



HIGH COURT OF AUSTRALIA

HIGH COURT OF AUSTRALIA
ENTERPRISE AGREEMENT

2024 – 2027

Signatories

Signed for and on behalf of the **HIGH COURT OF AUSTRALIA** (ABN 69 445 188 986)

 25.3.24.
.....

Philippa Lynch
Chief Executive and Principal Registrar
High Court of Australia
Parkes Place, Parkes ACT 2600

Signed for and on behalf of the **COMMUNITY AND PUBLIC SECTOR UNION**

 - 22-3-24.
.....

Andrew Smith
Lead Organiser
Community and Public Sector Union
4/224 Bunda Street, Canberra ACT 2601

Signed for and on behalf of the **EMPLOYEE BARGAINING REPRESENTATIVES**

 25/03/24
.....

Rebecca Lucas
Associate to Justice Jagot
High Court of Australia
Parkes Place, Parkes ACT 2600

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SECTION 1 – TECHNICAL MATTERS

Title

1. This Agreement will be known as the High Court of Australia Enterprise Agreement 2024 – 2027.

Parties to the Agreement

2. This Agreement covers:
 - 2.1 the CE&PR for and on behalf of the High Court of Australia (HCA) as the employer;
 - 2.2 all employees in the HCA employed under the *High Court of Australia Act 1979* (HCA Act) other than substantive Senior Executive employees; and
 - 2.3 subject to notice being given in accordance with section 183 of the *Fair Work Act 2009* (FW Act), the following employee organisation which was a bargaining representative for this Agreement:
 - 2.3.1 the Community and Public Sector Union (CPSU).

Operation of this Agreement

3. This Agreement will commence operation 7 days after approval by the Fair Work Commission.
4. This Agreement will nominally expire on 28 February 2027.

Delegations

5. The CE&PR may delegate or authorise any or all of their powers and functions under this Agreement, including this power of delegation and may do so subject to conditions.

National Employment Standards precedence

6. The terms of this Agreement are intended to apply in a manner that does not derogate from the National Employment Standards (NES). The NES will continue to apply to the extent that any term of this Agreement is less beneficial to an employee of the HCA in any respect when compared with the NES.

Closed comprehensive Agreement

7. This Agreement states the terms and conditions of employment of employees covered by this Agreement, other than terms and conditions applying under relevant Commonwealth laws.
8. This Agreement will be supported by policies and guidelines, as implemented and varied from time to time.
9. Policies and guidelines are not incorporated into and do not form part of this Agreement. To the extent that there is any inconsistency between policies and guidelines and the terms of this Agreement, the terms of this Agreement will prevail.

Individual flexibility arrangements

10. The HCA and an employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:

- 10.1. the Agreement deals with one or more of the following matters:
 - 10.1.1. arrangements about when work is performed;
 - 10.1.2. overtime rates;
 - 10.1.3. penalty rates;
 - 10.1.4. allowances;
 - 10.1.5. remuneration;
 - 10.1.6. leave and leave loading; and
 - 10.2. the arrangement meets the genuine needs of the HCA and employee in relation to one or more of the matters mentioned in clause 10.1; and
 - 10.3. the arrangement is genuinely agreed to by the HCA and employee.
11. The HCA must ensure that the terms of the individual flexibility arrangement:
 - 11.1. are about permitted matters under section 172 of the FW Act;
 - 11.2. are not unlawful terms under section 194 of the FW Act; and
 - 11.3. result in the employee being better off overall than the employee would be if no arrangement was made.
 12. The HCA must ensure that the individual flexibility arrangement:
 - 12.1. is in writing;
 - 12.2. includes the name of the HCA and employee;
 - 12.3. is signed by the HCA and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
 - 12.4. includes details of:
 - 12.4.1. the terms of the Agreement that will be varied by the arrangement;
 - 12.4.2. how the arrangement will vary the effect of the terms;
 - 12.4.3. how the employee will be better off overall in relation to the terms and conditions of their employment as a result of the arrangement; and
 - 12.4.4. states the day on which the arrangement commences.
 13. The HCA must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
 14. The HCA or the employee may terminate the individual flexibility arrangement:
 - 14.1. by giving no more than 28 days' written notice to the other party to the arrangement; or
 - 14.2. if the HCA and employee agree in writing – at any time.

15. The HCA and employee are to review the individual flexibility arrangement at least every 12 months.

Definitions

16. The following table outlines the definition of terms used through this Agreement:

Agreement	High Court of Australia Enterprise Agreement 2024 – 2027.
APS	Australian Public Service.
Associate	Associate to a Justice of the HCA, including Senior Associate.
Bandwidth	The span of hours during which an employee can perform ordinary hours.
Casual employee (irregular and intermittent employee)	Refers to an employee engaged under section 26(3) of the HCA Act who is: <ul style="list-style-type: none"> • a casual employee as defined by the FW Act; and • works on an irregular and intermittent basis.
CE&PR	Chief Executive and Principal Registrar
Chambers Staff	Chambers Staff include: <ul style="list-style-type: none"> • the Chief of Staff to the Chief Justice; • an Executive Assistant to a Justice; or • an Associate.
Child	Is the biological child, adopted child, foster child, stepchild or ward.
Compressed hours	Where an employee's ordinary hours are compressed into fewer working days over an agreed period. Under this arrangement, ordinary hours must continue to be worked within the span of hours.
De facto partner	A de facto partner means: <ul style="list-style-type: none"> • a person who, regardless of gender, is living in a common household with the employee in a bona fide, domestic, interdependent partnership, although not legally married to the employee.
Dependant	The dependant of an employee means: <ul style="list-style-type: none"> • an employee's spouse or de facto partner, a child, parent or aged relative of the employee or of the employee's spouse or de facto partner, who ordinarily resides with the employee and who is substantially dependent upon the employee; or • a child of the employee who does not ordinarily live with the employee but for whom the employee provides substantial financial support.
Determination	Determination under s26(4) of the <i>High Court of Australia Act 1979</i> Terms and Conditions of Employment

Employee	An individual employed under the HCA Act and whose employment is covered by this Agreement (whether full-time, part-time or casual, ongoing or non-ongoing).
Executive Level Employee or EL Employee	High Court Employee Executive Level 1 – 2.
Employee representative	A person (whether an employee or not) elected or chosen by an employee or elected or chosen by a group of employees in a workplace, to represent the individual and/or collective views of those employees in relation to a matter under this Agreement. This includes ‘representative’ appointed or chosen by an employee or group of employees.
Family	<p>Family means:</p> <ul style="list-style-type: none"> • a spouse, former spouse, de facto partner or former de facto partner of the employee; • a child, parent, grandparent, grandchild, or sibling of the employee; • a child, parent, grandparent, grandchild, or sibling of a spouse, former spouse, de facto partner or former de facto partner of the employee; • a member of the employee’s household; or • a person with whom the employee has a relationship of traditional kinship where there is a relationship or obligation, under customs and traditions of the community or group to which the employee belongs.
Family and domestic violence	Has the same meaning as in section 106B(2) of the FW Act.
Full-time employee	An employee employed to work an average of 37.5 hours per week in accordance with this Agreement.
FW Act	<i>Fair Work Act 2009.</i>
HCA	High Court of Australia.
HCA Act	<i>High Court of Australia Act 1979.</i>
HCA Employee	An employee engaged under the HCA Act.
HCE Level 1 – 6	High Court Employee Level 1 – 6.
HDA	Higher Duties Allowance.
Justice	Justice of the HCA and includes the Chief Justice of the HCA.
LSL Act	<i>Long Service Leave (Commonwealth Employees) Act 1976.</i>
Manager	An employee’s direct manager who is usually the person to whom an employee reports to in Aurion and on a day-to-day basis for work-related matters and may include a person referred to as a supervisor.

ML Act	<i>Maternity Leave (Commonwealth Employees) Act 1973</i> and any successor legislation.
NES	National Employment Standards as set out in Part 2-2 of the FW Act.
Non-ongoing employee	Refers to the engagement of employees for either a specified term or for the duration of a specified task; or for duties that are irregular or intermittent as provided in section 26(3) of the HCA Act and consistent with the FW Act.
Ongoing	Refers to the ongoing engagement of employees as provided in section 26(3) of the HCA Act.
Ordinary hours, duty or work	An employee's usual hours worked in accordance with this agreement and does not include additional hours.
Partner	Spouse or de facto partner.
Part-time employee	An employee employed to work less than an average of 37.5 hours per week in accordance with this Agreement.
Primary caregiver	A pregnant employee with an entitlement under the ML Act, or an employee other than a casual employee who has primary care responsibility for a child who is born to them or who is adopted or in long-term foster care as per the clauses on adoption and long-term foster care in this Agreement.
Relevant employee	Is an affected employee.
Secondary caregiver	An employee, other than a pregnant employee or casual employee, who has secondary care responsibility for a child who is born to them, or for a child who is adopted or in long-term foster care as per the clauses on adoption and long-term foster care in the Agreement.
Senior Executive Employee	Band 1 or 2 level equivalent employee.
Span of hours	Normally 8.00am to 6.00pm Monday to Friday, unless varied by formal agreement between the employee and CE&PR.
Substantive classification	The classification level at which a HCA employee was engaged at, or last promoted to.
SWS	Supported Wage System.
TOIL	Time off in lieu.
VR	Voluntary redundancy.

SECTION 2 – REMUNERATION

Salary

17. The salary ranges for each classification and the salaries payable to the HCA's employees will be increased as follows:
 - 17.1. 4% increase backdated to 1 March 2024;
 - 17.2. 3.8% increase from the first full pay period on or after 1 March 2025 (13 March 2025); and
 - 17.3. 3.4% increase from the first full pay period on or after 1 March 2026 (12 March 2026).
18. The salary rates for all classification levels are set out in [Attachment A – Base Salaries](#) of this Agreement.

Payment of salaries

19. Employees will be paid fortnightly in arrears by electronic funds transfer into a financial institution account of the employee's choice, based on their annual salary using the following formula:

$$\text{Fortnightly salary} = \frac{\text{Annual salary} \times 12}{313}$$

Note: This formula is designed to achieve a consistent fortnightly pay rate without significant variability year-to-year. It reflects that the calendar year is not neatly divisible into 26 fortnightly periods. There are 313 fortnightly pay cycles within a 12 year period.

Salary setting

20. Where an employee is engaged or is promoted in the HCA, the employee's salary will be paid at the minimum of the salary range of the relevant classification, unless the CE&PR determines a higher salary within the relevant salary range under these provisions.
21. The CE&PR may determine the payment of salary at a higher value within the relevant salary range of the relevant classification and the date of effect at any time.
22. In determining a salary under these provisions, the CE&PR will have regard to a range of factors (as relevant) including the employee's experience, qualifications and skills.
23. Where an employee commences ongoing employment in the HCA immediately following a period of non-ongoing employment in the HCA for a specified term or task, the CE&PR will determine the payment of the employee's salary within the relevant salary range of the relevant classification which recognises the employee's prior service as a non-ongoing employee in the HCA.
24. Where an employee commences ongoing employment in the HCA immediately following a period of casual employment in the HCA, the CE&PR will determine the payment of salary within the relevant salary range of the relevant classification which recognises the employee's prior service as a casual employee in the HCA.
25. Where an employee (other than Associates) commences with the HCA from the APS, Parliamentary Services, ACT Government Service or another Commonwealth public sector organisation, and they

provide evidence to demonstrate that their salary is above the maximum of the salary range for the HCA classification, the CE&PR may maintain the employee's salary at that level, until it is absorbed into the salary range for that classification, unless the CE&PR determines otherwise.

26. Where the CE&PR determines that an employee's salary has been incorrectly set, the CE&PR may determine the correct salary and the date of effect.

Incremental advancement

27. Employees (other than casual employees) will advance to the next highest pay point for their substantive classification if they have not reached the maximum pay point and:
 - 27.1. they have been at their current substantive pay point for 12 months; and
 - 27.2. they are performing at the expected standard for the substantive classification level, as determined by their manager through the Performance Management and Development System.
28. Employees who are acting at a higher classification, and satisfy other eligibility criteria, will be eligible for salary progression at both their substantive and acting classifications.
29. Salary progression while acting at a higher classification will be retained for future acting duties at, or promotion to, that classification.
30. Eligible service for salary progression will include:
 - 30.1. 1 increment during periods of paid and unpaid parental leave; and
 - 30.2. service while employed on a non-ongoing basis.
31. Casual employees who have not reached the maximum pay point are entitled to advance to the next point in that level every 2 calendar years, providing they have:
 - 31.1. been at their current substantive pay point for 24 months; and
 - 31.2. they are performing at the expected standard for the substantive classification level, as determined by their manager through the Performance Management and Development System.

Superannuation

32. The HCA will make compulsory employer contributions as required by the applicable legislation and fund requirements.
33. Employer superannuation contributions will be paid on behalf of employees during periods of paid leave that count as service.
34. The HCA will make employer superannuation contributions to any eligible superannuation fund, provided that it accepts payment by fortnightly electronic funds transfer (EFT) using a file generated by the HCA's payroll system.

Method for calculating superannuation salary

35. The HCA will provide an employer contribution of 15.4% of the employee's Fortnightly Contribution Salary (FCS) for employees in the Public Sector Superannuation Accumulation Plan (PSSap) and employees in other accumulation superannuation funds.
36. Employer contributions will be made for all employees covered by this Agreement.
37. Employer contributions will not be reduced by any other contributions made through salary sacrifice arrangements.

Payment during unpaid parental leave

38. Employer contributions will be paid on periods of unpaid parental leave in accordance with the requirements of the PSSap or PSS fund where the employee is a member of the PSSap or PSS, and up to a maximum of 52 weeks where the employee is a member of an accumulation fund other than PSSap.

Overpayments

39. An overpayment occurs if the CE&PR (or the HCA) provides an employee with an amount of money to which the employee was not entitled (including but not limited to salary, entitlements, allowances, travel payment and/or other amount payable under this agreement).
40. Where the CE&PR considers that an overpayment has occurred, the CE&PR will provide the employee with notice in writing. The notice will provide details of the overpayment.
41. Where an employee seeks to dispute the amount of the overpayment, they will advise the CE&PR in writing within 28 calendar days of receiving the notice. In this event, no further action will be taken until the employee's response has been reviewed.
42. If verified, the overpayment will be treated as a debt to the Commonwealth that must be repaid to the HCA in full by the employee.
43. The CE&PR and the employee will discuss a suitable recovery arrangement. A recovery arrangement will take into account the nature and amount of the debt, the employee's financial circumstances and any potential hardship to the employee.
44. The CE&PR and employee may agree to make a deduction from final monies where there is an outstanding payment upon cessation of employment.
45. Interest will not be charged on overpayments.
46. Nothing in the preceding clause prevents:
 - 46.1. the HCA from pursuing recovery of the debt through other available legal avenues; or
 - 46.2. the employee or the HCA from seeking approval to waive the debt.

Supported wage system

47. An employee can get a percentage of the relevant pay rate in line with their assessed capacity to do the work if they:

- 47.1. have a disability;
 - 47.2. meet the criteria for a Disability Support Pension; and
 - 47.3. are unable to perform duties to the capacity required.
48. Specific conditions in relation to the SWS are detailed in [Attachment B](#).

SECTION 3 – ALLOWANCES

Higher duties

49. Where a role needs to be filled for 5 working days or more, HDA will be paid to any temporary occupants of the role acting at a classification higher than their substantive position.
50. HDA will be equal to the difference between the employee's current salary and the salary that would be payable if they were promoted to the higher classification, or as otherwise determined by the CE&PR.
51. Where an employee is found to be eligible for salary progression at their acting level, they will receive an appropriate increase in the rate of HDA. The employee's salary level will be retained for any subsequent higher duties, provided the gap between periods of acting is no more than 12 months.
52. Where an employee is assigned only part of the higher duties, the CE&PR will determine the amount of allowance payable.
53. HDA will be payable while an employee is acting at a higher classification as part of a job sharing arrangement where the duration of the arrangement is at least 5 working days.
54. Higher duties are payable during periods of paid leave where the higher duties would have otherwise continued.
55. An employee assigned higher duties at the Senior Executive classification level for 5 days or more will be paid a HDA determined by the CE&PR.
56. Casual Court Reporting employees will be paid HDA when performing the role of Editor for 1 hour or more.

Workplace responsibility allowances

57. A workplace responsibility allowance will be paid where the HCA has appointed or elected an employee to one of the following roles:
 - 57.1. First Aid Officer (as designated by the First Aid Committee);
 - 57.2. Health and Safety Representative;
 - 57.3. Chief Fire Warden;
 - 57.4. Harassment Contact Officer; and
 - 57.5. Mental Health First Aid Officer.
58. If an employee is appointed to a workplace responsibility position and has successfully completed the relevant training program including any refresher course, they will receive a workplace responsibility allowance of \$29.34 per fortnight. This allowance will continue to be increased in line with salary increases.
59. An employee is not to receive more than one workplace responsibility allowance unless approved by the CE&PR due to operational requirements.

60. The full allowance is payable regardless of flexible work and part-time arrangements.
61. An employee's physical availability to undertake the role will be considered by agencies when appointing and reappointing employees to these roles. This is noting that not all workplace responsibility roles will necessarily require a physical presence in the workplace for the role to be successfully undertaken, such as Harassment Contact Officers, Mental Health First Aid Officers and Health and Safety Representatives.
62. This allowance does not count as salary for superannuation.

Community language allowance

63. A community language allowance will be paid where the CE&PR determines that an employee is regularly required to use their ability to communicate in Braille or a language other than English (including First Nations languages and AUSLAN) in the course of their work, and the employee meets the required level of competency set by the CE&PR.
64. The allowance is paid in accordance with the employee's level of competency:

Table 1: Community language allowance rates

Rate	Standard	Rate from 14 March 2024	Rate from 13 March 2025	Rate from 12 March 2026
1	An employee who has adequate language skills, as determined by an individual or body approved by the CE&PR, for simple communication.	\$1,435 per annum	\$1,490 per annum	\$1,541 per annum
2	An employee who is certified by the National Accreditation Authority for Translators and Interpreters (NAATI) as a Translator or Interpreter at any level; or is assessed to be at the equivalent level by an individual or body approved by the CE&PR.	\$2,870 per annum	\$2,979 per annum	\$3,080 per annum

65. The allowance is calculated annually and paid fortnightly.
66. The full allowance is payable regardless of flexible work and part-time arrangements.
67. The allowance is payable during periods of paid leave.
68. The allowance counts as salary for superannuation purposes and for calculating retirement and redundancy entitlements.

On call allowance

69. Where an employee is directed by their manager to be contactable and available to work outside the span of hours, the CE&PR may approve payment of an on call allowance of \$200 per fortnight.
70. Employees required to be on call for a period of less than 1 week will be paid on a pro-rata basis for each 24-hour period.
71. If employees are on call and recalled to work (in the office or remotely):
 - 71.1. HCE Level 1 – 6 employees (other than Chambers Staff) will be paid overtime and a minimum payment of 1 hour will apply;
 - 71.2. Executive Level employees will normally be granted time off in lieu, or paid overtime if the CE&PR determines there are exceptional circumstances; and
 - 71.3. Chambers staff may be granted time off as outlined in the Guide for Justices – Chambers Staff.

Executive Assistant and Associate allowance

72. Executive Assistants (including the Executive Assistant to the CE&PR) and Associates (HCE Level 6) will be paid an allowance equivalent to 8% of their annual salary. This allowance is in lieu of overtime outlined in clause 120 and, in relation to Associates, for reasonable additional hours worked outlined in clause 93.
73. This allowance will be paid in equal fortnightly instalments and will count as salary for superannuation.

SECTION 4 – CLASSIFICATION LEVELS

Work level standards

74. The classification structure for the HCA is set out in [Attachment A – Base Salaries](#). The classification structure will be in line with the APS Work Level Standards.
75. Applications for re-classification will have regard to the APS Work Level Standards where appropriate.

SECTION 5 – WORKING HOURS AND ARRANGEMENTS

Job security

Commitment to ongoing employment

76. The HCA recognises that the usual basis for engagement is as an ongoing employee when making its engagement decisions.

Pathways to permanency

77. The HCA will comply with the casual conversion provision of the FW Act. In addition, the HCA recognises that a proactive approach, including regularly reviewing casual and non-ongoing arrangements, is both a fair and efficient approach to supporting ongoing employment as the usual form of employment.

Casual employment

78. A casual employee is defined in the Definitions section of this Agreement.

79. A decision to expand the use of casual employees is subject to the consultation obligations set out in clause 356.

80. The HCA will regularly review the working arrangements of casuals to assess if they are genuinely performing irregular and intermittent duties and report de-identified outcomes to the Employee Consultative Forum.

81. Remuneration for casual employees shall be on an hourly basis. A casual employee shall receive a 25% loading on the base hourly rate of their classification as set out in this Agreement.

82. The casual loading is paid in lieu of payment for public holidays not worked, notice of termination of employment, redundancy benefits and all paid leave entitlements, other than leave required by legislation including long service leave in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976* and leave for family and domestic violence support.

83. A casual employee will be entitled to a payment of 3 hours when a rostered shift is cancelled with less than 24 hours' notice.

84. A casual employee shall be engaged for a minimum of 3 hours per engagement or shall be paid for a minimum of 3 hours at the appropriate casual rate.

Casual Court Reporting Employees

85. The salary rate for casual Court Reporting employees is the HCE Level 3.3. A casual Court Reporting employee who lacks the necessary qualifications and/or experience to perform duties to the required standard of proficiency will be paid a training rate, calculated at 75% of the HCE Level 3.3 rate until the employee is considered to be fully proficient and approved by the CE&PR.

Non-ongoing employment

86. A non-ongoing employee is defined in the Definitions section.

87. Non-ongoing employees will generally have the same terms and conditions of employment as ongoing employees under this Agreement's terms, except:

- 87.1. Personal/carer's leave accrual at clause 188; and
- 87.2. the redundancy provisions at clauses 423 - 432 subject to clause 88;
- 88. If the non-ongoing employee's contract is not permitted by section 333E of the FW Act, then the redundancy provisions at clauses 423 - 432 will apply.
- 89. If the redundancy provisions apply to an employee under clause 88, the HCA must adhere to the consultation requirements at clause 356.
- 90. All Associate roles are non-ongoing positions. An Associate to a Justice will be engaged for a 12 month or 18 month period.

Working hours

Standard weekly working hours

- 91. The ordinary hours of work for employees (other than Associates) are 7 hours and 30 minutes per day (37.5 hours per week) for full-time employees, or for employees with a part-time work agreement the hours set out in the Agreement.
- 92. Managers and employees are mutually responsible for discussing a regular pattern of hours and workload requirements, to achieve organisational priorities and support individual and team wellbeing.
- 93. The ordinary hours of work for Associates will be 7 hours and 30 minutes per day (37.5 hours per week). Such ordinary hours will be worked between the standard span of hours (8.00am – 6.00pm Monday to Friday). Associates may be requested to work reasonable additional hours as at the direction of the Justices. Such reasonable additional hours will only be worked within the standard span of hours and with a meal break of between 30 minutes and 1 hour being taken after no more than 5 hours work.
- 94. Chambers Staff (other than the Chief of Staff) must record their attendance in the HCA's timekeeping system. Timesheets will be monitored to assist in ensuring Chambers Staff are not routinely working additional hours and to ensure the continued health and wellbeing of Chambers Staff is maintained.

Standard span of hours

- 95. Employees may vary their work pattern across the 8.00am – 6.00pm span of hours Monday to Friday, as agreed with their manager.
- 96. The 8.00am – 6.00pm Monday to Friday span of hours may be formally varied to an alternative 12-hour period by agreement between the employee and CE&PR. Work performed within the alternative span of hours will not attract overtime or TOIL.
- 97. Where agreement cannot be reached on a regular pattern of hours, or an employee's attendance is unsatisfactory, the CE&PR may require the employee to work standard hours. This does not reduce an employee's entitlement to request flexible work under the NES.
- 98. Employees who are going to be absent or later than usual must advise their manager as soon as practicable, ideally prior to their usual starting time.

99. Where the CE&PR determines an employee's absence from work is unauthorised, the absence will be unpaid and will not count as service for any purpose, unless otherwise required by law.

Additional Hours

100. Employees are not expected to work for more than 10 hours on a day, or 5 consecutive hours without taking a break of at least 30 minutes, unless there are exceptional circumstances.

Flex time and recording attendance (HCE Level 1 – 6 employees)

101. HCE Level 1 – 6 employees (other than Chambers Staff and the Executive Assistant to the CE&PR) must record their attendance in the HCA's timekeeping system for manager approval.
102. HCE Level 1 – 6 employees who work more or less than their ordinary hours within the span of hours will incur a one-for-one flex credit or debit.
103. Accrued flex credits should be taken as soon as practicable, subject to operational requirements and by agreement between the employee and manager.
104. Where an employee's flex credit exceeds 20 hours (pro-rata for part-time), or they have a flex debit of 10 hours or more, they must agree with their manager to a plan to return their balance within these parameters over the next 4 weeks.
105. Employees are not to work excessive hours as a matter of course.

Executive Level employees TOIL

106. Executive level (EL) employees are sometimes required to work reasonable additional hours. Consistent with the NES, employees may refuse to work unreasonable additional hours.
107. EL employees seeking to access TOIL are required to keep records of their working hours using a method determined by the HCA.
108. A supervisor is to grant TOIL in recognition of reasonable additional hours worked. TOIL granted to employees can be taken as whole or part days.
109. The working arrangements for an EL employee should be agreed through discussion between the manager and the EL employee. The discussion should include consideration of the work requirements that will safely get the job done and reasonably allow the employee to balance their work and personal life.
110. An EL employee's working arrangements and actual hours worked should be discussed on at least a quarterly basis between the EL employee and their manager.
111. The pattern of hours is to be flexible enough to accommodate short term peaks and troughs in workload and include expected reasonable additional hours. The agreed pattern of hours is to be recorded.
112. Requests from EL employees to access flexible time off which are consistent with their agreed working arrangements are to be supported, subject to operational requirements.

Overtime

113. Overtime is paid as follows:
- 113.1. Monday to Saturday – time and a half for the first 3 hours and double time for each hour thereafter; and
 - 113.2. Sunday and Public Holidays – double time.
114. HCE Level 1 – 6 employees (other than Chambers Staff) will be paid overtime where they are directed by the CE&PR to undertake work:
- 114.1. outside the span of hours; or
 - 114.2. on public holidays or during Christmas closedown; or
 - 114.3. without an eight-hour break between workdays.
115. Casual Court Guides will be paid overtime where they are rostered to undertake work:
- 115.1. before 8.00am on normal working days;
 - 115.2. for catered functions that commence before 8.00am, from the start until 9.35am with a minimum 3 hours if not continuous with normal duty;
 - 115.3. after 4.35pm on any weekday; and
 - 115.4. on Saturdays, Sundays and Public Holidays.
116. Part-time employees are eligible to be paid overtime rates when they are directed to work on days other than agreed working days.
117. Where overtime is not continuous with an employee's normal work pattern, the minimum time period for which payment at the relevant rate will be made is 3 hours.
118. Where an employee is directed to work overtime for a continuous period of at least 1 hour outside the bandwidth which extends over a meal period, they will be paid a meal allowance where a meal break is taken during a meal period. For the purposes of this clause, a meal period is:
- 118.1. Monday to Friday -
 - 118.1.1. 7.00am – 7.30am;
 - 118.1.2. 7.00pm – 7.30pm; and
 - 118.1.3. Midnight – 1.00am.
 - 118.2. Weekends and public holidays -
 - 118.2.1. 7.00am – 7.30am;
 - 118.2.2. 12.30pm – 1.30pm;
 - 118.2.3. 7.00pm – 7.30pm; and

118.2.4. Midnight – 1.00am.

119. An employee who chooses to work additional hours on a weekend without direction from the CE&PR or has agreement to vary their span of hours to work on a weekend, will not be paid overtime for this work.
120. The Executive Assistant to the CE&PR and Chambers Staff who receive the allowance set out in clause 72 in lieu of overtime are not entitled to overtime.

Eight-hour break

121. Employees are entitled to an eight-hour break, plus reasonable travel time to and from work (where required), between working days. Where the eight-hour break results in absence for part or all of their next working day, the employee will not be required to make up those hours and their salary will be unaffected.
122. The CE&PR may direct an employee to return to work without an eight-hour break, plus reasonable travel time, for urgent or high priority work. Where this occurs employees will be paid overtime until they are able to take an eight-hour break.

Flexible working arrangements (including working from home)

123. The HCA, employees and their union recognise:
- 123.1. the importance of an appropriate balance between employees' personal and working lives, and the role flexible working arrangements can play in helping to achieve this balance;
 - 123.2. access to flexible work can support strategies to improve diversity in employment and leadership in the HCA;
 - 123.3. access to flexible work supports capability, and can assist in attracting and retaining the employees needed to deliver the operational requirements of the HCA;
 - 123.4. that flexibility applies to all roles in the HCA, and different types of flexible working arrangements may be suitable for different types of roles or circumstances; and
 - 123.5. requests for flexible working arrangements are to be considered on a case-by-case basis, with a bias towards approving requests.
124. The HCA is committed to engaging with employees and their union to build a culture that supports flexible working arrangements across the HCA at all levels. This may include developing and implementing strategies through the Employee Consultative Forum.
125. Flexible working arrangements include, but are not limited to, changes in hours of work, changes in patterns of work and changes in location of work.

Requesting formal flexible working arrangements

126. The following provisions do not diminish an employee's entitlement under the NES.
127. An employee may make a request for a formal flexible working arrangement.
128. The request must:
- 128.1. be in writing;

- 128.2. set out details of the change sought (including the type of arrangement sought and the proposed period the arrangement will operate for); and
- 128.3. set out the reasons for the change, noting the reasons for the change may relate to the circumstances set out at section 65(1A) of the FW Act.
129. The CE&PR must provide a written response to a request within 21 days of receiving the request.
130. The response must:
- 130.1. state that the CE&PR approves the request and provide the relevant details in clause 131; or
- 130.2. if following discussion between the CE&PR and the employee, the CE&PR and the employee agree to a change to the employee's working arrangements that differs from that set out in the request – set out the agreed change; or
- 130.3. state that the CE&PR refuses the request and include the following matters:
- 130.3.1. details of the reasons of refusal; and
- 130.3.2. set out the HCA's particular business grounds for refusing the request, explain how those grounds apply to the request; and
- 130.3.3. either:
- 130.3.3.1. set out the changes (other than the requested change) in the employee's working arrangements that would accommodate, to any extent, the employee's circumstances outlined in the request and that the HCA would be willing to make; or
- 130.3.3.2. state that there are no such changes; and
- 130.3.4. state that a decision to refuse the request, or failure to provide a written response within 21 days is subject to the dispute resolution procedures of the enterprise agreement, and if the employee is an eligible employee under the *Fair Work Act 2009*, the dispute resolution procedures outlined in section 65B and 65C of the *Fair Work Act 2009*.
131. Where the CE&PR approves the request, this will form an arrangement between the HCA and the employee. Each arrangement must be in writing and set out:
- 131.1. security and work health and safety requirements;
- 131.2. a review date (subject to clause 135); and
- 131.3. the cost of establishment (if any).
132. The CE&PR may refuse to approve the request only if:
- 132.1. the HCA has discussed the request with the employee; and
- 132.2. the HCA has genuinely tried to reach an agreement with the employee about making changes to the employee's working arrangements to accommodate the employee's circumstances (subject to any reasonable business grounds for refusal); and

- 132.3. the HCA and the employee have not reached such an agreement; and
 - 132.4. the HCA has had regard to the consequences of the refusal for the employee; and
 - 132.5. the refusal is on reasonable business grounds.
133. Reasonable business grounds include, but are not limited to:
- 133.1. the new working arrangements requested would be too costly for the HCA;
 - 133.2. there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested;
 - 133.3. it would be impractical to change the working arrangements of other employees, or to recruit new employees, to accommodate the new working arrangements requested;
 - 133.4. the new working arrangements requested would be likely to result in a significant loss in efficiency or productivity;
 - 133.5. the new working arrangements requested would be likely to have a significant negative impact on customer service; and
 - 133.6. it would not be possible to accommodate the working arrangements without significant changes to security requirements, or where work health and safety risks cannot be mitigated.
134. For First Nations employees, the HCA must consider connection to country and cultural obligation in responding to requests for altering the location of work.
135. Approved flexible working arrangements will be reviewed by the HCA and the employee after 12 months, or a shorter period, if agreed by the employee. This is to ensure the effectiveness of the arrangement.

Varying, pausing or terminating flexible working arrangements

136. An employee may request to vary an approved flexible working arrangement in accordance with clause 128. An employee may request to pause or terminate an approved flexible working arrangement.
137. The CE&PR may vary, pause or terminate an approved flexible working arrangement on reasonable business grounds, subject to clause 139.
138. The HCA must provide reasonable notice if varying, pausing or terminating a flexible working arrangement without the agreement of the employee, having regard to the circumstances of the employee. Exceptions to this requirement are urgent and critical operational circumstances or an employee's demonstrated and repeated failure to comply with the agreed arrangements.
139. Prior to varying, pausing or terminating the arrangement under clause 137, the HCA must have:
- 139.1. discussed with the employee their intention to vary, pause or terminate the arrangement with the employee;
 - 139.2. genuinely tried to reach an agreement with the employee about making changes to the employee's working arrangements to accommodate the employee's circumstances (subject

- to any reasonable business grounds for alteration);
- 139.3. had regard to the consequences of the variation, pause or termination for the employee;
 - 139.4. ensured the variation, pause or termination is on reasonable business grounds; and
 - 139.5. informed the employee in writing of the variation, pause or termination to the approved flexible working arrangement, including details set out in clause 130.3.

Working from home

140. The HCA will not impose caps on groups of employees on the time that may be approved to work from home or remotely, with each request to be considered on its merits.
141. The HCA may provide equipment necessary for, or reimbursement, for all or part of the costs associated with establishing a working at home arrangement.
142. An employee working at home is covered by the same employment conditions as an employee working at an office site under this Agreement.
143. The HCA will provide employees with guidance on working from home safely.
144. Employees will not be required by the HCA to work from home unless it is lawful and reasonable to do so. This may include where circumstances prevent attendance at an office during a pandemic or natural disaster. In these situations, the HCA will consider the circumstances of the employees and options to achieve work outcomes safely.

Ad-hoc arrangements

145. Employees may request ad-hoc flexible working arrangements. Ad-hoc arrangements are generally one-off or short term arrangements for circumstances that are not ongoing.
146. Employees should, where practicable, make the request in writing and provide as much notice as possible.
147. Requests for ad-hoc arrangements are not subject to the request and approval processes detailed in clauses 126 – 135.
148. The HCA should consider ad-hoc requests on a case-by-case basis, with a bias to approving ad-hoc requests, having regard to the employee's circumstances and reasonable business grounds.
149. Where a regular pattern of requests for ad-hoc arrangements from an employee emerges, the HCA should consider whether it is appropriate to seek to formalise the arrangement with the employee.

Altering span of hours

150. An employee may request to work an alternative regular span of hours (bandwidth hours). If approved by the CE&PR, hours worked on this basis will be treated as regular working hours and will not attract overtime payments. The HCA will not request or require that any employee alter their regular span of hours (bandwidth hours) under these provisions.

Employees with caring responsibilities

151. The HCA recognises and values the importance of supporting employees with caring responsibilities, whether it be for children, family members or other dependants. The HCA is committed to providing a supporting and inclusive work environment that enables employees to balance their work and caring responsibilities effectively.
152. Employees with caring responsibilities may be entitled to various forms of leave, including:
- 152.1. Parental leave under clause 224;
 - 152.2. Carer's leave under clause 185; and
 - 152.3. Compassionate leave under clause 242.
153. Employees with caring responsibilities may also be able to access flexible working arrangements, such as part-time work, job sharing or working from home. Please see clauses 123 - 144 for further information.

Range of locations of work

154. The HCA recognises the importance of providing employees with flexibility in their working arrangements, including the opportunity to work at other HCA locations.
155. Any requests by employees to work at another location must be cost-neutral and all expenses incurred will be the responsibility of the employee.
156. The availability of suitable workspaces at the location is also a key consideration and will need to be assessed prior to approval being granted.

Part-time work

157. Employees engaged on a full-time basis, will not be compelled to convert to part-time employment.
158. Employees engaged on a part-time basis, will not be compelled to convert to full-time employment.

Christmas closedown

159. Christmas closedown is the period from the end of the last working day before Christmas Day to the start of the first working day after New Year's Day.
160. Employees are not required to take leave and are not normally required to work during Christmas closedown and will continue to be paid for their ordinary hours during this period.

Public holidays

161. Employees are entitled to the following holidays each year in accordance with the *Fair Work Act 2009*:
- 161.1. 1 January (New Year's Day);
 - 161.2. 26 January (Australia Day);
 - 161.3. Good Friday and the following Monday;
 - 161.4. 25 April (Anzac Day);

- 161.5. the King's birthday holiday (on the day on which it is celebrated in a State or Territory or a region of a State or Territory);
 - 161.6. 25 December (Christmas Day);
 - 161.7. 26 December (Boxing Day); and
 - 161.8. any other day, or part day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday, other than a day or part day, that is excluded by the *Fair Work Regulations 2009* from counting as a public holiday.
162. Employees are entitled to the public holidays observed in their normal work location.
 163. If a public holiday falls on a Saturday or Sunday, and if under a State or Territory law, a day or part day is substituted for one of the public holidays listed above, then the substituted day or part day is the public holiday.
 164. The CE&PR and an employee may agree on the substitution of a day or part day that would otherwise be a public holiday, having regard to operational requirements.
 165. The CE&PR and an employee may agree to substitute a cultural or religious day of significance to the employee for any day that is a prescribed holiday. If the employee cannot work on the prescribed holiday, the employee will be required to work make-up time at times to be agreed.
 166. Where an employee substitutes a public holiday for another day, they will not be paid penalty rates for working their normal hours on the public holiday.
 167. Where a public holiday falls during a period when an employee is absent on leave (other than annual, paid Personal or Defence Service Sick Leave) there is no entitlement to receive payment as a public holiday. Payment for that day will be in accordance with the entitlement for that form of leave (e.g. If on Long Service Leave on half pay, payment is at half pay.)
 168. If under a law of a State or Territory every Sunday is declared or prescribed by or under that law to be a public holiday, there is no entitlement to receive payment as a public holiday if the employee would have worked, or does perform work, on that day. In these circumstances, payment will only be made at the public holiday rate if the employee performs work on that day, and the Sunday would otherwise be a public holiday under clause 161.1 – 161.8.
 169. Where a full-time employee, including but not limited to employees on compressed hours, has a regular planned day off which would fall on a public holiday, the CE&PR may allow the employee to change their planned day off so that it does not fall on a public holiday. If it is not possible to change their planned day off, the employee will be credited an equivalent amount of time to their regular hours for the day in flex credits or EL TOIL in recognition of their planned day off.
 170. A member of Chambers Staff may agree to work on a public holiday where it is not a public holiday in the State or Territory in which the Justice for whom they work is residing. Chambers Staff will not be required to work on a public holiday and, if they do work on a public holiday, will receive a day off in lieu.

SECTION 6 - LEAVE

Annual leave

171. Employees (other than casual employees) are entitled to 4 weeks (20 days) paid annual leave per year of service, accrued daily, and credited fortnightly. Annual leave for part-time employees accrues on a pro-rata basis.
172. The CE&PR may approve requests for annual leave at half pay subject to operational requirements. Annual leave cannot be taken at half pay where the employee has an excessive leave balance.
173. Where annual leave is cancelled or the employee is recalled to duty, the employee will be reimbursed travel costs not recoverable from insurance or other sources. Evidence of costs may be required.
174. Employees will receive payment in lieu of any untaken annual leave upon separation from the HCA.
175. An annual leave balance is excess if an employee has more than 50 days credit.
176. Where employees have excess annual leave, they must agree to a plan with their manager to take reasonable breaks from work and reduce the excess balance to 50 days or below.
177. If agreement cannot be reached, the CE&PR may direct an employee to take one or more periods of annual leave to reduce the balance to 50 days or below within the next 12 months. The direction will be in writing and provide at least 30 calendar days' notice.
178. Managers will encourage employees to use an appropriate amount of annual leave each year in consideration of the welfare of employees and to ensure that the accrued liability for annual leave for their work area is not excessive.

Annual leave cash-out

179. Employees may cash out some of their annual leave, provided they have taken at least 5 or more consecutive days of annual or long service leave in the preceding 12 months and will have a balance of at least 20 days remaining.
180. Each cashing out of a particular amount of annual leave must be by separate agreement in writing between the CE&PR and the employee.
181. Payment will be the rate that would have been payable had the employee taken the annual leave.

Purchased leave

182. Employees, subject to CE&PR approval and subject to operational requirements, may purchase up to 20 days additional annual leave (pro rata for part-time) for each 12-month period, where they do not have an excess annual leave balance.
183. Purchased leave must be taken within 12 months of the initial date of purchase.
184. The recovery of salary for this leave will be through fortnightly pre-tax deductions, with any balance owing on cessation from the HCA recoverable from final monies.

Personal/Carer's leave

Entitlement

185. Employees receive 18 days paid personal/carer's leave per annum (pro-rata for part-time employees).
186. The CE&PR may approve personal/carer's leave at half pay.

Accrual

187. For an ongoing employee, 18 days personal/carer's leave will be credited upon the employee's commencement with the HCA. In subsequent years, the employee's leave will accrue daily, credited at least monthly.
188. For a non-ongoing employee, the personal/carer's leave will be credited upon the employee's commencement with the HCA. This will be 18 days leave pro-rated based on the employee's initial contract period and is capped at 18 days. After the initial contract period or 12 months, whichever is shorter, or where the employee has an existing entitlement to personal/carer's leave, leave will accrue daily, credited at least monthly.
189. A casual employee may be absent without pay when not fit for work due to personal illness or injury. A casual employee may access 2 days' unpaid carer's leave per occasion, consistent with the NES.

Usage

190. Personal/carer's leave to be used:
- 190.1. due to personal illness or injury;
 - 190.2. to attend appointments with a registered health practitioner, including attendance for COVID and other pandemic vaccinations;
 - 190.3. to manage a chronic condition;
 - 190.4. provide care or support for a family or household member or a person they have caring responsibilities for, because:
 - 190.4.1. of a personal illness or injury affecting the other person; or
 - 190.4.2. of an unexpected emergency affecting the other person.

Carers

191. A person that an employee has caring responsibilities for may include a person who needs care because they:
- 191.1. have a medical condition, including when they are in hospital;
 - 191.2. have a mental illness;
 - 191.3. have a disability;
 - 191.4. are frail or aged; or
 - 191.5. are a child, not limited to a child of the employee.

Evidence

192. Evidence may be requested after:
- 192.1. more than 3 consecutive days; and
 - 192.2. more than 8 days without evidence in a calendar year.
193. Acceptable evidence includes:
- 193.1. a certificate from a registered health practitioner;
 - 193.2. a statutory declaration; and
 - 193.3. another form of evidence approved by the CE&PR.
194. A certificate from a registered health practitioner may be used as evidence of a chronic condition for up to 12 months for both personal and carer's leave.
195. In exceptional circumstances such as long periods of illness, the CE&PR may grant additional paid personal leave where existing credits have expired.

Portability of leave

196. Where an employee is engaged as an ongoing or non-ongoing employee in the HCA, and immediately prior to the engagement the person was an ongoing or non-ongoing employee in the APS, Parliamentary Services, ACT Government Service or another Commonwealth public sector organisation, at the employee's request, any unused accrued recognised annual leave (excluding accrued leave paid out on separation) and personal/carer's leave may be recognised.
197. Where a person is engaged as an ongoing employee in the HCA, and immediately prior to the engagement the person was employed as a non-ongoing employee at the HCA, at the employee's request, any unused accrued annual leave, and personal/carer's leave will be recognised.
198. The CE&PR may recognise a newly engaged employee's prior service for personal/carer's leave from a State or Territory Government on engagement, provided there is not a break in continuity of service.
199. For the purposes of this provision, an employee with a break in service of less than 2 months is considered to have continuity of service.

Miscellaneous leave

200. Miscellaneous leave may be granted with or without pay for an appropriate purpose that is not provided for elsewhere in this Agreement. Miscellaneous leave may be granted for a purpose, including, but not limited to:
- 200.1. a sabbatical;
 - 200.2. volunteering;
 - 200.3. gender affirmation; or
 - 200.4. during a pandemic.
201. The CE&PR will consider requests in line with supporting evidence.

202. The CE&PR may decide that all or part of a period of Miscellaneous leave is with full or part pay, or without pay.

Miscellaneous leave with pay

203. Miscellaneous leave with pay will count as service for all purposes.
204. Miscellaneous leave with pay will not be approved until annual and purchased leave credits are exhausted unless the CE&PR determines otherwise.

Miscellaneous leave without pay

205. Leave without pay, other than in the case of maternity, parental, adoption and fostering leave, may be granted subject to operational requirements by the CE&PR to assist an employee to better balance their work and personal responsibilities. Such leave would normally be short term of up to 52 weeks.
206. Periods of leave without pay greater than 30 calendar days per calendar year will not be counted as service (leave credits will not accrue) unless otherwise provided for by legislation. This will not break continuity of service.

Associates additional leave

207. Associates will receive an additional 5 days miscellaneous leave with pay. This leave may only be taken in the January or July recess after 6 months engagement with the Court.
208. Associates' additional leave must be taken during their time at the Court and will not be paid out on cessation of employment.

Re-crediting of leave

209. Where an employee is on:
- 209.1. annual leave; or
 - 209.2. purchased leave; or
 - 209.3. defence reservists leave; or
 - 209.4. First Nations Ceremonial leave; or
 - 209.5. NAIDOC leave; or
 - 209.6. cultural leave; or
 - 209.7. long service leave
- and becomes eligible for:
- 209.8. personal/carer's leave; or
 - 209.9. compassionate or bereavement leave; or
 - 209.10. emergency services leave; or
 - 209.11. leave to attend to family and domestic violence circumstances; or
 - 209.12. parental leave, premature birth leave, stillbirth leave, or pregnancy loss leave

the affected period of leave will be re-credited.

210. Where an employee is on personal/carer's leave and becomes eligible for parental leave, premature birth leave, stillbirth leave or pregnancy loss leave, the affected period of personal/carer's leave will be re-credited.
211. Re-crediting is subject to appropriate evidence of eligibility for the substituted leave.

Long service leave

212. An employee is eligible for long service leave in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976*.
213. The minimum period for which long service leave will be granted is 7 calendar days (whether taken at full or half pay). Long service leave cannot be broken with other periods of leave, except as otherwise provided by legislation or provided for at clause 209.

NAIDOC, ceremonial and cultural leave

NAIDOC Leave

214. First Nations employees may access up to 1 day per annum, of paid leave, to participate in NAIDOC week activities.
215. NAIDOC leave can be taken in part days.
216. Employees who are not First Nations employees will be supported to participate, on paid time, in NAIDOC week activities.

First Nations Ceremonial leave

217. First Nations employees may access up to 6 days of paid leave over 2 years to participate in significant activities associated with their culture or to fulfil ceremonial obligations.
218. The CE&PR may approve additional leave for cultural or ceremonial purposes as miscellaneous leave, with or without pay.
219. First Nations Ceremonial leave can be taken as part days.
220. First Nations Ceremonial leave is in addition to Compassionate and Bereavement Leave.

Cultural Leave

221. The CE&PR may grant up to 3 days paid leave per annum for the purpose of attending significant religious or cultural obligations associated with the employees' particular faith or culture.
222. The CE&PR may approve additional leave for cultural purposes as miscellaneous leave, with or without pay.
223. For the avoidance of doubt, this leave does not cover cultural purposes or obligations which are eligible for paid leave under clauses 217 - 220.

Parental leave

224. An employee who is a primary caregiver or secondary caregiver is entitled to parental leave up until 24 months from the date of the child's birth or placement (parental leave period). For the avoidance

of doubt, this is inclusive of all legislated leave entitlements. The parental leave period does not extend non-ongoing employment where the employment period remaining is less than 24 months.

- 225. For the pregnant employee, the parental leave period starts on commencement of maternity leave as per ML Act requirements and ceases 24 months from the date of birth. Medical certification requirements for the pregnant employee will be as required by the ML Act.
- 226. Conditions in this Agreement will continue to apply in circumstances where successor legislation to the ML Act does not provide parental leave conditions included in this Agreement.

Payment during parental leave

- 227. An employee is entitled to parental leave with pay as per clauses 229 and 230 below within the parental leave period. Any further parental leave during the parental leave period is without pay. Unused paid parental leave remaining at the end of the employee’s parental leave period will lapse. An employee may choose to use their accrued paid leave entitlements in accordance with usage and eligibility requirements in this Agreement during the parental leave period that would otherwise be without pay.
- 228. Employees newly engaged to the HCA from the APS, or another Commonwealth agency are eligible for the paid parental leave in clauses 229 and 230 where such paid leave had not already been provided by another APS or Commonwealth agency in the 24 months since the child’s date of birth or placement. If the paid leave used by the employee with the APS or previous Commonwealth agency is less than the limits specified in c clauses 229 and 230, the balance is available to the employee.
- 229. An employee who is a primary caregiver is entitled to parental leave with pay during the parental leave period to a maximum of 18 weeks as provided in **Table 2** below.

Table 2: Primary caregivers - circumstances for paid parental leave

Paid leave entitlement under the ML Act	Additional parental leave with pay under this Agreement for the primary caregiver
12 weeks’ paid maternity leave, including any reduced paid maternity leave period due to ML Act qualifying period rules	Paid leave to bring the total period of paid parental leave to 18 weeks
No ML Act eligibility or coverage	18 weeks

- 230. An employee who is a secondary caregiver is entitled to parental leave with pay during the parental leave period as provided in **Table 3** below.

Table 3: Secondary caregivers - circumstances for paid parental leave

Period which coincides with the parental leave period for the secondary caregiver	Parental Leave with pay under this Agreement
Date of commencement of this Agreement to 28 February 2025	8 weeks, or top up to 8 weeks where a lesser period of parental leave has already been provided

Period which coincides with the parental leave period for the secondary caregiver	Parental Leave with pay under this Agreement
1 March 2025 to 28 February 2026	11 weeks, or top up to 11 weeks where a lesser period of parental leave has already been provided
1 March 2026 to 27 February 2027	14 weeks, or top up to 14 weeks where a lesser period of parental leave has already been provided
On and from 28 February 2027	18 weeks, or top up to 18 weeks where a lesser period of parental leave has already been provided

231. **Flexibility** – Parental Leave with pay, whether provided as maternity leave under the ML Act or under this Agreement, can be accessed flexibly during the parental leave period and does not have to be taken in a single block. For the avoidance of doubt, parental leave can be used to replicate a part-time work arrangement and can be taken concurrently with another parent in relation to the same child.
232. **Rate of payment** – the rate of payment during paid parental leave is the same as for an absence on personal/carer’s leave and based on the employee’s weekly hours at the time of the absence.
233. **Half-pay option** – The payment of any paid parental leave may be spread over a maximum period of 36 weeks at the rate of, no less than, half the normal rate of salary. All paid parental leave counts as service for all purposes, where permitted by legislation.

Adoption and long-term foster care

234. An employee who is a primary caregiver or secondary caregiver is entitled to parental leave in accordance with this Agreement for adoption or long-term foster care, provided that the child:
- 234.1. is under 16 years as at the day (or expected day) of placement;
 - 234.2. has not lived continuously with the employee for a period of 6 months or more as at the day (or expected day) of placement; and
 - 234.3. is not (otherwise than because of the adoption) a child of the employee or the employee’s spouse or de facto partner.
235. Documentary evidence of approval for adoption or enduring parental responsibilities under formal fostering arrangements must be submitted when applying for parental leave for adoption or long-term foster carer purposes.

Stillbirth

236. Parents of a stillborn child remain eligible for parental leave, except for paid leave for the secondary caregiver which is 2 weeks.
237. A stillborn child is a child:
- 237.1. who weighs at least 400g at delivery or whose period of gestation was 20 weeks or more; and

237.2. who has not breathed since delivery; and

237.3. whose heart has not beaten since delivery.

Pregnancy loss leave

238. A pregnant employee who experiences, or an employee whose partner experiences, pregnancy loss is entitled to 1 weeks' paid leave. Pregnancy loss is a miscarriage or other loss of pregnancy that occurs between 12 and 20 weeks' gestation that is not a stillbirth.

239. Pregnancy loss leave is in addition to entitlements to compassionate leave for miscarriage provided under the FW Act and this Agreement.

Premature birth leave

240. In circumstances of a live birth before 37 weeks' gestation a pregnant employee, or an employee whose partner has given birth prematurely, is entitled to paid premature birth leave from the date of the child's birth up to just before 37 weeks' gestation. Parental leave with pay is then available from what would have been 37 weeks' gestation in accordance with parental leave in this Agreement, noting the parental leave period commences on the child's date of birth.

Transitional provisions

241. Employees eligible for paid leave under the ML Act are required under legislation to use their paid maternity leave first. In this circumstance, the employee may postpone their paid premature birth leave otherwise payable under clause 240 until after the legislated paid maternity leave is used.

Compassionate and bereavement leave

Compassionate leave

242. Employees will be eligible for 3 days' paid compassionate leave on each occasion when:

242.1. a member of their family, household or someone they have a close personal relationship with contracts, develops or sustains a life-threatening illness or injury; or

242.2. the employee or their spouse/partner has a miscarriage.

243. An employee may be asked to provide evidence to support their absences on compassionate leave.

244. Compassionate leave for an occasion may be taken as 3 consecutive days or in separate periods totalling 3 days.

245. For casual employees, compassionate leave is unpaid.

246. The CE&PR may approve further paid compassionate leave where requested and deemed appropriate.

Bereavement Leave

247. Employees will be eligible for 3 days' paid bereavement leave on each occasion when:

247.1. a member of their family, household or someone they had a close personal relationship with dies; or

247.2. a child is stillborn, where the child was a member of their family or household.

248. An employee may be asked to provide evidence to support their absences on bereavement leave.

- 249. Bereavement leave for an occasion may be taken as 3 consecutive days or in separate periods totalling 3 days.
- 250. For casual employees, bereavement leave is unpaid.
- 251. The CE&PR may approve 1 day paid bereavement leave for the death of a family pet.
- 252. The CE&PR may approve further paid bereavement leave where requested and deemed appropriate.

Emergency response leave

- 253. In line with section 108 of the FW Act, an employee who engages in an eligible community service activity can get emergency response leave to volunteer for emergency management duties for:
 - 253.1. the time engaged in the activity;
 - 253.2. reasonable travelling time; and
 - 253.3. reasonable recovery time.
- 254. Full-time and part-time employees will be able to access 20 working days of paid emergency response leave per year if required. The CE&PR may approve additional emergency response leave with pay.
- 255. Paid leave may be refused where the employee's role is essential to the HCA's response to the emergency.
- 256. An employee must provide evidence that the organisation requests their services. Employees can provide evidence before or as soon as practical after their emergency service activity.
- 257. The CE&PR may approve reasonable paid or unpaid leave for ceremonial duties and training.
- 258. Emergency response leave, with or without pay, will count as service.

Jury duty leave

- 259. HCA employees are exempt from jury service under section 8(b) of the *Jury Exemption Regulations 2019*.

Defence reserve leave

- 260. The CE&PR will give an employee leave with or without pay to undertake:
 - 260.1. Australian Defence Force Reserve continuous full-time service; and
 - 260.2. Cadet Force obligations.
- 261. An employee who is a Defence Reservist can take leave with pay for:
 - 261.1. up to 4 weeks (20 days) in each financial year; and
 - 261.2. an extra 2 weeks (10 days) in the first year of ADF Reserve service.
- 262. Leave can be built up and taken over 2 consecutive years. This includes the extra 2 weeks in the first year of service.
- 263. An employee who is an officer or instructor in a Cadet Force can get paid leave up to 3 weeks in each financial year to perform their duties. Cadet Force means:

- 263.1. Australian Navy Cadets;
 - 263.2. Australian Army Cadets; and
 - 263.3. Australian Air Force Cadets.
264. In addition to the entitlement at clause 260, paid leave may be granted to an employee to attend an interview or medical examination in connection with the enlistment of the employee in a Reserve Force of the Defence Force.
265. Paid Defence Reservist leave counts for service.
266. Unpaid Defence Reservist leave for 6 months or less counts as service for all purposes. This includes periods of continuous full-time service.
267. Unpaid leave taken over 6 months counts as service, except for annual leave.
268. An employee will not need to pay their tax free ADF Reserve salary to the HCA for any reason.

Defence service sick leave

269. An employee is eligible for Defence Service sick leave credits when the Department of Veterans Affairs (DVA) has certified that an employee's medical condition is as a result of either:
- 269.1. war-like service; or
 - 269.2. non-war like service.
270. An eligible employee can get 2 credits:
- 270.1. an initial credit of 9 weeks (45 days) Defence Service sick leave will apply as of the later below option:
 - 270.1.1.1. they start employment with the HCA; or
 - 270.1.1.2. DVA certifies the condition.
 - 270.2. an annual credit of 3 weeks (15 days) Defence Service sick leave.
271. An employee can use their Defence Service sick leave when a recognised medical practitioner provides a certificate that says they were away due to their DVA certified medical condition.
272. Unused annual credits can be built up to 9 weeks.
273. An employee cannot use annual credits until the initial credit is exhausted.
274. Defence Service sick leave is paid and counts as service for all purposes.

Leave to attend proceedings

275. An employee giving evidence before a Court, Tribunal or Royal Commission on behalf of the Commonwealth or a Commonwealth party in the course of their duties, will be considered on duty.
276. An employee who is not covered under clause 273, and is required to give evidence to, appear before or attend to instruct a representative at a Court, Tribunal or Royal Commission in relation to their

duties will be released from duty without loss of pay. This includes in proceedings relating to a dispute between the employee and the HCA.

277. An employee may otherwise be granted paid or unpaid miscellaneous leave by the CE&PR if required to give evidence to a Court, Tribunal or Royal Commission for any other reason.
278. The CE&PR may refuse to release an employee from duty having regard to business requirements and whether the employee's attendance is necessary for the Court, Tribunal or Royal Commission hearing.

SECTION 7 – EMPLOYEE SUPPORT AND WORKPLACE CULTURE

Blood donation

279. An employee can take reasonable time away from duty during their ordinary work hours to donate blood, plasma or platelets. It includes reasonable travel time and employers will consider employees on duty.
280. The employee must inform their supervisor or manager in advance of when they will be away from work before donating blood, plasma or platelets.

Vaccinations

281. The HCA offers annual influenza vaccinations at no cost to all employees, including casual employees.
282. Where the HCA requires an employee performing a role to be vaccinated for a particular condition, this vaccination will be offered at no expense to the employee.

Employee assistance program (EAP)

283. Employees, their spouses or partners, and their dependants/children will have access to up to 6 confidential, professional counselling services per annum to assist employees to manage personal and work issues.
284. This service will be provided at no cost to employees by the HCA and is accessible on paid time.
285. Additional sessions may be approved by the CE&PR.

Respect@Work

Principles

286. The HCA values a safe, respectful and inclusive workplace free from physical and psychological harm, harassment, discrimination and bullying. The HCA recognises that preventing sexual harassment, sex discrimination, sex-based harassment and victimisation in the workplace is a priority.
287. The HCA recognises that approaches to prevent sexual harassment, sex discrimination, sex-based harassment and victimisation in the workplace should be holistic and consistent with the Australian Human Rights Commission's guidance including the *Good Practice Indicators Framework for Preventing and Responding to Workplace Sexual Harassment*.

Consultation

288. The HCA will consult with employees and their unions and/or other representatives in developing, reviewing and evaluating approaches to prevent sexual harassment, sex discrimination, sex-based harassment and victimisation in the workplace.

Family and domestic violence support

289. The HCA will provide support for employees affected by family and domestic violence, appropriate for the employee's circumstances.

290. The HCA recognises that a holistic approach should be taken to support the employee, appropriate for the employee's individual circumstances.
291. Family and domestic violence support provisions, including paid leave, are available to all employees covered by this Agreement.
292. An employee experiencing family and domestic violence support is able to access paid miscellaneous leave. Reasons an employee experiencing family and domestic violence may access this leave include, but are not limited to:
- 292.1. illness or injury affecting the employee resulting from family and domestic violence;
 - 292.2. providing care or support to a family or household member who is also experiencing family and domestic violence, and is ill or injured as a result of family and domestic violence;
 - 292.3. providing care or support to a family or household member who is also experiencing family and domestic violence, and is affected by an unexpected emergency as a result of family and domestic violence;
 - 292.4. making arrangements for the employee's safety, or the safety of a close relative;
 - 292.5. accessing alternative accommodation;
 - 292.6. accessing police services;
 - 292.7. attending court hearings;
 - 292.8. attending counselling; or
 - 292.9. attending appointments with medical, financial or legal professionals.
293. This entitlement exists in addition to an employee's existing leave entitlements and may be taken as consecutive days, single days or part days and will count for service for all purposes.
294. Given the emergency context in which leave may need to be accessed, employees can proceed to take the leave and seek approval at a later date, as soon as practicable.
295. These provisions do not reduce an employee's entitlement to family and domestic violence leave under the NES.
296. Paid miscellaneous leave available under this clause is paid for ongoing and non-ongoing employees at their full rate as if they were at work.
297. Paid leave for casual employees under this clause is paid at their full pay rate for the hours they were rostered to work in the period they took leave.
298. Evidence may be requested to support the HCA in approving leave. In most cases, this will not be required. Where it is required, this will be discussed with the employee and a statutory declaration is the only form of evidence the HCA will require, unless the employee chooses to provide another form of evidence.

299. An employee may also choose to provide other forms of evidence, including a medical certificate, or document issued by the Police Service, a Court, a Doctor, District Nurse, a Family Violence Support Service or Lawyer.
300. The HCA will take all reasonable measures to treat information relating to domestic and family violence confidentially. The HCA will adopt a 'needs to know' approach regarding communication of an employee's experience of family domestic violence, subject to steps the HCA may need to take to ensure the safety of the employee, other employees or persons, or mandatory reporting requirements.
301. Where the HCA needs to disclose confidential information for purposes identified in clause 300 where it is possible the HCA will seek the employee's consent and take practical steps to minimize any associated safety risks for the employee and/or privacy breaches.
302. The HCA will not store or include information on the employee's payslip in relation to the employee's experience of family domestic violence; any leave accessed for the purposes of family domestic violence; or support(s) provided by the employer, unless otherwise required by legislation.
303. Other available support may include, but is not limited to: flexible working arrangements, additional access to EAP, changes to their span of hours or pattern of hours and/or shift patterns and/or location of work where reasonably practicable.
304. The HCA will acknowledge and take into account an employee's experience of family and domestic violence if an employee's attendance or performance at work is affected.
305. Further information about leave and other support available to employees affected by family and domestic violence may be found in the Family and Domestic Violence Policy.

Integrity and transparency

306. The HCA understands that procedural fairness is essential in building and maintaining trust with employees, and that it requires fair and impartial processes for employees affected by HCA decisions.
307. Employees are to give advice that is frank, honest, timely and based on the best available evidence. Employees will not be disadvantaged or discriminated against because they have given advice in accordance with their expertise or professional qualifications and in accordance with the HCA Values and Code of Conduct.

First Nations cultural competency training

308. The CE&PR will take reasonable steps to ensure all substantive, ongoing EL2 employees employed at the commencement of this Agreement or any new substantive, ongoing EL2 employees who commence within the first 6 months of this Agreement will complete relevant First Nations cultural competency training within 12 months of the commencement of the Agreement.
309. Any new substantive, ongoing EL2 employee who commences after 6 months of the commencement of this Agreement will be required to complete a relevant First Nations cultural competency training course within 6 months of their engagement or promotion.

Vicarious trauma training

310. The HCA acknowledges and understands that viewing objectionable material has the potential to impact employees in various ways and is committed to minimising the risk and impact to employees. The HCA is committed to assisting the recovery of employees experiencing distress or trauma.
311. Vicarious Trauma training will be provided, at least annually, to employees who may be impacted by viewing objectionable material.

Diversity

312. The HCA is an organisation which values fairness, equity and diversity. Consistent with that aim, the HCA is committed to preventing and eliminating discrimination on the basis of race, colour, gender, sexual orientation or practices, age, disability, marital status, family responsibilities, pregnancy, religion, political opinion, irrelevant criminal record, national extraction, membership or non-membership of a trade union or social origin.
313. The HCA recognises the need for a supportive and flexible workplace to enable employees to combine work and family responsibilities. This Agreement contains clauses that support and promote flexible, family friendly practices and includes access to part-time work, home-based work, parental leave and personal leave which assist employees to balance their family and work responsibilities.

Lactation and breastfeeding support

314. Reasonable paid time during work hours will be provided for lactation breaks for breastfeeding, expressing milk and other associated activities.
315. The HCA will provide access to appropriate facilities for the purpose of breastfeeding or expressing milk, subject to clause 316. In considering whether a space is appropriate, the HCA should consider whether:
 - 315.1. there is access to refrigeration;
 - 315.2. the space is lockable; and
 - 315.3. there are facilities needed for pumping such as appropriate seating.
316. Where it is not practicable for the HCA to have a designated space, a flexible approach will be taken so that the employee can access the support required.
317. The HCA will facilitate discussion between individual employees and their managers about accommodating the employee's lactation needs and practical arrangements to meet these needs.
318. The manager and employee shall discuss any flexible working arrangements that may be needed to support lactation. This may include consideration of arrangements such as working from home or varying work hours on an ad hoc or regular basis. Wherever possible, requests by an employee will be accommodated.
319. Further information is available in the Lactation and Breastfeeding Policy.

Disaster support

- 320. Where an official disaster or emergency is declared and this prevents an employee from reasonably attending work, or where it impacts their household or home, the CE&PR will consider flexible working arrangements to assist the employee to perform their work.
- 321. Where flexible working arrangements are not appropriate, the CE&PR may grant paid miscellaneous leave to an employee with regard to the scale and nature of the emergency. This leave counts as service and may be approved retrospectively.
- 322. In considering what period of leave is appropriate, the CE&PR will take into account the safety of the employee, their family and household and advice from local, State and Commonwealth authorities.

Screen based work

- 323. Where an employee undertakes screen-based work, once every 2 years the HCA will provide for eyesight testing and a capped reimbursement of the cost of prescription spectacles.
- 324. Further information is available in the Screen Based Work Policy.

SECTION 8 – PERFORMANCE AND DEVELOPMENT

Performance management

- 325. To enable the HCA to facilitate ongoing professional development, employees and managers are encouraged to engage in regular conversations about expectations and feedback.
- 326. All employees (except Associates) are required to participate in the Performance Management and Development System. The Performance Management and Development System adopts a behaviours-based approach and the principles of equity, transparency and procedural fairness.
- 327. Associates will receive feedback as outlined in the Guide for Justices – Chambers Staff.
- 328. If employees are not performing consistently at the required standard, in the first instance they will be supported to improve and maintain their performance. Where relevant, the employee's fitness for duty will be assessed and taken into account.
- 329. Underperformance will be dealt with having regard to the principles of fairness and natural justice and the right to representation.
- 330. Further information can be found in the Performance Management and Development System and Managing Underperformance Policy.

Workloads

- 331. The HCA recognises the importance of employees balancing their work and personal life. Subject to this Agreement, while it is acknowledged that at times it may be necessary for some extra hours being worked by some employees, this should be regarded as the exception rather than the rule.
- 332. When determining workloads for an employee or group of employees, the HCA will consider the need for employees to strike a balance between their work and personal life.
- 333. Where an employee or group of employees raise that they have experienced significant workload pressures over a prolonged period of time, the HCA and employee/s together must review the employee's workloads and priorities and determine appropriate strategies to manage the impact on the employee or group of employees.

Studies assistance

- 334. Ongoing employees and non-ongoing employees who have been engaged for a period over 12 months may, subject to CE&PR approval, access the following to undertake accredited study relevant to HCA priorities as identified in the HCA Corporate Plan:
 - 334.1. full or partial financial assistance per financial year for approved course fees, normally on a reimbursement basis upon satisfactory performance; and/or
 - 334.2. paid study leave of up to 5 hours per week during study periods.

Learning and development

- 335. Employees and managers are jointly responsible for identifying professional learning and development needs and opportunities.

- 336. Investment in learning and development must align with HCA priorities, individual and team development needs.
- 337. Employees will be entitled to financial support when attending professional development that has been determined and agreed by their manager through the Performance Management and Development System.

Professional memberships

- 338. Ongoing employees will have professional memberships and/or accreditation fees paid where the CE&PR determines they are an essential requirement of their role, or it aligns with HCA priorities.

SECTION 9 – TRAVEL AND LOCATION-BASED CONDITIONS

Travel

339. The HCA and its employees recognise that travel is a necessary part of the workings of a national court. Where possible, travel will be undertaken during ordinary hours.
340. Where employees are required to travel for work, the reasonable costs of travelling, accommodation, meals and other incidental expenses will be covered by the HCA. Travel allowance will apply for overnight travel. Travel that is over 10 hours and not overnight will receive the daily travel allowance rate as set by the CE&PR.
341. Travel allowance will be paid, normally in advance via direct credit to the employee's nominated bank account, at the rates set out by the Australian Taxation Office.
342. The normal class of travel for an employee is economy class. Business class travel may be used where an employee is required to travel on official business overseas or at a Justice's direction.

Motor vehicle allowance

343. Employees may use a private vehicle for official travel where it is likely to result in greater efficiency or less expense than other means of official travel and the CE&PR approves. Motor vehicle allowance will be paid at rates set by the Australian Taxation Office.

Recognition of travel time

344. Employees undertaking approved official travel outside of their ordinary hours (but not performing work) will have the time spent in transit recognised as follows:
- 344.1. HCE Level 1 - 6 employees (other than Chambers Staff) will accrue flextime;
 - 344.2. Executive Level employees may be granted EL TOIL as outlined in clauses 106 – 112; and
 - 344.3. Chambers staff may be granted time off as outlined in the Guide for Justices – Chambers Staff.
345. Overtime provisions only apply to employees undertaking official travel where they are directed by the CE&PR to perform work during transit.

Relocation assistance

346. Where an existing employee is required to relocate at the request of the HCA (such as a promotion), the employee will be provided with financial relocation assistance. Employees who relocate on a temporary basis to take up higher duties are entitled to removal expenses if they relocate for a period of 13 weeks or more.
347. Where an employee is required to relocate on ongoing engagement with the HCA, the employee will be provided with financial relocation assistance.
348. Reasonable expenses associated with the relocation include:
- 348.1. the cost of transport of the employee, dependants and partner by the most economical means;

- 348.2. removal expenses, namely the reimbursement of reasonably incurred costs of the removal of furniture and household effects of the employee, dependants and partner;
 - 348.3. the reimbursement of the cost of the insurance premium based on a reasonable replacement value; and
 - 348.4. the reasonably incurred expenses in kennelling and transport of pets.
349. Additional relocation assistance may be considered by the CE&PR.

Relocation assistance for Associates

350. Associates will be provided with financial relocation assistance, in order that they are not bearing unreasonable costs as a result of the requirements to relocate during their tenure with the HCA.
351. Relocation assistance will be provided where an Associate is required to:
- 351.1. relocate on engagement with the HCA; and
 - 351.2. relocate to the home location of the Justice at the mid-way point of their tenure.
352. Further information is available in the Associate Relocation Assistance Policy.

SECTION 10 – CONSULTATION, REPRESENTATION AND DISPUTE RESOLUTION

Consultation

Principles

353. Genuine and effective consultation with employees and the relevant union(s), taking into account the diverse needs of employees, fosters a positive and inclusive workplace, enabling the views of employees to be considered.
354. The HCA recognises:
- 354.1. the importance of inclusive and respectful consultative arrangements;
 - 354.2. employees and the relevant union(s) should have a genuine opportunity to influence decisions;
 - 354.3. the nature and extent of consultation will vary depending on the proposed change and the likely impact on employees - consultation on HCA policies may occur over at least 2 weeks, whereas a major change is likely to require a more extensive consultation process;
 - 354.4. consultation with employees and relevant unions(s) on workplace matters that significantly affect or materially impact them is sound management practice; and
 - 354.5. the benefits of employee and union involvement and the right of employees to be represented by their union.
355. Genuine and effective consultation involves:
- 355.1. providing employees and the relevant union(s) with a genuine opportunity to influence the decision prior to a decision being made;
 - 355.2. providing all relevant information to employees and the relevant union(s) in a timely manner to support consideration of the issues;
 - 355.3. considering feedback from employees and the relevant union(s) in the decision-making process; and
 - 355.4. advising employees and the relevant union(s) of the outcome of the process, including how their feedback was considered in the decision-making process.

When consultation is required

356. Consultation is required in relation to:
- 356.1. changes to work practices which materially alter how an employee carries out their work;
 - 356.2. changes to, or the introduction of policies or guidelines relevant to workplace matters (unless the changes are minor or procedural);
 - 356.3. major change that is likely to have a significant effect on employees;
 - 356.4. implementation of decisions that significantly affect employees;

- 356.5. changes to employees' regular roster or ordinary hours of work (subject to any other relevant provisions in this Agreement); and
 - 356.6. other workplace matters that are likely to impact employees significantly or materially.
357. The HCA, employees and the relevant union(s) recognise that consultation prior to a decision may not be practicable where a decision is made by Government or is required due to matters beyond the reasonable control of the HCA. In these circumstances, consultation regarding the implementation of the decision will occur as early as is reasonably practicable.

Provisions for consultation on major change and introduction of a change to regular roster or ordinary hours of work of employees

358. This clause applies if the HCA:

- 358.1. proposes to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or
- 358.2. proposes to introduce a change to the regular roster or ordinary hours of work of employees.

Representation

359. Employees may appoint a representative for the purposes of this clause. A representative for the purpose of this clause may be a union representative.
360. The HCA must recognise the representative if:
- 360.1. a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - 360.2. the employee or employees advise the employer of the identity of the representative.

Major change

361. In this clause, a major change is likely to have a significant effect on employees if it results in, for example:
- 361.1. the termination of the employment of employees; or
 - 361.2. major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
 - 361.3. the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
 - 361.4. the alteration of hours of work; or
 - 361.5. the need to retrain employees; or
 - 361.6. the need to relocate employees to another workplace; or
 - 361.7. the restructuring of jobs.

362. The following additional consultation requirements in clause 363 - 369 apply to a proposal to introduce a major change referred to in clause 356.3.
363. Consultation with employees and the relevant union(s) and/or recognised representatives will occur prior to a decision being made, subject to clause 357.
364. Where practicable, a HCA change manager or a primary point of contact will be appointed, and their details provided to employees and the relevant union(s) and/or their recognised representatives.
365. The HCA must notify employees and relevant union(s) and/or recognised representatives of the proposal to introduce the major change as soon as practicable.
366. As soon as practicable after proposing the change, or notifying of the change in circumstances described at clause 357, the HCA must:
- 366.1. discuss with affected employees and relevant union(s) and/or other recognised representatives:
 - 366.1.1. the proposed change
 - 366.1.1.1. the effect the proposed change is likely to have on the employees; and
 - 366.1.1.2. proposed measures to avert or mitigate the adverse effect of the proposed change on the employees; and
 - 366.1.2. for the purposes of the discussion – provide, in writing, to employees and the relevant union(s), their union and/or other recognised representatives:
 - 366.1.2.1. all relevant information about the proposed change, including the nature of the change proposed; and
 - 366.1.2.2. information about the expected effects of the proposed change on the employees; and
 - 366.1.2.3. any other matters likely to affect the employees.
367. The HCA must give prompt and genuine consideration to matters raised about the major change by employees and the relevant union(s) and/or other recognised representatives.
368. However, the HCA is not required to disclose confidential or commercially sensitive information to employees and the relevant union(s) and/or other recognised representatives.
369. If a term in this Agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the HCA, the requirements set out in clauses 361 - 366 are taken not to apply.

Change to regular roster or ordinary hours of work

370. The following additional consultation requirements in clause 371 - 374 apply to a proposal to introduce a change referred to in clause 356.5.
371. The HCA must notify affected employees and the relevant union(s) and/or other recognised representatives of the proposed change.

372. As soon as practicable after proposing to introduce the change, the HCA must:
- 372.1. discuss with employees and the relevant union(s) and/or other recognised representatives the proposed introduction of the change; and
 - 372.2. for the purposes of the discussion – provide to the employees and relevant union(s) and/or other recognised representatives:
 - 372.2.1. all relevant information about the proposed change, including the nature of the proposed change; and
 - 372.2.2. information about what the employer reasonably believes will be the effects of the proposed change on the employees; and
 - 372.2.3. information about any other matters that the employer reasonably believes are likely to affect the employees; and
 - 372.3. invite employees and the relevant union(s) and/or other recognised representatives to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
373. However, the HCA is not required to disclose confidential or commercially sensitive information to the relevant employees and the relevant union(s) and/or other recognised representatives.
374. The HCA must give prompt and genuine consideration to matters raised about the proposed change by the employees and the relevant union(s) and/or other recognised representatives.

Employee Consultative Forum (ECF)

375. The CE&PR will establish an Employee Consultative Forum to discuss relevant workplace matters.
376. The Employee Consultative Forum will operate subject to an agreed terms of reference and structure for the term of the Agreement. Representation on the Forum will be in accordance with the terms of reference.

Dispute resolution

377. If a dispute relates to:
- 377.1. a matter arising under the Agreement; or
 - 377.2. the National Employment Standards;
- this clause sets out procedures to settle the dispute.
378. An employee or union who is covered by this Agreement may initiate and/or be a party to a dispute under this clause.
379. An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this clause. Representatives will be recognised and dealt with in good faith.
380. Parties to the dispute must attempt to resolve the dispute at the workplace level, by discussion between the employee or employees and relevant supervisors. Parties to the dispute will notify higher

level managers to assist in the resolution of the dispute. Parties will give genuine consideration to proposals to resolve the dispute.

381. If a dispute about a matter arising under this Agreement is unable to be resolved at the workplace level, and all appropriate steps under clause 380 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.
382. The Fair Work Commission may deal with the dispute in 2 stages:
- 382.1. the Fair Work Commission will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
 - 382.2. if the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:
 - 382.2.1. arbitrate the dispute; and
 - 382.2.2. make a determination that is binding on the parties.

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

383. While the parties are attempting to resolve the dispute using the procedures in this clause:
- 383.1. an employee must continue to perform their work as they would normally in accordance with established custom and practice at the HCA that existed immediately prior to the dispute arising unless they have a reasonable concern about an imminent risk to their health or safety; and
 - 383.2. subject to clause 383.1, an employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace, unless:
 - 383.2.1. the work is not safe; or
 - 383.2.2. applicable work health and safety legislation would not permit the work to be performed; or
 - 383.2.3. the work is not appropriate for the employee to perform; or
 - 383.2.4. there are other reasonable grounds for the employee to refuse to comply with the direction.
384. The parties to the dispute agree to be bound by a decision made by the Fair Work Commission in accordance with this clause.
385. Any disputes arising under the *Determination under s26(4) of the High Court of Australia Act 1979 – Terms and Conditions of Employment of Employees* (dated 11 October 2022) or the NES before the commencement of this Agreement, that remain unresolved at the date of commencement of this Agreement, will be progressed under the dispute resolution procedures in this Agreement.

Leave of absence to attend proceedings

386. Where the provisions of clauses 377 - 382 have been complied with, and to assist in the resolution of the matter, the employee, and/or the union delegate or other employee representative referred to in clause 378 or employee required to provide evidence, will be granted paid time to attend dispute resolution processes and proceedings in the Fair Work Commission arising from referral of the matter in clause 381.

Delegates' rights

387. Union delegates play an important and legitimate role in the workplace. This includes representing their members and supporting employee access to union officials and providing employee views to the HCA.

388. The role of the union delegates is to be respected and supported.

389. The HCA and union delegates will work together respectfully and collaboratively.

Supporting the role of the union delegate

390. The HCA respects the role of union delegates to:

390.1. provide information, consult with and seek feedback from employees in the workplace on workplace matters;

390.2. consult with other delegates and union officials, and get advice and assistance from union officials;

390.3. represent the interests of members to the employer and industrial tribunals; and

390.4. represent members at relevant union forums, consultative forums or bargaining.

391. The HCA and union delegates recognise that undertaking the role of a union delegate is not the primary purpose of an employee's engagement and must work with and not unreasonably impact their regular duties. Honorary officials may request additional time and facilities from time to time.

392. Union delegates will be provided with reasonable paid time during their normal working hours to perform their union delegate role. The paid time provided should not result in disruption to critical services or operational requirements.

393. To support the role of union delegates, the HCA will, subject to legislative and operational requirements, including privacy and security requirements:

393.1. provide union delegates with reasonable access to HCA facilities and resources, including for paid or unpaid meetings between employees and their unions and to communicate with union officials;

393.2. advise union delegates and other union officials of the HCA facilities and resources available for their use, which may include telephone, photocopying, internet, and email;

393.3. allow reasonable official union communication appropriate to the HCA from union delegates with employees, including through email, intranet pages and notice boards. This may include providing a link to a union website for employees to access union information. Any

assistance in facilitating email communications does not include the HCA vetoing reasonable communications;

393.4. provide access to new employees as part of induction; and

393.5. provide reasonable access to union delegates to attend appropriate paid time training in workplace relations matters, during normal working hours.

394. Where HCA employees are elected as officials of a trade union or professional association, they are not required to seek permission from the workplace or HCA before speaking publicly in that capacity, subject to the HCA's Values and Code of Conduct and legislative requirements.

Employee representation

395. Employees have the right to be represented by a representative of their choice in matters relating to their employment and/or the operation of this Agreement.

396. The role of all employee representatives is respected and facilitated.

397. Employees are free to choose to join, or not to join, a union, for example the Community and Public Sector Union (CPSU). Irrespective of that choice, employees will not be disadvantaged or discriminated against in respect of their employment.

398. Employees who choose to be members of a union have the right to have their industrial interests represented by that union.

SECTION 11 – SEPARATION AND RETENTION

Resignation (Separation)

399. An employee may resign from their employment by giving the CE&PR at least 14 calendar days' written notice.
400. At the instigation of the CE&PR, the resignation may take effect at an earlier date within the notice period. In such cases, the employee will receive paid compensation in lieu of the notice period which is not worked.
401. The CE&PR has the discretion to agree to a shorter period of notice or waive the requirement to give notice.

Payment upon death of an employee

402. When an employee dies, or the CE&PR has directed that an employee is presumed to have died on a particular date, the CE&PR must authorise payments to the partner, dependants or legal representative of the former employee, the amount to which the former employee would have been entitled had they ceased employment through resignation or retirement, or where legislation provides specifically for amounts calculated based on the death of the employee, those amounts. If payment has not been made within a year of the former employee's death, it should be made to their legal representative.

Redeployment, retraining and redundancy – excess employees

403. The management of excess employee provisions do not apply to non-ongoing employees, casual employees, or employees on probation.

Meaning of excess employee

404. An employee is excess to the requirements of the HCA if the CE&PR determines:
- 404.1. the employee is included in a class of employees employed by the HCA and there are more employees in the class than is necessary for the efficient and economical working of the HCA; or
 - 404.2. the services of the employee cannot be effectively used because of technological or other changes in the work methods, or changes in the nature, extent or organisation of the functions of the HCA; or
 - 404.3. the duties usually performed by the employee are to be performed by the employee at a different locality, and the employee is not willing to perform duties at that locality.

Notification of being potentially excess

405. The CE&PR will notify employees who are potentially excess, in writing, including the reason/s, as soon as practicable.
406. The CE&PR will discuss the notification with the employee and, where they choose, their representative within 30 calendar days of the notice, to consider:

- 406.1. any measures that could be taken to remove or reduce the likelihood of an employee becoming excess; and
- 406.2. whether re-assignment of duties, VR or redeployment may be appropriate.
- 407. The CE&PR may invite employees who are not potentially excess to express interest in a VR, where this would allow the redeployment of potentially excess employees and aligns with workforce planning needs.
- 408. Where an employee becomes potentially excess or is excess, the CE&PR will approve a one-off reimbursement of up to \$500 (plus GST) for advice from a registered financial adviser.

Declaration of excess

- 409. The CE&PR may determine that an employee is excess to the requirements of the HCA:
 - 409.1. 30 calendar days after the employee was notified of being potentially excess; or
 - 409.2. earlier if the employee formally declines to participate in discussions; or
 - 409.3. on an earlier date agreed by the employee.
- 410. The CE&PR will provide the options of redeployment and voluntary redundancy to an excess employee, as detailed below.
- 411. If the CE&PR determines that it is effective and economical to do so, the HCA will facilitate the use of swaps to maximise the extent to which redundancies are voluntary.

Redeployment

- 412. If an excess employee advises that they wish to be redeployed, the CE&PR will take all reasonable steps to reassign the duties of an excess employee at the same level within the HCA.
- 413. The HCA will consider an excess employee in isolation from other applicants for an ongoing position in the HCA at or below the employee's classification level for which the employee has applied.
- 414. An employee seeking redeployment may choose to access career transition assistance through a recognised provider. The HCA will meet reasonable costs associated with these services.
- 415. The CE&PR may approve the cost of reasonable travel and incidental expenses incurred by an excess employee in seeking alternative employment, where these are not met by a prospective employer.

Retention period

- 416. An excess employee will be entitled to the following period of retention:
 - 416.1. 13 months when the employee has 20 years or more service or is 45 years of age or over; or
 - 416.2. 7 months for all other employees
- 417. If an excess employee is entitled to a redundancy payment in accordance with the NES the retention period is reduced by the number of weeks of redundancy pay that the employee is entitled to under the FW Act on termination of employment.
- 418. The retention period and notice period may be extended by any periods of paid personal/carer's leave

not exceeding 6 months that impact the redeployment process and are supported by medical evidence.

419. During the retention period, the CE&PR:
- 419.1. will continue to take reasonable steps to find alternative suitable employment for the excess employee; and/or
 - 419.2. may reduce the excess employee's classification as a means of securing alternative employment, after giving 28 calendar days' notice to the employee.
420. If an employee's classification is reduced during the retention period the employee will continue to be paid at their substantive base salary immediately prior to the reduction in classification, for the balance of the retention period.
421. Where the CE&PR determines there is insufficient productive work available for the excess employee during the retention period, the CE&PR may, with the agreement of the excess employee, terminate the employee's employment under clause 18(a) of the Determination during the retention period on the grounds that they are excess to requirements and pay the balance of the retention period as a lump sum.
422. On termination, the employee will be paid a lump sum comprising:
- 422.1. the balance of the retention period (as shortened by the number of weeks of redundancy pay the employee is entitled to under the NES) and this payment will be taken to include the payment in lieu of notice of termination of employment; and
 - 422.2. any redundancy payment to which the employee is entitled to under the NES.

Voluntary redundancy

Offer of voluntary redundancy

423. An excess employee not seeking redeployment, or an employee who has been invited to and expressed interest in a VR, will be made a single VR offer in writing and given 30 calendar days to consider, commencing the day after the offer is made.
424. When an employee is offered a VR, they will be given information on the:
- 424.1. amount of their severance pay and the indicative value of the balance of any annual leave and long service leave credits;
 - 424.2. details regarding superannuation;
 - 424.3. likely taxation rules applying to the various payments;
 - 424.4. length of notice the employee is entitled to; and
 - 424.5. availability of career advisory services.

Period of notice for termination

425. The employee will be provided with 4 weeks' notice (or 5 weeks for an employee over 45 years of age with at least 5 years of continuous service) prior to the termination of their employment. The notice

period will commence on the day after the employee is issued with a notice of termination under clause 18(a) of the Determination.

426. Where an employee requests and the CE&PR agrees, or where the CE&PR directs an earlier termination date within the notice period, the employee's employment will be terminated under clause 18(a) of the Determination on that date. The employee will receive payment in lieu of notice for the unexpired portion of the notice period on the basis of:

- 426.1. the employee's current ordinary hours of work;
- 426.2. the amounts payable to the employee in respect of those hours, e.g. allowances; and
- 426.3. any other payments under the employee's contract of employment except for accruals that would have occurred had the person remained as an employee during the relevant notice period.

Severance benefit

427. An employee who accepts a VR and has their employment terminated by the CE&PR under clause 18(a) of the Determination on the grounds that they are excess to requirements is entitled to payment in accordance with the applicable provision of the FW Act.

428. The minimum amount payable will be 4 weeks' salary and the maximum will be 26 weeks salary, subject to any minimum amount the employee is entitled to under the NES.

429. Severance payments will be calculated on a pro-rata basis for any period where they have worked part-time hours during their period of service and where they have less than the equivalent of 24 years full-time service.

430. Service for severance pay purposes means:

- 430.1. service in the HCA;
- 430.2. Government service as defined in section 10 of the LSL Act;
- 430.3. service with the Commonwealth (other than service with a joint Commonwealth-State body corporate in which the Commonwealth does not have a controlling interest) which is recognised for long service leave purposes;
- 430.4. service with the Australian Defence Forces;
- 430.5. APS service immediately preceding deemed resignation under the repealed Section 49 of the repealed *Public Service Act 1922* if the service has not previously been recognised for severance pay purposes; and
- 430.6. service in another organisation where the employee was moved from the APS to give effect to an administrative re-arrangement; or an employee of that organisation is engaged as an APS employee as a result of an administrative re-arrangement, and such service is recognised for long service leave purposes.

431. Service that will not count as service for severance pay purposes is any period of service which ceased:

- 431.1. through termination on the following grounds:
 - 431.1.1. the employee lacks, or has lost, an essential qualification for performing their duties;
 - 431.1.2. non-performance or unsatisfactory performance of duties;
 - 431.1.3. inability to perform duties because of a physical or mental incapacity;
 - 431.1.4. failure to satisfactorily complete an entry level program or training; or
 - 431.1.5. breach of the HCA's Values and Code of Conduct
 - 431.2. through voluntary retirement at or above the minimum retiring age applicable to the employee; or
 - 431.3. with the payment of a retrenchment benefit or similar payment or an employer financed retirement benefit.
432. For earlier periods of service to count as severance pay, there must be no breaks between periods of service, except where:
- 432.1. the break in service is less than 1 month and occurs where an offer of employment with the HCA was made and accepted by the employee before ceasing employment with the preceding employer; or
 - 432.2. the earlier period of service was with the APS and ceased because the employee was deemed to have resigned from the APS on marriage under the repealed section 49 of the repealed *Public Service Act 1922*.

Severance benefit – rate of payment

433. Salary for severance pay purposes will include:
- 433.1. the employee's substantive salary adjusted on a pro-rata basis for periods of part-time service;
 - 433.2. higher duties allowance for performance of duties at a higher classification level where the employee has been performing duties, and continues to perform duties, at the higher classification level for a continuous period of at least 12 months immediately prior to the date on which the employee was given notice of termination of employment; and
 - 433.3. other allowances in the nature of salary which have been paid to the employee on a regular basis and have continued to be paid during periods of annual leave, excluding allowances which are reimbursements for expenses incurred.

Involuntary redundancy

434. At the end of the retention period the CE&PR may make the excess employee involuntarily redundant under clause 18(a) of the Determination.
435. An excess employee will not be made involuntarily redundant where:
- 435.1. the employee has not been invited to accept an offer of VR;

- 435.2. the employee has requested a VR, but the CE&PR has refused; or
 - 435.3. the employee has not been given 4 weeks' notice of termination of employment (or 5 weeks for an employee over 45 years of age with at least 5 years' continuous service), or payment in lieu of notice.
436. An employee who is subject to involuntary termination under this clause is entitled to receive redundancy pay as applies under section 119 of the FW Act.

Attachment A – Base Salaries

	Pay point	Annual Salary 1 March 2023	4% increase on 1 March 2024	3.8% increase on 1 March 2025	3.4% increase on 1 March 2026
HCE Level 1	HCE1.1	50,173	52,180	54,163	56,005
	HCE1.2	51,530	53,591	55,628	57,519
	HCE1.3	54,935	57,132	59,303	61,320
HCE Level 2	HCE2.1	56,556	58,819	61,054	63,129
	HCE2.2	58,770	61,121	63,443	65,600
	HCE2.3	62,674	65,181	67,658	69,959
HCE Level 3	HCE3.1	64,201	66,769	69,306	71,663
	HCE3.2	65,832	68,466	71,067	73,484
	HCE3.3	69,157	71,924	74,657	77,195
HCE Level 4	HCE4.1	71,956	74,834	77,678	80,319
	HCE4.2	73,827	76,780	79,698	82,408
	HCE4.3	77,544	80,645	83,710	86,556
HCE Level 5	HCE5.1	79,657	82,843	85,991	88,915
	HCE5.2	82,151	85,437	88,683	91,699
	HCE5.3	84,467	87,846	91,184	94,284
HCE Level 6	HCE6.1	86,912	90,389	93,824	97,014
	HCE6.2	89,290	92,861	96,390	99,667
	HCE6.3	98,830	102,783	106,688	110,316
Executive Level 1	EL1.1	110,303	114,715	119,074	123,122
	EL1.2	118,924	123,681	128,381	132,746
	EL1.3	122,492	127,391	132,232	136,728
Executive Level 2	EL2.1	136,447	141,905	147,297	152,306
	EL2.2	148,764	154,714	160,594	166,054
	EL2.3	154,231	160,400	166,496	172,156

Attachment B – Supported Wage System

Purpose

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

Definitions

2. In this attachment:

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

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

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

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

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

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

Eligibility criteria

3. Employees covered by this attachment will be those who are unable to perform the range of duties to the competence level required within the classification for which the employee is engaged under this Agreement, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.
4. This attachment does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this Agreement relating to the rehabilitation of employees who are injured in the course of their employment.

Supported wage rates

5. Employees to whom this attachment applies shall be paid the applicable percentage of the relevant minimum wage according to the following table:

Table 5 – Applicable percentage of relevant minimum wage paid to applicable employees

Assessed capacity [sub-clause (d)]	% of prescribed Agreement rate
10%	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

6. Provided that the minimum amount payable to an employee to whom the SWS applies is not less than the amount prescribed in the National Minimum Wage Order. Note: The minimum amount payable is reviewed every year in July.
7. Where an employee's assessed capacity is 10%, they must receive a high degree of assistance and support.

Assessment of capacity

8. For the purposes of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the SWS by an approved assessor, having consulted the employer and the employee, and if the employee so desires, a union which the employee is eligible to join.
9. Assessment made under this attachment must be documented in a SWS wage assessment agreement and retained by the employer as a time and wages record in accordance with the FW Act.

Lodgement of SWS wage assessment agreement

10. All SWS wage assessment agreements under the conditions of this attachment, including the appropriate percentage of the relevant minimum wage to be paid to the employee, must be lodged by the employer with the Fair Work Commission.
11. All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment. Where a union which has an interest in this Agreement and is not a party to the assessment, the assessment will be referred by the Fair Work Commission to the union by certified mail and the agreement will take effect unless an objection is notified to the Fair Work Commission within 10 working days.

Review of assessment

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

Other terms and conditions of employment

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

Workplace adjustment

14. An employer wishing to employ a person under the provisions of this attachment must take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve redesign of job duties, working time arrangements and work organisation in consultation with other workers in the area.

Trial period

15. In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this attachment for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.
16. During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.
17. The minimum amount payable to the employee during the trial period must be no less than the current weekly rate, as determined by the Fair Work Commission.
18. Trial periods should include induction or training as appropriate to the job being trialled.
19. Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment.