees and their union recognise:
 - a) the importance of an appropriate balance between employees' personal and working lives, and the role flexible working arrangements can play in helping to achieve this balance
 - b) access to flexible work can support strategies to improve diversity in employment and leadership in the APS
 - c) access to flexible work supports APS capability, and can assist in attracting and retaining the employees needed to deliver for the Australian community, including employees located at a wider range of locations

- d) that flexibility applies to all roles in the agency, and different types of flexible working arrangements may be suitable for different types of roles or circumstances, and
 - e) requests for flexible working arrangements are to be considered on a case-by-case basis, with a bias towards approving requests.
215. The agency is committed to engaging with employees and their union to build a culture that supports flexible working arrangements across the agency at all levels. This may include developing and implementing strategies through an agency consultative committee.
216. Flexible working arrangements include, but are not limited to, changes in hours of work, changes in patterns of work and changes in location of work.

Requesting formal flexible working arrangements

217. The following provisions do not diminish an employee’s entitlement under the NES.
218. An employee may make a request for a formal flexible working arrangement.
219. The request must:
- a) be in writing
 - b) set out details of the change sought (including the type of arrangement sought and the proposed period the arrangement will operate for), and
 - c) set out the reasons for the change, noting the reasons for the change may relate to the circumstances set out at section 65(1A) of the *Fair Work Act 2009*.
220. The Agency Head must provide a written response to a request within 21 days of receiving the request.
221. The response must:
- a) state that the Agency Head approves the request and provide the relevant detail in clause 222, or
 - b) if following discussion between the agency and the employee, the agency and the employee agree to a change to the employee’s working arrangements that differs from that set out in the request – set out the agreed change, or
 - c) state that the Agency Head refuses the request and include the following matters:
 - i. details of the reasons for the refusal, and
 - ii. set out the agency’s particular business grounds for refusing the request, explain how those grounds apply to the request, and
 - iii. either:
 - (i) set out the changes (other than the requested change) in the employee’s working arrangements that would accommodate, to any extent, the employee’s circumstances outlined in the request and that the agency would be willing to make, or
 - (ii) state that there are no such changes, and

- iv. state that a decision to refuse the request, or failure to provide a written response within 21 days is subject to the dispute resolution procedures of the enterprise agreement, and if the employee is an eligible employee under the *Fair Work Act 2009*, the dispute resolution procedures outlined in sections 65B and 65C of the *Fair Work Act 2009*.
222. Where the Agency Head approves the request this will form an arrangement between the agency and the employee. Each arrangement must be in writing and set out:
- a) any security and work health and safety requirements
 - b) a review date (subject to clause 226), and
 - c) the cost of establishment (if any).
223. The Agency Head may refuse to approve the request only if:
- a) the agency has discussed the request with the employee, and
 - b) the agency has genuinely tried to reach an agreement with the employee about making changes to the employee's working arrangements to accommodate the employee's circumstances (subject to any reasonable business grounds for refusal), and
 - c) the agency and the employee have not reached such an agreement, and
 - d) the agency has had regard to the consequences of the refusal for the employee, and
 - e) the refusal is on reasonable business grounds.
224. Reasonable business grounds include, but are not limited to:
- a) the new working arrangements requested would be too costly for the agency
 - b) there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested
 - c) it would be impractical to change the working arrangements of other employees, or to recruit new employees, to accommodate the new working arrangements requested
 - d) the new working arrangements requested would be likely to result in a significant loss in efficiency or productivity
 - e) the new working arrangements requested would be likely to have a significant negative impact on customer service, and
 - f) it would not be possible to accommodate the working arrangements without significant changes to security requirements, or where work health and safety risks cannot be mitigated.
225. For First Nations employees, the agency must consider connection to country and cultural obligations in responding to requests for altering the location of work.
226. Approved flexible working arrangements will be reviewed by the agency and the employee after 12 months, or a shorter period, if agreed by the employee. This is to ensure the effectiveness of the arrangement.

Varying, pausing or terminating flexible working arrangements

227. An employee may request to vary an approved flexible working arrangement in accordance with clause 219. An employee may request to pause or terminate an approved flexible working arrangement.
228. The Agency Head may vary, pause or terminate an approved flexible working arrangement on reasonable business grounds, subject to clause 230.
229. The agency must provide reasonable notice if varying, pausing or terminating a flexible working arrangement without the agreement of the employee, having regard to the circumstances of the employee. Exceptions to this requirement are urgent and critical operational circumstances or an employee's demonstrated and repeated failure to comply with the agreed arrangements.
230. Prior to the Agency Head varying, pausing or terminating the arrangement under clause 228, the Agency Head must have:
 - a) discussed with the employee their intention to vary, pause or terminate the arrangement with the employee
 - b) genuinely tried to reach an agreement with the employee about making changes to the employee's working arrangements to accommodate the employee's circumstances (subject to any reasonable business grounds for alteration)
 - c) had regard to the consequences of the variation, pause or termination for the employee
 - d) ensured the variation, pause or termination is on reasonable business grounds, and
 - e) informed the employee in writing of the variation, pause or termination to the approved flexible working arrangement, including details set out in clause 221(c).

Working from home

231. The agency will not impose caps on groups of employees on the time that may be approved to work from home or remotely, with each request to be considered on its merits.
232. The agency may provide equipment necessary or reimbursement, for all or part of the costs associated with establishing a working from home arrangement.
233. An employee working from home is covered by the same employment conditions as an employee working at an office site under this agreement.
234. The agency will provide employees with guidance on working from home safely.
235. Employees will not be required by the agency to work from home unless it is lawful and reasonable to do so. This may include where circumstances prevent attendance at an office during a pandemic or natural disaster. In these situations, the agency will consider the circumstances of the employees and options to achieve work outcomes safely.

Ad hoc arrangements

236. Employees may request ad hoc flexible working arrangements. Ad hoc arrangements are generally one-off or short-term arrangements for circumstances that are not ongoing.
237. Employees should, where practicable, make the request in writing and provide as much notice as possible.

238. Requests for ad hoc arrangements are not subject to the request and approval processes detailed in clauses 217 to 226.
239. The agency should consider ad hoc requests on a case-by-case basis, with a bias to approving ad hoc requests, having regard to the employee's circumstances and reasonable business grounds.
240. Where a regular pattern of requests for ad hoc arrangements from an employee emerges, the agency should consider whether it is appropriate to seek to formalise the arrangement with the employee.

Altering span of hours

241. An employee may request to work an alternative regular span of hours (bandwidth hours). If approved by the Agency Head, hours worked on this basis will be treated as regular working hours and will not attract overtime payments. The Agency Head will not request or require that any employee alter their regular span of hours (bandwidth hours) under these provisions.

Flexitime arrangements: APS 1–6

242. Employees, including part-time employees, at or below an APS 6 classification level are eligible to access flexitime arrangements as an alternative to working standard hours.
243. Employees can accrue flexitime credits for duty performed in excess of their ordinary hours of work where it does not attract an overtime rate, and flexitime debits when they work less than their ordinary hours.
244. Flexitime credits and debits are accrued on a one for one basis and do not attract an overtime rate.
245. An employee's supervisor may require an employee to work ordinary hours in accordance with clause 206 where flexitime accruals cannot be justified by the employee's workload.
246. Use of flexitime credits requires prior approval by the employee's supervisor and reasonable notice time.
247. Flexitime credits may be utilised as part or full day absences up to five consecutive days.
248. The Agency Head may direct an employee, in writing, to perform standard hours in accordance with clause 207 for operational reasons or if they reasonably believe that the employee's attendance is unsatisfactory or the employee has not complied with the provisions of the flexitime scheme.
249. Access to flexitime will be restored when the Agency Head is satisfied that the circumstances no longer warrant standard hours.
250. The maximum carryover of flexitime credits will be 37 hours and 30 minutes, or 1 week of the relevant hours for a part-time employee, unless exceptional circumstances are approved by the Agency Head.
251. The maximum carryover of flexitime debits will be 10 hours, or 25 per cent of the relevant weekly hours performed by a part-time employee, unless exceptional circumstances are approved by the Agency Head.
252. Employees and their supervisor have a joint responsibility to manage flex credits and flex debits within the limits provided for at clauses 250 and 251 of this agreement.

253. The Agency Head may approve flex credits exceeding one week (37.5 hours for a full-time employee) being cashed out at the employee's ordinary hourly rate of pay where, due to operational requirements, the employee's supervisor cannot envisage an opportunity for the employee to use these credits in the settlement period.
254. An employee may request access to any flextime credit prior to ceasing employment, and the Agency Head, having regard to operational circumstances, will not unreasonably refuse such request.
255. A flextime debit will be treated as leave without pay and the amount will be deducted from the employee's final pay.

EL TOIL (Time off in lieu)

256. Executive level (EL) employees are sometimes required to work reasonable additional hours. Consistent with the NES, employees may refuse to work unreasonable additional hours.
257. EL employees seeking to access time off in lieu (EL TOIL) are required to keep records of their working hours using a method determined by the agency.
258. A manager is to grant EL TOIL in recognition of reasonable additional hours worked. EL TOIL granted to employees can be taken as whole or part days.
259. The working arrangements for an EL employee should be agreed through discussion between the manager and the EL employee. The discussion should include consideration of the work requirements that will safely get the job done and reasonably allow the employee to balance their work and personal life.
260. An EL employee's working arrangements and actual hours worked should be discussed on at least a quarterly basis between the EL employee and their manager.
261. The pattern of hours is to be flexible enough to accommodate short term peaks and troughs in workload, and include expected reasonable additional hours. The agreed pattern of hours is to be recorded.
262. Requests from EL employees to access flexible time off which are consistent with their agreed working arrangements are to be supported, subject to operational requirements.

Part-time work

263. A part-time employee is one who works less than 37 hours and 30 minutes per week.
264. Remuneration, leave accrual (except long service leave which will be administered in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976* and other employment conditions for part-time employees will be made on a pro-rata basis, except where an allowance is a reimbursement of a direct cost or expense related allowance or different arrangements have been agreed.
265. Changes to part-time hours of work on a short-term basis may be managed under flextime and EL TOIL arrangements or other alternatives agreed with an employee's supervisor. Longer term changes will be agreed in writing.

266. In addition to clause 265, in some circumstances, a part-time employee who works additional hours during the standard bandwidth, but outside the hours they are scheduled to work, may be paid for those hours at single time to a maximum payment of 7 hours and 30 minutes on a work day. These additional hours are not considered overtime and must be agreed by the employee and employer having regard to operational requirements.
267. Unless an alternative is agreed by the Agency Head and the employee, a part-time employee will not be required to work less than three continuous hours on a particular day.
268. Employees engaged on a full-time basis, will not be compelled to convert to part-time employment.
269. Employees engaged on a part-time basis, will not be compelled to convert to full-time employment.

Job share arrangements

270. Job sharing is an arrangement in which two or more part-time employees share one or more full-time positions.
271. An employee may submit in writing an application for part-time or job share arrangements. The Agency Head may approve such an application subject to operational requirements. The approval will be in writing and will specify the duration of the arrangements and the hours to be worked.

Non-ongoing employment

272. A non-ongoing employee is defined in the definitions section.
273. Non-ongoing employees will generally have the same terms and conditions of employment as ongoing employees under this agreement's terms, except:
- a) personal/carer's leave accrual at clause 96
 - b) redundancy provisions at clause 463, subject to clause 274
 - c) salary packaging provisions at clause 26, and
 - d) other conditions to be specified by the Agency Head.
274. If the non-ongoing employee's contract is not permitted by section 333E of the *Fair Work Act 2009*, then the redundancy provisions at clause 463 will apply.
275. If the redundancy provisions apply to an employee under clause 274, the agency must adhere to the consultation requirements at clause 408 to the consultation section and where applicable, the consultation provisions in section 11 of this agreement.

Casual (irregular or intermittent) employment

276. A casual (irregular and intermittent) employee is defined in the definitions section.
277. A decision to expand the use of casual employees is subject to clause 408 of this agreement.
278. The agency will regularly review the working arrangements of casuals to assess if they are genuinely performing irregular and intermittent duties, and report de-identified outcomes to the consultative committee, where one is in place.

279. Remuneration for casual employees shall be on an hourly basis. A casual employee shall receive a 25 per cent loading on the base hourly rate of their classification level as set out in this agreement.
280. The casual loading is paid in lieu of payment for public holidays not worked, notice of termination of employment, redundancy benefits and all paid leave entitlements, other than leave required by legislation including long service leave in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976* and leave for family and domestic violence support.
281. A casual employee shall be engaged for a minimum of 3 hours per engagement or shall be paid for a minimum of 3 hours at the appropriate casual rate.
282. A casual employee who is eligible for a workplace responsibility allowance in accordance with clause 291 will be paid the full amount.

Section 5: Allowances and reimbursements

Higher duties allowance

283. Where a role needs to be filled for 2 or more working weeks, higher duties allowance will be paid to any employee temporarily occupying the role acting at a classification level higher than their substantive classification level.
284. Higher duties allowance will be equal to the difference between the employees' current salary and the salary that would be payable if they were promoted to the higher classification level, or a higher amount determined by the Agency Head.
285. Where an employee is found to be eligible for salary progression at their acting classification level, they will receive an appropriate increase in the rate of higher duties allowance. The employee's salary level will be retained for all future periods of acting regardless of elapsed time.
286. Where an employee is assigned only part of the higher duties, the Agency Head will determine the amount of higher duties allowance payable.
287. Higher duties allowance will be payable while an employee is acting at a higher classification level as part of a job sharing arrangement where the duration of the arrangement is at least 2 working weeks.
288. The Agency Head may shorten the qualifying period for higher duties allowance on a case-by-case basis.
289. Payment of higher duties allowance will apply when the employee is on leave provided that the higher duties allowance would have continued but for the leave.
290. Where an employee is temporarily reassigned duties at SES level, the level of higher duties allowance will be determined by the Agency Head.

Workplace responsibility allowances

291. A workplace responsibility allowance will be paid where an employee is appointed or elected to one of the following roles:
 - a) First Aid Officer
 - b) Emergency Warden
 - c) Harassment Contact Officer
 - d) Health and Safety Representative, or
 - e) Mental Health First Aid Officer.
292. An employee is not to receive more than one workplace responsibility allowance unless approved by the Agency Head due to operational requirements.
293. The fortnightly rates for workplace responsibility allowances are set out in table 3.

Table 3: Workplace responsibility allowances

	On commencement of this agreement	Rate from 14 March 2024	Rate from 13 March 2025	Rate from 12 March 2026
WRA (fortnightly rate)	\$32.67	\$33.98	\$35.27	\$36.47

**WRA rate includes: First Aid Officer, Emergency Warden, Harassment Contact Officer, Health and Safety Representative, and Mental Health First Aid Officer.*

294. Employees in receipt of workplace responsibility allowance will receive a full allowance regardless of part-time or flexible work arrangements.
295. Casual employees who are eligible to receive a workplace responsibility allowance will be paid the full amount (noting the minimum rate), as varied from time to time, provided they engage in work during any given pay cycle, irrespective of the frequency and duration of the work undertaken.
296. An employee’s physical availability to undertake the role will be considered when appointing and reappointing employees to any of the workplace responsibility allowance roles set out in clause 291, noting that not all workplace responsibility roles will necessarily require a physical presence in the workplace for the role to be successfully undertaken, (i.e. Harassment Contact Officers, Mental First Aid Officers and Health and Safety Representatives) depending on work group arrangements.
297. Workplace responsibility allowance is not payable where an employee takes 28 calendar days (4 weeks) or more of continuous paid or unpaid leave, except long service leave, during which it will be paid consistent with the requirements of the *Long Service Leave (Commonwealth Employees) Act 1976* and the *Long Service Leave (Commonwealth Employees) Regulation 2016*.

Overtime

298. The Agency Head may, upon provision of reasonable notice, direct APS 1–6 employees to work overtime where they are required to perform work:
 - a) outside the bandwidth, or
 - b) on a public holiday, or
 - c) in excess of 10 hours on any one day, or
 - d) outside the standard hours of a part-time or job share arrangements unless otherwise agreed with the employee.
299. Unless otherwise agreed by the Agency Head, employees working overtime will receive time off in lieu of overtime (Overtime TOIL). Such time off will be calculated at the overtime rate set out in clause 301.

300. Unless an alternate period is agreed between the Agency Head and the employee, the Agency Head will authorise the payment of overtime in circumstances where, due to the nature of work and/or the significant overtime performed, it is unlikely that an employee will be able to take Overtime TOIL within four weeks of the overtime having been performed.
301. Where an employee works overtime, Overtime TOIL or payment is calculated at the following rates with reference to the employee's ordinary hourly rate of pay:

Period	Rate
Monday to Saturday	Time and one half for the first three hours and double time thereafter.
Sunday	Double time.
Public holidays, from 8:30 am to 5:00 pm	Time and one half (in addition to salary).
Public holidays, for any other hours	Double time and one half.

302. Overtime is considered to be continuous with ordinary duty when an employee does not have a break, other than a meal break, between the periods of ordinary duty and overtime.
303. Where a period of overtime is not continuous with ordinary duty, the minimum overtime payment is four hours at the relevant rate. Where the period of overtime is greater than four hours, payment will be made for the actual period worked at the relevant rate.
304. Time spent travelling to or from work will not count as part of an overtime attendance.
305. Where an employee is directed to work outside the bandwidth the employee is entitled to an 8 hour break plus reasonable travel time upon cessation of their duties before returning to work. If this break occurs during the employee's standard hours they will continue to receive their salary during that time.
306. Where such a break is not possible due to operational requirements, Overtime TOIL or payment in accordance with clauses 299 and 300 of this agreement will be made available to the employee for subsequent periods of work at the applicable overtime rates until the employee has had an eight hour break.
307. Where employees are required to work outside the bandwidth and public transport or alternative arrangements are not available or practicable having regard to safety or health and wellbeing matters, secure, accessible car parking or cab charge vouchers will be provided.
308. EL employees are not entitled to overtime except in exceptional circumstances as approved by the Agency Head.

Overtime meal allowance

309. An employee who is directed to work overtime outside of the normal bandwidth and takes a prescribed meal break for a minimum period of 30 minutes will be eligible for the payment of a meal allowance at the rate determined by the Australian Taxation Office’s annual taxation determination for reasonable overtime meal allowance.
310. For the purposes of clause 309, the meal break periods are:
- a) 6.00 am to 7.00 am
 - b) 12.30 pm to 1.30 pm
 - c) 7.00 pm to 8.00 pm
 - d) 12.00 midnight to 1.00 am

Restriction hours

311. The Agency Head may direct an employee to perform restriction duty and be contactable outside of the normal bandwidth and available to return to duty.
312. An employee performing restriction duty is eligible for the payment of an allowance.
313. The weekly restriction allowance will be paid in accordance with table 4.

Table 4: Restriction allowance

	On commencement of this agreement	Rate from 14 March 2024	Rate from 13 March 2025	Rate from 12 March 2026
Restriction allowance (gross) per week	\$375	\$390	\$405	\$419

314. For any period of restriction duty less than one week in total, the employee will be paid 1/7 of the allowance for each 24 hour period.
315. Payment of restriction allowance will not be made to an employee who does not remain contactable or at the required degree of readiness to perform the overtime.
316. Where an employee performing restriction duty is required to perform additional duties outside of their ordinary hours they will be paid overtime in accordance with clause 301 to 303.
317. Where an employee performs additional duties but is not required to attend the workplace, the minimum overtime payment will be one hour.
318. Where an employee required to perform additional duties and is required to attend the workplace, the minimum overtime payment will be 2 hours.

319. Where an employee is required to perform additional duties and is required to attend the workplace on multiple occasions, the overtime payment will not exceed the amount that would have been payable had the employee remained on duty from their first attendance to the end of their final attendance.

Travel allowance

320. Official travel is defined as short term travel (between one day and three months) to a locality away from the Canberra office (or usual place of work) undertaken whilst performing duties on behalf of the agency and which is approved by the Agency Head.

321. An employee undertaking official travel lasting at least 10 hours but not extending overnight is entitled to a part-day travel allowance as set out in table 5. This allowance is subject to taxation. The rate of part-day travel allowance under this clause 321 will be updated in accordance with clause 17 of this agreement.

Table 5: Daily Rate Travel Allowance

	On commencement of this agreement	Rate from 14 March 2024	Rate from 13 March 2025	Rate from 12 March 2026
Daily rate of part-day travel allowance	\$54.00	\$56.00	\$58.00	\$60.00

322. An employee undertaking official travel that involves overnight stays will be entitled to a travel allowance at the rate determined by the Australian Taxation Office’s annual taxation determination for reasonable travel expenses.

323. Where an employee can demonstrate that the prescribed allowance is insufficient to cover reasonable expenses, the Agency Head may approve payment of an additional amount.

324. An employee will be considered to be on duty:

- e) while they are in direct transit, and
- f) while they are undertaking official business away from the Canberra office or their usual workplace.

325. Where an employee is travelling outside the bandwidth, an employee at or below the APS6 classification level will:

- a) be entitled to time off in lieu, on an hour for hour basis, but
- b) not entitled to overtime payments.

Relocation assistance

326. Where an existing APS employee is required to relocate at the request of the Agency Head (such as a promotion), the employee will be provided with financial relocation assistance. Employees who relocate on a temporary basis to take up higher duties are entitled to removal expenses if they relocate for a period of 13 weeks or more.
327. Where an employee is required to relocate on engagement with the agency, the employee will be provided with financial relocation assistance.
328. Reasonable expenses associated with the relocation include:
- a) the cost of transport of the employee, dependants and partner by the most economical means
 - b) removal expenses, namely the reimbursement of reasonable incurred costs of the removal of furniture and household effects of the employee, dependants and partner
 - c) the reimbursement of the cost of the insurance premium based on a reasonable replacement value, and
 - d) the reasonably incurred expenses in kennelling and transport of pets, up to the amount specified in the APS Award.
329. Additional reasonable relocation assistance may be considered at the Agency Head's discretion.

Reimbursement of work-related expenses

330. The agency may offer other reimbursements to ensure an employee is not out of pocket for work-related expenses.

Loss or damage to clothing or personal effects

331. An employee may request reimbursement for loss or damage to clothing or personal effects which occurred in the course of the employee's work, not including normal wear and tear.

Community language allowance

332. A community language allowance will be paid where the Agency Head determines that an employee is regularly required to use their ability to communicate in Braille or a language other than English (including First Nations languages and AUSLAN) in the course of their work, and the employee meets the required level of competency set by the Agency Head. Further information is included in policy.

333. The allowance in table 6 is paid in accordance with the employee’s level of competency:

Table 6: Community language allowance rates

Rate	Standard	Rate from commencement of the agreement	Rate from 13 March 2025	Rate from 12 March 2026
1	An employee who has adequate language skills, as determined by an individual or body approved by the Agency Head, for simple communication.	\$1,435 per annum	\$1,490 per annum	\$1,541 per annum
2	An employee who is certified by the National Accreditation Authority for Translators and Interpreters (NAATI) as a Translator or Interpreter at any level, or is assessed to be at the equivalent level by an individual or body approved by the Agency Head.	\$2,870 per annum	\$2,979 per annum	\$3,080 per annum

334. The allowance is calculated annually and paid fortnightly.

335. The full allowance is payable regardless of flexible work and part-time arrangements.

336. The allowance is payable during periods of paid leave.

337. The allowance counts as salary for superannuation purposes and for calculating retirement and redundancy entitlements.

Section 6: Workplace culture and employee support

Job security

Commitment to ongoing employment and rebuilding APS capacity

338. The APS is a career-based public service. In its engagement decisions, the agency recognises that the usual basis for engagement is as an ongoing APS employee.

Reporting

339. Where a consultative committee is in place, the agency will report to the agency consultative committee on an annual basis, or more frequently if agreed, on the number, duration, classification and location of ongoing, non-ongoing and casual employees engaged by the agency.

Pathways to permanency

340. The agency and the APS will comply with the casual conversion provision(s) of the *Fair Work Act 2009*. In addition, the agency recognises that a proactive approach, including regularly reviewing casual and non-ongoing arrangements, is both a fair and efficient approach to supporting ongoing employment as the usual form of employment.

Workloads

341. The agency recognises the importance of employees balancing their work and personal life. While it is acknowledged that at times it may be necessary for some extra hours being worked by some employees, this should be regarded as the exception rather than the rule.
342. When determining workloads for an employee or group of employees, the agency will consider the need for employees to strike a balance between their work and personal life.
343. Where an employee or group of employees raise that they have experienced significant workload pressures over a prolonged period of time, the agency and employee/s together must review the employees' workloads and priorities and determine appropriate strategies to manage the impact on the employee or group of employees.

Integrity in the APS

344. The agency understands that procedural fairness is essential in building and maintaining trust with APS employees, and that it requires fair and impartial processes for employees affected by APS-wide or agency decisions.
345. Employees are to give advice that is frank, honest, timely and based on the best available evidence. This includes scientific and engineering advice based on evidence-based facts guided by the best available science and data. Employees will not be disadvantaged or discriminated against because they have given advice in accordance with their expertise or professional qualifications and in accordance with the APS Code of Conduct in the *Public Service Act 1999*.
346. Employees can, during their ordinary work hours, take time to:
- a) access an APS-wide ethics advisory service or another similar service provided by a professional association such as a law society or in the agency, and
 - b) attend agency mandated training about integrity.

Respect at work

Principles

347. The agency values a safe, respectful and inclusive workplace free from physical and psychological harm, harassment, discrimination and bullying. The agency recognises that preventing sexual harassment, sex discrimination, sex-based harassment and victimisation in the workplace is a priority.
348. The agency recognises that approaches to prevent sexual harassment, sex discrimination, sex-based harassment and victimisation in the workplace should be holistic and consistent with the Australian Human Rights Commission's guidance including the *Good Practice Indicators Framework for Preventing and Responding to Workplace Sexual Harassment*.

Consultation

349. The agency will consult with employees and their union(s) developing, reviewing and evaluating approaches to prevent sexual harassment, sex discrimination, sex-based harassment and victimisation in the workplace.

Employee Assistance Program

350. Employees and their immediate family will have access to a confidential, professional counselling service to assist employees to manage personal and work issues. This service will be provided at no cost to employees by the agency and will be accessible on paid time.

Vaccinations

351. The agency will offer annual influenza vaccinations at no cost to all employees.
352. Where the agency requires an employee performing a role to be vaccinated for a particular condition, this vaccination will be offered at no expense to the employee.

Lactation and breastfeeding support

353. Reasonable paid time during work hours will be provided for lactation breaks for breastfeeding, expressing milk and other associated activities.
354. The agency will provide access to appropriate facilities for the purpose of breastfeeding or expressing milk, subject to clause 355. In considering whether a space is appropriate, an agency should consider whether:
- a) there is access to refrigeration
 - b) the space is lockable, and
 - c) there are facilities needed for expressing such as appropriate seating.
355. Where it is not practicable for an agency site to have a designated space, a flexible approach will be taken so that the employee can access the support required.
356. The agency will facilitate discussion between individual employees and their managers about accommodating the employee's lactation needs and practical arrangements to meet these needs.

357. The manager and employee shall discuss any flexible working arrangements that may be needed to support lactation. This may include consideration of arrangements such as working from home and/or remote working or varying work hours on an ad hoc or regular basis. Wherever possible, requests by an employee will be accommodated, noting these needs may be changed over time.
358. Further information is available in the agency's breastfeeding and lactation guidelines.

Family and domestic violence support

359. The agency will provide support for employees affected by family and domestic violence, depending on the employee's circumstances.
360. The agency recognises that a holistic approach should be taken to support the employee, appropriate for the employee's individual circumstances.
361. Family and domestic violence support provisions, including paid leave, are available to all employees covered by this agreement.
362. An employee experiencing family and domestic violence is able to access paid miscellaneous leave. Reasons an employee experiencing family and domestic violence may access this leave include, but are not limited to:
- a) illness or injury affecting the employee resulting from family and domestic violence
 - b) providing care or support to a family member (including a household member) who is also experiencing family and domestic violence, and is ill or injured as a result of family and domestic violence
 - c) providing care or support to a family member (including a household member) who is also experiencing family and domestic violence, and is affected by an unexpected emergency as a result of family and domestic violence
 - d) making arrangements for the employee's safety, or the safety of a close relative
 - e) accessing alternative accommodation
 - f) accessing police services
 - g) attending court hearings
 - h) attending counselling, and
 - i) attending appointments with medical, financial or legal professionals.
363. This entitlement exists in addition to an employee's existing leave entitlements and may be taken as consecutive days, single days or part days and will count as service for all purposes.
364. Given the emergency context in which leave may need to be accessed, employees can proceed to take the leave and seek approval at a later date, as soon as practicable.
365. These provisions do not reduce an employee's entitlement to family and domestic violence leave under the NES.
366. Paid miscellaneous leave available under clause 362 is paid for ongoing and non-ongoing employees at their full rate of pay as if they were at work.
367. Paid leave for casual employees under clause 362 is paid at their full rate of pay for the hours they were rostered to work in the period they took leave.

368. Evidence may be requested to support the agency in approving leave. In most cases, this will not be required. Where it is required, this will be discussed with the employee and a statutory declaration is the only form of evidence the agency will require, unless the employee chooses to provide another form of evidence.
369. An employee may also choose to provide other forms of evidence, including a medical certificate, or document issued by the police service, a court, a doctor, a district nurse, a family violence support service or lawyer.
370. The agency will take all reasonable measures to treat information relating to family and domestic violence confidentially. The agency will adopt a 'need to know' approach regarding communication of an employee's experience of family and domestic violence, subject to steps the agency may need to take to ensure the safety of the employee, other employees or persons, or mandatory reporting requirements.
371. Where the agency needs to disclose confidential information for purposes identified in clause 369, where it is possible the agency will seek the employee's consent and take practical steps to minimise any associated safety risks for the employee and/or privacy breaches.
372. The agency will not store or include information on the employee's payslip in relation to the employee's experience of family and domestic violence, any leave accessed for the purposes of family and domestic violence, or support provided by the employer unless otherwise required by legislation.
373. Other available support may include, but is not limited to, flexible working arrangements, additional access to the Employee Assistance Program, changes to their span of hours or pattern of hours and/or shift patterns and/or location of work where reasonably practicable.
374. The agency will acknowledge and take into account an employee's experience of family and domestic violence if an employee's attendance or performance at work is affected.
375. Further information about leave and other support available to employees affected by family and domestic violence may be found in the agency's Family and Domestic Violence Policy.

Section 7: Performance and development

Work Level Standards

376. The APS Work Level Standards continue to operate and describe the work at each of the classification levels in this agreement, consistent with the *Public Service Classification Rules 2000*, made in accordance with section 23 of the *Public Service Act 1999*.

Performance management

377. All employees covered by this agreement who have been employed in the agency for at least 13 weeks must participate in the agency's performance management framework.

Performance cycle

378. The performance cycle runs from July to June each year and provides a mechanism for two-way feedback, recognising work performance, managing underperformance and employee development.

Performance process

379. The performance management policy and guidelines set out the processes for managing performance, the scope of assessment and responsibilities, and the rights and obligations of managers and employees. Employees' performance will be assessed against:

- (a) the job description for their position
- (b) the work level standards for their classification level
- (c) the terms of their individual performance agreement, and
- (d) the APS Values, APS Employment Principles and APS Code of Conduct.

380. Performance feedback will be provided to the employees throughout the year.

Managing underperformance

381. An employee may be assessed as underperforming at any time throughout the performance cycle.

382. Where underperformance is identified the agency will work with the affected employee to attain the standards required for their classification level and role.

383. If the employee's performance remains unsatisfactory possible actions may include reduction in classification, reassignment of duties or termination of employment.

384. Employees will be given an opportunity to comment on all reports produced through the underperformance process.

Learning and development

385. The agency and employees have a joint commitment to ensure that employees have the skills and knowledge they require to perform their duties, and to support their career development.

386. Subject to supervisor approval, operational requirements and available resources, employees will have access to appropriate learning and development opportunities.

First Nations cultural competency training

387. The Agency Head will take reasonable steps to ensure all substantive, ongoing EL2 employees employed at the commencement of this agreement or any new substantive ongoing EL2 employees who commence within the first 6 months of this agreement will complete relevant First Nations cultural competency training within 12 months of the commencement of the agreement.
388. Any new substantive ongoing EL2 employee who commences after 6 months of the commencement of this agreement will be required to complete a relevant First Nations cultural competency training course within 6 months of their engagement or promotion.

Studies assistance

389. The Agency Head may approve financial or other assistance to an employee to undertake formal courses of study at tertiary and higher education institutions and other vocational education courses where the study is of benefit to the agency or the broader APS.

Professional qualifications, accreditation and reimbursement

390. Where the Agency Head deems it a requirement for an employee to be professionally accredited either as a prerequisite for performance of their role or to provide a direct benefit to the agency, the agency will reimburse fees, including registration fees, for membership or accreditation of the professional association.

Section 8: Classifications and Broadbands

Classifications and broadbands

391. Classifications and broadbands for all employees are set out in Schedule A – Base salaries and Schedule B – Base salaries.
392. APS level classifications in the agency will be broadbanded as outlined in Schedule A – Base salaries and are:
 - a) CER Broadband 1—APS 1 and APS 2
 - b) CER Broadband 2—APS 3, APS 4 and APS 5, and
 - c) CER Legal Officer Broadband—APS 3, APS 4, APS 5 and APS 6.
393. Roles with duties that require an employee to hold a degree in law, or admission in Australia as a legal practitioner and to use professional legal skills and abilities will be assigned to a legal officer role as provided in Schedule A – Base salaries.
394. The Agency Head may approve advancement to a higher classification level within a broadband where it has been demonstrated that:
 - a. there is work available at the higher level
 - b. the employee has the necessary skills required at the higher level, and
 - c. their performance is satisfactory.

Graduates

395. A CER Graduate will be engaged under the APS training classification – Graduate APS. On commencement a CER Graduate will be paid the equivalent of an APS 3.
396. On successful completion of the graduate program the employee will be allocated an operational classification of APS 3 in the CER Broadband 2 – APS 3-5.
397. Subject to satisfactory performance, the employee’s demonstrated skills, and there being sufficient work available at a higher level, the Agency Head will assign the employee to an operational APS 4 classification in the CER Broadband 2 – APS 3-5.

Cadets

398. A CER Cadet or CER Indigenous Australian Cadet (local designation) will be engaged under the APS training classification – Cadet APS. A CER Cadet will be paid the equivalent of an APS 1 or APS 2. The pay point assigned will be dependent on the employee’s skills and experience.
399. A CER Cadet will receive 57 per cent of their salary when undertaking full-time study and 100 per cent of their salary when on work placement in the agency.
400. On successful completion of the cadetship program, including successfully attaining their academic qualification and demonstrating satisfactory performance, a CER Cadet will be assigned an operational classification of APS 3 in the CER Broadband 2 – APS 3-5.

Trainees

401. A CER Trainee will be engaged under the APS training classification – Trainee APS (Administrative). On commencement a CER Trainee will be paid the equivalent of an APS 1.

402. CER Trainees will undertake a course of training as determined by the Agency Head.
403. On successful completion of the CER Traineeship, an employee will be allocated an operational classification of APS 1 in the CER Broadband 1 – APS 1-2.
404. Subject to satisfactory performance, the employee's demonstrated skills, and there being sufficient work available at a higher level, the Agency Head will assign the employee to an operational APS 2 classification in the CER Broadband 1 – APS 1-2.

Section 9: Consultation, representation and dispute resolution

Consultation

Principles

405. Genuine and effective consultation with employees and the relevant union(s), taking into account the diverse needs of employees, fosters a positive and inclusive workplace, enabling the views of employees to be considered.
406. The agency recognises:
- a) the importance of inclusive and respectful consultative arrangements
 - b) employees and the relevant union(s) should have a genuine opportunity to influence decisions
 - c) the nature and extent of consultation will vary depending on the proposed change and the likely impact on employees. Consultation on agency policies may occur over at least 2 weeks, whereas a major change is likely to require a more extensive consultation process
 - d) consultation with employees and relevant union(s) on workplace matters that significantly affect or materially impact them is sound management practice, and
 - e) the benefits of employee and union involvement and the right of employees to be represented by their union.
407. Genuine and effective consultation involves:
- a) providing employees and the relevant union(s) with a genuine opportunity to influence the decision prior to a decision being made
 - b) providing all relevant information to employees and the relevant union(s) in a timely manner to support consideration of the issues
 - c) considering feedback from employees and the relevant union(s) in the decision-making process, and
 - d) advising employees and the relevant union(s) of the outcome of the process, including how their feedback was considered in the decision-making process.

When consultation is required

408. Consultation is required in relation to:
- a) changes to work practices which materially alter how an employee carries out their work
 - b) changes to or the introduction of policies or guidelines relevant to workplace matters (unless the changes are minor or procedural)
 - c) major change that is likely to have a significant effect on employees
 - d) implementation of decisions that significantly affect employees
 - e) changes to employees' regular roster or ordinary hours of work (subject to any other relevant provisions in this agreement), and
 - f) other workplace matters that are likely to significantly or materially impact employees.

409. The agency, employees and the relevant union(s) recognise that consultation prior to a decision may not be practicable where a decision is made by Government or is required due to matters beyond the reasonable control of the agency. In these circumstances, consultation regarding the implementation of the decision will occur as early as is reasonably practicable.

Provisions for consultation on major change and introduction of a change to regular roster or ordinary hours of work of employees

410. This clause applies if the agency:
- a) proposes to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees, or
 - b) proposes to introduce a change to the regular roster or ordinary hours of work of employees.

Representation

411. Employees may appoint a representative for the purposes of the procedures in this clause. A representative for the purpose of this clause may be a union representative.
412. The agency must recognise the representative 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.

Major change

413. In this clause, a major change is likely to have a significant effect on employees if it results in, for example:
- 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.
414. The following additional consultation requirements in clause 415 to 421 apply to a proposal to introduce a major change referred to in clause 408(c).
415. Consultation with employees and the relevant union(s) and/or recognised representatives will occur prior to a decision being made, subject to clause 409.
416. Where practicable, an agency change manager or a primary point of contact will be appointed and their details provided to employees and the relevant union(s) and/or their recognised representatives.

417. The agency must notify employees and relevant union(s) and/or recognised representatives of the proposal to introduce the major change as soon as practicable.
418. As soon as practicable after proposing the change, or notifying of the change in circumstances described at clause 409, the agency must:
- a) discuss with affected employees and relevant union(s) and/or other recognised representatives:
 - i. the proposed change:
 - i. the effect the proposed change is likely to have on the employees, and
 - ii. proposed measures to avert or mitigate the adverse effect of the proposed change on the employees, and
 - b) for the purposes of the discussion – provide, in writing, to employees and the relevant union(s) and/or other recognised representatives:
 - i. all relevant information about the proposed change, including the nature of the change proposed, and
 - ii. information about the expected effects of the proposed change on the employees, and
 - iii. any other matters likely to affect the employees.
419. The agency must give prompt and genuine consideration to matters raised about the major change by employees and the relevant union(s) and/or other recognised representatives.
420. However, the agency is not required to disclose confidential or commercially sensitive information to employees and the relevant union(s) and/or other recognised representatives.
421. If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the agency, the requirements set out in clauses 415 to 419 are taken not to apply.

Change to regular roster or ordinary hours of work

422. The following additional consultation requirements in clause 423 to 426 apply to a proposal to introduce a change referred to in clause 408(e).
423. The agency must notify affected employees and the relevant union(s) and/or other recognised representatives of the proposed change.
424. As soon as practicable after proposing to introduce the change, the agency must:
- a) discuss with employees and the relevant union(s) and/or other recognised representatives the proposed introduction of the change, and
 - b) for the purposes of the discussion – provide to the employees and relevant union(s) and/or other recognised representatives:
 - i. all relevant information about the proposed change, including the nature of the proposed change, and
 - ii. information about what the employer reasonably believes will be the effects of the proposed 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 employees and the relevant union(s) and/or other recognised representatives to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
425. However, the agency is not required to disclose confidential or commercially sensitive information to the relevant employees and the relevant union(s) and/or other recognised representatives.
426. The agency must give prompt and genuine consideration to matters raised about the proposed change by the employees and the relevant union(s) and/or other recognised representatives.

Interaction with emergency management activities

427. Nothing in this term restricts or limits the ability of a designated emergency management body to undertake activities provided at section 195A(1) of the *Fair Work Act 2009*.

Agency consultative committee

428. The Agency Head may establish an agency consultative committee to discuss relevant workplace matters.
429. Agency consultative committees will operate subject to an agreed terms of reference and structure for the term of the agreement. Representation on the committee will be in accordance with the terms of reference.

Consultation through the agency's Staff Consultative Committee

430. Consultation on general employment and workplace relations matters (including on policies and procedures) will occur through the agency's Staff Consultative Committee. The consultation period will typically be for a period of two weeks. The agency will consider any comments or feedback received prior to finalising policies and procedures. The Staff Consultative Committee is not a decision-making body.

APS consultative committee

431. The Agency Head will support the operation of the APS consultative committee to the extent possible. This includes providing information requested by the Australian Public Service Commission to support the operation of the APS consultative committee, subject to legislative requirements.

Dispute resolution

432. If a dispute relates to:
- a) a matter arising under the agreement, or
 - b) the National Employment Standards
- this term sets out procedures to settle the dispute.
433. An employee or union who is covered by this agreement may initiate and/or be a party to a dispute under this term.

434. An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term. Representatives will be recognised and dealt with in good faith.
435. Parties to the dispute must attempt to resolve the dispute at the workplace level, by discussion between the employee or employees and relevant managers. Parties to the dispute will notify higher level managers to assist in the resolution of the dispute. Parties will give genuine consideration to proposals to resolve the dispute.
436. If a dispute about a matter arising under this agreement is unable to be resolved at the workplace level, and all appropriate steps under clause 435 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.
437. The Fair Work Commission may deal with the dispute in 2 stages:
- a) the Fair Work Commission 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 Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:
 - i. arbitrate the dispute, and
 - ii. make a determination that is binding on the parties.

Note: If the Fair Work Commission arbitrates the dispute, it may also use the powers that are available to it under the FW Act. A decision that the Fair Work Commission makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the FW Act. Therefore, an appeal may be made against the decision.

438. While the parties are attempting to resolve the dispute using the procedures in this term:
- a) an employee must continue to perform their work as they would normally in accordance with established custom and practice at the agency that existed immediately prior to the dispute arising unless they have a reasonable concern about an imminent risk to their health or safety, and
 - b) subject to clause 438(a) an employee must comply with a direction given by the employer 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.
439. The parties to the dispute agree to be bound by a decision made by the Fair Work Commission in accordance with this term.
440. Any disputes arising under the Clean Energy Regulator Enterprise Agreement 2019-2022 or the National Employment Standards that were formally notified under clause 32 of that agreement before the commencement of this agreement, that remain unresolved at the date of commencement of this agreement, will be progressed under the dispute resolution procedures in this agreement.

Leave of absence to attend proceedings

441. Where the provisions of 432 to 436 have been complied with, and to assist in the resolution of the matter, the employee, and/or the union delegate or other employee representative referred to in clause 433, or employee required to provide evidence, will be granted paid time to attend dispute resolution processes and proceedings in the Fair Work Commission arising from referral of the matter in clause 436.

Delegates' rights

442. Union delegates play an important and legitimate role in the workplace. This includes representing their members and supporting employee access to union officials, and providing employee views to the agency.

443. The role of union delegates is to be respected and supported.

444. The agency and union delegates will work together respectfully and collaboratively.

Supporting the role of union delegates

445. The agency respects the role of union delegates to:

- a) provide information, consult with and seek feedback from employees in the workplace on workplace matters
- b) consult with other delegates and union officials, and get advice and assistance from union officials
- c) represent the interests of members to the employer and industrial tribunals, and
- d) represent members at relevant union forums, consultative committees or bargaining.

446. The agency and union delegates recognise that undertaking the role of a union delegate is not the primary purpose of an employee's engagement, and must work with and not unreasonably impact their regular duties. Honorary officials may request additional time and facilities from time to time.

447. Union delegates will be provided with reasonable paid time during their normal working hours to perform their union delegate role. The paid time provided should not result in disruption to critical services or operational requirements.

448. To support the role of union delegates, the agency will, subject to legislative and operational requirements, including privacy and security requirements:

- a) provide union delegates with reasonable access to agency facilities and resources, including for paid or unpaid meetings between employees and their union(s) and to communicate with union officials
- b) advise union delegates and other union officials of the agency facilities and resources available for their use, which may include telephone, photocopying, internet, and email
- c) allow reasonable official union communication appropriate to the agency from union delegates with employees, including through email, intranet pages and notice boards. This may include providing a link to a union website for employees to access union information. Any assistance in facilitating email communications does not include an agency vetoing reasonable communications
- d) provide access to new employees as part of induction, and

- e) provide reasonable access to union delegates to attend appropriate paid time training in workplace relations matters, during normal working hours.
449. Where APS employees are elected as officials of a trade union or professional association, they are not required to seek permission from the workplace or agency before speaking publicly in that capacity, subject to the APS Code of Conduct and legislative requirements.

Section 10: Separation

Employee resignation

- 450. An employee may resign from their employment by giving the Agency Head at least 14 calendar days' notice.
- 451. At the instigation of the Agency Head, the resignation may take effect at an earlier date within the notice period. In such cases, the employee will receive paid compensation in lieu of the notice period which is not worked.
- 452. The Agency Head has the discretion to agree to a shorter period of notice or waive the requirement to give notice.

Payment on death of an employee

- 453. When an employee dies, or the Agency Head has directed that an employee is presumed to have died on a particular date, subject to any legal requirements, the Agency Head must authorise payments to the partner, dependants or legal representative of the former employee, the amount to which the former employee would have been entitled had they ceased employment through resignation or retirement, or where legislation provides specifically for amounts calculated based on the death of the employee, those amounts. If payment has not been made within a year of the former employee's death, it should be made to their legal representative.

Termination of employment by the agency

- 454. Where an employee's employment is terminated by the Agency Head, the employee will be entitled to prior written notice of:
 - a) four weeks, or
 - b) five weeks for an employee over the age of 45 with at least 5 years continuous service.
- 455. Nothing in this agreement prevents the agency from terminating the employment of an employee for serious misconduct, without further notice or payment in lieu, in accordance with section 123(1)(b) of the *Fair Work Act 2009*.
- 456. Termination of employment, or a decision to terminate employment, cannot be reviewed under the dispute resolution procedures contained in this agreement.

Leave payments on cessation of employment

- 457. Employees will receive payment in lieu of unused accrued annual leave when their APS employment ceases.
- 458. Payment will be calculated using the employee's salary at the time of the cessation, including allowances that would have been included in the employee's pay during a period of annual leave.
- 459. Long service leave credits will be paid out in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976*.

Section 11: Redundancy, redeployment and retraining

Management of excess employees

Principles and definition

460. The following provisions apply to ongoing employees who are not on probation.

461. An employee is an excess employee when:

- a) the employee is included in a class of employees, where there are more employees in the class than is needed for the effective and economical operation of the agency, or
- b) the services of the employee cannot be effectively used due to technological or other changes in the work methods of the agency, or structural or other changes in the nature, extent or organisation of the functions of the agency, or
- c) the duties usually performed by the employee are to be performed at a different locality and the employee is not willing to perform those duties at the new locality, and the Agency Head has determined that the employee is excess to the agency's requirements.

Consultation period

Consultation with potentially excess employees

462. When the Agency Head is aware that an employee is likely to become excess the Agency Head, will as soon as practicable, notify the employee in writing and include reasons why the employee may become potentially excess.

463. During the consultation period the Agency Head will hold discussions with the employee to consider:

- a) actions that might be taken to reduce the likelihood of the employee becoming excess
- b) redeployment opportunities for the employee, at or below level, within the agency or through any APS-wide redeployment program which might exist at the time
- c) the possibility of retrenchment with the payment of a redundancy benefit (a voluntary redundancy).

464. Where the employee nominates a representative, the Agency Head will hold the discussions with the employee and the employee's representative.

Duration of the consultation period

465. The consultation period will be for a period of four weeks from the date the employee receives written notification that they are potentially excess.

466. The employee and employer may, in writing, agree to waive or alter employee's entitlement to the consultation period.

Preventing excess employee situations

467. During the consultation period the agency will:

- a) take all reasonable steps to redeploy a potentially excess employee to a suitable vacancy at an equal classification level within the agency

- b) consider a potentially excess employee, at or below level, in isolation from other applicants, prior to the vacancy being advertised, and/or prior to utilising an order of merit list to fill a vacancy
 - c) support referral of the employee to a suitable APS-wide redeployment program, where redeployment is not readily available at the agency. The agency will meet any costs associated with this referral.
468. As a potentially excess employee it is the employee's responsibility to take all reasonable steps to identify and apply for suitable vacancies.

Accelerated separation option

469. The Agency Head may provide employees who have been declared potentially excess with an accelerated separation option.
470. If you accept an accelerated separation option under clause 469 and your employment is consequently terminated under section 29 of the *Public Service Act 1999* within 14 days of the date of the accelerated separation option, you will, in addition to the payment of an amount calculated in accordance with clause 482, receive:
- a) an amount equivalent to 11 weeks of salary if you are 45 years of age or over and have at least five years continuous service, or
 - b) an amount equivalent to 10 weeks of salary if you are not over 45 years of age with at least five years continuous service.
471. The payments made under clause 470 are inclusive of the consideration period and any entitlement under this agreement, the NES or otherwise to payment in lieu of notice.

Declaring an employee excess

472. Where the Agency Head determines that an employee is excess to the agency's requirements the Agency Head will:
- a) advise the employee in writing of the decision, and may invite the employee to elect for voluntary retrenchment with the payment of a redundancy benefit
 - b) ensure the employee is provided, as soon as is practicable with information on the entitlements they would be eligible to receive if retrenched including superannuation options and taxation treatment of entitlements.

Consideration period

Duration of the consideration period

473. An employee who is declared excess to the agency's requirements will be notified by the Agency Head in writing, and if offered a voluntary redundancy, the employee will have a 3 week consideration period within which to accept or reject the offer.
474. The 3 week consideration period may be reduced or waived by agreement between the employee and the Agency Head.
475. Where the consideration period is reduced, the employee will, upon termination, be paid out the unexpired portion of the consideration period.
476. Only one offer of voluntary redundancy will be made.

477. Where the employee accepts a voluntary redundancy, the Agency Head may decide to retrench the employee but will not give notice of termination before the end of the consideration period without the agreement of the employee.

Financial and career assistance

478. An employee who is declared excess to the agency's requirements may apply for reimbursement for expenses incurred in seeking financial advice and/or career counselling or career related activities upon proof of payment. The reimbursement limits are as follows:
- a) up to \$500 for expenses incurred seeking financial advice, and
 - b) up to \$3,000 for APS 1–6 employees (and equivalent) and up to \$5,000 for EL1 and EL2 employees (and equivalent) for career counselling or career related activities.
479. For the purpose of clause 478 career related activities are activities that would assist an employee in obtaining future employment. This includes but is not limited to career counselling, formal studies and short courses.

Notice of termination

480. If an employee accepts a voluntary redundancy offer, the Agency Head will give the employee the required notice of termination of 4 weeks (or 5 weeks for an employee over 45 years of age with at least 5 years continuous service).
481. If an employee ceases employment at the commencement of or within the notice period, the employee will be paid out the unexpired portion of the notice period.

Redundancy payments

482. An excess employee who agrees to be voluntarily retrenched and whose employment is terminated by the agency under section 29 of the *Public Service Act 1999* on the grounds that they are excess to the requirements of the agency, is entitled to be paid redundancy pay as follows:
- a) the sum equal to 2 weeks' salary for each completed year of service for redundancy purposes, plus
 - b) a pro-rata payment for completed months of service since the last completed year of service for redundancy pay purposes.
483. The minimum sum payable under clause 482 is 4 weeks' salary, and the maximum sum will be 48 weeks' salary and also subject to any minimum amount the employee is entitled to under the NES.

Rate of payment for redundancy benefit

484. Redundancy payments will be calculated on:
- a) the employee's salary on the date of termination, and
 - b) any higher duties allowance where the employee has received the allowance for a continuous period of at least 12 months immediately preceding the date on which the employee is given notice of termination of employment, and

- c) allowances in the nature of salary which are paid during periods of annual leave and on a regular basis, excluding allowances which are a reimbursement for expenses incurred, or a payment for disabilities associated with the performance of duty.
485. The redundancy payment will be calculated on a pro-rata basis for any period where an employee has worked part-time hours during their period of service and the employee has less than 24 years full-time service, subject to any minimum amount the employee is entitled to under the NES. In these circumstances, the 2 weeks per year of service that relates to the part-time service will be paid on a pro-rata basis.
486. To determine the pro-rata amount payable the current annual full-time equivalent salary (used for redundancy purposes) will be divided by full-time hours then, multiplied by the part-time hours for that part-time period worked.

Service for redundancy pay purposes

487. Service for redundancy pay purposes means:
- a) services in an APS agency
 - b) government service as defined in section 10 of the *Long Service Leave (Commonwealth Employees) Act 1976*
 - c) service with the Commonwealth (other than service with a joint Commonwealth-State body corporate in which the Commonwealth does not have a controlling interest) which is recognised for long service leave purposes
 - d) service with the Australian Defence Forces
 - e) APS service immediately preceding deemed resignation (as defined), if the service has not previously been recognised for redundancy pay purposes, and
 - f) service in another organisation where:
 - i. an employee was transferred from the APS to that organisation with a transfer of function, or
 - ii. an employee engaged by that organisation on work within a function is appointed as a result of the transfer of that function to the APS and such service is recognised for long service leave purposes.
488. Periods of service that will not count as service for redundancy pay purposes are any periods of service that ceased by way of:
- a) termination under s29 of the *Public Service Act 1999*
 - b) prior to the commencement of the *Public Service Act 1999*, by way of redundancy, retirement on ground of invalidity, inefficiency or loss of qualifications, forfeiture of office, dismissal or termination of probationary appointment for reasons of unsatisfactory service
 - c) voluntary retirement at or above the minimum retiring age applicable to the employee, or
 - d) payment of a redundancy benefit or similar payment.

489. For earlier periods of service to count there must be no breaks between the periods of service, except where:
- a) the break in service is less than 4 weeks 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 2 periods of service are with the same employer or agency), or
 - b) the earlier period of service was with the APS and ceased because the employee was deemed to have resigned from the APS on marriage under the repealed section 49 of the *Public Service Act 1922*.
490. Absences from work, which do not count as service for any purpose, will not count as service for redundancy pay purposes.

Retention period

491. An excess employee who does not agree to be retrenched with the payment of a redundancy benefit will be entitled to the following retention periods:
- a) 13 months where an employee has 20 or more years of service or is over 45 years of age, or
 - b) 7 months for other employees commences on the day after the expiration of the consideration period.
492. If an employee is entitled to a redundancy payment under the NES, the retention period at clause 491 will, upon termination, be reduced by the employee's redundancy pay entitlement under the NES, calculated as at the expiration of the retention period (as adjusted by this clause).

Commencement of the retention period

493. The retention period will commence on the day the employee is advised in writing by the Agency Head, in accordance with clause 472, that they are an excess employee.
494. The employee's salary will be maintained during the retention period.

Extension of the retention period

495. The retention period will not be extended except where the Agency Head considers that evidence by a medical practitioner nominated by the agency indicates the employee is substantially incapacitated and unfit for work. In these circumstances the retention period would not be extended beyond an additional 2 months.

Responsibilities during the retention period

496. During the retention period the employee will:
- a) take reasonable steps to find alternative employment, and
 - b) consider all offers of suitable alternative employment.
497. During the retention period the Agency Head:
- a) will assist with employee attempts to find alternative employment

- b) may, on request, provide assistance in meeting reasonable travel costs and incidental expenses incurred in seeking alternative employment where these are not met by the prospective employer, including paid time to attend interviews
- c) may approve reasonable relocation expenses where an excess employee is required to move their household to a new locality as a result of taking an employment offer and these expenses are not met by the prospective employer, and
- d) may, after giving four weeks' notice to the employee, reduce the employee's classification as a means of securing alternative employment. If this occurs prior to the end of the retention period, the employee will continue to be paid at their previous level for the balance of the retention period.

Early termination of employment during the retention period

- 498. Where the Agency Head is satisfied that there is insufficient productive work available for the employee within the agency during the remainder of the retention period and that there is no reasonable redeployment prospects in the APS, the Agency Head may terminate the employee's employment under section 29 of the *Public Service Act 1999*.
- 499. Upon termination, the employee will be paid a lump sum comprising:
 - a) the balance of the retention period (as shortened for the NES) and this payment will be taken to include the payment in lieu of notice of termination, plus
 - b) the employee's NES entitlement to redundancy pay.
- 500. The employee may request an early termination of their retention period at any time.

Involuntary termination of employment at the end of the retention period

- 501. In accordance with section 29 of the *Public Service Act 1999*, the Agency Head may involuntarily terminate the employment of an excess employee at the end of the retention period.
- 502. Where the employee is to be terminated involuntarily, the agency will give 4 weeks' notice of termination under section 29 of the *Public Service Act 1999*, or 5 weeks notice for an employee over 45 years of age with at least 5 years continuous service, to be served as far as practicable concurrently with the retention period.
- 503. The Agency Head will not terminate the employment of an excess employee if the excess employee has not been invited to accept an offer of voluntary retrenchment or has elected to accept an offer of voluntary retrenchment but the Agency Head has refused to approve it.

Section 12: Definition of key terms

The following definitions apply to this agreement:

Agency means the Clean Energy Regulator.

Agency Head means the Chair of the Clean Energy Regulator or the person authorised by the Chair as their delegate.

Agreement (this agreement) means the Clean Energy Regulator Enterprise Agreement 2024-2027.

APS means the Australian Public Service.

APS agency means an agency whose employees are employed under the *Public Service Act 1999*, including an agency as defined in section 7 of the *Public Service Act 1999* whose employees are employed under that Act.

APS consultative committee means the committee established by the APS Commissioner to consider matters pertaining to the (APS) employment relationship and of interest to the APS as a whole.

Australian Defence Force Cadets means the Australian Navy Cadets, Australian Army Cadets, or the Australian Air Force Cadets.

Bandwidth means the span of hours during which an employee can perform ordinary hours.

Broadband refers to the allocation of more than one approved classification by the Agency Head to a group of duties involving work value applying to more than one classification under sub-rule 9(4) of the *Public Service Classification Rules 2000*. A broadband encompasses the full range of work value of the classifications contained within it.

Cadet force means the Australian Navy Cadets, Australian Army Cadets, or the Australian Air Force Cadets.

Casual employee (irregular or intermittent employee) means an employee engaged under section 22(2)(c) of the *Public Service Act 1999* who:

- a) is a casual employee as defined by the *Fair Work Act 2009*, and
- b) works on an irregular and intermittent basis.

CER means the Clean Energy Regulator.

Child means a biological child, adopted child, foster child, stepchild, or ward.

Classification or classification level means the approved classifications as defined by the *Public Service Classification Rules 2000*.

Continuous service means continuous employment with the Commonwealth and is as defined in the *Fair Work Act 2009*

De facto partner means a person who, regardless of gender, is living in a common household with the employee in a bona fide, domestic, interdependent partnership, although not legally married to the employee. This includes a former de facto partner.

Delegate means someone to whom a power or function has been delegated.

Dependant means the employee's spouse or de facto partner, a child, parent or aged relative of the employee or the employee's spouse or de facto partner, who ordinarily lives with the employee and who is substantially dependent on the employee. Dependant also includes a child of the employee who does not ordinarily live with the employee but for whom the employee provides substantial financial support.

Employee means an employee of the Commonwealth engaged under section 22(2) of the *Public Service Act 1999* who is covered by this agreement (whether full-time, part-time or casual, ongoing or non-ongoing).

Employee representative means a person (whether an employee or not) elected or chosen by an employee, or elected or chosen by a group of employees in a workplace, to represent the individual and/or collective views of those employees in relation to a matter under this agreement.

Executive level employee means Executive Level 1 (EL1) or Executive Level 2 (EL2) employees or equivalent Senior Legal Officer (SLO) or Principal Legal Officer (PLO).

Family (immediate family) means:

- a. a spouse, former spouse, de facto partner or former de facto partner of the employee
- b. a child, parent, grandparent, grandchild, or sibling of the employee
- c. a child, parent, grandparent, grandchild, or sibling of a spouse, former spouse, de facto partner or former de facto partner of the employee
- d. a member of the employee's household, or
- e. a person with whom the employee has a relationship of traditional kinship where there is a relationship or obligation, under customs and traditions of the community or group to which the employee belongs.

Family and domestic violence has the same meaning as in Section 106B(2) of the *Fair Work Act 2009*.

Flexible working arrangements mean arrangements that relate to hours of work, patterns of work or the location at which work is done.

Flextime means accrual of time for duty performed in excess of ordinary hours, and the incurring of a flextime debt for working less than ordinary hours over the flextime settlement period.

Flextime settlement period means the period of ordinary working days over which calculations are made to determine the flextime credit or debit of an employee. This period is four weeks (20 working days) inclusive of public holidays.

Full-time employee means an employee employed to work an average of 37 hours and 30 minutes per week or the agency's retained standard full-time hours, in accordance with the agreement.

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

Individual flexibility arrangement (IFA) means an arrangement made to alter terms and conditions of the agreement as applied to an individual employee as outlined under clauses 10 to 15.

Irregular or intermittent (casual) employee is an employee engaged under section 22(2)(b) of the *Public Service Act 1999* for a specified term or for the duration of a specified task, and consistent with the *Fair Work Act 2009*.

Leave management strategy means a written agreement specifying when an employee will take a period of annual leave to enable their accrued leave balance to be reduced to 30 days or less. The leave management strategy may be incorporated into a graduated return to work plan which ensures that an employee's health is considered before the reduction of the leave balance.

Manager means an employee's direct manager who is usually the person to whom an employee reports to on a day-to-day basis for work related matters, and may include a person referred to as a supervisor.

Member of an employee's household is as defined in the *Fair Work Act 2009*.

ML Act means the *Maternity Leave (Commonwealth Employees) Act 1973* as amended from time to time and any successor legislation.

NES means the National Employment Standards, at Part 2-2 of the *Fair Work Act 2009*.

Non-ongoing employee means an employee engaged for a specified term or for the duration of a specified task in accordance with section 22(2)(b) of the *Public Service Act 1999*, and consistent with the *Fair Work Act 2009*.

Ongoing employee is an employee engaged under section 22(2)(a) of the *Public Service Act 1999*.

Operational requirements are the factors impacting the agency's ability to carry out its business functions effectively and efficiently.

Ordinary hourly rate of pay has the meaning given in the following formula:

$$\text{Fortnightly salary}/75$$

Ordinary hours or duty or work means an employee's usual hours worked in accordance with the agreement and does not include additional hours.

Parliamentary service means employment under the *Parliamentary Service Act 1999*.

Partner means a spouse or de facto partner, or a former spouse or former de facto partner.

Part-time employee means an employee employed to work less than an average of 37 hours 30 minutes per week or the agency's retained standard full-time hours in accordance with this agreement.

Performed duties means having been present at work within the agency and performing duties as required. This definition takes into account employees who are:

- a) seconded to another organisation, or
- b) on temporary transfer to another organisation, and
 - i. meet the requirements of that organisation's performance management processes as "effective" or equivalent.

Primary caregiver for the purposes of the parental leave clause means a pregnant employee with an entitlement under the ML Act, or an employee other than a casual employee who has primary care responsibility for a child who is born to them or who is adopted or in long-term foster care as per clauses 139 and 140 of this agreement.

PS Act means the *Public Service Act 1999* as amended from time to time.

Relevant employee means an affected employee.

Salary means the salary for the employee's classification and pay point, as set out in Schedule A – Base salaries, excluding superannuation.

Salary advancement means the movement through the pay points within the salary range for a classification.

Secondary caregiver for the purposes of the parental leave clause means an employee, other than a pregnant employee or a casual employee, who has secondary care responsibility for a child who is born to them, or for a child who is adopted or in long-term foster care as per the clauses 139 and 140 of this agreement.

Settlement period is a 2-week period, commencing each payday and ending on the day prior to the following payday.

Staff Consultative Committee means the forum for consultation between the agency and employees.

Supervisor means the person to whom an employee reports to on a day-to-day basis with responsibility for approving their timesheets and/or leave requests.

Usual location of work is the normal place of work where an employee works on a day to day basis as specified on engagement or an alternate location determined by the Agency Head and/or agreed with the employee.

Schedule A – Base salaries

CER APS classifications

Broadband	APS Classification	CER Structure	As at 31 August 2023	From the later of the commencement of the agreement or 14 March 2024	From 13 March 2025	From 12 March 2026
				4.0 per cent	3.8 per cent	3.4 per cent
CER Broadband 1	APS 1	APS 1.1	\$51,572	\$53,635	\$55,673	\$57,566
		APS 1.2	\$55,033	\$57,234	\$59,409	\$61,429
		APS 1.3	\$58,494	\$60,834	\$63,146	\$65,293
	APS 2	APS 2.1	\$61,422	\$63,879	\$66,306	\$68,560
		APS 2.2	\$63,482	\$66,021	\$68,530	\$70,860
		APS 2.3	\$65,540	\$68,162	\$70,752	\$73,158
CER Broadband 2	APS 3	APS 3.1	\$68,358	\$71,092	\$73,793	\$76,302
		APS 3.2	\$70,827	\$73,660	\$76,459	\$79,059
		APS 3.3	\$73,998	\$76,958	\$79,882	\$82,598
	APS 4	APS 4.1	\$76,817	\$79,890	\$82,926	\$85,745
		APS 4.2	\$78,932	\$82,089	\$85,208	\$88,105
		APS 4.3	\$81,045	\$84,287	\$87,490	\$90,465
	APS 5	APS 5.1	\$83,865	\$87,220	\$90,534	\$93,612
		APS 5.2	\$85,979	\$89,418	\$92,816	\$95,972
		APS 5.3	\$88,094	\$91,618	\$95,099	\$98,332
APS 6	APS 6	APS 6.1	\$91,619	\$95,284	\$98,905	\$102,268
		APS 6.2	\$97,958	\$101,876	\$105,747	\$109,342
		APS 6.3	\$104,302	\$108,474	\$112,596	\$116,424
EL 1	EL 1	EL 1.1	\$112,758	\$117,268	\$121,724	\$125,863
		EL 1.2	\$120,509	\$125,329	\$130,092	\$134,515
		EL 1.3	\$128,263	\$133,394	\$138,463	\$143,171
EL 2	EL 2	EL 2.1	\$134,607	\$139,991	\$145,311	\$150,252
		EL 2.2	\$146,585	\$152,448	\$158,241	\$163,621
		EL 2.3	\$158,565	\$164,908	\$171,175	\$176,995

CER Legal Officers

Broadband	Local title	CER APS classification equivalent	As at 31 August 2023	From the later of the commencement of the agreement or 14 March 2024	From 13 March 2025	From 12 March 2026
				4.0 per cent	3.8 per cent	3.4 per cent
Legal Officer Broadband	LO 1.1	APS 3.2	\$70,827	\$73,660	\$76,459	\$79,059
	LO 1.2	APS 4.3	\$81,045	\$84,287	\$87,490	\$90,465
	LO 1.3	APS 5.3	\$88,094	\$91,618	\$95,099	\$98,332
	LO 1.4	APS 6.2	\$97,958	\$101,876	\$105,747	\$109,342
	LO 1.5	APS 6.3	\$104,302	\$108,474	\$112,596	\$116,424
Senior Legal Officer EL 1	SLO 1.1	EL 1.1	\$112,758	\$117,268	\$121,724	\$125,863
	SLO 1.2	EL 1.2	\$120,509	\$125,329	\$130,092	\$134,515
	SLO 1.3	EL 1.3	\$128,263	\$133,394	\$138,463	\$143,171
Principal (PLO) Legal Officer EL2	PLO 2.1	EL 2.1	\$134,607	\$139,991	\$145,311	\$150,252
	PLO 2.2	EL 2.2	\$146,585	\$152,448	\$158,241	\$163,621
	PLO 2.3	EL 2.3	\$158,565	\$164,908	\$171,175	\$176,995

CER training classifications

Classification	APS Classification	CER APS pay point equivalent	As at 31 August 2023	From the later of the commencement of the agreement or 14 March 2024	From 13 March 2025	From 12 March 2026
				4.0 per cent	3.8 per cent	3.4 per cent
Trainee APS	APS 1	APS 1.1	\$51,572	\$53,635	\$55,673	\$57,566
		APS 1.2	\$55,033	\$57,234	\$59,409	\$61,429
		APS 1.3	\$58,494	\$60,834	\$63,146	\$65,293
	APS 2	APS 2.1	\$61,422	\$63,879	\$66,306	\$68,560
		APS 2.2	\$63,482	\$66,021	\$68,530	\$70,860
		APS 2.3	\$65,540	\$68,162	\$70,752	\$73,158
Cadet APS	APS 1	APS 1.1	\$51,572	\$53,635	\$55,673	\$57,566
		APS 1.2	\$55,033	\$57,234	\$59,409	\$61,429
		APS 1.3	\$58,494	\$60,834	\$63,146	\$65,293
	APS 2	APS 2.1	\$61,422	\$63,879	\$66,306	\$68,560
		APS 2.2	\$63,482	\$66,021	\$68,530	\$70,860
		APS 2.3	\$65,540	\$68,162	\$70,752	\$73,158
Graduate APS	APS 3	APS 3.1	\$68,358	\$71,092	\$73,793	\$76,302
		APS 3.2	\$70,827	\$73,660	\$76,459	\$79,059
		APS 3.3	\$73,998	\$76,958	\$79,882	\$82,598

Schedule B – Base salaries

Maintained salaries for existing DCCEE and ORER employees*

Classification	DCCEE EA (expired)	ORER EA (expired)	As at 31 August 2023	From the later of the commencement of the agreement or 14 March 2024	From 13 March 2025	From 12 March 2026
				4.0 per cent	3.8 per cent	3.4 per cent
APS 4 A1	\$74,029	-	\$82,455	\$85,753	\$89,012	\$92,038
APS 5 A1	\$80,674	-	\$89,856	\$93,450	\$97,001	\$100,299
APS 6 A1	\$97,441	-	\$108,532	\$112,873	\$117,162	\$121,146
EL 1 A2	\$124,371	\$124,371	\$138,526	\$144,067	\$149,542	\$154,626
EL 1 A3	\$128,976	\$128,976	\$143,656	\$149,402	\$155,079	\$160,352

Please note this salary structure is only available for CER employees who had obtained an additional pay point under the pre-existing DCCEE and ORER enterprise agreements prior to the commencement of the 2016 to 2019 CER Enterprise Agreement. This salary structure is not available after commencement of the 2016 to 2019 CER Enterprise Agreement and any subsequent agreements. Salary advancement throughout this structure cannot occur under the terms of this agreement.

Schedule C – Supported Wage System

1. This schedule defines the condition which will apply to employees because of the effects of a disability, and are eligible for a supported wage under the terms of this agreement.

Definitions

2. In this schedule:

Approved assessor means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual's productive capacity within the supported wage system

Assessment instrument means the tool provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system

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

Relevant minimum wage means the minimum wage prescribed in this agreement for the class of work for which an employee is engaged

Supported Wage System (SWS) means the Commonwealth Government system to promote employment for people who cannot work at full agreement wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the JobAccess website (www.jobaccess.gov.au)

SWS wage assessment agreement means the document in the form required by the Department of Social Services that records the employee's productive capacity and agreed wage rate

Eligibility criteria

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

Supported wage rates

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

Table 1 Applicable percentage of relevant minimum wage paid to applicable employees

Assessed capacity	Percentage of agreement rate
10 per cent	10 per cent
20 per cent	20 per cent
30 per cent	30 per cent
40 per cent	40 per cent
50 per cent	50 per cent
60 per cent	60 per cent
70 per cent	70 per cent
80 per cent	80 per cent
90 per cent	90 per cent

6. Provided that the minimum amount payable to an employee to whom the SWS applies is not less than the amount prescribed in the National Minimum Wage Order. Note: The minimum amount payable is reviewed every year in July.
7. Where an employee's assessed capacity is 10 per cent, they must receive a high degree of assistance and support.

Assessment of capacity

8. For the purposes of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the Supported Wage System by an approved assessor, having consulted the employer and the employee, and if the employee so desires, a union which the employee is eligible to join.
9. Assessment made under this schedule must be documented in a SWS wage assessment agreement, and retained by the employer as a time and wages record in accordance with the Act.

Lodgement of SWS wage assessment agreement

10. All SWS wage assessment agreements under the conditions of this schedule, including the appropriate percentage of the relevant minimum wage to be paid to the employee, must be lodged by the employer with the Fair Work Commission.

11. All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment. Where a union which has an interest in the agreement is not a party to the assessment, the assessment will be referred by the Fair Work Commission to the union by certified mail and the agreement will take effect unless an objection is notified to the Fair Work Commission within 10 working days.

Review of assessment

12. The assessment of the applicable percentage should be subject to annual review or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the supported wage system.

Other terms and conditions of employment

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

Workplace adjustment

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

Trial period

15. In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a Trial Period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
16. During that Trial Period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.
17. The minimum amount payable to the employee during the Trial Period must be no less than the current weekly rate, as determined by the Fair Work Commission.
18. Work trials should include induction or training as appropriate to the job being trialled.
19. Where the employer and employee wish to establish a continuing employment relationship following the completion of the Trial Period, a further contract of employment will be entered into based on the outcome of assessment under clause 8 and 9 on assessment of capacity.

IN THE FAIR WORK COMMISSION

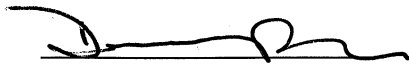
FWC Matter No: AG2024/770

Applicant: Commonwealth of Australia, as Represented by the Clean Energy Regulator

Undertaking – Section 190

I, David Parker, Chief Executive Officer of the Clean Energy Regulator, give the following undertakings with respect to the Clean Energy Regulator Enterprise Agreement 2024-2027 (the Agreement).

1. I have the authority to provide this undertaking in relation to the application before the Fair Work Commission.
2. The Clean Energy Regulator undertakes that despite clause 283 of the Agreement, if an APS 1 employee being paid at the APS 1.1 pay point is required to act at a higher classification for at least half a day, it will pay the employee a higher duties allowance as otherwise provided by clauses 283 to 290 of the Agreement and in accordance with the minimum period for higher duties provisions as set out in the Australian Public Service Enterprise Award 2015.
3. The Clean Energy Regulator undertakes that:
 - a. for a part-time employee 'standard hours' will mean the days of work and start and finish times specified in the employee's individual part-time work agreement, and
 - b. a part-time employee will have a written part-time work agreement specifying their standard hours before commencing part-time work.
4. These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.



Signature

27/03/2024

Date