

**Attorney-General's Department
Enterprise Agreement 2011**

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Part 1 Introduction

Division 1.1 About this Agreement

1.01 Objective and overriding commitment

- (1) This Agreement aims to support the Attorney-General's Department in its objective of achieving a just and secure society, by:
- valuing and developing its employees through:
 - remuneration and conditions that are competitive and affordable
 - encouraging high performance and ongoing learning
 - recognising the significant contribution and effort of our employees
 - working together, by:
 - fostering open communication
 - building trust through a strong emphasis on people management responsibilities
 - promoting flexibility and responsiveness in order to meet the challenges of the future
 - ensuring health and wellbeing, including:
 - having measures promoting a work and life balance
 - providing a safe and healthy workplace.
- (2) This Agreement represents a commitment by the Department and its employees to identify and realise productivity improvements and to ensure that salary increases and other benefits under this Agreement can be provided without diminishing the Department's responsiveness to the Government in providing timely advice and implementing the Government's policies and programs.

1.02 Particular commitments

This Agreement evidences a commitment by the Department and its employees to:

- delivering high quality professional public service in accordance with the APS Values set out in section 10 of the *Public Service Act 1999*
- achieving productivity gains through:
 - implementation of the Department's Efficiency Program
 - optimising use of the Department's information and communications technology
 - streamlining the Department's recruitment processes
 - continuing to apply the Department's Working Smarter Principles to enhance efficiency
 - simplifying administrative arrangements
 - an absence management strategy

- encouraging employees to be aware of and apply continuous improvement principles in all facets of their work
- developing and enhancing a high performance culture in the Department, particularly by:
 - removing unnecessary prescription and developing arrangements that best suit the Department's needs and the interests of employees
 - providing a framework for improved communication on performance issues
- recognising the productive benefits of diverse backgrounds, experiences, skills and perspectives, and encouraging employment equity as a key element of developing diversity
- providing sufficient support and flexibility in the workplace to enable employees to balance work and life responsibilities
- investing in employees' skills, training and career development to increase their value in the Department
- providing competitive remuneration, and terms and conditions, to facilitate the employment of the best people for the tasks at hand
- an employment relationship based on consultation, cooperation, trust and reasonableness.

1.03 Salary increases

In recognition of productivity improvements arising under this Agreement, salaries payable to employees of the Department whose employment is subject to this Agreement are increased:

- (a) by 4% from the commencement of this Agreement
- (b) by 3% from 1 July 2012
- (c) by 2% from 1 July 2013.

1.04 Productivity payment for participation in Efficiency Program

- (1) The parties to this Agreement are committed to implementation of the Department's Efficiency Program.
- (2) The Secretary will review the outcomes of the Efficiency Program by 30 June 2013. If the Secretary is satisfied that implementation of the Efficiency Program has enabled the redistribution of departmental resources equivalent to 10 full-time equivalent employees to undertake other departmental functions, employees will be entitled to a productivity payment of \$1000 in accordance with subclauses (3) to (6).
- (3) An employee who is continuously employed by the Department from the commencement of this Agreement until 30 June 2013 will receive the productivity payment in recognition of employee participation in the Efficiency Program.

Clause 1.05

- (4) However, an employee who has been on leave without pay or on a temporary movement to another APS agency for more than half of the period from the commencement of this Agreement until 30 June 2013 is ineligible to receive the productivity payment. The first 10 months of any maternity leave without pay or parental leave without pay absence taken under this Agreement will not be treated as leave without pay for the purpose of assessing eligibility for the productivity payment.
- (5) An employee who is engaged on an intermittent/irregular (casual) contract basis at the commencement date of this Agreement who has been engaged on less than 5% of available work days over the period from the date of commencement of this Agreement until 30 June 2013 is also ineligible to receive the productivity payment.
- (6) If payable, the productivity payment will be made by 31 August 2013.

Division 1.2 Preliminary

1.05 Name of Agreement

This Agreement is the *Attorney-General's Department Enterprise Agreement 2011*.

1.06 Application and coverage

- (1) This Agreement is made under section 172 of the *Fair Work Act 2009*.
- (2) This Agreement applies to:
 - (a) the Secretary of the Attorney-General's Department, on behalf of the Commonwealth; and
 - (b) all non-SES employees (within the meaning of the *Public Service Act 1999*) in the Attorney-General's Department.
- (3) Where the following employee organisations give notice in accordance with subsection 183(1) of the *Fair Work Act 2009*, Fair Work Australia will note in its decision to approve the Agreement that it covers these organisations:
 - (a) the Community and Public Sector Union; and
 - (b) the Media, Entertainment and Arts Alliance.

1.07 Interpretation

- (1) In this Agreement:

approved classification means an approved classification under the Classification Rules.

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

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

Department means the Attorney-General's Department.

employee means an employee to whom this Agreement applies (as set out in subclause 1.06 (2) (b)).

former agreement means the *Attorney-General's Department Enterprise Agreement 2010*

FWA means Fair Work Australia.

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

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

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

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

ordinary hours of work:

- (a) for a full-time employee — has the meaning given by subclause 4.05 (1); and
- (b) for a part-time employee — has the meaning given by subclause 4.05 (2).

ordinary span of work hours has the meaning given by subclause 4.05 (3).

part-time employee means an employee whose ordinary hours of duty amount to less than 75 hours over 2 weeks, other than an employee eligible for a loading under subclause 3.03 (1) for performing duties that are intermittent or irregular.

pay point, for an employee, means the pay point mentioned in Schedule 1 at which salary is payable to the employee.

public holiday has the meaning given by clause 4.16.

salary has the meaning given by clause 1.08.

salary barrier means:

- (a) for Subdivisions 3.2.3, 3.2.4 and 3.2.5 — the APS Level 6 classification; and
- (b) for clause 3.37 — the APS 4.2 pay point.

Secretary means the Secretary of the Department.

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

shiftworker means an employee who is rostered to perform ordinary duty outside the hours of 6.30 am to 6.00 pm for an ongoing or fixed period.

standard hours has the meaning given by clause 4.09.

WRC means the Department's Workplace Relations Committee.

Clause 1.08

1.08 Meaning of *salary*

The salary rate payable to an employee under Schedule 1 is the employee's *salary* for all purposes and is not affected for any purpose by the employee's participation in a variable purchased leave arrangement or an election to sacrifice salary for non-monetary benefits.

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

Part 2 Supporting a professional Department

Division 2.1 Workplace diversity

2.01 Commitment

- (1) The parties to this Agreement recognise that ensuring equity in employment and eliminating workplace discrimination and harassment are essential for developing a diverse workforce, attracting and retaining high quality employees and maximising productivity.
- (2) The Department will continue to uphold and promote a work environment that is free from discrimination on the basis of race, colour, sex, sexual orientation, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction, social origin or union membership.
- (3) The Department will make all reasonable endeavours to increase Aboriginal and Torres Strait Islander employment to at least 2.7% of employees of the Department by 2015. In consultation with employees and unions, the Department will implement targeted strategies to improve the attraction and retention of Aboriginal and Torres Strait Islander employees to meet this goal.
- (4) Nothing in this Agreement is intended to affect:
 - (a) treatment exempted under Commonwealth anti-discrimination legislation; or
 - (b) junior rates of pay; or
 - (c) an employee pursuing matters of discrimination in a State or Federal jurisdiction; or
 - (d) the exemptions mentioned in subsections 351(2) of the FW Act.

Division 2.2 Study leave and assistance

2.02 Availability of study leave and assistance

The Secretary may grant leave of absence or financial assistance to an employee for the purpose of study relevant to employment in the Department. For more information about studies assistance, employees should consult the AGD Employee Relations Advice *Study Assistance and Policy Guidelines*.

Clause 2.03

Division 2.3 A strategic learning and development plan

2.03 Commitment and measures to be taken

- (1) The Department recognises that the skills and knowledge of its employees are critical to its ability to meet its objectives. Further, the parties to this Agreement acknowledge the importance of learning and development opportunities both in building the capability of the Department and also in serving the development needs and career aspirations of its employees.
- (2) The Department's People Development Strategy (*PDS*) provides a framework for a range of development and training opportunities. The PDS is aimed at meeting the development needs as identified through the Department's Program for Performance Improvement (*PPI*).
- (3) All employees are encouraged and expected to take personal responsibility for participating fully in the PPI and taking full advantage of relevant PDS opportunities.

Division 2.4 Employee retention

2.04 Commitment and measures to be taken

- (1) The Department is committed to attracting and retaining skilled and motivated employees by offering challenging and stimulating work, career and mobility opportunities, competitive rewards and recognition, and by providing a friendly and supportive work environment.
- (2) The Department will continue to seek feedback from employees about working in the Department by supporting the further use of Department wide staff surveys and other less formal consultation mechanisms.

Division 2.5 Sound leadership and management

2.05 Commitment

The Department is fully committed to developing its current and future leaders and managers.

Division 2.6 Internal mobility

2.06 Commitment

- (1) The Department recognises that flexible mobility arrangements are a central element in the development of a skilled and flexible workforce.
- (2) By creating mobility opportunities, the Department will enhance career development opportunities, create a more mobile and flexible workforce to enable best use of skills and resources, and enhance the Department's prospects of retaining high quality staff.

Part 3 Developing and enhancing a high performance culture

Division 3.1 Managing for better performance

3.01 Program for performance improvement

- (1) The Program for Performance Improvement (*PPI*) provides the basis for managing the performance of AGD employees, particularly to improve work performance, consistent with the achievement of corporate objectives by:
 - (a) ensuring that every employee in a work team has a clear understanding of his or her role and responsibilities; and
 - (b) facilitating the early identification of employee underperformance based on objective work-related data; and
 - (c) identifying personal development opportunities for employees that are relevant to their professional and career goals and the Department's skill and knowledge requirements; and
 - (d) ensuring there are no 'surprises' for employees concerning manager appraisals of their work performance.
- (2) Employees covered by this Agreement will participate in the PPI. For more information about the PPI, employees should consult the AGD Employee Relations Advice *Program for Performance Improvement*.

3.02 PPI and underperformance

- (1) The parties to this Agreement agree that, although the emphasis of the PPI is on facilitating and positively reinforcing performance that *meets all key performance targets* or *exceeds most performance targets*, performance that *does not meet performance targets* provides a trigger for action under the Department's procedures for managing underperformance. Continued performance that *meets most performance targets* but does not *meet all key performance targets* may also result in action under the procedures for managing underperformance.
- (2) Under the procedures for managing underperformance that apply to ongoing employees:
 - (a) the employee will be afforded procedural fairness, including the right to be represented, if the employee chooses, by his or her chosen representative, in discussions with managers about the application of the procedures; and
 - (b) a formal assessment may be made of the employee's performance over a period of:
 - (i) at least 6 weeks; and
 - (ii) not more than 13 weeks.

Clause 3.03

- (3) Different procedures for managing underperformance may apply to employees on probation and non-ongoing employees.
- (4) For more information about managing underperformance, employees should consult the AGD Employee Relations Advice *Managing Underperformance*.

Division 3.2 Job classification and remuneration

3.03 Irregular or intermittent (casual) employment

- (1) If an employee is employed for duties that are intermittent or irregular, the employee is to receive a 20% loading for the intermittent or irregular nature of the duties.
- (2) An employee who receives the 20% loading is not entitled to annual leave, personal leave (except unpaid carer's leave), paid compassionate leave, paid community service leave, paid parental leave, discretionary miscellaneous leave or payment for public holidays but is eligible for long service leave in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976*.
- (3) Remuneration rates for NSH employees, inclusive of the 20% loading, are set out in Schedule 1.

Subdivision 3.2.1 Classification structure and associated arrangements

3.04 Classification structure

The classification structure, including training classifications, for employees is set out in Schedule 1.

3.05 Broadbanding within the 8 level classification structure

- (1) A position that would have been classified as APS Level 1 or APS Level 2 because it satisfies the work level standards for APS Level 1 or APS Level 2 is to be classified as a broadbanded APS Level 1–2 position.
- (2) A position that would have been classified as APS Level 5 or APS Level 6 because it satisfies the work level standards for APS Level 5 or APS Level 6 is to be classified as a broadbanded APS Level 5-6 position.
- (3) The AGD Graduate Broadband structure applies to employees who do not have a degree in law who successfully complete the AGD Graduate Program to enable their movement to a broadband APS Level 5-6 position.
- (4) If an employee is assigned the duties of a broadbanded position, the employee retains the approved classification allocated to him or her, as determined by reference to the APS Level pay point applicable to the employee.

- (5) Transitional arrangements introduced under the former agreement for movement to the generic broadbanding of APS Level 5 and APS Level 6 classifications, and for the movement of other specified broadband classifications to discrete classification levels, continue under this Agreement. The arrangements set out at Schedule 2, Parts 1 and 2 of the former agreement continue to apply. Updated rates of salary for obsolete pay points involved in the transitional arrangements are at Schedule 2 of this Agreement.

3.06 Treatment of positions requiring legal qualifications and skills

A position that requires an employee to hold a degree in law, or admission in Australia as a legal practitioner, and to use professional legal skills and abilities must be:

- (a) a broadbanded position covering the APS Level 3, 4, 5 and 6 classifications (locally designated *Legal Officer*); or
- (b) a position classified as Executive Level 1 (locally designated *Senior Legal Officer*); or
- (c) a position classified as Executive Level 2 (locally designated *Principal Legal Officer*).

3.07 Work level standards

- (1) Positions in the Department are classified with regard to the AGD work level standards and the kind of work allocated to the position. The AGD Generic Capabilities form part of the work level standards. Positions can be broadbanded under clauses 3.05 and 3.06.
- (2) The Secretary may review the work level standards during the life of this Agreement.
- (3) To ensure consistent classification of positions, the Secretary will ensure that assistance is provided, as necessary, to managers and supervisors to ensure that duty statements, selection criteria and job specifications are developed with regard to the work level standards.

Note Work level standards are issued under rule 10 of the Classification Rules.

3.08 Graduate APS employees

- (1) An employee who is classified as a Graduate APS employee must undertake a course of training decided by the Secretary.
- (2) If the Secretary is satisfied that the employee has successfully completed the course of training, the Secretary must:
 - (a) allocate to the employee the approved classification of APS Level 3; and
 - (b) subsequently assign the employee:
 - (i) if the employee has a degree in law — the duties of a Legal Officer (broadbanded APS Levels 3, 4, 5 and 6) position; or

Clause 3.09

- (ii) in any other case — the duties of an AGD Graduate Broadband position, and then the duties of a broadbanded APS Level 5-6 position;
at the APS 5.1 (LO 5) pay point of the APS Level 5 classification.

Subdivision 3.2.2 Remuneration

3.09 Salary rates

- (1) Salary rates payable to employees (other than employees covered by subclause (4)) are set out in Schedule 1.
- (2) Pay point Executive 2.1 at the Executive Level 2 classification (pay point PLO 1 for Principal Legal Officers) which applied under the former agreement ceases to apply from the commencement of this Agreement. Employees who, immediately prior to the commencement of this Agreement, are at pay point Executive 2.1, move to the new pay point Executive 2.1 applying under this Agreement.
- (3) Transitional arrangements introduced under Schedule 2, Part 3 of the former agreement for the realignment of the Legal Officer salary scale continue under this Agreement. Updated salary rates for employees subject to the grandfathered Legal Officer salary scale appear at Schedule 2 of this Agreement.
- (4) The Secretary will determine the salary rate applying to employees who are unable to perform duties to the competence level required under the AGD work level standards and who meet the criteria for receipt of a disability support pension. The determined salary rate will be based on a productivity assessment conducted by an accredited rehabilitation provider in accordance with the AGD Employee Relations Advice *Supported Salary Scheme*.

3.10 Salary on starting in a new position

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

3.11 Ongoing assignment of new duties at approved classification

- (1) An employee may be assigned new duties on an ongoing basis in a different position at his or her approved classification at any pay point applicable to the classification, subject to the employee's performance having been assessed under the Program for Performance Improvement as at least meeting all key performance targets.

Clause 3.14

- (2) If an employee asks in writing to perform work at a lower classification level temporarily, the Secretary may decide that the employee be paid salary at a pay point applying to the lower level for the period requested by the employee.
- (3) However, the pay point at which the employee is to be paid salary may not be lower than the pay point at which the employee was paid salary immediately before the assignment unless:
 - (a) the employee agrees; or
 - (b) the reduction in pay point is because of a sanction for misconduct under the *Public Service Act 1999*.

3.12 Salary maintenance — movement from another agency

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

3.13 Junior rates

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

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

3.14 Salary advancement

- (1) Subject to clause 3.13, and subclause (4) an employee is eligible for salary advancement if:
 - (a) the employee's performance has been rated as at least *meets all key performance targets* under the PPI at the end of an appraisal cycle; and
 - (b) the employee has at least 5 months service under a performance agreement at or above the employee's current classification in the appraisal cycle period.
- (2) If the employee is rated *exceeds most performance targets* or *meets all key performance targets*, the employee is to be advanced 1 pay point.
- (3) The Secretary may, for a particular employee and in special circumstances, approve a different appraisal cycle or a different date of effect for advancement of the employee's salary.

Clause 3.15

- (4) For salary advancement between pay points APS 1.4 and APS 2.1 in the APS Level 1-2 broadband, and pay points APS 5.2 and APS 6.1 in the APS Level 5-6 broadband, advancement is also subject to:
 - (a) the employee having successfully completed probation (where relevant); and
 - (b) there being sufficient work required to be performed at the higher classification within the broadband; and
 - (c) the employee having demonstrated their ability to perform duties at the higher classification.
- (5) The Secretary may develop and implement new criteria, or amend existing criteria, to determine whether an employee has met the requirements of subclause (4), following consultation with the Workplace Relations Committee.

3.15 Minimum pay point for admitted Legal Officers

- (1) An employee locally designated as a Legal Officer is entitled to be paid salary at the APS 4.3 (LO 4) pay point:
 - (a) for a new employee who is admitted as a legal practitioner of a State or Territory — on engagement with the Department; or
 - (b) in any other case — on admission as a legal practitioner of a State or Territory.
- (2) Salary advancement through the PPI is not affected by this clause.

3.16 Payment of salary

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

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

Subdivision 3.2.3 Overtime

3.17 Application

Except as provided by subclause 3.24 (7), this Subdivision does not apply to duty under a restriction direction or emergency duty.

Note For duty under a restriction direction and emergency duty, see clauses 3.25 and 3.26.

3.18 Overtime — general

- (1) Overtime is work performed:
 - (a) outside the employee's ordinary span of work hours on a day between Monday to Friday (inclusive); or

Clause 3.19

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

Note For limitation on the application of this Subdivision in relation to shiftworkers, see clause 3.30.

3.19 Overtime rates

- (1) Overtime rates are calculated as follows:
- (a) for overtime performed on a day other than a Sunday or public holiday — time and a half for the first 3 hours and double time after that;
 - (b) for overtime performed on a Sunday — double time;
 - (c) for overtime performed on a public holiday:
 - (i) double time and a half; or
 - (ii) for duty within standard hours on the public holiday — time and a half additional to single time paid for the public holiday.
- (2) For overtime that does not:
- (a) begin immediately after the end of ordinary hours of work; or
 - (b) end immediately before the beginning of ordinary hours of work;
- the employee is to be paid for at least 4 hours at the relevant overtime rate.
- (3) However, if more than 1 attendance is required, the payment for overtime must not be more than the amount that would have been paid if the employee had remained on duty until the end of the final required attendance.

Clause 3.20

3.20 Part-time employees above the salary barrier

- (1) For a part-time employee who is at a classification level above the salary barrier and for whom the Secretary has not authorised payment of overtime under subclause 3.18 (5), the rate of salary payable for duty performed at direction in addition to the employee's ordinary hours of work is the normal hourly rate.
- (2) However, the total ordinary duty and extra duty at the normal hourly rate must not exceed:
 - (a) on any day:
 - (i) 7 hours and 30 minutes; or
 - (ii) if the employee's standard hours on that day are more than 7 hours and 30 minutes — those standard hours; and
 - (b) in any week — 37 hours and 30 minutes.

3.21 Rest relief after overtime

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

3.22 Overtime meal allowance

- (1) This clause applies to an employee who:
 - (a) works overtime after ordinary duty for a day to the end of, or after, a meal period without taking a meal break; or
 - (b) works overtime after ordinary duty for a day after a meal break, if the employee is not entitled to payment during the meal break; or

Clause 3.24

- (c) works overtime before the start of ordinary hours of duty for a day and takes a meal break, if the employee is not entitled to payment during the meal break; or
 - (d) works overtime on a Saturday, Sunday or public holiday continuing after a meal break, if the employee is not entitled to payment during the meal break.
- (2) The employee is entitled to a meal allowance. At the commencement of this Agreement, the allowance is \$26.45.
- Note* For variation of the allowance, see clause 3.50.
- (3) For this clause, a *meal period* is:
- (a) 7.00 am to 9.00 am; or
 - (b) 12 noon to 2.00 pm; or
 - (c) 6.00 pm to 7.00 pm; or
 - (d) midnight to 1.00 am.
- (4) The Secretary may agree with an employee to other meal periods for the purpose of this clause.
- (5) However, any agreement must provide for 4 meal periods in a 24 hour period.

Subdivision 3.2.4 Restriction

3.23 Restriction direction

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

3.24 Restriction allowance

- (1) An employee is entitled to an allowance (a *restriction allowance*) if the employee:
 - (a) is subject to a restriction direction; and
 - (b) is not at a classification level above the salary barrier.
- (2) However, the Secretary may grant a restriction allowance to an employee at a classification level above the salary barrier.

Clause 3.25

- (3) The allowance is to be paid for each hour or part of an hour restricted in accordance with the following table:

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

- (4) However, if the Secretary has granted a restriction allowance to an employee at a classification level above the salary barrier, the salary for working out the hourly rate of salary is taken to be the maximum salary payable to an employee at the APS Level 6 classification.
- (5) Despite subclauses (3) and (4), the Secretary may approve another rate of restriction allowance for an employee, having regard to the circumstances of the restriction direction.
- (6) Restriction allowance is not payable for any period for which the employee receives another payment.
- (7) If an employee who is subject to a restriction direction is required to perform duty, the relevant overtime provisions apply to the duty, subject to:
- (a) if the employee is not recalled to a place of work to perform the duty — a 1 hour minimum payment; and
 - (b) if the employee is recalled to a place of work to perform the duty — a 3 hour minimum payment.

Subdivision 3.2.5 Emergency duty

3.25 Emergency duty

- (1) This clause applies if:
- (a) an employee is directed to attend for duty to meet an emergency; and
 - (b) the employee would not ordinarily have been on duty at that time; and
 - (c) the employee was not given notice of the direction before ceasing ordinary duty; and
 - (d) the employee is not at a classification above the salary barrier.
- (2) However, the Secretary may decide that this clause applies to an employee at a classification above the salary barrier.
- (3) For the time on duty, the employee is to be paid:
- (a) at the rate of double time; and
 - (b) for at least 2 hours.
- (4) The time on duty is taken to include time necessarily spent in travelling to and from duty.

- (5) This clause does not apply if the employee is subject to a restriction direction.
- (6) Clause 3.21 (rest relief after overtime) does not apply to overtime worked in circumstances covered by this clause unless the actual time worked is at least 3 hours for each attendance.

Subdivision 3.2.6 Shiftwork

3.26 General

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

Note Clause 3.30 of this Agreement details the circumstances under which work performed by shiftworkers will be treated as overtime.

Clause 3.27

3.27 Shift penalties

- (1) In addition to an employee's ordinary salary (including higher duties allowance), the employee is entitled to the highest penalty rate for shiftwork that applies to the performance of shiftwork set out in the following table:

Rostered time of ordinary duty	Penalty rate (% of employee's hourly rate of salary)
Ordinary duty, any part being between 6.00 pm and 6.30 am	15%
Ordinary hours worked continuously for a period exceeding 4 weeks on a shift falling wholly within the period from 6.00 pm to 8.00 am	30%
Ordinary duty, Saturday	50%
Ordinary duty, Sunday	100%
Ordinary duty, public holiday	150%

- (2) However, a part-time employee is entitled to the 30% penalty rate mentioned in subclause (1) only if:
- (a) the employee's rostered ordinary duty involves working no fewer shifts each week, or no fewer shifts a week on average over the shift cycle, than an equivalent full-time employee; and
 - (b) the shift is part of a full-time shift that is wholly between 6.00 pm and 8.00 am.
- (3) Payments for shift penalty rates must not be taken into account in working out overtime or any allowance based on salary.
- (4) Shift penalty rates will not be paid for a shift for which another penalty payment is made.
- (5) An employee who regularly performs shiftwork is entitled, when the employee is on annual leave, to 50% of the penalties that would be attracted by working the employee's regular shift pattern over the period of the leave.

3.28 Shiftwork and public holidays

- (1) For ordinary duty performed on a public holiday, the employee is to be paid for at least 4 hours at the relevant rate for each attendance (other than for an attendance that is continuous with ordinary duty on the day before, or the day after, the public holiday).
- (2) However, if more than 1 attendance is required, the payment must not be more than the amount that would have been paid if the employee had remained on duty until the end of the final attendance.
- (3) For this clause, duty broken by a meal period is not more than 1 attendance.

Clause 3.29

- (4) If, for an employee who performs duty on each of the days of the week in a cycle of shifts on a regular roster of shiftwork, a public holiday occurs on a day when the employee is rostered off duty, the employee is entitled to:
- (a) leave for a day instead of the public holiday; or
 - (b) an amount equal to salary for a day at the ordinary rate for the employee.
- (5) Subject to subclause (6), if the employee is receiving an annualised penalty payment under clause 3.31, the employee may substitute, with the Secretary's approval, his or her entitlement under subclause (4) (a) or (b) for an amount of leave in hours calculated as follows:

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

where:

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

B is the number of shiftworkers in the shift workforce.

- (6) Subclause (5):
- (a) applies only if a majority of the shift workforce agrees to its application; and
 - (b) if a majority agrees to its application — applies to the whole of the shift workforce.
- (7) For this clause duty performed on 25 December is taken to be duty performed on a public holiday even if another day has been declared as a substitute public holiday for that day.
- (8) For subclauses (5) and (6):
- shift workforce*, for an employee, means the shift workforce that is receiving the same annualised penalty payment under clause 3.31, as the employee.

3.29 12 hour shift arrangements

- (1) 12 hour shift arrangements may be introduced if:
- (a) each employee affected by the proposed arrangement, and if the employee chooses, his or her chosen representative, is given a reasonable opportunity to be consulted; and
 - (b) the Secretary and a majority of affected employees agree to the arrangement.
- (2) The agreement is to include suitable roster arrangements, including meal breaks, to be determined by the Secretary following consultation with the affected employees and, if they choose, their chosen representatives.
- (3) If practicable, the arrangement should have a forward rotation of shifts (day following night), and should provide that an employee not work more than 3 consecutive night shifts.

Clause 3.30

- (4) The arrangement may provide for review of the arrangement after a trial period.

3.30 Shiftwork and overtime

- (1) Subject to this clause, shiftworkers are subject to the conditions for the payment of overtime in clause 3.19.
- (2) For a shiftworker, duty is overtime if:
 - (a) it is performed on any day that is outside the normal rostered ordinary hours of duty for the shiftworker on that day; or
 - (b) it is performed in excess of the weekly hours of ordinary duty, or an average of the weekly hours of ordinary duty over a cycle of shifts.
- (3) For overtime performed on a Saturday, an employee must be paid at the rate of double time.
- (4) Unless there are exceptional circumstances:
 - (a) a shiftworker on 12 hour shifts should not be required to perform overtime within a period of 12 hours on either side of a normal day or night shift; and
 - (b) a shiftworker should not be required to remain on duty for more than 14 hours.

Subdivision 3.2.7 Annualised penalty payments

3.31 Secretary may approve rate of allowance

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

Subdivision 3.2.8 Higher duties

3.32 Entitlement to higher duties allowance

- (1) An employee may be assigned to perform temporarily all or part of the duties of a position at a higher classification.
- (2) Temporary assignments do not apply between classification levels within a broadband subject to the following exception. In respect of the APS level 1-2 broadband and the APS level 5-6 broadband, if an employee who holds an approved classification at the lower classification within the broadband is temporarily assigned to another APS level 1-2 or APS level 5-6 position, the employee may be paid higher duties allowance if the employee's manager certifies that the duties of the temporary position are predominantly at the work value of the higher classification within the broadband.
- (3) If, because of an assignment, or consecutive assignments, under subclause (1), an employee performs all or part of the duties of a position at a higher classification (including an SES position) for a continuous period of at least 2 weeks, the employee is eligible for payment of higher duties allowance for the period (including any public holiday or period of paid leave occurring during the continuous period).
- (4) If, because of an assignment, or consecutive assignments, under subclause (1), a full-time employee performs the duties of a position at a higher classification on a regular part-time basis for a period of at least 2 weeks, the employee is eligible for payment of higher duties allowance for the period of temporary assignment (including any public holiday or period of paid leave that occurs while assigned to the higher classified position).
- (5) The employee is eligible to be advanced to higher pay points for the higher position only if the employee's performance in the higher position has been assessed under the program for performance improvement for:
 - (a) a continuous period of 5 months or more higher duties within an appraisal cycle and if a performance agreement was in place for that assignment; or
 - (b) a total of 5 months or more higher duties in broken periods within an appraisal cycle, but involving at least 2 assignments covering periods of 2 months or more for which performance agreements were in place.
- (6) If the employee is rated as *exceeds most performance targets* or *meets all key performance targets*, the employee must be advanced 1 pay point at the higher classification level.

3.33 Rates of higher duties allowance

- (1) An employee who is eligible for payment of higher duties allowance must be paid higher duties allowance at the rate applicable under this clause.

Clause 3.34

- (2) An employee performing all the duties of a position at a higher classification will receive payment at least at the minimum pay point for the higher classification.
- (3) However, if the employee's salary for his or her approved classification is at the Executive 1.4 pay point, the employee is to be paid higher duties allowance at a rate equal to the difference between:
 - (a) the Executive 1.4 pay point; and
 - (b) the Executive 2.2 pay point.
- (4) If the employee has previously attained a higher pay point through pay point advancement under the PPI for previous performance at the classification, the employee is to be paid at that rate.
- (5) An employee performing part of the duties of a position at a higher classification will receive payment at a rate decided by the Secretary.
- (6) The amount of higher duties allowance payable is the difference between:
 - (a) the employee's salary for his or her classification; and
 - (b) the salary payable to the employee under this clause.
- (7) An employee performing the duties of an SES position:
 - (a) is to be paid higher duties allowance at a rate (not less than \$2 500 a year) decided by the Secretary; and
 - (b) may be entitled to other benefits and subject to conditions, as decided by the Secretary.

Subdivision 3.2.9 Allowances, expenses and contributions

3.34 Motor vehicle allowance

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

3.35 Travelling allowance — domestic travel

- (1) An employee who travels on official business and is required to be absent overnight is entitled to travelling allowance.
- (2) The Secretary may approve the payment of travelling allowance to an employee who travels on official business for at least 10 hours but is not required to be absent overnight.
- (3) For more information about travel allowance, employees should consult the AGD Employee Relations Advice *Official Travel*.
- (4) If the Secretary is satisfied that the standard travel allowance rate is insufficient for, or in excess of, expenses, the employee is entitled to an amount that the Secretary considers reasonable in the circumstances.
- (5) However, if an employee chooses to make private accommodation arrangements, the employee is to be paid \$60 as the accommodation component of the employee's travelling allowance.
- (6) If, for the purpose of official business, the employee has lived in 1 locality for at least 21 days, the employee is entitled to an allowance equal to the amount of expenditure incurred on accommodation, meals and incidental items, or an amount that the Secretary considers reasonable in the circumstances.
- (7) If practicable, and consistent with travelling allowance administration arrangements in the AGD Employee Relations Advice *Official Travel*, travelling allowance will be paid in advance.

3.36 Overseas official travel

If an employee is performing official duty overseas, the employee is entitled to fares, travelling allowance and other conditions. For more information about conditions for overseas travel, employees should consult the AGD Employee Relations Advice *Official Travel*.

3.37 Allowance for excess travelling time

- (1) An employee (other than an employee whose classification is above the salary barrier) who is travelling or on duty away from the employee's usual place of work is entitled to be paid for time necessarily spent in travel or on duty (exclusive of overtime duty) in excess of:
 - (a) the employee's usual hours of duty for the day; and
 - (b) the time necessarily spent travelling to and from the employee's home and the usual place of work.

Clause 3.38

- (2) However:
 - (a) the employee is not entitled to payment unless the excess travelling time exceeds 0.5 hours in any one day or 2.5 hours in any fortnight; and
 - (b) the employee is not entitled to receive payment for more than 5 hours in any one day.
- (3) The rate of payment is:
 - (a) for Monday to Saturday (other than a public holiday) — single time; and
 - (b) for Sunday and public holidays — time and a half.
- (4) If the employee is performing duty temporarily at a place other than the usual place of work, the employee is entitled to be reimbursed for any amount of fares incurred that is greater than the cost of travel to and from the usual place of work.
- (5) This clause does not apply to:
 - (a) travel for which travelling allowance is paid; or
 - (b) travel to a place of work in anticipation of a permanent relocation to that place of work of which the employee has been told in writing.
- (6) If the employee is subject to a home-based work arrangement, the employee's office place of work is the usual place of work for working out the amount of travel time and the cost of travel.
- (7) If the usual place of work for the employee is variable, the Secretary is to decide the usual place of work for this clause.
- (8) The maximum hourly rate for excess travelling time is the hourly rate payable for the maximum pay point of the APS Level 3 classification.

3.38 Departmental Liaison Officer allowance

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

Rate from commencement date	Rate from 1 July 2012	Rate from 1 July 2013
\$20 008	\$20 608	\$21 020

3.39 Conditions for employees providing short-term relief for MoPS Act employees

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

3.40 Cadet APS — fees and book and equipment allowance

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

3.41 Relocation expenses

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

3.42 Employee expenses

- (1) The Secretary may approve payment of expenses associated with an employee's employment with the Department. Expenses that may be approved for payment include:
 - (a) travel and incidental expenses reasonably incurred by the employee because the employee's leave is cancelled or the employee is recalled to duty from leave; and
 - (b) additional expenses incurred by the employee for arranging for the care of dependant family members if the employee is directed to perform additional hours of duty without 24 hours notice; and
 - (c) expenses incurred by the employee associated with the regular use of the employee's own equipment for official purposes; and
 - (d) expenses incurred by the employee associated with the loss of, or damage to, clothing or personal effects if the loss or damage relates to the employee's service; and
 - (e) reasonable expenses incurred by the employee on clothes if the employee is required to visit, on official duty, a locality that has a climate greatly different from the climate at the employee's usual place of work.

Clause 3.43

- (2) For more information about employee expenses, employees should consult the AGD Employee Relations Advice *Allowances*.

3.43 Contribution for home garaged Commonwealth owned or leased vehicles

If a Commonwealth owned or leased vehicle is made available to an employee under home garaging arrangements (other than because an employee performs temporarily duties of an SES position), the employee must make a contribution to the Department at the rate mentioned in the AGD Employee Relations Advice *Allowances*.

3.44 First aid certificate allowance

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

Standard	Qualification	Weekly rate
Certificate Standard A	St John Ambulance Association Senior First Aid Certificate,	from the commencement date — \$11.20
	Australian Red Cross Society Senior First Aid Certificate or equivalent qualification	from 1 July 2012 — \$11.54
		from 1 July 2013 — \$11.77
Certificate Standard B	St John Ambulance Association Advanced First Aid Certificate or Level 3 First Aid Certificate,	from the commencement date — \$13.78
	Australian Red Cross Occupational First Aid Course Certificate or Level 3 First Aid Certificate	from 1 July 2012 — \$14.19
		from 1 July 2013 — \$14.48
Medallion Standard C	St John Ambulance Association Occupational First Aid or Level 4 First Aid Certificate or equivalent qualification	from the commencement date — \$16.89
		from 1 July 2012 — \$17.40
		from 1 July 2013 — \$17.74

3.45 Health and safety representative allowance

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

Office	Powers and duties	Annual rate
Health and safety representative	Receiving training in and conducting workstation assessments, in addition to exercising powers under the <i>Occupational Health and Safety Act 1991</i>	from the commencement date — \$661
		from 1 July 2012 — \$681
		from 1 July 2013 — \$695

Clause 3.47

Office	Powers and duties	Annual rate
Health and safety representative	Exercising powers under the <i>Occupational Health and Safety Act 1991</i> (with no training in or conducting of workstation assessments)	from the commencement date — \$330
		from 1 July 2012 — \$340
		from 1 July 2013 — \$346
Deputy health and safety representative	Receiving training in and conducting workstation assessments, in addition to exercising powers under the <i>Occupational Health and Safety Act 1991</i>	from the commencement date — \$330
		from 1 July 2012 — \$340
		from 1 July 2013 — \$346

3.46 Allowance for office disabilities

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

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

- (2) The Secretary will seek to prevent office-based employees from being subject to a disability.
- (3) If office-based employees in a workplace are subject to a disability, the Secretary must as soon as practicable consult with affected employees, and if they choose, their chosen representatives, for the payment of an appropriate disability allowance to those employees.
- (4) If an employee is temporarily relocated because of a disability, the temporary location is not the employee's usual place of work for the purpose of clause 3.37.

3.47 Community language allowance

- (1) An employee who possesses a level of language skills or qualifications mentioned in this clause is entitled to be paid community language allowance (*CLA*) at the appropriate rate set out in the table at the end of this clause if the Secretary determines there is an identifiable and continuing need to provide client or staff services in a language other than English.
- (2) The employee is entitled to be paid CLA at Rate 1 if:
- the employee has passed the Language Aide Test conducted by the National Accreditation Authority for Translators and Interpreters (*NAATI*); or
 - the employee is recognised by NAATI as having a proficiency equivalent to that mentioned in paragraph (a); or
 - the employee is assessed as being at a level equivalent to the level mentioned in paragraph (a) or (b) by an individual or body approved by the Secretary; or

Clause

- (d) the employee is waiting to be assessed by means of an assessment mentioned in paragraph (c), and the employee's supervisor certifies that the employee uses the language skills to meet operating requirements of the workplace.
- (3) The employee is entitled to be paid CLA at Rate 2 if:
- (a) the employee is accredited or recognised by NAATI at the Paraprofessional Interpreter level or above; or
- (b) the employee is assessed as being at a level equivalent to that level by an individual or body approved by the Secretary.

Annual rate	Rate from commencement date	Rate from 1 July 2012	Rate from 1 July 2013
Rate 1	\$954	\$982	\$1002
Rate 2	\$1904	\$1961	\$2001

Subdivision 3.2.10 Allowances and other conditions relating to remote localities

3.48 Remote locality conditions

- (1) For the purposes of this clause, a remote locality is a locality mentioned in Table 22C or 22G of the *Australian Public Service Award 1998*.
- (2) For an employee who works and lives in a remote locality, the Secretary, in consultation with the employee, or if the employee chooses, the employee's representative, may make an agreement in writing with the employee that an allowance be paid and other employment conditions that enhance or supplement the conditions of this Agreement may apply.
- (3) Matters that may be the subject of an agreement include:
- (a) payment of a Remote Localities Allowance;
- (b) provision of additional annual leave credit;
- (c) reimbursement of leave fares associated with the taking of annual leave;
- (d) reimbursement of fares associated with seeking necessary medical treatment or emergency dental treatment in another locality;
- (e) reimbursement of fares if a close relative of the employee or employee's spouse or de facto partner dies or becomes critically or dangerously ill;
- (f) costs associated with the education of a child of the employee who attends primary or secondary school at a locality other than the locality where the employee is stationed;
- (g) assistance for an employee's spouse or de facto partner for seeking employment in the locality;
- (h) subsidising the cost of electricity utilised at the employee's residence;
- (i) provision of staff housing to an employee, including the value of employee contribution to such accommodation.

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

Subdivision 3.2.11 Conditions for overseas posting

3.49 Conditions for overseas posting

- (1) If an employee is deployed overseas on a posting the Secretary, in consultation with the employee, or if the employee chooses, the employee's representative, may make an agreement in writing with the employee that an allowance be paid and other employment conditions that enhance or supplement the conditions of this Agreement may apply to the employee.
- (2) Matters that may be the subject of an agreement include:
- (a) relocation costs to the locality the employee is being deployed and on return to Australia at the end of deployment;
 - (b) accommodation arrangements for the period of the deployment;
 - (c) payment of utility and internet costs at the place of deployment;
 - (d) provision of a motor vehicle for the private use of the employee during a deployment;
 - (e) payment of medical and dental expenses of the employee and accompanying dependants during the period of deployment;
 - (f) costs associated with the maintenance of an employee's residence in Australia during deployment;
 - (g) costs associated with an employee's return to Australia for reunion purposes or for compassionate reasons;
 - (h) Cost of Posting Allowance in recognition of additional expenses incurred by an employee because of a deployment;
 - (i) Hardship Allowance, in respect of difficult living conditions experienced at the place of deployment;
 - (j) Child Allowance, in respect of additional expenses incurred by an employee in respect of his or her children while on deployment;
 - (k) Transfer Allowance, in respect of costs associated with movement to locality of deployment and return to Australia not covered by paragraph (a);
 - (l) Relief Travel Allowance in respect of the costs of trips from the deployment locality for relief from locality conditions by the employee and accompanying family members during the deployment period;
 - (m) Australian Household Allowance, in respect of circumstances where an employee's spouse/partner or eligible dependents remain in the family home in Australia during the deployment of an employee;
 - (n) education costs in respect of children of an employee during a deployment; and
 - (o) provision of additional annual leave credit for the period of the deployment.

Clause 3.50

- (3) In considering conditions for an overseas posting, the Secretary may have regard to the conditions of service extended to employees of AusAID and the Department of Foreign Affairs and Trade.

Subdivision 3.2.12 Adjustment of allowances and entitlements

3.50 Adjustment of allowances and entitlements

- (1) The rates of allowances mentioned in this Agreement (other than the allowances mentioned in subclause (2)) will be reviewed and adjusted by the Secretary from time to time during the life of this Agreement. For more information about adjustment of allowances, employees should consult the AGD Employee Relations Advices *Allowances* and *Official Travel*.
- (2) For subclause (1), the allowances that will not be reviewed and adjusted are as follows:
 - (a) Departmental Liaison Officer Allowance;
 - (b) First Aid Certificate Allowance;
 - (c) Health and Safety Representative Allowance;
 - (d) Restriction Allowance;
 - (e) Higher Duties Allowance;
 - (f) Allowance for excess travelling time;
 - (g) Community Language Allowance.
- (3) Departmental Liaison Officer Allowance, First Aid Certificate Allowance, Health and Safety Representative Allowance and Community Language Allowance are increased under the Agreement at the same rate, and at the same time, as the salary increases applying under clause 1.03 of the Agreement.

Division 3.3 Flexible Remuneration Packaging

3.51 Flexible remuneration packaging

- (1) An employee may elect to sacrifice salary for non-monetary benefits.
- (2) The employee must pay fringe benefits tax and administrative costs incurred because of the election.
- (3) For more information about flexible remuneration packaging, employees should consult the AGD Employee Relations Advice *Salary Packaging Policy and Procedures*.

Division 3.4 Superannuation

3.52 Superannuation arrangements

- (1) The employer contribution rates for employees who are members of the Public Sector Superannuation Accumulation Plan will be 15.4% of the fortnightly contribution salary or such higher amount as may be set out in the PSSap Trust Deed.
- (2) Where an employee has chosen an accumulation fund other than the Public Sector Superannuation Accumulation Plan the employer contribution rates will be the same as for members of the Public Sector Superannuation Accumulation Plan.
- (3) This clause does not apply where a superannuation fund cannot accept employer contributions (e.g. unable to accept contributions for people over 75).
- (4) Employer contribution rates will not be the less than 9% of ordinary time earnings.
- (5) The Secretary may limit the superannuation funds to which an employee may choose to have employer superannuation contributions made to funds:
 - (a) that allow the Department to make a superannuation contribution for the benefit of the employee by means of an electronic funds transfer; and
 - (b) that accept a remittance advice in the form preferred by the Department.
- (6) The Secretary may impose a limitation under subclause (5) after the employee has chosen a fund if the fund ceases to satisfy the requirements mentioned in that subclause.
- (7) The Department will, as soon as possible within the life of this Agreement, examine the implications of changing the basis of employer superannuation contributions from fortnightly contribution salary to ordinary time earnings in respect of members of the Public Sector Superannuation Accumulation Plan and employees who are eligible for such membership who have exercised superannuation choice.
- (8) The Department will keep employees informed on the progress of this examination.
- (9) If the Secretary determines that it is financially and otherwise viable to change the basis for employer superannuation contributions to 15.4% of ordinary time earnings for Public Sector Superannuation Accumulation Plan members, and employees who are eligible for such membership who have exercised superannuation choice, the Secretary will implement this change, with a date of effect decided by the Secretary. The Secretary will record the decision in writing.

Clause 3.53

- (10) If the Secretary implements the change described at subclause (9), an ordinary time earnings employer superannuation contribution will continue to be paid on behalf of an employee during any period/s where the employee is on paid leave. However, employer superannuation contributions will not be paid on behalf of an employee during any period/s of unpaid leave (with the exception of maternity leave without pay or parental leave without pay), unless otherwise required under legislation.

3.53 Salary for superannuation purposes

- (1) The Secretary and an employee may agree a salary for superannuation purposes in respect of the employee's membership of the Commonwealth Superannuation Scheme, Public Sector Superannuation Defined Benefits Scheme or the Public Sector Superannuation Accumulation Plan or such other accumulation plan chosen by the employee under clause 3.52.
- (2) The timing of an employee's salary for superannuation purposes provided for by this clause taking effect for the purposes of employer superannuation contributions, employee contribution purposes (if applicable) and payment of superannuation benefit purposes will be in accordance with the rules of the employee's superannuation scheme.

Division 3.5 Individual Flexibility Arrangements

3.54 Individual flexibility arrangements

- (1) The Secretary and an employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
- (a) the agreement deals with 1 or more of the following matters:
 - (i) arrangements about when work is performed;
 - (ii) overtime rates;
 - (iii) penalty rates;
 - (iv) allowances;
 - (v) remuneration; and/or
 - (vi) leave; and
 - (b) the arrangement meets the genuine needs of the Department and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
 - (c) the arrangement is genuinely agreed to by the Secretary and employee.
- (2) The Secretary must ensure that the terms of the individual flexibility arrangement:
- (a) are about permitted matters under section 172 of the *Fair Work Act 2009*; and
 - (b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
 - (c) result in the employee being better off overall than the employee would be if no arrangement was made.

- (3) The Secretary must ensure that the individual flexibility arrangement:
 - (a) is in writing; and
 - (b) includes the name of the employer and employee; and
 - (c) is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
 - (d) includes details of:
 - (i) the terms of the enterprise agreement that will be varied by the arrangement; and
 - (ii) how the arrangement will vary the effect of the terms; and
 - (iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
 - (e) states the day on which the arrangement commences and, where applicable, when the arrangement ceases.
- (4) The Secretary must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- (5) The Secretary or employee may terminate the individual flexibility arrangement:
 - (a) by giving no more than 28 days written notice to the other party to the arrangement; or
 - (b) if the Secretary and employee agree in writing — at any time.
- (6) An employee may elect to be represented by a representative of his or her choice in negotiating an individual flexibility arrangement.

Clause 4.01

Part 4 A balanced working relationship

Division 4.1 General

4.01 Purpose of Part

- (1) This Part recognises the commitment of the Department to providing sufficient support and flexibility to assist employees to balance work and other responsibilities, particularly through flexible working arrangements and part-time work, home-based work and flexible leave arrangements.
- (2) The Department places importance on developing a working environment where employees are able to balance their work and personal responsibilities in a flexible and safe workplace. The Department recognises that employees need to balance their working life commitments with other competing interests such as family and community responsibilities and lifestyle choices.
- (3) The Department acknowledges that managers must provide effective leadership on setting clear, achievable and realistic work priorities in order to achieve an appropriate work/life balance in the particular circumstances.

4.02 Commitment to employee assistance program

The Department will maintain an employee assistance program for employees.

4.03 Commitment to carer's room

The Department will maintain a carer's room in Central Office.

4.04 Health and wellbeing program

- (1) The Department will maintain a health and wellbeing program, with the following objectives:
 - (a) maximising the health of employees;
 - (b) minimising the number of days lost through illness and injury.
- (2) Elements of the program include the following:
 - (a) reimbursement of expenditure up to \$300, per employee each financial year, on approved health and wellbeing activities and equipment;
 - (b) in accordance with the arrangements implemented by the Department, meeting the cost of influenza vaccinations for employees;
 - (c) provision of assistance for employees to quit smoking;
 - (d) provision of opportunities for employees to be educated in relation to health and wellbeing issues, including occupational health and safety issues;
 - (e) supporting employees' participation in a broad range of health and fitness activities.

- (3) For more information about the program, employees should consult the AGD Employee Relations Advice *Health and Wellbeing Program*.

Division 4.2 Flexible working arrangements

4.05 Hours of work

- (1) For a full-time employee, *ordinary hours of work* are 75 hours over a 2 week period (the *settlement period*). A full-time shiftworker must work an average of 75 hours each fortnight over the shiftworker's regular cycle of shifts.
- (2) For a part-time employee, ordinary hours of work over the settlement period are the number of hours stated in the employee's part-time work agreement or, for a management initiated part-time position, the hours decided by the Secretary for the employee's position.
- (3) The times when an employee (other than a shiftworker) may work ordinary hours of work (the *ordinary span of work hours*) are 7.30 am to 7.30 pm Monday to Friday.
- (4) An employee may be required to perform reasonable additional hours of work. Payment of overtime rates for additional hours may apply in accordance with clause 3.18.
- (5) For each day an employee works, the employee must record as soon as practicable, in a manner approved by the Secretary, the time when the employee starts and finishes work and the time of any breaks.

4.06 Flexitime

- (1) Flexitime is a system of flexible working hours arrangements that enables employees and their supervisors to change working hours, patterns and arrangements to provide maximum organisational flexibility with benefits to clients, employees and the Department.
- (2) An employee at the APS Level 1 to APS Level 6 classification (other than a shiftworker) will work the employee's ordinary hours in accordance with the AGD flexitime system. For more information about the AGD flexitime system, employees should consult the AGD Employee Relations Advice *Flexible Working Arrangements, Flexitime and Attendance Recording*.
- (3) An employee may carry over a maximum flexitime credit of 40 hours into the next settlement period.
- (4) An employee may carry over a maximum flexitime debit of 10 hours into the next settlement period.
- (5) During a settlement period, an employee may take flexitime leave up to the following amounts:
 - (a) if his or her supervisor agrees — 2 days;
 - (b) if his or her supervisor at the Executive Level 2 or higher agrees — 5 days.

Clause 4.07

- (6) An employee may record time spent in transit while on official travel outside the hours of 7.30 am and 7.30 pm, Monday to Friday, as time on duty for flextime purposes.
- (7) For a part-time employee, attendance outside the employee's normal pattern of work, as described in the part-time work agreement or decided by the Secretary for a management initiated part-time position, is subject to availability of work and the approval of the employee's supervisor.

4.07 Working patterns

- (1) The pattern by which an employee (other than a shiftworker) works the ordinary hours of work is as agreed between the employee and his or her supervisor or, in the absence of agreement:
 - (a) for a full-time employee — 8.30 am to 12.30 pm and 1.30 pm to 5 pm; and
 - (b) for a part-time employee — standard hours.
- (2) However:
 - (a) an employee must be available for reasonable direction to work outside his or her agreed pattern of work; and
 - (b) an employee must not be required to work more than 10 hours ordinary time on any 1 day; and
 - (c) an employee must not be required to work more than 5 hours without a break of 30 minutes; and
 - (d) an employee who works more than 5 hours ordinary time in a day is expected to take a break of 30 minutes.

4.08 Executive Level employees — working arrangements

- (1) Consistently with the importance the Department places on providing a working environment that enables employees to balance their work and other responsibilities, if an Executive Level employee works more than his or her ordinary hours of duty, he or she may take time off, with the prior approval of his or her supervisor, in recognition of working those hours. This clause will be applied in accordance with the following principles:
 - (a) these arrangements are intended to provide Executive Level employees with fair and reasonable access to time off in recognition of extra hours worked;
 - (b) the working arrangements for Executive Level employees are to be administered in a flexible manner, taking into account operational requirements and the employee's need to balance his or her work and life/family responsibilities;
 - (c) it is considered good management practice to grant any time off under these arrangements as soon as practicable after the additional hours have been worked;
 - (d) all Executive Level employees are required to maintain a record of working hours;

Clause 4.08

- (e) time spent in transit while on official travel outside the hours of 7.30 am to 7.30 pm, Monday to Friday may be considered in relation to requests for time off under these arrangements;
 - (f) the employee's supervisor must have regard to the record of working hours in considering a request for time off under these arrangements, including the following factors:
 - (i) the number of additional hours that have accrued;
 - (ii) the period over which those hours have accrued;
 - (g) if an employee has accrued, or is likely to accrue, a substantial amount of additional hours in a fortnight and the employee and supervisor have not discussed and agreed to any time off under these arrangements, the employee's supervisor should initiate a discussion with the employee regarding workload requirements and determine appropriate strategies to address the situation;
 - (h) while it is acknowledged that peak workload periods may necessitate some extra hours being worked, this should not be regarded as the norm and the employee's supervisor should ensure that sustained periods of substantial additional hours are not worked by the employee.
- (2) Taking into account the principles mentioned in subclause (1), reasonable requests from employees under these arrangements will not be refused, except for genuine operational reasons.
- (3) The parties to this Agreement have agreed to establish a Joint Management/Employee Working Group to consider issues associated with the operation of Executive Level working hour arrangements. Management and employees acknowledge that key issues in relation to these arrangements include:
- (a) a lack of agreement as to what level of additional hours performed attracts a grant of reasonable time off in recognition of the additional hours performed;
 - (b) inconsistency in management's approach to providing Executive Level employees with time off where additional hours are worked;
 - (c) an inability in some cases for employees to access time off;
 - (d) the lack of a shared understanding as to when employees are able to access time off.
- (4) The Joint Management/Employee Working Group will
- (a) consult with employees
 - (b) establish a clear evidence base on additional hours performed and time off granted in respect of these hours and on current management practices
 - (c) develop recommendations on access to time off in recognition of additional hours of work performed by 30 September 2011 for consideration by the Departmental Operations Executive Committee and Senior Leadership Group.
- (5) The Departmental Operations Executive Committee and Senior Leadership Group will consider the recommendations and advise the Working Group of their decision on the recommendations.

Clause 4.09

- (6) In the event that the Departmental Operations Executive Committee and Senior Leadership Group decision substantially departs from the Working Group's recommendations, the Working Group will reconvene to further consider the issue.
- (7) Following the decision by the Departmental Operations Executive Committee and Senior Leadership Group on the recommendations, management will implement the decision as soon as practical.
- (8) Where a party to this Agreement has concerns with any aspect of the process outlined at subclauses (3) to (7), they may seek to resolve the matter in accordance with the Dispute Settlement Procedures at clause 6.05 of this Agreement.
- (9) In making recommendations and decisions in respect of the Joint Working Group's review of Executive Level working hours arrangements, the Joint Working Group, Departmental Operations Executive Committee and the Senior Leadership Group will have regard to, and act consistently with, the Australian Public Service Bargaining Framework.

4.09 Standard hours

- (1) For a full-time employee (other than a shiftworker), *standard hours* are 37 hours 30 minutes each week, 8.30 am to 12.30 pm and 1.30 pm to 5.00 pm Monday to Friday.
- (2) For a full-time employee who works in the Northern Territory, *standard hours* are 8.00 am to 12.00 pm and 1.00 pm to 4.30 pm each day.
- (3) For a part-time employee (other than a shiftworker), *standard hours* are:
 - (a) the hours stated in the employee's part-time work agreement; or
 - (b) for a management initiated part-time position — the hours decided by the Secretary for the employee's position.
- (4) The standard hours are used to work out:
 - (a) leave accrual and deductions; and
 - (b) deductions for unauthorised absences; and
 - (c) usual hours of work for excess travelling time purposes.

Division 4.3 Part-time work

4.10 Remuneration etc for part-time work

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

4.11 Part-time work arrangements

- (1) An employee may be employed as a regular part-time employee for an agreed number of regular hours each week that is less than ordinary hours of duty for a full-time employee.
- (2) However, if a full-time employee occupies a position:
 - (a) a part-time working arrangement may be implemented for the position only if the employee agrees to the arrangement; and
 - (b) the employee must not be subject to any pressure to agree to part-time employment or to move to another position to allow a part-time working arrangement to be implemented for the position; and
 - (c) the employee is entitled to return to full-time work at the end of any period of a part-time working arrangement agreed to; and
 - (d) the Secretary and the employee may agree that the employee return to full-time work before the end of any period of a part-time working arrangement agreed to.
- (3) An employee is entitled to work on a part-time basis during any period within 3 years from the date of birth of a child or, in relation to the adoption of a child, from the date of placement of the child.
- (4) However, an employee must not be required to work less than 3 continuous hours in a day.
- (5) The pattern of hours must not be varied without the consent of the employee.
- (6) For more information about part-time work arrangements, employees should consult the AGD Employee Relations Advice *Part-time Work*.

Division 4.4 Home (or other)-based work

4.12 Home (or other)-based work agreements

- (1) The Secretary and an employee may agree that the employee is to perform all or part of the duties of the employee's position from the employee's home or elsewhere.
- (2) For more information about home-based work, employees should consult the AGD Employee Relations Advice *Home-Based Work*.
- (3) The agreement for home (or other)-based work may be terminated by the Secretary or the employee at any time.

Clause 4.13

Division 4.5 Leave

Subdivision 4.5.1 Absence Management

4.13 Commitment to absence management strategy

The Department is committed to fostering an employee attendance and participation culture, and achieving a reduction in the rate of unscheduled absences.

4.14 Reporting absences

An employee who is unable to attend for duty on a particular day and who does not have prior approval for the absence must phone by no later than 10.00 am and directly notify their supervisor or more senior manager (unless alternative local arrangements have been agreed) of the general nature of the absence, and the anticipated duration of the absence, unless exceptional circumstances prevent such notification.

4.15 Unauthorised absences

If an employee is absent from duty without approval, all pay and other benefits provided under this Agreement, including flexible working arrangements, cease to be available until the employee resumes duty or is granted leave for the absence.

Subdivision 4.5.2 Public holidays

4.16 Public holidays to be observed

- (1) Employees will be entitled to the following public holidays:
 - (a) New Year's Day (1 January);
 - (b) Australia Day (26 January);
 - (c) Good Friday
 - (d) Easter Monday;
 - (e) Anzac Day (25 April);
 - (f) The Queen's birthday holiday (on the day in which it is celebrated in a State or Territory or a region of a State or Territory);
 - (g) Christmas Day (25 December);
 - (h) Boxing Day (26 December);
 - (i) Any other day, or part day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday, other than a day or part day, or a kind of day or part day, that is excluded by the Fair Work regulations from counting as a public holiday.

Clause 4.17

- (2) If under a state or territory law, a day or part day is substituted for one of the public holidays listed above, then the substituted day or part day is the public holiday.
- (3) The Secretary and an employee may agree on the substitution of a day or part day that would otherwise be a public holiday, having regard to operational requirements.
- (4) An employee, who is absent on a day or part day that is a public holiday in the place where the employee is based for work purposes, is entitled to be paid for the part or full day absence as if that day or part day was not a public holiday, except where that person would not normally have worked on that day.

Note Where a public holiday falls during a period when an employee is absent on leave (other than annual leave or paid personal leave) there is no entitlement to receive payment as a public holiday. Payment for that day would be in accordance with the entitlement for that form of leave (eg if on long service leave on half pay, payment is on half pay).

- (5) If an employee performs duty or is subject to a restriction direction under clause 3.23 on Easter Saturday in a jurisdiction where it is not recognised as a public holiday, or on the first non-public holiday Christmas close-down day under clause 4.17, the employee will receive overtime, shift penalty or restriction allowance payments as if the day was a public holiday.

Subdivision 4.5.3 Annual Christmas close-down

4.17 Department to shut down between Christmas and New Year

- (1) The Department 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.
- (2) 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 work. Where an employee is absent on leave, payment for the Christmas closedown period will be in accordance with the entitlement for that form of leave (eg if on long service leave half pay, payment is on half pay).
- (3) There will be no deduction from annual or personal leave credits for the closedown days.
- (4) If:
 - (a) an employee is directed by the Secretary to work during this period (a possibility only in exceptional circumstances); or
 - (b) an employee is absent during the period on:
 - (i) long service leave; or
 - (ii) maternity leave under subclause 6 (1) (b) of the *Maternity Leave (Commonwealth Employees) Act 1973*; or
 - (c) a part-time employee's ordinary hours of work do not include the days of the week on which the Christmas closedown days fall; or

Clause 4.18

- (d) a shiftworker is not rostered to work on the days of the week on which the Christmas closedown days fall;
the employee will be entitled to 3 paid days off (or, if the employee worked during the period in response to a direction, paid time off equivalent to the time worked) to be taken within 4 weeks or, with the agreement of the employee's manager, at another time convenient to the employee.
- (5) If a part-time employee's ordinary hours of work, or a shiftworker's non-rostered days, include only 1 or 2 of the days of the week on which the Christmas closedown days fall, the employee will be entitled to an alternative paid 1 or 2 days off to be taken within 4 weeks or, with the agreement of the employee's manager, at another time convenient to the employee.
- (6) For a shiftworker entitled to a day or days, or other time off under this clause, the amount of time off:
- (a) must be taken within 12 months of the entitlement arising; and
 - (b) may be taken in periods of less than a full day

Subdivision 4.5.4 Annual leave

4.18 Entitlement

- (1) Employees will accrue on a daily basis 20 days (that is, for a full time employee, 150 hours) annual leave credit for every year of service.
- (2) If, in a year, an employee has worked a period or periods of part-time service, the employee's annual leave credits for each period of part-time service are to be calculated on the basis of the hours of service performed during that period.
- (3) If, in a year, an employee is absent for more than 30 days on leave that does not count for service, the employee's annual leave credit is reduced proportionally.
- (4) A shiftworker is entitled to:
- (a) if he or she is on a shift roster which operates on a 24 hours a day/7 day a week basis – 25 days annual leave for every year of service
 - (b) if he or she is a full-time employee not on a shift roster which operates on a 24 hour a day/7day a week basis — an additional 3.75 hours annual leave credit for each Sunday rostered (not exceeding a total of 37.5 hours each year); or
 - (c) if he or she is a part-time employee not on a shift roster which operates on a 24 hour a day/7day a week basis — an additional 10% of weekly ordinary hours annual leave credit for each Sunday rostered (not exceeding a total of 1 week each year of the employee's ordinary hours of duty).

4.19 Taking annual leave

- (1) An employee may, on application approved by the Secretary, take annual leave in either of the following ways:
 - (a) at full pay;
 - (b) at half pay (that is, by taking 2 days leave at the rate of one-half of the normal salary of the employee for every day of annual leave credit).
- (2) For more information about annual leave, employees should consult the AGD Employee Relations Advice *Leave Policy*.

4.20 Direction to take annual leave

If an employee has an annual leave credit of more than 60 days or, for a shiftworker, 75 days, the employee may be directed to take annual leave for up to 25% of the credit.

4.21 Cashing out annual leave

- (1) An employee may, with the approval of the Secretary, cash out a portion of the employee's annual leave credit on one occasion each year.
- (2) The maximum amount of annual leave credit that may be cashed out in a year is 10 days.
- (3) Annual leave credit cannot be cashed out if the cashing out would result in the employee's remaining accrued annual leave entitlement being less than 20 days.
- (4) Each cashing out of a particular amount of annual leave credit must be by a separate agreement in writing between the Secretary and the employee.
- (5) If an employee cashes out annual leave, the employee will be paid the full amount that would have been paid to the employee had the employee taken the leave that the employee has forgone.

4.22 Payment instead of unused leave

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

Subdivision 4.5.5 Leave for parenting purposes

4.23 Maternity, parental and maternal leave

- (1) An employee is entitled to unpaid maternity leave or unpaid parental leave in accordance with the *Maternity Leave (Commonwealth Employees) Act 1973* or Division 5 of Part 2.2 of the FW Act, whichever is the more favourable.

Clause 4.24

Note Under the *Maternity Leave (Commonwealth Employees) Act 1973*, in some circumstances, an employee is entitled to up to 12 weeks paid maternity leave. Additional payments may also apply under the *Paid Parental Leave Act 2010*

- (2) An employee who is entitled to paid maternity leave is also entitled to 2 weeks additional paid maternal leave.
- (3) To provide for more flexible administration of paid maternity leave and paid maternal leave, an employee who is entitled to 12 weeks' paid maternity leave and 2 weeks' additional paid maternal leave, may choose to extend the period of payment for those kinds of leave up to:
 - (a) double the number of weeks at a rate of one-half of the normal salary for the employee; or
 - (b) four times the number of weeks at a rate of one-quarter of the normal salary for the employee.
- (4) However, an employee may only choose to extend the period of payment for paid maternal leave if the employee takes that leave in respect of the 2 weeks' immediately following the paid maternity leave.
- (5) An arrangement to extend the period of payment for maternity leave and/or maternal leave under subclause (3) will end if an employee takes annual leave or long service leave in respect of the period over which the payment for maternity leave and/or maternal leave is extended. In those circumstances, the balance of the employee's entitlement to payment in respect of maternity leave and/or maternal leave will be paid to the employee as a lump sum.

4.24 Adoption leave

- (1) An employee who:
 - (a) is an ongoing APS employee or a non-ongoing APS employee engaged for a period of at least 12 months; or
 - (b) satisfies the continuous service requirements articulated at clause 29.2.2 of the *Australian Public Service Award 1998*; and
 - (c) is the primary carer of an adopted child;is entitled to 14 weeks paid adoption leave.
- (2) An employee is entitled to unpaid adoption leave in accordance with Division 5 of Part 2.2 of the FW Act.
- (3) For subclause (1) the adoptive child must not be a child or step child of the employee or the employee's partner unless the child has not been in the custody and care of the employee or employee's partner for a continuous period of 6 months or more before the adoption.
- (4) Paid adoption leave must be taken at a time agreed between the employee and his or her supervisor. The agreed time can commence up to 2 weeks before the expected date of adoption but must conclude within 12 months of the adoption.

4.25 Foster Parent Leave

- (1) An employee who:
 - (a) is an ongoing APS employee or a non-ongoing APS employee engaged for a period of at least 12 months; or
 - (b) satisfies the continuous service requirements articulated at clause 29.2.2 of the *Australian Public Service Award 1998*; and
 - (c) is the primary carer of a foster child for whom the employee has assumed long-term responsibility arising from the placement of the child under a permanent fostering arrangement:
 - (i) by a person / organisation with statutory responsibility for the placement of the child; and
 - (ii) where the child is not expected to return to their family;is entitled to 14 weeks paid foster parent leave.

4.26 Parental and supporting partner's leave

- (1) An employee, who is not entitled to paid maternity leave under clause 4.23, paid adoption leave under clause 4.24 or paid foster parent leave under clause 4.25, who is the parent of a new-born child, adopts a child or commences long-term responsibility for a foster child, and who ordinarily resides with the child, is entitled to 10 days paid parental leave.
- (2) For an employee whose partner gives birth or adopts a child, or commences long-term responsibility for a foster child, and the employee does not qualify for 10 days paid parental leave under subclause 4.26 (1), the employee is entitled to 10 days paid supporting partner's leave.
- (3) Leave must be taken at a time agreed between the employee and his or her supervisor. The agreed time can commence up to 2 weeks before the expected date of confinement, adoption or fostering but must be finished within 3 months after the birth, adoption or fostering.
- (4) An employee is entitled to unpaid parental leave in accordance with Division 5 of Part 2.2 of the FW Act.

4.27 Return to work after parental, adoption or foster parent leave

- (1) On ending maternity, parental, adoption or foster parent leave, an employee is entitled to return to:
 - (a) the employee's pre-leave duties; or
 - (b) if those duties no longer exist – an available position for which the employee is qualified and suited at the same classification and pay as applied pre-parental/maternity leave. Where this is not possible, other duties will be sought, with the redeployment, reduction and redundancy provisions applying to any placement.
- (2) For the purpose of this clause, duties means those performed:
 - (a) if the employee was moved to safe duties because of the pregnancy – immediately before the move; or

Clause 4.28

- (b) if the employee began working part-time because of the pregnancy – immediately before the part-time employment began; or
- (c) otherwise – immediately before the employee commenced maternity or parental leave.

4.28 Flexible work arrangements for parents

- (1) An employee who is a parent, or has responsibility for the care of a child under school age or a child under 18 who has a disability, may request flexible working arrangements, including part-time hours. The employee is not eligible to make this request unless they have completed at least 12 months of continuous qualifying service (the Secretary may waive this requirement in exceptional circumstances).
- (2) A casual employee engaged for irregular or intermittent duties may only request flexible work arrangements if the employee:
 - (a) is a long term casual employee immediately before making the request; and
 - (b) has reasonable expectation of continuing employment on a regular and systematic basis.
- (3) A request made in accordance with subclause (1) must be in writing and set out details of the change sought and the reasons for the change. The Secretary will respond in writing to the request within 21 days and will only refuse on reasonable business grounds. Where the request is refused, the response will include reasons for the refusal.
- (4) For the purposes of this clause:
 - (a) ‘qualifying service’ means service that is recognised for redundancy pay purposes;
 - (b) ‘casual’ means an employee engaged on an irregular or intermittent basis
 - (c) ‘long term casual employee’ has the same meaning as defined at section 12 of the FW Act.

Note Clause 4.11 of this Agreement provides an entitlement to work on a part-time basis in specified circumstances.

4.29 Relevant AGD Employee Relations Advice

For more information about leave for parenting purposes, employees should consult the AGD Employee Relations Advice *Leave Policy*.

Subdivision 4.5.6 Personal leave

4.30 Entitlement

Ongoing employees

- (1) An employee engaged by the Secretary as an ongoing APS employee (other than an employee who, immediately before engagement, was a non-ongoing APS employee who had accrued a personal leave credit under subclause (4) or (5)) will receive:
 - (a) 8 days personal leave credit on engagement; and
 - (b) an additional 14 days personal leave credit in the first year of service, accruing daily;

Note Subclause (1) does not apply to an employee who was already an ongoing APS employee before moving to the Department from another department or agency. Such an employee may carry over accrued credits under clause 7.06.

- (2) An ongoing APS employee accrues on a daily basis 22 days (that is, for a full time employee, 165 hours) cumulative personal leave credit for every year of service after the first year of service.

Non-ongoing employees

- (3) An employee who is a non-ongoing APS employee accrues on a daily basis personal leave credits at the rate of 13 days for the first year of service.
- (4) Immediately prior to the completion of 1 year of service with the Department as a non-ongoing APS employee:
 - (a) an employee will receive 22 days personal leave credit less any paid personal leave taken in that year; and
 - (b) any unused credits that accrued under subclause (3) lapse.
- (5) A non-ongoing APS employee who has more than 1 year of continuous service with the Department as a non-ongoing APS employee accrues on a daily basis 22 days cumulative personal leave credit for every year of service after the first year.
- (6) If an employee who is a non-ongoing APS employee and has accrued a personal leave credit under subclause (4) or (5) is engaged by the Department as an ongoing APS employee without any break in service, the employee keeps the personal leave credit that has accrued under subclause (4) or (5).

All employees

- (7) If, in a year, an employee is absent for more than 30 days on leave that does not count for service, the employee's personal leave credit is reduced in proportion to that leave.

Clause 4.31

- (8) If, in a year, an employee has worked a period or periods of part-time service, the employee's personal leave credits for each period of part-time service are to be calculated on the basis of the hours of service performed during that period.
- (9) An employee may, in the circumstances mentioned in the AGD Employee Relations Advice *Leave Policy* and with the approval of the Secretary, have prior service with a former Australian Government employer not covered by clause 7.06 or State Government employer recognised for personal leave credit purposes. For more information about recognition of prior service for personal leave credit purposes, employees should consult the AGD Employee Relations Advice *Leave Policy*.

4.31 Taking personal leave

- (1) Personal leave, on application approved by the Secretary, is available for:
 - (a) personal illness or injury of an employee not covered by workers' compensation or war service sick leave under clause 4.33; or
 - (b) the provision by an employee of care or support for a member of the employee's family, or a member of the employee's household who requires care or support because the member is ill or injured or has an unexpected emergency; or
 - (c) unexpected emergencies or exceptional circumstances applying to an employee.
- (2) Personal leave for the purposes mentioned in paragraphs (1)(a) and (b) may be taken without producing a medical certificate, statutory declaration or other evidence that would satisfy a reasonable person that the leave is being used for its intended purpose up to:
 - (a) 3 days from commencement of this Agreement until 31 December 2011;
 - (b) 5 days for each calendar year from 1 January 2012.
- (3) No more than 3 consecutive days of personal leave can be taken for the purposes mentioned at paragraphs (1)(a) and (b) without producing a medical certificate, statutory declaration or other evidence that would satisfy a reasonable person that the leave is being used for its intended purpose.
- (4) An employee who takes personal leave on a working day falling either side of a public holiday must produce a medical certificate, statutory declaration or other evidence that would satisfy a reasonable person that the leave is being used for its intended purpose.
- (5) Personal leave taken for the purposes mentioned in paragraph (1)(c) is limited to 3 days per year.
- (6) In this clause, clause 4.32 and clause 4.33 *family* means:
 - (a) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or

Clause 4.34

- (b) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee; or
 - (c) a relation by traditional kinship or fostering.
- (7) For more information about personal leave, employees should consult the AGD Employee Relations Advice *Leave Policy*.

4.32 Unpaid carer's leave

- (1) An employee who has exhausted paid personal leave credit or who is engaged on an irregular or intermittent employment basis is entitled, on application approved by the Secretary, to 2 days unpaid carer's leave each time the employee is required to provide care or support to a member of the employee's family or household member who requires care or support because he or she is sick or injured or has an unexpected emergency.
- (2) Unpaid carer's leave does not count as service for any purpose.

4.33 Compassionate leave

- (1) An employee is entitled, on application approved by the Secretary, to 3 days paid compassionate leave each time a family member dies.
- (2) An employee is entitled to 2 days paid compassionate leave each time that:
 - (a) a household member dies; or
 - (b) a family or household member contracts a personal illness or sustains an injury that poses a serious threat to the family or household member's life.
- (3) For an employee engaged to perform duties on an intermittent or irregular basis (a casual employee) and who receives a 20% loading under clause 3.03, the employee is entitled to compassionate leave on an unpaid basis.
- (4) Compassionate leave may be taken in a single continuous period, as separate days, or in separate periods.

4.34 War service sick leave

- (1) An employee who is a war veteran will be credited with 2 separate credits of paid war service sick leave:
 - (a) special credit — 9 weeks war service sick leave credited on commencement with the APS following eligible military service; and
 - (b) annual credit — 3 weeks annual credit on commencement and again following each 12 months of service.
- (2) Unused credits accumulate up to a maximum credit balance of 9 weeks. Annual credits cannot be accessed until the special credit has been exhausted.

Clause 4.35

- (3) Despite subclause (1), an employee who rejoins the APS following an earlier period of APS employment in which he or she had been credited with war service sick leave will be credited with the following:
 - (a) any special credit that remained unused at the final day of the prior APS employment;
 - (b) any annual credit held on the final day of the prior APS employment.
- (4) Annual credit for an employee who rejoins the APS following an earlier period of APS employment will accrue initially, when the employee's period of service since recommencement and the employee's period of service between 1 November before cessation and the date of cessation from the APS equals, in aggregate, 12 months.
- (5) War service sick leave may only be approved by the Secretary on application by an employee if:
 - (a) the employee is unfit for duty due to a war-caused medical condition; and
 - (b) the application is accompanied by:
 - (i) a medical certificate stating:
 - (A) the nature of the medical condition of the employee; or
 - (B) that the employee has a war-caused condition; and
 - (ii) a statement from the Department of Veterans' Affairs that identifies conditions that are accepted as being war-caused.
- (6) If an employee's war service sick leave credits have been used up, the employee may apply for personal leave.

Subdivision 4.5.7 Community service leave

4.35 Community service leave

- (1) An employee may take community service leave, on application approved by the Secretary, for the purposes of:
 - (a) jury service;
 - (b) voluntary emergency activity; or
 - (c) an eligible community service activity prescribed under the *Fair Work Regulations 2009*.
- (2) For the purposes of paragraph (1) (b) voluntary emergency activity includes emergency service responses, regular training, reasonable recovery time and ceremonial duties.
- (3) A maximum of 5 days paid leave for a year may be granted for the purposes mentioned in paragraph (1) (b).
- (4) For more information about community service leave, employees should consult the AGD Employee Relations Advice *Leave Policy*.

Subdivision 4.5.8 Discretionary miscellaneous leave

4.36 Discretionary miscellaneous leave

- (1) The Secretary may grant discretionary miscellaneous leave for a purpose not otherwise covered by:
 - (a) this Agreement; or
 - (b) the *Maternity Leave (Commonwealth Employees) Act 1973*; or
 - (c) the *Long Service Leave (Commonwealth Employees) Act 1976*; or
 - (d) the *Safety, Rehabilitation and Compensation Act 1988*.
- (2) The Secretary may decide that all or part of a period of discretionary miscellaneous leave is leave with full or part pay, or without pay.
- (3) Discretionary miscellaneous leave may be granted for cultural or ceremonial purposes, or for preparation or participation in NAIDOC-related activities.
- (4) A period of paid discretionary miscellaneous leave counts as service for all purposes.
- (5) A period of discretionary miscellaneous leave without pay may count as service for any or all purposes mentioned in subclause (6) if the Secretary decides that it should count as service for any or all those purposes.
- (6) For subclause (5), the purposes for which discretionary miscellaneous leave without pay may count as service are as follows:
 - (a) accrual of credits for annual leave or long service leave;
 - (b) qualifying service for long service leave;
 - (c) accrual of credits for personal leave for subclauses 4.30 (1), (2), (3) and (5).
- (7) For more information about discretionary miscellaneous leave, employees should consult the AGD Employee Relations Advice *Leave Policy*.

4.37 Discretionary miscellaneous leave for defence service

- (1) An employee is entitled to a grant of discretionary miscellaneous leave to enable the employee to fulfil Australian Defence Force (ADF) Reserve and Continuous Full Time Service (CFTS) or Cadet Force obligations.
- (2) An employee is entitled to ADF Reserve leave with pay, for up to four weeks during each financial year for the purpose of fulfilling service in the ADF Reserve. These purposes include training and operational duty as required.
- (3) During the employee's first year of ADF Reserve service, a further two weeks paid leave may be granted to facilitate participation in additional ADF Reserve training, including induction requirements.

Clause 4.38

- (4) With the exception of the additional two weeks in the first year of service, leave can be accumulated and taken over a period of two years, to enable the employee to undertake training as a member of the ADF Reserves.
- (5) Employees are not required to pay their tax free ADF reserve salary to the Department in any circumstances.
- (6) Discretionary miscellaneous leave granted for defence service purposes counts as service for all purposes, except for unpaid leave to undertake Continuous Full Time Service (CFTS). Unpaid leave for the purpose of CFTS counts for all purposes except annual leave.
- (7) Employees may also apply for annual leave, long service leave or leave without pay, or use flextime, for the purpose of fulfilling ADF Reserve, CFTS or Cadet Force obligations.
- (8) Employees are to notify supervisors at the earliest opportunity once dates for ADF Reserve, CFTS or Cadet Force activities are known and/or changed.
- (9) Further information concerning grants of discretionary miscellaneous leave for defence service purposes is available in the AGD Employee Relations Advice *Leave Policy*.

Subdivision 4.5.9 Variable purchased leave

4.38 Variable purchased leave arrangements

- (1) An employee may, with the approval of the Secretary, participate in the variable purchased leave scheme which allows employees to access additional paid leave by reducing annual salary by a factor of up to 8/52 over an agreed period.
- (2) An employee may, on application approved by the Secretary, take paid leave under the variable purchased leave scheme.
- (3) For more information about variable purchased leave arrangements, employees should consult the AGD Employee Relations Advice *Leave Policy*.

Part 5 Managing change

Division 5.1 General

5.01 Organisational change

As a flexible and innovative organisation, the Department will continue to change in its composition, structure and operation. The parties to this Agreement acknowledge that organisational change is constant and ongoing.

5.02 Consultation about organisational change

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

Clause 5.03

- (6) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (7) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- (8) The employer will explain its decisions about organisational change to the relevant employees, including how the views expressed by employees and, where they chose, their representatives, were taken into account.
- (9) If a term in the enterprise agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in subclauses (2), (3) and (5) are taken not to apply.
- (10) In this term, a major change is *likely to have a significant effect on employees* if it results in:
 - (a) the termination of the employment of employees; or
 - (b) major change to the composition, operation or size of the 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.
- (11) In this term, *relevant employees* means the employees who may be affected by the major change.

Division 5.2 Redeployment and retrenchment

5.03 Application of Division

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

5.04 Consultation process

- (1) If the Secretary considers that an employee is likely to become an excess employee, the Secretary must tell the employee in writing as soon as practicable, and give the employee written reasons why the employee is likely to become excess.
- (2) The Secretary must discuss with the employee measures that might be taken to resolve the employee's potentially excess status, including:
 - (a) redeployment opportunities for the employee at or below the employee's existing level; and
 - (b) referral to career advisory services; and
 - (c) whether voluntary retrenchment might be appropriate.
- (3) If the employee nominates a representative, the Secretary must hold the discussions with the employee's representative.
- (4) Before the discussions are over, the Secretary may ask an employee who is not an excess employee to express interest in voluntary retrenchment if the retrenchment of the employee would permit the redeployment of an employee who is excess and would otherwise be subject to retrenchment.
- (5) The Secretary may identify an employee who is excess to the Department's requirements:
 - (a) after the discussions under subclause (2) have been held; or
 - (b) if the employee or the employee's representative declines to attend discussions — no less than 1 month after the Secretary has told the employee that the employee is likely to become an excess employee.
- (6) After identifying an excess employee, the Secretary must tell the employee in writing that the employee is excess.
- (7) The Secretary must establish, through consultation with identified employees, the employees who want to be offered voluntary retrenchment immediately and the employees who seek redeployment.
- (8) The Secretary must, in writing, tell an employee seeking redeployment that the employee is excess (if this has not already happened) and that the employee may, at his or her request, be referred to career advisory services.
- (9) The Secretary must take reasonable steps, consistent with the interests of the efficient administration of the Department, to transfer an excess employee to a suitable vacancy at the same level within the Department.

5.05 Voluntary retrenchment

- (1) If an employee:
 - (a) is told under clause 5.04 that he or she is an excess employee; or
 - (b) expresses interest in voluntary retrenchment under subclause 5.04 (4);the Secretary may invite the employee to accept voluntary retrenchment.

Clause 5.06

- (2) The Secretary may invite an employee mentioned in paragraph (1) (b) to accept voluntary retrenchment only if:
 - (a) an otherwise excess employee is redeployed to perform duties that would otherwise have been performed by the employee mentioned in paragraph (1) (b); and
 - (b) as a result, the employee mentioned in paragraph (1) (b) becomes an excess employee.
- (3) If the Secretary invites an employee to accept voluntary retrenchment under subclause (1), the Secretary must:
 - (a) allow the employee at least 1 month (the *acceptance period*) to accept the invitation; and
 - (b) give notice of termination of employment in accordance with section 29 of the *Public Service Act 1999* before the end of the acceptance period only if the employee agrees.
- (4) Within the acceptance period, the Secretary must tell the employee in writing about the following matters:
 - (a) the amount of severance pay, pay in lieu of notice and paid up leave credits;
 - (b) the amount of accumulated superannuation contributions;
 - (c) options open to the employee for superannuation;
 - (d) taxation rules applying to payments to the employee;
 - (e) the level of assistance up to a maximum of \$750 for financial advice.
- (5) Only 1 invitation of voluntary retrenchment is to be made to an employee.
- (6) If an employee declines an invitation of voluntary retrenchment under subclause (1), or does not accept the invitation within 1 month, the Secretary must, as soon as possible and with the employee's consent, refer the employee to career advisory services.

5.06 Period of notice

- (1) If an employee agrees to be voluntarily retrenched under clause 5.05, the Secretary may retrench the employee by giving notice of termination of employment in accordance with section 29 of the *Public Service Act 1999*.
- (2) The period of notice is 4 weeks or, for an employee over 45 with at least 5 years of continuous service, 5 weeks.
- (3) If the employee is retrenched at the beginning of, or within, the notice period, the employee must receive payment instead of notice as set out in the FW Act for the unexpired part of the notice period.

5.07 Severance pay

- (1) Subject to any minimum amount an employee is entitled to under the National Employment Standards, an employee to whom subclause 5.05 (1) applies is entitled to be paid an amount equal to:
 - (a) 2 weeks salary for each completed year of continuous service; and
 - (b) a proportionate payment for completed months of service since the last completed year of service.
- (2) However, the minimum amount payable is an amount equal to 4 weeks salary and the maximum amount payable is an amount equal to 48 weeks salary.
- (3) Severance pay is calculated on a proportionate basis for any period of service when an employee worked part-time hours if the employee has less than 24 years of full-time service.
- (4) For severance pay, *service* means any of the following:
 - (a) service in the Department;
 - (b) Government service as defined by section 10 of the *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 has a controlling interest) that is recognised for long service leave purposes;
 - (d) service with the Australian Defence Force;
 - (e) service in the Australian Public Service immediately before deemed resignation under section 49 of the *Public Service Act 1922* (as in force on 17 November 1966) if the service has not previously been recognised for severance pay purposes;
 - (f) service in another organisation that is recognised for long service leave purposes if:
 - (i) the employee was transferred from the Australian Public Service to the organisation with a transfer of a function; or
 - (ii) the employee was engaged by the organisation on work within a function, and was appointed because of the transfer of the function to the Australian Public Service.
- (5) Earlier periods of service count if:
 - (a) there is no break between the periods of service; or
 - (b) there is a break between the periods of service of less than 1 month, and the break happened when an offer of employment with the new employer had been made and accepted by the employee before ceasing employment with the previous employer; or

Clause 5.08

- (c) the earlier period of service was with the Australian Public Service and ceased because the employee was deemed to have resigned from the Australian Public Service on marriage under section 49 of the *Public Service Act 1922* (as in force on 17 November 1966).
- (6) A period of service does not count as service for severance pay purposes if it ceased:
 - (a) with the payment of a redundancy benefit or similar payment or an employer financed retirement benefit; or
 - (b) for any of the following reasons:
 - (i) because the employee lacked, or had lost, an essential qualification for performing his or her duty;
 - (ii) because of non-performance, or unsatisfactory performance, of duties;
 - (iii) because of an inability to perform duties because of physical or mental incapacity;
 - (iv) failure to satisfactorily complete an entry level training course;
 - (v) failure to meet a condition imposed under subsection 22 (6) of the *Public Service Act 1999*;
 - (vi) breach of the APS Code of Conduct;
 - (vii) under the *Public Service Act 1922* for a reason equivalent to a reason mentioned in paragraphs (i) to (vi);
 - (viii) through voluntary retirement at or above the minimum retirement age applicable to the employee;
 - (ix) any other ground prescribed by the *Public Service Regulations 1999*.
- (7) An absence from work that does not count as service for long service leave purposes does not count as service for severance pay purposes.

5.08 Rate of payment — severance pay

In calculating severance pay, salary includes:

- (a) either:
 - (i) the employee's full-time salary, adjusted on a proportionate basis in accordance with subclause 5.07 (3) for periods of part-time service; or
 - (ii) if the employee acted in a higher position for a continuous period of at least 1 year immediately before the employee was given notice of retrenchment — the full-time salary of the higher position, adjusted on a proportionate basis in accordance with subclause 5.07 (3) for periods of part-time service; and
- (b) if the employee undertook shiftwork and was entitled to shift penalties for at least half the pay periods in the 1 year before the employee was given notice of retrenchment — a weekly average of shift penalties calculated over the year; and

- (c) other allowances in the nature of salary that were paid regularly and during annual leave, excluding allowances that were:
 - (i) a reimbursement for expenses incurred; or
 - (ii) a payment for disabilities associated with the performance of duty.

5.09 Retention periods

- (1) If an excess employee has not accepted an offer of voluntary retrenchment, the Secretary must not terminate his or her employment in accordance with section 29 of the *Public Service Act 1999* without the employee's consent until the following retention periods have elapsed:
 - (a) if the employee has at least 20 years service or is 45 years or over — 13 months;
 - (b) for any other employee — 7 months.
- (2) However, the retention period applying under paragraph (1) is reduced by an amount equivalent to an employee's redundancy entitlement under the National Employment Standards calculated as at the end of the adjusted period.
- (3) The retention period starts on:
 - (a) the day the employee is told in writing in accordance with the consultation process that the employee is excess; or
 - (b) for an employee who expresses interest in voluntary retrenchment under subclause 5.04 (4) — the day the Secretary invites the employee to accept voluntary retrenchment under clause 5.05.
- (4) The retention period is extended by any period of certified sick leave taken during the retention period.
- (5) During the retention period, the Secretary:
 - (a) must continue to take reasonable steps to find alternative employment for the employee; and
 - (b) may transfer the employee to a job at a lower classification with 4 weeks notice.
- (6) The notice period mentioned in paragraph (4) (b) must, as far as practicable, be concurrent with the retention period.
- (7) If the employee is transferred under paragraph (4) (b) before the end of the retention period, the employee is to be paid income maintenance to maintain the employee's salary at the previous higher level for the balance of the retention period.
- (8) An excess employee who, during the retention period, applies for assignment to duties within a classification group the same as, or lower than, the employee's current approved classification as a result of an advertised vacancy in the Department is entitled to be considered in isolation from, and not in competition with, an applicant who is not an excess employee.

Clause 5.09

- (9) An excess employee is entitled to reasonable leave with full pay to attend necessary employment interviews after the employee:
 - (a) is told in writing in accordance with the consultation process that the employee is excess; or
 - (b) has had an election to accept voluntary retrenchment approved by the Secretary.
- (10) The employee is entitled to reasonable travel and incidental expenses, not met by the prospective employer, to attend an employment interview.
- (11) An excess employee who has to move household to a new locality because of an ongoing assignment to duties within a classification group the same as, or lower than, the employee's approved classification before the assignment is entitled to reasonable expenses.
- (12) If an employee who has been notified that he or she is excess is not permanently redeployed to a suitable position within 3 months, and the employee has not previously been invited to accept voluntary retrenchment, the Secretary must invite the employee to accept voluntary retrenchment as soon as possible after the end of that period.
- (13) If an excess employee agrees, the Secretary may terminate the employee's employment in accordance with section 29 of the *Public Service Act 1999*, and pay the balance of the employee's entitlement for the retention period, reduced by an amount equivalent to the employee's entitlement to redundancy pay under the National Employment Standards, as a lump sum, if:
 - (a) the employee has been invited to accept, and has declined, voluntary retrenchment; and
 - (b) redeployment has not been achieved within 3 months of the employee being identified as excess; and
 - (c) the Secretary is satisfied that there is insufficient productive work available for the employee in the Department for the rest of the retention period; and
 - (d) for an employee who was referred to a career advisory service — the service has advised that the employee is unlikely to be redeployed to another Agency in the APS.
- (14) Payment under subclause (13) is taken to include payment in lieu of notice of termination.

5.10 Involuntary termination

- (1) Subject to the consultation process under this Part, the Secretary may terminate, in accordance with section 29 of the *Public Service Act 1999*, the employment of an excess employee at the end of the retention period, without the consent of the employee.
- (2) An excess employee must not have his or her employment terminated if the employee:
 - (a) has not been invited to accept an offer of voluntary retrenchment; or
 - (b) has elected to be retrenched but the Secretary has refused to approve it.
- (3) An excess employee must not have his or her employment terminated involuntarily without being given notice of termination, or payment in lieu of notice, of at least:
 - (a) for an employee over 45 years with at least 5 years of continuous service — 5 weeks; or
 - (b) for any other employee — 4 weeks.
- (4) The notice period mentioned in subclause (3) must, as far as practicable, be concurrent with the retention period.

5.11 Redeployment and retrenchment provisions not to prevent other action

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

Clause 6.01

Part 6 Cooperative workplace relations

Division 6.1 General

6.01 Commitment to cooperative workplace relations

The Department is committed to an employment relationship based on consultation, cooperation, trust and reasonableness.

Division 6.2 Consultation

6.02 AGD Workplace Relations Committee

- (1) The WRC is constituted to be the focus for consultation about the terms of this Agreement.
- (2) The primary functions of the WRC are:
 - (a) to monitor the operation of this Agreement, including the operation of consultative arrangements in the Department; and
 - (b) to facilitate consultation between AGD and its employees.
- (3) The Secretary will consult with the WRC in relation to:
 - (a) any changes, within the life of this Agreement, to policies, guidelines and standards that were developed or revised as part of the development of the Agreement; and
 - (b) the development or amendment, within the life of this Agreement, of any policies, guidelines and standards relating to any matter covered by the Agreement.
- (4) The WRC may decide its own procedures, including timing of meetings and the filling of casual vacancies for employee and management representatives.
- (5) A replacement WRC is to be convened, with employee representation being elected, before the nominal expiry date of this Agreement.

6.03 Consultation within Divisions

- (1) To complement the WRC, the Secretary will ensure that Division Heads make appropriate arrangements to consult with all employees regularly through all-employee meetings or committees representative of all employees.
- (2) Division Heads will ensure that consultative arrangements made by them have the support of a majority of their employees.

6.04 Employee representational rights and facilities

- (1) The Department recognises employee representational rights and workplace delegate rights in accordance with Government policy, and will provide facilities and resources available for delegates to use on a reasonable basis. Schedule 3 provides the Department's protocols for union representatives and workplace delegates, including the facilities and resources available.
- (2) The Secretary will permit the use of Departmental communication methods to assist communication between employees and employee representatives for the purposes of this Agreement, including noticeboards (physical and electronic), e-mail and other methods that become available.
- (3) However, these methods of communication:
 - (a) must be used in accordance with the Department's guidelines in relation to the appropriate use of communication methods, particularly e-mail; and
 - (b) must not be used for offensive or improper material.

Division 6.3 Dealing with conflict in the workplace

Subdivision 6.3.1 Resolution of industrial disputes

6.05 Dispute settlement procedures

- (1) If a dispute relates to:
 - (a) a matter arising under the agreement; or
 - (b) the National Employment Standards;this term sets out procedures to settle the dispute.
- (2) An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.
- (3) In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the employee or employees and relevant supervisors and/or management.
- (4) If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to Fair Work Australia.
- (5) Fair Work Australia may deal with the dispute in 2 stages:
 - (a) Fair Work Australia 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 Fair Work Australia is unable to resolve the dispute at the first stage, Fair Work Australia may then:
 - (i) arbitrate the dispute; and
 - (ii) make a determination that is binding on the parties.

Clause 6.06

Note If Fair Work Australia arbitrates the dispute, it may also use the powers that are available to it under the Act.

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

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

Subdivision 6.3.2 Review of decisions to terminate employment

6.06 Review rights and remedies for termination of employment

- (1) The only review rights and remedies for an employee in relation to termination of employment are those available under:
 - (a) the FW Act; and
 - (b) other Commonwealth laws (including the Constitution); and
 - (c) common law.
- (2) Subdivision 6.3.1 does not apply to the termination of, or a decision to terminate, an employee's employment.
- (3) Nothing in this Agreement prevents the Secretary from terminating the employment of an employee for serious misconduct, without further notice, or payment instead, in accordance with paragraph 123 (1) (b) of the FW Act, subject to compliance with the procedures established by the Secretary for determining whether the employee has breached the Code of Conduct under section 15 of the *Public Service Act 1999*.

Part 7 General

Division 7.1 Period of Agreement

7.01 Commencement and expiry date

- (1) This Agreement commences 7 days after it is approved by Fair Work Australia.
- (2) The nominal expiry date for the Agreement is 30 June 2014.

Division 7.2 Comprehensive agreement

7.02 Comprehensive agreement

This Agreement is a comprehensive agreement.

Note Employment in the Department continues to be subject to a number of Acts, including the following:

- *Fair Work Act 2009*
- *Long Service Leave (Commonwealth Employees) Act 1976*
- *Maternity Leave (Commonwealth Employees) Act 1973*
- *Occupational Health and Safety Act 1991*
- *Paid Parental Leave Act 2010*
- *Public Service Act 1999*
- *Safety, Rehabilitation and Compensation Act 1988*
- *Superannuation Act 1976*
- *Superannuation Act 1990*
- *Superannuation Act 2005*
- *Superannuation Benefits (Supervisory Mechanisms) Act 1990*
- *Superannuation (Productivity Benefit) Act 1988.*

Division 7.3 Closed agreement

7.03 Closed agreement

- (1) This Agreement is a closed Agreement in the settlement of all matters for the duration of the Agreement.
- (2) The parties to this Agreement agree that, for the period covered by this Agreement, no further claims may be pursued in relation to terms and conditions of employment by a party to this Agreement or an employee whose employment is subject to this Agreement, whether or not those terms and conditions relate to a matter expressly covered by this Agreement, except where consistent with the terms of this Agreement.

Clause 7.05

Division 7.4 Status of Employee Relations Advices

7.04 Status of Employee Relations Advices

- (1) The operation of this agreement is supported by Employee Relations Advices that, as amended time from time, will continue to apply to all employees. The Employee Relations Advices provide employees and managers with a more comprehensive understanding of provisions and conditions relating to their employment and responsibilities as employees and managers.
- (2) If there is any inconsistency between an Employee Relations Advice and the terms of this Agreement, the express terms of this Agreement will prevail. Employee Relations Advices cannot alter employees' conditions or entitlements contained in the Agreement.
- (3) All Employee Relations Advices which support the operation of this agreement may be varied from time to time following consultation with employees and their representatives, and will apply in the form they are in as at the time of any relevant action/decision.
- (4) Disputes over the application of Employee Relations Advices which support the operation of this Agreement will be subject to the Dispute Settlement Procedures of this Agreement.
- (5) Employee Relations Advices are published on the AGD Intranet.

Division 7.5 Delegation of Secretary's powers or functions

7.05 Delegation

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

Division 7.6 Portability of accrued paid leave entitlements

7.06 Portability of accrued paid leave entitlements

If an employee joins the Department on or after the commencement of this Agreement from another employer and was employed in performing functions for the other employer under the *Public Service Act 1999*, the *Parliamentary Service Act 1999* or from the ACT Government Service, accrued annual leave, personal leave and carers leave (however described) will be transferred, if there is no break in continuity of service.

Signatures

For the Commonwealth

Roger Wilkins AO
Secretary,
Attorney-General's Department
3-5 National Circuit
Barton ACT 2600
for and on behalf of the Commonwealth

September 2011

Bargaining Representative Signature

[Employee Representative Name]
[Employee Representative Address]

September 2011

Schedule 1 Classification structure and salary rates

Part 1 General

Classification (and local designation, if applicable)	Pay Points	Salary before commencement date	Salary from commencement date (4% increase)	Salary from 1 July 2012 (3% increase)	Salary from 1 July 2013 (2% increase)
APS Level 1–2 ¹	APS 1.1	\$40 231	\$41 840	\$43 095	\$43 957
	APS 1.2	\$41 581	\$43 244	\$44 542	\$45 432
	APS 1.3	\$42 706	\$44 414	\$45 747	\$46 662
	APS 1.4	\$44 461	\$46 239	\$47 627	\$48 579
	APS 2.1	\$45 530	\$47 351	\$48 772	\$49 747
	APS 2.2	\$46 783	\$48 654	\$50 114	\$51 116
	APS 2.3	\$48 009	\$49 929	\$51 427	\$52 456
	APS 2.4	\$49 258	\$51 228	\$52 765	\$53 820
	APS 2.5	\$50 488	\$52 508	\$54 083	\$55 164
APS Level 3	APS 3.1	\$50 841	\$52 875	\$54 461	\$55 550
	APS 3.2	\$52 161	\$54 247	\$55 875	\$56 992
	APS 3.3	\$53 486	\$55 625	\$57 294	\$58 440
	APS 3.4	\$54 870	\$57 065	\$58 777	\$59 952
APS Level 4	APS 4.1	\$56 662	\$58 928	\$60 696	\$61 910
	APS 4.2	\$58 463	\$60 802	\$62 626	\$63 878
	APS 4.3	\$59 986	\$62 385	\$64 257	\$65 542
	APS 4.4	\$61 522	\$63 983	\$65 902	\$67 220

¹ The junior rates set out in clause 3.13 apply to APS 1 and Cadet APS classifications.

Classification (and local designation, if applicable)	Pay Points	Salary before commencement date	Salary from commencement date (4% increase)	Salary from 1 July 2012 (3% increase)	Salary from 1 July 2013 (2% increase)
APS Level 5-6 ²	APS 5.1	\$63 202	\$65 730	\$67 702	\$69 056
	APS 5.2	\$67 017	\$69 698	\$71 789	\$73 224
	APS 6.1	\$71 875	\$74 750	\$76 993	\$78 532
	APS 6.2	\$75 487	\$78 506	\$80 862	\$82 479
	APS 6.3	\$80 175	\$83 382	\$85 883	\$87 601
Legal Officer ³	LO 1 (APS 3.1)	\$50 841	\$52 875	\$54 461	\$55 550
	LO 2 (APS 3.3)	\$53 486	\$55 625	\$57 294	\$58 440
	LO 3 (APS 4.1)	\$56 662	\$58 928	\$60 696	\$61 910
	LO 4 (APS 4.3)	\$59 986	\$62 385	\$64 257	\$65 542
	LO 5 (APS 5.1)	\$63 202	\$65 730	\$67 702	\$69 056
	LO 6 (APS 5.2)	\$67 017	\$69 698	\$71 789	\$73 224
	LO 7 (APS 6.1)	\$71 875	\$74 750	\$76 993	\$78 532
	LO 8 (APS 6.2)	\$75 487	\$78 506	\$80 862	\$82 479
	LO 9 (APS 6.3)	\$80 175	\$83 382	\$85 883	\$87 601
Cadet APS (practical training) ¹	Cadet PT 1	\$39 442	\$41 020	\$42 250	\$43 095
	Cadet PT 2	\$40 765	\$42 396	\$43 667	\$44 541
	Cadet PT 3	\$41 868	\$43 543	\$44 849	\$45 746
	Cadet PT 4	\$43 589	\$45 333	\$46 693	\$47 626

² The APS Level 5 and APS Level 6 classifications were generically broadbanded, with a reduced number of pay points, from 5 August 2010. Sub-clause 3.05 (5) and Schedule 2 detail the continuing transitional arrangements.

³ Pay points in the Legal Officer pay scale were re-aligned from 5 August 2010. Clause 3.09 (3) and Schedule 2 detail the continuing transitional arrangements.

¹ The junior rates set out in clause 3.13 apply to APS 1 and Cadet APS classifications.

Classification (and local designation, if applicable)	Pay Points	Salary before commencement date	Salary from commencement date (4% increase)	Salary from 1 July 2012 (3% increase)	Salary from 1 July 2013 (2% increase)
Cadet APS (full-time study) ¹	Cadet FTS	\$21 518	\$22 379	\$23 050	\$23 511
Graduate APS	GAPS 1 GAPS 2	\$50 465 \$51 724	\$52 484 \$53 793	\$54 058 \$55 407	\$55 139 \$56 515
AGD Graduate Broadband	GB 1 (APS 3.1) GB 2 (APS 4.1) GB 3 (APS 5.1) GB 4 (APS 5.2) GB 5 (APS 6.1) GB 6 (APS 6.2) GB 7 (APS 6.3)	\$50 841 \$56 662 \$63 202 \$67 017 \$71 875 \$75 487 \$80 175	\$52 875 \$58 928 \$65 730 \$69 698 \$74 750 \$78 506 \$83 382	\$54 461 \$60 696 \$67 702 \$71 789 \$76 993 \$80 862 \$85 883	\$55 550 \$61 910 \$69 056 \$73 224 \$78 532 \$82 479 \$87 601
Executive Level 1	Executive 1.1 Executive 1.2 Executive 1.3 Executive 1.4	\$87 088 \$94 039 \$100 000 \$105 963	\$90 572 \$97 801 \$104 000 \$110 202	\$93 289 \$100 735 \$107 120 \$113 508	\$95 154 \$102 749 \$109 262 \$115 778
Executive Level 2 ⁴	Executive 2.1 Executive 2.2 Executive 2.3 Executive 2.4	\$105 963 \$113 876 \$117 683 \$120 690	\$110 202 \$118 431 \$122 390 \$125 518	\$113 508 \$121 984 \$126 062 \$129 283	\$115 778 \$124 424 \$128 583 \$131 869
Senior Legal Officer	SLO 1 (Executive 1.1) SLO 2 (Executive 1.2) SLO 3 (Executive 1.3) SLO 4 (Executive 1.4)	\$87 088 \$94 039 \$100 000 \$105 963	\$90 572 \$97 801 \$104 000 \$110 202	\$93 289 \$100 735 \$107 120 \$113 508	\$95 154 \$102 749 \$109 262 \$115 778

¹ The junior rates set out in clause 3.13 apply to APS 1 and Cadet APS classifications.

⁴ Pay points Executive 2.1 and PLO 1 as applied under the *Attorney-General's Department Enterprise Agreement 2010* cease to apply from the commencement of this Agreement. The transitional arrangement is detailed at clause 3.09(2).

Classification (and local designation, if applicable)	Pay Points	Salary before commencement date	Salary from commencement date (4% increase)	Salary from 1 July 2012 (3% increase)	Salary from 1 July 2013 (2% increase)
Principal Legal Officer ⁴	PLO 1 (Executive 2.1)	\$105 963	\$110 202	\$113 508	\$115 778
	PLO 2 (Executive 2.2)	\$113 876	\$118 431	\$121 984	\$124 424
	PLO 3 (Executive 2.3)	\$117 683	\$122 390	\$126 062	\$128 583
	PLO 4 (Executive 2.4)	\$120 690	\$125 518	\$129 283	\$131 869

⁴ Pay points Executive 2.1 and PLO 1 as applied under the *Attorney-General's Department Enterprise Agreement 2010* cease to apply from the commencement of this Agreement. The transitional arrangement is detailed at clause 3.09(2).

Part 2 National Security Hotline Employees - Rates of Pay

(subclause 3.03(3))

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

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

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

When duties performed	Penalty rate (% of employee's hourly rate of salary)
Between midnight and 8.00 am on a non-public holiday Monday to Friday	15%
After the first 8 hours of duty each day, on a non-public holiday, Monday to Friday	50%
On a non-public holiday Saturday	50%
On a non-public holiday Sunday	100%
On a public holiday	150%

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

Table 1: Hourly Rates of Pay for National Security Hotline Employees

From the commencement date (4% increase):

	Pay Point	Hourly Rate, including 20% loading	Hourly Rate including 20% loading and 15% penalty	Hourly Rate including 20% loading and 50% penalty	Hourly Rate including 20% loading and 100% penalty	Hourly Rate including 20% loading and 150% penalty
APS Level 4	APS 4.1	\$36.15	\$41.57	\$54.23	\$72.30	\$90.37
	APS 4.2	\$37.29	\$42.89	\$55.94	\$74.59	\$93.25
	APS 4.3	\$38.27	\$44.01	\$57.40	\$76.53	\$95.67
	APS 4.4	\$39.25	\$45.14	\$58.87	\$78.50	\$98.12
APS Level 5-6	APS 5.1	\$40.32	\$46.36	\$60.48	\$80.64	\$100.80
	APS 5.2	\$42.75	\$49.17	\$64.13	\$85.51	\$106.88
	APS 6.1	\$45.85	\$52.73	\$68.78	\$91.71	\$114.63
	APS 6.2	\$48.15	\$55.38	\$72.24	\$96.31	\$120.39
	APS 6.3	\$51.15	\$58.82	\$76.72	\$102.29	\$127.87

From 1 July 2012 (3% increase):

	Pay Point	Hourly Rate, including 20% loading	Hourly Rate including 20% loading and 15% penalty	Hourly Rate including 20% loading and 50% penalty	Hourly Rate including 20% loading and 100% penalty	Hourly Rate including 20% loading and 150% penalty
APS Level 4	APS 4.1	\$37.23	\$42.82	\$55.85	\$74.47	\$93.08
	APS 4.2	\$38.41	\$44.18	\$57.62	\$76.83	\$96.04
	APS 4.3	\$39.42	\$45.33	\$59.12	\$78.83	\$98.54
	APS 4.4	\$40.43	\$46.49	\$60.64	\$80.85	\$101.07
APS Level 5-6	APS 5.1	\$41.53	\$47.75	\$62.29	\$83.06	\$103.82
	APS 5.2	\$44.04	\$50.65	\$66.05	\$88.07	\$110.09
	APS 6.1	\$47.23	\$54.31	\$70.84	\$94.46	\$118.07
	APS 6.2	\$49.60	\$57.04	\$74.41	\$99.20	\$124.00
	APS 6.3	\$52.68	\$60.59	\$79.02	\$105.36	\$131.70

From 1 July 2013 (2% increase):

	Pay Point	Hourly Rate, including 20% loading	Hourly Rate including 20% loading and 15% penalty	Hourly Rate including 20% loading and 50% penalty	Hourly Rate including 20% loading and 100% penalty	Hourly Rate including 20% loading and 150% penalty
APS Level 4	APS 4.1	\$37.98	\$43.67	\$56.97	\$75.96	\$94.94
	APS 4.2	\$39.18	\$45.06	\$58.77	\$78.36	\$97.96
	APS 4.3	\$40.21	\$46.24	\$60.30	\$80.41	\$100.51
	APS 4.4	\$41.24	\$47.42	\$61.85	\$82.47	\$103.09
APS Level 5-6	APS 5.1	\$42.36	\$48.71	\$63.54	\$84.72	\$105.90
	APS 5.2	\$44.92	\$51.66	\$67.37	\$89.84	\$112.29
	APS 6.1	\$48.17	\$55.40	\$72.26	\$96.35	\$120.43
	APS 6.2	\$50.59	\$58.18	\$75.89	\$101.19	\$126.48
	APS 6.3	\$53.74	\$61.80	\$80.60	\$107.47	\$134.34

Part 3

Trainee APS (Administrative) pay rates

Trainee APS (Administrative)

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

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

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

Schedule 2 Transitional provisions

Part 1 Broadbanding of APS 5-6 Level classifications – Salary level of obsolete pay points

(subclause 3.05(5))

- (1) This clause applies to an employee covered by subclause 3.05(5) of the Agreement who has not yet satisfied the criteria for advancement to the broadband APS Level 5-6 salary structure.
- (2) Until the employee satisfies the criteria set out at Schedule 2 of the former agreement for advancement to the broadband APS Level 5-6 salary structure, the employee will continue to be paid at his or her otherwise obsolete pay point in accordance with the table below.

Pay Point before 5 August 2010	Salary before commencement date	Salary from commencement date (4% increase)	Salary from 1 July 2012 (3% increase)	Salary from 1 July 2013 (2% increase)
APS 5.2: \$63 282	\$65 180	\$67 787	\$69 821	\$71 217
APS 6.1: \$66 272	\$68 260	\$70 990	\$73 120	\$74 583
APS 6.2: \$67 920	\$69 958	\$72 756	\$74 939	\$76 438
APS 6.5: \$76 128	\$78 412	\$81 548	\$83 995	\$85 675

Part 2

Realignment of Legal Officer Pay Scale – Maintenance of Grandfathered Pay Points

(subclause 3.09 (3))

- (1) This clause applies to an employee covered by clause 3.09(3) of the Agreement who is subject to the grandfathered Legal Officer salary scale following realignment of the salary scale applying from 5 August 2010.
- (2) The employee will be paid in accordance with the grandfathered Legal Officer salary scale set out in the table below.

Legal Officer Grandfathered Pay Scale

Grandfathered pay point	Salary before commencement date	Salary from commencement date (4% increase)	Salary from 1 July 2012 (3% increase)	Salary from 1 July 2013 (2% increase)
LO 1	\$50 841	\$52 875	\$54 461	\$55 550
LO 2	\$53 486	\$55 625	\$57 294	\$58 440
LO 3	\$56 662	\$58 928	\$60 696	\$61 910
LO 4	\$59 986	\$62 385	\$64 257	\$65 542
LO 5	\$65 180	\$67 787	\$69 821	\$71 217
LO 6	\$68 260	\$70 990	\$73 120	\$74 583
LO 7	\$71 875	\$74 750	\$76 993	\$78 532
LO 8	\$78 412	\$81 548	\$83 995	\$85 675
LO 9	\$80 175	\$83 382	\$85 883	\$87 601

Part 3

Preservation of Isolated Establishment Allowance for specified former Defence employees

- (1) This clause applies to employees formerly covered by clause H6.2 of the *Defence Employees Certified Agreement 2000-2001* who moved to the Attorney-General's Department under Section 72 of the *Public Service Act 1999* on 19 December 2001.
- (2) Each employee is entitled to a fortnightly allowance of \$35.68 from the commencement of this Agreement continuing for the period that the employee is based at Mt Macedon, Victoria.
- (3) The allowance ceases to be payable for an employee who is assigned on an ongoing basis to duties at a locality other than Mt Macedon.

Schedule 3 Principles relating to Workplace Delegates

- (1) The role of union workplace delegates and other elected union representatives is to be respected and facilitated.
- (2) The Department and union workplace delegates must deal with each other in good faith.
- (3) In discharging their representative roles at the workplace level, the rights of union workplace delegates include but are not limited to:
 - (a) the right to be treated fairly and to perform their role as workplace delegates without any discrimination in their employment;
 - (b) recognition by the Department that endorsed workplace delegates speak on behalf of their members in to workplace;
 - (c) the right to participate in collective bargaining on behalf of those whom they represent, as per the Fair Work Act;
 - (d) the right to reasonable paid time to provide information to and seek feedback from employees in the workplace on workplace relations matters at the agency during normal working hours;
 - (e) the right to email employees in their workplace to provide information and seek feedback, subject to individual employees exercising a right to 'opt out';
 - (f) undertaking their role and having union representation on the Department's Workplace Relations Committee;
 - (g) reasonable access to the Department's facilities (including telephone, facsimile, photocopying, internet and email facilities, meeting rooms, lunch rooms, tea rooms and other areas where employees meet) for the purpose of carrying out work as a delegate and consulting with members and other interested employees and the union, subject to agency policies and protocols;
 - (h) the right to address new employees about union membership at the time they enter employment;
 - (i) the right to consultation, and access to relevant information about the workplace and the agency; and
 - (j) the right to reasonable paid time to represent the interests of members to the employer and industrial tribunals.
- (4) In discharging any roles that may involve undertaking union business, the rights of union workplace delegates includes but are not limited to:
 - (a) reasonable paid time during normal working hours to consult with other delegates and union officials in the workplace, and receive advice and assistance from union staff and officials in the workplace;
 - (b) reasonable access to appropriate training in workplace relations matters including training provided by a union; and
 - (c) reasonable paid time off to represent union members in the agency at relevant union forums.

-
- (5) In exercising their rights, workplace delegates and unions will consider operational issues, departmental policies and guidelines and the likely affect on the efficient operation of the Department and the provision of services by the Commonwealth.
 - (6) For the avoidance of doubt, elected union representatives include APS employees elected to represent union members in representative forums, including, for example, CPSU Section Secretaries, Governing Councillors and Section Councillors, and MEAA elected representatives.