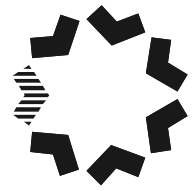


NATIONAL
COMPETITION
COUNCIL



**National Competition
Council
Employee Enterprise
Agreement 2012 - 2014**



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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. The Agreement supports the National Competition Council (NCC) in achieving its objectives by:
- providing remuneration and conditions that are competitive and affordable
 - encouraging high performance and ongoing learning
 - recognising the significant contribution and effort of its employees
 - promoting flexibility and a balance between work and personal commitments
 - providing a safe and healthy workplace.

Agreement title

- 1.2 This Agreement shall be known as the National Competition Council Employee Enterprise Agreement 2012– 2014.

Parties bound and covered

- 1.3 This Agreement is made under section 172 of the *Fair Work Act 2009* (FW Act) between the President and APS 1—EL 2 employees engaged under the *Public Service Act 1999* in the NCC.
- 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 7 days after it is approved by Fair Work Australia (FWA) under section 186 of the FW Act and nominally expires on 30 June 2014.
- 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 person or organisation covered by the Agreement will 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 Should legislative changes affect employees' terms and conditions of employment during the life of this Agreement, the employees and the NCC will consult on any action that might be appropriate to ensure that the objectives of the Agreement continue to be achieved.
- 1.9 This Agreement may only be varied in accordance with Division 7, Part 2-4 of Chapter 2 of the FW Act.

1.10 Employees covered by this Agreement continue to be subject to the provisions of, and regulations or instruments made under legislation, including:

- *Australian Human Rights Commission Act 1986*
- *Fair Work Act 2009*
- *Long Service Leave (Commonwealth Employees) Act 1976*
- *Maternity Leave (Commonwealth Employees) Act 1973*
- *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*
- *Work Health and Safety Act 2011.*

1.11 The operation of this Agreement is supported by NCC policies, procedures and guidelines. 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

1.12 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

1.13 This Agreement provides for flexible terms and conditions for employees through providing for flexible hours of attendance (section 3) and allowances or working conditions not specified in this Agreement (paragraph 5.2).

1.14 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. Such supplementation will be reflected in an individual flexibility arrangement (IFA) in accordance with paragraphs 1.15 – 1.19.

Individual flexibility arrangements

1.15 The President and an employee covered by this Agreement may agree to make an IFA to vary the terms of the Agreement in order to meet the genuine needs of the employee and employer, and in compliance with section 203 of the FW Act, this may occur if:

- a. the IFA deals with one or more of the following matters:
 - i) arrangements about when work is performed

- ii) overtime rates
 - iii) allowances
 - iv) remuneration
 - v) leave; and
- b. the arrangement meets the genuine needs of the President and employee in relation to one or more of the matters mentioned in paragraph (a); and
 - c. the arrangement is genuinely agreed to by the President and the employee.

1.16 The President must ensure that the terms of the IFA:

- a. are about permitted matters under section 172 of the FW Act
- b. are not unlawful terms under section 194 of the FW Act
- c. result in the employee being better off overall than the employee would be if no arrangement was made.

1.17 The President must ensure that the IFA:

- a. is in writing
- b. includes the name of the President and employee
- c. is signed by the employer and the employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee
- d. includes details of:
 - i) the terms of this National Competition Council Employee Enterprise Agreement that will be varied by the arrangement
 - ii) how the arrangement will vary the effect of the terms
 - iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement
- e. states the day on which the arrangement commences and, where applicable, when the arrangement ceases.

1.18 The President must give the employee a copy of the IFA within 14 days after it is agreed to.

1.19 The President or the employee may terminate the IFA:

- a. by giving no more than 28 days written notice to the other party to the IFA or
- b. if the President and employee agree in writing – at any time.

Definitions

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

Term	Definition
Agreement	the National Competition Council Employee Enterprise Agreement 2012–2014
anniversary date	the date of an employee’s commencement
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
commencement date	the seventh day after the date this Agreement is approved by FWA under s 186 of the FW Act
Delegate	A person to who the President has delegated powers and functions in accordance with paragraph 1.12
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 ○ is or was related 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, or foster child of the employee, the employee’s spouse, de facto spouse or partner, or the employee’s former spouse, de facto spouse or partner

Term	Definition
FW Act	Fair Work Act 2009 (Cwth)
FWA	Fair Work Australia
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>
IFA	An individual flexibility arrangement (see paragraphs 1.15 - 1.19)
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
Non-ongoing employee	Has the same meaning as in the <i>Public Service Act 1999</i>
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 1.12
salary	<p>Includes any adjustment for temporary performance at a higher level or salary adjustment pursuant to an IFA</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 (section 26 of the <i>Public Service Act</i>), or internal assignment of duties (section 25 of the <i>Public Service Act</i>)

Term	Definition
union	An employee organisation as defined in section 12 of the <i>Fair Work Act 2009</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 salary rates for each classification level are:

Classification	Salary range 30 Sept 2012		Salary range 30 Sept 2013 (after implementation of cl 2.3)	
	min	max	min	max
APS 1	\$41,507	\$48,106	\$42,752	\$49,549
APS 2	\$47,048	\$54,618	\$48,460	\$56,256
APS 3	\$53,608	\$60,553	\$55,217	\$62,369
APS 4	\$59,715	\$67,893	\$61,507	\$69,930
APS 5	\$66,614	\$73,953	\$68,613	\$76,172
APS 6	\$73,740	\$95,500	\$75,952	\$98,365
EL 1	\$91,609	\$106,154	\$94,358	\$109,338
EL 2	\$106,311	\$135,000	\$109,501	\$139,050

General salary increases

2.3 In recognition of productivity improvements arising under this Agreement, salaries payable to employees of the NCC whose employment is subject to this Agreement are increased by 3 per cent from 30 September 2013.

2.4 The salary increase provided for in paragraph 2.3 do not apply to an employee whose performance is assessed as not satisfactory.

2.5 Subject to paragraph 2.2, salary advancement may occur through the salary ranges relevant to the employee's classification following a satisfactory annual performance review based on the performance management framework.

Non-ongoing employees

2.6 Unless otherwise varied in this Agreement the terms and conditions for a non-ongoing employee shall be those set out in this Agreement for an ongoing employee.

2.7 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 paid leave with the exception of Long Service Leave and payment for public holidays on which the employee is not rostered.

Salary

- 2.8 The employee's salary as defined in paragraph 1.20 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.
- 2.9 The employee's salary will not alter until any one of the following occurs:
- the salary is increased in accordance with paragraph 2.3
 - the salary is supplemented in accordance with an IFA
 - the salary is decreased through a reduction in classification in accordance with section 23(4) of the *Public Service Act 1999*.
- 2.10 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.

Method of salary payment

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

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

Employer superannuation contributions

- 2.13 The NCC will make compulsory employer contributions as required by the applicable legislation and fund requirements.
- 2.14 Where an employee has chosen an accumulation superannuation fund other than the PSS Accumulation Plan (PSSap), the employer contribution will be the same percentage of the fortnightly superannuation contribution salary as that required for employees who are members of PSSap (currently 15.4 per cent). This will not be reduced by any other contributions made through salary sacrifice arrangements. This provision does not apply where a superannuation fund cannot accept employer superannuation contributions (e.g. unable to accept contributions for people aged over 75).
- 2.15 Employer superannuation contributions will not be paid on behalf of employees during periods of unpaid leave that does not count as service, unless otherwise required under legislation.
- 2.16 The President may choose to limit superannuation choice to complying superannuation funds that allow employee and/or employer contributions to be paid through fortnightly electronic funds transfer using a file generated by the payroll system.

Salary on reduction

- 2.17 Where an employee moves to a lower classification, their salary level in the lower classification will be determined by the President.
- 2.18 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)

- 2.19 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*.
- 2.20 An employee who participates in flexible remuneration packaging will have his or her salary for all other purposes calculated as if the flexible remuneration packaging arrangement had not been entered into.
- 2.21 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

- 2.22 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 1.20.
- 2.23 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.
- 2.24 All paid overtime must be claimed through the claims for payment of overtime form.
- 2.25 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.
- 2.26 The employee's salary will be used for the calculation of overtime.
- 2.27 Overtime, whether paid or taken as time off in lieu, will be calculated at the multiplier of time and one half.
- 2.28 The President may direct that overtime be paid at the multiplier of double time where the employee works overtime of:
- 15 hours or more in any seven day period until the employee has a one day break from work (this could include a day of a weekend, a public holiday or leave of at least one day)
 - 10 hours or more on a weekend or one day of a weekend and an adjoining public holiday.

- 2.29 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.
- 2.30 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.
- 2.31 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.
- 2.32 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. The employee may refuse to work unreasonable additional hours in accordance with the National Employment Standards.
- 2.33 Where an APS 1–6 employee is called into work to meet an emergency outside the flexible hours of attendance specified in paragraph 1.20, 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.
- 2.34 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 2.22-2.32.

Temporary performance at a higher work value

- 2.35 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*).
- 2.36 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.
- 2.37 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.
- 2.38 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.
- 2.39 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.

- 2.40 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.
- 2.41 Where an employee is required to undertake the duties of a SES position, the pay and conditions of the employee will be determined by the President.

Supported wage system

- 2.42 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.
- 2.43 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 FWA.

Resignation, permanent transfer to another APS agency

- 2.44 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

- 2.45 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. Long Service Leave credits will be paid out in accordance with *the Long Service Leave (Commonwealth Employees) Act 1976*.

Performance

- 2.46 Managers will facilitate the participation of employees in the performance management framework.
- 2.47 The performance management framework includes regular constructive feedback between the manager and the employee.
- 2.48 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
 - performance appraisal and management of unsatisfactory performance.

- 2.49 The Executive Director and an employee will meet to discuss the employee's performance, aspirations and development needs at least annually.
- 2.50 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 1.20)

- 3.1 Standard hours of work and attendance are as defined in paragraph 1.20.
- 3.2 An employee may choose start, finish and break times within the flexible hours of attendance defined in paragraph 1.20, subject to their manager's prior agreement.
- 3.3 For a part-time employee, standard hours of work and attendance are those agreed with the President.
- 3.4 An employee will not be required to work more than 10 hours in a 24-hour period.
- 3.5 All employees are required to keep a daily attendance record.
- 3.6 Employees are required to advise a manager of unexpected absences as soon as possible.
- 3.7 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)

- 3.8 The NCC is committed to ensuring that time worked in excess of standard hours is recognised and appropriately managed. Employees will not be required to work unreasonable additional hours and are entitled to refuse unreasonable additional hours in accordance with the National Employment Standards. Where additional hours are worked to achieve agreed work outcomes, the NCC will ensure that employees are appropriately compensated through flextime or TOIL.
- 3.9 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 and their manager should refer to the NCC TOIL Policy.
- 3.10 An employee at the Executive Levels 1 and 2 classification level does 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. Executive Level employees will be provided with reasonable access to time off, but will not be compensated for additional hours worked on an hour for hour basis. The employee and their manager should refer to the NCC TOIL Policy.

Unauthorised absence

- 3.11 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.

Flexible work arrangements for parents

- 3.12 An employee who has responsibility for the care of a child under school age or under 18 with a disability, may request access to flexible working arrangements, including flexible hours of work, attendance and part time employment, to assist them to care for their child. The employee is not eligible to make this request unless they have completed at least 12 months of continuous qualifying service (the President may waive this requirement in exceptional circumstances). A manager may only refuse such a request on reasonable business grounds, in accordance with the FW Act.
- 3.13 A request made in accordance with paragraph 3.12 must be in writing and set out the details of the change sought and the reasons for the change. The President will respond to the request in writing within 21 days. Where the request is refused, the response will include reasons for the refusal.
- 3.14 For the purpose of this provision, 'qualifying service' means service that is recognised for redundancy pay purposes.

Part-time work

- 3.15 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.
- 3.16 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.
- 3.17 An employee may initiate proposals for part-time work. The President will not unreasonably oppose requests for part-time work. An employee returning from maternity, adoption or supporting partner leave, an employee who is a parent, or has responsibility for the care of a child under school age or a child under 18 who has a disability will have access to part-time work in accordance with paragraphs 3.12-3.14.
- 3.18 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.
- 3.19 A full-time employee who becomes a part-time employee is able to revert to full-time hours.
- 3.20 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.
- 3.21 No employee will be required to vary part-time hours agreed during the time of the part-time agreement.

Home-based work

- 3.22 The NCC supports the practice of working from home as part of its flexible work arrangements.

- 3.23 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.
- 3.24 For more information on home-based work the employee should refer to the NCC Teleworking Guideline.

4 Leave

Principles

- 4.1 Employees are encouraged to take their annual leave entitlement. The President will not unreasonably refuse to approve a request by an employee to take annual leave.
- 4.2 A period of leave granted with pay counts as service for all purposes. 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. Unless the President otherwise decides, a period of leave granted without pay does not count as service for any purpose.
- 4.3 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.
- 4.4 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

- 4.5 An employee is entitled to four weeks annual leave in accordance with the National Employment Standard.

Accrual

- 4.6 Annual leave accrues progressively and accumulates from year to year.
- 4.7 An employee will accrue annual leave in real time each fortnight based on an accrual rate of 147 hours for each year of service. Part-time employees will accrue annual leave on a pro rata basis in accordance with the National Employment Standard.
- 4.8 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

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

Annual leave at half pay

- 4.11 Subject to the agreement of their respective managers, an employee may elect to take annual leave at half pay, in which case, payable leave credits will only be deducted for half the leave duration.
- 4.12 Annual leave at half pay will only be available at a minimum of one week's duration (2.5 days leave credits) per request.

Excess annual leave

- 4.13 Any annual leave entitlement in excess of 55 days is called 'excess annual leave'.
- 4.14 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.
- 4.15 If the employee has excess annual leave remaining on 1 April, the employee can be directed to take leave in accordance with section 93(3) of the FW Act.
- 4.16 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

- 4.17 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.

Cancelled leave

- 4.18 If an employee's leave is cancelled, the employee will be credited with the amount of leave cancelled and reimbursed for reasonable costs incurred. If an employee is recalled to duty, the employee will be re-credited with a period equivalent to the ordinary hours worked and reimbursed for any reasonable costs incurred.

Purchased leave

- 4.19 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

- 4.20 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.
- 4.21 For more information on purchased leave, the employee should refer to the Purchased Leave Guideline.

Personal/carer's leave

Accrual

- 4.22 On engagement, an ongoing full-time employee will be credited with 147 hours (20 days) personal/carer's 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/carer's leave on a pro rata basis for the proportion of standard working hours they are actually working.
- 4.23 From engagement, non-ongoing employees with a term of less than twelve months, will accrue personal/carer's leave in real time each fortnight.
- 4.24 Personal /carer's leave accruals of a non-ongoing employee carry over personal leave from an immediately previous NCC engagement.
- 4.25 An employee in receipt of employee compensation for more than 45 weeks will cease to accrue personal/carer's 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/carer's leave credits on a pro rata basis for hours actually worked.
- 4.26 Personal/carer's leave credits and debits will be maintained in hours and minutes. Unused personal leave credits will accumulate.

Approval

- 4.27 An employee may take personal/carer's leave for one or more of the following reasons, subject to available credits:
- the employee is not fit for work because of a personal illness or personal injury affecting the employee
 - to attend medical examinations, tests, and treatment
 - to provide care or support to a family member, or a member of the employee's household, who requires support because of:
 - a personal illness or personal injury affecting the member
 - an unexpected emergency affecting the member
 - as supporting partner's leave (see cl 4.52)
 - compassionate leave where a family member contracts or develops a personal injury or illness that poses a serious threat to their life, or dies.

- 4.28 Single absences of less than one day can be taken as personal /carer's leave, or leave under the flexible working arrangements.
- 4.29 An employee is obliged to inform the NCC of the reason for, and likely duration of, absences for which personal /carer's leave is sought. An employee may be required to support an application for personal/carer's leave with satisfactory evidence. 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.
- 4.30 Where an employee's entitlement to paid personal leave is exhausted and the employee is sick, the President may approve additional leave as unpaid personal leave or half pay personal leave through the use of an individual flexibility arrangement as per paragraphs 1.15 – 1.19. The President will determine whether unpaid personal leave counts as service.
- 4.31 Where an employee takes leave without pay not to count as service, personal leave credits will be adjusted on a pro rata basis.
- 4.32 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, adoption leave, foster carer's leave, or supporting partner's leave.
- 4.33 Accrued personal leave credits will not be paid out on separation from the NCC.

Compassionate Leave

- 4.34 Employees, other than casual, will be granted two days paid compassionate leave on each occasion that a member of the employee's family or household:
- a. contracts or develops a personal illness that poses a serious threat to life; or
 - b. sustains a personal injury that poses a serious threat to life; or
 - c. dies.
- 4.35 A casual employee is entitled to unpaid compassionate leave of two days per occurrence.
- 4.36 The employee may take a period of leave under clauses 4.34 or 4.35 as a single period of two days or any separate period that is negotiated between the employee and their manager.
- 4.37 The Manager may require the employee to provide evidence of the illness, injury or death in support of the request for leave.

Long Service Leave

- 4.38 An employee is eligible for long service leave in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976*.

- 4.39 The minimum period of long service leave which may be granted is seven calendar days (at full or half pay). Long service leave cannot be broken with other periods of leave, except as otherwise provided by legislation. 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.

Parental leave

Paid maternity Leave

- 4.40 An eligible employee 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). An employee eligible for paid Maternity Leave will receive an additional 2 weeks paid leave to be taken immediately following the period of paid Maternity Leave provided under the Maternity Leave Act. In order to provide more flexible administration of the Maternity Leave, an employee may elect to spread the payment for the 14 week period of absence up to a maximum period of 28 weeks at a rate no less than half the employee's normal salary. 14 weeks of paid maternity leave counts for service for all purposes.
- 4.41 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 President 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.

Paid adoption leave

- 4.42 An employee with 12 months continuous qualifying service who is the primary care giver to an adopted child may take adoption leave. Qualifying service is service as defined in s 5 of the Maternity Leave Act.
- 4.43 Adoption leave applies where the child is under the age of 16 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.
- 4.44 Eligible employees may take 14 weeks paid leave from the date of placement of the child. Paid adoption leave may be taken up to a period of 28 weeks at a rate of no less than half their salary but any period of leave in excess of 14 weeks will not count as service for any purpose.
- 4.45 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.
- 4.46 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.

Paid foster carer's leave

- 4.47 An employee with 12 months continuous qualifying service who is the primary care giver to a foster child may take foster carer's leave. Qualifying service is service as defined in s 5 of the Maternity Leave Act.
- 4.48 This entitlement applies in relation to a child for whom the employee has assumed long term responsibility arising from the placement of the child by a permanent 'fostering' arrangement:
- by a person/organisation with statutory responsibility for the placement of the child
 - where the child is not expected to return to their family.
- 4.49 Eligible employees may take 14 weeks paid leave from the date of placement of the child. Paid foster carer's leave may be taken up to a period of 28 weeks at a rate of no less than half their salary but any period of leave in excess of 14 weeks will not count as service for any purpose.
- 4.50 An employee who has insufficient annual leave credits may take 2 days unpaid pre-foster carer's leave to attend interviews or examinations required to obtain approval to foster a child.
- 4.51 An employee must provide written notice to the President of their intention to apply for foster carer's leave and the date the child is expected. Documentary evidence of approval of a permanent fostering arrangement must be submitted when applying for this leave.

Paid supporting partner's leave

- 4.52 An employee who is not the primary care giver to a dependent child may take two weeks (10 working days) paid supporting partner's leave and up to 5 days from personal /carer's 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, or the placement of the dependant child on a permanent fostering arrangement. The leave can only be taken on full pay. Supporting partner leave may be taken as a single continuous period or in separate periods as agreed by the employee and the manager.

Unpaid parental leave

- 4.53 Employees may access the unpaid parental leave provisions in accordance with s 70 of the FW Act. Unpaid foster carer's leave is also available and mirrors the provisions for unpaid adoption leave available under s 70 of the FW Act.
- 4.54 Where an employee is on unpaid parental leave (including unpaid maternity, adoption, or foster carer's leave) and their existing superannuation fund rules do not already provide for such payments, the NCC will continue to pay the employer contribution to superannuation as if that employee was not on unpaid parental leave.

Return to work after parental leave

- 4.55 On ending parental leave, an employee is entitled to return to:
- the employee's pre-parental leave duties
 - if those duties no longer exist – an available position for which the employee is qualified and suited at the same classification and pay as applied pre-parental leave.

Where this is not practical, other duties will be sought, with the redeployment, reduction, and redundancy provisions applying to any placement.

4.56 For the purposes of this clause, duties means those performed:

- if the employee was moved to safe duties because of the pregnancy – immediately before the move
- if the employee was moved to safe duties because of the pregnancy – immediately before the part-time employment began
- otherwise – immediately before the employee commenced parental leave.

4.57 An employee who has responsibility for the care of a child under school age or under 18 and with a disability, may request access to flexible working arrangements, as outlined in paragraph 3.12.

Direction to attend a medical examination

4.58 Under *Public Service Regulation 3.2*, the President may, by written notice, direct an employee to attend a medical examination if the President believes that the state of health of the employee:

- may be affecting the employee’s work performance
- has caused, or may cause the employee to have an extended absence from work
- may be a danger to the employee
- has caused, or may cause, the employee to be a danger to other employees or members of the public
- may be affecting the employee’s standard of conduct.

4.59 For the purpose of paragraph 4.58, an extended absence is:

- an absence from work of at least four continuous weeks
- a combined total of absences from work, within a 13-week period, whether based on a single or separate illness or injury, of at least four weeks.

Defence Reservists leave

4.60 An employee is entitled to ADF Reserve leave with pay, for up to four weeks during each financial year for the purpose of fulfilling service in the ADF Reserve. These purposes include training and operational duty as required:

- during the employee’s first year of ADF Reserve service, a further two weeks paid leave may be granted to facilitate participation in additional ADF Reserve training, including induction requirements
- with the exception of the additional two weeks in the first year of service, leave can be accumulated and taken over a period of two years, to enable the employee to undertake training as a member of the ADF Reserves
- employees are not required to pay their tax free ADF Reserve salary to the Agency in any circumstances.

- 4.61 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.
- 4.62 Defence Reserve leave counts as service for all purposes, except for unpaid leave to undertake Continuous Full Time Service (CFTS). Unpaid leave for the purpose of CFTS counts for all purposes except annual leave.
- 4.63 Eligible employees may also apply for annual leave, long service leave, leave without pay, top-up pay or they may use flextime or make up time for the purpose of fulfilling ADF Reserve, CFTS or Cadet Force obligations.
- 4.64 Employees are to notify supervisors at the earliest opportunity once the dates for ADF Reserve, CFTS or Cadet Force activities are known and/or changed.

Other leave

- 4.65 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.
- 4.66 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.
- 4.67 Attachment C contains an indicative listing of purposes for which the President may approve other leave.

Preservation of entitlements and portability of leave

- 4.68 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.
- 4.69 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.

Portability of leave – former non-ongoing employees

- 4.70 Where a person is engaged as an ongoing employee, and immediately prior to the engagement the person was employed as a non-ongoing APS employee, the President may, at the employee's request, recognise any accrued annual leave and personal/carers leave (however described), provided there is no break in continuity of service. Any recognised annual leave excludes any accrued leave paid out on separation.

Public holidays

- 4.71 An employee will observe the following public holidays each year and will be paid salary as if that day were not a public holiday:
- 1 January (New Year's Day)

- 26 January (Australia Day)
- Good Friday and Easter Monday
- 25 April (Anzac Day) or a substitute day
- in each state and territory, the day observed to celebrate the anniversary of the birthday of the Sovereign
- 25 December (Christmas Day)
- 26 December (Boxing Day)

- 4.72 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.
- 4.73 An employee and the President may agree to substitute any holiday prescribed in paragraph 4.72 for a cultural or religious day of significance to the employee having regard to operational requirements.
- 4.74 Employees will be paid at the rate of salary applicable on that day, had the day not been a public holiday.
- 4.75 An employee, who is absent on a part or full-day that is a public holiday in the place where the employee is based for work purposes, is entitled to be paid for the day or full day absence as if that day or part-day was not a public holiday, except where that person would not normally have worked on that day.
- 4.76 Where a public holiday falls during a period when an employee is absent on leave (other than annual or paid personal/carer's leave) there is no entitlement to receive payment as a public holiday. Payment for that day would be in accordance with the entitlement for that form of leave (for example, if on long service leave on half pay, payment is on half pay).

Year end closedown

- 4.77 Employees are not required to attend for duty during the NCC's year end closedown period, unless directed by the President. The President may only give such a direction to meet essential operational requirements.
- 4.78 The NCC will be closed for normal business and employees will not be required to perform normal duty on the working days between Christmas and New Year's Day. Pay eligibility for annual closedown will be treated in the same manner as public holidays in determining the appropriate rate of salary payment to apply on those days.
- 4.79 An eligible employee required to attend duty during this closedown period will attract overtime.
- 4.80 Closedown days will count for service for all purposes.
- 4.81 An employee will not have annual leave or personal/carer's 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 subject to, and dispensed in accordance with, an individual flexibility arrangement as per paragraphs 1.15 – 1.19.

Travel and related expenses

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

5.4 Whilst on approved travel the employee will be reimbursed for expenditure incurred on meals and accommodation, upon provision of receipts, up to the maximum meal and accommodation rates set out in the Annual ATO Determination relating to reasonable travelling and meal allowance expenses. If the employee incurs expenses for accommodation that exceeds the maximum rates the employee will be reimbursed subject to approval by the President.

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.

Consultation

- 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.

Consultation on major changes

- 5.12 This provision applies where a decision is made to introduce major changes in a work area that are likely to have significant effects on employees, other than where provision is already made elsewhere in this Agreement regarding a specific major change.
- 5.13 Where a definite decision is made to introduce major changes in program, organisation, structure or technology that are likely to have **significant effects** on employees, the President must notify the employees who are likely to be affected by the proposed changes and their representatives, if any.
- 5.14 **Significant effects** include:
- termination of employment
 - major changes in the composition, operation or size of the NCC's workforce or in the skills required
 - the elimination or diminution of job opportunities, promotion opportunities or job tenure
 - significant alteration in hours of work
 - the need to retrain employees
 - the need to relocate employees to another workplace, and
 - the major restructuring of jobs.

President to discuss major changes

- 5.15 The President must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in paragraph 5.13, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.
- 5.16 The discussions must commence as early as practicable after a definite decision has been made to make the changes referred to in paragraph 5.13.

- 5.17 For the purposes of such discussion, the employees concerned and their representatives, if any, are to be provided in writing all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees. The President is not required to disclose confidential or commercially sensitive information to the employees.

Resolution of Agreement disputes

- 5.18 If a dispute relates to a matter under this Agreement, or the National Employment Standard, the parties to the dispute must first attempt to resolve the matter at the workplace level by discussions between the employee or employees concerned and the relevant supervisor/manager.
- 5.19 If a resolution to the dispute has not been achieved after discussions have been held in accordance with paragraph 5.18, the parties to the dispute will endeavour to resolve the dispute in a timely manner either through discussions with more senior levels of management where appropriate or through alternative dispute resolution methods.
- 5.20 If discussions at the workplace level do not resolve the dispute, and all appropriate steps have been taken in accordance with paragraphs 5.18 - 5.19, a party to the dispute may refer the matter to FWA.
- 5.21 FWA may deal with the dispute in 2 stages:
- FWA will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
 - if FWA is unable to resolve the dispute at the first stage, FWA may then:
 - arbitrate the dispute; and
 - make a determination that is binding on the parties.

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

- 5.22 The agency or an employee who is a party to the dispute may appoint another person, organisation or association to accompany and/or represent them for the purposes of this term.
- 5.23 Resolution of disputes is to occur in good faith by following the same principles as the good faith bargaining requirements at section 228 of the FW Act.
- 5.24 While the parties are trying to resolve the dispute using the procedures in this section:
- 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
 - an employee must comply with a direction given by the President to perform other available work at the same workplace, or at another workplace, unless:
 - the work is not safe, or

- applicable occupational health and safety legislation would not permit the work to be performed, or
- the work is not appropriate for the employee to perform, or
- there are other reasonable grounds for the employee to refuse to comply with the direction.

5.25 The parties to the dispute agree to be bound by a decision made by FWA in accordance with this term.

Review of actions

5.26 Where local grievances arise over decisions or actions affecting an employee, every effort will be made to resolve the matter through discussion between the relevant manager and the employee concerned.

5.27 Employees are expected to raise issues of concern with their manager as soon as they arise. Managers are expected to respond promptly and to initiate discussions within two working days of receiving an employee's request.

5.28 Where those discussions fail to resolve the matter, an employee may refer the matter to the next level of management for resolution.

5.29 In circumstances where the matter relates to the behaviour of the manager or senior manager and the employee considers it would be inappropriate to discuss the matter at that level, the employee may similarly discuss the matter with a higher level of management.

5.30 In those exceptional circumstances where the matter remains unresolved after discussions with the appropriate level of management, an employee may refer the matter to the President who may, where they consider it necessary or appropriate, appoint an independent person from within or outside the NCC to assist in resolving the matter and/or to investigate the matter and make recommendations to the President.

5.31 The final internal adjudicator will be the President, who will advise the employee and the manager in writing of their 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.

5.32 In normal circumstances the resolution of the workplace issue should be completed within three months.

5.33 While the parties are trying to resolve the dispute using the procedures in this section:

- 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
- an employee must comply with a direction given by the President to perform other available work at the same workplace, or at another workplace, unless:
 - the work is not safe, or
 - applicable occupational health and safety legislation would not permit the work to be performed, or

- the work is not appropriate for the employee to perform, or
- there are other reasonable grounds for the employee to refuse to comply with the direction.

5.34 At any stage throughout this process the employee and/or the manager may seek the assistance of the Employee Assistance Program and may be assisted by a support person.

5.35 An employee may seek review of certain employment-related actions under the *Public Service Act 1999*.

5.36 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 paragraph 5.30 as a primary review for the purposes of the *Public Service Regulations*.

Misconduct and whistleblowing disclosures

5.37 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.

Right of entry

5.38 The NCC recognises the right of entry provisions of the FW Act.

Freedom of association

5.39 Employees are free to join unions of their choice or not to join unions. No employee will be discriminated against or disadvantaged with respect to any term or condition of this Agreement on account of membership or non-membership of, or holding office in, a union.

Principles for workplace delegates

5.40 The role of workplace delegates is to be respected and facilitated.

5.41 The NCC and workplace delegates must deal with each other in good faith.

5.42 The rights of workplace delegates and recognised representatives include but are not limited to:

- the right to be treated fairly and to perform their role as workplace delegates without any discrimination in their employment
- recognition by the NCC that endorsed workplace delegates speak on behalf of their members in the workplace
- the right to participate in collective bargaining on behalf of those who they represent, as per the FW Act
- the right to reasonable paid time to provide information to and seek feedback from employees in the workplace
- reasonable paid time off to represent union members in the agency at relevant union forums

- reasonable access to NCC facilities for the purpose of carrying out work as a delegate and consulting with workplace colleagues and the union, subject to NCC policies and protocols
- reasonable paid time during normal working hours to consult with colleagues in the workplace
- reasonable access to appropriate training in workplace relations matters including training provided by a union
- the right to consultation and access to relevant information about the workplace and the NCC
- the right to reasonable paid time to represent the interests of members to the employer and industrial tribunals.

5.43 The NCC will seek to facilitate official union communication with employees by means that may include:

- the use of email as a means of communicating with employees and other means of information sharing, including written materials, electronic billboards, and access to websites
- group or individual meetings between employees and their representatives.

5.44 In exercising their rights, workplace delegates and unions will consider operational issues, departmental policies and guidelines and the likely effect on the efficient operation of the NCC and the provision of services by the Commonwealth.

6 Workplace adjustment

Excess employees

- 6.1 The excess employee provisions outlined in 7Appendix D are designed to facilitate effective career transition for excess employees while meeting organisational needs.

Termination of employment

- 6.2 The sole and exhaustive rights and remedies of an employee in relation to termination of employment are those that the employee enjoys under:
- the FW Act
 - other Commonwealth laws (including the Constitution)
 - common law.
- 6.3 Termination of, or a decision to terminate employment, cannot be reviewed under the review of action and dispute settlement procedures addressed in paragraphs 5.18 - 5.36.
- 6.4 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 the FW Act, 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*.

7 Formal acceptance

The persons below sign this Agreement in accordance with Regulation 2.06A of the *Fair Work Regulations 2009*.

Employer

Signed on behalf of the President, National Competition Council.

Name	Address	Signature	Date
Robert John Feil (Executive Director)	GPO Box 250 Melbourne VIC 3001		

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 5.26 - 5.36). 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 5.26 - 5.33).
- 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.

Termination

A.26 Where an employee is terminated on the grounds of unsatisfactory performance, the notice of termination will take effect:

- 14 days after the day on which the notice is given, or after the expiration of the period of notice required under the FW Act, whichever is the later, or
- after payment of compensation instead of notice.

A.27 Before deciding to terminate the employment of an employee, the President is to ensure that correct procedures have been followed.

Guidance or assistance

A.28 An employee may choose to receive guidance or assistance, or have representation, from an employee representative at any stage of the procedure.

Documentation

A.29 All steps throughout the process must be documented. Documentation is kept confidential between the employee and the President (and their representatives, if necessary). The employee has access to correspondence between the employee and the manager, progress reports and any evidence associated with the employee's performance.

A.30 Actions arising from paragraph A.17 will be recorded on the employee's personal record. All documentation is kept in accordance with the National Archives of Australia approved record disposals authorities.

Temporary transfer

A.31 If an employee commences a temporary work placement with another agency after the issue of a written warning, but before the specified period has concluded, upon their return the process will continue from the point it was at when the employee left.

Leave

A.32 Requests for annual leave, purchased leave or long service leave may be approved, but will not extend the assessment period unless this is agreed with the President or unless the leave had been approved before the written warning.

A.33 The President may extend the assessment period for time taken on personal leave if satisfactory evidence is provided and the leave period was a continuous absence of five days or more. The total aggregated period of extension cannot exceed two weeks unless the President determines otherwise. A medical certificate or other evidence will be required for absences due to personal leave of more than three days. Paragraph 4.58 may be invoked, enabling the NCC to request a health assessment.

Appendix B Flextime scheme and time off in lieu

B.1 The NCC is committed to ensuring that:

- time worked in excess of standard hours is recognised and appropriately managed
- Employees are not required to work unreasonable additional hours and are entitled to refuse to work unreasonable additional hours in accordance with the National Employment Standards, and
- where additional hours are worked to achieve agreed work outcomes, 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. Executive Level employees will be provided with reasonable access to time off, but will not be compensated for additional hours worked on a one for one basis.

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 flextime 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 flextime 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 flextime scheme or time in lieu arrangement.
- B.11 Employees at classifications APS 1–6 who do not wish to participate in the flextime 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) attendance at legal hearings as a witness under subpoena
- (d) participation in major international sporting events
- (e) illness where the employee is unfit for duty due to a war-caused medical condition as specified by the Department of Veterans' Affairs
- (f) participation in State Emergency Service and other emergency volunteer organisation activities
- (g) attendance at industrial proceedings associated with this Agreement
- (h) a disaster significantly affecting the employee
- (i) cultural or ceremonial purposes and NAIDOC activities (either paid or unpaid).

Note: In providing leave to release community service volunteers for emergency services duties, leave for the purposes of regular training and ceremonial duties and emergency services, responses and reasonable recovery time is included.

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 and foster children)
- (d) ceremonial purposes
- (e) days of cultural or religious significance for employees
- (f) accompanying a spouse on a posting
- (g) meeting carer commitments (other leave without pay taken when personal leave credits have been exhausted)
- (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
- (k) attendance at the employee's own graduation ceremony from a recognised tertiary institution
- (l) community volunteer leave as defined by the National Employment Standard, (other than that covered by clause C.2 (f)).

Appendix D Excess staffing situations

- D.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, and the employer has determined that these provisions will apply to that employee.
- D.2 An excess employee does not include an employee on probation and non-ongoing employees.
- D.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.
- D.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 D.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).
- D.5 Where 15 or more employees become excess, sections 530 to 534 of the FW Act will also apply to the provisions within this part.

Voluntary retrenchment

- D.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.
- D.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.
- D.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.
- D.9 Excess employees will be provided with financial assistance of up to \$300 for the purpose of seeking financial advice.
- D.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.
- D.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

- D.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.
- D.13 The minimum redundancy payment will be equal to four weeks salary and the maximum will be equal to 48 weeks salary, subject to any minimum amount the employee is entitled to under the National Employment Standards.
- D.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, subject to any minimum amount the employee is entitled to under the National Employment Standards.
- D.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.

- D.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.
- D.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

- D.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

- D.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.
- D.20 If an employee is entitled to a redundancy payment under the National Employment Standards (NES), the relevant retention period in clause D.19 is reduced by the number of weeks redundancy pay that the employee will be entitled to under the National Employment Standards on termination, as at the expiration of the retention period (as adjusted by this clause).
- D.21 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.
- D.22 The retention period will be extended by any periods of certificated sick leave taken during the period.

- D.23 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.
- D.24 Where the employer is satisfied that there is insufficient productive work available for an excess employee during the remainder of the retention period, and there is no reasonable prospect of redeployment in the APS the employer may, with the agreement of the excess employee, terminate employee's employment under s. 29 of the *Public Service Act* and upon termination, the employee will be paid a lump sum comprising the balance of the retention period (as shortened for the National Employment Standards under clause D20), plus the employee's entitlement to redundancy pay under the National Employment Standards. This payment will be taken to include payment in lieu of the notice of retirement.

Involuntary retrenchment

- D.25 The employer may involuntarily retrench an excess employee at the end of the retention period.
- D.26 The notice periods for involuntary retrench are subject to any minimum amount the employee is entitled to under the National Employment Standards or the FW Act, and will be, as far as practicable, concurrent with the retention periods.
- D.27 An excess employee will not be retrenched involuntarily without first having been made an offer of voluntary retrenchment.

Income maintenance

- D.28 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.
- D.29 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.
- D.30 An employee can seek review of a decision to terminate employment in accordance with the termination of employment provisions in the FW Act.

Review of decision and actions

- D.31 Review of decision or action (paragraphs 5.26 - 5.36) only to entitlements available to excess employees.