



**CDPP**

*Australia's Federal Prosecution Service*

**COMMONWEALTH  
DIRECTOR OF PUBLIC  
PROSECUTIONS**

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**ENTERPRISE AGREEMENT  
2017-2020**

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# PART A – General Matters

## 1. Title

1.1. This Agreement shall be known as the Office of the Commonwealth Director of Public Prosecutions (CDPP) Enterprise Agreement 2017 - 2020.

## 2. Objectives

2.1. The objectives of this Agreement are to provide a framework of fair remuneration, reasonable workplace flexibility and work/life balance within a safe, secure and healthy workplace in the context of a legal environment.

## 3. Definitions

"**Agreement**" means the Office of the Commonwealth Director of Public Prosecutions Enterprise Agreement - 2017 - 2020.

"**APS**" means the Australian Public Service.

"**Casual**" means an employee engaged for duties that are irregular or intermittent as contained in clause 22 of the Public Service Act 1999 as varied from time to time.

"**CDPP**" means the Office of the Commonwealth Director of Public Prosecutions.

"**Child**" of a person includes:

- someone who is a child of the person within the meaning the *Family Law Act 1975*; and
- an adopted child or step-child of the person.

Other family relationships are also to be determined on the basis that the child is a child of that person.

"**De facto Partner**" means:

- a person who, although not legally married to the employee, lives with the employee in a relationship as a couple on a genuine domestic basis without discrimination as to sexual preference; and
- includes a former de facto partner of the employee.

"**Director**" means the Commonwealth Director of Public Prosecutions.

"**Employee**" means a person engaged under and within the meaning of the *Public Service Act 1999* or the *Director of Public Prosecutions Act 1983* (whether in a full-time or part-time capacity).

"**FWA**" means the Fair Work Act 2009.

"**Immediate Family**" means:

- a spouse (including a former spouse), de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
- a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee; or
- other person who has a strong traditional kinship or cultural affinity with the employee.

**“Non-Ongoing Employee”** has the same meaning as in the *Public Service Act 1999* and includes Employees engaged on a non-ongoing basis under the *Director of Public Prosecutions Act 1983*

**“NES”** means the National Employment Standards as defined in the *Fair Work Act 2009*.

**“Probation”** means the initial 6-month period following the ongoing and/or non-ongoing engagement of an employee in the APS and/or the CDPP inclusive of any previous periods of non-ongoing employment where there is no break in continuity.

**“PS Act”** means the *Public Service Act 1999*.

**“Salary”** means the relevant rate of pay payable to an employee according to their classification and pay point as contained in Appendix A2 of this Agreement. For the purpose of calculating any salary based payments, Salary is taken to include any higher duties allowance the employee is in receipt of.

**“Settlement Period”** means the four-week period that starts at the beginning of the fortnightly timekeeper period and finishes at the end of the following fortnightly timekeeper period.

**“Supervisor/Manager”** means the person responsible for a branch, section or a team within the CDPP.

**“Supported Wage System”** means a formal program run by the Department of Employment that enables payment of a productivity-based, or pro-rata wage for eligible people with disability.

**“Term”** has the same meaning as in the *Fair Work Act 2009*.

#### **4. Individual Flexibility Arrangement**

- 4.1. The Director and an employee covered by this Agreement may agree to make an Individual Flexibility Arrangement to vary the effect of any of the terms of this Agreement, where the arrangement meets the genuine needs of the employee and CDPP.
- 4.2. The Director must ensure that a flexibility arrangement agreed to under this clause:
  - a. is about permitted matters under section 172 of the FWA;
  - b. does not include unlawful terms under section 194 of the FWA;
  - c. results in the employee being better off overall than if no arrangement was agreed to;
  - d. is in writing;
  - e. is signed by both the employee and the Director, and, if the employee is under 18, is signed by their parent or guardian;
  - f. is able to be terminated by either the employee or the Director giving not more than 28 days written notice, or at any time by agreement between the employee and the Director in writing;
  - g. includes details of:
    - i. the terms of the 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
  - h. is given to the employee within 14 days after it is agreed to.
- 4.3. A flexibility arrangement must be genuinely agreed between the employee and the Director.

## **5. Guidelines and Policies**

5.1. Any guidelines, policies and procedures referred to in this Agreement are not incorporated into, and do not form part of, this Agreement. A term of this Agreement prevails to the extent of any inconsistency with a guideline, policy or procedure.

# PART B –Classification & Remuneration

## 6. Classification Structure

- 6.1. APS classification levels (including local job designations) and applicable salary rates applying to all employees covered by this Agreement are contained in Appendix A2.

## 7. Remuneration

### Annual Productivity Salary Increases

- 7.1. Employees will receive a productivity salary increase of:
- a. 3% from date of commencement of this Agreement
  - b. 2% payable from 12 months after commencement of this Agreement; and
  - c. 1% payable from 18 months after commencement of this Agreement.

### Salary on Engagement, Assignment or Promotion

- 7.2. Salary upon engagement or promotion into or within the CDPP will be set at the minimum point of the salary range applicable to the employee's classification.
- 7.3. The Director may authorise payment of salary above the minimum point in that salary range taking into consideration any previous relevant experience.
- 7.4. Where an employee is on higher duties or engaged on a non-ongoing basis at the designation to which they are promoted or engaged, the salary rate payable immediately before the promotion or engagement will be taken into account when determining salary subject to meeting the requirements detailed in clause 43.
- 7.5. The Director may authorise payment of salary above the maximum point in the salary range in exceptional circumstances. For the purpose of this section this is called a preserved salary rate.
- 7.6. Where an employee is in receipt of a preserved salary rate, the employee will not receive any Salary Increases until the preserved salary rate falls within the minimum and maximum salary points applicable to the employee's classification. At this time, the employee will move to the rate closest to the preserved salary rate without reduction in salary.
- 7.7. Where, at the time of engagement or promotion, an employee's salary is set at an incorrect pay point, the Director may authorise, in writing, payment at the correct salary point.

### Advancement

- 7.8. Advancement between the pay points within a classification will be dependent on receiving an assessment rating of satisfactory or better in work performance and skills development consistent with Clause 43.10 – 43.12 of this Agreement.
- 7.9. Advancement through classifications in a broadband will occur where:
- a. an employee's performance is satisfactory; and
  - b. there is sufficient work available at the higher classification level; and
  - c. the employee has the necessary skills and proficiencies to perform that work.

## **Salary on Reduction**

- 7.9. Where the classification of an employee is reduced, on either a temporary or ongoing basis in accordance with the provisions of this Agreement and/or the provisions of the PS Act, salary will be determined by the Director having regard to:
- a. the circumstances under which the reduction in classification has occurred; and
  - b. the experience, qualifications and skills of the employee; and
  - c. the salary payable to, and classification of the employee in respect of the duties they performed before the new duties were assigned; and
  - d. the classification of the employee in relation to the new duties; and
  - e. the applicable work level standards.
- 7.10. Where the reduction in classification is a result of workforce adjustment outlined in Appendix A1 of this Agreement, an employee's reduced salary will take effect after the expiration of an income maintenance period determined in Appendix A1.26.
- 7.11. Where the reduction in classification is employee-initiated no income maintenance period will apply.

## **Training Rates of Salary**

### **Cadet rates**

- 7.12. The Director may engage a person as a Cadet APS Employee.
- 7.13. A Cadet APS Employee will be paid at of the minimum salary point of APS 1.
- 7.14. When the Director is satisfied that the course of training has been successfully completed, a Cadet APS Employee will be allocated a classification in accordance with the Classification Rules and the Director will determine a salary within the applicable range.

### **Trainee rates**

- 7.15. The Director may engage a person as a Trainee APS (Administrative) Employee.
- 7.16. A Trainee APS (Administrative) Employee will be paid at the minimum salary point of APS 1 or such other salary point as the Director determines.
- 7.17. When the Director is satisfied that the course of training has been successfully completed, a Trainee APS (Administrative) Employee will be allocated a classification in accordance with the Classification Rules and the Director will determine a salary within the applicable range.

### **Graduate rates**

- 7.18. The Director may engage a person as a Graduate APS.
- 7.19. A Graduate APS Employee will be required to undertake a course of training determined by the Director. While undertaking training, a Graduate APS Employee will be paid at a salary point within the APS3 classification, as determined by the Director.
- 7.20. When the Director is satisfied that the course of training has been successfully completed, the Director will assign duties within the APS3 classification in accordance with the Classification Rules and determine salary.



## **Supported Salary**

7.21. This Agreement permits eligible employees to be employed in accordance with the Supported Wage System. An employee engaged under the Supported Wage System will be paid productivity wages as a percentage of the relevant pay rate as determined in accordance with the Supported Wage System detailed in Appendix A4 of this Agreement.

## **Rate of Salary – Casual employees**

7.22. An employee engaged on a Casual basis will be paid a loading of 20% of their salary in lieu of paid leave entitlements (other than long service leave), notice of termination of employment and redundancy benefits, Public Holidays and the Christmas Closedown.

7.23. A Casual employee will be paid at the applicable overtime rate if they are directed to work on a public holiday.

## **Payment of Salary**

7.24. Employees will be paid fortnightly in arrears by electronic funds transfer into a financial institution account of their choice.

7.25. Fortnightly rate of pay will be based on the following formula:

$$\text{Fortnightly pay} = \text{Annual Salary} \times 12/313$$

## **Salary Packaging**

7.26. Access to Salary Packaging is available to ongoing employees and non-ongoing employees whose contract exceeds 6 months (including in-house salary packaging for private superannuation).

## **8. Superannuation**

- 8.1. The CDPP will make compulsory employer contributions as required by the applicable legislation and fund requirements.
- 8.2. Employer contributions to the PSSap will be 15.4% of the employee's fortnightly contribution salary. Employer contributions for employees in other accumulation schemes will be at the same rate as for employees who are members of PSSap. Employer contributions will not be reduced by any other contributions made through salary sacrifice arrangements. This sub-clause does not apply where a superannuation fund cannot accept employer superannuation contributions.
- 8.3. Employer superannuation contributions will not be paid during periods of unpaid leave that do not count as service, unless otherwise required by law.
- 8.4. The Director may choose to limit superannuation choice to complying superannuation funds that allow employee and/or employer contributions to be paid through fortnightly electronic funds transfer (EFT).

# PART C – Allowances

## 9. Higher Duties – Allowance

- 9.1. Where the Director temporarily assigns an employee to duties of a higher classification contained within this Agreement, the qualifying period before payment may be made is 5 consecutive working days (inclusive of any public holiday/s) or the equivalent of an average working week for a part-time employee. The employee will generally be paid at the minimum salary point of that classification.
- 9.2. Where the employee has performed previous periods of higher duties, the Director may authorise higher duties allowance at a higher pay point within the relevant classification having regard to the total length of time on higher duties and the impact from any intervening periods not on higher duties, the previous level/s of higher duties and performance reviews conducted at the higher level.
- 9.3. Any Higher Duties Allowance payable for temporary assignment of duties at the SES level will be determined on a case by case basis by the Director (within the relevant remuneration scale applicable to SES employees) having regard to the length of the assignment and previous periods of temporary assignment at the SES level.

## 10. Workplace Responsibility Allowances

- 10.1. Where an employee has recognised workplace responsibilities as a:
  - a. First Aid Officer (as designated by the relevant Work Health and Safety Committee;
  - b. Occupational Health and Safety Representative for their designated workgroup;
  - c. Chief Fire or Chief Emergency Control Warden;
  - d. Harassment Contact Officer; or
  - e. Security Contact Officer (APS 1 – 6 classifications only)and has, where required, successfully completed the relevant training program including any refresher course as approved by the Director, they will receive a workplace responsibility allowance of \$28 per fortnight.
- 10.2. The allowance amounts detailed in this clause will be increased at the same rate as the Annual Productivity Salary Increases.

## 11. Motor Vehicle Allowance

- 11.1. Director may authorise an employee to use a private motor vehicle owned or hired by the employee at their own expense for official purposes. Where so authorised, an employee will be entitled to a motor vehicle allowance at a rate equivalent to that set by the Australian Taxation Office for claiming a deduction for car expenses via the cents per kilometre method.

## 12. Travelling Allowance

- 12.1. The CDPP will meet reasonable accommodation, meal and incidental expenses incurred whilst an employee is required to travel on official business, involving overnight stays for periods of up to 21 days in any one location.
- 12.2. The CDPP may choose to meet such expenses through the provision of accommodation and meals; or in the form of an allowance; or a combination of both.

- 12.3. Reasonable expenses will be determined in accordance with a relevant allowance subscription service. The applicable rates at the commencement of this Agreement are outlined in Appendix A3 of this Agreement.
- 12.4. Where an employee is required to be away from their usual place of work for not less than 8 hours but is not required to be away overnight, the employee will be paid part-day travelling allowance of \$50.00.
- 12.5. The normal class of travel for an employee is economy class. Business class travel may be used where an employee is required to travel on official business overseas.

### **13. Relocation Costs within Australia**

- 13.1. Reimbursement of certain costs associated with relocation of an employee may be paid at the discretion of the Director and if so, will apply from the commencement of the relocation. Reimbursement may cover some or all of the following items:
  - a. Transport to the new locality for the employee and, where appropriate, the employee's family/dependants residing with the employee at the time of the relocation;
  - b. Where appropriate, transport back to the employee's home locality;
  - c. Removal and storage of household furniture and effects;
  - d. Expenses which may include ongoing living expenses e.g. accommodation costs.
- 13.2. Where an employee is temporarily relocating to the same location for a period greater than 21 days, they will be reimbursed for approved costs associated with that relocation.

### **14. Professional Memberships and Practising Certificates**

- 14.1. The Office will meet the cost of certificates and professional memberships relevant and essential to an employee's duties.

# PART D – Hours of Work

## 15. Hours of Duty

- 15.1. The standard ordinary hours of duty for all full-time employees will be 36 hours 45 minutes per week or 7 hours 21 minutes per day.
- 15.2. Ordinary hours of duty will be worked as agreed within the standard bandwidth. Ordinary hours of duty will be worked between 8:30am – 4:51pm Monday to Friday. Core hours during which an employee must be either at work or on approved leave (including flex or working flexibly arrangements) are from 9.30am to 12.00 noon and 2.00pm to 4.00pm.
- 15.3. The hours of duty of part-time staff are those agreed in their part-time work agreement or contract of employment, conditional upon those hours being worked within the standard bandwidth.
- 15.4. An employee will not be required to work for more than 5 hours without at least a 30-minute break for a meal.

## 16. Bandwidth

- 16.1. The standard bandwidth is 8.00am to 6.00pm Monday to Friday (excluding public holidays) except in the Northern Territory where the standard bandwidth is 7.30 am to 5.30 pm Monday to Friday (excluding public holidays).

## 17. Working Flexibly

- 17.1. Working flexibly is an arrangement available to all Legal and Executive Level employees.
- 17.2. The hours of duty of employees will be managed to facilitate flexibility in working arrangements within the CDPP to balance the operational needs of a legal practice with the personal needs of employees. All employees should record the actual times of arrival and departure to and from work.
- 17.3. All employees will agree on their pattern of attendance at work subject to the approval of their Supervisor/Manager in accordance with these provisions.
- 17.4. Supervisors/Managers and their Legal and Executive Level employees will work together to manage workloads and working hours. Supervisor/Managers have a responsibility to minimise the extent to which employees at this level work exceptionally long hours.
- 17.5. Legal and Executive Level employees may have the flexibility to choose their start and finish times, subject to:
  - a. primary consideration should be given to the operational requirements of the Office whilst taking into account the need to balance this with the individual's personal circumstances; and
  - b. the employee working their required hours of duty; and
  - c. complying with any reasonable direction made in accordance with this Agreement to attend the workplace in an alternative pattern of hours as and when required, including a direction to work less hours.
- 17.6. Where an employee is regularly and unavoidably working in excess of ordinary hours for sustained periods, the Supervisor/Manager and employee should agree to arrangements for reasonable time off in lieu. Agreed time off is to be taken as soon as possible after the additional work has been performed to support work/life balance and as an aid to the rest and recuperation process. Access to time of in lieu in accordance with this clause will not be unreasonably withheld.
- 17.7. Where agreement cannot be reached, the Supervisor/Manager may direct the employee to take reasonable time off in lieu within a reasonable time following the working of the excess hours.

- 17.8. Reasonable time off for Legal and Executive Level employees is not on an hour for hour basis.
- 17.9. In determining what reasonable time off with pay is, the following factors will be taken into account:
- a. The additional hours worked;
  - b. The impact on the health and wellbeing of the employee; and
  - c. The nature and level of the employee's role.

## **18. Flex-time**

- 18.1. Formal flex-time arrangements are available to APS 1 to 6 (Non-Legal) employees.
- 18.2. Flexibility in relation to hours worked on any particular day outside of ordinary hours but within the standard bandwidth is available subject to supervisory approval and the availability of work.
- 18.3. The accrual of flex-time for hours worked outside the standard bandwidth may only occur where prior supervisory approval has been granted.
- 18.4. An eligible employee may accrue flex-time on official travel where that travel falls outside the employee's ordinary hours.
- 18.5. Credits for time worked on any day longer than standard hours will accrue on an hour for hour basis.
- 18.6. At the end of a Settlement Period, the maximum flex-time credit cannot exceed 36 hours and 45 minutes and the maximum flex-time debit cannot exceed 10 hours.
- 18.7. An employee may not carry over greater than 36 hours and 45 minutes flex-time credit. At the end of a settlement period, the maximum flex-time credit shall not exceed 36 hours and 45 minutes.
- 18.8. Where a request for flex-time leave cannot be accommodated due to operational requirements, the employee and their manager/supervisor will endeavour to ensure flex-time leave is taken within the following month. Access to flex time leave will not be unreasonably withheld.
- 18.9. An employee who fails to comply with the flex-time provisions may have access to flex-time removed. In these cases, the employee will be required to work Standard Ordinary Hours within the bandwidth.

## **19. Overtime**

- 19.1. Where an APS 1-6 (non-legal) employee is directed to work beyond the standard bandwidth and outside the start and finish times of an employees' Standard Ordinary Hours, overtime shall be paid to the employee, unless the employee requests time off in lieu in accordance with 19.4.
- 19.2. Overtime payment will be calculated on base salary as follows:
- a. Monday – Saturday excluding public holidays - time and one half for the first three hours worked each day and double time thereafter;
  - b. Sunday - double time;
  - c. Public Holidays, the Saturday following Good Friday and Christmas Closedown – Standard Ordinary Hours that would otherwise be payable plus single time for hours worked during standard hours and double time for hours worked outside of standard hours.
- 19.3. Employees will be provided a minimum break of 8 hours plus reasonable travelling time before being required to return to work following a period of overtime. Where a break cannot be provided due to operational requirements overtime rates will continue to be paid for hours worked until a break of at least 8 hours has been provided.

- 19.4. The employee may choose to take time in lieu accrued at the equivalent overtime rate for the hours worked rather than being paid overtime.
- 19.5. Ad-hoc or short term employee requests to work outside the standard bandwidth may be accommodated at the discretion of the Director. In such cases, overtime is not payable and the relevant flex-time or working flexible provisions will apply.

## **20. Overtime Meal Allowance**

- 20.1. An employee will be entitled to a meal allowance where:
- a. the employee is directed to work in excess of two hours' overtime on a regular working day or in excess of five hours on a weekend or public holiday; and
  - b. the overtime hours worked includes periods between 12.30pm to 1.30pm or 6.30pm to 7.30pm.
- 20.2. The meal allowance is \$28.80 on commencement of this Agreement. The CDPP subscribes to an allowance subscription service and will adopt the rate as varied from time to time, in line with the recommendations provided.

## **PART E – FLEXIBLE WORK PRACTICES**

### **21. Flexible working arrangements**

- 21.1. The CDPP recognises the need to provide sufficient support and flexibility at the workplace to enable employees to balance work and life issues, including family and other responsibilities, with the needs of a legal practice.
- 21.2. An employee may request flexible working arrangements in accordance with section 65 of the FWA.
- 21.3. An ongoing employee returning from Maternity or Parental Leave is entitled to access part-time employment up until the child's second birthday or, in the case of adoption or a long term fostering arrangement, for two years from the date of placement of the child.
- 21.4. The Director or their Delegate will consider requests for part-time work, subject to operational requirements.

### **22. Regular part-time employment**

- 22.1. An ongoing part-time employee is one whose ordinary hours of work are less than 73 hours 30 minutes per fortnight.
- 22.2. A full time employee may seek to enter into a regular part-time employment agreement.
- 22.3. Part-time work may include job sharing arrangements.
- 22.4. The Part Time Arrangement will detail the number of days and hours to be worked. A minimum of three consecutive days and three hours per day will be the standard arrangement unless alternative arrangements can meet operational requirements.
- 22.5. The Director may initiate the introduction or extension of part-time employment. Employees will not be required to convert from full-time to part-time hours or from part-time to full-time hours, without their agreement. There is no restriction on ongoing part-time employees resuming full-time employment at any time.
- 22.6. Unless agreed to or otherwise required by this Agreement, remuneration, leave and other monetary benefits (excluding expense-related allowances or benefits) for part-time employees will be calculated on a pro rata basis.

### **23. Employee Health Initiative**

- 23.1. Employees will be reimbursed up to \$250.00 annually for expenditure on approved health and wellbeing activities and equipment.
- 23.2. CDPP will fund a range of health services aimed at maximising productivity and reducing time lost through illness and injury. These services may include:
  - health and fitness assessments;
  - seminars/workshops on such things as heart health, mental wellbeing, workplace safety etc;
  - influenza vaccinations;
  - eye -testing for screen based equipment.

### **24. Employee Assistance Program**

- 24.1. A confidential, professional counselling service is available at no cost to employees and their families to assist in both personal and work related matters.
- 24.2. For the purpose of this clause, an employee's family is the employee's partner and children of the employee and/or partner.

## **25. Additional Travel and Family care costs**

- 25.1. The Director will authorise reimbursement of reasonable additional expenses not otherwise recoverable under any insurance or from any other source, arising from intrastate, interstate or overseas travel (including incidental costs) and/or family care arrangements made necessary where an employee:
- a. has an approved period of leave cancelled with no prior notice; or
  - b. is directed to return to duty from an approved period of leave
- 25.2. The maximum payable to compensate for additional family care arrangements is \$25 per day up to a total maximum of \$250.

## **26. Loss, Damage and Indemnity**

- 26.1. The Director may approve reimbursement to an employee for loss or damage to clothing or personal effects that occurs in the course of the employee's work.



# PART F – LEAVE PROVISIONS

## 27. Recreation Leave

### **Entitlement**

- 27.1. An employee (excluding a Casual employee) is entitled to 20 days Recreation Leave each year. Recreation Leave credits will accrue progressively throughout the year and may be accessed as it accrues.

### **Conditions**

- 27.2. Employees are encouraged to take a minimum of two weeks Recreation Leave each year.
- 27.3. An employee with 12 weeks or more accrued recreation leave will be required to enter into a leave plan with their Supervisor/Manager. The leave plan will require the employee to reduce their recreation leave balance to less than 9 weeks by the conclusion of the plan.
- 27.4. The leave plan will be agreed and must be completed within a reasonable timeframe. An employee will not be required to enter a Leave Plan when the employee is on long term Personal Leave, Compensation Leave, is proceeding on Maternity Leave or is 54 years of age or over and has set a retirement date occurring within 12 months.
- 27.5. An employee may apply to take Recreation Leave at half pay with the approval of the Director. Where an employee takes Recreation Leave at half pay, Recreation Leave credits will be deducted at half the rate. The entire period of Recreation Leave at half pay will count as service for all purposes.
- 27.6. The Director may approve other types of leave during a period of Recreation Leave where satisfactory evidence is provided. Recreation Leave will be re-credited to the extent of any other leave granted.

### **Cashing Out Recreation Leave**

- 27.7. An employee may, by agreement in writing with the Director, cash out an amount of Recreation Leave where the employee has taken at least 2 weeks Recreation Leave in the preceding 12 months and will have a minimum of 4 weeks Recreation Leave remaining after cashing out the leave.
- 27.8. Where the Director authorises the employee to cash out Recreation Leave, the employee will be paid the salary that they would have received if they had taken the Recreation Leave at that time.
- 27.9. Each cashing out of a particular amount of Recreation Leave must be by separate agreement in writing with the Director.

### **Payment on Resignation, Termination or Death**

- 27.10. Unused Recreation Leave and Long Service Leave credits will be paid out to an employee at the time of resignation or termination in accordance with the FWA and *Long Service Leave (Commonwealth Employees) Act 1976*.
- 27.11. Where an employee dies, or is presumed to have died on a particular date, the Director will authorise payment to be made to the legally entitled person of all leave entitlements otherwise payable on resignation or retirement.
- 27.12. Final rate of salary is defined as ongoing salary plus any other allowance in the nature of salary.

## **28. Personal Leave**

### **Entitlement**

- 28.1. An employee (excluding a Casual employee) is entitled to 20 days paid Personal/Carers Leave each year.
- 28.2. Ongoing employees will receive a Personal Leave credit of 20 days full pay on engagement to the APS. A further 20 days Personal Leave will be credited on 1 July each year where they have been employed for the preceding whole 12 months and on a pro rata basis for a part year. Part-time employees will receive Personal Leave credits on a pro rata basis.
- 28.3. Personal Leave, whether paid or unpaid, counts as service for the purpose of accruing leave entitlements.
- 28.4. Non-ongoing employees will receive Personal Leave credits in accordance with the following schedule:
- 1 day after 1 month of employment;
  - An additional 2 days after 2 months of employment;
  - An additional 2 days after 3 months of employment;
  - An additional 5 days after 6 months of employment;
  - An additional 5 days after 9 months of employment.

If their employment continues up to or beyond 12 months, their entitlement to Personal Leave will be calculated as if they were an ongoing employee.

- 28.5. Any unused Personal/Carer's Leave at 30 June each year will accumulate but will not be paid out on resignation, termination or death.

### **Conditions**

- 28.6. Personal Leave may be approved in the following circumstances:
- during a period that the employee is not fit for work due to a personal illness or injury affecting the employee; or
  - to provide care or support to an immediate family member, or member of the employee's household, who requires medical assistance, care or support due to personal illness, injury or unexpected emergency affecting the person; or
  - upon the death of an immediate family member where leave in excess of that provided for in Compassionate Leave (Clause 30) is required; or
  - emergency or unforeseen circumstances that require the employee to be absent from work; or
  - to attend an appointment with a registered health practitioner; or
  - for household emergencies not including routine repairs; or
  - moving from one residence to another within the same city (normally one day) or on relocation to another DPP office (normally two days); or
  - attending, or accompanying a family member with health, legal or other personal matters within an emergency or unforeseen circumstance; or
  - in special circumstances, attending cultural or religious obligations, including NAIDOC activities not formally designated as a public holiday in the Agreement (normally one day per occasion);
  - to attend the funeral of a relative, (not covered under the definition of Immediate Family as prescribed in this Agreement), a friend, neighbour or colleague (normally half a day to one day, depending on the circumstances).
- 28.7. Employees may be granted Personal Leave with pay, subject to available credits, without production of a medical certificate where the absence is 3 consecutive days or less. Evidence is to be provided for Personal Leave in excess of 3 consecutive days.
- 28.8. Notwithstanding sub-clause 28.7, the Director may request evidence for any absence where the employee has been informed of this requirement in advance or at the time of notification of that absence.
- 28.9. The Director may refer an employee to a nominated medical practitioner for a medical assessment if the Director is of the opinion that the employee's state of health is adversely

affecting their work performance or standard of conduct, has caused, or may cause, the employee to have an extended absence from work or constitutes a danger to themselves or other employees.

28.10. Evidence for this clause means:

- a. a medical certificate
- b. a statutory declaration, if it was not reasonably practicable for the employee to obtain a medical certificate, and/or
- c. with the prior agreement or direction of the Director another form of evidence, including no evidence.

28.11. If the employee provides a statutory declaration as evidence, the statutory declaration must set out the purpose of the leave, and why it was not reasonably practicable for them to obtain a medical certificate.

28.12. If the employee does not provide the required evidence within a reasonable period, the absence will be treated as unauthorised leave.

28.13. The Director may, where such circumstances are justified, approve unpaid leave or allow employees to access other forms of leave where Personal Leave with pay is exhausted.

28.14. An ongoing employee will not, without the employee's consent, be terminated on the grounds of physical or mental incapacity before the employee's full pay Personal Leave credit has expired unless otherwise provided for in legislation.

## **29. Part Day Absences**

29.1. Where an employee is approved to be absent for a part day, the use of flexible working hours will be the preferred method of accounting for part day absences.

## **30. Compassionate Leave**

- 30.1. An employee is entitled to 2 days Compassionate Leave for each permissible occasion that a member of their immediate family or household contracts or develops a personal illness or injury that poses a serious threat to that person's life, to spend time with that person.
- 30.2. An employee is entitled to 2 days Compassionate Leave for each permissible occasion following the death of a member of their immediate family or household.
- 30.3. Compassionate Leave may be taken as a single block of 2 days or as two separate periods to the extent of the entitlement.
- 30.4. An employee may be required to provide evidence of the person's illness, injury or death.
- 30.5. An employee who is not engaged on Casual basis will be entitled to payment for Compassionate Leave.

## **31. Long Service Leave**

- 31.1. The entitlement to Long Service Leave is provided for under the *Long Service Leave (Commonwealth Employees) Act 1976*.
- 31.2. The minimum period for which Long Service Leave will be granted is seven calendar days at full pay (or 14 calendar days half pay). Long Service Leave cannot be broken with other periods of leave, except where otherwise provided by legislation.
- 31.3. The Director may approve other types of leave during a period of Long Service Leave, except Recreation Leave, where satisfactory evidence is provided. Long Service Leave will be re-credited to the extent of any other leave granted.

## **32. Maternity and Parental Leave**

- 32.1. Employees who are pregnant, or who have given birth, are covered by the provisions of the *Maternity Leave (Commonwealth Employees) Act 1973* (the ML Act) and the NES.
- 32.2. Employees are entitled to up to 52 weeks Maternity Leave consistent with the ML Act. Employees with an entitlement to paid leave under the ML Act are provided with an additional 2 weeks of paid Maternity Leave payable immediately following the minimum period of paid leave under the ML Act.
- 32.3. An employee with 12 months' continuous service will be entitled to unpaid Parental Leave of up to 12-months to provide care for a newborn or newly adopted child of the employee, the spouse or de facto partner consistent with the *Fair Work Act 2009*.
- 32.4. Employees who adopt or permanently (long term) foster a child and have or will have responsibility for the care of the child, are entitled to up to 52 weeks of parental leave. For primary caregivers, up to 14 weeks of that leave will be paid leave, commencing from one week prior to the placement of the child, provided the employee satisfied the same qualifying requirements as those required to receive paid leave in accordance with the ML Act.
- 32.5. Employees are entitled to parental leave for adoption or permanent foster care when that child:
- is under 16 years of age;
  - has not, or will not have, lived continuously with the employee for a period of 6 months or more as at the day (or expected day) of placement; and
  - is not (otherwise than because of the adoption) a child of the employee or the employee's spouse/partner.
- 32.6. Documentary evidence of approval for adoption or enduring parental responsibilities under the formal fostering arrangements must be submitted when applying for parental leave for adoption or permanent foster carer purposes.
- 32.7. On ending the initial 52 weeks of maternity or parental leave, employees may request an extension of unpaid parental leave for a further period of up to 52 weeks. The second period of unpaid leave is to commence immediately following the initial 52 week leave period. Requests may be refused on reasonable business grounds.
- 32.8. Unpaid maternity or parental leave in excess of maternity or parental leave (paid or unpaid) taken during the first 12 weeks will not count as service for any purpose.
- 32.9. Eligible employees may elect to spread the payment for the period of Maternity Leave or Parental Leave over a maximum period of 28 weeks at a rate no less than half normal salary. Where payment is spread over a longer period, a maximum of the first 14 weeks of leave will count as service. This administrative arrangement does not extend the total period of paid or unpaid Maternity Leave available under the ML Act.
- 32.10. Maternity or parental leave is inclusive of public holidays and will not be extended because a public holiday (or Christmas closedown) falls during a period of paid or unpaid leave.
- 32.11. On ending maternity or parental leave, employees have the return to work guarantee and the right to request flexible working arrangements that are provided by the FWA.

### **Supporting Partner – Paid Parental Leave**

- 32.12. Employees with at least 12 months' continuous service with the APS are entitled to 2 weeks paid leave immediately following the birth, adoption or permanent fostering of the dependent child.
- 32.13. Documentary evidence as outlined in sub-clause 32.6 or a birth certificate following the birth of a child, must be submitted when applying for supporting partner leave.
- 32.14. This leave is inclusive of public holidays and counts as service for all purposes.

### **33. Miscellaneous Leave**

- 33.1. There will be a single category of Miscellaneous Leave, which may be approved with or without pay. Each application will be determined after discussion with the employee as appropriate.
- 33.2. Miscellaneous Leave without pay in excess of 30 days in any financial year will not count as service for Recreation and Personal Leave purposes, except where an employee is granted Miscellaneous Leave without pay in the public interest and they return to duty in the APS, where the period of leave will count for service for all purposes except Recreation Leave.

### **34. Elder / Disabled Care**

- 34.1. Unpaid Leave may be approved for a period of up to 12 months to enable an employee to provide care or support to an elderly parent or a disabled child over 18 years of age where that person requires ongoing care or support. The CDPP may refuse a request on reasonable business grounds and will provide any reasons for such a refusal in writing within 21 days of the formal request.

### **35. Cultural and Ceremonial Leave**

- 35.1. The Director may grant Cultural or Ceremonial Leave to employees for the purposes of undertaking significant and substantial cultural and ceremonial obligations. The base grant of Cultural or Ceremonial leave is 10 days in any 2 calendar years. Cultural and Ceremonial Leave is granted without pay and does not count as service for any purpose.

### **36. Christmas Closure**

- 36.1. The CDPP 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 Years' Day ('Christmas Closedown').
- 36.2. Employees (excluding Casual employees) are entitled to be absent with pay for the working days during Christmas Closedown.
- 36.3. Payment for absences on working days during Christmas Closedown will be made in accordance with an employee's Standard Ordinary Hours of work for that day.
- 36.4. Where the Christmas closure falls during a period of paid Recreation Leave or Personal Leave the employee will not be on that leave type for the duration of the Christmas closure and will be paid in accordance with sub-clause 36.3 without deduction of leave credit.
- 36.5. Where the Christmas closure falls during a period when an employee is absent on leave (other than Recreation or Personal Leave) there is no entitlement to receive payment as the Christmas closure. Payment for that day will be in accordance with the entitlement for that form of leave (e.g. if on Long Service Leave at half pay, payment is at half pay).

### **37. Public Holidays**

- 37.1. Employees are entitled to the following public holidays:
- a. New Years Day (1 January);
  - b. Australian Day (26 January);
  - c. Good Friday;
  - d. Easter Monday;
  - e. Anzac Day (25 April);

- f. The Queen's birthday holiday (on the day on 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 (eg Labour Day), 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.
- 37.2. If under a law of a State or Territory, a day or part day is substituted for one of the public holidays in sub-clause 37.1, then the substituted day or part day is the public holiday.
- 37.3. The Director 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.
- 37.4. An employee, who is absent on a day or part-day that is a public holiday in the place where the employee is normally based for work purposes, is entitled to be paid for the day or part day absence as if that day or part-day was not a public holiday.
- 37.5. Where a public holiday falls during a period of paid Recreation Leave or Personal Leave the employee will not be on that leave type for the duration of the public holiday and will be paid in accordance with sub-clause 37.4 without deduction of leave credit.
- 37.6. Where a public holiday falls during a period when an employee is absent on leave (other than Recreation or Personal Leave) there is no entitlement to receive payment as a public holiday. Payment for that day will be in accordance with the entitlement for that form of leave (e.g. if on Long Service Leave at half pay, payment is at half pay).

### **38. Defence Reservists' Leave**

- 38.1. An employee may be granted leave (with or without pay) to enable the employee to fulfil Australian Defence Force (ADF) Reserve and Continuous Full Time Service (CFTS) or Cadet Force obligations.
- 38.2. An employee is entitled to ADF Reserve leave with pay, for up to four weeks during each financial year and an additional two weeks' paid leave in the first year of ADF Reserve service, for the purpose of fulfilling service in the ADF Reserve.
- 38.3. 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.
- 38.4. An employee who is an officer or instructor of cadets in a Cadet Force may be granted paid leave of up to three weeks each financial year to perform duties as an officer or instructor of Cadets. For these purposes 'Cadet Force' means the Australian Navy Cadets, Australian Army Cadets, or the Australian Air Force Cadets.
- 38.5. Defence Reserve leave counts as service for all purposes, except for unpaid leave to undertake CFTS. Unpaid leave for the purpose of CFTS counts for all purposes except Recreation Leave.

### **39. War Service Sick Leave**

- 39.1. Employees will be eligible to be granted war service sick leave while unfit for duty because of a war or defence caused condition.
- 39.2. A war-caused condition means an injury or disease of an employee that has been determined under the relevant legislation to be war-caused or defence-caused.
- 39.3. Eligible employees will accrue a special credit of nine weeks on commencement in the APS and an annual credit of three weeks for each year of APS service. Unused credits will accumulate to a maximum of nine weeks

## **40. Community Service (emergency management and jury service) Leave**

- 40.1. In accordance with section 108 of the FWA, leave for participation in voluntary emergency management duties, including training, emergency service responses, reasonable recovery time, and ceremonial duties, will be approved. The Director may determine whether any or all of leave taken for participation in voluntary emergency management activities will be with pay.
- 40.2. An employee will be approved paid leave for any period where the employee engages in an activity that involves dealing with an emergency or natural disaster where the employee:
- a. engages in the activity on a voluntary basis; and
  - b. is a member of, or has a member-like association with the relevant emergency management body; and
  - c. was requested by or on behalf of the relevant emergency body to engage in the activity.
- 40.3. An employee will continue to be paid by the CDPP for any period of jury service, but will be required to pay to the CDPP any amount of jury service pay received by the employee (excluding any expense related allowances).

## **41. Portability of Accrued Entitlements**

- 41.1. Where an employee moves into the CDPP (including on promotion or for an agreed period) from another agency where they were an ongoing APS employee, the employee's unused accrued Recreation Leave and Personal/Carers Leave (however described) will be transferred, provided there is no break in continuity of service.
- 41.2. Where an employee is engaged in the CDPP immediately following a period of ongoing employment in the Parliamentary Service or the ACT Government Service, the employee's unused accrued Recreation Leave and Personal/Carers Leave (however described) will be recognised unless the employee received payment in lieu of those entitlements on cessation of employment.
- 41.3. For the purposes of this section:
- a. 'APS employee' has the same meaning as the PS Act;
  - b. 'Parliamentary Service' refers to employment under the *Parliamentary Service Act 1999*.



# PART G – Managing People Effectively & Professionally

## 42. Managing Performance

- 42.1. At a minimum, performance management is both:
- a. an aspect of the management relationship between a supervisor and employee in which work responsibilities, priorities and expectations are communicated and clarified, and
  - b. a process of defining, aligning and evaluating employee performance in relation to organisational goals and objectives.
- 42.2. Supervisors/ managers are required to manage and assess the performance of employees under their supervision and provide regular and ongoing informal feedback to those employees in addition to the established formal feedback mechanisms.
- 42.3. Employees are required to engage constructively in clarifying work expectations, and in resolving issues related to unsatisfactory performance.

## 43. Promoting Excellence in Performance Scheme

- 43.1. Employees must participate in the CDPP's Promoting Excellence in Performance Scheme (PEPS).
- 43.2. The PEPS cycle runs from 1 August to 30 July each year.
- 43.3. Employee's will complete a performance agreement at the beginning of each PEPS cycle that outlines individual goals and objectives and identifies skills development needs and opportunities. These goals and objectives will be aligned to the behavioural expectations applicable to the employee's classification and the corporate planning framework.
- 43.4. Newly engaged employees will complete a performance agreement as soon as reasonably practicable upon commencement with the CDPP.
- 43.5. Where an employee moves roles either at level or at a higher classification, or there has been a significant change to the expectations of the role the employee will complete a new performance agreement as soon as practicable following the move or change.
- 43.6. Temporary assignments greater than 9 months will result in a new performance agreement being developed.
- 43.7. An employee temporarily assigned to another position for periods of less than 9 months may elect or be required to enter into a new performance agreement for that period where appropriate.
- 43.8. Formal performance feedback will occur at the midpoint of the PEPS cycle and at the conclusion of the PEPS cycle.
- 43.9. At the conclusion of the PEPS cycle an employee's performance will be rated as either:
- a. Satisfactory; or
  - b. Requires development.

### **Pay Point Advancement Linked to Performance**

- 43.10. On the 12-month anniversary of an employee's last pay point advancement within the substantive classification/ job designation; or of an employee's engagement to the CDPP; or promotion to a higher classification, an employee will progress to the next highest pay point within their substantive classification where:
- a. The employee is below the maximum pay point of their substantive classification; and

- b. The employee was rated as performing at a satisfactory level at the end of their last annual performance appraisal cycle; and
  - c. The employee is not subject to a Performance Improvement Plan in accordance with sub clauses 43.16 to 43.21; and
  - d. The employee has completed at least nine (9) months performing duties relevant to their employment with the CDPP at their substantive classification or higher.
- 43.11. Where an employee has not completed at least nine (9) months in the workplace due to non-work related absence/s, their date of eligibility in accordance with sub-clause 43.10 will be deferred by the total period of absence.
- 43.12. For the purposes of 43.10, the 12-month anniversary includes any unbroken period of higher duties at that classification or higher where the higher duties were consecutive with a date of promotion to that level.

### **Higher Duties and Pay Point Advancement Linked to Performance**

- 43.13. Employees assigned to a higher classification for a continuous period of 12 months will be eligible for consideration for progression to the next highest pay point within the higher classification subject to participating in the Promoting Excellence in Performance Scheme at the higher classification and meeting the eligibility criteria detailed in sub-clause 43.10 and 43.11.
- 43.14. An employee advanced to the next pay point of a higher classification by virtue of this provision does not automatically retain the right to be paid at the same point for any future assignment. This does not preclude a consideration of previous history when determining the appropriate pay point for a temporary assignment at a higher level.
- 43.15. Where an employee is promoted within the CDPP and had previously been temporarily assigned duties at this classification or higher, and:
- a. the period or periods of temporary assignment equates to at least 12 months over the preceding 24-month period as at the date of effect of the promotion; and
  - b. the employee was rated as performing satisfactorily at the higher level during the period or periods of temporary assignment,

the period of temporary assignment will count towards the qualifying period for salary advancement.

### **Performance Improvement Plan**

- 43.16. The procedures for managing poor performance do not apply to employees during probation.
- 43.17. Formal feedback is necessary to ensure that employees receive regular and constructive feedback on their performance and to provide a focus for assessing further training and development needs. Early feedback is particularly important where potential performance concerns emerge. Individual circumstances including health related issues will be taken into account.
- 43.18. Where an employee's performance consistently falls below an acceptable level the Employee and their Supervisor/Manager will implement the procedures for managing poor performance including placing the employee on a Performance Improvement Plan.
- 43.19. A performance improvement plan is a structured assessment plan. The performance improvement plan must have regards for the principles of procedural fairness, natural justice and issues of privacy.
- 43.20. Where an employee was not eligible for pay point advancement as a result of being subject to a Performance Improvement Plan and;
- a. they have improved their performance; and

- b. they are reassessed as performing satisfactorily;

the employee will be eligible for consideration of salary advancement to the next available pay point from the date of reassessment, subject to sub-clause 43.10 and 43.11.

- 43.21. Where the Director determines, on the basis of the assessment at the conclusion of the performance improvement plan that the employee's performance remains unsatisfactory, the Director will commence action to:
- a. Assign the employee to other duties; or
  - b. Reduce the employee's classification; or
  - c. Terminate the employee; or
  - d. Take some other appropriate action.

### **Developing Skilled People**

- 43.22. The CDPP is committed to the provision of a range of developmental opportunities that relate to both the professional skills and the personal attributes of an employee.
- 43.23. Individual learning and development goals will be identified and recorded through an employee's PEP each year.
- 43.24. Both the employee and manager share a mutual obligation to the achievement of the identified learning and development goals by:
- a. The employee seeking out the identified opportunities; and
  - b. The employee's manager facilitating access to those opportunities whilst balancing operational requirements.

### **Studies Assistance**

- 43.25. The CDPP may provide Studies Assistance to approved students. Studies Assistance is regarded as a valuable element of this Agreement consistent with the objectives of the CDPP strategic priority to 'recruit, develop and retain quality people'. The CDPP acknowledges its importance as part of the overall developmental opportunities that are provided to its employees. Participation is encouraged within operational requirements and where there is direct benefit to the Office, taking into account the need to balance this with the individual's personal circumstances.
- 43.26. Approved Studies Assistance may include:
- a. approved paid and unpaid leave (including exam leave) up to 5 hours per week, and/or
  - b. reimbursement of costs up to \$500 per calendar year.

## **44. Managing Excess Employees**

- 44.1. Excess employees will be managed in accordance with the provisions contained in Appendix A1 of this Agreement.

## **45. Unauthorised Absence**

- 45.1. Where an employee is absent from duty without approval, the absence will be treated as an 'unauthorised absence' and will not count as service for any purpose under this Agreement, including remuneration and leave accrual. Any amounts paid to an employee in respect of an unauthorised absence are overpayments and the CDPP will seek to recover those amounts consistent with the Public Governance, Performance and Accountability Act 2013.

## PART H - Application and Operation

### 46. Coverage

- 46.1. This Agreement is made between the Office of the Commonwealth Director of Public Prosecutions and CDPP employees, under Section 172 of the FWA.
- 46.2. Pursuant to Section 53 of that Act, this Agreement covers:
- a. The Director of Public Prosecutions;
  - b. All employees of the CDPP except:
    - i. SES employees; and
    - ii. Employees whose salary is not paid by the CDPP.

### 47. Duration

- 47.1. This Agreement will commence operation seven (7) days after the day it is approved by the Fair Work Commission.
- 47.2. This Agreement will nominally expire three years from the date of commencement.

### 48. Consultation

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

#### **Major Change**

- 48.2. For a major change referred to in sub-clause 48.1 (a):
- a. The employer must notify the relevant employees of the decision to introduce the major change; and
  - b. Sub-clauses 48.3 to 48.9 apply.
- 48.3. The relevant employees may appoint a representative for the purposes of the procedures in this term.
- 48.4. 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.
- 48.5. 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.

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

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

48.8. If a term in this Agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in sub-clause 48.2(a), and sub-clauses 48.3 and 48.5 are taken not to apply.

48.9. 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.

***Change to regular roster or ordinary hours of work***

48.10. For a change referred to in sub-clause 48.1(b):

- a. The CDPP must notify the relevant employees of the proposed change; and
- b. Sub-clauses 48.11 to 48.15 apply.

48.11. The relevant employees may appoint a representative for the purposes of the procedures in this term.

48.12. If:

- a. A relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
- b. The employee or employees advise the employer of the identity of the representative;

The employer must recognise the representative.

48.13. As soon as practicable after proposing to introduce the change, the employer must:

- a. Discuss with the relevant employees the introduction of the change; and

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

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

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

48.16. In this term, "relevant employees" means the employees who may be affected by the changes referred to in sub-clause 48.1.

## **49. CDPP National Consultative Committee**

49.1. There will be a National Consultative Committee (NCC) to facilitate communication and consultation on agency employment and workplace relations matters related to the implementation of this Agreement.

The NCC will:

- meet at least three times a year
- establish and amend Terms of Reference by agreement
- have the number of employees and or employee representatives being equal to or greater than the number of management representatives.

To the extent reasonably practicable, the CDPP will consult with the NCC prior to the CDPP finalising changes to policies, procedures or guidelines and take into account any comments or feedback received in relation to those matters before the NCC. Where agreement cannot be reached on matters before the NCC, the Director will make a final decision.

The NCC will be established within 4 months of the date of effect of this Enterprise Agreement. By way of clarification, the NCC is not a decision making body.

## **50. Employee's Right to Workplace Representation**

50.1. The CDPP recognises:

- a. the legitimate role of unions in the workplace; and
- b. that employees are free to choose whether or not to join a union.

An employee may have an employee representative, who may be a union representative, to represent them in their industrial interests. The CDPP and employee representative will deal with each other in good faith.

The role of employee representatives, including union delegates and other non-union employee representatives, is to be respected and facilitated.

## **51. Procedures for Dealing with Disputes**

51.1 If a dispute relates to:

- a. a matter arising under the Agreement; or
- b. the NES;

this term sets out procedures to settle the dispute

- 51.2 An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this clause.
- 51.3 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.
- 51.4 If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to the Fair Work Commission.
- 51.5 The Fair Work Commission may deal with the dispute in 2 stages:
- 1.1 Fair Work Commission will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
  - 2.1 If the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:
    - i. arbitrate the dispute; and
    - ii. make a determination that is binding on the parties.

*Note* If the Fair Work Commission arbitrates the dispute, it may also use the powers that are available to it under the FWA.

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

- 51.6 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 work health and safety legislation would not permit the work to be performed; or
    - iii. the work is not appropriate for the employee to perform; or
    - iv. there are other reasonable grounds for the employee to refuse to comply with the direction.
- 51.7 The parties to the dispute agree to be bound by a decision made by the Fair Work Commission in accordance with this term.

## **52. Review of Decisions to Terminate Employment**

- 52.1 The sole and exhaustive rights and remedies of an employee in relation to termination of employment are those that the employee enjoys under:
- a. The FWA;
  - b. Other Commonwealth laws (including the Constitution); and
  - c. At common law.
- 52.2 Termination of, or a decision to terminate employment of employees covered by this Agreement,

cannot be reviewed under the dispute prevention and settlement procedures or review of action procedures of this Agreement.

### **53. Delegations**

- 53.1 The Director may, in writing, delegate any or all of the Directors powers or functions under this Agreement (other than under this clause).
- 53.2 A person exercising powers or functions under paragraph 53.1 must comply with any direction of the Director.



## 54. Formal Making of the Agreement

54.1. This Agreement is made under the FWA. Accordingly, it is an agreement between the employer and the employees whose employment is subject to this Agreement.

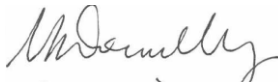
### Employer

Signed for, and on behalf of the Attorney-General, by the Director of Public Prosecutions.

Signed:   
Name: SARAH McNAUGHTON SC  
Title: Commonwealth Director of Public Prosecution  
Agency: Office of the Commonwealth Director of Public Prosecutions  
4 Marcus Clarke Street, Canberra ACT 2601  
Date: ...7./...7./2017

### Employee Bargaining Representative

Signed for, and on behalf of: *Community and Public Sector Union*


Signed:   
Name: Melissa Donnelly  
Title: Deputy Secretary  
Address: 191-199 Thomas St Haymarket  
Date: ...11./...7./2017

### Employee Bargaining Representative

Signed: Susan McKeag (signed electronically)  
Name: Susan McKeag  
Title: Principal Federal Prosecutor/Work Group Coordinator  
Address: Office of the Commonwealth Director of Public Prosecutions  
4 Marcus Clarke Street, Canberra ACT 2601  
Date: 10/07/2017

### Employee Bargaining Representative

Signed for, and on behalf of: *Isaac Morrison*

Signed:   
Name: Hannah Sewell  
Title: Federal Prosecutor  
Address: Level 10, 175 Pinepool St Sydney  
Date: 10./07/2017

# Appendices

## A1. Managing Excess Employees

### Procedures

A1.1 The following procedures will apply to all employees of the CDPP with the exception of:

- a. ongoing employees who are on probation
- b. non-ongoing employees.

### Excess Employee

A1.2 An employee is an excess employee if:

- a. The employee is included in a class of employees employed in the CDPP which comprises a greater number of employees than is necessary for the effective performance of a particular role or function within the CDPP;
- b. The services of the employee cannot be effectively used because of technological or other changes in the work methods of the CDPP or changes in the nature, extent or organisation of the functions of the CDPP; or
- c. Where the duties usually performed by the employee are to be performed at a different locality, the employee is not willing to perform duties at the locality and the Director has determined that these provisions will apply to that employee.

### Consultation Process

A1.3 When the Director is aware that an employee is likely to become excess, the Director will advise the employee of the situation at the earliest practicable time.

A1.4 The Director will hold discussions with the employee to consider:

- a. Measures that could be taken to resolve the situation, including redeployment opportunities for the employee, at or below level, within or outside the CDPP;
- b. Whether termination of employment is appropriate.

A1.5 Where the employee chooses a representative, the Director will hold the discussions with the employee's representative.

### Early Separation

A1.6 Where an employee is likely to be the subject of action under these provisions, the CDPP may provide to that employee an early separation opportunity. This option provides for separation to occur within 14 days of any such opportunity being made available to the employee. It attracts an additional payment of 6 weeks of salary, over and above any other amount paid on separation e.g. redundancy pay. The payment is in lieu of the time that may have reasonably been expected to elapse for the purposes of the consultation and consideration periods (refer A1.3 and A1.8 respectively).

### Declaring an employee excess

A1.7 Within one 1-month after advising the employee that they are likely to become excess, the Director may advise the employee in writing that they are an excess employee. The employee and the Director may agree to a shorter period.

### **Separation with Consent**

A1.8 Where the Director has advised an employee, in writing, that they are excess and the Director proposes to terminate the employee in accordance with subsection 29(3)(a) of the PS Act, the employee will have a maximum period of 1-month in which to consider their position and provide their consent to the termination or request redeployment assistance. The Director will not give notice of termination until the expiration of that 1-month period unless the employee requests an earlier termination date within that 1-month period.

A1.9 Within that month, unless agreed otherwise, an employee consenting to termination must be given information on the:

- a. Amount of redundancy pay, pay in lieu of notice and paid up leave credits;
- b. Amount of accumulated superannuation contributions;
- c. Options open to the employee concerning superannuation;
- d. Taxation rules applying to the various payments; and
- e. Level of assistance up to a maximum of \$500 for financial advice.

### **Redundancy Benefit**

A1.10 An excess employee who consents to termination of their employment and whose employment is terminated by the Director under subsection 29(3)(a) of the PS Act on the grounds that he /she is excess to the requirements of the CDPP is entitled to be paid redundancy pay of a sum equal to 2 weeks of salary for each completed year of continuous service plus a pro rata payment for completed months of service since the last completed year of service subject to paragraph A1.11.

A1.11 An excess employee with at least 2 years' service but less than 3 years will receive 6 weeks' redundancy pay in total. An excess employee with at least 3 years' service but less than 3.5 years will receive 7 weeks' redundancy pay in total.

A1.12 The minimum sum payable will be 4 weeks of salary and the maximum will be 48 weeks of salary.

A1.13 The redundancy benefit will be calculated on a pro rata basis for any period where an employee has worked part-time hours during their period of service and the employee has less than 24 years' full-time service.

### **Period of Notice**

A1.14 Where the excess employee agrees to be terminated, the Director may terminate the employee by giving the required notice of termination. The period of notice will be 4 weeks (or 5 weeks for an employee over 45 years of age with at least 5 years of continuous service).

A1.15 Where an employee is terminated at the beginning of, or within the notice period, the employee will receive payment in lieu of notice as set out in the FWA for the unexpired portion of the notice period. This amount is additional to any early separation payment.

### **Periods of Service**

A1.16 For earlier periods of service to count there must be no breaks between the periods of service, except where:

- a. The break in service is less than 1 month and occurs where an offer of employment with the new employer was made and accepted by the employee before ceasing employment with the preceding employer; or
- b. The earlier period of service was with the APS and ceased because the employee was deemed to have resigned from the APS on marriage under the repealed Section 49 of the *Public Service Act 1922*.

A1.17 Subject to A1.16, service for redundancy pay purposes means:

- a. Service in the CDPF;
- b. Government service as defined in Section 10 of the *Long Service Leave (Commonwealth Employees) Act 1976*;
- c. Service with the Commonwealth (other than service with a Joint Commonwealth-State body corporate in which the Commonwealth has a controlling interest) which is recognised for Long Service Leave purposes;
- d. Service with the Australian Defence Forces;
- e. Service in another organisation where:
  - i. an employee was transferred from the APS to that organisation with a transfer of function; or
  - ii. an employee engaged by that organisation on work within a function is appointed as a result of the transfer of that function to the APS; and
  - iii. such service is recognised for Long Service Leave purposes.

A1.18 Any period of service which ceased through termination on the following grounds will not count as service for redundancy pay purposes:

- a. The employee lacks, or has lost an essential qualification for performing his or her duties;
- b. Non-performance, or unsatisfactory performance of duties;
- c. Inability to perform duties because of physical or mental incapacity;
- d. Failure to satisfactorily complete an entry level training course;
- e. Failure to meet a condition imposed under subsection 22(6) of the PS Act;
- f. Breach of the Code of Conduct;
- g. Any other ground prescribed by the *Public Service Regulations 1999*;
- h. Voluntary retrenchment at or above the minimum retiring age applicable to the employee; or
- i. With the payment of a redundancy benefit or similar payment or an employer financed retirement benefit.

A1.19 Absences from work which do not count as service for Long Service Leave purposes will not count as service for redundancy pay purposes.

### **Rate of Payment – Redundancy Pay**

A1.20 For the purpose of calculating any payment under A1.10 to A1.13, salary will include:

- a. the employee's salary at their regular and ongoing classification; or
- b. the salary of a higher classification, where the employee has been working at the higher level for a continuous period of at least 12 months immediately preceding the date on which the employee is given notice of termination; and
- c. other allowances in the nature of salary which are paid during periods of Recreation Leave and on a regular basis, excluding allowances which are a reimbursement for expenses incurred, or a payment for disabilities associated with the performance of duty.

## **Redeployment**

- A1.21 If an excess employee wishes to be redeployed rather than consent to termination, the Director will take all reasonable steps, consistent with the efficient management of the CDPP, to assign duties to that employee in accordance with Section 25 of the PS Act. In the first instance, this placement will be handled within the employee's home office. The employee should pursue redeployment opportunities at the same time and may look across and outside the CDPP.
- A1.22 The redeployment provisions provide an employee with intensive and immediate redeployment assistance. The CDPP will assist employees throughout the redeployment process by providing, amongst other things, reasonable expenses and time off to attend necessary employment interviews.
- A1.23 The Director may choose to offer the services of a selected outplacement/career management provider at any point in the process (on and from the point the employee is advised that they are likely to become excess).
- A1.24 The CDPP will ask excess employees whether they want to register for APS-wide redeployment. With the agreement of the employee, the CDPP will register the employee's interest in redeployment by submitting their resume to a central electronic database maintained by the APS Commission where that is in operation at that time.
- A1.25 The redeployment process commences from the date the employee is advised, in writing, that they are an excess employee.

## **Salary Maintenance**

- A1.26 Where the Director exercises his power under s. 23 of the PS Act 1999 to reduce the classification of an employee; salary maintenance will be applied from the date of reduction in classification for a period of 6 months. Salary maintenance will be calculated on the basis of the employee's regular and ongoing salary.

## **Compulsory Termination**

- A1.27 Subject to Paragraph A1.31, if after 13 weeks from the date an employee has been identified as an excess employee:
- a. The Director has been unable to assign duties to the employee (at or below level) despite having taken all reasonable steps to do so;
  - b. The employee has not consented to termination;
- The Director may decide to compulsorily terminate the excess employee under s. 29 of the PS Act.
- A1.28 An excess employee must not be compulsorily terminated unless they have:
- a. rejected the opportunity to provide their consent to termination; and
  - b. been given the required period of notice of 4 weeks (or 5 weeks in the case of an employee over 45 years of age with at least 5 years' service).
- A1.29 In practice, notice of termination will be given 4 or 5 weeks before the end of the redeployment period described above to satisfy the requirements of the FWA. If redeployment arrangements are subsequently made after the issue of the notice of termination, the notice will be withdrawn.
- A1.30 An employee with 12 or more years of service who elects for redeployment and whose employment is compulsorily terminated, will receive the same entitlements on termination of employment as employees who consent to termination, except that the redundancy pay will be reduced to account for salary payments received during the redeployment period.

A1.31 An employee with less than 12 years of service, who elects for redeployment, will have the 13-week redeployment period reduced to the period as set out below. In addition, these employees will be entitled to the redundancy benefit as set out in the NES.

| Years of service | Redeployment period | NES redundancy benefit |
|------------------|---------------------|------------------------|
| 1                | 11 weeks            | <b>4 weeks</b>         |
| 2                | 9 weeks             | <b>6 weeks</b>         |
| 3                | 9 weeks             | <b>7 weeks</b>         |
| 4                | 9 weeks             | <b>8 weeks</b>         |
| 5                | 8 weeks             | <b>10 weeks</b>        |
| 6                | 8 weeks             | <b>11 weeks</b>        |
| 7                | 7 weeks             | <b>13 weeks</b>        |
| 8                | 7 weeks             | <b>14 weeks</b>        |
| 9                | 6 weeks             | <b>16 weeks</b>        |
| 10               | 11 weeks            | <b>12 weeks</b>        |
| 11               | 12 weeks            | <b>12 weeks</b>        |

## A2. Classification Structure, Salary Scales and Pay Increases

**Table 2.1 - Classification Structure, Salary Scales and Pay Increases – Legal**

| APS Classification | DPP Designation                   | Pay point | Salary prior to date of commencement | Salary on commencement + 3% | Salary 12 months' post commence + 2% | Salary 18 months' post commence + 1% |
|--------------------|-----------------------------------|-----------|--------------------------------------|-----------------------------|--------------------------------------|--------------------------------------|
| Executive Level 2  | Principal Federal Prosecutor      | 2         | \$130,117                            | \$134,021                   | \$136,701                            | \$138,068                            |
|                    |                                   | 1         | \$122,323                            | \$125,993                   | \$128,513                            | \$129,798                            |
| Executive Level 1  | Senior Federal Prosecutor         | 4         | \$113,220                            | \$116,617                   | \$118,949                            | \$120,138                            |
|                    |                                   | 3         | \$106,307                            | \$109,496                   | \$111,686                            | \$112,803                            |
|                    |                                   | 2         | \$99,573                             | \$102,560                   | \$104,611                            | \$105,658                            |
|                    |                                   | 1         | \$93,044                             | \$95,835                    | \$97,752                             | \$98,730                             |
| APS Level 6        | Federal Prosecutor 2<br>Broadband | 4         | \$82,513                             | \$84,988                    | \$86,688                             | \$87,555                             |
|                    |                                   | 3         | \$76,350                             | \$78,641                    | \$80,213                             | \$81,015                             |
|                    |                                   | 2         | \$73,461                             | \$75,665                    | \$77,178                             | \$77,950                             |
| APS Level 5        |                                   | 1         | \$67,271                             | \$69,289                    | \$70,675                             | \$71,382                             |
| APS Level 4        | Federal Prosecutor 1              | 2         | \$66,371                             | \$68,362                    | \$69,729                             | \$70,427                             |
|                    |                                   | 1         | \$59,996                             | \$61,796                    | \$63,032                             | \$63,662                             |

**Table 2.2 - Classification Structure, Salary Scales and Pay Increases - Non-Legal**

| APS Classification | Pay point | Salary prior to date of commencement | Salary on commencement + 3% | Salary 12 months' post commence + 2% | Salary 18 months' post commence + 1% |
|--------------------|-----------|--------------------------------------|-----------------------------|--------------------------------------|--------------------------------------|
| Executive Level 2  | 3         | \$126,894                            | \$130,701                   | \$133,315                            | \$134,648                            |
| Executive Level 2  | 2         | \$120,426                            | \$124,039                   | \$126,520                            | \$127,785                            |
| Executive Level 2  | 1         | \$112,110                            | \$115,473                   | \$117,783                            | \$118,961                            |
| Executive Level 1  | 2         | \$101,545                            | \$104,591                   | \$106,683                            | \$107,750                            |
| Executive Level 1  | 1         | \$93,044                             | \$95,835                    | \$97,752                             | \$98,730                             |
| APS Level 6        | 3         | \$84,389                             | \$86,921                    | \$88,659                             | \$89,546                             |
| APS Level 6        | 2         | \$76,350                             | \$78,641                    | \$80,213                             | \$81,015                             |
| APS Level 6        | 1         | \$73,461                             | \$75,665                    | \$77,178                             | \$77,950                             |
| APS Level 5        | 3         | \$72,232                             | \$74,399                    | \$75,887                             | \$76,646                             |
| APS Level 5        | 2         | \$68,907                             | \$70,974                    | \$72,394                             | \$73,118                             |
| APS Level 5        | 1         | \$66,835                             | \$68,840                    | \$70,217                             | \$70,919                             |
| APS Level 4        | 3         | \$66,371                             | \$68,362                    | \$69,729                             | \$70,427                             |
| APS Level 4        | 2         | \$63,259                             | \$65,157                    | \$66,460                             | \$67,125                             |
| APS Level 4        | 1         | \$59,996                             | \$61,796                    | \$63,032                             | \$63,662                             |
| APS Level 3        | 3         | \$59,274                             | \$61,052                    | \$62,273                             | \$62,896                             |



| APS Classification | Pay point      | Salary prior to date of commencement | Salary on commencement + 3% | Salary 12 months' post commence + 2% | Salary 18 months' post commence + 1% |
|--------------------|----------------|--------------------------------------|-----------------------------|--------------------------------------|--------------------------------------|
| APS Level 3        | 2              | \$55,521                             | \$57,187                    | \$58,330                             | \$58,914                             |
| APS Level 3        | 1              | \$53,904                             | \$55,521                    | \$56,632                             | \$57,198                             |
| APS Level 2        | 3              | \$53,542                             | \$55,148                    | \$56,251                             | \$56,814                             |
| APS Level 2        | 2              | \$50,511                             | \$52,026                    | \$53,067                             | \$53,598                             |
| APS Level 2        | 1              | \$48,697                             | \$50,158                    | \$51,161                             | \$51,673                             |
| APS Level 1        | 7              | \$47,240                             | \$48,657                    | \$49,630                             | \$50,127                             |
| APS Level 1        | 6              | \$44,520                             | \$45,856                    | \$46,773                             | \$47,240                             |
| APS Level 1        | 5              | \$42,165                             | \$43,430                    | \$44,299                             | \$44,742                             |
| APS Level 1        | 20 years       | \$38,370                             | \$39,521                    | \$40,312                             | \$40,715                             |
| APS Level 1        | 19 years       | \$34,154                             | \$35,179                    | \$35,882                             | \$36,241                             |
| APS Level 1        | 18 years       | \$29,516                             | \$30,401                    | \$31,010                             | \$31,320                             |
| APS Level 1        | Under 18 years | \$25,299                             | \$26,058                    | \$26,579                             | \$26,845                             |

### A3. Travelling Allowance Rates – Capital Cities

| City          | Accomm \$ | Breakfast \$ | Lunch \$ | Dinner \$ | Incidentals \$ |
|---------------|-----------|--------------|----------|-----------|----------------|
| Adelaide      | \$141.00  |              |          |           |                |
| Brisbane      | \$205.00  |              |          |           |                |
| Canberra      | \$158.00  |              |          |           |                |
| Darwin (high) | \$236.00  |              |          |           |                |
| Darwin (low)  | \$144.00  | \$25.90      | \$29.15  | \$49.65   | \$18.75        |
| Hobart        | \$119.00  |              |          |           |                |
| Melbourne     | \$165.00  |              |          |           |                |
| Perth         | \$187.00  |              |          |           |                |
| Sydney        | \$185.00  |              |          |           |                |

## A4. Supported Wage System (SWS)

A4.1 This appendix defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this Agreement.

A4.2 In this appendix:

**“Approved assessor”** means a person accredited by the management unit established by the Commonwealth under the SWS to perform assessments of an individual's productive capacity within the SWS.

**“Assessment instrument”** means the tool provided for under the SWS that records the assessment of the productive capacity of the person to be employed under the SWS.

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

**“Relevant minimum wage”** means the minimum wage prescribed in this Agreement for the class of work for which an employee is engaged.

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

**“SWS wage assessment agreement”** means the document in the form required by the Department of Employment that records the employee's productive capacity and agreed wage rate.

### Eligibility criteria

A4.3 Employees covered by this appendix will be those who are unable to perform the range of duties to the competence level required within the class for which the employee is engaged under this Agreement, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.

A4.4 This appendix does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provision of this Agreement relating to the rehabilitation of employees who are injured in the course of their employment.

## Supported wage rates

A4.5 Employees to whom this clause applies shall be paid the applicable percentage of the relevant minimum wage according to the following schedule provided that the minimum amount payable must be not less than \$82 per week or an amount higher as prescribed by the Fair Work Commission:

| Assessed capacity | % of prescribed rate |
|-------------------|----------------------|
| 10%               | 10%                  |
| 20%               | 20%                  |
| 30%               | 30%                  |
| 40%               | 40%                  |
| 50%               | 50%                  |
| 60%               | 60%                  |
| 70%               | 70%                  |
| 80%               | 80%                  |
| 90%               | 90%                  |

A4.6 Where an employee's assessed capacity is 10 per cent; they must receive a high degree of assistance and support.

## Assessment of capacity

A4.7 For the purposes of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the SWS by an approved assessor, having consulted the employer and the employee and if the employee so desires, a union which the employee is eligible to join.

A4.8 Assessment made under this appendix must be documented in a SWS wage assessment agreement, and retained by the employer as a time and wages record in accordance with the Act.

## Review of assessment

A4.9 The assessment of the applicable percentage should be subject to annual review or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the supported wage system.

## Other terms and conditions of employment

A4.10 Where an assessment has been made, the applicable percentage will apply to the relevant wage rate only. Employees covered by the provisions of the appendix will be entitled to the same terms and conditions of employment as all other workers covered by this Agreement paid on a pro-rata basis.

## Trial Period

A4.11 In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this appendix for a Trial Period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.

- A4.12 During that Trial Period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.
- A4.13 The minimum amount payable to the employee during the Trial Period must be no less than \$82 per week or an amount higher as prescribed by the Fair Work Commission.
- A4.14 Work trials should include induction or training as appropriate to the job being trialled.
- A4.15 Where the employer and employee wish to establish a continuing employment relationship following the completion of the Trial Period, a further contract of employment will be entered into based on the outcome of assessment consistent with this appendix.