



# DECISION

*Fair Work Act 2009*  
s.185—Enterprise agreement

**Australian Capital Territory**  
(AG2021/8827)

## **ACT PUBLIC SECTOR: OFFICE OF THE LEGISLATIVE ASSEMBLY ENTERPRISE AGREEMENT 2021-2022**

State and Territory government administration

DEPUTY PRESIDENT DEAN

CANBERRA, 21 DECEMBER 2021

*Application for approval of the ACT Public Sector: Office of the Legislative Assembly  
Enterprise Agreement 2021-2022.*

[1] An application has been made for approval of an enterprise agreement known as the *ACT Public Sector: Office of the Legislative Assembly Enterprise Agreement 2021-2022* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Australian Capital Territory (Employer). The Agreement is a single enterprise agreement.

[2] The application was not lodged within 14 days after the agreement was made. Pursuant to s.185(3)(b), in all the circumstances I consider it fair to extend the time for making the application to the date it was actually made.

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

[4] The Agreement has a National Employment Standards (NES) precedence clause at clause A5.4. I am therefore satisfied that the more beneficial entitlements of the NES will prevail where there is an inconsistency between the Agreement and the NES.

[5] CPSU, the Community and Public Sector Union, the Construction, Forestry, Maritime, Mining and Energy Union and the Media, Entertainment and Arts Alliance, being bargaining representatives for the Agreement, have given notice under s.183 of the Act that they want the Agreement to cover them. In accordance with s.201(2) I note that the Agreement covers the organisations.

[6] The Employer has also made an application pursuant to s.217 to vary the Agreement to remove ambiguity and uncertainty. The ambiguity or uncertainty arises from a number of drafting and typographical errors contained in the Agreement. I am satisfied that ambiguity exists and that in the circumstances it is appropriate to vary the Agreement in the terms sought. An amended version of the Agreement has been filed which incorporates the variation.

[7] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 28 December 2021. The nominal expiry date of the Agreement is 31 October 2022.

DEPUTY PRESIDENT

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**ACT PUBLIC SECTOR:  
OFFICE OF THE LEGISLATIVE  
ASSEMBLY ENTERPRISE  
AGREEMENT 2021-2022**

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## DICTIONARY

**Accrued Day Off (ADO)** means a day or shift off duty for an employee using bankable leave accrued as a result of increasing the employee's daily hours of work – e.g. from 7 hours 36 minutes to 8 hours.

**ACTPS** means the public sector established by the PSM Act. To avoid doubt, this includes Calvary Health Care ACT Limited.

**Agreement** means the ACT Public Sector Office of the Legislative Assembly Enterprise Agreement 2021-2022 and includes all Annexes and Schedules.

**Appeal Panel** means the panel established under the provisions at Section J or Section K.

**Appointed** means an appointment in accordance with Part 5 Division 5.3 of the PSM Act.

**Business Day** means any day of the week that is a Monday to Friday, which is not a Public Holiday.

**Business/Work Unit** means any particular work unit in the ACTPS; e.g. a section, branch, division, project team or administrative unit.

**Carer** means an employee who provides in addition to the employee's normal family responsibilities, care and support on a regular basis to other family members or other persons who are sick or ageing, have an injury, have a physical or mental illness or a disability.

**Casual Employee** means a person engaged under section 111 of the PSM Act to perform work with no firm advance commitment to continuing and indefinite work according to an agreed pattern of work.

**Child** includes children in the case of multiple births.

**Clerk** means the person appointed as Clerk of the Legislative Assembly under section 9 of the *Legislative Assembly (Office of the Legislative Assembly) Act 2012*.

**Consultation** means providing relevant information to employees and their union or other employee representatives. It means more than a mere exchange of information. For consultation to be effective the participants must be contributing to the decision-making process not only in appearance but in fact.

**Counts as service for all purposes** means also the provision of employer superannuation contributions to the extent of an employee's superannuation fund rules.

**Directorate** means an administrative unit so named or other government agency within the meaning of the PSM Act and Calvary Health Care ACT Limited.

**OCC** means the Office Consultative Committee established under clause G1 - of this Agreement.

**Disability** means a permanent or ongoing physical or psychological disability attributable to one or more intellectual, cognitive, neurological, sensory or physical impairments or to one or more impairments attributable to a psychiatric condition.

**Domestic Partnership** means a relationship between 2 people, whether of a different or the same sex, living together as a couple on a genuine domestic basis.

**Eligible Casual Employee** means an employee for which all of the following apply:

- (a) They have been employed as a casual employee.
- (b) They have been employed by the ACTPS on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months.
- (c) They have a reasonable expectation of continuing to be employed by the ACTPS on a regular and systematic basis.

**Employee** means (unless there is a clear intention in this Agreement to restrict the meaning) an officer or a casual employee or a temporary employee who is employed or engaged under the PSM Act in a classification set out in Annex A, excluding a person engaged as head of service under subsection 31(1) of the PSM Act, persons engaged as directors-general under subsection 31(2) of the PSM Act, or persons engaged as executives under subsection 31(2) of the PSM Act.

**Employee Representative** means any person chosen by an employee, or a group of employees, to represent the employee(s).

**Family Violence** is as defined under the *Family Violence Act (ACT) 2016*.

**FW Act** means the *Fair Work Act 2009*.

**FWC** means Fair Work Commission.

**Fair work Regulations** or **FW Regulations** mean the Fair Work Regulations 2009.

**Head of Service** means a person engaged under subsection 31(1) of the PSM Act as the head of service and the head of service for the ACT Long Service Leave Authority or a person who exercises Head of Service powers in relation to the appointment, engagement and employment of staff in a government agency in accordance with the PSM Act or other territory law, but only in relation to staff of that government agency.

**Household Member** means a person (other than the employee's immediate family) residing in the employee's normal place of residence at the time of their illness, injury, emergency or death.

**Immediate Family** means a person who is any of the following:

- (a) A domestic partner (including a former domestic partner).
- (b) A child or an adult child, parent, grandparent, grandchild or sibling of the employee or domestic partner of the employee.
- (c) A person related to the employee by Aboriginal or Torres Strait Islander kinship structures.
- (d) A child who is the subject of a permanent caring arrangement.
- (e) An adopted child.

'**Immediate family**' includes adopted, step-, fostered or ex-nuptial immediate family where these circumstances exist. Additionally, the Clerk may consider that the definition of 'immediate family' be extended for a particular decision involving an employee where exceptional circumstances exist. This might include other close family members or an employee who lives alone and has no-one to nominate as 'immediate family', may nominate one person, in similar circumstances, for the purpose of caring responsibilities.

**Long-term Temporary** means a person who is engaged under the PSM Act for a period of 12 months or more.

**Manager** means a person who has responsibility for planning, organising and leading a work unit or group activity.

**Miscarriage** is as defined under the *Fair Work Act 2009 (Cth)*.

**National Employment Standards** means Part 2-2 of the *Fair Work Act 2009 (Cth)*, as amended from time to time.

**Officer** means a person who is appointed as an officer under Division 5.3 of the PSM Act. Note: Permanent staff are officers.

**Permanent Caring Responsibility** means an out of home care placement for a child until the child turns 18 as defined by the Children and Young People Act 2008.

**Primary Care Giver** is a person who is the primary carer of a child in the person's reference period if the child is in the person's care in that period and the person meets the child's physical needs more than anyone else in that period.

**Public Sector Management Act** or (**PSM Act**) means the *Public Sector Management Act 1994* as varied, or replaced.

**Public Sector Management Standards** or (**PSM Standards**) means the Public Sector Management Standards as varied made under section 251 of the PSM Act.

**Public sector standards commissioner** means a person appointed under section 142 of the PSM Act.

**Registered Health Professional** means a health professional registered, or licensed, as a health professional (or as a health professional of a particular type) under a law of a State or Territory that provides for the registration or licensing of health professionals (or health professionals of that type).

**Registered Medical Practitioner** means a person registered, or licensed as a medical practitioner under a law of a state or territory that provides for the registration or licensing of medical practitioners.

**Rostered Day Off or (RDO)** means any one or more days rostered off duty without pay.

**Service or ACT Public Service** means the ACT Public Service established by the PSM Act.

**Short Term Care** means an out of home care placement for a child (or children) of up to 2 years duration as defined by the *Children and Young People Act 2008* (ACT).

**Short-term Temporary Employee** means an employee engaged under the PSM Act for a period of less than 12 months.

**Stillbirth/Stillborn child** is as defined under the *Fair Work Act 2009* (Cth).

**Strategic Board** means the ACTPS senior management team, comprising the head of service and the 8 directors-general, responsible for providing whole-of-government leadership and strategic direction to the ACT Public Service.

**Supervisor** means a person who has direct supervisory responsibility for one or more employees in a business unit or group activity.

**Temporary Employee** means a person engaged under the PSM Act for a specific period of time or for a specified task under Division 5.8 of the PSM Act, excluding a person engaged under section 31(1) of the PSM Act as head of service, persons engaged as directors-general under section 31(2) of the PSM Act or persons engaged as executives under section 31(2) of the PSM Act.

**Union(s)** means a union or unions which are covered by this Agreement, who are registered under the *Fair Work (Registered Organisations) Act 2009* (Cth).

## Section A Scope of Agreement

### A1 - Title

- A1.1 This Agreement, made under section 172 of the *Fair Work Act 2009*, will be known as the ACT Public Sector: Office of the Legislative Assembly Enterprise Agreement 2021-2022.

### A2 - Main Purpose

- A2.1 The main purpose of this Agreement is to provide for common terms and conditions that apply across the Australian Capital Territory Public Sector (ACTPS) and terms and conditions that reflect the operational and business requirements of particular business units and occupational groups.
- A2.2 The further purpose of this Agreement is to provide a fast-tracked interim Agreement for a period of 12 months in recognition of the added burdens imposed on the ACT Public Sector workforce as a consequence of the Covid pandemic. The Agreement provides a mechanism for continuing existing terms and conditions while providing for further wage increases during the 12 month period.

### Retaining our people

- A2.3 In order to promote permanent employment and job security for employees, the ACTPS will endeavour to minimise the use of temporary and casual employment. The ACTPS agrees to the use of temporary employees only where there is no officer available with the expertise, skills or qualifications required for the duties to be performed or the assistance of a temporary nature is required for the performance of urgent or specialised work within a particular business unit of the ACTPS and it is not practical in the circumstances to use the services of an existing officer.

Note: This is in addition to the FW Act right to request conversion

- A2.4 In respect of casual employment, a conversion to full time or part time permanent employment will be considered in accordance with the ACT Government's secure workforce conversion process where: regular and systematic patterns of work have existed in the 6 month period prior to the employee's 12 month anniversary; and where there is a reasonable expectation that such arrangements can continue, on a part time or full time permanent basis without significant changes.
- A2.5 The ACTPS will continue to consult with unions and employees on the development of strategies and initiatives that may assist in the successful recruitment and retention of mature age employees. Such strategies and initiatives will be the subject of discussion and agreement between the employee and the Clerk.
- A2.6 These strategies and initiatives may include any of the following:
- A2.6.1 Developing flexible working arrangements, such as variable employment, part-year employment, job sharing and purchased leave.
  - A2.6.2 Planning phased retirement arrangements for individual mature age employees who are considering retirement within 4 to 5 years, including through reducing the employee's management or higher level responsibilities during a phased retirement period.
  - A2.6.3 Examining the implications of current superannuation legislation for using such flexible employment and working arrangements and informing affected employees how such implications may be addressed.
  - A2.6.4 Arranging training to assist the employee in any changing roles the employee may have as part of the employee's phased retirement.
  - A2.6.5 Developing arrangements to facilitate the return of former mature age employees, including by engaging such persons for a short period in a mentoring capacity.
  - A2.6.6 At the discretion of the Clerk, contributing to the cost to an employee of financial advice received as part of planning for a phased retirement period.

## **Attracting future employees**

- A2.7 The ACTPS will consult with the union(s) through the Office's Consultative Committee (OCC) to develop strategies to assist in attracting and retaining suitable employees. This will involve development of appropriate strategies and processes, including the conduct of surveys of staff, to assist this objective.

## **Developing our people**

- A2.8 The ACTPS will consult and agree with the union(s) on the development and finalisation of Learning and Development Plans and on the annual key learning and development priorities. The ACTPS and the union(s) will also agree on the equitable use of resources to address these priorities and strategies appropriate for the different categories of employees. For the purposes of this clause, "resources" includes, but is not limited to, employees, time, funding (where required) and equipment.
- A2.9 This Agreement supports a performance culture within the ACTPS that promotes ethical workplace conduct and rewards employees for their contribution towards the achievement of the ACTPS's objectives.
- A2.10 It is acknowledged that performance management is important to employee development and to ensuring that the relationship between corporate, team and individual responsibilities is aligned to individual, team and organisational objectives.
- A2.11 Any performance management schemes in the ACTPS will not include performance pay and will not be used for disciplinary purposes.

## **Recognising our people**

- A2.12 The ACTPS is committed to achieving an environment where employees feel valued for the contribution they make to achieving organisational goals. The most effective form of recognition is timely and appropriate feedback. The ACTPS will consult with the union(s) on other effective ways of recognising and rewarding the achievement of individuals and work groups.
- A2.13 Any outcomes of this consultation will only be implemented by agreement of the ACTPS and the union(s).

## **Ensuring fairness**

- A2.14 The ACTPS recognises and encourages the contribution that people with diverse backgrounds, experiences and skills can make to the workplace. The ACTPS aims to ensure that this diversity is able to contribute to effective decision making and delivery of client service.
- A2.15 The ACTPS will work with employees to prevent and eliminate discrimination on the basis of sex, sexuality, gender identity, relationship status, status as a parent or carer, pregnancy, breastfeeding, race, religious or political conviction, disability, industrial activity, age, profession, trade, occupation or calling, association, or a spent conviction, in accordance with the *Discrimination Act 1991*.

## **Achieving a better work and life balance**

- A2.16 The ACTPS is committed to providing employees with a work-life balance that recognises the family and other personal commitments of employees.
- A2.17 The ACTPS acknowledges the commitment and responsibilities that Aboriginal and Torres Strait Islander employees have to their community, and that Aboriginal or Torres Strait Islander identity is not left at the door when entering the workplace. The ACTPS recognises that Aboriginal and Torres Strait Islander employees have the capacity to make a unique and important contribution and bring a strength to the operations of the Australian Capital Territory and Public Sector.
- A2.18 This Enterprise Agreement provides a number of entitlements specific to Aboriginal and Torres Strait Islander employees in recognition of their community and cultural responsibilities, and in this statement expressly recognises the roles that Aboriginal and Torres Strait Islander employees may be required to undertake as part of their community. Involvement in community is an on-going function for Aboriginal and Torres Strait Islander peoples and is not tied to 'office hours'.

A2.19 It is recognised that commitment to community can result in expectations being placed on Aboriginal and Torres Strait Islander employees that may not be expected of other employees, and that Aboriginal and Torres Strait Islander employees may be culturally bound to the performance of specific functions for their community. It is also recognised that Aboriginal and Torres Strait Islander employees may be impacted in their lives by a variety and accumulation of cultural factors.

A2.20 Within and subject to operational requirements, supervisors and managers should seek to work with Aboriginal and Torres Strait Islander employees to support utilising the appropriate entitlements contained in this Agreement and achieve an appropriate balance between cultural and community responsibilities, and workplace duties.

### **Promoting a healthy and safe working environment**

A2.21 The ACTPS is committed to promoting, achieving and maintaining the highest levels of health and safety for all employees.

A2.22 The ACTPS will take all reasonable steps and precautions to provide a healthy, safe and secure workplace for the employee. The ACTPS and all employees will act in a manner that is consistent with the Work Health and Safety Act (WHS Act).

A2.23 Further, given the clear evidence of the benefits and cost effectiveness of workplace health initiatives for both employers and employees, the ACTPS will develop health and wellbeing policies and programs that promote healthy lifestyles and help maintain a high standard of physical and mental health, along with supporting individual workplace safety and general wellbeing. Such policies and programs may include any of the following:

A2.23.1 Organisational and environmental policies and programs.

A2.23.2 Awareness, training and education programs that promote healthy lifestyles, assist employees to identify and reduce risk factors.

A2.23.3 Traditional and non-traditional physical activity programs.

### **A3 - Application and Coverage**

A3.1 This Agreement applies to and covers all of the following:

A3.1.1 The Clerk on behalf of the Australian Capital Territory

A3.1.2 Persons engaged under *the Public Sector Management Act 1994* (PSM Act) at any time when the Agreement is in operation in one of the classifications in Annex A, except persons engaged as executives under section 31(2) of the PSM Act.

A3.2 Subject to the Fair Work Commission (FWC) noting in its decision to approve this Agreement that it covers these unions, this Agreement covers all of the following:

A3.2.1 Community and Public Sector Union (CPSU)

A3.2.2 Media, Entertainment and Arts Alliance (MEAA)

### **A4 - Commencement and Duration**

A4.1 This Agreement will commence operation 7 days after it is approved by the FWC.

A4.2 The nominal expiry date of this Agreement is 31 October 2022.

A4.3 The Clerk and unions covered by this Agreement agree to commence bargaining for a new replacement Agreement no later than 8 months prior to the nominal expiry date of this Agreement.

A4.4 Copies of this Agreement will be made available, in paper or electronic form, to all employees covered by the Agreement.



## **A5 - Operation of the Agreement**

- A5.1 This Agreement is comprehensive and provides the terms and conditions of employment of employees covered by this Agreement, other than terms and conditions applying under applicable legislation.
- A5.2 Applicable legislation includes all of the following:
- A5.2.1 *Fair Work Act 2009 (Cth) (FW Act)*
  - A5.2.2 *Public Sector Management Act 1994 (ACT) (PSM Act)*
  - A5.2.3 *Public Sector Management Standards (PSM Standards)*
  - A5.2.4 *Financial Management Act 1996 (ACT) (FM Act)*
  - A5.2.5 *Work Health and Safety Act 2011 (ACT) (WHS Act)*
  - A5.2.6 *Holidays Act 1958 (ACT) (Holidays Act)*
  - A5.2.7 *Territory Records Act 2002 (ACT) (TR Act)*
  - A5.2.8 *Safety, Rehabilitation and Compensation Act, 1988 (Cth) (SRC Act)*
  - A5.2.9 *Superannuation Guarantee (Administration) Act 1992 (Cth)*
  - A5.2.10 *Integrity Commission Act 2018 (ACT) (IC Act)*
  - A5.2.11 *Public Interest Disclosure Act 2012 (ACT) (PID Act)*
  - A5.2.12 *Labour Hire Licensing Act 2020 (ACT) (LHL Act)*
- A5.3 This Agreement constitutes a closed agreement in settlement of all claims for its duration. Therefore, during the life of this Agreement, there will be no further claims that affect the provisions of this Agreement, except where these claims are consistent with the terms of this Agreement. This clause does not limit the rights to vary an agreement under the FW Act .
- A5.4 This Agreement will be read and interpreted in conjunction with the National Employment Standards (NES) of the FW Act. If there is inconsistency between this Agreement and the NES, and the NES provides greater benefit, the NES provision will apply to the extent of the inconsistency.
- A5.5 This Agreement prevails over ACT legislation, including the PSM Act and the PSM Standards and relevant policy statements and guidelines to the extent of any inconsistency.
- A5.6 To the extent of any inconsistency between a provision in one of the schedules to this Agreement and Section A to Section L of this Agreement, the provision in the schedule will prevail.

## **A6 - Authority of the Clerk (Head of Service Powers)**

- A6.1 The Clerk may, in writing, delegate any power or function that the Clerk has under this Agreement to another person or position within the Office, subject to directions, except for this power of delegation and the powers under subclause J1.2 and subclause K2.1.
- A6.2 This does not limit the power of the Clerk to authorise a person to act for and on the Clerk's behalf.
- A6.3 In this Agreement reference to the Clerk may be taken to mean delegate where the Clerk has delegated the particular power or function under subclause A6.1.

## **A7 - Authority of the Public Sector Standards Commissioner**

- A7.1 Where the Public Sector Standards Commissioner has express powers under this Agreement, only the Public Sector Standards Commissioner may delegate, in writing, those powers to another person or position within the ACTPS, subject to directions, except for this power of delegation.
- A7.2 This does not limit the power of the Public Sector Standards Commissioner to authorise a person to act for and on behalf of the Public Sector Standards Commissioner.
- A7.3 Where the Public Sector Standards Commissioner is conducting investigations by reference to section 144(1)(a)(i) of the PSM Act about a matter declared by the Chief Minister in the way prescribed, the Public Sector Standards Commissioner is not limited to or bound by the investigation procedures contained in clause H9 - and clause H10 - of this Agreement.

## **A8 - Flexibility Term**

- A8.1 The Clerk and an individual employee may agree to vary the application of certain provisions of this Agreement to meet the particular needs of a business unit in the Office and of the individual employee (an individual flexibility arrangement).
- A8.2 The Clerk and an individual employee may agree to vary, through an individual flexibility arrangement, any of the following provisions of this Agreement:
- A8.2.1 Vacation childcare subsidy (clause E10 -)
  - A8.2.2 Family care costs (clause E11 -)
  - A8.2.3 Emergency duty (clause C16-).
- A8.3 The Clerk must ensure that the terms of an individual flexibility arrangement meet all of the following:
- A8.3.1 They would be permitted if the arrangement were an enterprise agreement.
  - A8.3.2 They do not include a term that would be an unlawful term if the arrangement were an enterprise agreement.
  - A8.3.3 They will result in the employee being better off overall than the employee would have been if no individual flexibility arrangement were agreed to.
- A8.4 The Clerk must ensure that the individual flexibility arrangement meets all of the following:
- A8.4.1 It identifies the clause in A8.2 of this Agreement that the Clerk and the employee have agreed to vary.
  - A8.4.2 It sets out details of how the arrangement will vary the effect of the clause.
  - A8.4.3 It includes details of 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.
  - A8.4.4 It states the day the arrangement commences.
- A8.5 An individual flexibility arrangement made under this clause must be genuinely agreed to by the Clerk and the individual employee.
- A8.6 Except as provided in paragraph A8.7.2, an individual flexibility arrangement made under this clause must not include a provision that requires the individual flexibility arrangement to be approved, or consented to, by another person.
- A8.7 The Clerk must ensure that an individual flexibility arrangement made under this clause is made in writing and signed by the following:
- A8.7.1 In all cases - by the employee and the Clerk.
  - A8.7.2 If the employee is under 18 – by a parent or guardian of the employee.
- A8.8 The Clerk must give the employee a copy of an individual flexibility arrangement made under this clause within 14 days after it is agreed to.

- A8.9 The Clerk or the employee may terminate the individual flexibility arrangement by doing either of the following:
- A8.9.1 Giving written notice of no more than 28 days to the other party to the arrangement.
  - A8.9.2 Both parties agree in writing – at any time.
- A8.10 The right to make an individual flexibility arrangement under this clause is in addition to, and is not intended to otherwise affect, the right of the Clerk and an individual employee to make an agreement under any other provision of this Agreement.

### **A9 - Work Organisation**

- A9.1 An employee agrees to carry out all lawful and reasonable directions of the Clerk according to the requirements of the work and the employee's skill, experience and competence, in accordance with this Agreement, and without deskilling the employee.
- A9.2 An employee will not, unless this is done in the course of the employee's duties or as required by law or by the Office, use or disclose to any person any confidential information about the Office's business that becomes known to the employee during the employee's employment.
- A9.3 The Office will not reveal to any person any medical, financial or personal details of the employee that the Office may have obtained, except with the permission of the employee or where the Office is under a legal obligation to do so.
- A9.4 Subject to subclauses A9.5 to A9.8 and limited to new employees of the ACTPS whose employment with the ACTPS commences on or after the commencement of this Agreement (new employee), the ACTPS will provide details of the new employee's employment to the relevant union(s) (irrespective of whether the employee has elected to become a member of the union).
- A9.5 The details of the new employee's employment which the ACTPS may provide to a relevant union is limited to the new employee's first name and surname, the ACT Government contact information for the new employee (email address and contact phone number), and the position and directorate in which the new employee is engaged. The ACTPS will not provide the information to the union(s) until at least 21 days after the new employee has commenced employment.
- A9.6 Subclause A9.4 does not apply if the Clerk has received written notification from the new employee, either prior to their commencement of employment, or within 14 days after their commencement, that the employee does not consent to the information specified in subclause A9.5 being shared with the relevant union(s).
- A9.7 Each of the unions referred to in subclause A3.2 who wish to receive the information referred to in subclause A9.5 must advise the ACTPS of the classifications covered by this Agreement which, in accordance with its rules, the union is entitled to represent. Upon receipt of that advice from the unions, the ACTPS will compile a schedule and provide it to the unions (Union Representation Schedule).
- A9.8 The ACTPS will only provide new employee information to the relevant union(s) under subclause A9.4 in accordance with the Union Representation Schedule and will do so on a monthly basis.

### **A10 - Termination of Agreement**

- A10.1 The Office and the union(s) covered by this Agreement agree that the maintenance of, and adherence to, agreed terms and conditions of employment is a key component of good workplace relations and a dispute free workplace. They therefore agree that they will not exercise their right to terminate this Agreement under the FW Act.

## Section B Working in the ACT Public Sector

### B1 - Types of Employment

- B1.1 A person will be engaged under the PSM Act in one of the following categories:
- B1.1.1 *Permanent* employment as an officer on a full-time or permanent part-time basis, including appointment with or without probation.
  - B1.1.2 Short-term *temporary* employment for a period not exceeding 12 months on a full-time or part-time basis, engaged for a specified period of time or for a specified task or as an apprentice, trainee; or cadet.
  - B1.1.3 Long-term *temporary* employment for a period greater than 12 months but not exceeding 5 years on a full-time or part-time basis, engaged for a specified period of time or for a specified task or as an apprentice, seasonal employee, trainee, or cadet.
  - B1.1.4 *Casual* temporary employment.
- B1.2 Persons engaged on a part-time basis will receive, on a proportionate basis, equivalent pay and conditions to those of full-time employees unless specifically stated elsewhere in this Agreement.

#### Fixed-term employment for seasonal employees

- B1.3 Seasonal employees employed under paragraph B1.1.3 may be employed for a 3 year period on a temporary basis under which they work for certain periods during consecutive seasons (the “active employment periods”). Prior to the end of the 3 year contract the Clerk may offer the seasonal employee a further 2 year contract without the need for the position to be advertised.
- B1.4 The active employment period will be specified in the contract and fixed for the contract term, and will be no less than 22 weeks per 12 month period. The start and end dates of each active employment period will be specified in the contract.
- B1.5 In respect of the active employment periods, seasonal employees must, unless otherwise specified, be entitled to the same benefits as employees working throughout the year, calculated on a pro rata basis.
- B1.6 Notwithstanding any other provision of this Agreement, outside the active employment periods (other than during periods of paid annual leave) seasonal employees will be regarded as being on unpaid leave and they will not accrue leave or any other entitlements under this Agreement while on unpaid leave.
- B1.7 The start and end dates of the active employment period as specified in the contract may be varied by agreement between the Clerk and the employee, provided that this will not shorten the active employment period.
- B1.8 The active employment period can be extended up to 12 months in any contract year with agreement between the Clerk and the employee.
- B1.9 Notwithstanding subclause B1.4 if there is a demonstrated need for a shorter active employment period for a particular type of seasonal employee, the Clerk may determine that a shorter minimum active employment period applies for that particular group of employees, provided the minimum period is no less than 16 weeks.
- B1.10 A seasonal employee is not required to obtain prior permission for secondary employment in periods outside the active employment period, provided that there is no conflict of interest.

### B2 - Review of Employment Status

- B2.1 In order to promote permanent employment and job security for employees in the ACTPS, temporary and non-ongoing employees, as well as eligible casual employees who have been engaged on a regular and systematic basis for at least 12 months and who have a reasonable expectation that such arrangements will continue, may, by application in writing to their manager or supervisor, request an examination of their employment status.

Note: This is in addition to the FW Act right to request conversion

- B2.2 Having considered the request the manager or supervisor must respond in writing, giving reasons, within a 6 week timeframe.
- B2.3 To avoid doubt, decisions stemming from such reviews are subject to the application of selection and appointment processes applying in the ACTPS. These processes include the application of the merit principle and the application of a probation period on appointment. These processes are also subject to there being no excess officers who would be eligible for redeployment to the office.
- B2.4 A selection process initiated under this clause must be conducted with the use of a joint selection committee in accordance with clause B4 - of this Agreement.

### **B3 - Probation**

- B3.1 Where an officer is appointed on probation under the PSM Act, the period of probation will ordinarily be no more than 6 months.
  - B3.1.1 The probation period can only be longer than 6 months if it is in accordance with approved Training Scheme employment arrangements (for example at C6 -) or where the period of probation has been extended following an assessment of performance.
- B3.2 The Clerk must, at the time an officer is appointed on probation, inform the officer in writing of the period of probation and the criteria and objectives to be met for the appointment to be confirmed.
- B3.3 Probation provides a supportive process for the officer during which mutual evaluation and decisions about permanent appointment can be made.
- B3.4 There must be at least 2 formal assessments of an officer's performance at appropriate and reasonable points of the probationary period. The Clerk must provide the officer with a copy of each assessment report and provide the officer an opportunity to respond within 7 business days.
  - B3.4.1 If the assessment warrants the manager or supervisor's recommendation that the Clerk terminate the officer's employment, that recommendation must be included in the assessment report.
  - B3.4.2 Where an employee's employment is to be terminated at the initiative of the Clerk, the employee must be given at least 14 days written notice in accordance with section 70(5) of the PSM Act.
- B3.5 If the period of probation is extended in accordance with the PSM Act (s71B), the Clerk must inform the officer in writing of the period of the extension, the reasons for the extension, and what the officer must do by the end of the period of extension for their permanent appointment to be confirmed.
- B3.6 A period of extension is not to be longer than 6 months unless it is for extraordinary circumstances and has been approved by the Clerk.
- B3.7 A decision of the Clerk to accept the recommendation to terminate the appointment of an officer on probation, as per paragraph B3.4.1, is excluded from the Internal Review Procedures (Section I) and Appeal Mechanism (Section J) of this Agreement.
  - B3.7.1 To avoid doubt, an officer on probation is able to seek a review of the officer's probation under the Internal Review Procedures, (Section I), except in relation to a decision to terminate the officer's employment.

### **B4 - Joint Selection Committees**

- B4.1 A Joint Selection Committee must consist of a minimum of the following:
  - B4.1.1 A chairperson who has appropriate skills and experience, nominated by the Clerk.
  - B4.1.2 A person who has appropriate skills and experience, nominated by the union(s).

B4.1.3 a person who has appropriate skills and experience, nominated by the Clerk from a list of employees, and agreed by the Clerk and the principal union.

B4.2 The Office must as far as practicable ensure that employees who are Joint Selection Committee members have access to appropriate training to assist them in performing their role.

Note: 1 Provisions relating to the use of Joint Selection Committees are located in the PSM Standards.

2 For every JSC the relevant union(s) must be contacted to ascertain the union nominee and to seek agreement for the third JSC member.

### **B5 - Hours of Work for Non-Shift Workers**

B5.1 In this clause employee refers to an employee (other than a casual employee) who is employed in a position identified by the Clerk as having ordinary weekly hours of either 36:75 or 38:00 hours per week.

#### **Non-shift workers - ordinary hours of work**

B5.2 A non-shift work position may have ordinary weekly hours of either 36.75 or 38.00 hours per week.

B5.3 For a 36.75 hours per week position both the following apply:

B5.3.1 The ordinary daily hours are 7 hours and 21 minutes for a full-time employee.

B5.3.2 Standard hours are from 8:30 am to 12:30 pm and from 1:30 pm to 4:51 pm Monday to Friday, unless otherwise agreed in writing by the employee and the manager or supervisor.

B5.4 For a 38.00 hours per week position both the following apply:

B5.4.1 The ordinary daily hours are 7 hours and 36 minutes for a full-time employee.

B5.4.2 Standard hours are from 8:30 am to 12:30 pm and from 1:30 pm to 5:06 pm Monday to Friday, unless otherwise agreed in writing by the employee and the manager or supervisor.

B5.5 Ordinary weekly hours may be averaged over a period of up to 4 weeks (28 calendar days), or a longer period of no more than 12 months as agreed in writing between the manager or supervisor and the employee.

B5.6 A part-time employee will work less than the ordinary weekly hours of work for a full-time employee.

#### **Non-shift workers - span of hours**

B5.7 Ordinary daily hours must be worked within the span of hours limits of 7:00 am to 7:00 pm Monday to Friday.

B5.8 The span of hours worked in a day (subclause B5.7) may be varied by agreement between the manager or supervisor and a majority of employees concerned in a workplace.

B5.9 At the request of an employee and with the agreement of the Clerk, the employee may work outside the span of hours stipulated at subclause B5.7. This provision is designed to add flexibility in exceptional circumstances and is not to be used to replace normal overtime provisions.

B5.9.1 Where an employee requests to work outside the span of hours in accordance with subclause B5.9, these hours are considered normal hours of duty and do not attract overtime payments or time off in lieu provisions on an hour for hour basis, unless otherwise agreed between the employee and the Clerk prior to the work being performed.

#### **Non-shift workers - meal break**

- B5.10 Unless there are exceptional and unforeseen circumstances, an employee is not required to work for more than 5 hours without a meal break of at least 30 minutes' duration. Meal breaks do not count as time worked unless specifically provided for in this Agreement.
- B5.11 The provisions of subclause B5.10 may be varied by agreement between the manager or supervisor and a majority of employees concerned in a workplace.
- B5.12 The term 'meal break' does not require the employee to partake of a meal during the break period.
- B5.13 An employee who works up to 6 hours in a day may, with the agreement of the manager or supervisor, work up to 6 hours without a meal break to accommodate the employee's personal circumstances and work-life balance.

### **B6 - Hours of Work for Shift Workers**

- B6.1 An employee (other than a casual employee) is a shift worker if both of the following apply:
  - B6.1.1 The employee is rostered.
  - B6.1.2 The roster may require the employee to perform ordinary daily hours on a shift Note when some or all of a shift in the roster falls on one or both of the following:
    - B6.1.2 (a) Outside the span of hours as set out in subclause B5.7.
    - B6.1.2 (b) On Saturdays or Sundays on a regular and ongoing basis.

Note: A shift worker may be required, as a part of their regular roster, to work public holidays.

#### **Shift workers - ordinary hours of work**

- B6.2 A shift work position may have ordinary weekly hours of either 36.75 or 38.00 hours per week.
- B6.3 For a 36.75 hours per week position, the ordinary daily hours are 7 hours and 21 minutes for a full-time employee. The ordinary weekly hours are 36.75 hours for a full-time employee, performed in any of the following ways:
  - B6.3.1 36.75 hours within a period not exceeding 7 consecutive days.
  - B6.3.2 73.5 hours within a period not exceeding 14 consecutive days.
  - B6.3.3 147 hours within a period not exceeding 28 consecutive days.
  - B6.3.4 Any other period of 12 months or less and agreed in writing between the manager or supervisor and the employee to provide for an average weekly hours of 36.75 hours per week over the agreed period.
- B6.4 For a 38.00 hours per week position, the ordinary daily hours are 7 hours and 36 minutes for a full-time employee. The ordinary weekly hours are 38.00 hours for a full-time employee, performed in any of the following ways:
  - B6.4.1 38.00 hours within a period not exceeding 7 consecutive days.
  - B6.4.2 76.00 hours within a period not exceeding 14 consecutive days.
  - B6.4.3 152 hours within a period not exceeding 28 consecutive days.
  - B6.4.4 Any other period of 12 months or less and agreed in writing between the manager or supervisor and the employee to provide for an average weekly hours of 38.00 hours per week over the agreed period.
- B6.5 The ordinary weekly hours may be averaged over a period of up to 4 weeks (28 calendar days), or a longer period of no more than 12 months as agreed in writing between the manager or supervisor and the employee affected.
- B6.6 A part-time employee will work less than the ordinary weekly hours of work for a full-time employee.

- B6.7 After consulting with the employees affected and the employees' representatives and following agreement of a majority of employees affected, the Clerk may introduce any of the following:
- B6.7.1 Shift work.
  - B6.7.2 A new roster.
  - B6.7.3 An arrangement of shift cycles.
- B6.8 Subject to subclause B6.9 rosters setting out the start times, finish times, and rotation of shifts over at least a 28 day period must be posted at least 14 calendar days prior to the commencement of the roster.
- B6.9 Amendments may be made to rosters to meet the operational or business needs of a particular business unit. These amendments must be made available as soon as practicable.

**Shift Workers - payment for an employee rostered off on a public holiday**

- B6.10 An employee will be granted a day's leave in lieu of a public holiday if both of the following apply to the day on which the public holiday falls:
- B6.10.1 The employee is normally rostered to perform work on that day of the week.
  - B6.10.2 The employee is scheduled to be on a rostered day off...
- B6.11 The day in lieu provided for in subclause B6.10 must be granted within one month after the holiday, if practicable.
- B6.12 If it is not practicable to grant a day's leave in lieu in accordance with subclause B6.11, the employee will be paid one day's pay at the ordinary hourly rate of pay.
- B6.13 The day's leave in lieu of a public holiday occurring on a rostered day off provided under subclause B6.10, or the day's pay provided under subclause B6.12, is equivalent to the ordinary hours the employee would have worked had the employee been rostered to work on the public holiday, provided that the employee is not otherwise being compensated for the public holiday by any of the following:
- B6.13.1 The provision of additional paid annual leave in lieu of public holidays.
  - B6.13.2 The payment of a composite rate of pay that includes payment for public holidays.
  - B6.13.3 The accrual of additional rostered hours of work towards an Accrued Day Off.
  - B6.13.4 Any other means.

**Shift Workers - meal break**

- B6.14 Unless there are exceptional and unforeseen circumstances, an employee is not required to work for more than 5 hours without a meal break of at least 30 minutes' duration. Meal breaks do not count as time worked unless specific provisions are made for in this Agreement.
- B6.15 The term 'meal break' does not require the employee to partake of a meal during the break period.
- B6.16 The provisions of subclause B6.14 may be varied by agreement between the manager or supervisor and a majority of employees concerned in a workplace.
- B6.17 An employee who works up to 6 hours in a day may, at the employee's discretion, work up to 6 hours without a meal break to accommodate the employee's personal circumstances and work-life balance.
- B6.18 An employee who is required by the Clerk, due to operational reasons, to continue working through the employee's meal break will be paid an additional 50% of the employee's ordinary hourly rate of pay from the scheduled time of commencement of the break until the employee is provided a break or commencement of a period of overtime following completion of ordinary hours of work.



## **B7 - Flexitime**

- B7.1 Flexitime provides the framework for an employee's pattern of attendance at work to be varied according to the needs of the employee and the requirements of the work unit. It is not a system that is designed to increase or reduce the total number of hours that must be worked.
- B7.2 Flexitime is not available to any of the following:
- B7.2.1 Casual employees.
  - B7.2.2 Employees above the Senior Officer Grade C level (or equivalent classification, including Legal Officer 1).
  - B7.2.3 Shift workers whose hours of work are provided for in clause B6 -.
  - B7.2.4 Employees who are entitled to accrued days off in accordance with subclause B8 -.
  - B7.2.5 Part-time employees, except where agreed and expressed in their part-time work agreement in accordance with subclause E2.5 or subclause E4.5.
- B7.3 For flexitime arrangements to work effectively, managers and employees have a responsibility to manage hours of work to ensure that individuals are not building up excessive flex credits while either of the following apply:
- B7.3.1 The employee does not have the opportunity to access flexitime accrued.
  - B7.3.2 The employee is not being productively employed i.e. the Clerk may require an employee not to accumulate flex credits before 8:30 am or after 4:51 pm where there is insufficient work or an employee cannot be sufficiently managed.
- B7.4 Hours of work arrangements must be in accordance with operational requirements and occupational health and safety principles. This means that patterns of working hours that have the potential to impact on the health of an employee, such as working long hours in a condensed period or avoiding meal breaks so as to depart early from work, should be avoided.
- B7.5 A settlement period comprises 2 pay periods (i.e. 4 weeks).
- B7.6 Starting and finishing times within the span of hours are to be determined for individual work areas by the Clerk based on operational needs.
- B7.7 An employee may have a maximum flexitime credit equal to the employee's normal weekly hours of duty, at the end of the settlement period. This may be varied by agreement between the Clerk and the employee.
- B7.8 There is no provision to cash out flexitime credits either during a period of employment or upon separation or transfer out of the Office.
- B7.9 The maximum flexitime debit that may accrue is 10 hours measured at the end of any settlement period. Part-time employees that have access to flexitime in accordance with their part-time agreement may accrue a flex debit on a pro rata basis. Any debit in excess of the maximum debit, at the end of a settlement period, is considered to be leave without pay and deducted in accordance with the overpayment process at clause D5 -.
- B7.10 Any flexitime debits an employee has if the employee ceases employment with the Office will be treated as a debt in accordance with clause D5 -. The employee may nominate to use any available annual leave credits to cover the debt, or the debt will be recovered from any termination payment owing to the employee, except in the case of death.
- B7.11 Accrued flexitime credits will be taken at such times and in such a period or periods as are agreed between the employee and the Clerk and approved prior to taking accrued flexitime. It is the responsibility of both the employee and the Clerk to take steps to ensure that accrued flexitime credits can be taken as time off, in accordance with this clause.
- B7.12 An employee not complying with these flexitime provisions may be directed by the Clerk to work standard hours or the employee's standard working pattern. Standard hours are 8:30 am to 12:30 pm and 1:30 pm to 4:51 pm Monday to Friday, for an employee whose hours of work are provided for in subclause B5.3 (36.75 Hours per Week – Non Shift Workers) and 8:30 am to 12:30 pm and 1:30 pm to 5:06 pm Monday to Friday, for an employee whose hours of work are

provided for in subclause B5.4, (38.00 Hours per Week – Non Shift Workers), Monday to Friday, unless otherwise agreed in writing by the employee and the Clerk.

### **B8 - Accrued Days Off (ADOs)**

- B8.1 An employee to whom this clause applies is entitled to a day/shift off duty using bankable leave accrued as a result of increasing the employee's daily hours of work – e.g. increasing from 7 hours 36 minutes to 8 hours.
- B8.2 An employee may apply to take an ADO as a whole day or part of a day by agreement with the manager or supervisor. ADOs must be approved by the manager or supervisor if they consider the approval will not affect operational requirements. If the manager or supervisor does not approve an ADO because of operational requirements, the manager or supervisor must consult with the employee to determine a mutually convenient alternative time (or times) for the employee to take the leave.
- B8.3 Accrual towards an ADO does not occur when an employee is on any form of leave with the exception of annual leave, paid personal leave and compassionate leave.
- B8.4 ADOs will not be taken in advance and must only be taken when the equivalent time has been accrued.
- B8.5 An employee may bank a maximum of 6 ADOs with the approval of the employee's manager or supervisor.
- B8.6 For each day or shift an employee is absent on annual leave, paid personal leave or compassionate leave, leave credits are reduced by the number of ordinary hours that the employee would have worked on that day or shift (including time accrued for the ADO). Each day or shift of paid annual leave, paid personal leave or paid compassionate leave taken during the cycle of shifts will therefore be regarded as a day worked for accrual towards an ADO.
- B8.7 Where an employee, who has accrued credit towards an ADO, ceases employment with the Office and it is not practical for the employee to utilise that credit, the employee will have the accrued ADO credit paid on separation. The rate at which any unused ADO credit will be paid is the rate of pay, including any applicable higher duties allowance, that is in effect on the date of separation.

### **B9 - Casual Employment Arrangements**

#### **Minimum attendance**

- B9.1 The minimum payment on each occasion when a casual employee is called for and attends for duty is 3 hours, whether or not the casual employee is required to work for those 3 hours.

#### **Rate of pay**

- B9.2 A person engaged as a casual employee will be paid at the same rate of pay as would be applicable to an employee performing the duties and hours of that role. In addition the casual employee will receive a loading of 25% of the ordinary hourly rate of pay set out in Annex A to this Agreement in lieu of paid leave entitlements, other than long service leave, and in lieu of payment for public holidays on which the employee did not work.

#### **Payment for shift work**

- B9.3 A casual employee is eligible to receive payment of shift penalties in accordance with clause C8 -.
- B9.4 The loading paid under subclause B9.2 is not taken into account in the calculation of shift work penalty payments.

#### **Overtime**

- B9.5 A casual employee is eligible to receive payment for overtime in accordance with clause C9 -.
- B9.6 A casual employee is eligible for payment of overtime in respect of all hours worked in excess of either seven hours and 21 minutes or 7 hours and 36 minutes, as applicable, on any day or shift.

B9.7 The loading paid under subclause B9.2 is not taken into account in the calculation of overtime payments.

#### **Overtime meal allowance**

B9.8 A casual employee is eligible to receive payment of overtime meal allowances in accordance with Annex C.

B9.9 The term 'meal break' does not require the employee to partake of a meal during the break period.

#### **Payment for public holidays**

B9.10 A casual employee is not eligible for payment in respect of public holidays, unless the employee works on a public holiday provided under clause F10 -.

B9.11 Where a casual employee does work on a public holiday, the casual employee is entitled to the appropriate shift penalties or overtime payments described in subclauses C8.7 and C9.15.

#### **Leave**

B9.12 A casual employee is not eligible for paid leave other than long service leave.

### **B10 - Record Keeping**

B10.1 The Office must keep records relating to the employees' work, including records about attendance and pay, in accordance with the requirements of the FW Act, FW Regulations and the Territory Records Act 2002.

B10.2 The employee must record the time of commencing and ceasing duty for each day. These records must be provided to the manager or supervisor where the manager or supervisor so requests.

### **B11 - Insourcing and secure employment**

B11.1 The ACTPS is committed to promoting permanent employment and job security for employees within the ACTPS and accordingly agrees to the provisions in this clause.

B11.2 The ACTPS is committed to establishing an insourcing and Secure Employment Framework for assessing if applicable procured work should be provided by the public sector.

B11.3 The ACTPS is committed to all of the following:

B11.3.1 Minimising the use of consultants and contractors and labour-hire across the ACTPS.

B11.3.2 Minimising the use of sub-contractors and increase the use of direct employment of workers across the ACTPS.

B11.3.3 Supporting direct employment relationships, but where sub-contractors are operating, that industrial and legal mechanisms to protect their rights, be developed and implemented.

B11.4 As part of the introduction of the Secure Employment Framework and to assist in the promotion of permanent employment for employees, the Office will ensure that the employees of any consultants or contractors the Office proposes to engage, receive pay and conditions at least equivalent in overall terms to ACTPS pay and conditions.

B11.5 Prior to making decisions about matters covered by this clause, appropriate consultation will be undertaken with relevant employees and unions in accordance with clause G1 -of this Agreement.

### **B12 - Secure workforce conversion process**

B12.1 The ACTPS is committed to promoting permanent employment and job security for employees within the ACTPS.

B12.2 For the purposes of giving effect to this commitment, which is further outlined in this Agreement, including at subclauses A2.3 and A2.4, a Joint Union and ACT Government secure workforce conversion process has been established by the ACT Government. The secure workforce conversion process delivers important outcomes regarding secure work for temporary and casual employees.

- B12.3 In accordance with subclauses A2.3 and A2.4, assessments will occur through the secure workforce conversion process which will facilitate recommendations to the Clerk as to whether a position, or group of positions, or a temporary or casual employee, should be converted to permanency. Where such a recommendation has been made, the Clerk will endeavour to convert the position(s) or employee(s) to permanent employment. The Clerk may appoint the employee(s) currently in the relevant positions without a further merit selection process, if the Clerk is satisfied that the relevant employee(s) meets the requirements of the proposed position and the criteria of the secure work conversion process.
- B12.4 Where the secure workforce conversion process has made a recommendation to the Clerk that a position or group of positions, or an employee with temporary or casual employment should be converted to permanency and the Clerk decides not to appoint the relevant employee(s) in accordance with subclause B12.3, the Clerk must provide written reasons for their decision.

### **B13 - Notice of Termination**

- B13.1 Where an employee's employment is to be terminated at the initiative of the Clerk, other than in accordance with subclause H7.8 or Section L, the notice periods set out in the Fair Work Act will apply.
- B13.2 Where an employee's employment is to be terminated at the initiative of the employee, the employee must provide written notice of their resignation from the Office to the Clerk at least 2 weeks prior to the proposed date of the resignation.
- B13.3 The period of notice required in subclause B13.2 may be reduced by agreement in writing between the employee and the Clerk.

## Section C Rates of Pay and Allowances

### C1 - Part-Time Employment

- C1.1 Persons engaged on a part-time basis will receive, on a proportionate basis, equivalent pay and conditions to those of full-time employees, unless specifically stated elsewhere in this Agreement.

### C2 - Pay Increases

- C2.1 Employees will be paid in accordance with the employee's classification and rates of pay set out in Annex A to this Agreement.
- C2.2 Increases to pay rates for all classifications set out in Annex A of this Agreement will be:
- C2.2.1 1.35% from the commencement of the first full pay period on or after 1 December 2021.
- C2.2.2 1.35% from the commencement of the first full pay period on or after 1 June 2022.

### C3 - Method of Payment

- C3.1 Employees will be paid fortnightly in arrears and by electronic funds transfer into a financial institution account of the employee's choice.
- C3.2 The ACTPS commits to paying employees their ordinary fortnightly pay and allowances on the appropriate payday. The ACTPS also commits to paying any shift penalties, overtime payments and higher duties allowance as soon as reasonably possible, but not later than within 2 pay periods of the appropriate authorisation having been received by the relevant corporate area.
- C3.3 The ordinary fortnightly pay is based on the following formula:
- C3.3.1  $\text{Fortnightly pay} = \text{annual rate of pay} \times 12 / 313$ .
- C3.4 A part-time employee is paid pro rata based on the employee's agreed ordinary hours.
- C3.5 An employee must, with the approval of the Clerk, be advanced the pay due for any period of approved paid annual or long service leave. Advancement of pay is subject to payroll processing timeframes. The approval of the Clerk must not be unreasonably withheld.

### C4 - Payroll Deduction for Union Fees

- C4.1 Upon request by the union, the Office must facilitate arrangements for payroll deductions for union fees. The Office agrees that it must not impose any limitations or impediments to an employee utilising payroll deductions for union fees that do not apply to other regular payroll deductions, such as health insurance.

### C5 - Pay Points and Increments

- C5.1 A person who is engaged by the Office, or an employee who is promoted or is approved to perform the duties of a higher office, is entitled to be paid at the first pay point for the classification level.
- C5.2 Despite subclause C5.1, the Clerk may approve a person who is engaged by the Office, or an employee who is promoted or approved to receive higher duties allowance, to be paid at a higher pay point within that classification level.
- C5.3 Increments apply to both an employee's permanent and higher duties classification. When an employee has completed 12 months higher duties within a 24 month period an increment will be paid and all further instances of higher duties will be paid at this level.
- C5.4 Previous service at a higher duties pay must be considered when determining a pay point should the employee be promoted to that classification, and will be used to determine the date at which increments fall due.

- C5.5 An eligible employee is entitled (subject to there being no Underperformance or Discipline action undertaken in accordance with Section H – Workplace Values and Behaviours) to be paid an annual increment on and from the relevant anniversary of the date of commencement in the position for the employee concerned.
- C5.6 Accelerated incremental advancement may occur as follows:
- C5.6.1 A person who is engaged by the Office, or an employee who is promoted or approved to perform higher duties, may be paid at a higher pay point within that classification level.
- C5.6.2 Subject to a maximum of 2 additional increments within the classification range being awarded to the employee in a 12 month period (excluding any additional increments awarded to the employee on commencement in the position in accordance with subclause C5.2), the Clerk may approve the payment of additional accelerated increments to the employee at one of the following times:
- C5.6.2 (a) At the time annual incremental advancement is due: i.e., at the time an employee is eligible for annual incremental advancement (either in the substantive or higher duties position).
- C5.6.2 (b) At any other time between periods of annual incremental advancement.
- C5.6.3 Where an employee is awarded additional accelerated increments over the 12 month period between the payments of annual increments in accordance with paragraph C5.6.2, the employee is still eligible for the payment of an annual increment, and the date of effect of the annual increment will remain unchanged.
- C5.7 In considering whether to approve payment at a higher pay point (as per subclause C5.2), or accelerated advancement (as per subclause C5.6), the Clerk must take into account all of the following factors:
- C5.7.1 The employee’s qualifications.
- C5.7.2 The employee’s relevant work and personal experience.
- C5.7.3 The employee’s current pay.
- C5.7.4 The employee’s ability to make an immediate contribution.
- C5.7.5 Difficulties in attracting and retaining suitable employees.

## **C6 - Entry Level Programs**

- C6.1 The ACTPS may run various entry level programs based on operational needs and available resources. All employment arrangements for entry level positions, including graduates, cadets, trainees and apprentices should be fair and attractive.
- C6.2 Rates of pay for employees engaged in Graduate and Cadet Programs, Traineeships, and Apprenticeships are set out at Annex A to this Agreement. Rates of pay for employees in other entry level programs will vary and be in accordance with classifications and rates of pay set out at Annex A to this Agreement, as determined by particular entry level program governance documentation or the PSM Standards.
- C6.3 Where an entry level program comprising work and structure training is introduced, all the following apply:
- C6.3.1 The program must comply with the requirements of Australian Apprenticeships or Traineeships where relevant.
- C6.3.2 Entry to the program must be by merit selection.
- C6.3.3 In accordance with B3 - the length of the probation period, the associated assessment criteria and timeframe must be notified in writing to the participant in the entry level program prior to the commencement of the program.
- C6.3.4 A person will be engaged either as a graduate, cadet, trainee, apprentice or other entry level program participant for the duration of the program.

- C6.3.5 If, following the successful completion of the program and a rating of competent or better on their performance plan, a vacant funded position exists, participants in entry level programs will be appointed as an officer, or will have their appointment as an officer confirmed, or will be promoted into a classification that is appropriate without the need for a further merit selection process.
- C6.3.6 An internal merit selection process will be used where the number of participants in the relevant entry level program potentially suitable for appointment or promotion on completion of the program exceeds the number of available permanent funded positions.
- C6.4 Where a program exceeds 12 months duration and there is provision in the applicable rates of pay, a participant is entitled, in accordance with clause C5 -and subject to there being no Underperformance or Discipline action undertaken in accordance with Section H, to be paid an annual increment on and from the relevant anniversary of the date of commencement in the position concerned.

## **C7 - Higher Duties Allowance**

- C7.1 Higher Duties Allowance (HDA) is payable to an officer who is directed to temporarily perform the duties of a position with a higher classification.

### **Selection for HDA**

- C7.2 If a position is expected to be available for a period of 6 months or longer the position must be advertised in the gazette.
- C7.3 Periods of higher duties should not normally extend beyond 12 months. If after 12 months the position is nominally vacant it must be advertised unless there are exceptional circumstances.
- C7.4 Nothing in this clause restricts casual or temporary employees performing duties of a higher office in accordance with the PSM Act and the PSM Standards.

### **Periods of HDA**

- C7.5 An officer who is acting in a position with up to a maximum pay of an ASO 6 or equivalent, for a period of one day or more, will be paid HDA for that period.
- C7.6 An officer acting in a position with a pay or maximum pay greater than the maximum pay of an ASO 6 or equivalent will be paid HDA for a period of 5 consecutive days or more. This payment will occur from day one, provided the total period of higher duties is 5 days or more.
- C7.7 Where an officer on temporary transfer is to perform the full duties of the higher position, HDA is calculated as the difference between the officer's current pay and a point in the pay range of the higher position determined by the Clerk in accordance with clause C5 -.
- C7.8 Where the officer is performing only part of the duties of the higher position and the higher position is at least 2 levels above the officer's current substantive level, payment of partial HDA may be agreed between the Clerk and the officer, prior to the commencement of the temporary transfer.
- C7.9 The rate of payment for partial HDA will be a point in the pay range(s) of the intervening level(s). The Clerk's decision on the rate of payment of partial HDA must take into account the specified part of the duties of the higher position that the officer is to perform.
- C7.10 An officer receiving HDA is entitled to normal incremental progression for the officer's substantive position and the HDA position in accordance with C5 -.
- C7.10.1 Increments gained while performing HDA are maintained upon the officer ceasing the higher duties.
- C7.11 Previous higher duties service will be considered in determining the appropriate pay point for future periods of higher duties.

## **C8 - Payment for Shift Workers**

### **Payment of shift penalties**

- C8.1 An employee who is a shift worker and who is rostered to perform and performs ordinary duty on a shift, any part of which falls between the hours of 6:00 pm and 6:30 am, will be paid an additional 15% of the employee's ordinary hourly rate of pay, for that shift.
- C8.2 An employee who is a shift worker and who is required to work ordinary hours continuously for a period exceeding 4 weeks on a shift falling wholly within the hours of 6:00 pm and 8:00 am, will be paid an additional 30% of the ordinary hourly rate of pay for that shift.
- C8.3 The additional payment prescribed by this clause will not be taken into account in the computation of overtime or in the determination of any allowance based upon pay. The additional payment will not be paid for any shift for which any other form of penalty payment is made under this Agreement, or under the provisions of the PSM Act or the PSM Standards under which the employee is employed.

### **Payment while on annual leave**

- C8.4 Additional payment for shift duty, as provided by this clause, is to be made in respect of any such duty that an employee would have performed had the employee not been on approved annual leave.

### **Payment for shift duty on a Saturday**

- C8.5 An employee who is a shift worker is entitled to an additional payment of 50% of the employee's ordinary hourly rate of pay for all rostered time of ordinary duty performed between midnight on Friday and midnight on Saturday.

### **Payment for shift duty on a Sunday**

- C8.6 An employee who is a shift worker is entitled to an additional payment of 100% of the employee's ordinary hourly rate of pay for all rostered time of ordinary duty performed between midnight on Saturday and midnight on Sunday.

### **Payment for shift duty on a public holiday**

- C8.7 An employee who is a shift worker is entitled to an additional payment of 150% of the employee's ordinary hourly rate of pay for all rostered time of ordinary duty performed between midnight on the day before a public holiday, as described in clause F10 -, and midnight on the public holiday,

## **C9 - Overtime**

### **Eligibility for payment of overtime**

- C9.1 An employee may be required or requested to work reasonable additional hours of duty, subject to the payment for overtime in accordance with the conditions set out in this clause, and the reasonable additional hours provisions of the FW Act.
- C9.2 Overtime rates are payable for duty that the Clerk requires an employee to perform on any day from Monday to Friday inclusive, during the following times:
- C9.2.1 In the case of a non-shift employee only, before 7:00 am and/or after 7:00 pm (or such other span of hours as may have been agreed under subclause B5.8).
- C9.2.2 In the case of a non-shift employee only, between 7:00 am and 7:00 pm (or such other span of hours as may have been agreed under subclause B5.8 but beyond the employee's ordinary daily hours, and which is not worked under the flexitime provisions at clause B7 -.
- C9.2.3 In the case of a shift worker only, beyond the employee's ordinary hours of work, and which is not worked under the provisions of clause B8 -.
- C9.3 Overtime rates are payable for all duty that the Clerk requires an employee to perform on a Saturday, Sunday or Public Holiday that is in addition to the employee's ordinary weekly hours of work.



- C9.4 Subclause C9.1 to subclause C9.3 apply to employees up to and equivalent to the top incremental point of the AS06 classification or equivalent.
- C9.5 Except with the approval of the Clerk, an employee who occupies a position with a classification having an annual pay of a Senior Officer Grade C (or equivalent) or higher is not eligible to receive payment under this clause.
- C9.6 Overtime approved under subclause C9.5 for Senior Officers is calculated at the maximum hourly overtime rate for an ASO 6 for any Senior Officer, or other employee whose substantive pay exceeds the highest pay point of the ASO 6 classification. At the request of the employee, hours worked outside normal working hours may be taken as time in lieu on an hour for hour basis.

#### **Minimum attendance for overtime**

- C9.7 Where an employee is required to perform overtime duty that is not continuous with ordinary duty the minimum period of overtime payable for each separate overtime attendance is 4 hours.
- C9.8 For the purposes of subclause C9.7 meal periods do not break continuity of duty.
- C9.9 Where an overtime attendance that is not continuous with ordinary duty involves duty both before and after midnight and a higher overtime rate applies on one of the days covered by the overtime attendance, the minimum payment is calculated at the higher rate.
- C9.10 Where an employee is in an on-call or close-call situation as provided for in clause C13 - or clause C14 -, the minimum payment for overtime is 3 hours or 1 hour in accordance with subclauses C13.6 or C14.8 or C13.10 or C14.12 respectively.

#### **Payment of overtime**

- C9.11 For the purposes of calculating overtime payments, each day or shift will stand alone.
- C9.12 An employee's annual pay for the purpose of calculating the overtime payment, includes higher duties allowance and any allowance that is payable for all purposes.
- C9.13 Overtime payment rates for overtime worked on any day from Monday to Saturday inclusive, are the following:
- C9.13.1 Time and a half:  $\text{Annual Pay} \times 12/313 \times 3/2 \times 1/76$  for the first 3 hours worked on a day/shift.
- C9.13.2 Double time:  $\text{Annual Pay} \times 12/313 \times 2/1 \times 1/76$  for any further overtime worked on that day/shift.

#### **Sunday rate of payment**

- C9.14 An employee who works overtime on a Sunday will be paid a rate of double time at the employee's ordinary hourly rate of pay for all time worked.

#### **Public holiday rate of payment**

- C9.15 An employee who works overtime on a public holiday or on a substituted public holiday as defined in clause F10 - of this Agreement will be paid a total rate of double time and a half at the employee's ordinary hourly rate of pay for all time worked.

#### **Alternatives to payment of overtime**

- C9.16 Where agreed between the manager or supervisor and the employee, the employee may be granted time off in lieu of overtime.

### **C10 - Rest Relief after Overtime**

- C10.1 In this clause employee refers to employees other than casual employees.
- C10.2 Unless the Clerk directs an employee to report for duty earlier, the employee must have a continuous period of 8 hours, plus reasonable travel time, off duty between ceasing overtime duty following ordinary hours of work one day, and commencing ordinary hours of work the following day.
- C10.3 An employee is entitled to be absent from duty, without loss of pay, until the employee has been off duty for a continuous period of 8 hours plus reasonable travel time.

- C10.4 If an employee is required by the Clerk to return to duty without having had 8 consecutive hours off duty, plus reasonable travel time, both the following apply:
- C10.4.1 The employee will be paid at double the ordinary hourly rate of pay until the employee is released from duty for that period.
- C10.4.2 The employee is then be entitled to be absent until the employee has had 8 consecutive hours off duty plus reasonable travel time, without loss of pay for any ordinary working time occurring during that absence.
- C10.5 The provisions of this clause do not apply to overtime worked in the circumstances covered by clause C16 - unless the actual time worked (excluding travel time) is at least 3 hours on each call.

### **C11 - Payment for Public Holiday Duty**

- C11.1 An employee who is not a shift worker and who works on a public holiday is entitled to an additional payment of 150% of the employee's ordinary hourly rate of pay for the period of work that meets all of the following:
- C11.1.1 It is not in excess of the employee's ordinary weekly hours.
- C11.1.2 It is not outside of the employee's limit of daily hours.
- C11.1.3 It is not in excess of the employee's ordinary daily hours.

Note: If an employee who is not a shift worker works on a public holiday for a period that does not satisfy the above conditions, the employee will have worked overtime and is eligible to a payment in accordance with clause C9 -.

### **C12 - Daylight Saving Arrangements**

- C12.1 During the changes to and from Australian Eastern Standard Time and Australian Eastern Daylight Time employees will be paid by the clock, with the exception of casual employment arrangements under clause B9 - and overtime arrangements under clause C9 - which will be paid according to the hours actually worked. This means that at the beginning of daylight saving employees working an overnight shift will work one hour less but will still be paid for the full shift, and when daylight saving ends employees will work for an extra hour but will be paid according to the clock.

### **C13 - On-Call Allowances**

- C13.1 Where an employee is required or directed, prior to ceasing duty, by the employee's manager or supervisor to be contactable and available to be recalled to duty within a reasonable time outside the employee's ordinary hours of duty (a restricted situation), the employee is entitled to be paid an on-call allowance at the following rates:
- C13.1.1 For each hour of on-call Monday to Friday—10% of the employee's hourly rate of pay.
- C13.1.2 For each hour of on-call on Saturday and Sunday—15% of the employee's hourly rate of pay.
- C13.1.3 For each hour of on-call on public holidays and accrued days off—20% of the employee's hourly rate of pay.
- C13.2 An employee's pay for the purpose of calculation of payment under this clause includes higher duties allowance and other allowances in the nature of pay.
- C13.3 Employees at the ASO 6 (or equivalent) classification and below are eligible for payment of the on-call allowance. However, the Clerk may approve payment of the on-call allowance to employees above this level in exceptional circumstances.
- C13.4 Where approval has been made for payment under subclause C13.3 to an employee above the ASO 6 (or equivalent) classification, the hourly allowance paid is equivalent to the allowance paid to the ASO 6 (or equivalent) classification.

- C13.5 The on-call allowance is not payable for any period that the employee does not hold himself or herself at the required degree of readiness to be recalled to duty.
- C13.6 Where an employee who had been placed in an on-call situation is recalled to duty at a designated place of work, the employee will be paid at the applicable overtime rates, subject to a minimum payment of 3 hours overtime being made to the employee.
- C13.7 The provisions of clause C16 - do not apply where an employee is recalled to duty while on on-call.
- C13.8 The on-call allowance is not payable for any period of time where overtime payments are made. Therefore, if the employee performs a period of duty for which overtime is payable, the on-call allowance is not paid for a period equal to the overtime period.
- C13.9 “Recalled to duty at a designated place of work” means a recall to perform duty at any designated place of work and is not limited to a recall to perform at the employee’s usual place of work. For example, a tradesperson may have a usual place of work, but while the tradesperson is restricted the tradesperson might be recalled to perform duty at a number of different places of work.
- C13.10 Where an employee who has been placed in an on-call situation is recalled for duty, but is not required to be recalled to their usual place of work (for example, where an employee is able to access computer systems at home via remote access), the employee will be paid at the applicable overtime rates, subject to a minimum payment of one hour overtime being made to the employee.
- C13.11 If a recall to duty attracts a minimum overtime payment, subsequent recalls attract a further minimum overtime payment(s) only if the employee commences after the minimum payment period has elapsed. For the purposes of this clause, the minimum payment period is either 3 hours or 1 hour, as set out in subclause C13.6 and subclause C13.10, from the commencement of the recall to duty that attracts the overtime payment.

#### **C14 - Close-Call Allowance**

- C14.1 Where an employee is required or directed, prior to ceasing duty, by the employee's supervisor to be contactable and available for immediate recall to duty outside the employee’s ordinary hours of duty (a close-call situation), the employee is entitled to be paid a close-call allowance at the following rates:
  - C14.1.1 For each hour of close-call Monday to Friday—20% of the employee’s hourly rate of pay.
  - C14.1.2 For each hour of close-call on Saturday and Sunday—30% of the employee’s hourly rate of pay.
  - C14.1.3 For each hour of close-call on public holidays and accrued days off—40% of the employee’s hourly rate of pay.
- C14.2 An employee placed in a close-call situation must do both of the following:
  - C14.2.1 Remain within a radius of 30 minutes vehicle travelling time from the work site.
  - C14.2.2 Commence the return to work journey immediately on being recalled, being within 5 minutes from time of recall.
- C14.3 The Clerk may, in special circumstances, allow an employee who cannot meet these requirements to be deemed to be on close-call if the employee is able to return to the worksite within 45 minutes from the time of recall.
- C14.4 An employee’s pay for the purpose of calculation of payment under this clause includes higher duties allowance and other allowances in the nature of pay.
- C14.5 Employees at the ASO 6 classification (or equivalent) and below are eligible for payment of the close-call allowance. However, the Clerk may approve payment of the close-call allowance to employees above this level in exceptional circumstances.
- C14.6 Where approval has been made for payment under subclause C14.5 to an employee above the ASO 6 (or equivalent) classification, the hourly allowance payable is equivalent to the allowance paid to the ASO 6 (or equivalent) classification.

- C14.7 The close-call allowance is not payable for any period that the employee does not hold himself or herself at the required degree of readiness to be recalled to duty.
- C14.8 Where an employee who has been in a close-call situation is recalled to duty at their place of work, the employee will be paid at the applicable overtime rates, subject to a minimum payment of 3 hours overtime being made to the employee.
- C14.9 The provisions of clause C16 - do not apply where an employee is recalled to duty while on close-call.
- C14.10 Where the employee performs a period of duty for which overtime is payable, the close-call allowance is not paid for a period equal to the overtime period.
- C14.11 "Recalled to duty at their place of work" means a recall to perform duty at any designated place of work and is not limited to a recall to perform at the employee's usual place of work. For example, a tradesperson may have a usual place of work, but while the tradesperson is in a close-call situation the tradesperson might be recalled to perform duty at a number of different places of work.
- C14.12 Where an employee who had been placed in a close-call situation is recalled for duty, but is not required to be recalled to their place of work (for example, where an employee is able to access computer systems at home via remote access), the employee will be paid at the applicable overtime rates, subject to a minimum payment of one hour being made to the employee.
- C14.13 If a recall to duty attracts a minimum overtime payment, subsequent recalls attract a further minimum overtime payment(s) only if the employee commences after the minimum payment period has elapsed. For the purposes of this clause, the minimum payment period is either 3 hours or 1 hour, as set out in subclause C14.8 and subclause C14.12, from the commencement of the recall to duty that attracts the overtime payment.

### **C15 - Rest Relief for On-Call or Close-Call Situations**

- C15.1 Where an employee who had been placed in an on-call or close-call situation under clause C13 - or clause C14 - is recalled to duty, the employee must, other than in exceptional circumstances, be given a genuine opportunity for having 8 continuous hours rest in the 24 hour period where there is a recall to duty.
- C15.2 In addition to the 8 hours rest relief, the employee must be allowed reasonable time to travel to and from the employee's place of work.
- C15.3 In exceptional circumstances, if an employee is required by the Clerk to resume or continue ordinary work time without having the rest relief as set out in subclause C15.1, plus reasonable travel time, both the following apply:
  - C15.3.1 The employee must be paid an additional single time at the employee's ordinary hourly rate of pay until the employee is released from duty for that period.
  - C15.3.2 The employee is then entitled to be absent until the employee has had 8 consecutive hours off duty plus reasonable travel time, without loss of pay for any ordinary working time occurring during that absence.
- C15.4 There is a need for appropriate roster management processes to enable the effective implementation of subclause C15.1.

### **C16 - Emergency Duty**

- C16.1 Where an employee is called on duty by the Clerk to meet an emergency at a time when the employee would not ordinarily have been on duty, and no notice of such call was given to the employee prior to ceasing ordinary duty, the employee will be paid for such emergency duty.
- C16.2 Employees who are in on-call or close-call situations are not eligible to receive payment under this clause.
- C16.3 The time for which payment must be made under this clause includes time necessarily spent travelling to and from duty.
- C16.4 The minimum payment under this clause is 2 hours.

- C16.5 The rate of payment for emergency duty is double time at the employee's ordinary hourly rate of pay.
- C16.6 At any time following the finalisation of the initial period of emergency duty, the Clerk may place an employee on to on-call or close-call duty in accordance with clause C13 - and C14 -.
- C16.7 This does not apply to employees whose duty for the day is varied by alteration of the commencement of the scheduled shift to meet an emergency.

### **C17 - Other Allowances**

- C17.1 The Clerk may approve the payment of expense-related, disability-related, functional-related and qualification-related allowances as provided for in this Agreement at Annex C.
- C17.2 The rates for all allowances provided for in Annex C of this Agreement will be adjusted by the same percentage amounts and on the same dates as the pay increases set out in subclause C2.2, unless the contrary intention is stated for a specific allowance in Annex C.
- C17.3 Despite clause C1 - part-time and casual employees who satisfy the requirements for payment of an expense-related allowance will receive the full amount of allowance or payment prescribed in Annex C.
  - C17.3.1 Part-time and casual employees who satisfy the requirements for payment of a disability-related or skill- related allowance under this Agreement will receive the allowance on a proportional basis.
- C17.4 Allowances payable to casual employees under this Agreement are not subject to the loading prescribed in subclause B9.3.
- C17.5 Where an employee is in receipt of a shift penalty, any disability allowance the employee receives in accordance with Annex C, will not be included for the purpose of calculating the shift penalty.
- C17.6 Unless the contrary intention is specifically provided, an allowance payable on leave is also payable on payments in lieu of leave for credits of the same leave type in accordance with the FW Act.
 

Note, this includes the 'cash out' of leave credits where available under this Agreement, and the payment of leave credits on separation from the Office.
- C17.7 The following allowances, detailed in Annex C, may apply to any ACTPS employee:
  - C17.7.1 Overtime meal allowance
  - C17.7.2 First aid allowance
  - C17.7.3 Community language allowance
  - C17.7.4 Motor vehicle allowance.

#### **Excess travel time**

- C17.8 An employee who is travelling or on duty away from the employee's usual place of work will be paid for time necessarily spent in travel or on duty (exclusive of overtime duty) in excess of both the following:
  - C17.8.1 The employee's usual hours of duty for the day.
  - C17.8.2 The time necessarily spent travelling to and from home and the usual place of work.
- C17.9 Payment under subclause C17.8 is subject to all of the following:
  - C17.9.1 The employee's annual salary must not exceed the rate of \$36,180 per annum.
  - C17.9.2 The additional travel time must be at least 30 minutes in travel in any one day, or 2.5 hours in any fortnight.
  - C17.9.3 The maximum payment is for 5 hours in any one day.
- C17.10 The rate of payment under subclause C17.8, with the exception of employees classified as General Service Officer, is single time on Mondays to Saturdays and time and a half on Sundays and Public Holidays.

- C17.11 Where an employee classified as General Service Officer is directed to work away from a depot or centre on any day, the employee is entitled to be paid a Travel Relocation allowance in accordance with Annex C.
- C17.12 Where an employee's normal place of work is variable within a specified district, the director-general will determine the usual place of work. In this case a minimum of 20 minutes travelling time each way applies where an employee is directed to work at another location before an employee is entitled to payment for the excess travel time.

**Excess fares**

- C17.13 An employee is entitled to the reimbursement of excess fares incurred by the employee performing duty temporarily at a place other than the employee's usual place of work, when the cost of travelling to and from the temporary place of work is greater than the cost of travelling to and from the employee's usual place of work.

**Allowances arising out of employee mobility occasioned by exceptional circumstances**

- C17.14 In circumstances where an employee is directed, or requested and agrees, to perform the work of a classification that is different to their substantive classification and that other work attracts allowances which are not applicable to the employee's substantive classification, the Clerk may, at their discretion, authorise payment to the employee of an allowance from the other classification that relates to the performance of that other work.
- C17.15 For the sake of clarity, subclause C17.14 does not give rise to an employee having an entitlement to the payment of such other allowance. Rather, the purpose of subclause C17.14 is to provide a mechanism for the payment of an allowance in extenuating circumstances where the Clerk considers it is warranted.

**C18 - Reimbursement of Reasonable Relocation Expenses**

- C18.1 The purpose of this reimbursement is to provide financial assistance to employees recruited from interstate or overseas who are engaged on a permanent or long-term temporary basis.
- C18.2 The Clerk may approve a reimbursement payment to a new employee as the Clerk considers is reasonable in the new employee's circumstances. The relevant pre-determined ceiling is set out below:

Single with no dependants	\$12,000
Additional payment per dependant (first 6 dependants)	\$2,000
Additional payment per dependant (seventh and further dependants)	\$1,750

- C18.3 In order for a new employee to be reimbursed costs, valid receipts must be provided.
- C18.4 For the purposes of this clause, dependant does not require actual financial dependency and includes members of the new employee's immediate household including a domestic partner, parent, parent of domestic partner, brother, sister, guardian, foster parent, step-parent, step-brother, half-brother, step-sister, half-sister, child, foster child or step child residing with the employee at the time the offer is made.
- C18.5 The Clerk may approve payment in excess of the approved amount or ceiling in exceptional circumstances.
- C18.6 In the event that the employee terminates their employment with the Office within 24 months of the date of engagement and does not commence employment with another ACTPS business unit within one month, the employee may be required by the Clerk to repay one of the following:
  - C18.6.1 In the case the employee terminates employment within 12 months from the date of appointment – 100% of the relocation reimbursement.

C18.6.2 In the case the employee terminates employment more than 12 months and less than 24 months from the date of appointment – 50% of the relocation reimbursement.

## Section D Pay Related Matters

### D1 - Salary Sacrifice Arrangements

- D1.1 Voluntary access to salary sacrifice arrangements are available to employees in accordance with ACTPS policies and guidelines.
- D1.2 The employee must meet all costs incurred as a result of the salary sacrifice arrangements under these provisions.
- D1.3 The employee's pay for superannuation purposes and severance and termination payments are the gross pay that the employee would receive if the employee were not taking part in salary sacrifice arrangements.
- D1.4 Changes to salary sacrifice arrangements, including taxation changes, are not a cause for further claims against the ACTPS.
- D1.5 The Clerk must continue to provide appropriate information to employees concerning salary sacrifice arrangements.

### D2 - Attraction and Retention Incentives

- D2.1 In some special circumstances it may be necessary for the Clerk to determine that an employee or group of employees who are covered by this Agreement and who occupy certain positions should be provided with attraction and retention incentives that may differ from some of the terms and conditions under this Agreement.
- D2.2 The framework under which attraction and retention incentives may apply during the life of this Agreement is set out in Annex B of this Agreement.

### D3 - Classification and Work Value Review

- D3.1 An employee, or a group of employees, or the union(s) or other employee representatives ("the applicant"), may present a case to request the Clerk to undertake a classification and work value review of a position or group of positions.
- D3.2 The Clerk must undertake the review in consultation with the employee(s), the union(s) and other employee representatives
- D3.3 If the Clerk determines that the case presented under subclause D3.1 is frivolous or vexatious, the Clerk must refuse to undertake the review.
- D3.4 If the Clerk determines that the case presented under subclause D3.1 does not contain enough information for the Clerk to make an assessment on whether the review is warranted, the Clerk must provide the applicant an opportunity to make further submissions. If, following such further submissions, or if no such submissions are made, the Clerk still does not have enough information to make an assessment on whether or not the review is warranted, the Clerk may refuse to undertake the review.
- D3.5 Any classification and work value review must take into account the relevant work level standards, position descriptions, market and other relevant comparators, including comparators that are considered pertinent to the skills, competencies and general responsibilities required of the position(s).
- D3.6 These provisions do not affect the right of the Clerk to undertake a classification and work value review at the initiative of the Clerk.
- D3.7 Where agreement cannot be reached on the need to conduct the review then the disagreement may be resolved in accordance with the dispute resolution procedure.

### D4 - Supported Wage System

- D4.1 Employees who are assessed as eligible to receive a supported wage under subclause D4.2 are to be paid the percentage of pay that corresponds to the employee's assessed productive capacity and the class of work which the person is performing, provided that the minimum amount payable is not to be less than 10% of the second point of the ASO 1 pay range.



- D4.2 The Office must arrange for an assessment of the productive capacity of an employee in accordance with the processes contained in the National Minimum Wage Order issued annually by the FWC, except that the minimum rate payable is as set out in subclause D4.1.

## **D5 - Overpayments**

- D5.1 An overpayment is any payment in respect of pay, allowance or leave, whether the overpayment is by accident or otherwise, to which the employee is not entitled.
- D5.2 An overpayment is a debt owed to the Territory.
- D5.3 In the event that an employee has received an overpayment, the Clerk may recover the overpayment in accordance with this clause.
- D5.4 Any disputes about the application of these provisions should be addressed through the Dispute Avoidance/Settlement Procedures outlined at G6 -. Unless the employee agrees, recovery of monies will not occur while a dispute is in process.
- D5.5 Despite subclause D5.1, an amount paid to an employee to which they are not entitled is not considered an overpayment but a “discrepancy” and the amount may be deducted from the employee’s pay in the following pay period if all the following apply:
- D5.5.1 It is the result of an amendment to, or late submission of, a time sheet, evidence, material or other forms.
  - D5.5.2 It is not more than 10% of the employee’s gross fortnightly pay.
  - D5.5.3 No more than 2 pay periods have passed since the amount was paid.
  - D5.5.4 The employee has been notified accordingly.
- D5.6 Further to subclause D5.5, if more than 2 pay periods have passed since the discrepancy was paid, or the discrepancy exceeds 10% of the employee’s gross fortnightly pay, the discrepancy will be considered a debt and the provisions of this clause D5 will apply, unless the employee agrees in writing to the adjustment being made.
- D5.7 If the Clerk believes that an overpayment has occurred, the Clerk will consider whether it would be appropriate in the circumstances to waive part or all of the overpayment in accordance with section 131 of the FM Act.
- D5.8 For the purposes of these provisions, when considering whether a waiver is appropriate, the Clerk will consider all the following compelling circumstances:
- D5.8.1 Financial hardship.
  - D5.8.2 The circumstances under which the debt arose.
  - D5.8.3 Other exceptional circumstances.
- D5.9 If the Clerk considers that a waiver in accordance with subclause D5.7 is not appropriate in the circumstances, the Clerk must provide the employee with all the following information:
- D5.9.1 The pay period(s) in which the overpayment occurred.
  - D5.9.2 The nature of the overpayment.
  - D5.9.3 The reasons why the overpayment occurred.
  - D5.9.4 The gross and net components of the overpayment.
- D5.10 The Clerk will provide the employee or their representative with an opportunity to respond or request a waiver within 10 working days from the date the information at D5.9 was provided. If the the Clerk does not receive a response within this timeframe, the overpayment process will continue in accordance with the following provisions in this clause.
- D5.11 Subsequent to the decision of whether to waive the overpayment in accordance with subclause D5.10 the Clerk must advise the employee in writing, as soon as practicable, of all the following:
- D5.11.1 The decision to waive any, or part, of the overpayment, if applicable.

- D5.11.2 The process for recovery of the overpayment, if any.
- D5.11.3 The proposed recovery rate, if any.
- D5.12 The Clerk and the employee must make genuine efforts to agree on a reasonable recovery rate having regard for all of the circumstances prior to any recovery being made. Where agreement cannot be reached subclause D5.15 applies.
- D5.13 Any such agreement in accordance with subclause D5.12 may include recovery of the overpayment by the Clerk using one of the following methods:
  - D5.13.1 A lump sum payment by the employee.
  - D5.13.2 A payroll deduction from the employee's pay.
- D5.14 In respect to recovery action it may be agreed with the employee to adjust their leave credits instead of, or in combination with, a cash recovery under subclause D5.13, subject to the cashing out of leave limitation provisions in this Agreement.
- D5.15 Where the Clerk and the employee cannot agree about the arrangements for recovery of an overpayment, the overpayment must be recovered in accordance with an arrangement as determined by the Clerk under section 246 of the PSM Act.
  - D5.15.1 Where recovery occurs in accordance with subclause D5.15 the overpayment will be recovered at the rate of up to 10% of the employee's gross fortnightly pay, or such other rate determined by the Clerk having regard for all of the circumstances.
- D5.16 Despite subclause D5.12 and subclause D5.15, the recovery period will not usually exceed 26 pay periods.
- D5.17 Any outstanding money owing to the Office when an employee ceases employment is to be recovered by deduction from any final entitlements payable to the employee. If a debt still exists further debt recovery action is to be taken unless the Clerk does one of the following:
  - D5.17.1 Directs the recovery be waived, in part or in full, based on evidence provided by the employee of exceptional circumstance or that such recovery would cause undue hardship.
  - D5.17.2 Determines that an overpayment is not recoverable. If an overpayment is not recoverable, the provisions of the Clerk's Financial Instructions, relating to the write off of monies, will apply.

## **D6 - Underpayments**

- D6.1 Where the Clerk agrees that an employee has been underpaid on the employee's ordinary hourly rate of pay, and the employee requests, an offline payment for the amount owing will be made to the employee within 3 business days of the Clerk receiving the request.
- D6.2 Where a shift penalty, overtime payment or higher duties allowance is not made within 2 pay periods of the appropriate authorisation having been received by the relevant corporate area, and the employee requests, an offline payment for the amount owing will be made to the employee within 3 business days of the Clerk receiving the request.

## **D7 - Superannuation**

- D7.1 The Clerk must provide employer superannuation contributions in accordance with the relevant legislative requirements.
- D7.2 This clause does not apply to employees who are members of the Public Sector Superannuation Accumulation Plan (PSSap), unless they are eligible to be members of the PSSap as a fund of choice.
- D7.3 This clause does not apply to preserved members of other superannuation plans, including CSS and PSSdb. Employees covered by those superannuation plans, must receive the employer contributions specified by the fund rules for the relevant superannuation plan.
- D7.4 An employee may choose any approved superannuation fund as long as the fund can accept employer contributions by EFT. If the employee's chosen fund cannot or will not accept

additional contributions as outlined in subclause D7.5 and subclause D7.9, then the employee will be advised of their right to change funds, to enable such contributions to be made.

- D7.5 The employer contributions are all of the following:
- D7.5.1 The superannuation guarantee contribution in accordance with the *Superannuation Guarantee (Administration) Act 1992*, (which at the commencement of this Agreement is 10%).
  - D7.5.2 An additional 1.5%.
  - D7.5.3 A further 1% pro rata per pay, based on the employee's gross fortnightly Ordinary Time Earnings (OTE) (or other methods where prescribed by the nominated superannuation fund rules), for each pay period where the employee contributes 3% or more of their fortnightly OTE to their nominated superannuation fund (either in pre or post tax dollars) and where it is processed through the ACT Government's payroll system.
- D7.6 If the legislated minimum Superannuation Guarantee rate is increased during the life of this Agreement, the increase will be absorbed by the additional contribution provided under subclause D7.5.2 (as increased in accordance with subclause D7.5), but will not affect the "3 for 1" arrangement in paragraph D7.5.3.
- D7.7 The salary for superannuation purposes is calculated on the employee's Ordinary Time Earnings (OTE) within the meaning of the *Superannuation Guarantee (Administration) Act 1992*.
- D7.8 Employer contributions are not reduced by any other contributions made through salary sacrifice arrangements.
- D7.9 For employees who take paid or unpaid parental leave (which includes birth, parental, grandparental and foster care leave), employer contributions (which are calculated using the same formula as prescribed in subclause F14.22) are made for a period equal to a maximum of 52 weeks, in accordance with the rules of the appropriate superannuation scheme.
- D7.10 The Government must, through the Chief Minister, Treasury and Economic Development Directorate, consult with unions and employees on changes to superannuation legislation that may be proposed by the Commonwealth.

## **D8 - Payment on Death**

- D8.1 Where an employee dies, or the Clerk has directed that an employee is presumed to have died on a particular date, the Clerk may make a payment or partial payment for unused leave credits and other entitlements directly to the dependants or the domestic partner, or to the legal personal representative, or to the estate, of the former employee of an amount that would have been paid had the employee ceased employment otherwise than because of the employee's death. The payment in respect of unused long service leave is calculated in accordance with subclause F26.11.

## Section E Flexible Working Arrangements and Employee Support

### E1 - Work and Life Balance

- E1.1 The ACTPS is committed to providing flexible working arrangements which allow employees to manage their work and personal commitments. This must be balanced against the operational requirements for the ACTPS to deliver services to the Canberra community.
- E1.2 The ACTPS recognises the need to provide sufficient support and flexibility at the workplace to assist employees in achieving work and life balance and to meet their caring responsibilities. While family friendly initiatives are important aspects of work and life balance, it is also important that all employees, at all stages in their working lives, are supported through this Agreement.

### E2 - Request for Flexible Working Arrangements

- E2.1 An employee may apply to the Clerk for flexible working arrangements to support their work and life balance. The Clerk must give the employee a written response to the request within 21 calendar days of receiving the request, stating whether the request is approved and the reasons if the request is refused.
- E2.2 Nothing in this clause diminishes any provisions expressed elsewhere in this Agreement, where those entitlements are entitlements in their own right.
- E2.3 An employee may request flexible working arrangements, in accordance with the FW Act, in any of the following circumstances relating to the employee:
- E2.3.1 They seek working arrangements to suit their personal circumstances.
  - E2.3.2 The employee has a parental or other caring responsibility for a child of school age or younger.
  - E2.3.3 They have a caring responsibility for an individual with a disability, a terminal or chronic medical condition, mental illness or is frail and aged.
  - E2.3.4 They have a disability.
  - E2.3.5 They are over 55 years old.
  - E2.3.6 They are experiencing family violence.
  - E2.3.7 They are providing personal care, support and assistance to a member of their immediate family or household because they are experiencing family violence.
- E2.4 To assist employees in balancing work and personal commitments, flexible working arrangements are provided throughout this Agreement. Examples of these flexible working and leave arrangements include, but are not limited to the following:
- E2.4.1 Flexible starting and finishing times (including at B7 -)
  - E2.4.2 Ability to take a few hours off work, and make it up later
  - E2.4.3 Home based work on a short-term or long-term basis (E7 -)
  - E2.4.4 Part-time work (E4 -, E6 -)
  - E2.4.5 Job sharing (E5 -)
  - E2.4.6 Purchased leave (F9 -)
  - E2.4.7 Annual leave (F7 -).
  - E2.4.8 Long service leave (F26 -)
  - E2.4.9 Leave without pay (F25 -)
  - E2.4.10 Leave not provided for elsewhere (F25 -).
- E2.5 The flexible working arrangement must be recorded in writing and run for a specified duration of up to 3 years. At the end of the flexible working arrangement's period of operation, unless a new flexible working arrangement is entered into, the default is that the employee returns to their nominal status.

- E2.6 Approved flexible working arrangements may be reviewed annually at which time the circumstances under which the flexible working arrangements were originally granted will be examined and reassessed.
- E2.7 Employees that have an existing flexible working arrangement at the commencement of this Agreement must have that arrangement reviewed within 12 months of commencement of this Agreement.
- E2.8 The Clerk may only deny an employee's request for flexible working arrangements or a variation to existing flexible working arrangements where there are reasonable business grounds for doing so.
- E2.9 Reasonable business grounds to deny a request include any of the following:
- E2.9.1 The new working arrangements requested by the employee would be too costly to implement, or would likely result in a significant loss in efficiency or productivity, or would likely have a significant negative impact on service.
  - E2.9.2 There is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested by the employee.
  - E2.9.3 It would be impractical to change the working arrangements of other employees or recruit new employees to accommodate the new working arrangements requested by the employee.
  - E2.9.4 It would be a genuine risk to the health and safety of an employee(s).
  - E2.9.5 Demonstrable exceptional circumstances have arisen that mean the request cannot be approved.
- E2.10 Where a request is not approved the Clerk must consult with the employee to explore alternative arrangements.

### **E3 - Management of Excessive Hours**

- E3.1 The ACTPS recognises the importance of employees balancing work and personal life. The appropriate balance is a critical element in developing and maintaining healthy and productive workplaces. While it is acknowledged that peak workload periods may necessitate some extra hours being worked by some employees, this should be regarded as the exception rather than the rule. This subclause should be read in conjunction with subclause B7.3 and clause F24 -.
- E3.2 Managers, supervisors and employees have a responsibility to minimise the extent to which excessive hours are worked. In the circumstances where work pressures result in the employee being required to work, or is likely to work, excessive hours over a significant period, the manager, supervisor and employee together must review workloads and priorities and determine appropriate strategies to address the situation. In doing so, the manager or supervisor must consider and implement one or more of the following strategies to reduce the amount of excessive hours being accumulated:
- E3.2.1 Review of workloads and priorities.
  - E3.2.2 Re-allocation of resources.
  - E3.2.3 Consideration of appropriate arrangements for time off in lieu or other recompense.
  - E3.2.4 Review of staffing levels and classifications within the work group.
- E3.3 The Clerk must consult with OCC's about the development and implementation of appropriate strategies to deal with issues associated with both paid and unpaid overtime.

### **E4 - Regular Part-Time Employment**

- E4.1 A person may be employed in any classification as a part-time officer for an agreed number of regular hours that is less than the ordinary weekly hours specified at subclause B5.1 or subclause B6.2.
- E4.2 Proposals to reduce hours below full-time employment may be initiated by the Clerk for operational reasons.

- E4.3 The Clerk must obtain the written agreement of a full-time officer before the officer converts to part-time.
- E4.4 No pressure is to be exerted on full-time officers to convert to part-time employment or to transfer to another position to make way for part-time employment.
- E4.5 The agreed period, pattern of hours and days and commencement and cessation times for part-time work must be agreed between the officer and the officer's manager or supervisor and recorded in writing.

Note: An employee who wishes to work part-time may apply for a flexible working arrangement in accordance with subclause E2.1.

#### **Variation to part-time hours**

- E4.6 Proposals to vary a part-time employment arrangement may be initiated by the Clerk for operational reasons or by an officer for personal reasons.
- E4.7 Where an officer initiates a proposal the Clerk must have regard to the personal reasons put by the officer in support of the proposal and to their business unit's operational requirements.
- E4.8 The Clerk must obtain the written agreement of the officer before the officer's hours are varied.
- E4.9 No pressure is to be exerted on an officer to vary the officer's hours of employment or to transfer to another position to make way for part-time employment.
- E4.10 The agreed period, pattern of hours and days and commencement and cessation times for part-time work must be agreed between the officer and the officer's manager or supervisor and recorded in writing.

### **E5 - Job Sharing**

- E5.1 In this clause employee refers to employees other than casual employees.
- E5.2 Job sharing arrangements may be introduced by agreement between the Clerk and the employees involved, subject to operational requirements. Employees working under job sharing arrangements share one job and are considered to be part-time with each working part-time on a regular, continuing basis.
- E5.3 An employee must request in writing permission to work in a job sharing arrangement. The Clerk must agree to reasonable requests for regular job sharing arrangements, subject to operational requirements.
- E5.4 The pattern of hours for the job sharing arrangement must be agreed between the employee and the Clerk. However, any single attendance at the office-based worksite must be for no less than 3 consecutive hours.
- E5.5 The employee who is in a job sharing arrangement and who was previously working full-time may revert to full-time employment before the expiry of the agreed period of job sharing if all parties to the arrangement agree.
- E5.6 In the event that either employee ceases to participate in the job sharing arrangement, the arrangement must be terminated.

### **E6 - Part Time Employment Following Birth Leave, Primary Caregiver Leave, Adoption or Permanent Care Leave or Parental Leave**

- E6.1 Subject to this clause, the Clerk must approve an application by an officer employed on a full-time basis who returns to work after accessing birth leave, primary caregiver leave, adoption or permanent care leave or parental leave, to work on a part-time basis up until the date which is 3 years from the birth or adoption of a child or the granting of parental responsibility of a foster child.
- E6.2 If the Clerk deems that an application by an officer to access part-time work under this clause can only be accommodated if the officer agrees to become unattached, then the application must only be approved if the officer so agrees.

- E6.3 The maximum aggregate period of part-time employment that may be approved for an officer under subclause E6.1 is 7 years.
- E6.4 Either the officer who accesses primary care giver leave under clause F16 -, or adoption and permanent care leave under clause F20 -, or the employee who is entitled to or accesses birth leave under clause F14 - is entitled to access part-time employment as provided in subclause E6.1.
- E6.5 The agreed period, pattern of hours and days and commencement and cessation times for part-time work must be agreed between the officer and the officer's manager or supervisor and recorded in writing.

### **E7 - Home Based Work**

- E7.1 The diverse nature of work conducted in the ACTPS lends itself to a range of working environments. From time to time workplaces may include work undertaken in the field and in the home.
- E7.2 Home-based work, on a regular basis, is a voluntary arrangement that requires the agreement of both the Clerk and the employee. The Clerk must consider requests by employees for home based work, having regard to operational requirements and the suitability of the work.
- E7.3 In determining appropriate home based work arrangements, the Clerk and the employee must consider the following range of matters:
- E7.3.1 Appropriate and effective communication with office based employees.
  - E7.3.2 The need to ensure adequate interaction with colleagues.
  - E7.3.3 The nature of the job and operational requirements.
  - E7.3.4 Privacy and security considerations.
  - E7.3.5 Health and safety considerations.
  - E7.3.6 The effect on clients.
  - E7.3.7 Adequate performance monitoring arrangements.
- E7.4 Home based work arrangements may be terminated by the Clerk on the basis of operational requirements, inefficiency of the arrangements, or failure of the employee to comply with the arrangements.
- E7.5 An employee may terminate home-based work arrangements at any time by giving reasonable notice to the Clerk.
- E7.6 There may also be occasions where it is appropriate for an employee to work from home on an ad hoc basis. In these circumstances, arrangements to work from home are to be negotiated on a case-by-case basis between the employee and the manager or supervisor.
- E7.7 The Office must provide home computing facilities where an employee and the employee's manager or supervisor agree there is a need for such facilities. Provision of equipment by the Office is subject to occupational health and safety requirements and to an assessment of technical needs by the manager or supervisor.

### **E8 - Employee Assistance Program**

- E8.1 As a benefit to employees, the ACTPS must provide employees and employees' immediate families with access to an independent, confidential and professional counselling service at no cost to the employee.

### **E9 - Scheduling of Meetings**

- E9.1 To assist employees to meet their personal responsibilities, where possible, all meetings in the ACTPS are to be scheduled at times that take into account those responsibilities.

## **E10 - Vacation Childcare Subsidy**

- E10.1 This clause applies to an employee (other than a casual employee or a temporary employee who has been engaged by the ACTPS for a period of less than 12 months) with school age children who makes a timely application, with regard to work and rostering arrangements applying in their particular business unit, based on their accrued annual leave, purchased leave or long service leave during school holidays that is rejected. The Clerk must make a payment to the employee of \$52.00 per day towards the cost of each school child enrolled in an accredited school holiday program for each calendar year subject to all the following conditions:
- E10.1.1 The maximum payable per child over a 5-day period is \$260.
  - E10.1.2 The maximum payable days per child per year is 10.
  - E10.1.3 The maximum number of children the benefit is payable for is 3.
  - E10.1.4 Payment will not be made without the production of a receipt(s).
- E10.2 An accredited school holiday program is a program approved, subsidised or approved and subsidised by a State, Territory or Local Government.
- E10.3 The payment applies only on the days when the employee is at work.
- E10.4 The payment will be made regardless of the length of time the child is in the program each day, but it cannot exceed the actual cost incurred.
- E10.5 An employee whose domestic partner receives a similar benefit from the partner's employer is not eligible for the payment.

## **E11 - Family Care Costs**

- E11.1 Where an employee is directed to work outside the employee's regular pattern of work, the Clerk must authorise reimbursement to the employee by receipt for some or all of the costs of additional family care arrangements.

## **E12 - Nursing Employees**

- E12.1 Employees who are breastfeeding must be provided with the facilities and support necessary to enable such employees to combine a continuation of such breastfeeding with the employee's employment.
- E12.2 Where practicable the Office must establish and maintain a room for nursing employees. Where there is no room available another appropriate space may be used.
- E12.3 Up to one hour, per day or shift, paid lactation breaks that are non-cumulative must be available for nursing employees.

## **E13 - Transfer of Medically Unfit Staff**

- E13.1 This clause does not apply to casual employees.
- E13.2 A medically unfit employee is an employee who is considered by the Clerk, in accordance with paragraph (a), sub-section 115 of the PSM Act, to be an employee who is unable to perform duties appropriate to the employee's role because of physical or mental incapacity.
- E13.3 Despite the provision of section 27 of the PSM Act, a medically unfit employee may, by agreement with the employee, be transferred to any position within the employee's current skill level and experience, the classification of which has a maximum pay which does not vary from the top increment of the employee's classification by more than 10%. For clarity this allows transfer between alternate classification streams, but does not allow for the transfer of an officer within the same classification stream e.g. a SOG B transfer to a SOG A.
- E13.4 An employee must not be redeployed in accordance with subclause E13.3 unless there is no suitable vacant position at the employee's substantive classification within the Office.



## **E14 - Transfer to a Safe Job during Pregnancy**

### **Purpose**

- E14.1 This clause provides arrangements to enable a pregnant employee to have their duties modified or to be transferred to an appropriate safe job during their pregnancy or enable them to be absent from their workplace if an appropriate safe job is not available.

### **Eligibility**

- E14.2 In accordance with the NES, this clause applies to a pregnant employee when they do both the following:
- E14.2.1 Give notice that they will be applying for birth leave.
  - E14.2.2 Provide evidence from a registered health professional or registered medical professional to the Clerk that they are fit for work but that it is inadvisable to continue with some or all of their duties in their present position during a stated period because of illness or risks arising out of the pregnancy or hazards connected with that position.
- E14.3 In these circumstances, the employee is entitled to have their duties modified or to be transferred to an appropriate safe job for the stated period with no detriment to their current terms and conditions of employment.

### **Paid absence for 'no safe job' purposes**

- E14.4 If the Clerk determines that an appropriate safe job is not available, and when the employee has completed 12 months of continuous service, the employee is entitled to take paid absence for 'no safe job' purposes for the stated period at a rate of payment that is the same rate as would be paid if the employee was granted personal leave. This period of paid absence counts as service for all purposes.
- E14.5 If the Clerk determines that an appropriate safe job is not available, and the employee has not completed 12 months of continuous service, the employee is entitled to take unpaid absence for 'no safe job' purposes. This period of absence does not count as service for any purposes but does not break continuity of service.
- E14.6 The employee's entitlements under this clause cease when the employee's pregnancy ends before the end of the stated period.

## Section F Leave

### F1 - Part-time Employees

F1.1 Part time employees are credited and debited leave on a pro rata basis.

### F2 - Leave Below One Day

F2.1 Employees with access to flextime (or TOIL) must use flextime (or TOIL) for all absences of less than one day wherever practicable; however personal leave may still be accessed for these absences.

### F3 - Non-approval of Leave

F3.1 Where a request is not approved the Clerk must, if so requested in writing by the employee, provide the reasons for that decision to the employee in writing. Where a request is not approved the Clerk must consult with the employee to determine mutually convenient alternative arrangements.

### F4 - Personal Leave

#### Purpose

- F4.1 Personal leave is available to employees to enable them to be absent from duty in any of the following circumstances:
- F4.1.1 The employee is unfit for work because of a personal illness, or personal injury.
  - F4.1.2 The employee must provide care or support to a member of the employee's immediate family, or a member of the employee's household who is in either of the following circumstances:
    - F4.1.2 (a) They are ill or injured.
    - F4.1.2 (b) They are affected by an unexpected emergency.
  - F4.1.3 There are extraordinary and unforeseen circumstances in accordance with clause F5 -.

#### Eligibility

F4.2 Personal leave is available to employees other than casual employees.

#### Entitlement

- F4.3 An employee may be granted personal leave up to their available credit from the first day of service.
- F4.4 Personal leave is cumulative and there is no cap on the personal leave balance an employee may accrue.
- F4.5 On engagement under the PSM Act, employees who have prior service recognised for personal leave purposes, will be credited with any personal leave balance accrued with the previous employer.
- F4.6 If a person is retired from the Sector on grounds of invalidity, and is re-appointed as a result of action taken under the *Superannuation Act 1976* or the *Superannuation Act 1990*, they are entitled to be re-credited with unused personal leave credit held prior to the invalidity retirement.
- F4.7 Except for a short-term temporary employee and an employee to whom subclause F4.5 applies, an employee's personal leave balance will be credited with an equivalent of 3.6 weeks of personal leave on the day they commence with the Territory.

#### Daily Accrual

- F4.8 The Office HR system facilitates daily accrual of personal leave.
- F4.9 Despite subclause F4.7, from the day of commencement, an employee's personal leave accrues on a daily basis according to the formula set out below:

$(A \times B \times D) / C$  = total hours of leave accrued per day, where:

A = number of ordinary hours per week worked; and

B = one where the day counts as service or zero where the day does not count as service;

C = number of calendar days in the year; and

D = number of weeks of personal leave an employee is entitled to a year (i.e. 3.6 weeks).

F4.10 A part-time officer or part-time temporary employee will accrue personal leave calculated on a pro rata basis.

#### **Short-term temporary employees**

F4.11 A short term temporary employee will accrue personal leave in accordance with the formula set out in subclause F4.9.

F4.12 A short-term temporary employee subsequently appointed under the PSM Act prior to completing 12 months service will have their personal leave balance brought up to the equivalent of 3.6 weeks, less any personal leave with pay granted under subclause F4.3.

#### **When personal leave credits have been exhausted**

F4.13 Where personal leave credits have been exhausted, the Clerk may, subject to the production of documentary evidence, grant an employee a period of unpaid personal leave for personal illness or injury or for the care or support of a member of the employee's immediate family or household who is ill or injured or affected by an unexpected emergency. This is in addition to the entitlement to unpaid carer's leave that employees have under the NES.

NOTE: In such circumstances, alternative arrangements are also provided for at subclause F4.42.

F4.14 Despite subclause F4.13, the Clerk may allow an officer, when the officer provides documentary evidence that the officer has a personal illness or injury, or needs to provide care or support to a member of the employee's immediate family or household, to anticipate up to a maximum of 3.6 weeks paid personal leave where all full pay personal leave credits are exhausted.

F4.15 Temporary employees may be granted up to an aggregate of 20 days without pay in the first 12 months.

F4.16 The Clerk may, when a personal illness or injury poses a serious threat to the employee's life, grant an officer an additional period of paid personal leave for personal illness or injury. This leave may be at either full or half pay. Such leave will not be granted if the absence is due to a condition for which the officer is receiving compensation under the *Safety, Rehabilitation and Compensation Act 1988*.

#### **Other provisions**

F4.17 An employee in receipt of workers compensation for more than 45 weeks will accrue personal leave on the basis of hours actually worked.

F4.18 Unused personal leave credit will not be paid out on cessation of employment.

#### **Evidence and conditions**

F4.19 An employee must give notice of the intention to take personal leave. The notice must be provided to their manager or supervisor as soon as practicable (which in the case of personal illness or injury may be a time immediately after the leave has commenced) and must advise the duration, or expected duration, of the leave.

F4.20 The Clerk may grant personal leave if they are satisfied there is sufficient cause, having considered any requested or required documentary evidence.

F4.21 An employee must provide requested or required documentary evidence in a timely manner. To unduly withhold the provision of documentary evidence may result in the personal leave application not being approved for payment.

F4.22 The Clerk must accept either of the following documentary evidence as proof of personal illness or injury or the need to care for or support a member of the employee's immediate family or household who is ill or injured or who is affected by an unexpected emergency:

- F4.22.1 A certificate from a registered medical practitioner or registered health professional who is operating within their scope of practice.
- F4.22.2 A statutory declaration made by the employee if it is not reasonably practicable for the employee to give the Clerk a certificate.
- F4.23 Unless otherwise approved by the Clerk, an employee may only access a maximum of 3 consecutive days of paid personal leave on each occasion up to an accumulated maximum of 7 days in any accrual year, without providing documentary evidence. Absences for personal leave without documentary evidence in excess of 3 consecutive days, or 7 days in any accrual year is without pay.
- F4.24 Notwithstanding subclause F4.23 the Clerk may, with reasonable cause, request the employee to provide a medical certificate from a registered medical practitioner or registered health professional operating within their scope of practice or a statutory declaration for any absence from duty on personal leave at the time of notification of the absence.
- F4.25 Any personal leave without pay that goes beyond a maximum continuous period of combined paid and unpaid personal leave of 78 weeks does not count as service for any purpose.
- F4.26 The Clerk must approve an application for up to 5 days of personal leave for the purpose of bonding leave in accordance with subclause F18.4.
- F4.27 The Clerk may refer an employee for a medical examination by a nominated registered medical practitioner or registered health professional, or nominated panel of registered medical practitioners or registered health professionals, at any time for any of the following reasons:
  - F4.27.1 The Clerk is concerned about the wellbeing of an employee and considers that the health of the employee is affecting, or has a reasonable expectation that it may affect, the employee's ability to adequately perform their duties.
  - F4.27.2 The Clerk considers that documentary evidence supplied in support of an absence due to personal illness or injury is inadequate.
  - F4.27.3 The employee has been absent on account of illness for a total of 13 weeks in any 26 week period.
- F4.28 The Clerk may require the employee to take personal leave after considering the results of a medical examination requested by the Clerk.

#### **Rate of payment**

- F4.29 Personal leave is granted with pay except where it is granted without pay under subclause F4.13, subclause F4.15 or subclause F4.23.
- F4.30 Subject to the approval of the Clerk, an employee may request to use personal leave at half pay for absences of at least one week. Such absences will be deducted from the employee's accrued credits at a rate of 50% of the period of absence.
- F4.31 Any personal leave taken must be deducted from the employee's credit.

#### **Effect on other entitlements**

- F4.32 Personal leave with pay counts as service for all purposes.
- F4.33 Personal leave without pay, other than provided for at subclause F4.25, counts as service for all purposes.
- F4.34 Where an employee is absent on paid personal leave and a public holiday for which the employee is entitled to be paid falls within that period of absence, both the following apply:
  - F4.34.1 The employee will be paid as a normal public holiday for that day.
  - F4.34.2 The public holiday will not be deducted from the employee's personal leave credits.
- F4.35 Where the personal leave under subclause F4.34 is without pay both sides of the public holiday or Christmas shutdown period, the public holiday, or the Christmas shutdown period, will also be without pay.

- F4.36 While personal leave is not deducted over the Christmas shutdown period, the Christmas shutdown does not break continuity of the period of absence in relation to the maximum period(s) of leave under subclause F4.25.

#### **Interaction with other leave types**

- F4.37 This clause applies to an employee who suffers personal illness or injury, or provides care or support for a member of the employee's immediate family or household who is ill or injured or who is experiencing an unexpected emergency, for one day or longer while the employee is on one of the following types of leave:
- F4.37.1 Annual leave
  - F4.37.2 Purchased leave
  - F4.37.3 Long service leave
  - F4.37.4 Unpaid birth leave
  - F4.37.5 Unpaid parental leave
  - F4.37.6 Grandparental leave
  - F4.37.7 Accrued day off.
- F4.38 If the employee produces a certificate from a registered medical practitioner or a registered health professional operating within their scope of practice, or in the case of an unexpected emergency, other satisfactory evidence, the employee may apply for personal leave.
- F4.39 Where an employee is subsequently granted the personal leave, the other leave must be re-credited for that period of the personal leave that falls within the period of the other leave.
- F4.40 An employee cannot access paid personal leave while on paid birth leave, or primary care giver's leave, or adoption or permanent care leave, but can apply for personal leave during unpaid birth leave or unpaid parental leave.
- F4.41 If the employee has exhausted all paid personal leave, personal leave without pay cannot be substituted for unpaid birth leave.
- F4.42 If an employee exhausts the employee's paid personal leave entitlement and produces documentary evidence, as per subclause F4.22, as evidence of continuing personal illness or injury, or requirement to care or provide support to a member of the employee's immediate family or household, the employee may apply to the Clerk for approval to take annual leave or long service leave. If approved, this leave will not break the continuity of the 78 weeks under subclause F4.25.

#### **F5 - Personal Leave in Extraordinary and Unforeseen Circumstances**

- F5.1 Employees, other than casual employees, are eligible for personal leave in extraordinary and unforeseen circumstances.
- F5.2 Personal leave in extraordinary and unforeseen circumstances, is non-cumulative and if granted is deducted from the employee's personal leave balance.
- F5.3 The Clerk may grant a maximum of 4 days of personal leave, other than for personal illness or the care of a member of the employee's immediate household who is sick or requires support, in an accrual year, in extraordinary, unforeseen or unexpected circumstances and where it is essential that the employee have leave from the workplace. These 4 days are in addition to the 7 days personal leave without documentary evidence.
- F5.4 While personal leave in extraordinary and unforeseen circumstances does not normally require documentary evidence, the Clerk may request reasonable evidence before granting the leave.
- F5.5 Personal leave in extraordinary and unforeseen circumstances must be granted with pay.

#### **F6 - Infectious Disease Circumstances**

- F6.1 Where an employee is prevented from attending for duty under the *Public Health Act 1997*, the Clerk may grant that employee personal leave during that period.

- F6.2 The employee may also apply for the absence or a part of it to be deducted from their annual leave credit.

## **F7 - Annual Leave**

### **Purpose**

- F7.1 Annual leave is available to employees to enable them to be absent from duty for the purposes of rest and recreation.

### **Eligibility**

- F7.2 Annual leave is available to employees other than casual employees.

### **Entitlement**

- F7.3 An employee may be granted annual leave up to their available credit from the first day of service.

- F7.4 Annual leave is cumulative.

- F7.5 An employee's annual leave credit accrues on a daily basis according to the following formula:

Total hours of leave accrued per day =  $(A \times B \times D) / C$ , where:

- F7.5.1 A = number of ordinary hours per week worked.

- F7.5.2 B = one where the day counts as service or zero where the day does not count as service or is an unauthorised absence.

- F7.5.3 C = number of calendar days in the year.

- F7.5.4 D = number of weeks of annual leave an employee is entitled to a year.

- F7.6 For the purpose of subclause F7.5 the basic leave entitlement is one of the following:

- F7.6.1 In the case of 36.75 hour workers, 147 hours annual leave for each full year worked; or

- F7.6.2 In the case of 38 hour workers, 152 hours annual leave for each full year worked.

- F7.7 Shift workers who are regularly rostered to work on Sundays and work at least 10 Sundays in a year are entitled to an additional 5 days of paid annual leave per year.

- F7.8 Shift workers rostered to work on less than 10 Sundays during which annual leave will accrue are entitled to additional annual leave at the rate of one tenth of a working week for each Sunday so rostered.

- F7.9 If an employee moves from one ACTPS directorate to another, annual leave accrued with the first directorate will transfer to the second directorate.

- F7.10 An annual leave credit does not accrue to an employee if the employee is absent from duty on leave for specified defence service, or full-time defence service. If the employee resumes duty after a period of specified defence service, annual leave will accrue from the date the employee resumes duty.

- F7.11 Employees will receive payment on separation from the ACTPS of any unused annual leave entitlement.

### **Evidence and conditions**

- F7.12 Employees are encouraged to use their annual leave in the year that it accrues, and to this end should discuss their leave intentions with their manager or supervisor as soon as practicable.

- F7.13 An employee must make an application to the Clerk to access their annual leave entitlement.

- F7.14 Having considered the requirements of this clause the Clerk may approve an employee's application to access annual leave.

- F7.15 The Clerk should approve an employee's application to take annual leave, subject to operational requirements.

- F7.16 If the Clerk does not approve an employee's application for annual leave because of operational requirements, the Clerk must consult with the employee to determine a mutually convenient alternative time (or times) for the employee to take the leave.

- F7.17 The Clerk must, unless there are exceptional operational circumstances, approve an application for annual leave if it would enable an employee to reduce their annual leave credit below 2.5 years worth of accrued annual leave credit. However, in the case of exceptional operational circumstances, the Clerk must consult with the employee to determine the time (or times) for the annual leave to be taken that is mutually convenient to both the administrative unit and the employee.
- F7.18 If an employee's annual leave is cancelled without reasonable notice, or an employee is recalled to duty from leave, the employee is entitled to be reimbursed reasonable travel costs and incidental expenses not otherwise recoverable under any insurance or from any other source.
- F7.19 If the operations of the Office, or part of the Office, are suspended at Christmas or another holiday period, the Clerk may direct an employee to take annual leave at a time that is convenient to the working of the Office, whether or not an application for leave has been made. However, this does not affect any other entitlements to leave under this Agreement.
- F7.20 If an employee has the equivalent of 2 years' accrued credit of annual leave and unless exceptional operational circumstances exist, the employee and relevant manager or supervisor must agree, and implement an annual leave usage plan to ensure the employee's accrued leave credit will not exceed an accrued 2.5 years worth of annual leave credit.
- F7.21 If an employee does not agree to a reasonable annual leave usage plan the Clerk may direct an employee who has accrued 2.5 years worth of accrued annual leave credit to take enough annual leave to reduce the accrued leave credit to the equivalent of 2 years' accrued credit, subject to giving the employee one calendar month notice. This clause does not apply to an employee who is on graduated return to work following compensation leave.
- F7.22 An employee must reduce their annual leave credit to 2.5 years worth of entitlement or less within 12 months if their credit exceeds 2.5 years worth of entitlement at any of the following points in time:
- F7.22.1 At the commencement of the Agreement.
  - F7.22.2 On joining, or returning to the Office.
  - F7.22.3 On returning to duty from compensation leave.
- F7.23 An employee may not be directed under subclause F7.21 to take annual leave where the employee has made an application for a period of annual leave equal to or greater than the period specified in subclause F7.21 in the past 6 months and the application was not approved. The manager or supervisor and the employee may agree to vary an annual leave usage plan.

#### **Rate of payment**

- F7.24 Annual leave is granted with pay.
- F7.25 Payment for the annual leave is based on the employee's ordinary hourly rate of pay, including allowances that count for all purposes for the time the leave is taken. If an employee is being paid HDA before going on paid leave and would have continued to receive HDA had they not taken leave then the employee is entitled to payment of HDA during the leave.
- F7.26 The Clerk may approve an application in accordance with clause E2 - for annual leave to be taken at half pay with credits to be deducted on the same basis.

#### **Effect on other entitlements**

- F7.27 Annual leave counts as service for all purposes.
- F7.28 Public holidays for which the employee is entitled to payment that fall during periods of absence on annual leave will be paid as a normal public holiday and must not be deducted from the employee's annual leave balance.

#### **Interaction with other leave entitlements**

- F7.29 If personal leave is granted to the employee annual leave must be re-credited for the period of paid personal leave granted.

- F7.30 Subject to the approval of the Clerk, an employee who is on unpaid leave may be granted annual leave during that period, unless otherwise stated in this Agreement.
- F7.31 If an employee is prevented from attending for duty under the *Public Health Act 1997*, the Clerk may grant annual leave during that period.

#### **Payment in lieu of annual leave**

- F7.32 On receiving a request in writing from an employee, the Clerk may approve payment in lieu of an employee using annual leave credit subject to all the following:
- F7.32.1 The employee must take at least one week of annual leave in conjunction with the payment in lieu of annual leave or the employee has taken at least one week of annual leave in the past 6 months.
- F7.32.2 The payment in lieu must not result in a reduction in the balance of the employee's remaining annual leave credit to below one year's accrued entitlement.
- F7.33 Payment in lieu of annual leave is based on the employee's ordinary hourly rate of pay, including allowances that count for all purposes at the date of application. The payment in lieu is based on the pay that the employee would have received for a notional period of leave equal to the credit being paid in lieu on the day the application is made.

### **F8 - Annual Leave Loading**

#### **Purpose**

- F8.1 Annual leave loading is available to employees to provide monetary assistance while they are on annual leave.

#### **Eligibility**

- F8.2 Employees who accrue annual leave under clause F7 - are entitled to an annual leave loading. Part-time employees are paid the annual leave loading on a pro rata basis.

#### **Entitlement**

- F8.3 Where an employee's entitlement is based on paragraph F8.7.1, the leave loading payable is subject to a maximum payment. This maximum payment is the equivalent of the Australian Bureau of Statistics' male average weekly total earnings for the May quarter of the year before the year in which the date of accrual occurs. Where the leave accrual is less than for a full year, this maximum is applied on a pro rata basis.
- F8.4 An employee whose employment ceases and who is entitled to payment of accumulated annual leave or pro rata annual leave must be paid any accrued annual leave loading not yet paid and leave loading on pro rata annual leave entitlement due on separation.

#### **Evidence and conditions**

- F8.5 Annual leave loading accrued is paid at such a time as the employee nominates, by making a written request to the Clerk.
- F8.6 Any unpaid annual leave loading accrued by employees must be paid on the first payday in November following its accrual.

#### **Rate of payment**

- F8.7 The amount of an employee's entitlement under subclause F8.2 is based on whichever is the greater of the following:
- F8.7.1 Subject to subclause F8.3, 17.5% of the employee's ordinary hourly rate of pay on 1 January multiplied by the number of hours of annual leave accrued during the preceding calendar year (excluding shift penalties).
- F8.7.2 Any shift penalties that the employee would have received had the employee not been on approved annual leave.

### **F9 - Purchased Leave**

#### **Purpose**



F9.1 Purchased leave is available to employees to enable them to be absent from duty to support their work-life balance.

### **Eligibility**

F9.2 Employees, other than casual employees, are eligible to apply to purchase leave.

### **Entitlement**

F9.3 Employees may purchase leave in addition to the employee's usual annual leave entitlement, up to a maximum of 12 weeks in any 12 month period, subject to Clerk approval.

F9.4 An employee may apply, at any time, to the Clerk for approval to participate in the purchased leave scheme.

F9.5 The application must specify the amount of leave to be purchased in whole weeks up to a maximum of 12 weeks in any 12 month period, and the period over which the additional leave is to be acquitted.

F9.6 Approval by the Clerk for an employee to purchase and use purchased leave, is subject to both the operational requirements of the workplace and the personal responsibilities of the employee.

F9.7 Approval to purchase additional leave must not be given where an employee has an annual leave balance of 2.5 years worth of annual leave credit or more, except where the employee intends to use all excess annual leave credit before taking purchased leave.

F9.8 Once an employee commences participation in the scheme, the employee may only opt out of the scheme before the expiration of the agreed acquittal period if any of the following apply:

F9.8.1 The employee can demonstrate in writing that exceptional circumstances exist and the Clerk agrees. For example, unforeseen financial hardship.

F9.8.2 The employee's employment with the ACTPS ceases before the expiration of the agreed acquittal period.

F9.8.3 The employee proceeds on paid birth or primary care giver leave.

F9.9 If an employee transfers from one ACTPS directorate to another ACTPS directorate during the agreed acquittal period, the employee's continuation in the purchased leave scheme is subject to the separate approval of the gaining directorate. Where such approval is not given, any money owing to the employee in respect of purchased leave not taken must be refunded to the employee as soon as practicable. Any shortfall in payments must be deducted from monies owing to the employee.

### **Evidence and conditions**

F9.10 An employee should discuss with their manager or supervisor, as soon practicable, their intention to be absent on purchased leave.

F9.11 An employee must make an application to the Clerk to access their purchased leave entitlement.

F9.12 Having considered the requirements of this clause the Clerk may approve an employee's application to access purchased leave. A decision not to approve the leave must be made in accordance with subclause F3.1.

F9.13 Approval by the Clerk to grant purchased leave is subject to the operational requirements of the workplace, the personal responsibilities of the employee and appropriate periods of notice.

F9.14 A minimum of one week of purchased leave, or the pro rata equivalent for part-time employees, must be taken at any one time unless the remaining balance is less than one week or the Clerk is satisfied, on evidence presented, there are exceptional circumstances which warrant purchased leave being taken in shorter periods.

F9.15 Purchased leave must be used within the agreed acquittal period, not exceeding 12 months from the date of commencement in the scheme. Purchased leave not taken within the agreed acquittal period will be forfeited and the value of the leave refunded to the employee at the end of the acquittal period.

### **Rate of payment**

- F9.16 While an employee is on a period of purchased leave the employee must be paid at the rate of pay used to calculate the employee's deduction.
- F9.17 Purchased leave will be paid for by a fortnightly deduction from the employee's pay over an agreed acquittal period not exceeding 12 months from the date the employee commences participation in the scheme.
- F9.18 Fortnightly deductions, from the employee's pay, will commence as soon as practicable following approval of the employee's application to participate in the purchased leave scheme. The deductions will be calculated on the employee's pay at the date of commencement of participation in the scheme, the amount of leave to be purchased and the agreed acquittal period.
- F9.19 Despite subclause F9.18, if the employee's pay changes during the acquittal period the employee may apply to the Clerk for the deduction to be recalculated.
- F9.20 Fortnightly tax deductions are calculated on the employee's gross pay after the deduction has been made for purchased leave.
- F9.21 Subject to subclause F9.22, allowances in the nature of pay may be included in the calculation of purchased leave payments if both the following apply:
- F9.21.1 The Clerk and the employee agree any or all of these allowances are appropriate.
- F9.21.2 There is the likelihood the allowance will continue to be received over the duration of the acquittal period.
- F9.22 Disability allowances, which are paid according to the hours worked, cannot be included for the purposes of calculating purchased leave payments.

#### **Effect on other entitlements**

- F9.23 Leave taken as purchased leave counts as service for all purposes.
- F9.24 Public Holidays for which the employee is entitled to payment that fall during periods of absence on purchased leave must be paid as a normal public holiday and not deducted from the employee's purchased leave balance.
- F9.25 Purchased leave does not affect the payment and timing of pay increments or the accrual of other forms of leave.
- F9.26 The purchase of additional leave under this clause does not affect the superannuation obligations of the ACTPS or the employee involved.

#### **Interaction with other leave types**

- F9.27 Where an employee provides a certificate from a registered medical practitioner or registered health professional operating within their scope of practice for a personal illness or injury or for the purpose of providing care or support for a member of the employee's family who is ill or injured or who is experiencing an unexpected emergency during a period of absence on purchased leave, the employee will have the purchased leave re-credited for that period covered by the certificate, and substituted by personal leave.
- F9.28 An employee participating in the scheme who proceeds on paid birth or primary care giver's leave must elect to do one of the following:
- F9.28.1 Exit the purchased leave scheme and have any money owing refunded.
- F9.28.2 Subject to subclause F9.29, remain in the scheme and have pay deductions continue during the period of paid birth or primary care giver's leave.
- F9.29 Purchased leave taken during an employee's absence on birth or primary care giver's leave does not extend the employee's total period of birth leave or primary care giver's leave.
- F9.30 An employee participating in the scheme who is in receipt of paid workers' compensation will have pay deductions for purchased leave continue. Normal conditions for purchased leave will apply for employees on graduated return to work programs; however, entry into the scheme should be discussed with the rehabilitation case manager.

## F10 - Public Holidays

### Eligibility

F10.1 Public holidays are available to employees other than casual employees.

### Entitlement

F10.2 Employees are entitled to be absent from duty on a day, or part of a day, that is a public holiday, in accordance with the FW Act.

F10.3 The following days are observed as public holidays under this Agreement:

F10.3.1 The 1 January (New Year's Day), and, if that day falls on a Saturday or Sunday, the following Monday.

F10.3.2 The 26 January (Australia Day), or, if that day falls on a Saturday or Sunday, the following Monday.

F10.3.3 The 2nd Monday in March (Canberra Day).

F10.3.4 Good Friday.

F10.3.5 The Saturday following Good Friday.

F10.3.6 Easter Sunday.

F10.3.7 The Monday following Good Friday.

F10.3.8 The 25 April (Anzac Day), or, if that day falls on a Saturday or Sunday, the following Monday.

F10.3.9 The 27 May (Reconciliation Day), or, if that day is not a Monday, the following Monday.

F10.3.10 The 2nd Monday in June (the day for the observance of the anniversary of the birthday of the Sovereign).

F10.3.11 The 1st Monday in October (Labour Day).

F10.3.12 The 25 December (Christmas Day) and one of the following:

F10.3.12 (a) If Christmas Day falls on a Saturday, the following Monday.

F10.3.12 (b) If Christmas Day falls on a Sunday, the following Tuesday.

F10.3.13 The 26 December (Boxing Day) and one of the following

F10.3.13 (a) If Boxing Day falls on a Saturday—the following Monday.

F10.3.13 (b) if that day falls on a Sunday—the following Tuesday.

F10.4 In addition to the public holidays provided for under subclause F10.3, employees are entitled to be absent from duty on all of the following:

F10.4.1 The next business day after Boxing Day, or one of the following:

F10.4.1 (a) If Boxing Day falls on a Saturday, the following Tuesday.

F10.4.1 (b) If Boxing Day falls on a Sunday, the following Wednesday.

F10.4.2 Any other day, or a part of any other day, that the Minister declares to be a public holiday in the ACT under the *Holidays Act 1958* (the Holidays Act).

F10.4.3 Any other day, or a part of any other day, that the ACTPS Head of Service declares to be a holiday under the PSM Act.

F10.5 Where a day identified in subclause F10.3 is replaced by another day by an amendment to the Holidays Act, the replacement day will be observed as the public holiday in its place.

### Rate of payment

F10.6 Subject to subclause F10.7 and subclause F10.8, where an employee who is entitled to be absent from duty on a day, or a part of a day, that is a public holiday, and the employee is

absent from duty, the employee will be paid at the employee's ordinary hourly rate for the employee's ordinary hours of work on that day or part-day.

- F10.7 A part-time employee is entitled to observe a public holiday without loss of pay if the employee would usually have been required to work on the day of the week on which the public holiday falls. To remove any doubt, a part-time employee whose regular part-time hours do not fall on a public holiday will not be paid for that public holiday.
- F10.8 An employee will not be paid for a public holiday which occurs during a period of leave without pay.
- F10.9 If a public holiday occurs on the day immediately before or immediately after an employee is on a period of leave without pay the employee is entitled to be paid for the public holiday.

#### **Effect on other entitlements**

- F10.10 Subject to subclause F10.11, public holidays count as service for all purposes.
- F10.11 A public holiday does not count as service if it occurs while the employee is on a period of leave not to count as service.

### **F11 - Christmas Shutdown**

#### **Purpose**

- F11.1 Christmas shutdown is provided for operational efficiency and the wellbeing of employees.

#### **Eligibility**

- F11.2 Christmas shutdown is available to employees other than casual employees.

#### **Entitlement**

- F11.3 Employees are entitled to 2 days of paid absence during the Christmas shutdown period, which are the business days between 28 December and 31 December inclusive.
- F11.4 Only those employees who are directed or rostered to work during this period may attend for work over the Christmas shutdown period.
- F11.5 If an employee (other than an employee to whom subclause F11.6 or subclause F11.7 apply) is directed to work during the Christmas shutdown period the employee i, in addition to the entitlement under subclause F11.3, is entitled to one of the following:
- F11.5.1 A paid absence, equivalent to the time worked at a time agreed between the employee and the relevant manager or supervisor.
  - F11.5.2 A payment equivalent to the time worked at the employee's ordinary rate of pay.
- F11.6 Employees who are working under rostering arrangements during the Christmas shutdown period are entitled to one of the following:
- F11.6.1 A paid absence at a time agreed between the employee and the relevant manager or supervisor equivalent to the time worked, or the time the employee would have worked had the employee been rostered to work.
  - F11.6.2 A payment equivalent to the time worked, or the time the employee would have worked had the employee been rostered to work at the employee's ordinary rate of pay.
- F11.7 An employee who is working under rostering arrangements who is required to work on a rostered day off which falls on either of the Christmas shutdown days shall receive payment of overtime at the appropriate rate for the attendance. The payment of overtime is in addition to the entitlement under subclause F11.6. These days are not public holidays and therefore public holiday rates do not apply.
- F11.8 Nothing in this clause is intended to reduce or increase a part-time employee's pay entitlement for the pay period in which the Christmas shutdown period falls. Part-time employees whose regular part-time hours do not fall during the Christmas shutdown period are not entitled to the additional 2 days of paid absence.

F11.9 Notwithstanding subclause F11.8 part-time employees whose regular part-time hours do not fall during the Christmas shutdown period, but who are directed to work during the Christmas shutdown period, are entitled to one of the following:

F11.9.1 A paid absence, equivalent to the time worked, at a time agreed between the employee and the relevant manager or supervisor.

F11.9.2 A payment of overtime at the appropriate rate for the time worked.

#### **Rate of payment**

F11.10 Christmas shutdown absence is granted with pay.

#### **Effect on other entitlements**

F11.11 Christmas shutdown absence counts as service for all purposes.

### **F12 - Compassionate Leave**

#### **Purpose**

F12.1 Compassionate leave is available to employees to enable them to be absent from duty when one of the following applies to a member of an employee's immediate family or household:

F12.1.1 They have a personal illness or injury that poses a serious threat to the person's life.

F12.1.2 They die, including where a child is stillborn.

F12.2 Compassionate leave is available to employees to enable them to be absent from duty when they experience a miscarriage or when an employee's domestic partner has experienced a miscarriage.

#### **Eligibility**

F12.3 Compassionate leave is available to all employees.

#### **Entitlement**

F12.4 An employee may be granted compassionate leave from the first day of service.

F12.5 Compassionate leave is non-cumulative.

F12.6 Employees are entitled to up to 5 days of compassionate leave on each occasion of the death of a member of the employee's immediate family or household. The Clerk may grant an additional paid or unpaid period of compassionate leave for this purpose.

F12.7 Employees are entitled to up to 2 days of compassionate leave on each occasion of personal illness or injury of a member of the employee's immediate family or household that poses a serious threat to the person's life. The Clerk may grant an additional paid or unpaid period of compassionate leave for this purpose.

#### **Evidence and conditions**

F12.8 The employee should discuss with their manager or supervisor, as soon as practicable, their absence or intention to be absent on compassionate leave.

F12.9 An employee must make an application to the Clerk to access compassionate leave.

F12.10 The Clerk may request evidence that would satisfy a reasonable person that an application for compassionate leave is for a purpose specified in subclause F12.1.

F12.11 Having met the requirements of this clause, the Clerk must approve an employee's application to access compassionate leave.

F12.12 If the employee has not provided the evidence requested under subclause F12.10, a decision not to approve the leave may be taken in accordance with subclause F3.1.

#### **Rate of payment**

F12.13 Compassionate leave must be granted with pay, except for casual employees and except where it is granted without pay under subclause F12.6 or subclause F12.7.

F12.14 Compassionate leave is paid at the employee's base rate of pay, including relevant allowances for the ordinary hours the employee would have worked during the leave.

#### **Effect on other entitlements**

F12.15 Compassionate leave with pay counts as service for all purposes.

F12.16 Public Holidays for which the employee is entitled to payment that fall during periods of absence on paid compassionate leave must be paid as a normal public holiday and will not be considered an absence on compassionate leave.

#### **Interaction with other leave types**

F12.17 If compassionate leave of at least one day is granted while an employee is absent on another type of leave, the other type of leave must be re-credited for the period of the absence on compassionate leave.

### **F13 - Community Service Leave**

#### **Purpose**

F13.1 Community service leave is available to employees to allow them to be absent from the workplace to engage in the following 3 distinct types of community service activities:

F13.1.1 Jury service (including attendance for jury selection) that is required by or under a law of the Commonwealth, a State or a Territory.

F13.1.2 A voluntary emergency management activity.

F13.1.3 Other recognised voluntary community service activities.

#### **Jury Service**

#### **Eligibility**

F13.2 Community service leave for jury service is available to all employees.

#### **Evidence and conditions**

F13.3 Although the granting of community service leave for jury service is deemed to be approved, an employee must do both the following:

F13.3.1 Submit a leave application for the period of the absence.

F13.3.2 Provide sufficient documentary evidence of the reason for the absence.

F13.4 The employee should discuss with their manager or supervisor their intention to be absent on community service leave for jury service.

#### **Rate of payment**

F13.5 Community service leave for jury service must be granted with pay to employees other than casual employees.

F13.6 If the employee is paid jury fees, this amount must be deducted from the employee's pay less reasonable out-of-pocket expenses.

#### **Effect on Other Entitlements**

F13.7 Community service leave for jury service counts as service for all purposes.

F13.8 Public holidays for which the employee is entitled to payment that fall during periods of absence on paid community service leave for jury service must be paid as a normal public holiday and will not be considered to be community service leave for jury service.

### **Voluntary Emergency Management**

#### **Eligibility**

F13.9 An employee who is a member of a relevant voluntary emergency management service, including any of the following, is eligible for community service leave :

F13.9.1 A state or territory emergency service.

- F13.9.2 A fire-fighting service.
- F13.9.3 A search and rescue unit.
- F13.9.4 Another volunteer service that performs similar functions.

F13.10 A casual employee who is a member of a relevant emergency service is eligible to unpaid community service leave for voluntary emergency management service.

**Entitlement**

- F13.11 Eligible employees are entitled to be absent on unpaid leave to engage in a voluntary emergency management activities, subject to operational requirements in the workplace.
- F13.12 Eligible employees, other than casual employees, are eligible for up to 4 days paid community service leave for voluntary emergency management per emergency.
- F13.13 Community service leave for voluntary emergency management is non-cumulative.

**Evidence and conditions**

- F13.14 An employee should discuss their intention to be absent on paid or unpaid community service leave for voluntary emergency management with their manager or supervisor as soon as practicable, which may be at a time after the absence has started. The employee must advise the manager or supervisor of the period, or expected period, of the absence.
- F13.15 An employee must make an application to the Clerk to access their community service leave entitlement for voluntary emergency management.
- F13.16 The employee must, if requested by the Clerk, provide sufficient documentary evidence of the reason for the absence.
- F13.17 The Clerk may grant paid community service leave for voluntary emergency management to enable the employee to fulfil an obligation in the event of a civil emergency.
- F13.18 Having considered the requirements of this clause the Clerk may approve an employee’s application to access paid community service leave for voluntary emergency management. A decision not to approve the leave must be taken in accordance with subclause F3.1.

**Rate of payment**

F13.19 Where paid leave is granted for community service leave for voluntary emergency management, it is paid at the employee’s ordinary hourly rate of pay.

**Effect on other entitlements**

- F13.20 A period of approved community service leave for voluntary emergency management counts as service for all purposes.
- F13.21 Public holidays for which the employee is entitled to payment that fall during periods of absence on paid community service leave for voluntary emergency management must be paid as a normal public holiday and will not be considered to be community service leave for voluntary emergency management.

**Additional leave**

F13.22 Additional paid leave may be approved by the Clerk for any voluntary emergency management duties required to be performed by an employee who is a member of a state or territory emergency service.

**Voluntary Community Service**

**Eligibility**

F13.23 Community service leave for voluntary community service is available to all employees.

**Entitlement**

- F13.24 Employees, other than casual employees, are entitled to up to 3 days of paid leave for community service leave to engage in a recognised voluntary community service activity within a 12 month period.
- F13.25 Community service leave for voluntary community service is non-cumulative.
- F13.26 An employee may be granted unpaid community service leave to engage in a recognised voluntary community service activity, subject to operational requirements in the workplace.

**Evidence and conditions**

- F13.27 An employee should discuss their intention to be absent on community service leave for voluntary community service, as soon as practicable, with their manager or supervisor.
- F13.28 An employee must make an application to the Clerk to access their community service leave for voluntary community service entitlement.
- F13.29 The Clerk may request sufficient documentary evidence of the reason for the absence.
- F13.30 In considering an application from an employee for paid leave to engage in a voluntary community service activity, the Clerk must consider all of the following:
  - F13.30.1 Whether the activity is a recognised voluntary activity and benefits the local community.
  - F13.30.2 Whether the community organisation or project is an acceptable organisation or project as defined in whole-of-government policy or the Office’s guidelines.
  - F13.30.3 Whether there is a risk the activity would place the employee in a real or perceived conflict of interest.
- F13.31 Leave for a voluntary community service activity must not be approved for activities that do any of the following:
  - F13.31.1 Involve any payment in cash or kind for the duties performed by the employee.
  - F13.31.2 Replace work ordinarily undertaken by a paid worker.
  - F13.31.3 Are undertaken solely for direct personal benefit of the employee.
  - F13.31.4 Place the employee in a conflict-of-interest situation.
  - F13.31.5 Primarily focus on promoting particular religious or political views.
  - F13.31.6 Involve work which does not have a local community focus.
- F13.32 Having considered the requirements of this clause the Clerk may approve an employee’s application to access paid or unpaid community service leave for voluntary community service.
- F13.33 A decision not to approve the leave must be made in accordance with subclause F3.1.

**Rate of payment**

- F13.34 Community service leave for voluntary community service is granted with pay for the first 3 days leave in a 12 month period to all employees except casual employees.

**Effect on other entitlements**

- F13.35 Community service leave for voluntary community service counts as service for all purposes up to a maximum of 23 days in any 12 month period.
- F13.36 Where the Clerk has approved a request for unpaid community service leave for voluntary community service exceeding 20 days in a 12 month period, the leave in excess of 20 days does not count as service.
- F13.37 Public holidays for which the employee is entitled to payment that fall during periods of absence on paid community service leave for voluntary community service must be paid as a normal public holiday and will not be considered to be community service leave for voluntary community service.

**Interaction with other leave entitlements**



- F13.38 Leave granted under this provision may be taken in combination with approved annual or long service leave.

## **F14 - Birth Leave**

### **Purpose**

- F14.1 Birth leave is available to pregnant employees to enable them to be absent from duty to do any of the following:
- F14.1.1 Support their own wellbeing and to care for and bond with a newborn child.
  - F14.1.2 Support the protection of the family and children under the *Human Rights Act 2004*.
  - F14.1.3 Support the employee's right to continuity of service.

### **Eligibility**

- F14.2 An employee who is pregnant is eligible to be absent on birth leave.
- F14.3 An employee is eligible for birth leave where any of the following applies:
- F14.3.1 The employee gives birth to a newborn child;
  - F14.3.2 the employee's pregnancy ends at or within 20 weeks of the estimated date of delivery of the child, including where a child is stillborn.
- F14.4 Where an employee's pregnancy ends by miscarriage, any birth leave which has been prospectively approved must be cancelled. In this circumstance, the employee may become eligible for compassionate leave in accordance with clause F12 - and special birth leave in accordance with clause F15 -.

### **Eligibility – paid birth leave**

- F14.5 An employee (other than a casual employee) who is eligible for birth leave and who has completed 12 months of continuous service, including recognised prior service, immediately prior to commencing a period of birth leave, is eligible for paid birth leave.
- F14.6 An employee (other than a casual employee) who is eligible for birth leave and who completes 12 months of continuous service within the first 18 weeks of birth leave is eligible for paid birth leave for the period between completing 12 months of service and the end of the first 18 weeks of birth leave.
- F14.7 An employee who is eligible for paid birth leave and who is on approved leave without pay is eligible for paid birth leave for the period between completing the approved period of leave without pay and the end of the first 18 weeks of birth leave.

### **Entitlement**

- F14.8 An eligible employee is entitled to be absent for up to 52 weeks birth leave for each pregnancy. To avoid doubt, the entitlement under this clause does not increase in cases of multiple births.
- F14.9 Subject to subclause F14.4, an employee who is eligible for paid birth leave is entitled to be paid for the first 18 weeks of birth leave and this entitlement is in addition to the federal paid parental leave scheme.
- F14.10 Birth leave is non-cumulative.
- F14.11 Subject to subclause F14.13 and subclause F14.14, an employee who is eligible for birth leave must absent themselves from duty for a period commencing 6 weeks prior to the estimated date of delivery of the child and ending 6 weeks after the actual date of birth of the child.
- F14.12 An eligible employee's period of birth leave commences 6 weeks prior to the estimated date of delivery unless one of the following applies :
- F14.12.1 The employee is approved a later commencement date under subclause F14.13. Birth leave will commence on the date recommended by the medical practitioner.

- F14.12.2 The child is born more than 6 weeks before the estimated date of delivery. Birth leave will commence on the day the child is born.
- F14.12.3 The pregnancy ends at or within 20 weeks of the estimated date of delivery of the child, including where a child is stillborn. Birth leave will commence on the day the pregnancy ends.

- F14.13 An employee who produces medical evidence from a registered medical practitioner that they are fit for duty until a date less than 6 weeks prior to the estimated date of delivery of the child may continue to work up until a date recommended by the medical practitioner, subject to the approval of the Clerk.
- F14.14 An employee who has given birth to a child and produces medical evidence from a registered medical practitioner that they are fit for duty from a date less than 6 weeks after the date of birth of the child may resume duty on a date recommended by the medical practitioner, subject to the approval of the Clerk.
- F14.15 An employee who has given birth to a child may resume duty following the end of the 6 week period after the birth of the child and earlier than the end of the approved period of birth leave subject to the approval of the Clerk.
- F14.16 An employee is entitled to return to work in accordance with the provisions in the NES.

**Evidence and conditions**

- F14.17 An employee must give notice to their manager or supervisor as soon as practicable of their intention to be absent on birth leave.
- F14.18 Birth leave is deemed to be approved; however an employee must submit an application to the Clerk for any period of birth leave. Having considered the requirements of this clause the Clerk must approve an employee's application to access birth leave.
- F14.19 Prior to commencing birth leave an employee must provide the Clerk with evidence of the pregnancy and the estimated date of delivery from a registered medical practitioner or registered health professional who is operating within their scope of practice.
- F14.20 If requested by the Clerk, an employee must provide the Clerk with evidence of the birth and the date of the birth of the child as soon as possible after the birth of the child. Such evidence may include a copy of the birth certificate or documents provided by a registered medical practitioner or registered health professional who is operating within their scope of practice.

**Rate of payment**

- F14.21 The rate of payment to be paid to the employee during a paid period of birth leave is the same rate as would be paid if the employee was granted paid personal leave.
- F14.22 Despite subclause F14.21, where an employee varies their ordinary hours of work, either from part-time to full-time, from part-time to different part-time, or from full-time to part-time, during the 12- month period directly preceding birth leave, the rate of payment for the paid component of their birth leave, which is capped at full-time rates, is calculated by using the average of their ordinary hours of work, excluding any periods of leave without pay, for the 12- month period immediately before the period of birth leave commences.
- F14.23 To avoid doubt, an employee's status and all other entitlements remain unaltered by the operation of subclause F14.22.
- F14.24 Paid birth leave may be taken with full or half pay, or a combination of full and half pay, with credits to be deducted on the same basis. The maximum paid period is up to 36 weeks at half pay.
- F14.25 The Clerk may approve, subject to a medical certificate from a registered medical practitioner, an employee taking paid birth leave in a non-continuous manner, on the condition no other form of paid leave is approved before the employee has used all of their paid birth leave entitlement.
- F14.26 A period of paid birth leave does not extend the maximum 52 week period of birth leave available to an eligible employee.

F14.27 An employee's period of absence on birth leave between the paid period of birth leave and the maximum 52 week period of birth leave must be without pay, unless other paid leave entitlements are accessed.

#### **Effect on other entitlements**

F14.28 Birth leave with pay counts as service for all purposes.

F14.29 Any period of unpaid birth leave taken by an employee during the period commencing 6 weeks prior to the estimated date of delivery of the child and ending 6 weeks after the actual date of birth of the child counts as service for all purposes.

F14.30 Subject to subclause F14.29 any period of unpaid birth leave taken by an employee does not count as service for any purpose, but does not break continuity of service.

F14.31 Public holidays for which the employee would otherwise have been entitled to payment that fall during periods of absence on birth leave will not be paid as a normal public holiday.

#### **Interaction with other leave entitlements**

F14.32 An application by an employee for long service leave or annual leave during a period that would otherwise be an unpaid period of birth leave must be granted to the extent of available entitlements.

F14.33 Subject to subclause F4.39, an application by an employee for personal leave during a period that would otherwise be an unpaid period of birth leave must be granted subject to the employee providing a certificate from a registered medical practitioner or registered health professional operating within their scope of practice to the extent of available entitlements.

#### **Keep-in touch arrangements (birth leave)**

F14.34 At any time after 6 weeks from the child's date of birth, an employee may, following an invitation from an authorised person, agree to attend the workplace on up to 10 separate occasions of up to one day each so as to keep in touch with developments in the workplace (for meetings and training etc.).

F14.35 The employee will be paid at their ordinary hourly rate of pay for the hours they attend the workplace in accordance with subclause F14.34 during unpaid birth leave. Keep-in-touch attendance counts as service for all purposes, but does not extend the period of leave and does not end or reduce the entitlement to birth leave.

F14.36 For the purpose of subclause F14.34, a medical certificate is not required.

## **F15 - Special Birth Leave**

### **Purpose**

F15.1 Special birth leave is available to employees where any of the following apply:

F15.1.1 The employee is not fit for work due to a pregnancy-related illness.

F15.1.2 The pregnancy of the employee ends between 28 weeks and 20 weeks of the estimated date of delivery, other than by the birth of a living child.

Note: If a pregnancy ends within 20 weeks of the estimated date of delivery of the child the employee may be entitled to paid or unpaid birth leave as per subclause F14.3.

### **Eligibility**

F15.2 Special birth leave is available to all employees and eligible casual employees.

### **Entitlement**

F15.3 An employee is entitled to a period of unpaid special birth leave for the duration certified by a registered medical practitioner or registered health professional operating within their scope of practice as necessary.

### **Evidence and conditions**

- F15.4 The employee must provide the Clerk with notice that they are taking special birth leave. The notice must be given as soon as practicable (which may be after the leave has started); and should include the period, or expected period, of the leave.
- F15.5 An employee must submit an application to the Clerk for any period of special birth leave. Having considered the requirements of this clause the Clerk must approve an employee's application to access special birth leave.
- F15.6 An employee who has given notice that special birth leave will be (or is being) taken must provide reasonable evidence of the purpose for taking leave. This evidence may include a medical certificate from a registered medical practitioner or a registered health professional operating within their scope of practice.

#### **Rate of payment**

- F15.7 Special birth leave is granted without pay.

#### **Effect on other entitlements**

- F15.8 Special birth leave does not count as service for any purpose.
- F15.9 Special birth leave does not break continuity of service.
- F15.10 Special birth leave accessed due to pregnancy-related illness is not deducted from the entitlement for unpaid birth leave accessed after the birth of the child.

#### **Interaction with other leave types**

- F15.11 Special birth leave is in addition to any accrued personal leave entitlement.
- F15.12 Special birth leave is in addition to compassionate leave.

### **F16 - Primary Care Giver Leave**

#### **Purpose**

- F16.1 Primary care giver leave is available to employees to enable them to be absent from duty to do both of the following:
- F16.1.1 Care for and bond with a newborn child.
  - F16.1.2 Support the protection of the family and children under the *Human Rights Act 2004*.

#### **Eligibility**

- F16.2 Primary care giver leave is available to employees (other than casual employees) who are the primary care giver of a newborn child.
- F16.3 An employee who has completed at least 12 months continuous service, including recognised prior service, immediately prior to commencing a period of primary care giver leave, is eligible for primary care giver leave.
- F16.4 An employee who is eligible for paid birth leave, foster and short-term care leave, or adoption or permanent care leave is not eligible for primary care giver leave.
- F16.5 An employee who completes 12 months of continuous service within 18 weeks of becoming the primary care giver for a child is eligible for primary care giver leave for the period between completing 12 months of qualifying service and the end of the first 18 weeks of becoming the primary care giver of the child.

#### **Entitlement**

- F16.6 An eligible employee is entitled to 18 weeks of paid leave in relation to each birth and this entitlement is in addition to the federal paid parental leave scheme. To avoid doubt, the entitlement under this clause does not increase in cases of multiple births, adoptions or care and protection orders that apply to more than one child.
- F16.7 Primary care giver leave is non-cumulative.
- F16.8 An employee is entitled to return to work in accordance with the provisions in the NES.

#### **Evidence and conditions**

- F16.9 An employee should discuss with their manager or supervisor, as soon practicable, their intention to be absent on primary care giver leave.
- F16.10 An employee must make an application to the Clerk to access their primary care giver leave.
- F16.11 The employee must provide the Clerk with appropriate evidence concerning the reasons for and circumstances under which the primary care giver leave application is made, which may include any of the following:
  - F16.11.1 A certificate from a registered medical practitioner or registered health professional operating within their scope of practice relating to the estimated date of delivery of a child.
  - F16.11.2 A birth certificate.
- F16.12 In all cases details of leave being taken by other persons in relation to the same child (or children in the case of multiple births) must be provided.
- F16.13 Before granting primary care giver leave, the Clerk must be satisfied that the employee demonstrates that they are the primary care giver.
- F16.14 For the purposes of this clause a newborn is considered to be a baby of up to 14 weeks old. In extenuating circumstances, the Clerk may approve primary care giver leave when a newborn is more than 14 weeks old.
- F16.15 For the purposes of clause F16.14, the primary care giver is entitled to access up to 18 weeks primary care givers leave where the leave has commenced before the baby was 14 weeks old, subject to subclause F16.16.
- F16.16 Having considered the requirements of this clause the Clerk may approve an employee's application to access primary care giver leave.
- F16.17 The total combined entitlement for ACTPS employees under this clause and the birth leave clause, and equivalent clauses in any other ACTPS enterprise agreement, is 18 weeks of paid leave in relation to the birth.
- F16.18 Primary care giver leave may be taken in any combination with birth leave provided that the person who has given birth and the other employee entitled to primary care giver leave do not take these forms of paid leave concurrently.
- F16.19 Subclause F16.17 does not apply where the person giving birth is an ACTPS employee entitled to surrogacy leave in accordance with clause F28.

**Rate of payment**

- F16.20 Primary care giver leave is granted with pay.
- F16.21 The rate of payment to be paid to the employee during a paid period of primary care giver leave is the same rate as would be paid if the employee was granted personal leave.
- F16.22 Despite subclause F16.21, where an employee varies their ordinary hours of work, either from part-time to full-time, from part-time to different part-time, or from full-time to part-time, during the 12-month period directly preceding primary care giver leave, the rate of payment for the paid component of their primary care giver leave, which is capped at full-time rates, is calculated by using the average of their ordinary hours of work, excluding any periods of leave without pay, for the 12-month period immediately before the period of primary care giver leave commences.
- F16.23 To avoid doubt, an employee's status and all other entitlements remain unaltered by the operation of subclause F16.22.
- F16.24 Primary care giver leave may be granted with full or half pay, or a combination of full and half pay, with credits to be deducted on the same basis. The maximum paid period is up to 36 weeks at half pay.
- F16.25 The Clerk may approve an employee taking primary care giver leave in a non-continuous manner, provided a period of annual leave or long service leave in between the periods of

primary caregiver leave will not be approved until the employee has used all of the employee's paid primary care giver leave entitlement within 52 weeks of the birth of the child.

### **Effect on other entitlements**

- F16.26 Primary care giver leave counts as service for all purposes.
- F16.27 Public holidays for which the employee would otherwise have been entitled to payment that fall during periods of absence on primary caregiver leave will not be paid as a normal public holiday.

### **Interaction with other leave types**

- F16.28 Primary care giver leave does not extend the maximum period of unpaid parental leave available to an employee.

### **Keep-in-touch arrangements (primary care giver leave)**

- F16.29 An employee on primary care giver leave may, following an invitation from an authorised person, agree to attend the workplace on up to 10 separate occasions of up to one day each so as to keep in touch with developments in the workplace (for meetings and training etc.).
- F16.30 The employee will be paid at their ordinary hourly rate of pay for the hours they attend work in accordance with subclause F16.29 during paid or unpaid primary care giver leave. Keep in touch attendance will count as service for all purposes, but does not extend the period of leave and does not end or reduce the entitlement to primary care giver leave.

## **F17 - Parental Leave**

### **Purpose**

- F17.1 Parental leave without pay is in addition to the provisions available in birth leave, primary care giver leave and adoption or permanent care leave and is available to employees to enable them to be absent from duty following the birth or adoption of a child or the commencement of a permanent caring arrangement for a child.

### **Eligibility**

- F17.2 Parental leave is available to an employee or an eligible casual employee who is the primary care giver of a child following the birth or adoption of a child or the commencement of a permanent caring arrangement for a child.

### **Entitlement**

- F17.3 An employee is entitled to up to 2 years of parental leave following the child's birth, adoption or commencement of a permanent caring arrangement, less any period of birth leave, primary care giver leave or adoption or permanent care leave which the employee has taken in relation to the same child.
- F17.4 To avoid doubt, the entitlement under this clause does not increase in cases of multiple births, adoptions or permanent caring arrangements that apply to more than one child at any one time.
- F17.5 At the end of this time the employee is entitled to return to work in accordance with the provisions in the National Employment Standards.
- F17.6 An employee may apply for up to 52 additional weeks of parental leave for up to 2 further occasions of birth. The leave must be granted if all the following apply:
- F17.6.1 The parental leave is taken within 3 years following the child's birth, adoption or commencement of a permanent caring arrangement.
- F17.6.2 That the employee agrees, where necessary, to become unattached.
- F17.6.3 The parental leave is taken in periods of one week or more.

### **Evidence and conditions**

- F17.7 An employee should discuss with their manager or supervisor, as soon as practicable, their intention to be absent on parental leave.
- F17.8 An employee must make an application to the Clerk to access their unpaid parental leave entitlement.

- F17.9 The Clerk must approve an employee's application to access parental leave if satisfied the employee has met the requirements under this clause.
- F17.10 The employee must provide the Clerk with appropriate evidence concerning the reasons for and circumstances under which the unpaid parental leave application is made, which may include any of the following:
- F17.10.1 A birth certificate.
  - F17.10.2 Documents from an adoption authority concerning the adoption of a child.
  - F17.10.3 Documents relating to a permanent caring arrangement.
- F17.11 The Clerk must not grant parental leave if the employee's domestic partner is on parental leave and is an employee of the ACTPS.

#### **Rate of payment**

- F17.12 Parental leave is granted without pay.

#### **Effect on other entitlements**

- F17.13 Parental leave does not count as service for any purpose.
- F17.14 Parental leave does not break continuity of service.
- F17.15 Public holidays for which the employee would otherwise have been entitled to payment that fall during periods of absence on parental leave will not be paid as a normal public holiday.

#### **Interaction with other leave types**

- F17.16 An employee on parental leave may access annual and long service leave on full or half pay to the extent of available entitlements.
- F17.17 An application by an employee for personal leave during a period that would otherwise be a period of parental leave must be granted subject to the employee providing a certificate from a registered medical practitioner or registered health professional operating within their scope of practice, in accordance with subclause F4.38.

#### **Keep-in-touch arrangements (parental leave)**

- F17.18 An employee may, following an invitation from an authorised person, agree to attend the workplace on up to 10 separate occasions of up to one day each so as to keep in touch with developments in the workplace (for meetings and training etc.), less any keep-in-touch time approved during birth or primary caregiver leave as per subclause F14.34 or subclause F16.29.
- F17.19 The employee will be paid at their ordinary hourly rate of pay for the hours that they attend the workplace in accordance with subclause F17.18. Keep-in-touch attendance counts as service for all purposes, but does not extend the period of leave and does not end or reduce the entitlement to parental leave.

## **F18 - Bonding Leave**

#### **Purpose**

- F18.1 Bonding leave is available to employees to enable them to be absent from duty to do the following:
- F18.1.1 Bond with their newborn child, adopted child or a child for whom the employee's domestic partner has commenced a primary care giving role under a permanent caring arrangement.
  - F18.1.2 Support the protection of the family and children under the *Human Rights Act 2004*.

#### **Eligibility**

- F18.2 Bonding leave is available to employees (other than casual employees) at the time of the child's birth, adoption or the commencement of a permanent caring arrangement when the employee is not the primary care giver to the child.

F18.3 An employee who is eligible for paid birth leave, adoption or permanent care leave or primary care giver leave is not entitled to bonding leave. If, however, bonding leave has been taken by the employee, and the employee later becomes entitled to primary care giver's leave due to unforeseen circumstances, the Clerk may agree to convert the bonding leave and personal leave taken in accordance with this clause to primary care giver's leave.

#### **Entitlement**

F18.4 Under this clause, an employee is entitled to be absent on paid leave for a maximum of 2 weeks (10 working days) at, or near, the time of the birth, adoption or commencement of the permanent caring arrangement. The maximum absence may be increased by a further 5 days of personal leave for bonding purposes as per subclause F4.28.

F18.5 In accordance with the NES, an eligible employee is entitled to be absent up to a maximum of 8 weeks of concurrent unpaid bonding leave in the first 12 months following the birth or adoption or commencement of a permanent caring arrangement for a child, subject to a minimum period of 2 weeks at a time unless a shorter period is agreed by the Clerk.

F18.6 The entitlement under subclause F18.5 is reduced by the extent of the entitlement accessed by an employee under subclause F18.4.

F18.7 To avoid doubt, the entitlement under this clause does not increase in cases of multiple births, adoptions or permanent caring arrangements that apply to more than one child at the one time.

F18.8 Bonding leave is non-cumulative.

F18.9 Paid bonding leave must be taken within 14 weeks from the date of birth, adoption or commencement of the permanent caring arrangements, unless there are exceptional circumstances and the Clerk agrees to a longer period.

F18.10 The 5 days of personal leave accessed as per subclause F4.27 may be taken at any time up to 14 weeks from the date of the birth, adoption or commencement of the permanent caring arrangement.

F18.11 Where an employee's domestic partner is also an ACTPS employee this leave may be taken concurrently with the domestic partner receiving birth leave, adoption or permanent care leave or primary care giver leave.

#### **Evidence and conditions**

F18.12 An employee should discuss with their manager or supervisor, as soon as practicable, their intention to be absent on bonding leave.

F18.13 Bonding leave must be approved subject only to the Clerk being satisfied that the eligibility requirements have been met; however, an employee must submit an application to the Clerk for any period of bonding leave.

F18.14 The employee must provide the Clerk with appropriate evidence concerning the circumstances under which the bonding leave application is made, which may include any of the following:

F18.14.1 A medical certificate relating to the estimated date of delivery of a child.

F18.14.2 A birth certificate.

F18.14.3 Documents from an adoption authority concerning the proposed adoption of a child.

F18.14.4 Documents relating to a permanent caring arrangement until the child reaches 18 years old.

F18.15 Unless the Clerk determines that exceptional circumstances apply, bonding leave must not be approved to care for any of the following:

F18.15.1 A baby over 14 weeks old (not applicable in cases of adoption or permanent caring arrangements).

F18.15.2 An adopted adult or adult who is the subject of a permanent caring arrangement over 18 years old on the day of placement.



## **Rate of payment**

- F18.16 Bonding leave is granted with or without pay.
- F18.17 The rate of payment to be paid to the employee during a period of paid bonding leave is the same rate as would be paid if the employee was granted personal leave.

## **Effect on other entitlements**

- F18.18 Paid bonding leave counts as service for all purposes and unpaid bonding leave does not count as service for any purposes, but does not break continuity of service.
- F18.19 Public holidays for which the employee is entitled to payment that fall during periods of absence on paid bonding leave must be paid as a normal public holiday and will not extend the maximum period of bonding leave.

## **F19 - Grandparental Leave**

### **Purpose**

- F19.1 Grandparental leave is available to employees to enable them to be absent from duty to undertake a primary care giving role to their grandchild during normal business hours.

### **Eligibility**

- F19.2 Grandparental leave is available to employees other than casual employees and employees on probation.
- F19.3 To be eligible for grandparental leave, the baby or child whom the employee is providing care for must be one of the following:
- F19.3.1 Their grandchild.
  - F19.3.2 Their step-grandchild.
  - F19.3.3 Their adopted grandchild.
  - F19.3.4 A child for whom the employee's child has parental or caring responsibility authorised under a law of a State or Territory.

### **Entitlement**

- F19.4 An eligible employee may be granted up to 52 weeks of grandparental leave, in relation to each grandchild under care. This leave may be taken over a period not exceeding 5 years.
- F19.5 Grandparental leave is available up until the fifth birthday of the grandchild for whom the employee is the primary care giver.
- F19.6 Grandparental leave is non-cumulative.
- F19.7 The length of a period of absence on grandparental leave must be agreed between the eligible employee and the Clerk.
- Example 1: A day or part-day on an occasional basis.
- Example 2: A regular period of leave each week, fortnight or month.
- Example 3: A larger block of leave such as 6 or 12 months.
- F19.8 If an employee is absent on grandparental leave and becomes a grandparent to another grandchild, for whom they are the primary care giver, a new application must be made as per subclause F19.10.

### **Evidence and conditions**

- F19.9 An employee should discuss with their manager or supervisor, as soon as practicable, their intention to be absent on grandparental leave.
- F19.10 An employee must make an application to the Clerk to access their grandparental leave entitlement, and must include details of the period, or expected period, of the absence.

- F19.11 Having considered the requirements of this clause the Clerk may approve an employee's application to access grandparental leave. A decision not to approve the leave must be taken in accordance with subclause F3.1.
- F19.12 The Clerk should not approve an application for grandparental leave where an employee has an annual leave balance in excess of 8 weeks.
- F19.13 An application for grandparental leave must include one of the following types of evidence:
  - F19.13.1 A statutory declaration or a medical certificate confirming the birth or the estimated date of delivery of the grandchild.
  - F19.13.2 The grandchild's adoption certificate or a statutory declaration confirming the adoption of the grandchild.
  - F19.13.3 A letter or a statutory declaration confirming that there is an authorised care situation.
- F19.14 If both grandparents are employees of the ACTPS either grandparent may be granted leave but the leave may not be taken concurrently.

**Rate of payment**

- F19.15 Grandparental leave is granted without pay.

**Effect on other entitlements**

- F19.16 Employees cannot engage in outside employment during a period of grandparental leave without the prior approval of the Clerk.
- F19.17 Grandparental leave counts as service for all purposes except the accrual of annual leave and personal leave.
- F19.18 Grandparental leave does not break continuity of service.
- F19.19 Public holidays for which the employee would otherwise have been entitled to payment that fall during periods of absence on grandparental leave will not be paid as a normal public holiday.

**Interaction with other leave entitlements**

- F19.20 An employee on grandparental leave may access annual leave, purchased leave or long service leave.
- F19.21 An application by an employee for personal leave during a period that would otherwise be grandparental leave must be granted subject to the employee providing a certificate from a registered medical practitioner or registered health professional who is operating within their scope of practice.

**Unattachment**

- F19.22 During an employee's absence on grandparental leave, the Clerk may, with the employee's written consent, declare the employee unattached.

**F20 - Adoption or Permanent Care Leave**

**Purpose**

- F20.1 Adoption or permanent care leave is available to employees to enable them to be absent from duty to do the following:
  - F20.1.1 Care for and bond with an adopted child or a child for whom the employee has a permanent caring responsibility, including kinship arrangements, where the child is under 18 years old.
  - F20.1.2 Support the protection of the family and children under the *Human Rights Act 2004* and the *Children and Young People Act 2008*.

**Eligibility**

- F20.2 Paid adoption or permanent care leave is available to an employee (other than a casual employee) who is the primary care giver of one of the following:
  - F20.2.1 An adopted child.

- F20.2.2 A child for whom the employee has a permanent caring responsibility, where the child is under 18 years old.
- F20.3 An employee providing foster care under a Concurrency Care Foster Care Program described in clause F22 - must be treated as having a permanent caring responsibility, and be eligible for adoption or permanent care leave subject to the terms of this clause.
- F20.4 An employee is not eligible for any further grant of adoption or permanent care leave for a child if both the following apply to the employee in relation to that child:
- F20.4.1 The employee is granted adoption or permanent care leave in respect of the child being cared for under a Concurrency Care Foster Care Program.
- F20.4.2 The employee subsequently enters into an adoption or permanent care arrangement for that child.
- F20.5 An employee who has completed at least 12 months continuous service, including recognised prior service, immediately prior to commencing a period of adoption or permanent care leave is eligible for adoption or permanent care leave.
- F20.6 An employee who is eligible for paid primary care giver leave is not eligible for a adoption or permanent care leave.
- F20.7 An employee who completes 12 months of continuous service within 18 weeks of becoming the primary care giver for an adopted child or a child for whom the employee has a permanent caring responsibility is eligible for adoption or permanent care leave for the period between completing 12 months of qualifying service and the end of the first 18 weeks of becoming the primary care giver of the child.

#### **Entitlement**

- F20.8 An eligible employee is entitled to 18 weeks of paid leave in relation to each occasion of adoption or commencement of a permanent caring responsibility, less any leave taken in accordance with clause F21 - in the same 12 month period in relation to the same child.
- F20.9 A casual employee is entitled to unpaid pre-adoption leave in accordance with the provisions of the NES.
- F20.10 To avoid doubt, the entitlement under subclause F20.8 does not increase when the adoption or permanent caring responsibility involves more than one child at the time of application.
- F20.11 Adoption and permanent care leave is non-cumulative.
- F20.12 An employee is entitled to return to work in accordance with the provisions in the NES.

#### **Evidence and conditions**

- F20.13 An employee should discuss with their manager or supervisor, as soon practicable, their intention to be absent on adoption or permanent carer leave.
- F20.14 An employee must make an application to the Clerk to access their adoption or permanent care leave.
- F20.15 The employee must provide the Clerk with appropriate evidence concerning the reasons for and circumstances under which the adoption or permanent care leave application is made, which may include any of the following:
- F20.15.1 Documents from an adoption authority concerning the adoption.
- F20.15.2 An authorisation as a kinship carer made under the *Children and Young Peoples Act 2008*.
- F20.15.3 Documents confirming that an arrangement consistent with the terms set out in clause F22 - applies.
- F20.16 In all cases details of leave being taken by other persons in relation to the same child must be provided.
- F20.17 Leave under this clause must not be approved for employees in circumstances where the child has lived continuously with the employee for a period of 6 months or more at the date of

placement or in cases where the child is a child of the employee or employee's spouse or partner.

- F20.18 Before granting leave the Clerk must be satisfied that the employee is the primary care giver.
- F20.19 Adoption or permanent care leave may commence up to one week prior to the date the employee assumes permanent caring responsibility for the child but not later than the formal commencement of the adoption or permanent caring responsibility, unless exceptional circumstances apply.
- F20.20 In all cases, the child must be under 18 years old on the date the employee assumes permanent responsibility for the child for leave to be approved.

#### **Rate of payment**

- F20.21 Adoption or permanent care leave is granted with pay, except for unpaid pre-adoption leave for casual employees.
- F20.22 The rate of payment to be paid to the employee during a paid period of adoption or permanent care leave is the same rate as would be paid if the employee was granted personal leave.
- F20.23 Despite subclause F20.22 where an employee varies their ordinary hours of work, either from part-time to full-time, from part-time to different part-time, or from full-time to part-time, during the 12 month period directly preceding adoption or permanent caring leave, the rate of payment for the paid component of their adoption or permanent care leave, which is capped at full-time rates, is calculated by using the average of their ordinary hours of work, excluding any periods of leave without pay, for the 12-month period immediately before the period of adoption or permanent care leave commences.
- F20.24 To avoid doubt, an employee's status and all other entitlements remain unaltered by the operation of subclause F20.23.
- F20.25 The Clerk may approve an employee taking adoption and permanent care leave in a non-continuous manner, provided a period of annual leave or long service leave in between the periods of adoption and permanent care leave will not be approved until the employee has used all of the employee's paid adoption and permanent care leave entitlement within 52 weeks of the commencement of the adoption or permanent caring responsibility
- F20.26 Leave may be granted with full or half pay, or a combination of full and half pay, with credits to be deducted on the same basis. The maximum paid period is up to 36 weeks at half pay.

#### **Effect on other entitlements**

- F20.27 Paid adoption or permanent care leave counts as service for all purposes.
- F20.28 Public holidays for which the employee would otherwise have been entitled to payment that fall during periods of absence on adoption or permanent care leave will not be paid as a normal public holiday.

#### **Interaction with other leave types**

- F20.29 Adoption or permanent care leave does not extend the maximum period of unpaid parental leave available to an employee.

### **F21 - Foster and Short-term Care Leave**

#### **Purpose**

- F21.1 Foster and short-term care leave is available to employees to enable them to be absent from duty to do the following:
- F21.1.1 Care for a child in an emergency or other short-term out of home care placement, including kinship arrangements and respite care, that has not been determined to be permanent.
  - F21.1.2 Support the protection of the family and children under the *Human Rights Act 2004* and the *Children and Young People Act 2008*.

## **Eligibility**

- F21.2 Foster and short-term care leave is available to employees (other than casual employees) who are the primary care giver of a child in an emergency or other out of home care placement that has not been determined as permanent.
- F21.3 An employee who has completed at least 12 months continuous service, including recognised prior service, immediately prior to commencing a period of foster and short-term care leave, is eligible for foster and short-term care leave.

## **Entitlement**

- F21.4 An eligible employee is entitled to a period of paid leave proportionate to the duration of the caring arrangement per application, up to a maximum of 10 working days or shifts per calendar year.
- F21.5 Where the duration of the existing arrangement is subsequently altered, for example, a change from an emergency placement to a short-term placement, the employee may, subject to further application and approval, have their leave extended up to a maximum period of 10 working days or shifts.
- F21.6 An eligible employee is entitled to paid leave as per subclause F21.4 to undertake accreditation towards an enduring parental authority to care for the child to whom the current short-term caring arrangement applies.
- F21.7 The entitlement under subclause F21.4 does not increase when the short-term caring arrangement involves more than one child at the time of application.
- F21.8 Foster and short-term care leave is non-cumulative.
- F21.9 Where an employee exhausts their paid leave entitlement under this clause the employee may seek approval for further unpaid leave.

## **Evidence and conditions**

- F21.10 An employee should discuss with their manager or supervisor, as soon practicable, their intention to be absent on foster and short-term care leave.
- F21.11 An employee must make an application, as soon as practicable, to the Clerk to access their foster and short-term care leave.
- F21.12 The employee must provide the Clerk with appropriate evidence concerning the reasons for and circumstances under which each foster and short-term care leave application is made, which may include any of the following:
- F21.12.1 Documents *relating* to current and previous court orders granting responsibility for a foster child.
  - F21.12.2 Documents from a registered health professional or registered medical practitioner.

## **Rate of payment**

- F21.13 Foster and short-term care leave is granted with pay or without pay.
- F21.14 The rate of payment during absence on a period of paid foster and short-term care leave is the same rate as would be paid if the employee was granted personal leave.
- F21.15 The approved leave period may be taken at full pay in a single block or as single or part days.

## **Effect on other entitlements**

- F21.16 Paid foster and short-term care leave counts as service for all purposes and unpaid foster and short-term care leave does not count as service for any purposes but does not break continuity of service.
- F21.17 Public holidays for which the employee is entitled to payment that fall during periods of absence on paid foster and short-term care leave must be paid as a normal public holiday and will not be considered to be foster and short-term care leave.

## **Interaction with other leave types**

- F21.18 An eligible employee is required to have exhausted their entitlement under this leave clause before accessing their personal leave credit to care for a child, for whom they are responsible under a short-term caring arrangement, who is ill or injured.

## **F22 - Concurrency Care Entitlement to Adoption of Permanent Care Leave**

- F22.1 For the purpose of subclause F22.2, a community organisation is an organisation involved with out of home care and adoption of children and young people such as the following:
- F22.1.1 A member of the ACT Together consortium.
  - F22.1.2 Marymead.
  - F22.1.3 A similar organisation based outside the ACT.
- F22.2 For the purposes of subclause F22.3, a Concurrency Care Foster Care Program involves a community organisation placing a child with foster carers while restoration to the birth family is explored. If restoration is not achieved, the foster carers have an opportunity to care for the child permanently. The primary care giver in such an arrangement is required by the community organisation to take a minimum of 12 month leave to stabilise the placement of the child.
- F22.3 Notwithstanding clause F21 -, an employee who provides foster care under a Concurrency Care Foster Care Program, in accordance with arrangements approved by the Community Services Directorate, is entitled to apply for adoption or permanent care leave under clause F20 -, as if they had a permanent caring responsibility. Such employees are not entitled to leave under clause F21 -.

## **F23 - Leave for Family Violence Purposes**

### **Purpose**

- F23.1 Leave for family violence purposes is available to employees who are experiencing family violence to allow them to be absent from the workplace to attend counselling appointments, legal proceedings and other activities related to, and as a consequence of, family violence.

### **Eligibility**

- F23.2 Leave for family violence purposes is available to all employees with the exception of casual employees.
- F23.3 Casual employees are entitled to access leave without pay for family violence purposes.

### **Entitlement**

- F23.4 An employee experiencing family violence has access up to a maximum of 20 days or shifts per calendar year paid leave, subject to the provision of appropriate evidence. Leave for family violence purposes is non-cumulative.
- F23.5 Leave for family violence purposes is in addition to other leave entitlements and is not to be used as a substitute for personal leave. However, where supporting evidence is not immediately available the Clerk must, grant paid leave under clause F5 - of this Agreement (Personal Leave in Extraordinary and Unforeseen Circumstances), subject to available credit. If the employee subsequently produces supporting evidence, the personal leave will be re-credited and the leave taken will be converted to leave for family violence purposes.
- F23.6 Leave for family violence purposes is to be used for but not limited to the following actions required as a consequence of family violence occurring:
- F23.6.1 Attendance at appropriate medical appointments for referral to other appropriate counselling or support services.
  - F23.6.2 Obtaining legal advice.
  - F23.6.3 Attending counselling appointments.
  - F23.6.4 Seeking assistance from other relevant support services.
  - F23.6.5 Attending court proceedings.

- F23.6.6 Attending prosecution appointments.
- F23.6.7 Attending police appointments.
- F23.6.8 Attending to Protection Order matters and Domestic Violence Order matters however termed.
- F23.6.9 Attending to issues arising through urgent property damage that is a consequence of family violence.
- F23.6.10 Seeking veterinary assistance for pets injured through family violence.
- F23.6.11 Accessing alternative accommodation.
- F23.6.12 Accessing alternative childcare or schooling for children.

Note: It may be necessary under this provision for the employee to use additional time to the duration of appointments, proceedings etc. in order to facilitate travel and recovery.

- F23.7 Leave for family violence purposes may be taken as consecutive or single days, or as part days.
- F23.8 For confidentiality and privacy reasons leave for family violence purposes will be attributed as coming under “where leave cannot be granted under any other provision” which is included and identified within “Other Leave Types” in Annex D of this Agreement.

### **Evidence and conditions**

- F23.9 Employees wishing to access leave for family violence purposes should discuss making an application with their manager or supervisor or an appropriate HR Manager as soon as reasonably practical.
- F23.10 As a general rule, a leave application should be submitted by an employee for approval by the Clerk before the commencement of the leave. However, retrospective applications may be approved provided that appropriate evidence is provided as soon as reasonably practicable upon the employee’s return to the workplace.
- F23.11 Evidence of the occurrence of family violence is required to access leave for family violence purposes.
- F23.12 Evidence may include any of the following:
  - F23.12.1 A document issued by the Police.
  - F23.12.2 A written referral, issued by a registered medical practitioner or registered nurse, to a counsellor trained in providing support in family violence situations.
  - F23.12.3 A document issued by a Court, or a counsellor trained in providing support to people experiencing the effects of family violence.
  - F23.12.4 Written confirmation from an Employee Assistance Program provider or from a family violence support service that the employee is experiencing family violence issues.
- F23.13 Managers are to keep all information concerning the leave application strictly confidential. This includes, after sighting any supporting documentation, returning that documentation to the employee.

### **Rate of payment**

- F23.14 Leave for family violence purposes is granted with pay. Casual employees are entitled to access leave without pay for family violence purposes.
- F23.15 Leave for family violence purposes must not be granted at half pay unless there are extenuating circumstances.

### **Effect on other leave types**

- F23.16 Leave with pay for family violence purposes counts as service for all purposes. Leave without pay for family violence purposes does not count as service for any purpose but does not break an employee’s continuity of service.

## **Interaction with other leave types**

- F23.17 Where leave for family violence purposes credits have been exhausted the Clerk may grant an employee leave without pay or other forms of paid leave, such as annual leave or long service leave.
- F23.18 Employees should utilise personal leave for an illness or injury, or to seek treatment for an illness or injury, caused by family violence.
- F23.19 Leave entitlements under clause F5 - of this Agreement (Personal Leave in Extraordinary and Unforeseen Circumstances) may be used by an employee who is seeking leave to support a person who is experiencing family violence.

## **F24 - Recovery Leave Arrangements for Senior Officer Grade A and B and Equivalent Employees**

- F24.1 The ACTPS has a responsibility to minimise the extent to which excessive hours are worked by Senior Officer Grade A or B (or equivalent) employees. As far as practicable, directorates and business units must develop strategies to try to reduce the incidence of excessive hours being worked by this group of employees.
- F24.2 The working arrangements, including working hours, for an employee who is a Senior Officer Grade A or B (or equivalent classification), must be agreed between the employee and the manager or supervisor. In considering these working arrangements, the employee and the manager or supervisor must take into account both of the following:
- F24.2.1 The operational requirements and workload demands of the ACTPS and the relevant business unit.
- F24.2.2 The interests of the employee in achieving a reasonable work-life balance.
- F24.3 Senior Officer Grade A and B (or equivalent) employees may be required to work extensive hours over a significant period because of the nature of their duties and responsibilities.
- F24.4 In recognition of extensive hours performed, recovery leave arrangements set out in subclause F24.6 apply. These arrangements do not apply to any of the following:
- F24.4.1 Casual employees.
- F24.4.2 Senior Officer Grade A and B (or equivalent) employees who work shift work.
- F24.4.3 Officers with a pay less than that of a Senior Officer Grade B (or equivalent) who have been, or will be, performing the duties of a position of Senior Officer Grade A or B (or equivalent) for a continuous period of less than 4 months.
- F24.5 Recovery leave is not a substitute for flex time and an employee is not entitled to any or all of the credited 5 days recovery leave unless the employee can demonstrate that extensive hours have been worked.
- F24.6 An eligible employee will be provided with a credit of 5 days non-cumulative recovery leave on 1 April each year subject to all the following conditions:
- F24.6.1 Where possible the leave must be taken after a period of extensive hours performed or immediately before a period of anticipated extensive hours to be worked.
- F24.6.2 The leave is to be taken within 12 months of the credit being granted, at a time agreed between the employee and the manager or supervisor.
- F24.6.3 Those days not taken by the employee within 12 months of the credit being provided will lapse.
- F24.6.4 The credit is provided on the basis that the employee maintains appropriate attendance records and submits an application for leave on an approved form.
- F24.6.5 The leave taken at any given time must be in whole days up to a maximum of 2 consecutive working days.



- F24.7 Employees who become eligible for recovery leave part way through the 12 month period commencing on 1 April will be provided with a pro rata credit rounded up to the nearest whole day.
- F24.8 If an employee's application for leave under this clause is not approved due to operational reasons, the employee and their manager or supervisor must determine a mutually convenient alternative time, or times, for the employee to take the leave. Where agreement cannot be reached, the employee must be allowed to take the leave subject to reasonable notice being given.
- F24.9 Employees must not receive payment on separation from the ACTPS of any unused recovery leave entitlement.

## **F25 - Other Leave**

### **Purpose**

- F25.1 Other leave is available to employees to enable them to be absent from duty for a variety of purposes as set out in Annex D.
- F25.2 Other leave may be granted in the interests of any of the following:
- F25.2.1 The ACTPS, a State, a Territory or the Commonwealth.
  - F25.2.2 The community in general.
  - F25.2.3 The employee.

Note: Separate provisions apply for community service leave which includes jury service, voluntary emergency management and voluntary community service.

### **Eligibility**

- F25.3 An employee who meets the eligibility requirements specified in Annex D is eligible to apply for that form of other leave.

### **Entitlement**

- F25.4 An employee may be granted other leave to the maximum period set out in Annex D.

### **Evidence and conditions**

- F25.5 An employee should discuss with their manager or supervisor, as soon as practicable, their intention to be absent on a form of other leave, including the reasons for the absence and the period, or expected period, of the absence.
- F25.6 An employee must make an application to the Clerk to access a form of other leave.
- F25.7 Having considered the requirements of this clause the Clerk may approve an employee's application to access a form of other leave. A decision not to approve the leave must be made in accordance with subclause F3.1.
- F25.8 The employee must, if requested by the Clerk, provide sufficient documentary evidence supporting the reason for the absence.
- F25.9 When considering requests for other leave, the Clerk must take into account all of the following:
- F25.9.1 The employee's circumstances.
  - F25.9.2 Community norms and obligations.
  - F25.9.3 The operational requirements of the workplace.
  - F25.9.4 Other available leave options.
  - F25.9.5 Any conditions on the entitlement as defined in Annex D.

### **Rate of payment**

- F25.10 Other leave may be granted with or without pay in accordance with Annex D.

### **Effect on other entitlements**

- F25.11 A period of other leave will, or will not, count as service in accordance with Annex D.

- F25.12 Public holidays for which the employee is entitled to payment that fall during periods of absence on other paid leave must be paid as a normal public holiday and will not reduce an entitlement of the employee to other leave under Annex D.

### **Interaction with other leave types**

- F25.13 Leave must not be granted under this provision if another form of leave is more appropriate.

### **Unattachment**

- F25.14 Where the leave is without pay for a period of more than 12 months the Clerk may, with the employee's written consent, declare the employee unattached.

## **F26 - Long Service Leave**

### **Purpose**

- F26.1 Long service leave is available to employees to enable them to be absent from duty in recognition of their length of service in the public sector.

### **Eligibility**

- F26.2 The eligibility requirements and entitlements for long service leave under the PSM Standards apply, subject to the provisions of this clause.
- F26.3 Chief Minister Treasury and Economic Development (CMTEDD) must consult with the unions and seek union agreement in relation to changes to long service leave entitlements provided under the PSM Standards.

### **Entitlement**

- F26.4 Employees accrue long service leave at the rate of 3 months for each 10 years of completed eligible employment, or an equivalent period of employment for casual employees.
- F26.5 A period without pay of one day or more that does not count as service does not count towards long service accrual, but does not break a period of employment for the purpose of determining an employee's eligibility for long service leave.
- F26.6 Employees accrue long service leave according to the employee's ordinary hours of work.
- F26.7 The Clerk may grant long service leave to an employee to the extent of that employee's prorated long service leave credits after 7 years of completed eligible employment.
- F26.8 To encourage the flexible use of long service leave an employee may elect to do one of the following:
- F26.8.1 Take long service leave on double, full or half pay subject to approval by the Clerk and operational requirements, with credits to be deducted on the same basis.
  - F26.8.2 Request in writing the approval of the Clerk to the partial or full payment in lieu (cash out) of taking their accrued long service leave. The payment in lieu is subject to a minimum payment of one week and is based on the rate of pay the employee would have received had the employee taken the leave.
- F26.9 If the employee is on higher duties at the time of taking, or cashing out, long service leave, payment for the leave at the higher duties rate must only be approved if the higher duties would have continued for the entire period of the leave taken, or the entire period of the leave cashed out.
- F26.10 Employees will receive payment on separation of any prorated long service leave entitlements after 7 years of completed eligible employment.
- F26.11 If an employee separates for any of the following reasons and their period of eligible employment is less than 7 years but not less than one year, the Clerk may authorise payment to the employee under this subclause in accordance with Part 4.3 of the PSM Standards:
- F26.11.1 The employee has reached minimum retirement age.
  - F26.11.2 The employee has been made redundant.
  - F26.11.3 The Clerk is satisfied that the employee must separate due to ill health.

If an employee whose period of employment is not less than one year dies, the Clerk may authorise payment of an amount equal to the amount that would have been payable to the employee under Part 4.3 of the PSM Standards if the employee had, on the day the employee died, ceased to be an employee otherwise than because of death, on or after, the employee attaining the minimum retiring age.

#### **Evidence and conditions**

- F26.12 An employee should discuss with the Clerk as soon as practicable their intention to be absent on long service leave.
- F26.13 An employee or their legal representative must make an application to the Clerk to access their long service leave entitlement.
- F26.14 Having considered the requirements of this section the Clerk may approve an employee's application to access long service leave.
- F26.15 If the Clerk does not approve an application by an employee for long service leave because of operational requirements the Clerk must consult with the employee to determine a mutually convenient alternative time (or times) for the employee to take the leave.

#### **Effect on other entitlements**

- F26.16 Long service leave counts as service for all purposes.
- F26.17 When applying for long service leave an employee must seek approval if they propose to engage in outside employment during the leave.

### **F27 - Disability Leave**

#### **Purpose**

- F27.1 Disability leave is available to employees to enable them to be absent from duty for the purposes of activities associated with an employee's diagnosed permanent or ongoing physical or psychological disability.
- F27.2 Disability leave supports the Territory's commitment to being an equitable employer and to support employees with disability to balance their work commitments with appointments or activities associated with their disability.

#### **Eligibility**

- F27.3 Disability leave is available to employees, other than casual employees, who have a disability. For the purposes of this clause, disability is defined as a permanent or ongoing physical or psychological disability attributable to one or more intellectual, cognitive, neurological, sensory or physical impairments or to one or more impairments attributable to a psychiatric condition.

#### **Entitlement**

- F27.4 Employees eligible for disability leave will be entitled up to a maximum of 5 days/shifts of disability leave per calendar year, subject to the provision of appropriate evidence. Disability leave is non-cumulative.
- F27.5 An employee may be granted disability leave from the first day of service.
- F27.6 The use of disability leave is restricted to activities associated with an employee's disability, and is not to be used as a substitute for personal leave entitlements available under clause F4 -.
- F27.7 Disability leave is to be used for activities or appointments associated with the employee's disability, including, but not limited to any of the following:
  - F27.7.1 To attend appointments with medical practitioners.
  - F27.7.2 To attend treatment, rehabilitation, therapy or counselling.
  - F27.7.3 To attend tests or assessments.
  - F27.7.4 To receive delivery of, fitting, repairing, maintaining and undergoing training in use of orthoses, prostheses, adaptive equipment, or other aids.

F27.7.5 To obtain wheelchair or other equipment maintenance or replacement.

### **Evidence and conditions**

- F27.8 Employees wishing to access disability leave should discuss their intention to take leave with their manager or supervisor as soon as practical.
- F27.9 An employee must make an application to the Clerk to access disability leave accompanied by supporting documentary evidence.
- F27.10 Documentary evidence may include any of the following:
- F27.10.1 A medical certificate from a registered medical practitioner or registered health professional operating within their scope of practice.
  - F27.10.2 A written referral, issued by a registered medical practitioner.
  - F27.10.3 A statutory declaration.
  - F27.10.4 Other reasonable forms of documentation.
- F27.11 Having considered the requirements of this clause the Clerk may approve an employee's application to access disability leave, subject to operational requirements in the workplace.
- F27.12 If the Clerk does not approve an employee's application for disability leave because of operational requirements, the Clerk must consult with the employee to determine a mutually convenient alternative time (or times) for the employee to take the leave.

### **Management of the disability**

- F27.13 An employee may initiate a request to establish an individual disability management plan.
- F27.14 Following a request made under F27.13, the manager and employee will jointly prepare and agree to a disability management plan.

### **Rate of payment**

- F27.15 Disability leave must be granted with pay.
- F27.16 The rate of payment to be paid to the employee during a paid period of disability leave is the same rate as would be paid if the employee was granted paid personal leave.

### **Effect on other entitlements**

- F27.17 Employees who are unable to attend work due to illness related to their disability may utilise personal leave.
- F27.18 Disability leave will count as service for all purposes.
- F27.19 Public holidays for which the employee would otherwise have been entitled to payment that fall during periods of absence on disability leave must be paid as a normal public holiday.

### **Interaction with other leave entitlements**

- F27.20 Where an employee has exhausted their disability leave entitlement, they may apply to the Clerk for approval to take personal leave, or other forms of paid leave such as annual leave or long service leave.
- F27.21 An employee who is entitled under this Agreement to operational service personal leave for injuries or diseases associated with operational service, or for medical purposes as a returned soldier, is not entitled to disability leave.

## **F28 - Surrogacy Leave**

### **Purpose**

- F28.1 Surrogacy leave is available to pregnant employees who have entered into a valid surrogacy arrangement to enable them to be absent from duty to do both of the following:
- F28.1.1 Support their own wellbeing.
  - F28.1.2 Support the employee's right to continuity of service.

## **Eligibility**

- F28.2 An employee who is pregnant as part of a valid Australian surrogacy agreement is eligible to be absent on surrogacy leave.
- F28.3 An employee who is eligible for surrogacy leave is not entitled to birth leave under clause F14 -.
- F28.4 An employee is eligible for surrogacy leave where one of the following applies:
- F28.4.1 The employee gives birth to a newborn child as part of a valid surrogacy agreement.
- F28.4.2 The employee's pregnancy as part of a valid surrogacy agreement ends at within 20 weeks of the estimated date of delivery other than by the birth of a living child (including stillbirth).
- F28.5 Where an employee's pregnancy ends more than 20 weeks before the estimated date of delivery of the child any surrogacy leave which has been prospectively approved must be cancelled. In this circumstance the employee may become eligible for compassionate leave in accordance with clause F12 and/or special birth leave in accordance with clause F15 -.

## **Eligibility – paid surrogacy leave**

- F28.6 An employee, other than a casual employee, who is eligible for surrogacy leave and who has completed 12 months of continuous service, including recognised prior service, immediately prior to commencing a period of surrogacy leave is eligible for paid surrogacy leave.
- F28.7 An employee, other than a casual employee, who is eligible for surrogacy leave and who completes 12 months of continuous service within the first 12 weeks of surrogacy leave is eligible for paid surrogacy leave for the period between completing 12 months of service and the end of the first 12 weeks of surrogacy leave.
- F28.8 An employee who is eligible for paid surrogacy leave and who is on approved leave without pay is eligible for paid surrogacy leave for the period between completing the approved period of leave without pay and the end of the first 12 weeks of surrogacy leave.

## **Entitlement**

- F28.9 Subject to subclause F28.6, an employee who is eligible for paid surrogacy leave is entitled to 12 weeks of paid leave in relation to each birth.
- F28.10 To avoid doubt, the entitlement under this clause does not increase in cases of multiple births.
- F28.11 Surrogacy leave is non-cumulative.
- F28.12 Subject to subclauses F28.13 and F28.14, a surrogate who is eligible for surrogacy leave must absent themselves from duty for a period commencing 6 weeks prior to the estimated date of delivery of the child and ending 6 weeks after the actual date of birth of the child.
- F28.13 A surrogate who produces medical evidence from a registered medical practitioner stating they are fit for duty until a date less than 6 weeks prior to the estimated date of delivery of the child may continue to work up until a date recommended by the medical practitioner, subject to the approval of the Clerk.
- F28.14 A surrogate who has given birth to a child and produces medical evidence from a registered medical practitioner stating they are fit for duty from a date less than 6 weeks after the date of birth of the child may resume duty on a date recommended by the medical practitioner, subject to the approval of the Clerk.
- F28.15 A surrogate who has given birth to a child may resume duty following the end of the 6 week period after the birth of the child, and earlier than the end of the approved period of surrogacy leave subject to the approval of the Clerk.
- F28.16 An employee who has given birth to a child is entitled to return to work in accordance with the provisions in the National Employment Standards of the FW Act.

## **Evidence and conditions**

- F28.17 An employee must give notice to their manager or supervisor as soon as practicable of their intention to be absent on surrogacy leave.

- F28.18 Surrogacy leave is deemed to be approved, however, an employee must submit an application to the Clerk for any period of surrogacy leave.
- F28.19 Having considered the requirements of this clause the Clerk must approve an employee's application to access surrogacy leave.
- F28.20 Prior to commencing surrogacy leave an employee will provide the Clerk with documentary evidence of both the following:
- F28.20.1 The pregnancy and the estimated date of delivery from a registered medical practitioner or registered health professional who is operating within their scope of practice.
- F28.20.2 Evidence of the valid surrogacy arrangement.
- F28.21 If requested by the Clerk, an employee must provide the Clerk with documentary evidence of the birth and the date of the birth of the child as soon as possible after the birth of the child. Such documentary evidence may include a copy of the birth certificate or documents provided by a registered medical practitioner or registered health professional who is operating within their scope of practice.

### **Rate of payment**

- F28.22 The rate of payment to the employee during a paid period of surrogacy leave is the same rate as would be paid if the employee was granted paid personal leave.
- F28.23 Despite F28.22, where an employee varies their ordinary hours of work, either from part time to full time, from part time to different part time, or from full time to part time, during the 12-month period directly preceding surrogacy leave, the rate of payment for the paid component of their surrogacy leave, which will be capped at full time rates, will be calculated by using the average of their ordinary hours of work, excluding any periods of leave without pay, for the 12-month period immediately before the period of surrogacy leave commences.
- F28.24 To avoid doubt, an employee's status and all other entitlements remain unaltered by the operation of subclause F28.23.

### **Effect on other entitlements**

- F28.25 Surrogacy leave with pay will count as service for all purposes.
- F28.26 Any period of unpaid surrogacy leave taken by an employee during the period commencing 6 weeks prior to the estimated date of delivery of the child and ending 6 weeks after the actual date of birth of the child will count as service for all purposes.
- F28.27 Public holidays for which the employee would otherwise have been entitled to payment that fall during periods of absence on surrogacy leave will not be paid as a normal public holiday.

### **Interaction with other leave entitlements**

- F28.28 An employee who is eligible for surrogacy leave is not entitled to birth leave under clause F14 -.

## **F29 - Gender transition leave**

### **Purpose**

- F29.1 Gender transition leave is available to employees to enable them to be absent from duty for the purposes of activities associated with affirming an employee's gender.

### **Eligibility**

- F29.2 Gender transition leave is available to employees, other than casual employees, who are undergoing transition to another gender.

### **Entitlement**

- F29.3 Gender transition leave is available to an employee for the first 52 weeks after commencement of living as a member of another gender.
- F29.4 An employee undergoing gender transition is entitled, subject to the provision of appropriate evidence, to both the following:

F29.4.1 Up to 4 weeks (20 days) paid leave, or up to 8 weeks (40 days) at half pay.

F29.4.2 Up to 48 weeks unpaid leave.

F29.5 Leave for gender transition purposes is in addition to other leave entitlements, and is to be used for activities associated with affirming an employee's gender, including, but not limited to any of the following:

F29.5.1 To attend appropriate medical or psychological appointments.

F29.5.2 To attend counselling appointments.

F29.5.3 To obtain legal advice.

F29.5.4 To obtain hormonal treatments.

F29.5.5 To undergo gender transition surgery or to attend surgery-related appointments.

Note: it may be necessary under this provision for the employee to use additional time to the duration of appointments in order to facilitate travel and recovery.

F29.6 Leave for gender transition purposes may be taken as consecutive or single days, or as part days.

### **Evidence and conditions**

F29.7 Employees wishing to access gender transition leave should discuss their intention to take leave with their manager or supervisor, or an appropriate HR Manager, as soon as practical.

F29.8 An employee must make an application to the Clerk to access gender transition leave. As far as practicable an employee will provide at least 4 weeks' written notice of their intended commencement date together with supporting documentary evidence.

F29.9 Evidence may include any of the following:

F29.9.1 A medical certificate from a registered medical practitioner or registered professional operating within their scope of practice.

F29.9.2 A written referral, issued by a registered medical practitioner, to a counsellor.

F29.9.3 A document issued by a counsellor.

F29.9.4 A legal or other document issued by a state, territory, or federal government organisation.

F29.9.5 A statutory declaration.

F29.10 Having considered the requirements of this clause the Clerk may approve an employee's application to access gender transition leave.

### **Rate of payment**

F29.11 Gender transition leave will be granted with pay for the first 4 weeks, or 8 weeks at half pay.

F29.12 Paid gender transition leave may be taken with full or half pay, or a combination of full and half pay, with credits to be deducted on the same basis. The maximum paid period is up to 8 weeks at half pay.

F29.13 The rate of payment to be paid to the employee during a paid period of gender transition leave is the same rate as would be paid if the employee was granted paid personal leave.

### **Effect on other entitlements**

F29.14 Leave with pay for gender transition purposes will count as service for all purposes. Leave without pay for gender transition purposes will not count as service for any purpose, but will not break an employee's continuity of service.

F29.15 Public holidays for which the employee would otherwise have been entitled to payment that fall during periods of absence on gender transition leave will be paid as a normal public holiday.

### **Interaction with other leave entitlements**

- F29.16 An application by an employee for long service leave or annual leave during a period that would otherwise be an unpaid period of gender transition leave will be granted to the extent of available entitlements.
- F29.17 An application by an employee for personal leave during a period that would otherwise be an unpaid period of gender transition leave will be granted subject to the employee providing a certificate from a registered medical practitioner or registered health professional operating within their scope of practice to the extent of available entitlements.



## Section G Communication and Consultation

### G1 - Consultation

- G1.1 There will be effective consultation with an employee(s) and their representatives, including union representatives, on workplace matters. The Office recognises that consultation and employee participation in decisions that affect them is essential to the successful management of change.
- G1.2 If there are proposals by the Office to introduce changes that would have a significant effect on an employee or a group of employees, the Clerk will consult with the affected employees and the union(s). Consultation means a genuine opportunity to contribute to and influence the decision making process prior to decisions being made.
- G1.2.1 Significant effect includes, but is not limited to, effects of proposals that deal with any of the following:
- G1.2.1 (a) The termination of the employment of employees through redundancy.
  - G1.2.1 (b) Changes to the composition, operation or size of the Office workforce or the skills required of employees.
  - G1.2.1 (c) The elimination or diminution of job opportunities (including opportunities for promotion or tenure).
  - G1.2.1 (d) The alteration of hours of work.
  - G1.2.1 (e) The need to retrain employees.
  - G1.2.1 (f) The need to physically relocate employees.
  - G1.2.1 (g) The restructuring of job-roles, positions, structures or the Office.
  - G1.2.1 (h) Changes to employment policies.
  - G1.2.1 (i) Anything likely to materially affect workloads.
  - G1.2.1 (j) Any other matter deemed relevant by parties covered by this Agreement.
- G1.3 An employee(s) or their representative(s) may also initiate consultation on any matters or proposals if such consultation hasn't already been initiated under subclause G1.2.
- G1.4 The Clerk will provide relevant information to assist the employee(s) and the union(s) to understand the reasons for the proposed changes and the likely impact of these changes so that the employee(s) and union(s) are able to contribute to the decision making process.
- G1.5 In addition to the consultation outlined in subclause G1.1 to subclause G1.3 all the following apply:
- G1.5.1 Office's Consultative Committees (OCCs) will be established, with membership to be agreed by the Clerk and the union(s) following commencement of this Agreement and comprising representatives of both the following:
    - G1.5.1 (a) The Clerk.
    - G1.5.1 (b) The union(s).
  - G1.5.2 Adequate time must be provided to employees and the union(s) to consult with the Office.
  - G1.5.3 The Office may establish a OCC to cover one or more enterprise agreements that cover its employees.
  - G1.5.4 Additional levels of consultation, such as a Workplace Consultative Committee (WCC), may be established with the agreement of the relevant OCC to operate at the local level. Where established, these levels of consultation must deal with workplace specific issues before such issues may be raised with the OCC and have membership agreed by the OCC.
- G1.6 The purpose of the OCC is to do all the following:
- G1.6.1 Monitor the operation and implementation of this Agreement.

- G1.6.2 Consider any proposed new or significant changes to the Office policy statements and guidelines that relate to the provisions of this Agreement.
- G1.6.3 Consult on workplace matters significantly affecting employees.
- G1.7 The OCC will meet within 2 months of the commencement of this Agreement. The purpose of this meeting is to agree on the terms of reference, which will include the consultative structure to operate during the term of this Agreement.
  - G1.7.1 The OCC must meet no less than once in any 12 month period thereafter, unless a different period is agreed in the Terms of Reference.
  - G1.7.2 Additional meetings of the OCC may also be convened if requested by any member of the OCC, or as determined by the Terms of Reference.
- G1.8 The Chief Minister, Treasury and Economic Development Directorate must consult with the union(s) and employees prior to the finalisation of any significant changes or any new provisions in the PSM Act and the PSM Standards and any new service wide policy statements or guidelines that relate to the provisions of this Agreement. This consultation may occur through the Joint Council.

**Consultation on changes to regular rosters or ordinary hours of work**

- G1.9 If the Office proposes to introduce a change to the regular roster or ordinary hours of work of employees, the Clerk will do all the following:
  - G1.9.1 Notify the relevant employees of the proposed change.
  - G1.9.2 Recognise the affected employee's union or other representative.
  - G1.9.3 As soon as practicable after proposing to introduce the change, all of the following:
    - G1.9.3 (a) Discuss with the relevant employees the introduction of the change.
    - G1.9.3 (b) For the purposes of the discussion, provide to the relevant employees all of the following:
      - G1.9.3 (b) (i) All relevant information about the change, including the nature of the change.
      - G1.9.3 (b) (ii) Information about what the Clerk reasonably believes will be the effects of the change on the employees.
      - G1.9.3 (b) (iii) Information about any other matters that the Clerk reasonably believes are likely to affect the employees.
    - G1.9.3 (c) Invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- G1.10 The Clerk is not required to disclose confidential or commercially sensitive information to the relevant employees.
- G1.11 The Clerk must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- G1.12 These provisions are to be read in conjunction with other consultative obligations detailed in the Agreement.
 

Note: In this term "**relevant employees**" means the employees who may be affected by a change referred to in subclause G1.9.
- G1.13 In addition, the employer undertakes that, for the purposes of subclause G1.2, the Clerk must recognise and consult with the affected employee(s), their union or other representative.

**G2 - Freedom of Association**

- G2.1 The ACTPS recognises that employees are free to choose whether or not to join a union. Irrespective of that choice, employees must not be disadvantaged or discriminated against in

respect of the employees' employment under this Agreement. The ACTPS recognises that employees who choose to be members of a union have the right to choose to have their industrial interests represented by the union.

- G2.2 Employees in negotiations of any kind are entitled to negotiate collectively where they so choose.
- G2.3 Employees engaging in negotiations of any kind are entitled to be represented by a representative of their choice. The ACT Government must deal with any such representative in good faith.

### **G3 - Right of Existing and New Employees to Representation in the Workplace**

- G3.1 The ACTPS acknowledges the rights of its employees to be represented on any workplace relations matter and to meet with their representatives in the workplace. The ACTPS recognises the legitimate right of the union(s) to represent its employees who are members, or eligible to become members of the union(s).
- G3.2 The FW Act prescribes the purpose and manner under which the union(s) may exercise right of entry in the workplace. The ACTPS must grant the union(s) access in accordance with the FW Act.
- G3.3 In addition, the ACTPS will do the following:
  - G3.3.1 Allow union officials and employees, who are permit holders, to enter ACTPS workplaces for normal union business or to represent employees, to meet with management or members and to distribute or post material, provided that work is not disrupted.
  - G3.3.2 Allow the union(s) to meet with new ACTPS employees who are members, or who are eligible to become members, of the union(s), at a time during normal working hours which the union(s) and the Clerk agree upon, and of which the Clerk must advise the employees.
  - G3.3.3 Provide all new ACTPS employees with some form of induction program, including an induction package containing information about the union(s) which the union(s) has given the ACTPS.
  - G3.3.4 Invite the union(s) to attend any face-to-face induction of new ACTPS employees, the details of which the Clerk must provide to the union(s)' contact officer or other nominated person with reasonable notice. Such attendance must be included as an integral part of the induction process and be for the purpose of delivering an information presentation including recruitment information to new ACTPS employees.
  - G3.3.5 Organise regular face to face meetings, which may be the face-to-face inductions of new ACTPS employees as per paragraph G3.3.4, between new ACTPS employees and the relevant union(s), for the purpose of delivering an information presentation including recruitment information to new ACTPS employees. Such meetings must be held at regular intervals as agreed between the Office and the relevant unions.
- G3.4 For the avoidance of doubt, nothing in subclause G3.3 should be taken as conferring a right of entry that is contrary to, or for which there is otherwise, a right of entry under the FW Act.

### **G4 - Co-operation and Facilities for Unions and Other Employee Representatives**

- G4.1 For the purpose of ensuring that union(s) and other employee representatives who are employees of the ACTPS can effectively fulfil their employee representative role under this Agreement, the following provisions apply.
- G4.2 Reasonable access to Office facilities, including the internal courier service, access to the ACT Government communication systems, telephone, facsimile, photocopying, access to meeting rooms and storage space, must be provided to union(s) and other employee representatives to assist them to fulfil their representative obligations, duties and responsibilities having regard to the Office's statutory obligations, operational requirements and resources.

- G4.3 In addition to the Office facilities outlined in subclause G4.2, where available, a union or employee representative who is an employee of the Office must be able to establish designated Microsoft Outlook public folders which will provide a collaborative electronic workspace to improve the flow of information. The use of Office facilities must be in accordance with published whole-of-government policies and for matters other than for industrial action.
- G4.4 A union or other employee representative who is an employee of the Office will be provided with adequate paid time off from their usual working hours, to undertake duties to represent other employees.
- G4.5 While the representative duties would normally be expected to be performed within the workplace, on occasions the union or employee representative may be required to conduct these duties external to the workplace.
- G4.6 The role of union workplace delegates and other recognised union representatives is to be respected and facilitated. The Office and union workplace delegates must deal with each other in good faith.
- G4.7 In addition to other provisions in this Agreement, in discharging their representative roles at the workplace level, the rights of union workplace delegates include, but are not limited to, all of the following:
- G4.7.1 To be treated fairly and perform their role as workplace delegate without any discrimination in their employment.
  - G4.7.2 To speak on behalf of their members in the workplace.
  - G4.7.3 To participate in collective bargaining on behalf of those who they represent, as per the FW Act.
  - G4.7.4 To reasonable paid time off from their usual working hours to do any of the following:
    - G4.7.4 (a) Provide information and seek feedback from employees in the workplace on workplace relations matters in the ACTPS during normal working hours.
    - G4.7.4 (b) Represent the interests of members to the employer and industrial tribunals.
    - G4.7.4 (c) Consult with other delegates and union officials in the workplace, and receive advice and assistance from union staff and officials in the workplace.
  - G4.7.5 To email employees in their workplace to provide information to and seek feedback, subject to individual employees exercising a right to 'opt out'.
  - G4.7.6 To consultation, and access to relevant information about the workplace and the ACTPS, subject to privacy legislation and other relevant legislation.
  - G4.7.7 To undertake their role as union representatives on directorate workplace relations consultative committee(s).
  - G4.7.8 To have reasonable access to Office facilities (including internet and email facilities, meeting rooms, lunch rooms, tea rooms and other areas where employees meet) for the purpose of carrying out work as a delegate and consulting with members and other interested employees and the union.
  - G4.7.9 To address new employees about union membership at the time they enter employment in their workplace.
  - G4.7.10 To access appropriate training in workplace relations matters including training provided by a union in accordance with clause G5 -.
- G4.8 In exercising their rights under subclause G4.7, workplace delegates and unions must adhere to Office and ACTPS policies and guidelines and consider operational issues and the likely effect on the efficient operation of the Office and the provision of services.

## **G5 - Attendance at Industrial Relations Courses and Seminars**

- G5.1 For the purpose of assisting employees in gaining a better understanding of industrial relations issues relating to this Agreement, the Clerk must grant leave to employees to attend recognised short training courses or seminars subject to all of the following conditions:
- G5.1.1 Operating requirements permit the granting of leave.
  - G5.1.2 The scope, content and level of the short courses will contribute to the better understanding of industrial relations issues.
  - G5.1.3 Leave granted under this clause is at full pay, not including shift and penalty payments or overtime.
  - G5.1.4 Each employee will not be granted more than 15 days or shifts leave in any calendar year.
- G5.2 If the employee has applied for leave under subclause G5.1 and the Clerk rejected the application because of operational requirements, approval of any subsequent application for leave by the employee under subclause G5.1 must not be withheld unreasonably, provided that the employee gives the Clerk at least 14 days or shifts notice in writing.
- G5.3 The ACTPS must accept any short course conducted or accredited by a relevant employee organisation (for example union(s), the Australian Council of Trade Unions or the ACT Trades and Labour Council) as a course to which subclause G5.1 applies.
- G5.4 Leave granted for this purpose counts as service for all purposes.

## **G6 - Dispute Avoidance and Settlement Procedures**

- G6.1 The objective of these procedures is the prevention and resolution of disputes about both of the following:
- G6.1.1 Matters arising in the workplace, including disputes about the interpretation or implementation of this Agreement.
  - G6.1.2 The application of the NES.
- G6.2 For the purposes of this clause, except where the contrary intention appears, the term 'parties' refers to 'parties to the dispute'.
- G6.3 All persons covered by this Agreement agree to take reasonable internal steps to prevent, and explore all avenues to seek resolution of, disputes.
- G6.4 An employee who is a party to the dispute may appoint a representative, which may be a relevant union, for the purposes of the procedures of this clause.
- G6.5 In the event there is a dispute, all the following processes apply.
- G6.5.1 Where appropriate, the relevant employee or the employee's representative must discuss the matter with the employee's supervisor. Should the dispute not be resolved, it must proceed to the appropriate management level for resolution.
- G6.6 In instances where the dispute remains unresolved, the next appropriate level of management, the employee, the union or other employee representative must be notified and a meeting be arranged at which a course of action for resolution of the dispute will be discussed.
- G6.7 If the dispute remains unresolved after this procedure, a party to the dispute may refer the matter to the FWC.
- G6.8 The FWC may deal with the dispute in the following 2 stages:
- G6.8.1 The FWC must first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation.
  - G6.8.2 If the FWC is unable to resolve the dispute at this first stage, the FWC may then do both the following:

G6.8.2 (a) Arbitrate the dispute.

G6.8.2 (b) Make a determination that is binding on the parties.

- G6.9 The FWC may exercise any powers it has under the FW Act as are necessary for the just resolution or determination of the dispute.
- G6.10 A person may be assisted and represented at any stage in the dispute process in the FWC on the same basis as applies to representation before the FWC under section 596 of the FW Act.
- G6.11 All persons involved in the proceedings under subclause G6.8 must participate in good faith.
- G6.12 Unless the parties agree to the contrary, the FWC must, in responding to the matter, have regard to whether a party has applied the procedures under this term and acted in good faith.
- G6.13 The parties agree to be bound by a decision made by the FWC in accordance with this clause.
- G6.14 Notwithstanding subclause G6.13, any party may appeal a decision made by the FWC in accordance with the FW Act.
- G6.15 Despite the above, the parties may agree to submit the dispute to a body or person other than the FWC. Where the parties agree to submit the dispute to another body or person, all the following apply:
- G6.15.1 References to the FWC in the above provisions must be read as a reference to the agreed body or person.
  - G6.15.2 All obligations and requirements on the parties and other relevant persons under the provisions in this clause must be complied with unless the parties agree otherwise.
  - G6.15.3 The agreed body or person must deal with the dispute in a manner that is consistent with section 740 of the FW Act.
- G6.16 While the parties are trying to resolve the dispute using procedures in this clause the employee must do all of the following:
- G6.16.1 Continue to perform their work as they would normally unless they have a reasonable concern about an imminent risk to their health or safety.
  - G6.16.2 Comply with a direction given by the Clerk to perform other available work at the same workplace, or at another workplace, unless any of the following apply:
    - G6.16.2 (a) The work is not safe.
    - G6.16.2 (b) Applicable occupational health and safety legislation would not permit the work to be performed.
    - G6.16.2 (c) The work is not appropriate for the employee to perform.
    - G6.16.2 (d) There are other reasonable grounds for the employee to refuse to comply with the direction.
- G6.17 Any dispute formally commenced in accordance with G6.7 under the ACT Public Sector Office of the Legislative Assembly Enterprise Agreement 2018 – 2021, but not concluded before the commencement of this Agreement, shall continue to be dealt with in accordance with the dispute settlement provisions in this Agreement. Any steps already taken in that process will be recognised and accepted by parties and the FWC as steps taken for the purpose of this clause.

## **G7 - Privatisation**

- G7.1 In order to promote job security it is agreed that the privatisation of a government entity may only occur if all of the following apply:
- G7.1.1 The entity does not perform a role central to the functions of government.
  - G7.1.2 Disadvantaged groups would not be negatively affected by the privatisation.
  - G7.1.3 A social impact statement has been completed which indicates that there is a demonstrated public benefit from the sale.

- G7.2 In the event that privatisation of the Office or a service or services currently supplied by the Office is under consideration, consultation must occur on the implications for employees and the Office from these proposals.
- G7.3 Where such privatisation is under consideration, the Office must provide the necessary reasonable resources to develop an in-house bid and this bid must be prepared either off site or on site as determined by the Clerk and subject to consideration on equal terms to any other bid. An independent probity auditor must be appointed by the Clerk to oversee the assessment of the in-house bid.

## Section H Workplace Values and Behaviours

### H1 - Introduction

- H1.1 All employees have a common interest in ensuring that workplace behaviours are consistent with, and apply the values and general principles set out in Division 2.1 of the PSM Act and the Public Sector Management (Office of the Legislative Assembly) Code of Conduct 2018 and Values. This involves the development of an ethical and safe workplace in which all employees act responsibly and are accountable for their actions and decisions. Bullying, harassment and discrimination of any kind will not be tolerated in the Assembly and ACTPS workplaces. It is recognised that bullying, harassment and discrimination in the workplace has both emotional and financial costs and that both systemic and individual instances of bullying and harassment are not acceptable.
- H1.2 The following provisions of Section H contain procedures for managing workplace behaviours that do not meet expected standards, including the management of cases of unsatisfactory work performance and misconduct.
- H1.3 These procedures for managing workplace behaviours and values promote the values and general principles of the Office and ACTPS as set out in Division 2.1 of the PSM Act and account for the principles of natural justice and procedural fairness.
- H1.4 Any misconduct, underperformance, internal review or appeal process under the previous enterprise agreement that is not completed as at the date of commencement of this enterprise agreement will be completed under the previous enterprise agreement. Any right of appeal from that process will also be set out in the previous enterprise agreement.
- H1.5 Noting that the provisions of this Section H are in identical terms to Section H (however described) of other ACTPS Enterprise Agreements: If an employee moves from one directorate or Agreement to another either on a permanent or temporary basis while a misconduct process is on foot, and irrespective of whether this Agreement or another ACTPS Enterprise Agreement applied to the employee at the time the misconduct process commenced, the misconduct process will continue and the employee is required to continue to participate in the process.
- H1.5.1 Any disciplinary action and sanction which is determined to be applied under clause H11 - will be applied to the employee in their new position, where the Clerk determines it is appropriate and necessary and having due regard to the nature of the misconduct and the changes in employment circumstances including any material bearing on the employee's duties and responsibilities in their new position.
- H1.6 If an employee resigns from the Office or ACTPS while a misconduct process is on foot, the public sector standards commissioner must consult with the Clerk and may do one of the following:
- H1.6.1 Determine to complete the misconduct process under Section H of this Agreement, including inviting the employee to participate in the process, such that the outcome of the process can be taken into account with any application by the employee to subsequently re-enter the ACTPS.
- H1.6.2 Determine to stay the process upon the employee's resignation and communicate to the employee that the misconduct process may recommence if the employee subsequently re-enters, or seeks to re-enter, the service. Any disciplinary action and sanction which is determined as a consequence of a resumed misconduct process may be imposed on the employee in their new position in accordance with H1.5.1 or taken into account with any application by the employee to subsequently re-enter the ACTPS.



## **H2 - Preliminary Assessment**

- H2.1 In cases where an allegation of inappropriate behaviour or alleged misconduct is made or an incident occurs which may be deemed to be inappropriate behaviour or alleged misconduct, the appropriate manager or supervisor must undertake an assessment to determine whether the matter can be resolved or whether further action is required or not.
- H2.2 The manager or supervisor may seek advice from an appropriate Human Resources adviser, however the manager or supervisor is be responsible for undertaking the assessment unless an actual or perceived conflict of interest exists.
- H2.3 The assessment must be done in an expedient manner and generally be limited to having discussions (either verbal or written) about the allegation or incident, with relevant employees, and, if requested, their representatives.
- H2.4 Although the principles of procedural fairness apply, this assessment is not a formal investigation (as this may occur after the assessment is undertaken) and is designed to enable a manager or supervisor to quickly determine whether formal investigation or other action is needed or not to resolve the issues. The manager or supervisor must communicate the outcomes to relevant employees and their representatives if any.
- H2.5 If the manager or supervisor determines that the allegations require investigation the manager or supervisor must recommend to the Clerk that the matter be investigated.
- H2.6 The Clerk may determine that no investigation is necessary where the employee admits to the alleged misconduct and the employee agrees that there is no need for an investigation. The employee must fully understand the misconduct they are admitting to and make an admission statement.
- H2.7 Where an employee makes an admission in accordance with subclause H2.6 the Clerk may determine the appropriate disciplinary action or sanction in accordance with clause H11 -. The Clerk must ensure that they have sufficient information concerning the nature and full circumstances of the misconduct, any mitigating factors, and details of the employee's prior service record and performance to enable a fair and reasonable determination under clause H11 - to be made.

## **H3 - Counselling**

- H3.1 Counselling may happen outside of the misconduct and underperformance processes. This is an opportunity for the employee and the manager to discuss possible causes and remedies for identified workplace problems. All parties have an obligation to participate in counselling in good faith.
- H3.2 In cases where counselling is considered to be appropriate, the employee will be informed what the discussion will be about and be invited to have a support person, who may be the employee's union or other employee representative, present at the counselling and will allow reasonable opportunity for this to be arranged.
- H3.3 The manager or supervisor or the Clerk must create a formal record of the counselling which must include details about the ways in which the employee's conduct needs to change or improve, the time frames within which these changes or improvements must occur and may include a written direction about future expectations, standards and behaviours.
- H3.4 The record of the counselling must be provided to the employee and the employee given an opportunity to correct any inaccuracies and provide comments before signing the record. The employee's signature is taken as representing their full agreement that the record accurately reflects the discussion. If the employee elects not to sign the record, then details of the offer and any reasons given for refusal must be clearly noted.
- H3.5 Where the manager or supervisor or the Clerk considers that the employee's conduct has not improved following counselling, an underperformance or misconduct process may be

undertaken in relation to continued or subsequent behaviour, following a preliminary assessment being undertaken in accordance with clause H2 -.

## **H4 - Underperformance**

- H4.1 Under this clause, procedures are established for managing underperformance by an employee.
- H4.2 This clause applies to all employees, except casual employees who are not eligible casual employees. In applying these procedures to officers on probation, temporary employees, or eligible casual employees, the Clerk may determine that procedures and practices throughout this clause H4 - may be applied on a proportionate basis according to the circumstances of the case, and in accordance with the principles of procedural fairness and natural justice.
- H4.2.1 If the process is to be applied on a proportionate basis in accordance with this subclause the content of that process, along with any estimated timeframes, must be communicated to the employee when the process commences.
- H4.3 The objectives of these procedures are to do both the following:
- H4.3.1 Provide advice and support to an employee whose performance is below the standard required.
- H4.3.2 Provide a fair, prompt and transparent framework for action to be taken where an employee continues to perform below expected standard.

### **Underperformance discussions**

- H4.4 Consistent with good management practice, concerns about underperformance should be raised by the manager or supervisor with the employee at the time that the concerns arise or are identified. The manager or supervisor should offer advice and support to the employee to overcome these concerns. The manager or supervisor should inform the employee that the underperformance procedures in subclause H4.7 to subclause H4.20 might be invoked if the underperformance continues.
- H4.5 In order to ensure that these procedures operate in a fair and transparent manner, the manager or supervisor is responsible for documenting all relevant discussions. This includes making a record of all relevant discussions under this clause, to be signed by both the manager or supervisor and the employee. The employee must be given the opportunity to comment on any records before signing them. In circumstances where the employee refuses to sign such a record, the refusal must be noted on the relevant record.
- H4.6 All parties have an obligation to participate in underperformance processes in good faith.

### **Underperformance process**

#### **Step One: Action Plan**

- H4.7 Where a manager or supervisor assesses that an employee's work performance is demonstrated as being below expected standards after having previously discussed concerns with the employee in line with subclause H4.4, the manager or supervisor must inform the employee in writing of this assessment and the reasons for it. The employee must be invited by the manager or supervisor to provide written comments on this assessment, including any reasons that in the employee's view may have contributed to their recent work performance.
- H4.8 After taking into account the comments from the employee, the manager or supervisor must prepare an action plan in consultation with the employee.
- H4.9 The manager or supervisor must invite the employee to have a support person, who may be the employee's union or other employee representative, present at discussions to develop the action plan and must allow reasonable opportunity for this to be arranged.
- H4.10 The action plan must provide all of the following:

- H4.10.1 Identify the expected standards of work required of the employee on an on-going basis.
- H4.10.2 Identify any learning and development strategies that the employee should undertake.
- H4.10.3 Outline the potential underperformance actions that may be taken if the employee does not meet the expected standards.
- H4.10.4 Specify the action plan period, which should not normally be less than one month and should not exceed 6 months to allow the employee sufficient opportunity to achieve the expected standard.
- H4.10.5 Specify the assessment criteria to be measured within the action plan period.
- H4.11 Any current performance agreement must be suspended during the period of the action plan. Any incremental advancement action for the employee must be suspended during the action plan period.

**Step Two: Regular Assessment**

- H4.12 During the action plan period, the manager or supervisor must make regular written assessments (desirably every fortnight) of the employee's work performance under the action plan. The employee must be given an opportunity to provide written comments on these assessments.
- H4.13 If the manager or supervisor considers that further assessment time is needed the manager or supervisor may extend the action plan period. However, the extended assessment time must not result in the action plan exceeding 6 months' duration. The manager or supervisor must inform the employee in writing of the decision to extend the assessment time and the duration of the action plan.

**Step Three: Final Assessment Report**

- H4.14 If at the end of the action plan period, the manager or supervisor assesses the work performance of the employee as satisfactory, no further action can be taken under these procedures at that time. The manager or supervisor must inform the employee in writing of this decision.
- H4.15 If at the end of the action plan period, the manager or supervisor assesses the work performance of the employee as not satisfactory, the manager or supervisor must provide a report including the assessment and reasons for the assessment to the Clerk.

**Step Four: Underperformance Action**

- H4.16 The Clerk must advise the employee in writing of all the following:
  - H4.16.1 The assessment and reasons for the manager's or supervisor's assessment.
  - H4.16.2 The underperformance action(s) (subclause H4.17) proposed to be taken and the reasons for proposing this action.
  - H4.16.3 The employee's right to respond in writing to the proposed action within a period of not more than 7 calendar days.
- H4.17 At any time after 7 calendar days from the date the Clerk advised the employee under subclause H4.16, and after considering any response from the employee, the Clerk may decide to take one or more of the following underperformance actions:
  - H4.17.1 Transfer the employee to other duties (at or below current pay).
  - H4.17.2 Defer the employee's incremental advancement.
  - H4.17.3 Reduce the employee's incremental point.
  - H4.17.4 Temporarily or permanently reduce the employee's classification and pay.
  - H4.17.5 Remove any benefit derived through an existing Attraction and Retention Incentive.
  - H4.17.6 Terminate the employee's employment.

- H4.18 If an employee's incremental point is reduced in accordance with subclause H4.17.3, or the employee's classification is permanently reduced in accordance with subclause H4.17.4 the date the sanction takes effect will become the new anniversary date for the purpose of future incremental advancement. Any higher duties worked prior to the date of sanction do not count towards incremental advancement at a higher level.
- H4.19 The Clerk must inform the employee in writing of the decision made under subclause H4.17, the reasons for the decision and the appeal mechanisms available under this Agreement.
- H4.20 At any time in these procedures, the employee may elect to be retired on the grounds of inefficiency.

### **H5 - Appeal Rights**

- H5.1 The employee has the right under Section J to appeal any underperformance action taken under subclause H4.17, except action to terminate the employee's employment.
- H5.2 The employee may have an entitlement to bring an action under the FW Act in respect of any termination of employment under this Agreement. This is the sole right of review of such an action.

### **H6 - Misconduct & Discipline**

#### **Objectives and application**

- H6.1 This clause establishes procedures for managing misconduct or alleged misconduct by an employee.
- H6.2 This clause applies to all employees, except casual employees who are not eligible casual employees. In applying these procedures to officers on probation, temporary employees or eligible casual employees, the Clerk may determine that procedures and practices throughout clause H10 - and clause H11 - apply on a proportionate basis according to the circumstances of the case and in accordance with the principles of procedural fairness and natural justice.
  - H6.2.1 If the process is to be applied on a proportionate basis in accordance with this subclause the content of that process, along with any estimated timeframes, must be communicated to the employee when the process commences.
- H6.3 The objective of these procedures is to encourage the practical and expeditious resolution of misconduct issues in the workplace.
- H6.4 All parties have an obligation to participate in misconduct processes in good faith.

#### **What is misconduct**

- H6.5 For the purposes of this section, misconduct includes any of the following:
  - H6.5.1 The employee fails to meet the obligations set out in section 9 of the PSM Act.
  - H6.5.2 The employee engages in conduct that the Clerk or the public sector standards commissioner is satisfied may bring, or has brought, the Office or the ACTPS into disrepute.
  - H6.5.3 A period of unauthorised absence and the employee does not offer a satisfactory reason on return to work.
  - H6.5.4 The employee is found guilty of, or is convicted of a criminal offence or where a court finds that an employee has committed an offence but a conviction is not recorded, taking into account the circumstances and seriousness of the offence, the duties of the employee and the interests of the ACTPS and the Office.
  - H6.5.5 The employee fails to notify the Clerk of criminal charges in accordance with clause H12 -.
  - H6.5.6 The employee makes a vexatious or knowingly false allegation against another employee.

## **What is serious misconduct**

H6.6 Serious misconduct means conduct that is so serious that it may be inconsistent with the continuation of the employee's employment with the Territory. Serious misconduct is defined within the Fair Work Regulations.

## **H7 - Dealing with Allegations of Misconduct**

- H7.1 Upon becoming aware of a matter of alleged misconduct the Clerk will determine whether or not the matter needs to be investigated. Where the Clerk determines that investigation is required the Clerk may refer the matter to the public sector standards commissioner for investigation.
- H7.2 Where the Clerk determines that an investigation is required, but decides not to refer the matter to the Public Sector Standards Commissioner in accordance with subclause H7.1, the Clerk will appoint an appropriately trained or experienced person (the investigating officer) and any reference to the Public Sector Standards Commissioner in subclause H7.4 and clauses H9, H10 and H11 will be read as a reference to the Clerk as appropriate.
- H7.3 At any stage of dealing with alleged misconduct the Clerk may, in accordance with clause H8 - do any of the following:
- H7.3.1 Transfer the employee to other duties.
  - H7.3.2 Re-allocate duties away from the employee.
  - H7.3.3 Suspend the employee with pay.
  - H7.3.4 Suspend the employee without pay where serious misconduct is alleged.
- H7.4 Upon receiving a referral in accordance with subclause H7.1 the public sector standards commissioner must either make arrangements for an appropriately trained or experienced person (the investigating officer) to investigate the alleged misconduct in accordance with clause H9 - or may decide that an investigation will not resolve the matter and refer it back to the Clerk for resolution or further consideration.
- H7.5 The Clerk may determine that no investigation is necessary where the employee admits to the alleged misconduct and the employee agrees that there is no need for an investigation. The employee must fully understand the misconduct they are admitting to and make an admission statement.
- H7.6 Where an employee makes an admission in accordance with subclause H2.6 the Clerk may determine the appropriate disciplinary action or sanction in accordance with clause H11 -. The Clerk must ensure that they have sufficient information concerning the nature and full circumstances of the misconduct, any mitigating factors, and details of the employee's prior service record and performance to enable a fair and reasonable determination under clause H11 - to be made.
- H7.7 The public sector standards commissioner may at any time decide to instigate an investigation of alleged misconduct, in the absence of a referral under subclause H7.1, if satisfied that the matter warrants investigation, but will first discuss this matter with the Clerk.
- H7.8 Notwithstanding the provisions of this section, the Clerk may summarily terminate the employment of an employee without notice for serious misconduct as defined within the Fair Work Regulations.

## **H8 - Suspension, Reassignment or Transfer**

- H8.1 This clause applies to all employees including eligible casual employees and employees on probation.
- H8.2 In accordance with subclause H7.3 the Clerk may suspend with or without pay, reassign or transfer an employee where the Clerk is satisfied that it is in the public interest, the interests of the ACTPS or the interests of the Office to do so while the alleged misconduct is being dealt with.
- H8.3 The requirements under subclauses H8.4, H8.5 and H8.10 also apply in circumstances where an employee has been reassigned or transferred with pay to other duties following an allegation of misconduct, to the extent that the employee is no better off financially than if they had not been reassigned or transferred.
- H8.4 The Clerk will not suspend, reassign or transfer an employee without first informing the employee of the reasons for the proposed suspension, reassignment or transfer and giving the employee the opportunity to be heard. Despite this, the Clerk may suspend an employee first and then give the employee the reasons for the suspension and an opportunity to be heard, where, in the Clerk's opinion, this is appropriate in the circumstances.
- H8.5 While suspended with pay an employee is paid in accordance with all of the following:
- H8.5.1 The employee's ordinary hourly rate of pay and any higher duties allowances that would have been paid to the employee for the period they would otherwise have been on duty.
  - H8.5.2 Overtime (but not overtime meal allowance) and shift penalty payments where there is a regular and consistent pattern of extra duty or shift work being performed over the previous 6 months which would have been expected to continue but for the suspension from duty.
  - H8.5.3 Any other allowance or payment (including under an Attraction and Retention Incentive entered into in accordance with Annex B to this Agreement) of a regular or on-going nature that is not conditional on performance of duties.
- H8.6 Where a decision is made to suspend an employee with pay no appeal or review of that decision is available.
- H8.7 Unless the employee is on authorised leave an employee who is suspended must be available to attend work and participate in the disciplinary process within 48 hours of receiving notice.
- H8.8 Suspension without pay is usually only appropriate where serious misconduct is alleged or where the employee is charged with a criminal offence that would in the opinion of the Clerk be incompatible with the continuation of the employee's employment.
- H8.9 A period of suspension without pay must not be more than 30 calendar days unless exceptional circumstances apply.
- H8.10 If the period of suspension without pay extends beyond 30 calendar days as per subclause H8.9, the suspension should be reviewed every 30 calendar days unless the Clerk considers that, in the circumstances, a longer period is appropriate.
- H8.11 While suspended without pay all of the following apply:
- H8.11.1 The employee may apply to the Clerk for permission to seek alternate employment outside the ACTPS for the period of the suspension or until the permission is revoked. Any such permission given to the employee is granted on the condition that the employee remains available to attend work and participate in the disciplinary process as per subclause H8.7.
  - H8.11.2 In cases of demonstrated hardship, the Clerk may determine that the employee may cash out accrued long service leave and annual leave.
  - H8.11.3 The employee may apply to the Clerk for the suspension to be with pay on the grounds of demonstrated hardship.

- H8.12 An employee suspended without pay and who is later acquitted of the criminal offence (which is the subject of the allegation(s) of misconduct which caused the employee to be suspended), or is found not to have been guilty of the misconduct is entitled to both the following:
- H8.12.1 Repaid the amount by which the employee's pay was reduced.
  - H8.12.2 Credited with any period of long service or annual leave that was cashed out in accordance with paragraph H8.11.2.
- H8.13 Where an employee is suspended and later found guilty of a criminal offence (whether or not a conviction is recorded), or is found guilty of misconduct and whose employment is terminated because of the offence or misconduct, a period of suspension under this clause does not count as service for any purpose, unless the Clerk determines otherwise.

### **H9 - Investigations**

- H9.1 The role of the investigating officer is to establish the facts of the allegations and to provide a report of those facts to the public sector standards commissioner.
- H9.2 The investigating officer must do all the following:
- H9.2.1 Inform the employee in writing of the particulars of the alleged misconduct, and details concerning the investigative process.
  - H9.2.2 Give the employee a reasonable opportunity to respond to allegations, which the employee may do in writing or at a scheduled interview or in a different manner as agreed with the investigating officer, before making a finding of fact.
  - H9.2.3 For written responses provide the timeframe for response which must be reasonable under the circumstances.
  - H9.2.4 If the response includes an interview, provide the employee with at least 24 hours written notice prior to conducting an interview, and advise the employee if the interview is to be recorded electronically.
  - H9.2.5 Advise the employee that the employee may have a second person present during the interview, who may be the employee's union representative or other individual acting as support person and must allow reasonable opportunity for this to be arranged; and provide a record of the interview to the employee.
  - H9.2.6 Give the employee an opportunity to supplement the record of an interview with a written submission, if the employee so chooses.
  - H9.2.7 As soon as practicable take any further steps considered necessary to establish the facts of the allegations.
  - H9.2.8 Provide a written report to the public sector standards commissioner setting out the investigating officer's findings of fact.
- H9.3 If the employee fails to, or chooses not to, respond to the allegations in accordance with subclause H9.2 within a reasonable timeframe, the investigating officer must prepare the report and set out the findings of fact on the information available.
- H9.4 The investigating officer's findings of fact must be made on the balance of probabilities.
- H9.5 The public sector standards commissioner may request that the Clerk authorise access to relevant Office information and communication technology (ICT) records including email, computer, work phone records, or building access logs if the investigating officer requires access in order to establish the facts of the allegations.

### **H10 - Findings of misconduct**

- H10.1 After considering the report from the investigating officer, the public sector standards commissioner must make a proposed determination on the balance of probabilities as to whether misconduct has occurred.

- H10.2 If the public sector standards commissioner determines that the misconduct has not occurred, the public sector standards commissioner must notify the employee of this finding and advise that no sanctions will be imposed.
- H10.3 If the public sector standards commissioner makes a proposed determination that misconduct has occurred, in accordance with subclause H10.1 the public sector standards commissioner must do all of the following:
- H10.3.1 Advise the employee in writing of the proposed determination that misconduct has been found to have occurred.
  - H10.3.2 Provide written reasons for arriving at this proposed determination.
  - H10.3.3 Provide a copy of the investigation report unless this would be inappropriate in the circumstances.
  - H10.3.4 Advise the employee of the period during which the employee has to respond to the proposed determination that misconduct has occurred. This period must be no less than 14 calendar days.
- H10.4 After considering the employee's response or, if the employee has not responded, at any time after the period outlined in paragraph H10.3.4 has lapsed, the public sector standards commissioner must make a final determination as to whether or not misconduct has occurred and will do the following:
- H10.4.1 Inform the employee in writing of the final determination of whether or not misconduct has occurred; and if the determination is that misconduct has occurred do both the following:
    - H10.4.1 (a) Refer the matter to the Clerk for consideration of whether or not disciplinary action is to be taken in accordance with clause H11 -.
    - H10.4.1 (b) Inform the employee that the matter has been referred to the Clerk in accordance with subparagraph H10.4.1 (a).

### **H11 - Disciplinary Action and Sanctions**

- H11.1 This clause applies to circumstances in which one of the following applies:
- H11.1.1 The Clerk receives a determination from the public sector standards commissioner in accordance with paragraph H10.4.1.
  - H11.1.2 An admission is made by the employee under subclause H2.6.
- H11.2 The Clerk must consider whether or not disciplinary action is appropriate, and whether or not one or more of the following sanctions may be taken in relation to the employee:
- H11.2.1 A written reprimand.
  - H11.2.2 A financial penalty in the form of one or more of the following:
    - H11.2.2 (a) Reduce the employee's incremental level.
    - H11.2.2 (b) Defer the employee's incremental advancement.
    - H11.2.2 (c) Impose a fine on the employee.
    - H11.2.2 (d) Require the employee to fully or partially reimburse the employer for damage that the employee has wilfully incurred to property or equipment.
  - H11.2.3 Transfer the employee temporarily or permanently to another position at level or to a lower classification level.
  - H11.2.4 Remove any benefit derived through an existing Attraction and Retention Incentive.
  - H11.2.5 Termination of employment.
- H11.3 Nothing in this section limits the ability of the Clerk to require an employee to participate in formal remedial programs and sessions aimed at assisting the employee with addressing the behaviour that was the subject of the misconduct process.



- H11.4 In relation to paragraph H11.2.3, if an employee's classification is reduced as a result of disciplinary action, service before the demotion is not counted towards an increment for any higher duties the employee performs after demotion.
- H11.5 Sanctions imposed under these procedures must be proportionate to the degree of misconduct concerned. In determining the appropriate sanction, all the following factors must be considered:
- H11.5.1 The nature and seriousness of the misconduct.
  - H11.5.2 The degree of relevance to the employee's duties or to the reputation of the Office or the ACTPS.
  - H11.5.3 The circumstances of the misconduct.
  - H11.5.4 Any mitigating factors, including any full admission of guilt.
  - H11.5.5 The previous employment history and the general conduct of the employee.
- H11.6 If the employee has moved to a new position (other than as a result of a decision in accordance with clause H7 -) during the course of the misconduct process, the changes in employment circumstances must be taken into account as appropriate in accordance with paragraph H1.5.1.
- H11.7 Unless there are exceptional circumstances, the Clerk must within 14 calendar days of receiving the referral from the public sector standards commissioner under subparagraph H10.4.1 (a) inform the employee in writing of the proposed disciplinary action to be taken, if any, and provide the employee with 7 calendar days to respond.
- H11.8 The timeframes stipulated in H11.7 may be extended if the Clerk and the public sector standards commissioner agree that extenuating circumstances warrant the extension.
- H11.9 After considering the employee's response in accordance with subclause H11.7, or if the employee does not respond, at any time after the 7 calendar days as set out in H11.7 have passed, the Clerk must make their final decision and inform the employee in writing of all the following:
- H11.9.1 The final decision.
  - H11.9.2 The disciplinary action to be taken, if any.
  - H11.9.3 The date of effect and, if relevant, the cessation of any disciplinary action.
  - H11.9.4 The appeal mechanisms that are available under Section J of this Agreement.

## **H12 - Criminal Charges**

- H12.1 An employee must advise the Clerk in writing within 48 hours where practicable, but no longer than 7 calendar days, of any criminal charges laid against the employee in circumstances where the interests of the Office or of the ACTPS may be adversely affected, taking into account all of the following:
- H12.1.1 The circumstances and seriousness of the alleged criminal offence.
  - H12.1.2 The employee's obligations under section 9 of the PSM Act.
  - H12.1.3 The effective management of the employee's work area.
  - H12.1.4 The integrity and good reputation of the ACTPS and/or the Office.
  - H12.1.5 The relevance of the offence to the employee's duties.
- H12.2 Where criminal charges are laid against an employee and the interests of the Office or the ACTPS may be adversely affected, the Clerk may suspend the employee in accordance with the suspension arrangements under clause H8 -.
- H12.3 If an employee is found guilty of, or convicted of a criminal offence (including if a non-conviction order is made) the employee must provide a written statement regarding the circumstances of the offence to the Clerk within 7 calendar days of the conviction or the finding.

H12.4 Where an employee is convicted of a criminal offence and the conviction or finding has adversely affected the interests of the Office or the ACTPS, the Clerk may impose a sanction for misconduct against the employee in accordance with clause H11 -.

### **H13 - Right of Appeal**

H13.1 An employee has the right under Section J to appeal against any finding of misconduct under clause H10 -, any decision to take disciplinary action or to apply a sanction under clause H11 -, or against any decision taken under clause H8 - to suspend the employee without pay, or to transfer the employee at reduced pay, except action to terminate the employee's employment.

H13.2 An employee may have an entitlement to bring an action under the FW Act in respect of any decision under this section to terminate the employee's employment. This is the sole right of review of such a decision.

H13.3 The appeal procedures under Section J apply to the exclusion of the rights of appeal and review under the PSM Act and the internal review procedures contained in Section I of this Agreement.

## Section I Internal Review Procedures

### I1 - Objectives and Application

- I1.1 Under this section, procedures are established for employees to seek a review of management actions that affect their employment with the ACTPS.
- I1.2 The procedures in this section promote the values and general principles of the ACTPS and account for the principles of natural justice and procedural fairness.
- I1.3 These procedures apply to all employees covered by this Agreement.
- I1.4 For the purposes of this section, an action includes a decision and a refusal or failure to make a decision.

### I2 - Decisions and Actions Excluded

- I2.1 All the following decisions and actions are excluded from the rights of an employee to seek a review under procedures set out in this section:
  - I2.1.1 Actions regarding the policy, strategy, nature, scope, resourcing or direction of the Office, ACTPS and agencies (see clause G1 - of this Agreement for consultation on these actions).
  - I2.1.2 Actions arising under Commonwealth or ACT legislation that concern domestic or international security matters.
  - I2.1.3 Actions regarding superannuation (see relevant superannuation legislation for complaints and appeals on these actions, in particular the *Superannuation Industry (Supervision) Act 1993* and the *Superannuation (Resolution of Complaints) Act 1993*).
  - I2.1.4 Actions regarding workers' compensation (see the *Safety, Rehabilitation and Compensation Act 1988* for reviews and appeals on these actions).
  - I2.1.5 Decisions to terminate the appointment of an officer on probation.
  - I2.1.6 Decisions on classification of an office (see clause D3 - of this Agreement for reviews on classifications).
  - I2.1.7 Any action to which the employee has an appeal or review right under Section K of this Agreement.
  - I2.1.8 Any action to which the employee has an appeal right under subclause J1.3 of this Agreement.
  - I2.1.9 Any action arising from the preliminary assessment process under clause H2 -.
  - I2.1.10 Actions arising from the misconduct procedures of this Agreement.
  - I2.1.11 Actions arising from the underperformance procedures of this Agreement.
  - I2.1.12 Any decisions under subclauses H7.1, H7.4H7.4 and H7.7 of this Agreement.
  - I2.1.13 Any decisions under subclause J2.2 and subclause J3.7 of this Agreement.
  - I2.1.14 Actions regarding the setting of rates of pay or conditions of employment under an award or agreement made under the FW Act, or under the PSM Act or the PSM Standards (this includes an Attraction and Retention Incentive (ARINs) or a pre FW Act Australian Workplace Agreement (AWA)).
  - I2.1.15 Decisions to appoint or not appoint a person as an officer to a vacant position.
  - I2.1.16 Decisions that another officer perform the duties of a higher office or role for periods up to and including 6 months.
  - I2.1.17 Decisions to transfer another employee or promote another officer to an advertised vacancy where the officer or employee seeking the review was not an applicant.

- 12.1.18 Actions arising from the internal review procedures or appeal panel procedures of this Agreement, including the review and appeals procedures under Section K of this Agreement.

### **I3 - Initiating a Review**

- 13.1 An employee should first discuss their concerns about an action or decision with the relevant decision-maker with a view to resolving the matter within the workplace before initiating a review under these procedures.
- 13.2 An employee, or the employee's union or other employee representative on the employee's behalf, has the right to apply for a review of any action or decision that directly affects the employee's employment, unless the action or decision is specifically excluded under this section.
- 13.3 An employee, or the employee's union or other employee representative on the employee's behalf, may initiate a review under this Section by making an application to the Clerk in accordance with all of the following:
- 13.3.1 It is in writing.
- 13.3.2 It is made no more than 28 calendar days after the employee was advised of the decision that is the subject of the application for review, unless the Clerk agrees that extenuating circumstances exist.
- 13.3.3 It identifies the action or decision or both to which the employee seeks a review of.
- 13.3.4 It does not concern a decision or action that is excluded under subclause 12.1.
- 13.3.5 It identifies the reasons the review is sought including, in the employee's view, the effect(s) that the action or decision has or is having on the employee's employment.
- 13.3.6 It outlines the extenuating circumstances, if any, where the application is made outside the timeframe specified in paragraph 13.3.2.
- 13.3.7 It describes the outcome sought.
- 13.4 If the review relates to a failure or refusal to make a decision in accordance with subclause 11.4, the 28 day time period outlined in paragraph 13.3.2 is taken to commence on the day it was apparent that there was a failure or refusal to make a decision.
- 13.5 The Clerk must, provided that the requirements under subclause 13.3 have been met, refer the matter for review in accordance with clause 14 -.

### **I4 - Review Process**

- 14.1 Notwithstanding subclause 13.5, where appropriate, and agreed by the employee who made the application under clause 13.3 (for the purposes of this Section I "the applicant"), or the applicant's union or other employee representative on the applicant's behalf, the Clerk must consider mediation as an option before arranging for a review under subclause 14.3. The mediator must be agreed between the applicant and the Clerk.
- 14.2 In the event that mediation does take place and that it resolves the issues raised in the application, then no further action is required under these procedures. In that event a formal written statement that the issue has been resolved must be signed by the applicant and the Clerk.
- 14.3 Subject to subclauses 13.5, 14.1 and 14.2, the Clerk must arrange for an application made under clause 13.3 to be reviewed by an independent person (the reviewer) who may be one of the following:
- 14.3.1 A suitably skilled person who was not involved in the original action.
- 14.3.2 A person chosen from a panel of providers.

- 14.4 The reviewer must be provided with all relevant information and evidence that was available to the delegate in the making of the original decision or in taking the original action.
- 14.5 The reviewer may recommend to the Clerk that an application should not be considered on any of the following grounds:
- 14.5.1 The application concerns a decision or action that is excluded under subclause 12.1.
- 14.5.2 The applicant has made an application regarding the decision or action to a court or tribunal, or where the reviewer believes it is more appropriate that such an application be made.
- 14.5.3 The reviewer believes on reasonable grounds that the application is any of the following:
- 14.5.3 (a) Frivolous or vexatious.
- 14.5.3 (b) Misconceived or lacks substance.
- 14.5.3 (c) Should not be heard for some other compelling reason.
- 14.6 The Clerk must either confirm a recommendation made by the reviewer under subclause 14.5 that an application should not be considered or arrange for another reviewer to consider the application.
- 14.7 The Clerk must inform the applicant in writing, within 14 calendar days of the date of any decision under subclause 14.6, including, the reasons for any decision not to consider the application.
- 14.8 If the reviewer does not make a recommendation under subclause 14.5, then the reviewer must conduct a procedural review on the papers to determine all of the following:
- 14.8.1 Whether it was open to the Clerk to take the action that they did.
- 14.8.2 Whether the principles of procedural fairness and natural justice were complied with in taking the original action.
- 14.8.3 Whether the final decision of the Clerk was fair and equitable in all of the circumstances. If the reviewer is of the view that there is doubt over the veracity or validity of the information or evidence or processes used in making the initial decision or action, or that significant information or evidence was not considered in the making of the original decision or action, the reviewer must inform the Clerk of that doubt and the reasons for it in the written report in accordance with 14.9.
- 14.9 After reviewing any action or decision the reviewer must, subject to subclause 14.13, make a written report to the Clerk recommending one of the following:
- 14.9.1 The original decision or action be confirmed.
- 14.9.2 The original decision or action be varied.
- 14.9.3 Other action be taken.
- 14.10 A copy of the report under subclause 14.9 must be provided to the applicant and the applicant must be given the opportunity to provide a response. The applicant may respond to any aspects of the report. Such a response must be in writing and be provided to the Clerk within 14 calendar days of the applicant receiving the report.
- 14.11 The Clerk, after considering the report from the reviewer and any response from the applicant to the report of the reviewer, may do one of the following:
- 14.11.1 Confirm the original action.
- 14.11.2 Vary the original action.
- 14.11.3 Take any other action the Clerk believes is reasonable.
- 14.12 The Clerk must inform the applicant in writing, within 14 calendar days of the date of any decision under subclause 14.11, including the reasons for the action.

## **Review of Clerk decisions**

- I4.13 Where the subject of the application is an action or decision of the Clerk (in person), the written report of the reviewer must be made to the public sector standards commissioner. A copy of this report must be provided to the applicant.
- I4.14 The public sector standards commissioner may, after considering the report from the reviewer, recommend to the Clerk one of the following:
- I4.14.1 The original action be confirmed.
  - I4.14.2 The original action be varied.
  - I4.14.3 Other action be taken that the public sector standards commissioner believes is reasonable.
- I4.15 The Clerk (in person) , after considering the report from the public sector standards commissioner, may do one of the following:
- I4.15.1 Accept any or all of the report's recommendation(s) and take such action as necessary to implement the recommendation(s).
  - I4.15.2 Not accept the report's recommendation(s) and confirm the original action.
- I4.16 If the Clerk (in person) does not accept any one of the recommendation(s) of the public sector standards commissioner under subclause I4.14, they must do both the following:
- I4.16.1 Provide written reasons to the public sector standards commissioner for not accepting the recommendation(s).
  - I4.16.2 Provide the applicant, within 14 calendar days, with written reasons for not accepting the recommendation(s).
- I4.17 If the Clerk (in person) does not accept any one of the recommendation(s) of the public sector standards commissioner under subclause I4.14, the public sector standards commissioner must report on this outcome.

## **I5 - Right of External Review**

- I5.1 The applicant, or the applicant's union or other employee representative on the employee's behalf, may seek a review of a decision or action under subclause I4.11 or subclause I4.15 by an external tribunal or body, including the FWC.
- I5.2 The FWC is empowered to resolve the matter in accordance with the powers and functions set out in clause G6 - of this Agreement. The decision of the FWC is binding, subject to any rights of appeal against the decision to a Full Bench of the FWC in accordance with clause G6.14.

## Section J Appeal Mechanism for misconduct, underperformance and other matters

### J1 - Objective and Application

- J1.1 This section sets out an appeal mechanism for an employee where the employee (referred to in this section as “the appellant”) is not satisfied with the outcome of decisions described in the following clause.
- J1.2 The Clerk (in person) must nominate a person, or position, to be the Convenor of Appeals (“the Convenor”).
- J1.3 This appeal mechanism applies to all the following decisions:
- J1.3.1 Decisions to suspend the employee without pay under clause H8 - of this Agreement.
  - J1.3.2 Decisions relating to findings of misconduct under clause H10 -, provided that such and appeal can only be made after a decision about disciplinary action under clause H11 - has been made.
  - J1.3.3 Decisions to take disciplinary action under subclause H11 - of this Agreement, except a decision to terminate the employee’s employment.
  - J1.3.4 Decisions to take underperformance action under subsection H4.17 of this Agreement, except a decision to terminate the employee’s employment.
  - J1.3.5 Decisions taken in relation to an employee’s eligibility for benefits under clauses L6 - of this Agreement and the amount of such benefits, the amount payable by way of income maintenance under clause L10 -, and the giving of a notice of involuntary redundancy under clause L9 -.
  - J1.3.6 Any other decision that is subject to appeal under the PSM Act.
- J1.4 In relation to appeals about misconduct findings and disciplinary action in accordance with subclause J1.3.2 and subclause J1.3.3, only one application for appeal can be made in relation to the same misconduct matter. The application must state which one of the following the application relates to:
- J1.4.1 The finding of misconduct under clause H10 -.
  - J1.4.2 The disciplinary action under clause H11 -.
  - J1.4.3 Both the finding of misconduct under clause H10 - and the disciplinary action under clause H11 -.
- J1.5 An employee may have an entitlement to bring an action under the FW Act in respect of any termination of employment under this Agreement. This is the sole right of review of such an action.

### J2 - Initiating an Appeal

- J2.1 The appellant, or the appellant’s union or other employee representative on the appellant’s behalf, may initiate an appeal under these procedures by making an application to the Convenor in accordance with all of the following:
- J2.1.1 It is in writing.
  - J2.1.2 It describes the decision or action taken or to be taken, the reasons for the application and the outcome sought.
  - J2.1.3 It is received by the Convenor within 14 calendar days of being notified, or the appellant becoming aware, of the decision to take the action.
  - J2.1.4 It seeks to appeal an appealable decision as set out in subclause J1.3.
- J2.2 Notwithstanding any other provisions in this section, the Convenor has the authority to dismiss an appeal if the appellant obstructs, unreasonably delays or fails to co-operate with the process.

### **J3 - Composition of the Appeal Panel**

- J3.1 The public sector standards commissioner must keep a list of approved Appeal Panel Chairs.
- J3.2 The Clerk must keep a list of suitably skilled and trained employer representatives for Appeal Panels and a list of suitably skilled and trained employee representatives, nominated by the unions.
- J3.3 Where an application is received by the Convenor in accordance with the requirements set out in subclause J2.1 and subclause J2.2 the Convenor must set up an Appeal Panel.
- J3.4 The Appeal Panel must comprise a panel member from the list of employer representatives in accordance with subclause J3.2, a panel member from the list of employee representatives in accordance with subclause J3.2 and a chair in accordance with clause J3 -.
- J3.5 The Convenor may only be a member of an Appeal Panel with the agreement of the appellant.
- J3.6 A person is not eligible to be a member of an Appeal Panel if that person was involved in the decision or the process that is the subject of the application or if there is any other perceived or actual conflict of interest.
- J3.7 Where a panel member fails to comply with a provision in this section in a manner that affects the effective operation of the appeal process, the Convenor can disqualify the member from the panel. Where that occurs the panel is dissolved and a new one must be convened in accordance with subclause J3.3.

### **J4 - Powers and Role of the Appeal Panel**

- J4.1 In considering an application, the Appeal Panel must have due regard to the principles of natural justice and procedural fairness. Proceedings of the Appeal Panel are to be conducted as quickly as practicable and consistent with a fair and proper consideration of the issues.
- J4.2 The Convenor must invite the appellant to have a support person, who may be the appellant's union or other employee representative, present at any meetings held between the Appeal Panel and the appellant and must allow reasonable opportunity for this to be arranged.
- J4.3 The Appeal Panel must be provided with all relevant information and evidence that was available to the decision-maker in the making of the original decision or in taking the original action.
- J4.4 The Appeal Panel have the discretion to decide not to conduct a review of the appeal application, or, if it has commenced reviewing the application, to decide not to proceed further if the Appeal Panel believes any of the following apply:
  - J4.4.1 The application is frivolous or vexatious, or not made in good faith.
  - J4.4.2 The appellant making the appeal may apply to another person or authority about the application who may more appropriately deal with the application.
  - J4.4.3 Further review of the application is not warranted.

#### **Conducting an appeal**

- J4.5 Where the Appeal Panel determines that an application for appeal should proceed, the Appeal Panel must conduct a procedural review on the papers provided under subclause J4.3 to determine whether all of the following apply:
  - J4.5.1 It was open to the Clerk to take the action they did.
  - J4.5.2 The principles of procedural fairness and natural justice were complied with in taking the original action or decision.
  - J4.5.3 The final decision of the Clerk, the Public Sector Standards Commissioner or both was appropriate in all of the circumstances.
- J4.6 Where the Appeal Panel is satisfied that a fundamental piece of evidence was not considered in the original process, the Appeal Panel may request that the Convenor refer the matter back to the Clerk, Public Sector Standards Commissioner or both for further investigation.



- J4.7 The Clerk and/or Public Sector Standards Commissioner, after considering the referral from the Convenor under subclause J4.5.3, must do one of the following:
- J4.7.1 As soon as possible, arrange for a further investigation to be conducted, in line with the referral of the Convenor, and must provide any further information, evidence or outcomes of the further investigation to the Appeal Panel in order that they may complete their review.
  - J4.7.2 Provide written reasons to the Appeal Panel, within 14 calendar days, for not accepting their referral for further investigation.
- J4.8 After reviewing any application under this section, the Appeal Panel must, subject to subclause J4.5.3, make a determination of the appeal and do one of the following:
- J4.8.1 Confirm the original decision.
  - J4.8.2 Vary the original decision.
  - J4.8.3 Prescribe that other action be taken.
- J4.9 The Appeal Panel must provide a report to the public sector standards Commissioner and the Clerk which must include the determination and the reasons for the determination. A copy of the report must also be provided to the appellant.

### **J5 - Costs**

- J5.1 The Territory are not liable for any costs associated with representing an appellant in these procedures.

### **J6 - Right of External Review**

- J6.1 The employee, or the employee's union or other employee representative on the employee's behalf, may seek a review by the FWC of a decision under subclause J4.8.
- J6.2 The FWC is empowered to resolve the matter in accordance with the powers and functions set out in clause G6 - of this Agreement. The decision of the FWC is binding, subject to any rights of appeal against the decision to a Full Bench in accordance with subclause G6.14.

## Section K Appeal and Process Reviews of certain recruitment decisions

### K1 - Application

- K1.1 Under this section, procedures are established for employees to seek a review of recruitment processes or appeal certain recruitment decisions.
- K1.2 These procedures for appeals and reviews account for the principles of procedural fairness and natural justice in this context.
- K1.3 For the purposes of this section, an action includes a decision and a refusal or failure to make a decision.
- K1.4 Decisions made by Joint Selection Committees in accordance with subclause B4 - cannot be reviewed or appealed.

### K2 - Appeals about promotions and temporary transfer to higher office

- K2.1 The Clerk (in person) must nominate a person, or position, to be the Convenor of the Appeal Panels ("the Convenor"), which may or may not be the same person, or position, nominated under subclause J1.2.
- K2.2 This appeal mechanism applies to both the following:
  - K2.2.1 Decisions about promotion or temporary transfer to a higher office or role (for periods in excess of 6 months) affecting the officer where the officer was an applicant for the position, except decisions made on the unanimous recommendation of a joint selection committee (see PSM Act and PSM Standards).
  - K2.2.2 Decisions to promote an officer after acting for a period of 12 months or more in a position at or below Administrative Services Officer Class 6 (or equivalent classification).
- K2.3 For the purposes of subclause K2.2, an appeal may only be made in relation to promotions or temporary transfer to a higher office or role where the pay applicable is any classification with a maximum pay that is less than the minimum pay of a classification equivalent to a Senior Officer Grade C. For positions above Administrative Services Officer Class 6 (or equivalent classification) an application may be made for an internal review of the process (see section K3 - of this Agreement).
- K2.4 For the purposes of paragraph K2.2.2, any suitably qualified officer may appeal the decision.
- K2.5 For appeals concerning promotion or transfer to a higher office or role under subclause K2.2, the only ground on which the Appeal Panel can review the decision is that the officer making the appeal would be more efficient in performing the duties of the position than the person promoted or selected for temporary transfer.

#### Initiating an appeal

- K2.6 An officer ("the appellant" for the purposes of this section) or the appellant's union or other employee representative on the appellant's behalf, may initiate an appeal under these procedures by making an application to the Convenor in accordance with all of the following:
  - K2.6.1 It is in writing.
  - K2.6.2 It is received by the Convenor within 14 calendar days of the decision to take the action being notified in the Gazette.
  - K2.6.3 It seeks to appeal an appealable decision as set out in subclause K2.2.
- K2.7 Notwithstanding any other provisions in this section, the Convenor has the authority to dismiss an appeal if the appellant obstructs, unreasonably delays or fails to co-operate with the process.

#### Composition of Appeal Panel

- K2.8 Where an application is received by the Convenor in accordance with the requirements set out in subclause K2.6, subject to subclause K2.7 the Convenor must set up an Appeal Panel.

- K2.9 The Appeal Panel must comprise of a nominee of the Office, a nominee of the employee and a chairperson.
- K2.9.1 The chairperson must be agreed between the employee and the Clerk or chosen from a panel of providers on a rotational basis, unless there is an identified conflict of interest, in which case the next person on the panel of providers is to be chosen.
- K2.10 A person is not eligible to be a member of an Appeal Panel if that person was involved in the decision or the process that is the subject of the application.
- K2.11 Where a panel member fails to comply with a provision in this section in a manner that affects the effective operation of the appeal process, the Convenor can disqualify the member from the Appeal Panel. Where that occurs the Appeal Panel is dissolved and a new one must be convened in accordance with subclause K2.9.

### **Appeal Panel recommendations**

- K2.12 After reviewing an application about promotion or temporary transfer to a higher office or role affecting the appellant, the Appeal Panel must recommend to the Clerk to do one of the following with regard to the decision that is the subject of the application:
- K2.12.1 Confirm the decision.
- K2.12.2 Vary the decision.
- K2.12.3 Take another action.
- K2.13 The Clerk must inform the appellant and affected parties in writing of their decision and the reasons for the decision, within 28 calendar days.

### **K3 - Process review**

- K3.1 An officer may seek a review of the process leading up to a decision about any of the following:
- K3.1.1 Decisions that another officer perform the duties of a higher office or role (with a pay less than that of a Senior Officer Grade C or equivalent classification) for periods greater than 6 months if the vacancy was advertised.
- K3.1.2 Decisions to promote or not promote an officer.
- K3.1.3 Decisions to appoint or not appoint an employee, or to engage or not engage an employee, on a temporary contract.
- K3.1.4 Decisions to transfer, or not to transfer, an employee.
- K3.1.5 Decisions under the PSM Standards to promote an officer after acting for a period of 12 months or more in a position above Administrative Services Officer Class 6 or equivalent classification.
- K3.2 The findings of a review under this clause do not alter the outcome of the original decision, but may be used to inform similar processes conducted in the future, or address any failings on the part of employees involved in the process under review.

### **Initiating a review**

- K3.3 An officer ("the applicant" for the purposes of this section), or the applicant's union or other employee representative on the applicant's behalf, may initiate a review under these procedures by making an application to the Clerk in accordance with all of the following:
- K3.3.1 It is in writing.
- K3.3.2 It describes how the applicant believes the process was not conducted properly and provides reasons for this.
- K3.3.3 It is received by the Clerk within 14 calendar days of the employee being advised of the decision, or becoming aware of the decision.
- K3.3.4 It seeks to review a reviewable process as set out in subclause K3.1.

### **Conducting a process review**

- K3.4 Subject to subclause K3.3 the Clerk must arrange for an application to be reviewed by an independent person (the reviewer) who may be one of the following:
- K3.4.1 A suitably skilled person who was not involved in the original action.
  - K3.4.2 A person chosen from a panel of providers.
- K3.5 The independent reviewer must be provided with all relevant information and evidence that was available to the decision-maker in the making of the original decision.
- K3.6 The reviewer must make an assessment whether relevant processes contained in this Agreement, the PSM Act and PSM Standards were followed, and to what extent.
- K3.7 After reviewing the information and evidence provided under subclause K3.5, the independent reviewer must provide a report to the Clerk, which does one of the following:
- K3.7.1 Confirms that the process was conducted in accordance with the provisions of this Agreement, the PSM Act, and PSM Standards.
  - K3.7.2 Finds that there were deficiencies in the process. Such findings must be supported by reasons and the report may include recommendations for how similar processes may be conducted in future.

## Section L Redeployment and Redundancy

### L1 - Definitions

- L1.1 Excess officer means an officer who has been notified in writing by the Clerk that they are excess to the Office's requirements because one of the following applies:
- L1.1.1 The officer is included in a class of officers employed in the Office, which class comprises a greater number of officers than is necessary for the efficient and economical working of the Office.
  - L1.1.2 The services of the officer cannot be effectively used because of technological or other changes in the work methods of the Office or changes in the nature, extent or organisation of the functions of the Office.
- L1.2 Potentially excess officer means an officer who is formally notified they are likely to become an excess officer in a foreseeable space of time.

### L2 - Application

- L2.1 The ACTPS recognises the need to make the most effective use of the skills, abilities and qualifications of its officers in a changing environment. When positions become excess, the Office must seek to redeploy permanent officers within the Office or the ACTPS in order to avoid or minimise an excess officer situation. Should redeployment not be possible, voluntary redundancy, reduction in classification and involuntary redundancy must be considered in that order. Throughout these procedures the Office must, where practicable, take into consideration the personal and career aspirations and family responsibilities of affected officers.

### L3 - Consultation

- L3.1 Where it appears to the Clerk that a position is likely to be either potentially excess or excess to the Office's requirements, and prior to any individual officer(s) being identified, the Clerk must, at the earliest practicable time, advise and discuss with the union(s), the following issues (as appropriate in each case):
- L3.1.1 The number and classification of officers in the part of the Office affected.
  - L3.1.2 The reasons an officer is or officers are likely to be excess to requirements.
  - L3.1.3 The method of identifying officers as excess, having regard to the efficient and economical working of the Office and the relative efficiency of officers.
  - L3.1.4 The number, classification, location and details of the officers likely to be excess.
  - L3.1.5 The number and classification of officers expected to be required for the performance of any continuing functions in the part of the Office affected.
  - L3.1.6 Measures that could be taken to remove or reduce the incidence of officers becoming excess.
  - L3.1.7 Redeployment prospects for the officers concerned.
  - L3.1.8 The appropriateness of using voluntary retirement.
  - L3.1.9 Whether it is appropriate for involuntary retirement to be used if necessary.
- L3.2 The discussions under subclause L3.1 must take place over such time as is reasonable, taking into account the complexity of the restructuring and need for potential excess officer situations to be resolved quickly and must comply with the consultation requirements of G1 -. Any use of involuntary redundancy must be agreed between the Clerk and the union(s) at this stage and must not be used without the written agreement of the Clerk and the union(s).
- L3.3 The Clerk must comply with the notification and consultation requirements for union(s) and Centrelink about terminations set out in the FW Act.
- L3.4 The Clerk must, at the first available opportunity, inform all officers likely to be affected by an excess staffing situation of the terms and operation of this section.

- L3.5 Where a redundancy situation affects a number of officers engaged in the same work at the same level, elections to be made voluntarily redundant may be invited.
- L3.6 Nothing in this Agreement prevents the Clerk inviting officers who are not in a redundancy situation to express interest in voluntary redundancy, where such redundancies would permit the redeployment of potentially excess and excess officers who do not wish to accept voluntary redundancy.

#### **L4 - Notification**

- L4.1 Except where a lesser period is agreed between the Clerk and the officer, the officer must not, within one month after the union(s) has been advised under subclause L3.1, be invited to volunteer for retirement nor be advised in writing in accordance with subclause L4.4 that the officer is excess to the Office's requirements.

#### **Potentially excess officers**

- L4.2 At the point where individual employees can be identified, the Clerk must advise the officer(s) that a position(s) is likely to become excess and that the employee may be affected. In that advice the officer(s) must also be advised that the officer may be represented by a union or other employee representative at subsequent discussions. The Clerk must discuss with the officer(s) and, where chosen, the union or other employee representative(s) the issues dealt with in paragraphs L3.1.1 through L3.1.9 (as appropriate in each case).
- L4.3 Potentially excess officers who have not been invited to be voluntarily retired, or who have declined to elect to be voluntarily retired, are subject to the redeployment provisions in clause L4.6.

#### **Excess officers**

- L4.4 Subject to subclause L4.1 the notification of an officer's excess status may only be given when the consultation required under clause L3 - and the consultation required under subclause L4.2 has taken place. Following such consultation, where the Clerk is aware that an officer is excess, the Clerk must advise the officer in writing.
- L4.5 An excess officer is subject to the redeployment provisions in clause L4.6.
- L4.6 An excess officer who is offered a voluntary redundancy, but who does not accept the offer, is entitled to a 7 month retention period in accordance with clause L6.10.3.

#### **L5 - Redeployment**

- L5.1 Redeployment of potentially excess and excess officers must be in accordance with the officer's experience, ability and, as far as possible, the officer's career aspirations and wishes.
- L5.2 Once an officer has been notified that they are potentially excess or excess in accordance with subclause L4.2 and subclause L4.4 respectively, the officer must be registered by the Office on the redeployment register.
- L5.3 The Clerk must consider a potentially excess or excess officer from other ACT Public Service agencies in isolation for vacancies at the officer's substantive level.
- L5.4 An excess officer (or potentially excess) has absolute preference for transfer to positions at the officer's substantive level and must be considered in isolation from other applicants for any vacancy, which is to be advertised for permanent filling or for a temporary period of 6 months or more, within the ACTPS. For the purposes of this clause substantive level means the same classification or an alternative equivalent classification in another classification stream where the maximum pay does not exceed the top increment of the officer's current classification by more than 10%. For clarity this does not allow for the transfer of an officer within the same classification stream e.g a SOG B to transfer to a SOG A.
- L5.5 Under this clause an excess officer must be given preference over a potentially excess officer.

- L5.6 An excess officer need only be found suitable, or suitable within a reasonable time (generally 3 to 6 months) to be transferred to a position in accordance with subclause L5.4.
- L5.7 The Clerk must make every effort to facilitate the placement of an excess officer, within the service.
- L5.8 The Clerk must arrange reasonable training that would assist the excess officer's prospects for redeployment.
- L5.9 The Clerk must provide appropriate internal assistance and career counselling and assist as necessary with the preparation of job applications.

## **L6 - Voluntary Redundancy**

- L6.1 Subject to subclause L4.1, at the completion of the discussions in accordance with clause L3 -, the Clerk may invite officers to elect to be made voluntarily redundant under this clause.
- L6.2 Where the Clerk invites an officer to elect to be made voluntarily redundant, the officer must be provided a consideration period of a maximum of one month from the date of the offer in which to advise the Clerk of the officer's election, and the Clerk must not give notice of redundancy before the end of the one month consideration period.
- L6.3 To allow an officer to make an informed decision on whether to submit an election to be made voluntarily redundant, the Clerk must provide the officer with advice on all of the following:
  - L6.3.1 The sums of money the officer would receive by way of severance pay, pay instead of notice, and paid up leave credits.
  - L6.3.2 The career transition and development opportunities within the ACTPS.
- L6.4 The officer should seek independent advice on all of the following:
  - L6.4.1 The amount of accumulated superannuation contributions.
  - L6.4.2 The options open to the officer concerning superannuation.
  - L6.4.3 The taxation rules applicable to the various payments.
- L6.5 The Office must supplement the costs of independent, accredited financial counselling incurred by each officer who has been offered voluntary redundancy up to a maximum of \$1000. The Clerk must authorise the accredited financial counsellors to invoice the Office directly.
- L6.6 Subject to subclause L6.7, where the Clerk approves an election to be made redundant and gives the notice of retirement in accordance with the PSM Act, the period of notice is one month, or 5 weeks if the officer is over 45 years old and has completed at least 2 years continuous service.
- L6.7 Where the Clerk so directs, or the officer so requests, the officer will be retired at any time within the period of notice under subclause L6.6, and the officer must be paid in lieu of pay for the unexpired portion of the notice period.

### **Severance benefit**

- L6.8 An officer who elects to be made redundant in accordance with this clause is entitled to be paid the greater of the following amounts:
  - L6.8.1 An amount equal to 2 weeks of the officer's pay for each completed year of continuous service, plus a pro rata payment for completed months of continuous service since the last year of continuous service. The maximum sum payable under this paragraph is 48 weeks' pay.
  - L6.8.2 An amount equal to 26 weeks of the officer's pay.
- L6.9 For the purpose of calculating any payment instead of notice or part payment, the pay an officer would have received had they been on annual leave during the notice period, or the unexpired portion of the notice period as appropriate, is used.
- L6.10 For the purpose of calculating payment under subclause L6.8 all the following apply:

- L6.10.1 If an officer has been acting in a higher position for a continuous period of at least 12 months immediately preceding the date on which they receive a notice of retirement, the pay level is the officer's pay in the higher position at that date.
- L6.10.2 If an officer has, during 50% or more of pay periods in the 12 months immediately preceding the date on which they receive a notice of retirement, been paid a loading for shift-work or are paid a composite pay, the weekly average amount of shift loading received during that 12 month period is counted as part of "weeks pay".
- L6.10.3 The inclusion of other allowances, being allowances in the nature of pay, will be subject to the approval of the Clerk.

### **L7 - Retention Period for Excess Officers**

- L7.1 An excess officer who does not accept voluntary redundancy is entitled to a 7 month retention period.
- L7.2 The retention period will commence on one of the following days:
  - L7.2.1 On the day the officer is advised in writing by the Clerk that the officer is an excess officer.
  - L7.2.2 In the case of an officer who is invited by the Clerk to submit an election to be retired - one month after the day on which the election is invited.
- L7.3 At the end of the retention period, if the officer has not been redeployed, the officer must be offered a choice of the following:
  - L7.3.1 A suitable vacant position at the officer's substantive level, to be transferred to in accordance with the PSM Act.
  - L7.3.2 Retirement from the ACTPS with a severance payment which is the equivalent to what the officer would have received had the officer accepted the voluntary redundancy, less the amount of salary that the officer received during the retention period.
- L7.4 To be transferred to a suitable position in accordance with paragraph L7.3.1 an excess officer need only be found suitable, or suitable within a reasonable time (generally 3 to 6 months) to be transferred to the position.

### **L8 - Reduction in Classification**

- L8.1 Where efforts to redeploy at level have failed and where the officer has refused the offer of voluntary redundancy, the Clerk with the agreement of the officer may reduce the officer in classification and place the officer in a specific position.
- L8.2 Reduction in classification is to occur in accordance with the PSM Act.

### **L9 - Involuntary Retirement**

- L9.1 An excess officer may be made involuntarily redundant, subject to the agreement of the union(s). This clause applies to excess officers who are not any of the following:
  - L9.1.1 Retired with consent.
  - L9.1.2 Redeployed to another position.
  - L9.1.3 Reduced in classification.
- L9.2 An officer may be involuntarily retired subject to the agreement of the union(s). Such agreement must not be withheld if, during or after 6 months from the date the officer was declared excess, the officer does one of the following:
  - L9.2.1 Does not accept a transfer in accordance with the PSM Act.



L9.2.2 Refuses to apply for, or be considered for, a position for which the officer could reasonably be expected to be qualified to perform, either immediately or in a reasonable time.

L9.3 Where the Clerk believes that there is insufficient productive work available for an excess officer during the retention period, the Clerk may make the officer involuntarily redundant before the end of the retention period.

L9.4 An excess officer must not be involuntarily retired if they have not been invited to elect to be voluntarily retired with benefits, or have made such an election and the Clerk refuses to approve it.

L9.5 Where the Clerk involuntarily retires an excess officer, the officer must be given no less than 4 weeks' notice of the action proposed; or 5 weeks if the officer is over 45 years old and has completed at least 2 years of continuous service. This notice period must, as far as practicable, be concurrent with the 7 month retention period.

### **L10 - Income Maintenance Payment**

L10.1 An officer who has been receiving a higher rate of pay for a continuous period of at least 12 months and who would have continued to receive that pay rate, except for the excess officer declaration, must be considered to have the higher pay rate.

L10.2 This pay is known as the income maintenance pay. The income maintenance pay, where applicable, is used for the calculation of all conditions and entitlements under this clause.

L10.3 The income maintenance pay exists for the retention period or the balance of the retention period.

L10.4 If an officer is involuntarily retired, the entitlements, including paying out the balance of the retention periods, where applicable, must be calculated on the income maintenance pay rate. If an officer is involuntarily retired during the retention periods the officer's date of retirement is the date that the officer would have retired after the retention period ceased, not the date of the involuntary retirement. All final entitlements must be calculated from the latter date.

L10.5 If an officer is involuntarily reduced in classification during the retention period, the officer is entitled to be paid at the income maintenance pay rate for the balance of the retention period.

L10.6 All allowances in the nature of pay must be included in determining the income maintenance pay rate.

### **L11 - Leave and Expenses to Seek Employment**

L11.1 At any time after the officer has been advised under subclause L4.2 of being potentially excess, the officer is entitled to paid leave to seek alternative employment. Leave granted under this clause is for periods of time to examine the job and to attend interviews. Reasonable travelling time must also be granted.

L11.2 The officer is entitled to any reasonable fares and other incidental expenses if these are not met by the prospective employer.

### **L12 - Use of Personal Leave**

L12.1 The use of personal leave must not extend the retention periods of an officer unless these periods are supported by a medical certificate or are of such a nature as to make the seeking of employment during certificated personal leave inappropriate.

L12.2 An officer who is receiving income maintenance must have those payments continued during certified personal leave periods of up to a total of 6 months.

### **L13 - Appeals**

L13.1 Without affecting the officer's rights under the FW Act, an excess officer has the right under Section J to appeal any decision taken in relation to the officer's eligibility for benefits under

clause L4.6, clause L9 -and, the amount of such benefits, or the amount payable by way of income maintenance under clause L10 -.

- L13.2 .An excess officer who received a notice of involuntary redundancy under clause L9.5 has the right under section J to appeal the decision.

#### **L14 - Agreement Not to Prevent Other Action**

- L14.1 Nothing in this Agreement prevents the reduction in classification of an officer or the retirement of an officer as a result of action relating to discipline, invalidity, inefficiency or loss of essential qualifications.

#### **L15 - Re-engagement of Previously Retrenched Officers**

- L15.1 Despite the PSM Act, officers who are involuntarily retired from the ACTPS can be engaged at any time by the Clerk.
- L15.2 Officers who elect to be made voluntarily redundant under clause L4.66 cannot be re-engaged in the ACTPS until a period has expired, which is equivalent in weeks and days to the termination payment received under subclause L6.8 or paragraph L7.3.2, except with the written consent of the ACTPS Head of Service (In person).

## Section M Office of the Legislative Assembly Specific Matters

### **M1 - EMPLOYEES FROM OTHER JURISDICTIONS**

- M1.1 The parties agree that circumstances may arise from time to time, where it would be in the interests of the Assembly for staff of other Parliaments to be considered for employment in, or secondment to, the Office of the Legislative Assembly. In this respect, the Clerk may notify other Parliaments of vacancies or projects and seek expressions of interest so that such staff can be considered in conjunction with other applicants or interested parties. At the same time, the vacancy or project will also be advertised within the Office of the Legislative Assembly.

### **M2 - TEMPORARY EMPLOYMENT**

- M2.1 Where it is proposed to engage a temporary employee, the requirement to select the person from a register of available people or a field of applicants will be deemed to have been met if the person being employed has, in the previous 12 months, been employed by the Office of the Legislative Assembly and was selected at that time from a register or through some other merit selection process.

### **M3 - BANKABLE HOURS ARRANGEMENTS FOR SENIOR OFFICER GRADE A AND B**

- M3.1 In recognition of the responsibilities of, and additional hours worked by Senior Officer Grades A and B, they will have access to a bankable hours scheme. This clause will prevail over clause F24 of this Agreement.
- M3.2 All Senior Officer Grades A and B will be required to maintain details of time spent on duty and submit those details to the Clerk on a periodic basis, but at least monthly. In consultation with the Clerk and subject to operational requirements (including the need for availability during usual business hours), Senior Officer Grades A and B will have flexibility to manage the attendance times to meet their work programs.
- M3.3 Hours worked in excess of 38 hours 45 minutes per week are bankable and available as time off in lieu subject to operational requirements.
- M3.4 The maximum number of hours that may be banked is 50.
- M3.5 Any bankable hours accumulated by Senior Officer Grades A and B prior to the end of an Assembly, must be used during the interregnum or, where the Clerk agrees, within three months of the commencement of the next Assembly.

### **M4 - LATE NIGHT SITTING ALLOWANCE FOR SENIOR OFFICERS**

- M4.1 Refer to the Agency Specific Allowance Schedule at Annex C

### **M5 - PAYMENT OF OVERTIME**

- M5.1 Overtime shall be payable in accordance with clause C9 of this agreement. For the purposes of calculating the respective hourly rates for overtime, the prescribed weekly hours shall be 36.75.

## **M6 - TRAVELLING ALLOWANCE ENTITLEMENTS**

- M6.1 Office of the Legislative Assembly staff who travel interstate on official business and are required to be absent overnight shall be entitled to have the costs of reasonable accommodation, meals and incidental expenses met.
- M6.2 From the date of operation of this Agreement, the amount used to determine this entitlement will correspond with the amounts determined by the ATO in its annual Taxation Ruling on reasonable allowances as the reasonable daily travel allowance amounts. The Clerk will ensure that the details of the relevant taxation ruling are made available to staff covered by this Agreement.
- M6.3 This entitlement is to be administered in accordance with the guidelines issued by the Clerk. The parties will be consulted prior to new guidelines being issued.

## **M7 - HEALTH AND WELLBEING INITIATIVES**

- M7.1 In recognition of the benefits of maintaining a healthy and productive workforce, eligible employees (officers and fixed long term employees) who undertake, in their own time, health promotion activities will be paid an amount not exceeding \$200 per annum in accordance with the relevant policy.
- M7.2 The payment will be on a reimbursement basis subject to an original receipt(s) being provided and only one claim may be made in a Fringe Benefit year (1 April to 31 March). The health promotion activity must have been purchased in the same Fringe Benefit year of the claim being made.

## **M8 - LEAVE LOADING**

- M8.1 (to be read in conjunction with Clause F8 of the Agreement)
- M8.2 The annual leave loading payable to an employee shall be paid on the first payday in January (or the second payday in January where the processing for the first payday would not allow sufficient time to calculate all employees entitlements).

## **M9 - PAYMENT TO ELIGIBLE CASUALS WHERE EMPLOYMENT IS DISCONTINUED**

- M9.1 Casual employees employed within the Office of the Legislative Assembly will be employed in accordance with the PSM Act and Standards.
- M9.2 Where a casual staff member:
- M9.2.1 is employed on a regular pattern;
  - M9.2.2 re-registers on at least two successive occasions and, as a result, continues to be employed on a regular pattern; and
  - M9.2.3 has further employment discontinued, by virtue of changes to working arrangements introduced within the Office of the Legislative Assembly,
- the casual employee will be entitled to a pro rata payment in lieu of accumulated long service leave, together with payment of the benefit calculated in accordance with the formula:

total gross earnings earned during casual employment

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## ANNEX A – CLASSIFICATIONS AND RATES OF PAY

CLASSIFICATION	Pay Rates as at 10.6.2021	1.35% from 9/12/2021	1.35% from 9/6/2022
Administrative Services Officer Class 1	\$52,442	\$53,150	\$53,868
	\$54,114	\$54,845	\$55,585
	\$55,518	\$56,267	\$57,027
	\$57,690	\$58,469	\$59,258
Administrative Services Officer Class 2	\$59,016	\$59,813	\$60,620
	\$60,569	\$61,387	\$62,216
	\$62,093	\$62,931	\$63,781
	\$63,637	\$64,496	\$65,367
	\$65,167	\$66,047	\$66,939
Administrative Services Officer Class 3	\$66,867	\$67,770	\$68,685
	\$68,540	\$69,465	\$70,403
	\$70,206	\$71,154	\$72,115
	\$71,963	\$72,935	\$73,920
Administrative Services Officer Class 4	\$74,237	\$75,239	\$76,255
	\$76,511	\$77,544	\$78,591
	\$78,434	\$79,493	\$80,566
	\$80,381	\$81,466	\$82,566
Administrative Services Officer Class 5	\$82,506	\$83,620	\$84,749
	\$85,004	\$86,152	\$87,315
	\$87,331	\$88,510	\$89,705
Administrative Services Officer Class 6	\$88,899	\$90,099	\$91,315
	\$91,055	\$92,284	\$93,530
	\$93,475	\$94,737	\$96,016
	\$98,048	\$99,372	\$100,714
	\$101,743	\$103,117	\$104,509
Senior Officer Grade C	\$111,887	\$113,397	\$114,928
	\$120,436	\$122,062	\$123,710
Senior Officer Grade B	\$131,773	\$133,552	\$135,355
	\$138,585	\$140,456	\$142,352
	\$148,344	\$150,347	\$152,377
Senior Officer Grade A	\$153,041	\$155,107	\$157,201

<b>CLASSIFICATION</b>	<b>Pay Rates as at 10.6.2021</b>	<b>1.35% from 9/12/2021</b>	<b>1.35% from 9/6/2022</b>
Information Communications Technology Trainee	\$52,442	\$53,150	\$53,868
	\$54,114	\$54,845	\$55,585
	\$59,016	\$59,813	\$60,620
Information Technology Officer Class 1	\$71,963	\$72,935	\$73,920
	\$74,237	\$75,239	\$76,255
	\$76,511	\$77,544	\$78,591
	\$78,434	\$79,493	\$80,566
	\$80,381	\$81,466	\$82,566
	\$81,917	\$83,023	\$84,144
Information Technology Officer Post Graduate	\$82,506	\$83,620	\$84,749
	\$85,004	\$86,152	\$87,315
	\$87,331	\$88,510	\$89,705
Information Technology Officer Class 2	\$88,899	\$90,099	\$91,315
	\$91,055	\$92,284	\$93,530
	\$93,475	\$94,737	\$96,016
	\$98,048	\$99,372	\$100,714
	\$101,743	\$103,117	\$104,509
Senior Information Technology Officer Grade C	\$111,887	\$113,397	\$114,928
	\$120,436	\$122,062	\$123,710
Senior Information Technology Officer Grade B	\$131,773	\$133,552	\$135,355
	\$138,585	\$140,456	\$142,352
	\$148,344	\$150,347	\$152,377
Senior Information Technology Officer Grade A	\$153,041	\$155,107	\$157,201

CLASSIFICATION	Pay Rates as at 10.6.2021	1.35% from 9/12/2021	1.35% from 9/6/2022
Trainee Technical Officer	\$56,426	\$57,188	\$57,960
	\$59,617	\$60,422	\$61,238
	\$62,272	\$63,113	\$63,965
Technical Officer Level 1	\$60,942	\$61,765	\$62,599
	\$61,993	\$62,830	\$63,678
	\$62,936	\$63,786	\$64,647
	\$63,894	\$64,757	\$65,631
Technical Officer Level 2	\$65,966	\$66,857	\$67,760
	\$68,014	\$68,932	\$69,863
	\$69,661	\$70,601	\$71,554
	\$71,486	\$72,451	\$73,429
	\$73,233	\$74,222	\$75,224
	\$75,539	\$76,559	\$77,593
Technical Officer Level 3	\$77,011	\$78,051	\$79,105
	\$78,755	\$79,818	\$80,896
	\$80,903	\$81,995	\$83,102
	\$83,028	\$84,149	\$85,285
	\$85,179	\$86,329	\$87,494
	\$87,032	\$88,207	\$89,398
Technical Officer Level 4	\$88,899	\$90,099	\$91,315
	\$91,519	\$92,755	\$94,007
	\$94,014	\$95,283	\$96,569
	\$98,048	\$99,372	\$100,714
	\$101,743	\$103,117	\$104,509
Senior Officer (Technical) C	\$111,887	\$113,397	\$114,928
	\$120,436	\$122,062	\$123,710
Senior Officer (Technical) B	\$131,773	\$133,552	\$135,355
	\$138,585	\$140,456	\$142,352
	\$148,344	\$150,347	\$152,377

CLASSIFICATION	Pay Rates as at 10.6.2021	1.35% from 9/12/2021	1.35% from 9/6/2022
Professional Officer Class 1	\$62,767	\$63,614	\$64,473
	\$65,166	\$66,046	\$66,938
	\$68,810	\$69,739	\$70,680
	\$73,233	\$74,222	\$75,224
	\$78,178	\$79,233	\$80,303
	\$83,028	\$84,149	\$85,285
	\$87,032	\$88,207	\$89,398
Professional Officer Class 2	\$88,899	\$90,099	\$91,315
	\$91,519	\$92,755	\$94,007
	\$94,014	\$95,283	\$96,569
	\$98,048	\$99,372	\$100,714
	\$101,743	\$103,117	\$104,509
Senior Professional Officer Grade C	\$111,887	\$113,397	\$114,928
	\$120,436	\$122,062	\$123,710
Senior Professional Officer Grade B	\$131,773	\$133,552	\$135,355
	\$138,585	\$140,456	\$142,352
	\$148,344	\$150,347	\$152,377
Senior Professional Officer Grade A	\$153,041	\$155,107	\$157,201

CADET			
Cadet - practical training	\$52,442	\$53,150	\$53,868
	\$54,114	\$54,845	\$55,585
	\$55,518	\$56,267	\$57,027
	\$57,690	\$58,469	\$59,258
Cadet - full-time study (57% of practical training)	\$29,891	\$30,295	\$30,704
	\$30,845	\$31,261	\$31,683

GRADUATE			
Graduate Administrative Assistant	\$74,237	\$75,239	\$76,255
	\$76,511	\$77,544	\$78,591

TRAINEES			
Trainee	\$52,442	\$53,150	\$53,868
	\$54,114	\$54,845	\$55,585
	\$55,518	\$56,267	\$57,027
	\$57,690	\$58,469	\$59,258



CLASSIFICATION		Pay Rates as at 10.6.2021	1.35% from 9/12/2021	1.35% from 9/6/2022
<b><u>TRAINING WAGE</u></b>				
Wage Level A - Highest year of schooling completed				
School Leaver				
	Year			
	10	\$346.00	\$350.67	\$355.40
		\$395.23	\$400.57	\$405.98
	Year 11	\$416.02	\$421.64	\$427.33
		\$463.43	\$469.69	\$476.03
	Year 12	\$550.51	\$557.95	\$565.48
Plus 1 year out of school	Year 10	\$463.43	\$469.69	\$476.03
	Year 11	\$550.51	\$557.95	\$565.48
	Year 12	\$633.76	\$642.32	\$650.99
Plus 2 years out of school	Year 10	\$550.51	\$557.95	\$565.48
	Year 11	\$633.76	\$642.32	\$650.99
	Year 12	\$728.44	\$738.28	\$748.24
Plus 3 years out of school	Year 10	\$633.76	\$642.32	\$650.99
	Year 11	\$728.44	\$738.28	\$748.24
	Year 12	\$824.93	\$836.06	\$847.35
Plus 4 years out of school	Year 10	\$728.44	\$738.28	\$748.24
	Year 11	\$824.93	\$836.06	\$847.35
	Year 12	-	-	-
Plus 5 or more years out of school	Year 10	\$824.93	\$836.06	\$847.35
	Year 11	-	-	-
	Year 12	-	-	-

CLASSIFICATION		Pay Rates as at 10.6.2021	1.35% from 9/12/2021	1.35% from 9/6/2022
Wage Level B - Highest year of schooling completed				
	School Leaver			
	Year 10	\$346.00	\$350.67	\$355.40
		\$395.23	\$400.57	\$405.98
	Year 11	\$416.02	\$421.64	\$427.33
		\$463.43	\$469.69	\$476.03
	Year 12	\$531.54	\$538.72	\$545.99
Plus 1 year out of school	Year 10	\$463.43	\$469.69	\$476.03
	Year 11	\$531.54	\$538.72	\$545.99
	Year 12	\$605.30	\$613.47	\$621.75
Plus 2 years out of school	Year 10	\$531.54	\$538.72	\$545.99
	Year 11	\$605.30	\$613.47	\$621.75
	Year 12	\$701.94	\$711.42	\$721.02
Plus 3 years out of school	Year 10	\$605.30	\$613.47	\$621.75
	Year 11	\$701.94	\$711.42	\$721.02
	Year 12	\$790.93	\$801.60	\$812.43
Plus 4 years out of school	Year 10	\$701.94	\$711.42	\$721.02
	Year 11	\$790.93	\$801.60	\$812.43
	Year 12	-	-	-
Plus 5 or more years out of school	Year 10	\$790.93	\$801.60	\$812.43
	Year 11	-	-	-
	Year 12	-	-	-

CLASSIFICATION		Pay Rates as at 10.6.2021	1.35% from 9/12/2021	1.35% from 9/6/2022
Wage Level C - Highest year of schooling completed				
	School Leaver			
	Year 10	\$346.00	\$350.67	\$355.40
		\$395.23	\$400.57	\$405.98
	Year 11	\$416.02	\$421.64	\$427.33
		\$463.43	\$469.69	\$476.03
	Year 12	\$516.33	\$523.30	\$530.37
Plus 1 year out of school	Year 10	\$463.43	\$469.69	\$476.03
	Year 11	\$516.33	\$523.30	\$530.37
	Year 12	\$575.04	\$582.80	\$590.67
Plus 2 years out of school	Year 10	\$516.33	\$523.30	\$530.37
	Year 11	\$575.04	\$582.80	\$590.67
	Year 12	\$637.51	\$646.12	\$654.84
Plus 3 years out of school	Year 10	\$575.04	\$582.80	\$590.67
	Year 11	\$637.51	\$646.12	\$654.84
	Year 12	\$705.72	\$715.25	\$724.90
Plus 4 years out of school	Year 10	\$637.51	\$646.12	\$654.84
	Year 11	\$705.72	\$715.25	\$724.90
	Year 12	-	-	-
Plus 5 or more years out of school	Year 10	\$705.72	\$715.25	\$724.90
	Year 11	-	-	-
	Year 12	-	-	-

## ANNEX B – ATTRACTION AND RETENTION INCENTIVES

### 1. Introduction

- 1.1. This Annex sets out the Framework that applies to individual Attraction and Retention Incentives (ARIs) and to ARIs for groups of employees performing an identical function at the same classification level within the Office.
- 1.2. This Framework does not apply to casual employees.
- 1.3. Notwithstanding the below provisions of the Framework, it is a matter for the Clerk's discretion (in consultation with the ACTPS Head of Service) as to whether an ARI will be applied to an employee in a position.
- 1.4. In assessing whether an ARI should be applied to an employee in a position, the Clerk must give particular consideration to the consequences the provision of the ARI may have on the Territory's ability to recruit and retain employees in executive positions.
- 1.5. In this Framework, a reference to position, employee, occupant or union includes positions, employees, occupants or unions.
- 1.6. The terms and conditions of employment of this Agreement will continue to form the principal basis for employees covered by this Agreement. Accordingly, where an ARI applies to an employee, the terms and conditions that apply to that employee are a combination of both of the following:
  - 1.6.1. The terms and conditions contained in this Agreement.
  - 1.6.2. The terms and conditions contained in the ARI.
- 1.7. The terms and conditions of employment contained in an ARI prevail over the terms and conditions of employment contained in this Agreement to the extent of any inconsistency.

### 2. Scope of an Attraction and Retention Incentive

- 2.1. An ARI may contain any of the following:
  - 2.1.1. Enhanced pay rates.
  - 2.1.2. Provision for privately plated vehicles where the Clerk considers there is a clear, unambiguous and exceptional need.
  - 2.1.3. Other terms and conditions of employment where the Clerk considers there is a clear, unambiguous and exceptional need.
- 2.2. The rates of pay component of an ARI count as pay for all purposes including superannuation and for the purposes of calculating the rate of pay for annual leave, long service leave, paid personal leave, paid maternity leave, redundancy payments and other paid leave granted under this Agreement. If leave is on reduced pay or without pay, the pay component of the ARI must be reduced proportionately.
- 2.3. Normal incremental advancement and pay increase percentages will continue to apply in relation to the base rate of pay of the employee in receipt of an ARI. Pay increase percentages do not apply to the pay component of an ARI.
- 2.4. The pay component of an ARI is payable by fortnightly instalment.
- 2.5. Notwithstanding subclause 2.4, an ARI may provide for the pay component, or part thereof, to be paid as a lump sum, subject to the pay component not being directly linked to performance.

- 2.6. The terms of the ARIn must contain all the following provisions:
  - 2.6.1. The expiry date, or expected expiry date, of the ARIn.
  - 2.6.2. The level of the employee's base rate of pay.
  - 2.6.3. The pay component, any other terms and conditions of employment that are to apply under the ARIn and the total dollar value of the ARIn.
  - 2.6.4. Whether or not the pay component in the ARIn (if any) reduces (or increases) proportionately on a pro rata basis where the employee in the position to which the ARIn applies reduces (or increases) their working hours.
  - 2.6.5. A statement that the terms and conditions of the employee will revert to the applicable rates of pay and terms and conditions of employment under this Agreement in the event the ARIn ceases to operate or is terminated.
  - 2.6.6. The terms of this Framework.

### **3. Approval**

- 3.1. An ARIn may only be agreed and approved in accordance with this Framework.
- 3.2. The Clerk may approve an ARIn for any of the following:
  - 3.2.1. A specific project, provided the term of the ARIn is no longer than 24 months (a "Project ARIn"). A Project ARIn cannot be renewed and will cease on the date specified in the ARIn for cessation of the position's involvement in the project, or the date of completion of the project, whichever date is the earlier. The review provisions at subclause 7.1 do not apply to Project ARIns.
  - 3.2.2. A specified period of less than 12 months (a "Fixed Term ARIn"). A Fixed Term ARIn cannot be varied, extended or renewed, and will automatically cease on its specified expiry date. The review provisions at subclause 7.1 do not apply to Fixed Term ARIns; or
  - 3.2.3. A specified period of 12 months (a "Renewable ARIn"). A Renewable ARIn may be renewed for a further 12 months on a maximum of 2 occasions, and must be reviewed in accordance with subclause 7.1.
  - 3.2.4. A group of positions and employees performing identical functions at the same classification level, in accordance with subclause 4.1, for a period of 24 months (a "Group Block Approval ARIn"). A Group Block Approval ARIn must be reviewed in accordance with subclause 7.2.
- 3.3. Notwithstanding paragraph 3.2.1., where the Clerk forms a preliminary view that there will be a requirement for a further Project ARIn beyond the date specified in the original Project ARIn, a comprehensive submission must be provided to the ACTPS Head of Service to consider in accordance with subclause 8.6.
- 3.4. The Clerk may only approve an ARIn if the Clerk has done all the following:
  - 3.4.1. Decided it is appropriate to provide an employee with terms and conditions of employment that are in excess of those which are ordinarily provided for under this Agreement after taking in account the position the employee is engaged to perform and the matters to be considered in subclause 5.1 of this Framework.

3.4.2. With the exception of ARIn approved under paragraph 8.5.2., discussed the proposed terms of the ARIn with the employee prior to the ARIn being approved. In these discussions, the employee may invite a union or other employee representative to assist the employee.

3.4.3. Provided a written submission in accordance with subclause 7.8.

Note: Where the ARIn is for a specified project, the estimated period of the position's involvement in the project to be covered by the ARIn must be specified in the ARIn.

3.5. An ARIn must not be agreed where it would result, when assessed as a whole, in a reduction in the overall terms and conditions of employment provided for the employee under this Agreement or provide terms and conditions that are, in a particular respect, less favourable than the NES or the rates of pay set in this Agreement for the same work at the same classification level.

3.6. Where it is proposed that an ARIn will replace or reduce a condition of employment contained in this Agreement, the Clerk must consult with the relevant union with coverage of the position prior to the provision of a written submission to the ACTPS Head of Service for consideration, about the proposed change. In consulting with the union, the Clerk must do all of the following:

3.6.1. Provide the union with relevant information about the position and the proposed change.

3.6.2. Give the union a reasonable opportunity to consider this information and, if the union wishes, provide written views to the Clerk within 7 days.

3.6.3. Take into account any views of the union before deciding to enter into the ARIn.

Information that the Clerk provides to the union under paragraph 3.6.1. must not include information that might directly or indirectly disclose the identity of the particular employee.

3.7. At any time following the conclusion of the consultation required under subclause 3.6, and subject to consideration by the ACTPS Head of Service, the Clerk and the employee may agree on the terms of an ARIn to apply to the position that the employee occupies.

3.8. The ACTPS Head of Service must consider a submission pursuant to paragraph 7.7.2, and provide their views about the ARIn to the Clerk.

3.9. The Clerk may approve an ARIn after considering the views of the ACTPS Head of Service.

#### **4. Group Block Approval**

4.1. Where it is proposed that identical ARIns are to apply to a group of positions and employees performing identical functions at the same classification level within the Office this may be done as one block approval (a "Group Block Approval"). Only one submission needs to be made in accordance with paragraph 7.8.2 in relation to the group of positions as identified in the submission to the ACTPS Head of Service, provided that both the following apply:

4.1.1. Each employee in a relevant position must be provided with an individual ARIn.

4.1.2. Each ARIn provided under this subclause needs to be identical in regard to the matters considered under paragraph 5.1 outlined in the ARIn supplied with the submission.

- 4.2. To avoid doubt, in the case of Group Block Approval ARIn, the application of the ARIn to those employees in the group who continue to meet the matters considered at subclause 5.1, will continue to apply, even where any of the following apply:
  - 4.2.1. An individual employee to whom the Group Block Approval applied no longer satisfies the matters to be considered at subclause 5.1.
  - 4.2.2. An employee moves out of the position to which a Group Block Approval applies.
- 4.3. If following a review under subclause 7.2 the Clerk determines that it is no longer appropriate to provide positions covered by a Group Block Approval, and employees in those positions with an ARIn, then all ARIns which apply to the positions covered by the Group Block Approval will cease to operate in accordance with subparagraph 9.1.4.2 for all employees who are the subject of the Group Block Approval.
- 4.4. If following a review under subclause 7.1 or subclause 7.2 the Clerk determines that the ARIn should be renewed (on the same or different terms) the new ARIn will apply to all positions covered by the Group Block Approval, and all employees in positions the subject of the Group Block Approval.
- 4.5. Despite subclause 4.1 and subclause 4.4, if following a review under subclause 7.2 it is determined a particular position covered by a Group Block Approval, and the employee in the position covered by the Group Block Approval, warrants a different set of benefits from the other positions covered by the Group Block Approval, and from other employees the subject of the Group Block Approval, the ARIn applying to that particular position and particular employee will cease to be covered by the Group Block Approval and shall be an individual ARIn for all future reviews.

## **5. Matters to be Considered**

- 5.1. In determining whether to apply an ARIn to an employee in a position, the Clerk must have regard to all the following matters:
  - 5.1.1. Whether the position is critical to the operation of the Office or to a business unit in the Office.
  - 5.1.2. Whether an employee who occupies the position requires specialised qualifications, skill set or experience to perform the requirements of the position.
  - 5.1.3. Whether the role and skills required by the employee who occupies the position are in high demand.
  - 5.1.4. The level at which comparable individuals with skills and qualifications for the role are remunerated in the marketplace.
  - 5.1.5. The difficulty and cost associated with recruiting to the position.
  - 5.1.6. Any other matter considered relevant to determining whether or not an ARIn would be appropriate in the circumstances.
- 5.2. In considering paragraph 5.1.4 the Clerk must take into account relevant market data (by reference to the definition of relevant market data in this Framework).

## **6. Commencement**

6.1. The ARIn will commence from the later of the following:

- 6.1.1. The date specified in the ARIn.
- 6.1.2. The date of final approval by the Clerk in accordance with subclause 3.8.

6.2. To avoid doubt, an ARIn cannot operate retrospectively.

## **7. Review**

7.1. If, following a comprehensive submission to the ACTPS Head of Service for consideration, an ARIn is approved by the Clerk for a specified period of 12 months (a “Renewable ARIn”), the Clerk may renew the ARIn for a further 12 months on a maximum of 2 occasions, provided both the following apply:

- 7.1.1. A review of each ARIn is conducted within 12 months from the date of the ARIn commencing, or the date of first renewal of the ARIn, (a “renewal review”) to determine whether the Clerk continues to consider that it is appropriate to provide an employee occupying the position, to which the ARIn applies with terms and conditions of employment that are in excess of those which are ordinarily provided for under this Agreement.
- 7.1.2. A comprehensive market-based review (a “comprehensive review of each Renewable ARIn is conducted within 3 years from the date of the ARIn commencing to determine whether the ARIn should be renewed (on the same or different terms) and a further submission is made to the ACTPS Head of Service for consideration in accordance with subclause 8.6, or ceased, in accordance with this Framework.

7.2. A comprehensive market-based review (a “comprehensive review”) of each Group Block Approval ARIn, must be completed within 24 months from the date of the ARIn commencing, or prior to the date of expiry of this Agreement, whichever date is the earlier. As a result of the review the Clerk must determine whether any of the following should apply:

- 7.2.1. The ARIn should be renewed (in the same or different terms) in accordance with paragraph 8.5.4.
- 7.2.2. The ARIn should be ceased in accordance with subclause 9.1.
- 7.2.3. The additional pay component of the ARIn should be incorporated into base rates of pay in any subsequent Agreement.
- 7.2.4. The additional pay component of the ARIn should be provided for in some other way.

7.3. In addition to reviewing ARIns under subclause 7.1, the Clerk must also review an ARIn to determine whether the ARIn should be renewed, where:

- 7.3.1. a preliminary view is formed by the Clerk that the position ceases to be critical to the operation of the Office or business unit in the Office; or
- 7.3.2. a preliminary view is formed by the Clerk that the employee ceases to hold the required specialist qualifications or specialist attributes.

7.4. In reviewing the ARIn, the Clerk must have regard to the matters to be considered at subclause 5.1, including any matters they consider relevant as per paragraph 5.1.6. In conducting a comprehensive review of an ARIn the Clerk must also take into consideration relevant market data (by reference to the definition or relevant market data in this Framework).



- 7.5. If the position to which the ARIn applies is occupied when undertaking a review of the ARIn, the Clerk must consult with the employee occupying the position to which the ARIn applies. The employee may invite a union or other employee representative to assist the employee in the consultation.
- 7.6. If the employee occupying the position for which the ARIn is being reviewed is on long-term leave, reasonable attempts must be made to consult with the employee, or the employee's representative, pursuant to subclause 7.5. If such reasonable attempts to consult with the employee are unsuccessful, then the Clerk may proceed with the review without the input of the employee.
- 7.7. Upon completion of the review the Clerk must notify the affected employee(s) in writing, and where relevant their representative(s), of the preliminary outcomes and reasons for the decision. The Clerk must provide the employee(s) and their representative(s) 14 days in which to provide a written response for consideration by the Clerk before making a final decision.
- 7.8. Following the conclusion of a review under subclause 7.1 or subclause 7.3, if the Clerk forms a preliminary view that the ARIn should be renewed on the same terms or on different terms, the Clerk must complete one of the following, as applicable:
  - 7.8.1. A renewal submission.
  - 7.8.2. A comprehensive submission for consideration by the ACTPS Head of Service.
- 7.9. Shared Services must provide regular reports to the ACTPS Head of Service on all Renewable ARIns, or Group Block Approval ARIns, 3 months prior to their nominal expiry date for which a comprehensive review has not been completed pursuant to paragraph 7.1.2 or subclause 7.2.
- 7.10. If a comprehensive review of a Renewable ARIn, or Group Block Approval ARIn, has not been completed by the nominal expiry date, the Office must develop, in consultation with the ACTPS Head of Service, a plan to ensure the ARIn review is completed within 3 months.

## **8. Submissions**

### *Renewal Submission*

- 8.1. A renewal submission is required to be completed if any of the following apply:
  - 8.1.1. Pursuant to paragraph 7.8.1, it is proposed that a Renewable ARIn for a position should be renewed on the same terms.
  - 8.1.2. An employee who is party to a Fixed Term, Renewable or Project ARIn temporarily vacates the position to which the ARIn relates, and it is being proposed that the ARIn be provided to the employee who is acting in the vacated position.
  - 8.1.3. An employee who is party to a Fixed Term, Renewable or Project ARIn temporarily vacates the position to which the ARIn relates for a period of 90 days or more, and it is being proposed that the ARIn apply to the employee upon the employee's return to the position.
- 8.2. A renewal submission provided in accordance with subclause 8.1 must contain a declaration by the Clerk that they consider it appropriate to provide the employee with terms and conditions of employment that are in excess of those which are ordinarily provided for under this Agreement as set out in the ARIn. That submission must address the matters to be considered at subclause 5.1, including any matters which the Clerk considers relevant to whether the ARIn should apply and has had regard to in accordance with paragraph 5.1.6.

- 8.3. Pursuant to subclause 8.1, a Renewable ARIn may be renewed for a period of 12 months following a review under paragraph 7.1.1, provided that both the following conditions are met:
- 8.3.1. Any Renewable ARIn can only be renewed on 2 occasions before a comprehensive review is undertaken.
  - 8.3.2. The review must be completed before the date of expiration specified in the ARIn.
- 8.4. If the provisions of subclause 8.3 are not met, or the review under subclause 7.1 or subclause 7.3 determines that a Renewable ARIn should not be renewed, the ARIn will cease to operate in accordance with paragraph 9.1.3. Any further ARIns for the position or group of positions will require the provision of a new comprehensive submission to the ACTPS Head of Service for consideration by the ACTPS Head of Service in accordance with subclause 8.6.

#### *Comprehensive Submission*

- 8.5. A comprehensive submission is required to be submitted if any of the following apply:
- 8.5.1. In relation to a Renewable ARIn, 3 years have elapsed since the last comprehensive submission.
  - 8.5.2. A position is to be advertised with a rate of pay which includes the proposed ARIn amount.
  - 8.5.3. A new ARIn for an individual position is being proposed for an existing employee.
  - 8.5.4. A new Group Block Approval is being proposed or sought for an identified group of positions performing an identical function at the same classification level within the Office.
  - 8.5.5. A variation is being proposed to an existing renewable ARIn, whether it applies to an individual position or group of positions under a Group Block Approval.
- 8.6. A comprehensive submission provided in accordance with subclause 8.5 must include all of the following:
- 8.6.1. Address the matters to be considered at subclause 5.1.
  - 8.6.2. Address any factors which the Clerk has considered relevant to whether an ARIn apply, and has had regard to in accordance with paragraph 5.1.6.
  - 8.6.3. Address whether the substantive position is correctly classified.
  - 8.6.4. Address whether the position's job description or organisation structure of the business unit can be adjusted to mitigate the need for an ARIn.
  - 8.6.5. A declaration by the Clerk that they consider it appropriate to provide the employee who occupies the position to which the ARIn is to apply with terms and conditions of employment that are in excess of those which are ordinarily provided for under this Agreement as set out in the ARIn.
- 8.7. Where the Clerk considers that there is a compelling reason for the directorate to pay enhanced rates of pay in excess of 50% of the base rate of pay for the position's classification, the Clerk must address the reason for such 50% plus enhanced pay in the submission under subclause 8.6 to the ACTPS Head of Service.

## 9. Cessation

9.1. An ARIn will cease to operate on one of the following dates:

- 9.1.1. In relation to a Project ARIn, on the date specified in the ARIn for cessation of the position's involvement in the project, or the date of completion of the project, whichever date is the earlier.
- 9.1.2. In relation to a Fixed Term ARIn, on the date specified in the ARIn.
- 9.1.3. In relation to a Renewable ARIn: where the ARIn is reviewed in accordance with subclause 7.1 or subclause 7.3 and the Clerk determines following the review that the ARIn should no longer apply to the position, on the date that is at least 90 days after the date notice is provided to the employee of cessation of the ARIn, or less if agreed by the employee.
- 9.1.4. In relation to Group Block Approval ARIns on one of the following dates:
  - 9.1.4.1. On the date this Agreement is replaced by a further enterprise agreement.
  - 9.1.4.2. Where the ARIn is reviewed in accordance with subclause 7.2 and the Clerk determines following the review that the ARIn should no longer apply (or at any other time), on the date that is at least 90 days after the date notice of cessation of the ARIn is provided to the employee(s) to whom the ARIn applies.
- 9.1.5. On the date an employee vacates the position to which the ARIn applies, including when the employee becomes unattached or is temporarily transferred to another position.

- Note:
- 1. A new renewal submission is required to be completed in accordance with paragraph 8.1 b) where an ARIn is to apply to another employee who occupies the vacated position, unless the position is covered by a Group Block Approval.
  - 2. Where an employee is temporarily transferred to another position for a period of 90 days or more, a renewal submission is required to be completed in accordance with paragraph 8.1.1 where the ARIn is to apply to the employee upon their return to the vacated position, unless the position is covered by a Group Block Approval.

- 9.1.6. In relation to a finding arising from a misconduct or underperformance matter, on the date the sanction is to apply where the delegate determines, in accordance with paragraph H11.2.5 of this Agreement, that the sanction to be applied is termination of the ARIn.
- 9.1.7. On the date an employee loses the qualification, or registration which allows them to perform the duties of the position to which the ARIn relates.
- 9.1.8. On the date this Agreement is replaced by a further enterprise agreement, unless one of the following applies:
  - 9.1.8.1. The ARIn ceases to operate at an earlier time in accordance with the provisions of this Framework.
  - 9.1.8.2. The ARIn is deemed to continue to operate under the provisions in the replacement enterprise agreement.

- 9.1.9. In relation to ARInS which are deemed to operate pursuant to subclause 10.2 of this Framework, on the day after 12 months from the commencement of this Agreement.

## 10. Deeming

- 10.1. An ARIn that applied to a position, and to the employee occupying the position to which the ARIn applies, which is covered by this Agreement on the day before the Agreement commenced operation will continue in accordance with the provisions of this Framework.
- 10.2. Any entitlement which an employee enjoyed on the day before the Agreement commences, which is in excess of those provided for under this Agreement is deemed to be an ARIn. ARInS which are deemed to continue under this subclause may operate for a maximum of 12 months from the date the Agreement commences.
- 10.3. If the Clerk determines that an ARIn that has been deemed to continue under subclause 10.2 should continue to operate beyond 12 months from the date the Agreement commences, then they must follow the procedures for approving a new ARIn, as set out in this Framework.

## 11. Salary Sacrifice Arrangements

- 11.1. The additional pay component provided under an ARIn may be used for the purposes of salary sacrifice arrangements in accordance with the salary sacrifice arrangement provisions of this Agreement. Where an employee salary sacrifices any part of the terms of an ARIn and, in accordance with this Framework, the ARIn ceases to apply, the employee must notify the salary sacrifice arrangement provider that the terms of the ARIn can no longer be packaged.

## 12. Notification

- 12.1. The Clerk must provide information to the Chief Minister Treasury, and Economic Development Directorate about ARInS approved by the Clerk for employees in the directorate during the reporting year, for inclusion in the state of the service report.
- 12.2. The Chief Minister, Treasury and Economic Development Directorate must provide regular reports to the union on ARInS including details of the number, terms and classifications of all ARInS approved by the Office.

## 13. Interpretation

- 13.1. In this Framework, unless the contrary intention appears:

**'Attraction and Retention Incentives' (ARInS)** means additional pay or conditions of employment, provided in recognition of the additional requirements of a position under a written agreement between the Clerk and the employee occupying the position to which the ARIn is to apply, that are in excess of those which are ordinarily provided for under this Agreement.

**'base rate of pay'** in relation to an employee is the rate of pay payable under Annex A of this Agreement for the employee's classification on the date the ARIn commences, or for a review, on the date that the ARIn is approved, or renewed, following a review.

**'Clerk'** means the person occupying the position of dClerk of the ACT Legislative Assembly of the Office, or their nominated delegate.

**'Group Block Approval'** means an ARIn approved by the Clerk, after consideration by the ACTPS Head of Service, for a number of related positions

with the same classification and perform an identical function in the Office, and the employees in those positions.

**'ACTPS Head of Service'** means the person occupying the position and exercising the powers of the ACTPS Head of Service.

**'relevant market data'** includes but is not limited to job sizing assessments, recruitment experience, market surveys and job advertisements. Where a job sizing assessment or market survey is used as relevant market data, the assessment or survey must be undertaken by a remuneration consultant or internal remuneration employee.

## ANNEX C – EXPENSE, DISABILITY AND SKILL RELATED ALLOWANCES

<b>Late Night Sitting</b>	Classification	Senior Officers Grade A, B and C		
	Employee Type	Senior Officers		
	Description	Where a Senior Officer is required to work after 7.00pm on a sitting night, on duties which directly relate to the sitting of the Assembly, they may elect to be paid Late Night Sitting Allowance as a commuted overtime payment.		
	Rate/Frequency	per occurrence (rounded to the nearest whole dollar)		
		<b>Rate as at 10/6/2021</b>	<b>1.35% from 9/12/2021</b>	<b>1.35% from 9/06/2022</b>
		\$236	\$239	\$242
	Payment on Leave	Not paid during any type of paid or unpaid leave.		
Special Conditions	Senior Officers who are paid late night sitting allowance are not able to claim flextime or bankable hours beyond 6.00pm on that day.			

<b>Meal Allowance</b>	Classification	All classifications		
	Employee Type	Any		
	Description	<p>An employee who works overtime is entitled to payment of an allowance, in addition to any overtime payment, where:</p> <ol style="list-style-type: none"> <li>1. After the completion of, and continuous with, the employee's ordinary hours of duty for the day, a period of at least 1.5 hours overtime is worked prior to an unpaid meal break being taken, which is followed by a further period of overtime of at least 0.5 hours.</li> <li>2. Before the commencement of the employee's ordinary hours of duty for the day, a period of at least 1.5 hours overtime is worked prior to an unpaid meal break being taken, which is followed by a further period of overtime of at least 0.5 hours.</li> <li>3. On a Saturday, Sunday or public holiday, a period of at least 5 hours overtime is worked, in addition to the employee's normal weekly hours of duty, prior to an unpaid meal break being taken, which is followed by a further period of overtime of at least 0.5 hours.</li> </ol>		
	Rate/Frequency	<b>Rate as at 10/6/2021</b>	<b>1.35% from 9/12/2021</b>	<b>1.35% from 9/06/2022</b>
		Per occasion	\$30.76	\$31.18
	Payment on Leave	Not paid during any type of paid or unpaid leave.		
	Special Conditions	Where an appropriate meal is obtainable by the employee at a canteen, cafeteria or dining room conducted, controlled, or assisted by the directorate, the amount of meal allowance is the maximum amount for which an appropriate meal is obtainable at the canteen, cafeteria or dining room. This rate is in substitution for the rate above.		
	Allowance Type	Disability		

<b>Community Language</b>	Classification	Any		
	Employee Type	Any		
	Description	Employees whose duties involve communication on a regular basis in languages other than English, including Deaf Oral language, Deaf Sign language and Aboriginal languages, will be paid an allowance if their language competence meets the required National Accreditation Authority for Translators and Interpreters (NAATI) level, as follows:		
	Rate/Frequency	<b>Rate as at 10/6/2021</b>	<b>1.35% from 9/12/2021</b>	<b>1.35% from 9/06/2022</b>
	Per annum (paid in equal fortnightly instalments) (1) Community Language Aide (NAATI Level 1):	\$1,254	\$1,271	\$1,288
	Per annum (paid in equal fortnightly instalments) (2) Certified Provisional Interpreter (NAATI L.2):	\$2,505	\$2,539	\$2,573
	Payment on Leave	The allowance is payable during paid personal leave, annual leave and long service leave, pro-rata where appropriate, but not during any other period of leave.		
Special Conditions	<ol style="list-style-type: none"> <li>1. Eligible part-time employees are entitled to receive the allowance on a pro-rata basis.</li> <li>2. The minimum required standard of language competence for receipt of the allowance is accreditation at (NAATI) Level 1.</li> <li>3. Where assessment in a language is not offered by NAATI, the Clerk may approve assessment by another individual or body that has the necessary expertise to assess the language skills and has sufficient knowledge of NAATI levels and competencies required to determine the appropriate rate of allowance.</li> <li>4. The Clerk should arrange accreditation testing, and pay any associated fees.</li> <li>5. Until such time as recognition by NAATI, or an alternative provider, is available, the Clerk may approve the payment at Level 1 to an employee on the certification of the employee's supervisor.</li> <li>6. The allowance may be paid from the date of an employee's application for payment, or from the date at which the Clerk determines the need for the language has been demonstrated.</li> <li>7. Payment of the allowance should be reviewed annually, or whenever the employment status of a recipient changes (e.g. upon the recipient's promotion or temporary transfer).</li> <li>8. Such reviews should address whether there is a continuing need for communication in a language other than English.</li> </ol>			
	Allowance Type	Qualification		

<b>First Aid</b>	Classification	Any		
	Employee Type	Any		
	Description	<p>An employee who is suitably qualified and who is designated as the primary contact for First Aid and who performs the duties of a First Aid Officer in a workplace or work group, will be paid an allowance determined by their current level of qualification:</p> <ol style="list-style-type: none"> <li>1. A Base Level qualification is a nationally recognised Statement of Attainment in Providing First Aid issued by a Registered Training Organisation that is accredited to deliver First Aid training and to issue qualifications for nationally endorsed First Aid unit/s of competency. This would normally provide competencies required to recognise and respond to common life threatening injuries or illnesses including: life-support using Cardiopulmonary resuscitation (CPR), and management of the casualty and incident until the arrival of medical or other assistance, as well as treatment of minor illnesses and injuries.</li> <li>2. An Advanced Level qualification provides additional competencies required to apply Advanced First Aid procedures and Advanced First Aid response in a workplace environment.</li> <li>3. An Occupational or Specialist level required to meet this level will include the ability to completely render first aid in the workplace in the context of Work Health and Safety legislation.</li> </ol>		
	Rate/Frequency	<b>Rate as at 10/6/2021</b>	<b>1.35% from 9/12/2021</b>	<b>1.35% from 9/06/2022</b>
	Per fortnight (1) Base Level:	\$28.54	\$28.93	\$29.32
	Per fortnight (2) Advanced Level:	\$35.75	\$36.23	\$36.72
	Per fortnight (3) Occupational or Specialist Level:	\$42.42	\$42.99	\$43.57
	Payment on Leave	<p>The allowance is payable during:</p> <ol style="list-style-type: none"> <li>a) long service leave, paid birth or primary care giver's leave or annual leave;</li> <li>b) paid personal leave or other leave with pay for up to one month.</li> </ol> <p>Where leave is on reduced pay, or without pay, the allowance must be proportionately reduced or withdrawn accordingly. The allowance is included in salary for payment in lieu of long service leave and annual leave.</p>		
	Special Conditions	<ol style="list-style-type: none"> <li>1. The above rates will be paid in full to part-time employees.</li> <li>2. Where the qualification of an employee who is in receipt of the allowance is no longer current, the Clerk may allow a short period to allow for requalification.</li> <li>3. The Clerk may reimburse fees for renewal of qualification and/or relevant courses incurred by an employee who is eligible to be paid a First Aid allowance.</li> <li>4. Where an employee holds more than one First Aid qualification, the employee will be paid an allowance only for the qualification which attracts the higher payment.</li> <li>5. The allowance must not be included in salary for overtime or penalty payments.</li> <li>6. Where an employee who normally undertakes First Aid functions is absent and another employee who is qualified in First Aid undertakes all the duties for which the allowance is paid, the relieving employee is entitled to be paid the allowance appropriate to that employee's qualifications.</li> </ol>		
	Exclusions	The First Aid allowance is not payable to employees who, as part of their normal duties, are required to maintain a First Aid qualification.		
Allowance Type	Qualification			



<b>Intermittent Driving Duties</b>	Classification	Any		
	Employee Type	Any		
	Description	An employee, other than one performing the duties of a motor driver, who is required to undertake intermittent driving duties as an incident of his or her employment involving the acceptance of full responsibility for the operation of a vehicle, will be paid an allowance (computed on a daily basis for each day or part of a day on which he or she is so employed) to raise their full-time pay to the following rates:		
	Rate/Frequency	<b>Rate as at 10/6/2021</b>	<b>1.35% from 9/12/2021</b>	<b>1.35% from 9/06/2022</b>
	Per annum (1) Under 19, (70% of GSO 3)	\$25,349	\$25,691	\$26,038
	Per annum (2) At 19, (80% of GSO 3)	\$28,971	\$29,362	\$29,758
	Per annum (3) At 20, (100% of GSO 3)	\$36,212	\$36,701	\$37,196
	Payment on Leave	Not paid during any type of paid or unpaid leave.		
Allowance Type	Functional			

<b>Motor Vehicle</b>	Classification	Any
	Employee Type	Any
	Description	<p>The Clerk may authorise an employee to use a motor vehicle they own or hire:</p> <ol style="list-style-type: none"> <li>1. For official purposes, where the Clerk is satisfied this use would: <ol style="list-style-type: none"> <li>(a) Result in greater efficiency.</li> <li>(b) Involve the ACT Government in less expense than if public transport or a vehicle owned by the ACT Government were used.</li> </ol> </li> <li>2. For specified journeys, where the clerk is satisfied that: <ol style="list-style-type: none"> <li>(a) The use will not result in the employee taking more time on the journey than they would otherwise take.</li> <li>(d) It would not be contrary to the interest of the ACT Government.</li> </ol> </li> <li>3. Travel between normal headquarters and a temporary work station, or between the employee's home and a temporary work station, where the Clerk is satisfied that: <ol style="list-style-type: none"> <li>a) There is no public transport available for travel to the temporary station.</li> <li>b) Although public transport is available, the work program makes its use impossible.</li> </ol> </li> </ol>
	Rate/Frequency	<b>Rate as at 10/6/2021</b>
	Per km (1) Small car - 1600cc non-rotary, 800cc rotary:	\$0.78
	Per km (2) Medium - 1601-2600cc non-rotary 801-1300cc rotary:	\$0.90
	Per km (3) Large – over 2600cc non-rotary over 1300cc rotary:	\$0.91
	Payment on Leave	Not paid during any type of paid or unpaid leave.
	Special Conditions	<ol style="list-style-type: none"> <li>1. The amount of the allowance is to be reduced by the amount of any Isolated Establishments (or equivalent) allowance that is payable. If the amount of any Isolated Establishments (or equivalent) allowance payable exceeds the amount of motor vehicle allowance that would otherwise be payable, then no motor vehicle allowance may be authorised.</li> <li>2. If an employee satisfies the Clerk that the allowance is insufficient to meet the amount of the expenses reasonably incurred and paid by the employee in using a motor vehicle for official purposes, the Clerk may grant an additional allowance equal to the amount by which those expenses exceed the amount of the allowance or allowances.</li> <li>3. If, as a consequence of using a motor vehicle an employee is required to pay a higher insurance premium than would otherwise be the case, they are entitled to be reimbursed the additional cost.</li> <li>4. Employees who use a private motor vehicle under the motor vehicle allowance conditions may be reimbursed parking fees, bridge and car-ferry tolls incurred while on duty, but not fines.</li> </ol>
	Allowance Type	Expense

## ANNEX D – OTHER LEAVE

Leave to:	1. Accompany a domestic partner on a posting
Purpose	To enable an employee to accompany the employee’s domestic partner for the period, or part of the period, of a posting.
Eligibility	An employee.
Entitlement	The maximum period is the period during which the domestic partner of the employee is required to perform duties overseas, or interstate.
Conditions	-
Rate of payment	Without pay.
Effect on other entitlements	Does not count for any purpose.
Leave to:	2. Attend Aboriginal or Torres Strait Islander Ceremonies
Purpose	To attend a ceremony associated with the death of an immediate or extended family member or for other ceremonial obligations under Aboriginal and Torres Strait Islander law.
Eligibility	An employee who is of Aboriginal or Torres Strait Islander descent.
Entitlement	A maximum period of 10 days in any 2-year period, in addition to bereavement leave.
Conditions	-
Rate of payment	Without pay.
Effect on other entitlements	Does not count for any purpose.

<b>Leave to:</b>	<b>3. Attend Aboriginal and Torres Strait Islander meetings</b>
Purpose	For attending representative meetings in the capacity of an elected representative of the Aboriginal and Torres Strait Islander peak body.
Eligibility	An employee who is an elected representative of the ACT Aboriginal and Torres Strait Islander peak body.
Entitlement	Paid time to attend recognised meetings.
Conditions	If an employee accepts any fee for attendance at the meeting, leave is granted without pay. An employee may accept reimbursement for out-of-pocket expenses.
Rate of payment	Full pay.
Effect on other entitlements	Does count as service for all purposes.
<b>Leave to:</b>	<b>4. Attend sporting events as an accredited competitor or official</b>
Purpose	To enable an employee to attend sporting events as an accredited competitor or official.
Eligibility	An employee who is selected by an official sporting body to participate as an accredited official or competitor with national or international sporting status.
Entitlement	To attend training for, or to attend, a major national or international sporting or other recognised event in the capacity of an accredited official or competitor.
Conditions	Leave is with pay unless otherwise agreed by the employee.
Rate of payment	With pay or without pay.
Effect on other entitlements	With pay does count as service for all purposes. Without pay does not count as service for any purpose.

Leave to:	5. Attend as a witness
Purpose	To enable an employee to give evidence before a body or person before whom evidence may be taken on oath.
Eligibility	An employee.
Entitlement	Refer to rate of payment.
Conditions	If an employee is required to travel to give evidence, they may be reimbursed for reasonable travel expenses as if the employee had travelled in the course of the employee's duties, less any amount received as witnesses' expenses.
Rate of payment	<p>With pay where the employee is to give evidence for any of the following:</p> <ul style="list-style-type: none"> <li>(a) On behalf of a Territory, a State or the Commonwealth.</li> <li>(b) On behalf of an authority established by or under a law of a Territory, State or the Commonwealth.</li> <li>(c) In a judicial review or administrative review proceeding where the matter being reviewed relates to the work of the employee; or</li> <li>(d) Before a Royal Commission appointed under a law of the Commonwealth.</li> <li>(e) Before a person conducting an inquiry under a law of a Territory, a State or the Commonwealth.</li> <li>(f) Before a person or authority exercising arbitral functions under a law of a Territory, a State or the Commonwealth.</li> </ul> <p>Without pay where the leave to give evidence is for any other purpose.</p>
Effect on other entitlements	Does count as service for all purposes.

<b>Leave to:</b>	<b>6. Attend NAIDOC week activities</b>
Purpose	To enable an employee to attend and participate in NAIDOC Week activities.
Eligibility	An employee other than a casual employee.
Entitlement	This leave may be granted for one complete day or for varying periods over the week's activities, totalling the equivalent of one complete day.
Conditions	Subject to operational requirements.
Rate of payment	Full pay.
Effect on other entitlements	Does count as service for all purposes.
<b>Leave to:</b>	<b>7. Attend proceedings at the Fair Work Commission</b>
Purpose	To enable the employee to give evidence on behalf of a staff organisation in proceedings at the Fair Work Commission.
Eligibility	An employee who is a representative of a staff organisation.
Entitlement	The time necessary to present a case or to give evidence or to attend inspections conducted by the Fair Work Commission, plus reasonable travel time.
Conditions	Leave with pay cannot be granted to more than 2 representatives for the same period.
Rate of payment	With pay or Without pay.
Effect on other entitlements	With pay does count as service for all purposes. Without pay does not count as service for any purpose, but does not break continuity of service for long service leave purposes.

<b>Leave to:</b>	<b>8. Campaign for election</b>
Purpose	To enable the employee to campaign for election.
Eligibility	An employee who is standing for election to the ACT Legislative Assembly, Commonwealth or State House of Parliament, or other approved legislative or advisory body approved by the Clerk.
Entitlement	A maximum period of 3 months.
Conditions	-
Rate of payment	Without pay.
Effect on other entitlements	Does not count for any purpose.
<b>Leave to:</b>	<b>9. Cope with a disaster</b>
Purpose	Where an employee is affected by a disaster which has destroyed or significantly damaged the employee's usual place of residence or its contents.
Eligibility	An employee whose home is wholly or partly uninhabitable associated with health or safety reasons.
Entitlement	A maximum period of 3 days in each consecutive period 12 months.
Conditions	-
Rate of payment	Full pay.
Effect on other entitlements	Counts as service for all purposes.

Leave for:	10. Defence Reserve
Purpose	To enable an employee to undertake specified defence service and, also, enlistment, training or deployment with the Australian Defence Force Reserve (ADFR).
Eligibility	Available to employees other than casual employees.
Entitlement	<p>The entitlement to leave for Reserve Service is prescribed under the <i>Defence Reserve Service (Protection) Act 2001</i>.</p> <p>An employee may be granted leave (with or without pay) to enable the employee to fulfil Australian Defence Force (ADF) Reserve and Continuous Full Time Service (CFTS) or Cadet Force obligations.</p> <p>An employee is entitled to ADF Reserve Leave with pay, for up to 4 weeks during each financial year for the purpose of fulfilling service in the ADF Reserve. These purposes include training and operational duty as required.</p> <p>During an employee's first year of ADF Reserve service, a further 2 weeks paid leave may be granted by the Clerk to facilitate participation in additional ADF Reserve training, including induction requirements.</p> <p>With the exception of the additional 2 weeks in the first year of service, leave can be accumulated and taken over a period of 2 years, to enable the employee to undertake training as a member of the ADF Reserves.</p> <p>Employees are not required to pay their tax-free ADF Reserve salary to the ACTPS in any circumstances.</p> <p>An employee who is an officer or instructor of cadets in a Cadet Force may be granted paid leave of up to 3 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.</p> <p>Defence Reserve Leave counts as service for all purposes, except for unpaid leave to undertake CFTS. Unpaid leave for the purpose of CFTS counts for all purposes except Annual Leave.</p> <p>An eligible employee may also apply for Annual Leave, Long Service Leave, leave without pay, or they may use ADOs or flextime (where available) to make up time for the purpose of fulfilling ADF Reserve, CFTS or Cadet Force obligations.</p>
Conditions	An eligible employee must give notice to the Clerk as soon as practicable of their absence or intention to be absent for Defence Reserve Leave, including documentary evidence.
Rate of payment	With pay or without pay.
Effect on other entitlements	As per entitlement.



<b>Leave to:</b>	<b>11. Donate an organ</b>
Purpose	To enable an employee to donate an organ.
Eligibility	An employee who volunteers as an organ donor.
Entitlement	A maximum period of 3 months in any 12 month period.
Conditions	-
Rate of payment	Full pay.
Effect on other entitlements	Will count as service for all purposes.
<b>Leave to:</b>	<b>12. Donate blood</b>
Purpose	To enable an employee to donate blood.
Eligibility	An employee, who volunteers as a blood donor.
Entitlement	The time necessary to attend to give blood, including travel and reasonable recovery time.
Conditions	-
Rate of payment	Full pay.
Effect on other entitlements	Will count as service for all purposes.

<b>Leave to:</b>	<b>13. Engage in employment associated with compensation</b>
Purpose	To enable an employee to engage in employment outside the ACTPS as part of a rehabilitation process under the <i>Safety, Rehabilitation and Compensation Act 1988</i> .
Eligibility	An employee who is, or was, entitled to compensation leave under the <i>Safety, Rehabilitation and Compensation Act 1988</i> and the employment is part of a rehabilitation process under that Act.
Entitlement	A maximum period of 3 years.
Conditions	-
Rate of payment	Without pay.
Effect on other entitlements	Will count as service for all purposes.
<b>Leave to:</b>	<b>14. Engage in employment in the interests of defence or public safety</b>
Purpose	To enable the employee to engage in work or employment that the Clerk considers is in the interests of the defence or public safety of the Commonwealth or the Territories.
Eligibility	An employee.
Entitlement	A maximum period of 2 years.
Conditions	-
Rate of payment	Without pay.
Effect on other entitlements	The first 12 months will count as service for all purposes. Subsequent leave will count as service for all purposes except annual leave. If an employee does not return to duty with the ACTPS the leave will not count as service for any purpose.

<b>Leave to:</b>	<b>15. Engage in employment in the interests of the ACTPS</b>
Purpose	To enable an employee to engage in work or employment outside the ACTPS where the Clerk is satisfied that the employment is in the interests of the ACTPS.
Eligibility	An employee, (other than an employee) who meets one of the following: (a) They are a probationary employee. (b) They have 6 months or less continuous employment.
Entitlement	A maximum period of 5 years.
Conditions	-
Rate of payment	Without pay.
Effect on other entitlements	Will counts as service for all purposes except for annual leave. If an employee does not return to duty with the ACTPS the leave will not count as service for any purpose.
<b>Leave to:</b>	<b>16. Hold a full-time office in a staff organisation</b>
Purpose	To enable an employee to hold a full-time office in a staff organisation; council of staff organisations, or credit union, co-operative society, building co-operative or similar body.
Eligibility	An employee.
Entitlement	The maximum period of leave that may be granted is the period for which the employee is elected to office, or in the case of a non-elected office, 3 years.
Conditions	To be eligible for leave to hold a non-elected office the employee must have been employed in the ACTPS or in the Australian Public Service for at least 4 years, at the date at which the leave is proposed to begin. Leave may only be granted for this purpose where the relevant body is incorporated and is conducted by, or on behalf of, a staff organisation for the benefit of the members of the staff organisation or all persons employed in the ACTPS.
Rate of payment	Without pay.
Effect on other entitlements	Will count as service for accruing personal leave and calculating the period of service for long service, except where the leave is to enable the employee to take up an honorary office. Where leave is granted to enable the employee to take up an honorary office, the first 2 months leave in each calendar year will count as service for all purposes. Leave in excess of 2 months in a calendar year will not count as service for any purpose other than ongoing eligibility to access birth leave as provided by subclause F14.7.

<b>Leave for:</b>	<b>17. Local government purposes</b>
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Purpose	To enable the employee to attend formal meetings, in the capacity of an elected office holder, of a local government council.
Eligibility	An employee who is a duly elected office holder of a local government council.
Entitlement	A maximum period of one of the following: (a) In the case of an employee who is mayor or president of the council, 5 days in any 12 month period. (b) In any other case 3 days in any 12 month period.
Conditions	-
Rate of payment	Full pay.
Effect on other entitlements	Will count as service for all purposes.


<b>Leave for:</b>	<b>18. Operational Service Personal Leave</b>
Purpose	To enable officers and employees who have rendered operational service to be absent from duty when they are unfit for work because of war-caused injuries or diseases.
Eligibility	An officer or employee (other than a casual employee) who has rendered operational service.
Entitlement	<p>Operational service personal leave is cumulative and is additional to personal leave entitlements contained in clause F4.</p> <p>Officers:</p> <p>On appointment, an eligible officer is entitled to 9 weeks operational service personal leave.</p> <p>An eligible officer is entitled to receive an additional credit of 3 weeks operational service personal leave at all of the following times:</p> <ul style="list-style-type: none"> <li>12 months after the date of appointment.</li> <li>24 months after the date of appointment.</li> <li>36 months after the date of appointment.</li> </ul> <p>The maximum operational service personal leave balance that an eligible officer may have is 18 weeks.</p> <p>Employees (other than Officers):</p> <p>On engagement, an eligible employee is entitled to 9 days operational service personal leave.</p> <p>An eligible employee is entitled to receive an additional credit of 3 days operational service personal leave at all of the following times:</p> <ul style="list-style-type: none"> <li>12 months after the date of engagement.</li> <li>24 months after the date of engagement.</li> <li>36 months after the date of engagement.</li> </ul> <p>The maximum operational service personal leave balance that an eligible employee may have is 18 days.</p> <p>Where operational service personal leave credits have been exhausted, the Clerk may grant an employee personal leave or a period of unpaid operational service personal leave.</p>
Evidence and Conditions	<p>An eligible officer or employee should discuss with their manager or supervisor, as soon as practicable, of their absence or intention to be absent on operational service personal leave.</p> <p>An eligible officer or employee must make an application to the Clerk to access their operational service personal leave entitlement.</p> <p>Having considered the requirements of this clause the Clerk may approve an eligible officer or employee's application to access operational service personal leave. A decision not to approve the leave will be taken in accordance with subclause F3.1.</p>
<b>Leave for:</b>	<b>18. Operational Service Personal Leave (cont.)</b>


	Operational service personal leave may be granted by the Clerk for any of the following: (a) To cover absences resulting from war-caused injury or diseases. (b) Following a written request from an eligible officer or employee, which must include documentary evidence that the absence is due to the war-caused injury or disease, including evidence that the injury or disease is a war-caused injury or disease in accordance with the requirements of the <i>Veterans' Entitlement Act 1986 (Commonwealth)</i> .
Rate of payment	With pay. The rate of payment to be paid to the employee during a period of operational service personal leave is the same rate as would be paid if the employee was granted personal leave, except where it is granted without pay.
Effect on other entitlements	Operational service personal leave with pay will count as service for all purposes. Operational service personal leave without pay will not count as service.
Interpretation	<b>Operational service</b> has the same meaning as in the <i>Veterans' Entitlement Act 1986 (Commonwealth)</i> . <b>War-caused injuries or diseases</b> has the same meaning as in the <i>Veterans' Entitlement Act 1986 (Commonwealth)</i> .
<b>Leave for:</b>	<b>19. Religious purposes</b>
Purpose	To enable an employee to attend a ceremony integral to the practice of the employee's religious faith.
Eligibility	An employee who is an adherent to the particular religious faith and who is a practising member of that religious faith.
Entitlement	A maximum period of 10 days in any 2 year period.
Conditions	Religious leave is only available for ceremonies that are of significant importance to the particular faith that are generally observed by the entire faith. Leave is not available for ceremonies that are only of significance to the individual member of the particular religious faith.
Rate of payment	Without pay.
Effect on other entitlements	Will not count for any purpose.

<b>Leave for:</b>	<b>20. Returned soldiers for medical purposes</b>
Purpose	To enable an employee to attend an appointment for treatment or review as a returned soldier under the <i>Veterans' Entitlement Act 1986</i> (Commonwealth).
Eligibility	An employee who is a returned soldier.
Entitlement	A maximum period of 2 weeks in any 12 month period.
Conditions	-
Rate of payment	Full pay.
Effect on other entitlements	Will count as service for all purposes.
<b>Leave to:</b>	<b>21. Take leave where leave cannot be granted under any other provision</b>
Purpose	To enable an employee to be absent from duty where the leave cannot be provided for elsewhere.
Eligibility	An employee.
Entitlement	A maximum period of 12 months.
Conditions	-
Rate of payment	Without pay, except where the Clerk determines there are special circumstances, having regard to: (a) the purpose for which the leave is being taken; and (b) the length of service of the employee; and (c) the length of the period for which the leave is being taken. In special circumstances the Clerk determines whether leave is at full pay or half pay.
Effect on other entitlements	Leave without pay will not count as service for any purpose. However where the Clerk determines there are special circumstances and that the period of leave granted is to be with pay then the paid leave will count as service for all purposes.

## SIGNATORY PAGE

### ACT Public Sector: Office of the Legislative Assembly ENTERPRISE AGREEMENT 2021-2022

EMPLOYER	
SIGNATURE	
NAME	Tom Duncan
ADDRESS	196 London Circuit Canberra ACT 2601
AUTHORITY TO SIGN THE AGREEMENT	Signatory holds the office of the Clerk of the Legislative Assembly
DATE	29/11/2021

REPRESENTATIVE OF EMPLOYEES	
SIGNATURE	
NAME	Maddy Northam
ADDRESS	1/40 Brisbane Avenue Barton ACT 2600
AUTHORITY TO SIGN THE AGREEMENT	For and on behalf of the Community and Public Sector Union
DATE	6/12/21



