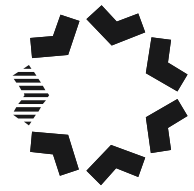


NATIONAL
COMPETITION
COUNCIL



**National Competition
Council
Employee Collective
Agreement 2009 - 2012**



Table of Contents

1 Scope of Agreement	1
Purpose	1
Agreement title.....	1
Parties bound and covered.....	1
Operation of Agreement	1
Delegation.....	2
Flexible employment arrangements.....	2
Definitions.....	2
2 Classification structure, remuneration, and performance	5
Classification structure	5
Non-ongoing employees.....	5
Salary	5
Salary increases	6
Method of salary payment	6
Employer superannuation contributions.....	6
Salary on reduction.....	6
Flexible remuneration packaging (salary packaging)	7
Overtime.....	7
Temporary performance at a higher work value.....	8
Supported wage system	8
Resignation, permanent transfer to another APS agency	9
Death of employee	9
Performance	9
3 Flexible working conditions	10
Hours of work and attendance (refer to definitions in paragraph 1.14).....	10
Flexible working scheme and time off in lieu (TOIL)	10
Unauthorised absence.....	10
Part-time work.....	10
Home-based work	11
4 Leave	12
Principles.....	12
Annual leave	12
Purchased leave.....	13
Personal leave.....	13
Compassionate leave.....	15
Long Service Leave.....	15
Maternity Leave.....	15
Maternal Leave	15

Supporting Partner’s Leave	16
Adoption Leave	16
Other leave	16
Preservation of entitlements and portability of leave	16
Public holidays	17
Year end closedown.....	17
5 Working environment, other working conditions and allowances	19
Objective.....	19
Allowances and variation to allowances or working conditions	19
Travel and related allowances.....	19
Loss, damage and indemnity	19
Employee assistance program.....	20
Participative work practices	20
Grievances and disputes.....	20
Misconduct	20
Excess employees	20
Termination of employment	20
6 Formal acceptance.....	21
Employer.....	21
Employees.....	21
Appendix A Managing unsatisfactory performance of duties	22
Introduction.....	22
Unsatisfactory performance.....	22
Preliminary measures	22
Written warning.....	23
Assessment period.....	23
Where performance has improved	23
Where performance remains unsatisfactory	23
Reassignment	24
Reduction in classification and salary.....	24
Appendix B Flextime scheme and time off in lieu	25
Absences during agreed core hours	25
Attendance arrangements for part-time employees	25
Reversion to standard day.....	26
Appendix C Other leave.....	27
Appendix D Resolving workplace issues and dispute settlement principles	28
Procedures for reviewing decisions and/or actions	28
Dispute settlement procedure: matters arising from Agreement	29

Appendix E Excess staffing situations	31
Voluntary retrenchment.....	31
Redundancy payment and definition of service for redundancy payment.....	32
Salary	33
Retention periods	33
Involuntary retrenchment	34
Income maintenance	34
Review of decision and actions	34

1 Scope of Agreement

Purpose

- 1.1 The purpose of this Agreement is to set out, for its duration, the terms and conditions of employment for those employees it covers.

Agreement title

- 1.2 This Agreement shall be known as the National Competition Council Employee Collective Agreement 2009– 2012.

Parties bound and covered

- 1.3 This Agreement is made under s.327 of the *Workplace Relations Act 1996* between the President and APS 1—EL 2 employees engaged under the *Public Service Act 1999* in the National Competition Council.
- 1.4 An employee temporarily assigned to a Senior Executive Service (SES) position continues to be subject to this Agreement except where it is inconsistent with relevant legislation and binding instructions of the President.

Operation of Agreement

- 1.5 This Agreement comes into operation on the commencement date and nominally expires on 30 June 2012.
- 1.6 This Agreement states the terms and conditions of employment of the employees covered by this Agreement, other than terms and conditions applying under a Commonwealth law.
- 1.7 From the commencement of this Agreement, a party to this Agreement or an employee whose employment is subject to this Agreement shall not pursue further claims for terms and conditions of employment that would have effect during the period of operation of this Agreement, except where consistent with the terms of this Agreement.
- 1.8 This Agreement may only be varied in accordance with Division 8 of Part 8 of the *Workplace Relations Act 1996*.
- 1.9 Employees covered by this Agreement continue to be subject to the provisions of, and regulations or instruments made under, legislation including:
 - *Human Rights and Equal Opportunity Act 1986*
 - *Long Service Leave (Commonwealth Employees) Act 1976*
 - *Maternity Leave (Commonwealth Employees) Act 1973*
 - *Occupational Health and Safety Act 1991*
 - *Public Service Act 1999*
 - *Safety, Rehabilitation and Compensation Act 1988*

- *Sex Discrimination Act 1984*
- *Superannuation Act 1976*
- *Superannuation Act 1990*
- *Superannuation Benefits (Supervisory Mechanisms) Act 1990*
- *Superannuation (Productivity Benefit) Act 1988*
- *Workplace Relations Act 1996.*

1.10 Where any provisions of this Agreement are inconsistent with NCC policies, procedures or guidelines, as varied from time to time, then the terms of this Agreement shall prevail.

Delegation

1.11 The President may, by instrument in writing, delegate to a person or persons any or all of the powers or functions under this Agreement. No such delegation shall prevent the personal exercise by the President of a power or function so delegated.

Flexible employment arrangements

1.12 This Agreement provides for flexible terms and conditions for employees through providing for flexible hours of attendance (paragraph 3.1) and allowances or working conditions not specified in this Agreement (paragraph 5.2).

1.13 Without disadvantaging the employee, the President may supplement the terms and conditions of employment of an employee at any time, following consultation with the employee, or where the employee chooses, their representative.

Definitions

1.14 The following table defines particular terms for the purpose of this Agreement:

Term	Definition
Agreement	the National Competition Council Employee Collective Agreement 2009–2012
anniversary date	the date of an employee's commencement
AIRC	the Australian Industrial Relations Commission
APS	the Australian Public Service
attendance record	auditable attendance record approved by the President
consult, consultation	the exchange of relevant information and discussion between the employees directly affected and the NCC with the objective of contributing substantively to the decision making process and achieving an agreed outcome

Term	Definition
commencement date	the seventh day after the date of a notice issued by the Workplace Authority Director under section 346M of the <i>Workplace Relations Act 1996</i> in relation to this Agreement
Delegate	A person to who the President has delegated powers and functions in accordance with paragraph 1.11
Employee	an employee, whether ongoing or non-ongoing, employed by the NCC under and within the meaning of the <i>Public Service Act 1999</i> as amended; does not include an NCC senior executive service (SES) staff member
employee representative	a representative chosen by the employee to assist them, and includes an employee organisation official or member, family member, friend or professional advisor
Executive Director	the Executive Director of the NCC including a person acting in that position
family member	a person who: <ul style="list-style-type: none"> ○ is related by blood or by marriage, or ○ has a strong affinity with the employee of the nature of a family relationship otherwise falling within this definition, or ○ stands in a bona fide domestic or household relationship with the employee without discrimination as to sexual preference, or ○ is a child or an adopted child of the employee, the employee's spouse, de facto spouse or partner, or the employee's former spouse, de facto spouse or partner
hours of work and attendance	<p>standard working hours: Monday to Friday, 7:21 hours per day, 36.45 hours per week, 73.30 hours per fortnight</p> <p>standard hours of attendance: Monday to Friday 0830-1230 and 1330-1651, public holidays excepted</p> <p>flexible hours of attendance: Monday to Friday 0700-1900</p> <p>core hours of attendance: Monday to Friday: 1000-1200 and 1400-1600</p>

Term	Definition
Manager	the immediate manager/supervisor of the employee
Merit	has the same meaning as defined in section 10(2) of the <i>Public Service Act 1999</i> and the <i>Public Service Commissioner's Directions 2.3(b)</i>
NCC or the Council	the National Competition Council
Pay	has the same meaning as salary
President	the President of the NCC (including a person acting as President), who is the agency head as defined in the <i>Public Service Act 1999</i> , and includes a delegate as provided for in paragraph 1.11
Salary	<p>the employee's rate of salary as agreed in writing between the President and the employee and includes any adjustment for temporary performance at a higher level, salary adjusted pursuant to paragraph 2.8, or salary supplemented pursuant to paragraph 1.13.</p> <p>Where salary sacrifice, purchased leave or other relevant arrangements are in place, the employee's salary for purposes of superannuation, severance and termination payments will be determined as if the salary sacrifice or other arrangements had not been entered into</p>
Transfer	movement between APS agencies (s. 26 of the <i>Public Service Act</i>), or internal assignment of duties (s. 25 of the <i>Public Service Act</i>)
Union	a 'trade union' as defined in s.4 of the <i>Workplace Relations Act 1996</i>

2 Classification structure, remuneration, and performance

Classification structure

2.1 The APS classifications applicable to this Agreement are :

- APS Level 1, APS Level 2, APS Level 3, APS Level 4, APS Level 5, APS Level 6, Executive Level 1, Executive Level 2.

2.2 The minimum or base salary for each classification level is:

APS Level 1	\$36,700
APS Level 2	\$41,600
APS Level 3	\$47,400
APS Level 4	\$52,800
APS Level 5	\$58,900
APS Level 6	\$65,200
Executive Level 1	\$81,000
Executive Level 2	\$94,000

Non-ongoing employees

2.3 Unless otherwise varied in this Agreement or the contract of engagement or commencement, the terms and conditions for a non-ongoing employee shall be those set out in this Agreement for an ongoing employee.

2.4 An employee who is engaged or commences on an irregular or intermittent basis will be paid an additional 20 per cent of the hourly rate of pay payable to an ongoing employee at the same classification. This additional payment is in lieu of annual leave, personal leave and public holidays.

Salary

2.5 The employee's salary as defined in paragraph 1.14 is the salary agreed in writing between the President and the employee and will not be less than the minimum or base salary for the employee's classification level as stipulated in paragraph 2.2 nor will the salary be less than the employee received prior to the commencement of this agreement.

2.6 The agreed salary is the employee's salary until any one of the following occurs:

- the salary is increased in accordance with paragraph 2.8
- the salary is supplemented in accordance with paragraph 1.13.
- the salary is decreased through a reduction in classification in accordance with ss. 23(4) of the *Public Service Act 1999*.

2.7 Where, at the time of engagement, promotion or transfer, an employee's salary is incorrectly set at a salary level other than that which it has been agreed the employee will be paid, the President may determine in writing the payment of the employee's salary at the correct salary level, and any necessary adjustment will be made.

Salary increases

2.8 This Agreement provides for the following increases to NCC employees' salaries as below:

Date	Salary increase
30 September 2009	3%
30 September 2010	3%
30 September 2011	3.5%

2.9 The salary increases listed paragraph 2.8 do not apply to an employee whose salary is set through supplementation (paragraph 1.13) or where performance is not satisfactory.

Method of salary payment

2.10 The Employee will have their fortnightly net salary paid by electronic funds transfer into a financial institution account of their choice. Additional fixed deductions may be made to financial institutions subject to restrictions of the payroll system.

2.11 The fortnightly salary will be calculated according to the following formula:

$$\text{fortnightly salary} = (\text{annual salary} \times 12) \div 313$$

Employer superannuation contributions

2.12 **Commonwealth superannuation schemes:** For an employee who is a member of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS), or the Public Service Superannuation accumulation plan (PSSap), the value of superannuation support will be taken to be 15.4 per cent of the employee's base salary.

2.13 **Other superannuation schemes:** For an employee who is not a member of the CSS, the PSS or the PSSap, the value of the superannuation support will be taken to be the minimum amount required by law. This is generally 9 per cent (as at May 2009).

2.14 **Changing schemes:** Where an employee's remuneration is expressed in terms of a total remuneration package (TRP) any change in superannuation fund that may result in a change in the employer superannuation contribution will have no impact on the agreed TRP. The component of TRP that is received as salary will be reassessed if the employee's level of superannuation support changes.

Salary on reduction

2.15 Where an employee moves to a lower classification, their salary level in the lower classification will be determined by the President.

2.16 Where an employee accepts a position at a lower classification level than the level of the position they previously occupied, they accept the classification level and remuneration of the lower position.

Flexible remuneration packaging (salary packaging)

- 2.17 All NCC employees will have access to flexible remuneration packaging. For more information about remuneration packaging, employees should refer to the *ACCC Salary Packaging Employee Information Guide*.
- 2.18 The NCC will meet reasonable internal administrative costs. Costs and taxes directly associated with the employee's salary packaging must be met by the employee.

Overtime

- 2.19 Paid overtime is time directed to be worked for a specific purpose by an APS 1–6 employee, outside standard hours as defined in paragraph 1.14.
- 2.20 Paid overtime can be worked only by the prior direction of the relevant manager. Where circumstances do not permit prior direction, paid overtime can be subsequently approved by the relevant manager.
- 2.21 All paid overtime must be claimed through the claims for payment of overtime form.
- 2.22 For a part-time APS 1–6 employee, overtime is work performed at the direction of a manager which is not continuous with the employee's agreed or specified hours, or is beyond the total hours over the settlement period specified for the employee.
- 2.23 The employee's salary will be used for the calculation of overtime.
- 2.24 Overtime, whether paid or taken as time off in lieu, will be calculated at the multiplier of time and one half.
- 2.25 Where overtime is worked, the employee can choose an overtime payment or time off in lieu of overtime, except where the employee has reached the maximum carryover of flextime credit (36:45 hours), in which case an overtime payment must be made.
- 2.26 Where overtime is continuous with ordinary duty, overtime payments will be made for time actually worked; there will be no minimum period for payments. Where overtime is not continuous, payment for each separate overtime attendance will be for a minimum of two hours.
- 2.27 Where an employee works overtime they will be entitled to an eight-hour break plus actual travelling time before commencing work without incurring any loss of pay. Where this break is not possible due to operational requirements, the employee will be paid at the multiplier of time and one half worked for any period of work until an eight-hour break occurs.
- 2.28 The manager directing an employee to work overtime should have due regard for the health and safety of the employee. The manager should ensure the employee has a break each five hours of work, and provide taxi vouchers where necessary.
- 2.29 Where an APS 1–6 employee is called into work to meet an emergency outside the flexible hours of attendance specified in paragraph 1.14, the employee will be paid for the period of work and any time reasonably spent in travelling to and from the work place at the multiplier of double time. The minimum payment for such work will be two hours.

- 2.30 Executive level employees are not generally entitled to overtime payment. Employees at these levels are generally required to hold themselves in some degree of readiness for extra duty or recall to duty. However, the President may direct that an executive level employee be paid overtime in exceptional circumstances. Payment is to be made in accordance with paragraphs 2.19-2.31.
- 2.31 For more information about overtime, employees should refer to the *<Overtime and Meal Allowance Policy and Guideline>*.

Temporary performance at a higher work value

- 2.32 The President may assign an employee work at a higher work value on a temporary basis. The use of such temporary assignments will be guided by the principle of merit for selection to perform work of a higher value (see also Public Service Commissioner's Directions 4.7).
- 2.33 Where an employee is required to perform duties of a higher work value for periods of more than 4 weeks, the President may determine a temporary performance allowance to be paid to the employee. For periods of less than 4 weeks no such allowance will be paid.
- 2.34 Where an employee temporarily performs work at a higher work value for a continuous period of 4 weeks or more, the employee will be paid at a rate consistent with the work value standards for the work being performed. An employee may be paid a portion of the rate where they will not be performing the full work value.
- 2.35 While an employee is temporarily performing work at a higher work value, any resulting additional payment is treated as salary for the purpose of determining other allowances.
- 2.36 While an employee is temporarily performing work at a higher work value, the terms of this Agreement for the higher classification (e.g. overtime) will apply to the employee.
- 2.37 Where an employee is temporarily performing work at a higher work value, they will continue to receive any resulting additional payment while on paid leave and during public holidays, for the approved period of the temporary performance at the higher work value.
- 2.38 Where an employee is required to undertake the duties of a Senior Executive Service (SES) position, the pay and conditions of the employee will be determined by the President.

Supported wage system

- 2.39 The supported wage system covers an employee who is unable to perform their duties to the level of competence required because of a disability, and who meets the impairment criteria test for a disability support pension. The President and an accredited assessor will assess and document the employee's capacity to do the job.
- 2.40 Eligible employees will be paid a percentage of the salary that corresponds to their assessed capacity but no less than the minimum prescribed rate set by the Australian Fair Pay Commission, or its successor agency.

Resignation, permanent transfer to another APS agency

2.41 An employee must give thirty days' written notice of their decision to resign from the APS, and thirty days notice for a voluntary move to another APS agency on permanent transfer or promotion; the President can reduce the notice period. A resigning or transferring employee must complete the NCC's separation checklist before their resignation date or transfer date. Where the employee's date of resignation would fall on a non-business day, the effective date of the resignation will be the last business day prior to that non-business day.

Death of employee

2.42 Where an employee dies, or the President directs that an employee will be presumed to have died on a particular date, the President may authorise the payment of the amount of salary, annual leave and allowances to which the former employee would have been entitled had they otherwise ceased employment on resignation or retirement.

Performance

2.43 Managers will facilitate the participation of employees in the performance management framework.

2.44 The performance management framework includes regular constructive feedback between the manager and the employee.

2.45 The performance management framework consists of the following components:

- performance feedback on a regular basis
- performance development, including the regular discussion between the employee and manager on the employee's learning and development needs and career aspirations

2.46 The Executive Director and an employee will meet to discuss the employee's performance, aspirations and development needs at least annually.

2.47 The position description for the position occupied by the employee is the base performance document. 'Satisfactory performance' means performance of duties as described in the performance document that is the right amount, right quality, adequate and competent performance.

3 Flexible working conditions

Hours of work and attendance (refer to definitions in paragraph 1.14)

- 3.1 An employee may choose start, finish and break times within the flexible hours of attendance, subject to their manager's prior agreement.
- 3.2 For a part-time employee, standard hours of work and attendance are those agreed with the President.
- 3.3 An employee will not be required to work more than 10 hours in a 24-hour period.
- 3.4 All employees are required to keep a daily attendance record.
- 3.5 Employees are required to advise a manager of unexpected absences as soon as possible.
- 3.6 An employee should not work more than five hours without a break of at least 30 minutes. Breaks taken from work (e.g. for shopping, coffee, smoking, lunch, socialising) within the work day are not paid breaks.

Flexible working scheme and time off in lieu (TOIL)

- 3.7 The NCC is committed to ensuring that excessive time worked is recognised and appropriately managed, and that where agreed work outcomes are achieved, the employee is appropriately compensated through flextime or TOIL.
- 3.8 An employee at the APS 1-6 classification level may have access to a flextime scheme as set out in Appendix B. Alternatively, and subject to the agreement of their manager, TOIL is available to the employee if the employee is required to work periods of excessive hours to meet agreed work outcomes. The employee should refer to the NCC TOIL Policy.
- 3.9 An employee at the Executive Levels 1 and 2 classification level do not have access to the flextime scheme, but may, with the agreement of the President, have access to TOIL where periods of excessive hours are worked. The employee should refer to the NCC TOIL Policy.

Unauthorised absence

- 3.10 An employee is on unauthorised leave when the employee is absent from duty without the absence being approved either in advance or subsequently. Where an employee is absent without approval, all pay and other benefits provided in this Agreement (including flexible attendance arrangements) will cease to be available until the employee resumes duty or is granted approved leave.

Part-time work

- 3.11 An employee who is engaged or commences on a part-time basis works fewer than 36:45 hours per week. Part-time hours included in part-time work arrangements will be within the flexible hours of attendance as specified by this Agreement.

- 3.12 An employee will be able to enter part-time work agreements with the President, where the President recognises that such an agreement will be compatible with the NCC's operational needs.
- 3.13 An employee may initiate proposals for part-time work. The President will not unreasonably oppose requests for part-time work. Within the six weeks prior to the birth of the employee's child, the employee will have access to part-time work if requested. An employee returning from maternity, adoption or supporting partner leave will have access to part-time work for a reasonable period following their return. This will be reviewed after the child's second birthday, or in the case of an adopted child on the second anniversary of the placement of the child.
- 3.14 Remuneration and other benefits for a part-time employee will be calculated on a pro rata basis apart from those allowances of a reimbursement nature, where a part-time employee will receive the same amount as a full-time employee. The ordinary hourly rate of salary for a part-time employee will be the same as for an equivalent full-time employee.
- 3.15 A full-time employee who becomes a part-time employee is able to revert to full-time hours.
- 3.16 The President and employee may agree to vary specified hours of work, including between part-time and full-time and vice versa. These considerations will be based on the operational needs of the work area and will take into account the personal needs of the employee.
- 3.17 No employee will be required to vary part-time hours agreed during the time of the part-time agreement.

Home-based work

- 3.18 The NCC supports the practice of working from home as part of its flexible work arrangements.
- 3.19 Approval of applications for home-based work will be determined by the President on a case by case basis. The NCC's organisational needs are a key factor in the consideration of such applications.
- 3.20 For more information on home-based work the employee should refer to the Home Based Work Guideline.

4 Leave

Principles

- 4.1 Employees are encouraged to take their annual leave entitlement.
- 4.2 Except as directed by the President, periods of leave without pay not counting as service, and unauthorised absences, will not count in calculating annual, long service and personal leave accruals.
- 4.3 Where any designated public holiday for which an employee is entitled to payment occurs during any period of annual or personal leave, the period of the holiday is not deducted from the employee's leave entitlement.

Annual leave

Accrual

- 4.4 An employee will accrue annual leave in real time each fortnight based on an accrual rate of 147 hours for each year of service.
- 4.5 Fortnightly accrual will be calculated as follows:
 - A x B
 - where
 - A = number of hours that count as service in a fortnight
 - B = accrual factor of 0.076628 hours (147 divided by 1918.35)
- 4.6 An employee in receipt of employee compensation for more than 45 weeks will cease to accrue annual leave. An employee who is on a graduated return to work program and who has received compensation for a total of 45 weeks will accrue annual leave credits on a pro rata basis for hours actually worked.

Approval

- 4.7 Annual leave can be taken as it accrues, subject to the approval of an employee's manager.
- 4.8 Annual leave must be accrued before it can be taken; it cannot be taken in anticipation of future accrual.

Excess annual leave

- 4.9 Any annual leave entitlement in excess of 55 days is called 'excess annual leave'.
- 4.10 Where an employee has excess annual leave on 1 October in each year, the employee and their manager will agree on a plan to reduce the leave to below 55 days credit within six months.
- 4.11 If the employee has excess annual leave remaining on 1 April, the employee can be directed to take leave in accordance with s.236 of the *Workplace Relations Act 1996*.

- 4.12 Where an employee has been on compensation leave and has commenced a graduated return to work program, they will not be directed to be on leave until three months after returning to their pre-injury hours of work.

Part-time employees

- 4.13 For part-time employees, where an annual leave credit accrued in a year provides less than the amount of annual leave available to an equivalent full-time employee, the employee may elect to take the balance of the period of leave available to an equivalent full-time employee as leave without pay. Leave without pay in this instance will count as service for all purposes.

Purchased leave

- 4.14 All ongoing NCC employees are eligible to apply for purchased leave of between one and four week-long blocks, according to the following schedule:

Purchased leave applied for on or before:	Maximum period that can be purchased for the calendar year:
15 December (previous calendar year)	4 week-long blocks
15 March	3 week-long blocks
15 June	2 week-long blocks
15 September	1 week-long block

- 4.15 Purchased leave must be used during the calendar year within which it has been purchased. Any outstanding monies will be reconciled at the end of the purchased leave year.
- 4.16 For more information on purchased leave, the employee should refer to the Purchased Leave Guideline.

Personal leave

Accrual

- 4.17 Fortnightly accrual of personal leave will be calculated as follows:

$$A \times B$$

where

A = number of hours that count as service in a fortnight

B = accrual factor of 0.076628 hours (147 divided by 1918.35)

- 4.18 On engagement, an ongoing full-time employee will be credited with 147 hours personal leave, based on approved weekly hours, and from their first anniversary date will acquire personal leave in real time each fortnight on an accrual rate of 147 hours for each year of service. Ongoing part-time employees will be credited with personal leave on a pro rata basis for the proportion of standard working hours they are actually working.

-
- 4.19 From engagement, non-ongoing employees with a term of less than twelve months, will accrue personal leave in real time each fortnight.
- 4.20 Personal leave accruals of a non-ongoing employee carry over personal leave from an immediately previous NCC engagement.
- 4.21 An employee in receipt of employee compensation for more than 45 weeks will cease to accrue personal leave. An employee who is on a graduated return to work program and who has received compensation for a total of 45 weeks will accrue personal leave credits on a pro rata basis for hours actually worked.
- 4.22 Personal leave credits and debits will be maintained in hours and minutes. Unused personal leave credits will accumulate.

Approval

- 4.23 Subject to the President's approval, personal leave may be taken for one or more of the following reasons:
- inability to perform duties due to a medical condition or illness
 - to attend medical examinations, tests and treatment
 - to care for a family member on an unforeseen short-term or emergency basis
 - as supporting partner's leave (paragraphs 4.41-4.42)
 - the death of a family member.
- 4.24 Single absences of less than one day can be taken as personal leave, or leave under the flexible working arrangements.
- 4.25 An employee is obliged to inform the NCC of the reason for, and likely duration of, absences for which personal leave is sought. An employee may be required to support an application for personal leave with satisfactory evidence. In the case of an application for compassionate leave, the employee must provide supporting evidence of the illness, injury or death.
- 4.26 An employee who is sick or required to care for a sick family member for one day or longer while on annual leave or long service leave and who produces satisfactory medical evidence may apply for personal leave to be approved for that period instead of the annual or long service leave previously approved. Annual leave or long service leave will be re-credited to the extent of the number of full days of personal leave granted.
- 4.27 Where an employee's entitlement to paid personal leave is exhausted, the President may approve additional leave as unpaid personal leave or half pay personal leave if the employee is sick. The President will determine whether unpaid personal leave counts as service.
- 4.28 Where an employee's entitlement to paid personal leave is exhausted, the President may approve two days of unpaid carer's leave for each occasion when a member of the employee's immediate family, or a member of employee's household, requires care or support because of (a) a personal illness, or personal injury, affecting the member, or (b) an unexpected emergency affecting the member.
- 4.29 Where an employee takes leave without pay not to count as service, personal leave credits will be adjusted on a pro rata basis.

- 4.30 An employee will not be entitled to paid personal leave while also taking paid leave under the *Maternity Leave (Commonwealth Employees) Act 1973*, maternal leave, supporting partner's leave or adoption leave.
- 4.31 Accrued personal leave credits will not be paid out on separation from the NCC.

Compassionate leave

- 4.32 An employee is entitled to two days of compassionate leave for each occasion when a member of the employee's immediate family, or member of the employee's household (a) contracts or develops a personal illness that poses a serious threat to his or her life; or (b) sustains a personal injury that poses a serious threat to his or her life; or (c) dies.
- 4.33 For casual employees, compassionate leave is unpaid leave.

Long Service Leave

- 4.34 The minimum period of Long Service Leave which may be granted is seven calendar days. For any period of long service leave the final date will be the day before the employee returns to duty or commences another leave type.

Maternity Leave

- 4.35 An employee who is entitled to 12 weeks paid leave in accordance with the *Maternity Leave (Commonwealth Employees) Act 1973* (hereafter referred to as the Maternity Leave Act) may elect to spread the payment for the period of paid maternity leave up to a period of 24 weeks at a rate of no less than half their salary. Twelve weeks of paid maternity leave counts for service for all purposes.
- 4.36 In accordance with the Maternity Leave Act an employee may furnish a certificate given by a medical practitioner certifying that she is fit for duty within the period of six weeks before the expected birth of her child. The delegate may give the employee permission to continue to perform duty up until two weeks before the expected birth of her child on the basis of certification of fitness. In the last two weeks the President will need to be satisfied additionally that it is appropriate, in all the circumstances, for the employee to remain on duty.

Maternal Leave

- 4.37 An employee who is entitled to paid leave in accordance with the Maternity Leave Act may take up to an additional 2 weeks paid maternal leave which is to be taken at the end of and continuous with the 12 weeks of paid maternity leave provided for by the Maternity Leave Act.
- 4.38 The employee may elect to spread the payment for the period of paid maternal leave up to a period of 4 weeks at a rate of no less than half their salary.
- 4.39 A maximum period of combined paid maternity leave and maternal leave of 14 weeks counts for service for all purposes.
- 4.40 The total period of combined paid maternity leave, maternal leave and unpaid maternity leave is not to exceed 52 weeks.

Supporting Partner's Leave

- 4.41 An employee with 12 months continuous service in the APS who is not the primary care giver to a dependent child may take up to 10 days paid supporting partner's leave and up to 5 days from personal leave credits. Supporting partner's leave is to be taken within 6 weeks of the date of the birth or date of adoption of the dependant child. The leave can only be taken on full pay.
- 4.42 An employee without 12 months continuous service in the APS who is not the primary care giver to a dependent child may take up to 5 days from personal leave credits. Supporting partner's leave is to be taken within 6 weeks of the date of the birth or date of adoption of the dependant child.

Adoption Leave

- 4.43 An employee with 12 months continuous service in the APS who is the primary care giver to an adopted child may take adoption leave.
- 4.44 Adoption leave applies where the child is under the age of 15 years and the adoptive child has not lived with the employee for a period of six months or more immediately before the adoption. The adoptive child cannot be a child of the employee or the employee's partner, unless that child had not been in the custody and care of the employee or the employee's partner for a continuous period of six months or more immediately before the adoption.
- 4.45 Eligible employees may take 12 weeks paid leave from the date of placement of the child and up to 40 weeks unpaid leave. Adoption leave may be taken up to a period of 24 weeks at a rate of no less than half their salary but any period of leave in excess of 12 weeks will not count as service for any purpose.
- 4.46 The total period of combined paid adoption leave and unpaid adoption leave is not to exceed 52 weeks.
- 4.47 An employee who has insufficient annual leave credits may take 2 days unpaid pre-adoption leave to attend interviews or examinations required to obtain approval to adopt a child.
- 4.48 An employee must provide written notice to the President of their intention to apply for adoption leave, and the date the child is expected. Documentary evidence of approval for adoption must be submitted when applying for this leave.

Other leave

- 4.49 The President may approve other leave, with or without pay, for any purpose which the President considers to be in the interests of the NCC and/or the Commonwealth.
- 4.50 An employee on leave without pay who wishes to return to work prior to the agreed return date is required to give four weeks notice of their intention to return to work.
- 4.51 Appendix C contains an indicative listing of purposes for which the President may approve other leave.

Preservation of entitlements and portability of leave

- 4.52 All leave entitlements accrued by NCC employees by virtue of their employment in the APS before the commencement date of this Agreement are unaffected by this Agreement.

- 4.53 Where an employee joins the NCC on or after the commencement date from an employer staffed under the *Public Service Act 1999*, the *Parliamentary Services Act 1999* or from the ACT Government Service, accrued annual leave and personal/carers leave (however described) will be transferred, provided there is no break in continuity of service. In exceptional circumstances, the President may agree to the transfer of accrued annual leave and personal/carers leave for an employee from a State or Territory government agency, provided there is no break in continuity of service.
- 4.54 Recognition of other forms of accrued leave, except leave which is covered by legislation listed in paragraph 1.9, will be by negotiation between the President and the individual employee.

Public holidays

- 4.55 An employee will observe the following public holidays each year and will be paid salary as if that day were not a public holiday:
- (a) 1 January (New Year's Day) or, if that day falls on a Saturday or Sunday, the following Monday
 - (b) 26 January (Australia Day) or, if that day falls on a Saturday or Sunday, the following Monday
 - (c) Good Friday and the following Saturday and Monday
 - (d) 25 April (Anzac Day)
or another day substituted by state or territory governments
or where a day is not substituted by a state or territory Government, the Monday following 25 April.
 - (e) in each state and territory, the day observed to celebrate the anniversary of the birthday of the Sovereign
 - (f) the day variously called 'Eight Hour Day', 'Labor Day', 'Labour Day', or 'May Day' as proclaimed by state or territory governments
 - (g) 25 December (Christmas Day) or, if that day falls on a Saturday or Sunday, 27 December
 - (h) 26 December (Boxing Day) or, if that day falls on a Saturday or Sunday, 28 December
- 4.56 State, Territory and local public holidays will be observed by employees who work in that State, Territory or locality when these days are declared State or Territory law or gazetted in the relevant State or Territory government gazette.
- 4.57 An employee and the President may agree to substitute any holiday prescribed in paragraph 4.55 above for a cultural or religious day of significance to the employee.
- 4.58 Employees will be paid at the rate of salary applicable on that day, had the day not been a public holiday.

Year end closedown

- 4.59 Employees are not required to attend for duty during the NCC's year end closedown period, unless directed by the Executive Director. The Executive Director may only give such a direction to meet essential operational requirements.

- 4.60 The closedown period commences from 12 noon on the last working day before Christmas Day, with resumption on the first working day after New Year's Day.
- 4.61 An eligible employee required to attend duty during this closedown period will attract overtime.
- 4.62 Closedown days will count for service for all purposes.
- 4.63 An employee will not have annual leave or personal leave deducted during the closedown period.

5 Working environment, other working conditions and allowances

Objective

5.1 These provisions aim to:

- ensure that an employee is not financially disadvantaged by costs reasonably incurred in the course of their official duties
- promote employee satisfaction and welfare, and organisational productivity, through a cooperative working relationship
- facilitate effective career transition for excess employees while meeting organisational needs.

Allowances and variation to allowances or working conditions

5.2 The President may authorise the payment of an allowance, the access to a condition of service, or the reimbursement of an expense to an employee, where the allowance, condition or expense is reasonably and unavoidably incurred in carrying out the NCC's business. Those allowances or conditions shall be dispensed as determined by the President.

Travel and related allowances

5.3 When travelling on NCC business, the standard for air travel is economy.

5.4 The employee will be reimbursed for expenditure on meals and accommodation incurred while on approved travel. The maximum meal and accommodation costs to apply to each city will be guided by the annual taxation determination for reasonable travel. If, while on approved travel, the employee incurs expenses for meals and accommodation that exceeds the maximum rates the employee will be reimbursed on the provision of appropriate receipts.

5.5 The President may authorise an employee to use a private motor vehicle for NCC business. Where such permission is granted, the employee will be reimbursed at a rate guided by the annual taxation determination for motor vehicle allowance. Where the employee can demonstrate that the allowance payable is insufficient to meet reasonable expenses incurred in the use of the private motor vehicle for NCC business, the President may approve the payment of an additional allowance.

5.6 No additional allowance is payable should a person or persons whose travel costs would otherwise have been met by the NCC accompany the employee in their private vehicle.

Loss, damage and indemnity

5.7 The President may approve reimbursement to an employee for loss or damage to clothing or personal effects which occurs in the course of the employee's work.

5.8 The President has the discretion to reimburse an employee for expenses reasonably and unavoidably incurred in carrying out the NCC's functions.

Employee assistance program

- 5.9 Employees and their immediate family will have access to the NCC's Employee Assistance Program (EAP) for personal or work related problems.

Participative work practices

- 5.10 The NCC is committed to consulting employees in a timely and appropriate manner about workplace matters affecting them.
- 5.11 The Executive Director and employees meet weekly, so far as it is practical, to discuss workplace issues.

Grievances and disputes

- 5.12 The NCC and the employee agree that should any grievance or dispute arise between them, to follow the procedures set out in Appendix D.

Misconduct

- 5.13 The procedures for determining allegations of misconduct and for dealing with whistleblowing disclosures are established under the *Public Service Act 1999*. They do not form part of this Agreement.

Excess employees

- 5.14 The excess employee provisions outlined in Appendix E are designed to facilitate effective career transition for excess employees while meeting organisational needs.

Termination of employment

- 5.15 The sole and exhaustive rights and remedies of an employee in relation to termination of employment are those that the employee enjoys under:
- Division 4 of Part 12 of the *Workplace Relations Act 1996*
 - other Commonwealth laws (including the Constitution)
 - common law.
- 5.16 Termination of, or a decision to terminate employment, cannot be reviewed under the review of action and dispute settlement procedures addressed in Appendix D.
- 5.17 Nothing in this agreement prevents the President from terminating the employment of an employee for serious misconduct, without further notice or payment in lieu, in accordance with section 661 of the *Workplace Relations Act 1996*, subject to compliance with the procedures established by the President for determining whether an employee has breached the code of conduct under section 15 of the *Public Service Act 1999*.

6 Formal acceptance

This Agreement is made and approved under section 327 of the *Workplace Relations Act 1996*. Accordingly, it is an agreement between the employer and the employees whose employment is subject to this Agreement.

Employer

Signed on behalf of the President, National Competition Council.

Name	Address	Signature	Date
Robert John Feil (Executive Director)	PO Box 250 Melbourne VIC 3001		23 June 2009

Employees

Signed by the employees of the National Competition Council.

Appendix A Managing unsatisfactory performance of duties

Introduction

- A.1 Recognising that unsatisfactory performance of duties may arise, in fairness to all employees, when they do arise these issues will be addressed promptly, with fairness, sensitivity, and in a consistent manner.
- A.2 The objective of the following provisions is to improve performance.
- A.3 It is the duty of all managers to regularly communicate with staff about performance requirements and to provide feedback on their performance.
- A.4 The following provisions do not apply to employees on probation, or non-ongoing employees.

Unsatisfactory performance

- A.5 Acceptable standard of performance refers to both qualitative and quantitative aspects of work performance. It refers to what is acceptable, qualitatively and quantitatively, having regard to the nature of the work, the level of the position and the skills and experience of the employee.
- A.6 Unsatisfactory performance occurs when an employee consistently fails to work at an acceptable standard.
- A.7 Unsatisfactory performance must not be confused with misconduct. Misconduct is generally seen to be a failure to observe workplace rules. The following procedures must not be used for dealing with misconduct.

Preliminary measures

- A.8 It is the manager's responsibility to ensure that each of the following steps have been taken before issuing a written warning to the employee:
 - (a) the employee has been provided with a written articulation of the acceptable standard of performance, and current position documentation
 - (b) the employee has been provided with an opportunity to explain whether personal circumstances are impinging on performance
 - (c) the employee has been advised of sources of advice or support.

Written warning

- A.9 In circumstances where performance remains unsatisfactory the following process, aimed at improving performance, must be followed.
- A.10 The manager should provide a written warning notice. The warning should specify each of the following:
- (a) the acceptable standard of work
 - (b) how the employee's work does not meet that standard
 - (c) what the employee must do to meet that standard
 - (d) how long the employee has to meet the required standard (*specified period*)
 - (e) the consequences if the employee does not meet the required standard
 - (f) the employee's right to request a review of action (paragraphs D.5–D.12). A review of action inquiry can run concurrently with the process to manage unsatisfactory performance.

Note: the *specified period* in paragraph A.10 (d) generally will be no less than one month and no more than three months. The type of duties to be performed typically determines the length of the specified period. In a processing role where duties require that the employee meet daily or short-term timeframes (e.g. personal assistants role, various corporate jobs) the specified period would be shorter. In a role where duties require the employee to produce work over a longer period (e.g. investigative, research or analytical role) the specified period may need to be longer.

- A.11 A copy of this warning will be provided to the President and, where it is not issued by the Executive Director, the Executive Director.

Assessment period

- A.12 The employee has the period specified in paragraph A.10(d) to meet the required standard before further action will be taken.
- A.13 During this period the manager or Executive Director will assess the employee's performance at least on a fortnightly basis and prepare a written progress report on the employee's performance
- A.14 The employee must be given a copy of each report and the opportunity to provide comments on it.

Where performance has improved

- A.15 If the employee has met the required standard of performance by the end of the specified period, no further action will be taken. The employee will be informed in writing that they meet the required standard of performance and that the process has concluded.

Where performance remains unsatisfactory

- A.16 If the employee's performance fails to meet the required standard by the end of the specified period the employee will be asked to show cause within seven days as to why further action should not be taken against them.

A.17 Further action includes one or more of the following:

- (a) assignment of more suitable duties
- (b) reduction in classification
- (c) termination of employment on the grounds of unsatisfactory performance of duties.

Reassignment

A.18 Assignments to other duties shall be processed in accordance with section 25 of the *Public Service Act 1999*.

Reduction in classification and salary

A.19 An action pursuant to section 23(4)(e) of the *Public Service Act 1999* will reduce an employee's classification.

A.20 A notice of reduction takes effect after one month unless the employee lodges an appeal.

A.21 If an employee is reduced in classification without consent, the employee may lodge an appeal to the President within 14 days of the notice of reduction on one or both of the following grounds:

- (a) they met the required standard of performance
- (b) there was a serious defect in the application of the above procedure.

A.22 Where the employee lodges such an appeal they may not also seek to have the matter considered under either the review of action (paragraphs D.5–D.12) or dispute settlement procedures (paragraphs D.14–D.15).

A.23 The President will consider the matter and decide to confirm or revoke the notice of reduction in classification within four weeks from the date the appeal was lodged. If the appeal is successful, the notice of reduction in classification is revoked without detriment to the employee.

A.24 Where an employee lodges an appeal and the President's decision is upheld, the reduction takes effect on the day the appeal is dismissed or withdrawn or one month after the notice is issued, whichever is the later. During the course of an appeal, the employee will remain in their current job. If the employee fails to appear at a scheduled hearing of the appeal, the President may dismiss the appeal.

A.25 An employee may also seek review of the decision under the *Public Service Act 1999*. The President may, subject to the complaint and the outcome of the investigation being recorded in writing, choose to adopt the review and its outcome undertaken under paragraphs A.21–A.24 as a primary review for the purposes of the Public Service Regulations.

Appendix B Flextime scheme and time off in lieu

- B.1 The NCC is committed to ensuring that excessive time worked is recognised and appropriately managed, and that where agreed work outcomes are achieved, staff are appropriately compensated through flextime or time off in lieu (TOIL).
- B.2 All employees at classifications APS 1–6 may have access to a flextime scheme as follows.
- (a) Actual hours of attendance are reconciled to the standard weekly hours of work over a settlement period of four weeks. Where actual hours of attendance do not equal the standard hours applying to the settlement period, the credit or debit balance will be transferred to the next settlement period.
 - (b) Credit carry-over for full-time employees is available up to a maximum of 36 hours 45 minutes (five days). Where, because of unavoidable operational requirements, an employee has accumulated a credit carry-over of more than five (5) days, the manager may agree to additional credit carry-over providing steps are taken to reduce the credit to five days or less by the end of the next settlement period.
 - (c) Debit carry-over for full-time employees is available up to a maximum of 14 hours 42 minutes (two days). Where an employee has accumulated in excess of the allowable debit carry-over at the end of a settlement period, the manager and employee may agree to a debit carry-over of more than two days provided steps are taken to reduce the debit to two days or less by the end of the next settlement period. Alternatively, at the employee's request, the excess hours may be taken without pay and deducted from the next available pay.
 - (d) Credits accumulated are not able to be cashed out.
 - (e) Attendance credits and debits accrued prior to the date of this Agreement will carry over to the new flextime scheme.
- B.3 Under this Agreement, TOIL is available to staff who are required to work periods of excessive hours to meet agreed organisational objectives.
- B.4 Employees at classifications Executive Level 1 and Executive Level 2 shall not have access to the flextime scheme but may, with the agreement of their manager, have access to TOIL where periods of excessive hours are worked according to the NCC TOIL Policy.
- B.5 Employees at classifications APS 1–6 shall have the option of the flextime scheme or time in lieu in accordance with the NCC's TOIL Policy.

Absences during agreed core hours

- B.6 All absences from duty during agreed core hours must be approved by the employee's manager. Where possible, such approval should be obtained in advance of the absence. Excluding other forms of approved leave, absences under agreed attendance arrangements must not exceed five (5) days during a four-week period.

Attendance arrangements for part-time employees

- B.7 The attendance arrangements for part-time employees will be agreed between the employee and the manager on an individual basis.

- B.8 The maximum credit carry-over for part-time employees who participate in the flexitime scheme will equate to the agreed weekly hours of work. The maximum debit carry over will equate to two-fifths of the agreed weekly hours of work.

Reversion to standard day

- B.9 Managers may revert an employee to the hours of the standard day for a period where:
- (a) it is necessary to meet essential work requirements; or
 - (b) it is reasonable because an employee has failed to comply with the agreed attendance arrangements.
- B.10 Where a manager reverts an employee to standard hours for the reason in paragraph B.9(b), the manager and the employee may agree on the circumstances under which the employee could participate in the flexitime scheme or the time in lieu arrangement again. Attendance credits and debits accrued at the date that the employee reverts to standard hours will carry over upon resumption of participation in the flexitime scheme or time in lieu arrangement.
- B.11 Employees at classifications APS 1–6 who do not wish to participate in the flexitime scheme specified in Attachment B may opt to work standard hours of 0830 to 1230 and 1330 to 1651 Monday to Friday.
- B.12 The President is to be informed of all reversion decisions including where employees opt to work standard hours.

Appendix C Other leave

- C.1 The following is an indicative listing of purposes for which the employer may approve other leave.
- C.2 Other leave with pay may be granted by the employer in, but not limited to, the following circumstances:
- (a) approved training/study purposes
 - (b) jury service
 - (c) defence reservist for enlistment, peacetime training and development
 - (d) attendance at the funeral of a friend or family member
 - (e) participation in major international sporting events
 - (f) illness where the employee is unfit for duty due to a war-caused medical condition as specified by the Department of Veterans' Affairs
 - (g) participation in State Emergency Service and other emergency volunteer organisation activities
 - (h) attendance at industrial proceedings associated with this Agreement
 - (i) a disaster significantly affecting the employee
 - (j) ceremonial purposes for employees of Aboriginal or Torres Strait Islander descent.
- C.3 Other leave without pay may be granted by the employer in, but not limited to, the following circumstances:
- (a) defence service
 - (b) full time study commitments
 - (c) parental leave (including for adopted children)
 - (d) ceremonial purposes (Eligible employees are identified as, or accepted as, a member of the Aboriginal or Torres Strait Islander community. Leave is to enable the employee to meet traditional law or customs including the death of an immediate or extended family member. Reasonable paid bereavement leave may also be available)
 - (e) days of cultural or religious significance for Employees
 - (f) accompanying a spouse on a posting
 - (g) meeting carer commitments
 - (h) non-APS employment or work in the interests of the APS
 - (i) engagement in work or employment in the interests of defence or public safety
 - (j) for other purposes where other types of paid leave have been exhausted.
- C.4 Unless the employer otherwise decides, a period of leave granted without pay does not count as service for any purpose.
- C.5 A period of leave granted with pay counts as service for all purposes.
- C.6 However, leave with or without pay does not count as service for any purpose if the employee does not resume duty in the APS at the end of the period of the leave.

Appendix D Resolving workplace issues and dispute settlement principles

- D.1 It is recognised that disagreements arising from this Agreement and from decisions affecting the employee may sometimes occur. The employer and employee agree to work co-operatively to resolve any such disagreements as far as practicable at the workplace level by:
- (a) promptly addressing those disagreements as they arise in accordance with the procedures below
 - (b) discussing those disagreements in a fair, honest and constructive way, and
 - (c) seeking to resolve those disagreements wherever possible without recourse to third parties.
- D.2 Where disagreements over matters covered by this Agreement arise, the employee agrees that work will continue while the procedures outlined below are applied. In instances where a genuine safety issue is involved, the employee will not be required to work in an unsafe environment, but will undertake suitable alternative work until the issue is resolved.
- D.3 At all stages of the procedures outlined in the paragraphs below, the employee may choose to be accompanied or represented by a person of his or her choice. Where the employee chooses to be accompanied or represented, they will inform their immediate manager and/or the relevant level of management.
- D.4 Matters outside this Agreement, including NCC policies, procedures and guidelines mentioned in this Agreement are not subject to the dispute settlement procedure.

Procedures for reviewing decisions and/or actions

- D.5 Where disagreements arise over decisions and/or actions affecting one or more employees, every effort will be made to resolve the matter through discussion between the relevant manager and the employees concerned. In circumstances where the matter relates to the behaviour of the manager and the employee considers that it would be inappropriate to discuss the matter at that level, the employee may discuss the matter with another manager.
- D.6 The employee is expected to raise issues of concern with his/her manager as soon as practicable. Managers are expected to respond as soon as possible.
- D.7 It is agreed that, in general, the workplace issue will be discussed no later than two working days of the matter being raised by the employee.
- D.8 Where the matter remains unresolved after discussions with a person's manager, the employee may refer the matter to the Executive Director who may appoint a mutually agreed independent person from within or outside the National Competition Council to assist in resolving the matter and/or to investigate the matter and make recommendations to the President. The decision to seek the assistance of an independent person is an option to be determined on a case by case basis with the agreement of the employee.
- D.9 The final internal adjudicator will be the President. In reaching a decision on the matter, the President will take account of the recommendations of the independent person where such a person has been engaged to assist resolution of the disagreement. The President will advise the parties to the disagreement in writing of his decision in respect of the matter and the reasons for

that decision, including (but subject to appropriate privacy safeguards) the outcome of any investigation of the matter. The President will endeavour to resolve the workplace issue within three months.

- D.10 The President may delegate responsibility as the final internal adjudicator to another person. However, the President will not so delegate this responsibility to a person who has had prior direct participation in dealing with the disagreement.
- D.11 At any stage throughout this process either party may seek the assistance of the Employee Assistance Program.
- D.12 Nothing in this Agreement prevents an employee from exercising their right of review of APS action relating to their employment as provided for in section 33 of the Public Service Act or Part 5 of the Public Service Regulations. The employer may, subject to the complaint and the outcome of the investigation conducted under this procedure for reviewing decisions and/or actions being recorded in writing, choose to adopt the investigation (and its outcome) as an initial review for the purposes of the Public Service Regulations.
- D.13 Where the right of review provided in the Public Service Act and the Public Service Regulations is exercised, and does not fall for want of jurisdiction, the employee will have no right of review with respect to that matter under this agreement.

Dispute settlement procedure: matters arising from Agreement

- D.14 For any dispute and issues over matters covered by this Agreement that are not reviewable actions within the meaning of the Public Service Regulations, the following procedures will apply, in accordance with section 709 of the Workplace Relations Act 1996.
- D.15 Reference in the following paragraphs to 'party' or 'parties' refers to the parties to the dispute: the employer and the employee.
- (a) Employee will discuss the matter with their immediate manager. In circumstances where the matter may relate to the behaviour or actions of the immediate manager and the employee considers that it would be inappropriate to discuss the matter at that level, the employee may discuss the matter with the next level of management.
 - (b) If the matter is not resolved at that level, the parties to the dispute may arrange further discussions involving more senior levels of management, as appropriate.
 - (c) If the matter remains unresolved after the consultation process has been exhausted, it is agreed that the parties to the dispute may refer the matter to a mutually agreed independent mediator for resolution:
 - (i) the mediator should initially be satisfied that the persons concerned have genuinely undertaken the steps outlined above, and
 - (ii) should mediation prove unsuccessful, the mediator is empowered to make recommendations to the President.
 - (d) The President will advise the employee in writing of his decision in respect of the matter and the reason for his decision, including the outcome of an investigation of the matter. In reaching his decision, the President will take into account the recommendations of the independent mediator.

- (e) The President may delegate responsibility as decision maker to another person. However, the President will not so delegate this responsibility to a person who has had prior direct participation in dealing with the dispute.
- D.16 Nothing in the above procedure shall preclude a manager referring the matter to the appropriate manager in circumstances where that manager has been by-passed by the employee concerned. However, the matter will not be referred to the by-passed manager where the matter may relate to the behaviour or actions of the by-passed manager.
- D.17 If the matter is not resolved after discussions between the employee and their manager or more senior levels of management as set out in this Attachment, it may be referred to mediation by an accredited mediator. Notification may be made by the employee (or where the employee chooses, their representative), by agreement between the employee and the President, or by the President (either on his behalf or on behalf of the employee).
- D.18 Unless agreed to the contrary by the parties to the dispute, the mediator shall, in responding to notifications, have regard to whether the parties to the dispute have in good faith attempted to resolve the matter consistent with provisions of this Attachment and, where relevant, independent mediation.
- D.19 The mediator, by this Agreement, is empowered to settle matters in dispute over the application of this Agreement.

Appendix E Excess staffing situations

- E.1 Redeployment, retirement and redundancy provisions apply in excess staffing situations. For the purposes of this clause, an employee is an 'excess employee' if:
- (a) the employee is included in a class of employees employed in the NCC, which class comprises a greater number of employees than required for the efficient and economical operation of the Council, or
 - (b) the employee is surplus to requirements due to technological change, other changes in work methods, or changes in organisation or functions of the NCC, or
 - (c) where the duties usually performed by the employee are to be performed at a different locality and the employee is not willing to perform duties at that locality,
- E.2 An excess employee does not include an employee on probation, nor fixed-term and short-term employees.
- E.3 When the employer is aware that an employee(s) is likely to become excess, the employer will, at the earliest practicable time, advise the employee(s) of the situation. Discussions with the potentially excess employee(s) and/or, where the employee(s) requests, with the employee's representative, will be held to consider:
- (a) measures which might be taken to reduce the incidence of an employee becoming excess
 - (b) redeployment opportunities for the employee(s) concerned both internally and the wider APS, including identifying whether the employee(s) seeks redeployment, and
 - (c) whether voluntary retrenchment might be appropriate and whether the employee wants to be offered voluntary retrenchment.
- E.4 The employer may, prior to the conclusion of these discussions, invite employees who are not potentially excess to express interest in voluntary retrenchment (paragraph E.6), where such retrenchments would permit the redeployment of employees who are potentially excess. The employer will not advise an employee that he or she is excess until these discussions have been completed. The period of these discussions will not exceed one month (or lesser period where agreed).
- E.5 Where 15 or more employees are to be declared excess, before terminating the employment of any employee, the employer will comply with the notification requirements of sections 660 and 668 of the Workplace Relations Act (employer to notify Centrelink of proposed terminations in certain cases and employer to inform each trade union of which any of the employees was a member).

Voluntary retrenchment

- E.6 Where an excess employee expresses an interest in voluntary retrenchment, the employer may, after assessing the redeployment prospects of that employee, make a written offer of voluntary retrenchment.
- E.7 The employee will have one month in which to advise the employer of their acceptance of the offer, prior to the issue of a notice of termination under s.29 of the Public Service Act.

- E.8 To enable an excess employee to make an informed decision, the employee will have access to advice on:
- (a) the sums of money that would be payable by way of severance pay, pay-in-lieu of notice and leave credits
 - (b) the amount of accumulated superannuation contributions
 - (c) the options open to the employee concerning superannuation, and
 - (d) the taxation treatment to the various payments.
- E.9 Excess employees will be provided with financial assistance of up to \$300 for the purpose of seeking financial advice.
- E.10 The period of notice of retrenchment will be 28 days except for excess employees over 45 years of age with at least five years continuous service, where the notice period will be five weeks.
- E.11 Where an employee retires or is retired at the beginning of, or within, the notice period, the employee will receive payment-in-lieu of notice equal to the unexpired portion of the notice period.

Redundancy payment and definition of service for redundancy payment

- E.12 An excess employee who is voluntarily retrenched is entitled to redundancy payment equal to two weeks salary for each completed year of service plus pro rata payment for completed months of service since the last completed year of service.
- E.13 The minimum redundancy payment will be equal to four weeks salary and the maximum will be equal to 48 weeks salary.
- E.14 The redundancy payment will be calculated on a pro rata basis where an employee has worked part-time hours during the period of service and has less than 24 years of full-time service.
- E.15 For the purpose of calculating the redundancy payment for excess employees, “service” means:
- (a) service in an agency
 - (b) Government service as defined in section 10 of the *Long Service leave (Commonwealth Employees) Act 1976*
 - (c) service with the Commonwealth (other than service with a joint Commonwealth-State body or a body corporate in which the Commonwealth does not have a controlling interest) which is recognised for long service purposes
 - (d) service with the Australian Defence Forces
 - (e) APS service immediately preceding deemed resignation under the section 49 of the repealed *Public Service Act 1922* if the service has not previously been recognised for redundancy pay purposes, and
 - (f) service in another organisation where:
 - (i) an employee was transferred from 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.

- E.16 Any period of service which ceased in any of the following ways will not count as service for redundancy pay purposes: retrenchment; retirement on grounds of invalidity; inefficiency or loss of qualifications; forfeiture of office; dismissal; termination of probation appointment for reasons of unsatisfactory service; or voluntary retirement at or above the minimum retiring age applicable to the employee or with payment of an employer-financed retirement benefit. Absences from duty which do not count as service for long service leave purposes will not count as service for redundancy pay purposes.
- E.17 For earlier periods of service to count there must be no breaks between the periods except where:
- (a) the break in service is less than one 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 section 49 of the repealed Public Service Act.

Salary

- E.18 For the purpose of calculating a redundancy payment, salary will be the excess employee's substantive salary or current salary if the excess employee has been receiving higher duties allowance for a period of more than 12 months.

Retention periods

- E.19 Unless the employee agrees, an excess employee will not be involuntarily retired until either of the following retention periods have elapsed:
- (a) 13 months where an employee has 20 years or more of service or is over 45 years of age, or
 - (b) seven months for other employees.
- E.20 The retention period will commence on the earlier of the following:
- (a) the day the employee is advised in writing that the employee is an excess employee, or
 - (b) one month after the excess employee has been invited to accept an offer of voluntary retrenchment.
- E.21 The retention period will be extended by any periods of certificated sick leave taken during the period.
- E.22 During the retention period, every effort will continue to be made to find alternative employment for the excess employee. Upon request, the employee will be referred to an outplacement agency for services up to the value of \$2000.
- E.23 Where the employer believes there is insufficient suitable work available for an excess employee during the retention period, or believes that there is no reasonable prospect of redeployment in the APS, the employer may, with the agreement of the excess employee, retire the employee and

pay an amount up to the balance of the retention period salary as a lump sum. This payment will be taken to include payment in lieu of the notice of retirement.

Involuntary retrenchment

- E.24 The employer may involuntarily retrench an excess employee at the end of the retention period.
- E.25 The notice periods for involuntary retrench are the same as those specified in s. 661 of the Workplace Relations Act, and will be, as far as practicable, concurrent with the retention periods.
- E.26 An excess employee will not be retrenched involuntarily without first having been made an offer of voluntary retrenchment.

Income maintenance

- E.27 Where an excess employee is reduced in classification during the retention period, the employee will be eligible to receive income maintenance payments for the balance of the applicable retention period.
- E.28 Income maintenance payments are the amounts payable to maintain the level of salary and allowances being paid to the excess employee on the date the employee is notified as an excess employee or the date immediately prior to being reduced in classification, whichever is the later.
- E.29 An employee can seek review of a decision to terminate employment in accordance with the termination of employment provisions under Division 4 of Part 12 of the Workplace Relations Act 1996.

Review of decision and actions

- E.30 Review of decision or action referred to in Appendix D applies only to entitlements available to excess employees. The employee should refer to paragraphs 5.15-5.17 of this Agreement on the rights and remedies of the employee in relation to termination of employment.