



**Australian Government**

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**Australian Commission for  
Law Enforcement Integrity**

**Collective Agreement**

**2009-2012**

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# 1 Scope of the Agreement

## 1.1 Title of the Agreement

This Collective Agreement is made between the Integrity Commissioner and all employees and shall be known as the Australian Commission for Law Enforcement Integrity Collective Agreement 2009-2012. The Agreement is made under *Section 327 of the Workplace Relations Act 1996*.

## 1.2 Interpretation

In this Agreement:

**ACLEI** means the Australian Commission for Law Enforcement Integrity.

**Agency** means the Australian Commission for Law Enforcement Integrity.

**Agency Head** means the Integrity Commissioner for the Australian Commission for Law Enforcement Integrity.

**Approved Classification** means an approved classification under the Classification Rules.

**APS** means the Australian Public Service.

**Classification Rules** means the *Public Service Classification Rules 2000* made under subsection 23 (1) of the PSA, and includes any subsequent rules made under that section that replace those Rules.

**Immediate Family** means a relation by:

- blood;
- marriage (in law or fact);
- adoption;
- fostering or traditional kinship;
- a parent, child, grandparent, grandchild or sibling of the employee's spouse; or
- in a bona fide domestic or household relationship with an employee without discrimination as to sexual preference.

**Part-time employee** means an employee whose ordinary hours of duty amount to less than 75 hours per fortnight.

**PSA** means the *Public Service Act 1999*.

**Salary Barrier** means the APS Level 6 classification.

**SES** means the Senior Executive Service.

**WR Act** means the *Workplace Relations Act 1996*.

### **1.3 Parties Bound**

This Agreement shall apply to and be binding upon:

- the Integrity Commissioner in respect of those Australian Commission for Law Enforcement Integrity employees employed under the Public Service Act 1999; and
- employees of the Australian Commission for Law Enforcement Integrity below the Senior Executive Service level (or equivalent) other than employees whose salary is paid by another agency or who are employed under an individual agreement.

### **1.4 Operation of the Agreement**

Employment of employees in ACLEI is subject to the provisions of legislation including but not limited to:

- *Law Enforcement Integrity Commissioner Act 2006*
- *Public Service Act 1999*
- *Public Service Regulations 1999*
- *Workplace Relations Act 1996*
- *Workplace Relations Regulations 2006*
- *Long Service Leave (Commonwealth Employees) Act 1976*
- *Maternity Leave (Commonwealth Employees) Act 1973*
- *Superannuation Act 1976*
- *Superannuation Act 1990*
- *Superannuation Productivity Benefit Act 1988*
- *Superannuation Benefits (Supervisory Mechanisms) Act 1990*
- *Safety Rehabilitation and Compensation Act 1988*
- *Occupational Health and Safety Act 1991*

This Agreement is supported by policies and procedures to provide more detailed guidance to managers and employees on the application of the provisions of this Agreement. These policies and procedures may be altered through consultation and will apply in the form they are in as at the time of any relevant action or decision. For your assistance and guidance, particular policies are identified in the relevant item, however they are not incorporated into and do not form part of this Agreement. If there is any inconsistency between the policies and the express terms of this Agreement, the express terms of the Agreement prevail.

### **1.5 Duration**

The Agreement comes into effect seven days after the Workplace Authority has issued a notice stating that the Agreement satisfies the 'No Disadvantage Test' and has a nominal expiry date of 30 June 2012.

### **1.6 Variations to the Agreement**

This Agreement may be varied in accordance with the WR Act.

### 1.7 Closed Agreement

From the commencement of this Agreement, a party to the Agreement or an employee whose employment is subject to the Agreement shall not pursue further claims for terms and conditions of employment that would have effect during the period of operation of this Agreement, except where consistent with the terms of this Agreement.

### 1.8 Freedom of Association

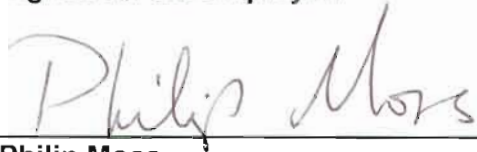
An employee is free to choose to join or not join a union. Irrespective of that choice employees will not be disadvantaged or discriminated against in respect of their employment under this Agreement.

### 1.9 Signature of Parties

We the undersigned agree to be bound by the terms and conditions set out in this Agreement.

Dated this 30<sup>th</sup> day of June 2009

**Signed for the employer:**



**Philip Moss**  
Integrity Commissioner  
Australian Commission for Law Enforcement Integrity

**For and on behalf of all eligible employees:**



**Christine Johnston**



**Gavin Larsen**

## **2 Developing and enhancing high performance**

### **2.1 Productivity Outcomes**

To ensure continuous improvement in organisational and individual productivity and performance, the following initiatives which reflect genuine workplace change and improvements will apply from the commencement of the Agreement:

- Establish a clear link between individual performance that contributes to ACLEI's objectives by tying wage outcomes to participation in ACLEI's Program for Performance Improvement (**PPI**).
- Providing a range of flexible work practices to assist employees balance their personal responsibilities with organisational priorities.
- ACLEI and its employees jointly commit to improving ACLEI productivity by addressing the critical areas of improving business practices and processes, people management, information technology and workplace environment.
- ACLEI will continue to review its work practices with the objective of streamlining processes, leading to productivity savings.
- All ACLEI employees will be committed to ongoing continuous improvement including a commitment to fully utilising the Electronic Document and Records Management System.

### **2.2 Salary increases**

In recognition of productivity improvements arising under this Agreement, salaries payable to employees of ACLEI whose employment is subject to this Agreement are increased by the following amounts:

1. from the date of commencement of this Agreement – 3.2%
2. from 1 July 2010 – 3.2%
3. from 1 July 2011 – 3.2%

## **3 Managing for better performance**

### **3.1 Participation in program for performance improvement**

Employees will participate in the Program for Performance Improvement (**PPI**) as set out in the Agency Policy Advice *Program for Performance Improvement*.

### **3.2 Study assistance**

The Agency Head may grant leave of absence or financial assistance to employees for the purpose of study relevant to employment in ACLEI. More information is contained in the Agency Policy Advice *Study Assistance and Policy Guidelines*.

## **4 Remuneration**

### **4.1 Salary rates**

Following commencement of this Agreement salaries will be adjusted annually, effective from 1 July of each year, in accordance with Schedule 1. Salary advancement within a classification and to a higher classification within a broadband will depend on employees meeting agreed performance targets to a satisfactory or higher standard as assessed in line with the Program for Performance Improvement.

If an employee works a period or periods of part-time service, his or her annual salary for each period of part-time service is to be calculated on the basis of the approved part-time hours of service performed during that period.

Salary is payable by fortnightly instalments in arrears.

Employees agree that the guarantee of basic periodic rates of pay for the employee's guaranteed hours in Subdivision B of Division 2 of Part 7 of the WRA may be met over a 12 month period, for each year of service, commencing upon signing of this Agreement.

All employees below SES will receive payment of a Service Allowance, an allowance in the nature of salary. The allowance acknowledges the special requirements applicable to working with ACLEI, including the need to comply with the requirements of high level personal security assessments, additional intrusion in the form of an obligation to notify private interests both financial and social that may indicate a potential conflict of interest, and the necessity to carry out practices to prevent targeting by unlawful elements.

The allowance rate will be \$1,500 per annum and will be paid as a fortnightly allowance.

### **4.2 Salary on starting in a new position**

The classification structure applicable to APS employees is set out in Schedule 1. The Agency Head may allocate broadbands to the classification structure.

Starting salary on commencing duty in a position on promotion, or on assignment to new duties on an ongoing basis is at the minimum pay point for the approved classification.

However, the Agency Head may approve a starting salary at a higher pay point in accordance with the approved classification and the salary rates at Schedule 1.

### **4.3 Flexibility and supplementation**

The Agency Head, in consultation with an employee, or their nominated representative(s), may supplement the remuneration and conditions of an individual employee, at the Agency Head's discretion.

The procedures for the resolution of disputes detailed at item 7.1 of this Agreement are to be applied to any dispute arising from or related to any supplementary benefits provided to an employee under this item.

#### **4.4 Irregular and/or intermittent (casual) employment**

If the employee is employed for duties that are intermittent or irregular, the employee is to receive a 20% loading for the intermittent or irregular nature of the duties.

An employee who receives the 20% loading is not entitled to annual leave, personal leave (except unpaid carer's leave), compassionate leave, paid parental leave, miscellaneous leave or payment for public holidays but is eligible for long service leave in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976*.

#### **4.5 Temporary performance at higher work value**

The salary payable recognises that from time to time that an employee may be required to take on additional responsibilities or tasks usually performed by other employees.

For temporary performance in a higher classified position for periods of two weeks or longer, an employee shall receive a rate of higher duties allowance in accordance with Schedule 2.

#### **4.6 Salary advancement**

Employees are eligible for salary advancement in line with the arrangements set out in the Agency Policy Advice *Program for Performance Improvement*. An employee is not eligible for salary advancement until assessed as having met all performance targets.

#### **4.7 Regression to a lower classification**

An employee may, with his or her consent, be assigned to duties for which he or she would receive a lower salary (known as regression).

Regression (without consent) might also occur if it is determined that an employee:

- (a) is excess to requirements;
- (b) lacks, or has lost, an essential qualification;
- (c) has not performed assigned duties or has performed assigned duties unsatisfactorily;
- (d) is unable to perform duties due to physical or mental incapacity; or
- (e) has breached the APS Code of Conduct.

#### **4.8 Additional responsibility or retention allowance**

The Agency Head may approve the payment of an additional allowance to an employee for the following purposes:

- (a) to recognise that an employee has been required to take on responsibilities or tasks in addition to the performance of duties at his or her approved classification level;
- (b) employee retention.

## **4.9 Overtime - Application**

Except as provided under item 4.17, paragraph 6, this section does not apply to duty under a restriction direction.

## **4.10 Overtime — general**

An employee may be directed to perform overtime. If circumstances do not permit a prior written direction, the overtime must be approved in writing after it has been performed.

Overtime is work performed at direction:

- (a) outside the ordinary span of work hours Monday to Friday; or
- (b) within that ordinary span of work hours, but outside the number of ordinary hours an employee would work on a day (or is formally rostered to work on that day); or
- (c) on a Saturday, Sunday or public holiday.

An employee is entitled to overtime rates if he or she is at a classification level at or below the salary barrier or if the Agency Head otherwise authorises payment of overtime rates to the employee.

For the purpose of determining whether overtime begins immediately after the end of ordinary hours of work, a meal period is to be disregarded.

## **4.11 Overtime rates**

Overtime rates are as follows:

- (a) for overtime performed on a day other than a Sunday or public holiday — time and a half for the first 3 hours and double time after that;
- (b) for overtime performed on a Sunday — double time;
- (c) for overtime performed on a public holiday:
  - (i) double time and a half; or
  - (ii) for duty within standard hours on the public holiday — time and a half additional to single time paid for the public holiday.

For overtime that does not:

- (a) begin immediately after the end of ordinary hours of work; or
- (b) end immediately before the start of ordinary hours of work;

the employee is to be paid for at least 4 hours at the relevant overtime rate.

## **4.12 Part-time employees**

For a part-time employee who is not at a classification level above the salary barrier, overtime rates are payable:

- (a) for duty that does not end immediately before the start, or begin immediately after the end, of the employee's ordinary hours of work (disregarding any meal break); and

- (b) for duty that ends immediately before the start, or begins immediately after the end, of the employee's ordinary hours of work, on a day when the employee completes the ordinary hours of work, if the duty falls (wholly or in part) outside the period from 7.30 am to 7.30 pm; and
- (c) for duty that ends immediately before the start, or begins immediately after the end, of the employee's ordinary hours of work, if the duty falls wholly within the period from 7.30 am to 7.30 pm and exceeds, in any one week, the employee's prescribed weekly hours.

#### **4.13 Part-time employees above the salary barrier**

For a part-time employee who is at a classification level above the salary barrier, the rate payable for duty performed at direction outside the employee's ordinary pattern of hours is:

- (a) for duty that does not exceed, for any one day or any one week, the total ordinary duty and extra duty mentioned in paragraph 2 — the normal hourly rate; and
- (b) for duty that exceeds, for any one day or any one week, the total ordinary duty and extra duty mentioned in paragraph 2 — the relevant overtime rate under item 4.10.

For paragraph 1, the total ordinary duty and extra duty is:

- (a) on any day, 7 hours and 30 minutes; and
- (b) in any week, 37 hours and 30 minutes.

#### **4.14 Rest relief after overtime**

This item applies if an employee performs overtime that results in not having at least 8 consecutive hours off duty (plus reasonable travelling time):

- (a) between the end of ordinary duty on any day, and the start of the employee's ordinary hours of work on the next day; or
- (b) on a Saturday, Sunday or a public holiday, in the 24 hours preceding the time when the employee will next ordinarily begin duty.

The employee:

- (a) may be absent from work, after performing the overtime, for 8 consecutive hours off duty (plus reasonable travelling time); and
- (b) is entitled to payment for any period of ordinary working time occurring in the employee's absence.

However, if the employee is not able to be absent from work because he or she is required to continue or resume work, the employee is entitled to be paid overtime at the rate of double time until the employee has at least 8 consecutive hours off duty (plus reasonable travelling time).

This item does not apply if the employee is at a classification level above the salary barrier.

#### 4.15 Overtime meal allowance

This item applies if the employee:

- (a) works overtime after ordinary duty for a day to the end of, or after, a meal period without taking a meal break; or
- (b) works overtime after ordinary duty for a day after a meal break, if he or she is not entitled to payment during the meal break; or
- (c) works overtime before the start of ordinary hours of duty for a day and takes a meal break, if he or she is not entitled to payment during the meal break; or
- (d) works overtime on a Saturday, Sunday or public holiday continuing after a meal break, if he or she is not entitled to payment during the meal break.

The employee is entitled to a meal allowance. At the commencement of this Agreement, the allowance is \$23.60.

For this item, a **meal period** is:

- (a) 7.00 am to 9.00 am; or
- (b) 12 noon to 2.00 pm; or
- (c) 6.00 pm to 7.00 pm; or
- (d) midnight to 1.00 am.

#### 4.16 Emergency duty

This item applies if an employee:

- (a) is directed to attend for duty to meet an emergency; and
- (b) would not ordinarily have been on duty at that time; and
- (c) were not given notice of the direction before ceasing ordinary duty; and
- (d) the employee:
  - (i) is at a classification at or below the salary barrier; or
  - (ii) is at a classification above the salary barrier and the Agency Head has authorised the payment of an amount under this item to the employee.

For the time on duty, the employee is to be paid:

- (a) at the rate of double time; and
- (b) for at least 3 hours.

The time on duty is taken to include time necessarily spent in travelling to and from duty.

This item does not apply if the employee is subject to a restriction direction.

Item 4.14 (rest relief after overtime) does not apply to overtime worked in circumstances covered by this item unless the actual time worked is at least 3 hours for each attendance.

#### 4.17 Restriction direction

An employee may be directed to be contactable and available to perform duties outside the employee's ordinary hours of work (a **restriction direction**).

The employee is entitled to a restriction allowance if he or she is subject to a restriction direction and he or she is at a classification level at or below the salary barrier or the Agency Head authorises payment of restriction allowance to the employee.

The allowance is to be paid for each hour or part of an hour restricted in accordance with the following table:

<b>Period of restriction</b>	<b>Allowance (% of employee's hourly rate of salary)</b>
Monday to Friday	7.5%
Saturday or Sunday	10%
Public holiday	15%

If the Agency Head has granted a restriction allowance to an employee at a classification above the salary barrier under paragraph 2, the salary for working out the hourly rate of salary is taken to be the maximum salary payable to the employee at the APS Level 6 classification.

Restriction allowance is not payable for any period for which an employee receives another payment.

If an employee is subject to a restriction direction and he or she is required to perform duty, the relevant overtime provisions apply to the duty, subject to:

- (a) if the employee is not recalled to a place of work to perform the duty — a one hour minimum payment; and
- (b) if the employee is recalled to a place of work to perform the duty — a 3 hour minimum payment.

#### 4.18 Official travel — domestic and overseas

If an employee is travelling on official business or is on duty away from his or her usual place of work, he or she is entitled to fares, travelling allowance and other conditions relating to the travel or duty as set out in the Agency Policy Advice *Official Travel*.

#### 4.19 Relocation expenses

The Agency Head may make financial or other assistance available for relocation of a person from one locality to another in connection with employment by the Agency.

#### 4.20 Reimbursement of expenses

The Agency Head may authorise reimbursement of costs, incurred by an employee, that directly relates to his or her employment (other than costs that are covered by other allowances under this Agreement).

#### **4.21 Flexible remuneration packaging**

An employee may elect to sacrifice salary for non-monetary benefits as set out in the draft Agency Policy on salary packaging.

The employee must pay fringe benefits tax and administrative costs incurred because of the election.

#### **4.22 Salary for Superannuation Purposes**

For Commonwealth Superannuation Scheme and for the purposes of the *Superannuation Act 1976* the annual rate of salary is the amount to which the employee is entitled as per Schedule 1.

For Public Sector Superannuation Scheme members and for the purposes of the Trust Deed and Rules under the *Superannuation Act 1990* the:

- (a) Basic Salary is the amount to which the employee is entitled at Schedule 1; and
- (b) the amount of any allowances to which the employee is entitled under this Agreement.

For ordinary employer sponsored members of the Public Sector Superannuation Accumulation Plan (PSSAP) and for the purposes of the Trust Deed and Rules under the *Superannuation Act 2005* the Fortnightly Contribution Salary is as though the employee had been a PSS member.

#### **4.23 Employers Superannuation Contribution**

Where an employee who is eligible for membership of the Public Sector Superannuation Accumulation Plan (PSSAP) exercises superannuation choice, the Agency will pay an employer contribution to the employee's eligible fund based on the employee's fortnightly salary.

The employer contribution will be the same as that applicable in the PSSAP scheme as set out in the Trust Deed which is currently 15.4%.

The Agency will limit superannuation choice to funds which:

- (a) are complying and registered superannuation funds; and
- (b) allow employee and /or employer contributions to be paid fortnightly through electronic funds transfer.

## **5 Flexible working arrangements**

### **5.1 Duties**

Employees will perform with due care and diligence:

- (a) the duties described in the employee's Performance Agreement; and
- (b) other duties directed from time to time by the Agency Head (or manager), consistent with the laws of the Commonwealth.

## **5.2 Hours of work**

For the purposes of leave accrual and deductions, deductions for unauthorised absences and calculating salary for part-time hours, full-time hours are 37.5 hours per week.

Subject to item 5.2 paragraph 3, working arrangements, including attendance for duty, will be in line with the Agency Policy Advice *Flexible Working Arrangements, Flextime and Attendance Recording*.

If the employee is at an Executive Level classification, flexible working arrangements are at the discretion of his or her individual manager.

## **5.3 Recording attendance**

Employees must maintain a record of each period of attendance and approved leave in the form approved by the Agency Head.

## **5.4 Christmas shut-down**

Employees are entitled to time off for the two normal working days between Christmas Day and New Year's Day without loss of pay and deduction from leave. Employees will also have access to an additional day within the Christmas/New Year period to be observed on the working day following the Boxing Day public holiday.

If an employee's duties require he or she to work during this period he or she will be entitled to an equivalent period of paid time off to be taken within four weeks or, with the agreement of his or her manager, at another time convenient to the employee.

## **5.5 Unauthorised absences**

If an employee is absent from duty without approval, all pay and other benefits provided under this Agreement cease to be available until the employee resumes duty or is granted leave for the absence.

## **5.6 Health and wellbeing program**

Employees may be eligible for the benefits under the Agency's health and wellbeing program. Eligibility for reimbursement or assistance will be determined consistent with the Guidelines for the program contained in the Agency Policy Advice *Health Practices — Health and Wellbeing Program*.

## **5.7 Employee Assistance Program**

Employees and their families can access a confidential, professional counselling service provided by ACLEI to help them resolve both personal and work related matters. More information can be found in the Agency Policy *Employee Assistance Program*.

## **5.8 Part-time work**

Employees may work on a part-time basis. Information on the policy for part-time work arrangements is set out in the Agency Policy Advice *Part-Time Work*.

Reimbursement for expenses incurred and allowances for a part-time employee are the same as for a full-time employee.

## **5.9 Home-based work Contracts**

The Agency Head and the employee may agree that he or she is able to perform all or part of the duties of his or her position from his or her home or elsewhere.

The conditions for home-based work will be as set out in the Agency Policy Advice *Home-Based Work*.

## **5.10 Public holidays to be observed**

Employees are entitled to observe the public holidays for their work locality.

## **5.11 Annual leave entitlement**

A full-time employee's annual leave credit for a year of service is 150 hours.

Credits accrue each day.

If in a year an employee has worked a period or periods of part-time service, his or her annual leave credits for each period of part-time service are to be calculated on the basis of the approved part-time hours of service performed during that period.

If in a year the employee is absent on leave that does not count for service for a total of more than 30 calendar days, his or her annual leave credit is reduced accordingly.

## **5.12 Taking annual leave**

An employee may, on written application in the form approved by the Agency Head, take annual leave with the approval of his or her manager.

If a public holiday for which the employee is entitled to pay occurs during the course of annual leave, no deduction for that day will be made from his or her annual leave credit.

Annual leave counts as service for all purposes.

## **5.13 Unused annual leave**

Unused annual leave:

- (a) may be cashed out in accordance with section 233 of the WRA; and
- (b) is subject to any directions given under subsection 236 (6) of the WRA; and
- (c) is payable on separation.

Note: From 1 July 2009 cashing out of unused annual leave is subject to the provision of section 93 of the *Fair Work Act 2009* and paid annual leave must not be cashed out if the cashing out would result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.

#### **5.14 Annual leave during graduated return to work**

This item applies to an employee who is on a graduated return to work following an absence on sick leave for a non-compensable illness or injury (whether or not the absence related to a single medical condition).

If an employee takes annual leave, the whole of the period of absence is to be treated as annual leave.

#### **5.15 Paid parental leave**

An employee, other than an employee who is entitled to maternity leave under the *Maternity Leave (Commonwealth Employees) Act 1973*, who:

- (a) is the parent of a new-born child, or adopts a child; and
- (b) ordinarily resides with the child;

is entitled to 5 days paid parental leave.

Paid parental leave must be taken, at a time agreed between the employee and his or her manager, within 3 months after the birth or adoption of the child.

A period of paid parental leave counts as service for all purposes.

#### **5.16 Unpaid parental leave**

An employee has parental leave conditions at the standard described in Part 7, Division 6 of the WRA.

*Note* The employee may also have an entitlement to maternity leave under the *Maternity Leave (Commonwealth Employees) Act 1973*.

#### **5.17 Sick leave and carer's leave**

Employees are entitled to a total of 18 days full pay leave credit for sick leave and carer's leave purposes:

- (a) on engagement as an ongoing APS employee; and
- (b) on an accrual basis over each 12 month period of service as an ongoing employee.

Leave credit for sick leave and carer's leave purposes is cumulative and is accrued on a daily basis.

Sick leave and carer's leave credits are available for use for absences:

- (a) for personal illness or injury that is not covered by workers' compensation
- (b) if an employee is required to provide care or support to a member of his or her Immediate Family or a member of the employee's household, who requires care or support because of:
  - (i) a personal illness, or injury, of the member; or
  - (ii) an unexpected emergency affecting the member.

Sick leave and carer's leave must have the approval of the employee's manager.

Sick leave without pay may be granted to an employee if paid leave credits are exhausted.

If paid leave for the purposes described at 5.17 paragraph 3 (b) has been exhausted, an employee is entitled to a period of up to 2 days unpaid carer's leave for each occasion when he or she is absent for a purpose mentioned in that paragraph.

Sick leave and carer's leave for all employees is managed on the basis of reasonable needs and trust. In some circumstances, the Integrity Commissioner (or delegate) may require an employee to provide reasonable supporting medical documents or other proof, or require the employee to attend an appropriate medical practitioner for a medical examination.

### **5.18 Sick and carer's leave — non-ongoing employees**

Subject to item 5.19, a non-ongoing employee is entitled to paid leave for an absence if the Agency Head or a non-ongoing employee's manager is satisfied that the absence:

- (a) is for genuine personal illness or injury that is not covered by workers' compensation; or
- (b) is required to provide care or support to a member of that employee's Immediate Family, or a member of the employee's household, who requires care or support because of:
  - (i) a personal illness, or injury of the member; or
  - (ii) an unexpected emergency affecting the member.

### **5.19 Standards for sick/carer's leave for non-ongoing employees**

After the completion of each 4 week period of service, a non-ongoing employee is entitled to accrue an amount of paid sick/carer's leave of 1/20 of the number of ordinary hours worked by that non-ongoing employee during the 4 week period.

If that employee's paid sick/carer's leave credits have been exhausted, the employee is entitled to

- (a) a period of up to 2 days unpaid carer's leave for each occasion when the employee is absent for a purpose mentioned in item 5.18 (b) (i) or (ii); or
- (b) sick leave without pay, as approved by the Agency Head.

### **5.20 Compassionate leave — ongoing and non-ongoing employees**

An employee is entitled to a period of up to 2 days paid compassionate leave for each occasion when a member of his or her Immediate Family or a member of the employee's household:

- (a) contracts or develops a personal illness that poses a serious threat to his or her life; or
- (b) sustains a personal injury that poses a serious threat to his or her life.

An employee is entitled to a period of up to 3 days paid compassionate leave for each occasion when a member of his or her Immediate Family or a member of the employee's household dies.

The Agency Head may approve additional paid compassionate leave if the Agency Head is satisfied that there are appropriate circumstances for doing so.

However, an employee is entitled to compassionate leave only if the employee gives the Agency Head any evidence that the Agency Head reasonably requires of the illness, injury or death.

### **5.21 Discretionary miscellaneous leave**

The Agency Head may grant discretionary miscellaneous leave (including supporting the release of community service volunteers for emergency services, Defence leave, jury service or to donate blood) for a purpose not covered by this Agreement. More information regarding discretionary miscellaneous leave can be found in the Agency Policy Advice *Leave Policy*.

### **5.22 Variable leave arrangements**

Employees may participate in the variable leave scheme with the approval of the Agency Head. The scheme allows employees to access additional paid leave by reducing annual salary by an agreed factor over an agreed period.

## **6 Managing change – Redeployment and Retrenchment**

### **6.1 Application of Section**

This section applies only if an employee is an excess ongoing employee other than an employee on probation.

An employee is an **excess employee** if:

- (a) the employee is of a kind of which there are more than are necessary for the efficient and economical working of ACLEI, or
- (b) the services of that employee cannot be effectively used because of technological or other changes to work methods or changes in the nature, extent or organisation of the functions of ACLEI or
- (c) the duties usually performed by that employee are to be performed at a different locality:
  - (i) that the employee is not willing to perform the duties at that locality; and
  - (ii) the Agency Head decides that that employee is an excess employee.

## 6.2 Consultation process

If the Agency Head considers that an employee is likely to become an excess employee, the Agency Head must consult with that employee in line with the guidelines for managing excess employees set out in the Agency Policy Advice *Managing Excess Employees*.

## 6.3 Voluntary retrenchment

The Agency Head may invite an employee to accept voluntary retrenchment if:

- (a) that employee has been advised that he or she is an excess employee; or
- (b) that employee expresses interest in voluntary retrenchment and the Agency Head is of the opinion that retrenchment of the employee would permit the redeployment of another employee who is excess and would otherwise be subject to retrenchment.

The Agency Head must not invite that employee to accept voluntary retrenchment under paragraph 1 (b) unless:

- (a) an otherwise excess employee will be redeployed to perform duties that would otherwise have been performed by the employee; and
- (b) as a result, that employee becomes an excess employee.

Subject to paragraph 4, if the Agency Head invites that employee to accept voluntary retrenchment under paragraph 1, the Agency Head must allow that employee at least 1 month (the **acceptance period**) to accept the offer.

If, before the end of the acceptance period, that employee accepts the offer and agrees to waive the acceptance period, the Agency Head may give notice of termination in accordance with section 29 of the PSA.

Within the acceptance period, the Agency Head must tell that employee in writing about the following matters:

- (a) the amount of severance pay, pay in lieu of notice and paid up leave credits;
- (b) the amount of accumulated superannuation contributions;
- (c) options open to the employee for superannuation;
- (d) taxation rules applying to payments to the employee;
- (e) the level of assistance up to a maximum of \$750 for financial advice.

Only one offer of voluntary retrenchment is to be made to an employee.

If an employee does not accept or decline an offer of voluntary retrenchment under paragraph 1 before the end of the acceptance period, that employee is taken to have declined the offer.

If an employee declines, or is taken to decline, an offer of voluntary retrenchment under paragraph 1, the Agency Head must, as soon as possible and with that employee's consent, refer that employee to career advisory services.

## 6.4 Period of notice

If an employee agrees to be voluntarily retrenched under item 6.3, the Agency Head may retrench that employee by giving notice of termination in accordance with section 29 of the PSA.

The period of notice is 4 weeks or, if that employee is over 45 with at least 5 years of continuous service, 5 weeks.

If an employee is retrenched at the beginning of, or within, the notice period, that employee must receive payment instead of notice as set out in the WRA for the unexpired part of the notice period.

## 6.5 Severance pay

If an employee is an employee to whom item 6.4 paragraph 1 applies, that employee is entitled to be paid an amount equal to:

- (a) 2 weeks salary for each completed year of continuous service; and
- (b) a proportionate payment for completed months of service since the last completed year of service.

However, the minimum amount payable is an amount equal to 4 weeks salary and the maximum amount payable is an amount equal to 48 weeks salary.

Severance pay is calculated on a proportionate basis for any period of service when the employee worked part-time hours if that employee has less than 24 years of full-time service.

Subject to paragraphs 5, 6 and 7, for severance pay, **service** means any of the following:

- (a) service in the Agency;
- (b) Government Service as defined by section 10 of the *Long Service Leave (Commonwealth Employees) Act 1976*;
- (c) service with the Commonwealth (other than service with a Joint Commonwealth-State body corporate in which the Commonwealth has a controlling interest) that is recognised for long service leave purposes;
- (d) service with the Australian Defence Force;
- (e) service in the Australian Public Service immediately before deemed resignation under section 49 of the *Public Service Act 1922* (as in force on 17 November 1966) if the service has not previously been recognised for severance pay purposes;
- (f) service in another organisation that is recognised for long service leave purposes if:
  - (i) the employee was transferred from the Australian Public Service to the organisation with a transfer of a function; or
  - (ii) the employee was engaged by the organisation on work within a function, and was appointed because of the transfer of the function to the Australian Public Service.

Earlier periods of service count if:

- (a) there is no break between the periods of service; or
- (b) there is a break between the periods of service of less than 1 month, and the break happened when an offer of employment with the new employer had been made and accepted by that employee before ceasing employment with the previous employer; or
- (c) the earlier period of service was with the Australian Public Service and ceased because that employee was deemed to have resigned from the Australian Public Service on marriage under section 49 of the *Public Service Act 1922* (as in force on 17 November 1966).

A period of service does not count as service for severance pay purposes if it ceased for any of the following reasons:

- (a) because that employee lacked, or had lost, an essential qualification for performing his or her duty;
- (b) because of non-performance, or unsatisfactory performance, of duties;
- (c) because of an inability to perform duties due to physical or mental incapacity;
- (d) failure to satisfactorily complete an entry level training course;
- (e) failure to meet a condition imposed under subsection 22 (6) of the PSA;
- (f) breach of the APS Code of Conduct;
- (g) under the *Public Service Act 1922* for a reason equivalent to a reason mentioned in paragraphs (a) to (f);
- (h) through voluntary retirement at or above the minimum retirement age applicable to that employee;
- (i) with the payment of a redundancy benefit or similar payment or an employer financed retirement benefit;
- (j) any other ground prescribed under the *Public Service Regulations 1999*.

An absence from work that does not count as service for long service leave purposes does not count as service for severance pay purposes.

## **6.6 Rate of payment — severance pay**

In calculating severance pay, salary includes:

- (a) either:
  - (i) that employee's full-time salary, adjusted on a proportionate basis in accordance with 6.5 paragraph 3 for periods of part-time service; or
  - (ii) if that employee acted in a higher position for a continuous period of at least 1 year immediately before the employee was given notice of retrenchment — the full-time salary of the higher position, adjusted on a proportionate basis in accordance with 6.5 paragraph 3 for periods of part-time service; and

- (b) other allowances in the nature of salary that were paid regularly and during annual leave, excluding allowances that were:
  - (i) a reimbursement for expenses incurred; or
  - (ii) a payment for disabilities associated with the performance of duty.

## **6.7 Retention periods**

If an excess employee does not accept an offer of voluntary retrenchment, the Agency Head must not terminate his or her employment in accordance with section 29 of the PSA without that employee's consent until the following retention periods have elapsed:

- (a) if the employee has at least 20 years service or is 45 years or over — 13 months;
- (b) for any other employee — 7 months.

The retention period starts on:

- (a) the day the employee is told in writing in accordance with the consultation process that that employee is excess; or
- (b) if that employee is an employee mentioned in item 6.3 paragraph 1 (b) who expresses interest in voluntary retrenchment — the day the Agency Head invites that employee to accept voluntary retrenchment under item 6.3.

The retention period is extended by any period of certified sick leave taken during the retention period.

## **6.8 Redeployment during retention period**

During the retention period, the Agency Head must take reasonable steps, consistent with the interests of the efficient administration of the agency, to transfer an excess employee to a suitable vacancy at the same level within the agency.

However, during the retention period, the Agency Head may transfer an employee to a job at a lower classification with 4 weeks notice.

The notice period mentioned in paragraph 2 must, as far as practicable, be concurrent with the retention period.

If an employee is transferred under paragraph 2 before the end of the retention period, that employee is to be paid income maintenance to maintain that employee's salary at the previous higher level for the balance of the retention period.

## **6.9 Application for other positions during retention period**

An excess employee who, during the retention period, applies for assignment to duties within a classification group the same as, or lower than, that employee's current approved classification as a result of an advertised vacancy in ACLEI is entitled to be considered in isolation from, and not in competition with, an applicant who is not an excess employee.

An excess employee is entitled to reasonable leave with full pay to attend necessary employment interviews if the employee:

- (a) has been told in writing in accordance with the consultation process that that employee is excess; or
- (b) has elected to be retrenched but the Agency Head has not retrenched that employee under 6.4 paragraph 1.

An employee is entitled to reasonable travel and incidental expenses, not met by the prospective employer, to attend an employment interview.

An excess employee who has to move household to a new locality because of an ongoing assignment to duties within a classification group the same as, or lower than, that employee's approved classification before the assignment is entitled to reasonable expenses.

### **6.10 Voluntary retrenchment during retention period**

If:

- (a) an employee has been notified that he or she is excess; and
- (b) that employee is not permanently redeployed to a suitable position within 3 months; and
- (c) that employee has not previously been invited to accept voluntary retrenchment;

the Agency Head must, as soon as possible after the end of the 3 month period, invite that employee to accept voluntary retrenchment.

If an excess employee agrees, the Agency Head may terminate that employee's employment in accordance with section 29 of the PSA, and pay the balance of that employee's entitlement for the retention period as a lump sum, if:

- (a) that employee has been invited to accept, and has declined, voluntary retrenchment; and
- (b) redeployment has not been achieved within 3 months of that employee being identified as excess; and
- (c) the Agency Head is satisfied that there is insufficient productive work available for that employee for the rest of the retention period; and
- (d) for an employee who was referred to a career advisory service — the service has advised that that employee is unlikely to be redeployed to another APS agency.

Payment under paragraph 2 is taken to include payment in lieu of notice of termination.

### **6.11 Involuntary termination**

Subject to the consultation process under this section, the Agency Head may terminate, in accordance with section 29 of the PSA, the employment of an excess employee at the end of the retention period, without the consent of the employee.

An excess employee must not have his or her employment terminated if that employee:

- (a) has not been invited to accept an offer of voluntary retrenchment; or
- (b) has elected to be retrenched but the Agency Head has not retrenched that employee under 6.4 paragraph 1.

An excess employee must not have his or her employment terminated involuntarily without being given notice of termination, or payment in lieu of notice, of at least:

- (a) if that employee is over 45 years with at least 5 years of continuous service — 5 weeks; or
- (b) in any other case — 4 weeks.

The notice period mentioned in paragraph 3 must, as far as practicable, be concurrent with the retention period.

### **6.12 Redeployment and retrenchment provisions not to prevent other action**

This section does not prevent the reduction in classification, or the termination of the employment of an employee, because of a breach of the Code of Conduct, physical or mental incapacity, unsatisfactory performance of, or non-performance of, duties, loss of an essential qualification or any other ground for termination of employment prescribed by the *Public Service Regulations 1999*.

### **6.13 Termination of Employment: Review Mechanism**

In the event of termination of an employee's employment, his or her sole rights and remedies are those under:

- (a) Part 12 Division 4 of the *Workplace Relations Act 1996*;
- (b) other Commonwealth laws (including the Constitution); and
- (c) common law.

In particular, termination of employment, or a decision to terminate employment, cannot be reviewed under the procedures for dispute resolution in section 8 of this Agreement.

Nothing in this Agreement prevents the Agency Head from terminating an employee's employment without notice or payment in lieu of notice for serious misconduct in accordance with Part 12 Division 4 of the *Workplace Relations Act 1996*, subject to the Agency Head's procedures for determining whether the employee has breached the APS Code of Conduct under Subsection 15(3) of the PSA.

## **7 Cooperative workplace relations**

### **7.1 Dispute avoidance and settlement procedures**

If there is any dispute arising between an employee and ACLEI from or relating to this Agreement, the parties agree to resolve it in good faith at the workplace level. If resolution cannot be achieved within a reasonable time either party must refer the matter to mediation to a person agreed between the parties. If the parties cannot reach agreement on who is to conduct the mediation either party may refer the matter to an agency approved under sub section 4(2) *Mediation Act 1997 of the Australian Capital Territory*, or an equivalent State statute.

The parties each agree to participate in such a mediation process. The Agency Head agrees to the costs of the mediation being borne by ACLEI, provided that the employee has genuinely attempted to resolve the dispute at the workplace level.

Where the right of review provided by section 33 of the PSA and Part 5 of the Public Service Regulations is exercised, and does not fail for want of jurisdiction, the employee will have no right of review with respect to that matter under item 7.1.

### **7.2 Conduct during dispute**

Employees agree that while the dispute is being resolved, he or she will;

- (a) continue to work in accordance with this Agreement, unless the employee has a reasonable concern about an imminent risk to health or safety; and
- (b) comply with any reasonable direction given by the Agency Head or delegate to perform other available work, either at the same workplace or at another workplace.

In directing the employee to perform other available work, the Agency Head or delegate must have regard to:

- (a) the provisions, if any, of the law of the Commonwealth or of a State or Territory dealing with occupational health and safety that apply to that employee or that other work; and
- (b) whether that work is safe and appropriate for the employee to perform.

### **7.3 Time frames and other matters**

The parties agree not to commence an action:

- (a) seeking an administrative or judicial review or arbitration;
- (b) seeking any penalty or damages; or
- (c) to enforce a provision of this Agreement;  
unless:
  - (d) the party initiating the action has genuinely attempted to resolve the dispute at the workplace level; and  
either

- (i) a period of 14 days has expired from the date when the party initiating the action gave notice that mediation is not requested; or
- (ii) mediation was requested by either party and that mediation has been completed, without unreasonable delay.

The parties agree to bear their own costs arising from any action occurring other than in the mediation process but retain the right to seek costs arising from an action involving any court or commission.

## **8 Preservation of accrued paid leave entitlements**

### **8.1 Preservation of accrued paid leave entitlements**

If an employee joins the Agency on or after the commencement of this Agreement from another employer and was employed in performing functions for the other employer under the PSA, the *Parliamentary Service Act 1999* or from the ACT Government Service, accrued annual leave, personal leave and carers leave (however described) will be transferred, if there is no break in continuity of service.

## Schedule 1      Salary rates

Classification	Pay Points	Salary as at	From	From	From
		1 July 2008	date of commencement of Agreement +3.2%	1 July 2010 +3.2%	1 July 2011 +3.2%
		Salary Rates	Salary Rates	Salary Rates	Salary Rates
APS Level 1	APS 1.1	\$36,785	\$37,962	\$39,177	\$40,431
	APS 1.2	\$38,075	\$39,293	\$40,551	\$41,848
	APS 1.3	\$39,363	\$40,623	\$41,923	\$43,264
	APS 1.4	\$40,656	\$41,957	\$43,300	\$44,685
APS Level 2	APS 2.1	\$41,632	\$42,964	\$44,339	\$45,758
	APS 2.2	\$43,141	\$44,522	\$45,946	\$47,416
	APS 2.3	\$44,652	\$46,081	\$47,555	\$49,077
	APS 2.4	\$46,165	\$47,642	\$49,167	\$50,740
APS Level 3	APS 3.1	\$47,418	\$48,935	\$50,501	\$52,117
	APS 3.2	\$48,670	\$50,227	\$51,835	\$53,493
	APS 3.3	\$49,924	\$51,522	\$53,170	\$54,872
	APS 3.4	\$51,177	\$52,815	\$54,505	\$56,249
APS Level 4	APS 4.1	\$52,847	\$54,538	\$56,283	\$58,084
	APS 4.2	\$54,359	\$56,098	\$57,894	\$59,746
	APS 4.3	\$55,869	\$57,657	\$59,502	\$61,406
	APS 4.4	\$57,381	\$59,217	\$61,112	\$63,068
APS Level 5	APS 5.1	\$58,945	\$60,831	\$62,778	\$64,787
	APS 5.2	\$60,130	\$62,054	\$64,040	\$66,089
	APS 5.3	\$61,420	\$63,385	\$65,414	\$67,507
	APS 5.4	\$62,504	\$64,504	\$66,568	\$68,698
APS Level 6	APS 6.1	\$63,662	\$65,699	\$67,802	\$69,971
	APS 6.2	\$66,819	\$68,957	\$71,164	\$73,441
	APS 6.3	\$69,976	\$72,215	\$74,526	\$76,911
	APS 6.4	\$73,131	\$75,471	\$77,886	\$80,379
Executive Level 1	Executive 1.1	\$81,200	\$83,798	\$86,480	\$89,247
	Executive 1.2	\$85,569	\$88,307	\$91,133	\$94,049
	Executive 1.3	\$89,939	\$92,817	\$95,787	\$98,852
	Executive 1.4	\$94,309	\$97,327	\$100,441	\$103,655
	Executive 1.5	\$98,678	\$101,836	\$105,094	\$108,457
Executive Level 2	Executive 2.1	\$99,822	\$103,016	\$106,313	\$109,715
	Executive 2.2	\$104,041	\$107,370	\$110,806	\$114,352
	Executive 2.3	\$108,261	\$111,725	\$115,301	\$118,990
	Executive 2.4	\$112,481	\$116,080	\$119,795	\$123,628

## Schedule 2 Rates of higher duties allowance

### 1 Rate of allowance — temporary assignment to perform duties at higher classification

This item applies to an employee if:

- (a) that employee is assigned to perform temporarily all the duties of a position (other than an SES position) that has a classification higher than that employee's approved classification; and
- (b) that employee is eligible for payment of higher duties allowance under item 2.6.

Subject to sub item (3), the rate at which higher duties allowance is to be paid to an employee is the greater of the following:

- (a) the difference between:
  - (i) that employee's salary for the approved classification; and
  - (ii) the lowest pay point at the higher classified position that is above that employee's salary for the approved classification;
- (b) the difference between:
  - (i) that employee's salary for the approved classification; and
  - (ii) if that employee has, through incremental or PPI based advancement, attained a higher than the minimum pay point for a classification higher than that employee's approved classification — the highest pay point attained by that employee at the higher classification;

The Agency Head may approve a higher rate at which higher duties allowance is to be paid to that employee.

### 2 Rate of allowance — acting in a broadbanded position

This item applies to an employee if:

- (a) that employee is assigned to perform temporarily all of the duties of a position that is broadbanded; and
- (b) the broadbanded position includes that employee's approved classification (eg an APS Level 4 directed to undertake the duties of a broadbanded APS Level 4/5 position).

That employee is not entitled to be paid a higher duties allowance in relation to the performance of duties unless the Agency Head approves the payment of higher duties allowance.

Subject to sub item (4), if the Agency Head approves the payment of higher duties allowance, the rate at which higher duties allowance is to be paid to an employee is the greater of the following:

- (a) the difference between:
  - (i) that employee's salary for the approved classification; and
  - (ii) the lowest pay point of the next APS Level classification within the broadbanded position that is above that employee's approved classification;
- (b) the difference between:
  - (i) that employee's salary for the approved classification; and
  - (ii) if that employee has, through incremental or PPI based advancement, attained a higher than the minimum pay point for the next APS Level classification within the broadbanded position that is above that employee's approved classification — the highest pay point attained by that employee at the next classification.

The Agency Head may approve a higher rate at which higher duties allowance is to be paid to an employee.

### **3 Salary advancement under program for performance improvement**

This item applies to an employee if:

- (a) that employee is assigned to perform temporarily all of the duties of a broadbanded position at a classification higher than that employee's approved classification; and
- (b) the broadbanded position includes that employee's approved classification; and
- (c) that employee participates in the PPI in relation to the position; and
- (d) that employee is rated as *meets all key performance targets* or *exceeds most performance targets* in relation to the position and is advanced 1 pay point.

An employee is to be paid higher duties allowance for temporarily performing duties of the position, or another position at the same classification level, based on the pay point to which that employee has advanced.

However, salary advancement under sub item (2) does not result in promotion of an employee to the higher classification level.

#### **4 Temporary assignment of duties at SES classification**

An employee is to be paid higher duties allowance at a rate (not less than \$2 500 a year) decided by the Agency Head if:

- (a) that employee is assigned to perform the duties of an SES position that has a classification higher than that employee's approved classification; and
- (b) that employee is eligible for payment of higher duties allowance under item 2.6.

The Agency Head may also decide that an employee is entitled to other benefits and subject to conditions.

#### **5 Partial performance at higher position**

An employee is to be paid higher duties allowance at a rate decided by the Agency Head if:

- (a) that employee is temporarily assigned to perform part of the duties of a position (including an SES position) that has a classification higher than that employee's approved classification; and
- (b) that employee is eligible for payment of higher duties allowance.