



# **Murray–Darling Basin Authority Enterprise Agreement 2024–2027**

Effective 3 April 2024

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# Signatories

This agreement is made under Section 172 of the *Fair Work Act 2009*.

## Employer

Signed for and on behalf of the Murray–Darling Basin Authority



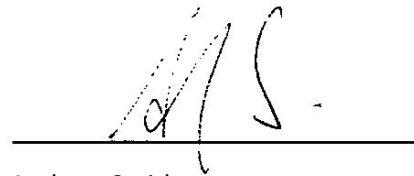
13/03/2024

Andrew McConville

Chief Executive of the Murray–Darling Basin Authority

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## Bargaining representative: Community and Public Sector Union



130324

Andrew Smith

Lead Organiser

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## Bargaining representative: The Association of Professional Engineers, Scientists and Managers Australia



Kathleen Studdert

Director, ACT Branch

7 Napier Close, Deakin, ACT 2600

# Section 1: Technical matters

## Title

1. This agreement will be known as the Murray–Darling Basin Authority Enterprise Agreement 2024-2027.

## Parties to the Agreement

2. This agreement covers:
  - 2.1 the Chief Executive, for and on behalf of the Commonwealth of Australia as the employer;
  - 2.2 all employees in the MDBA employed under the PS Act other than Senior Executive Service employees or equivalent; and
  - 2.3 subject to notice being given in accordance with section 183 of the FW Act, the following employee organisation/s which were a bargaining representative for this agreement:
    - 2.3.1 Community and Public Sector Union; and
    - 2.3.2 The Association of Professional Engineers, Scientists and Managers Australia.

## Operation of the 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 Chief Executive may delegate to or authorise any person to perform any or all of the Chief Executive's powers or functions under this agreement, including the power of delegation, and may do so subject to conditions.

## National Employment Standards (NES) precedence

6. The terms of this agreement are intended to apply in a manner that does not derogate from the NES. The NES will continue to apply to the extent that any term of this agreement is detrimental to an employee of the MDBA 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 MDBA 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; and
    - 10.1.6 leave and leave loading; and
  - 10.2 the arrangement meets the genuine needs of the MDBA 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 MDBA and employee.
11. The MDBA 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 MDBA must ensure that the individual flexibility arrangement:
  - 12.1 is in writing;
  - 12.2 includes the name of the MDBA and employee;
  - 12.3 is signed by the MDBA 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 enterprise 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 MDBA must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- 14. The MDBA or 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 MDBA and employee agree in writing – at any time.
- 15. The MDBA and employee are to review the individual flexibility arrangement at least every 12 months.

## Definitions

- 16. The following definitions apply to this agreement:

**Agreement** means the Murray–Darling Basin Authority Enterprise Agreement 2024-2027.

**APS** means the Australian Public Service.

**APS agency** means an agency whose employees are employed under the PS Act, including an agency as defined in section 7 of the PS Act whose employees are employed under that Act.

**APS consultative committee** means the committee established by the APS Commissioner to consider matters pertaining to the APS employment relationship and of interest to the APS as a whole.

**Australian Defence Force Cadets** means the Australian Navy Cadets, Australian Army Cadets, or the Australian Air Force Cadets.

**Bandwidth** means the span of hours during which an employee can perform ordinary hours.

**Broadband** refers to the allocation of more than one approved classification by the Chief Executive to a group of duties involving work value applying to more than one classification under sub-rule 9(4) of the *Public Service Classification Rules 2000*. A broadband encompasses the full range of work value of the classifications contained within it.

**Casual employee (irregular or intermittent employee)** means an employee engaged under section 22(2)(c) of the PS Act who:

- a. is a casual employee as defined by the FW Act; and
- b. works on an irregular or intermittent basis.

**Classification or classification level** means the approved classifications as set out in rule 5 of the *Public Service Classification Rules 2000*.

**Chief Executive** means the Chief Executive of the MDBA or the Chief Executive's delegate.

**Child** means a biological child, adopted child, foster child, stepchild, or ward.

**De facto partner** means 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. This includes a former de facto partner.

**Delegate** means someone to whom a power or function has been delegated.

**Dependant** means the employee's spouse or de facto partner, a child, parent or aged relative of the employee or the employee's spouse or de facto partner, who ordinarily lives with the employee and who is substantially dependent on the employee. Dependant also includes a child of the employee who does not ordinarily live with the employee but for whom the employee provides substantial financial support.

**Employee** means an employee of the Commonwealth engaged under section 22(2) of the PS Act who is covered by this agreement (whether full-time, part time or casual, ongoing or non-ongoing).

**Employee representative** means 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.

**Family** means:

- a. a spouse, former spouse, de facto partner or former de facto partner of the employee;
- b. a child, parent, grandparent, grandchild, or sibling of the employee;
- c. a child, parent, grandparent, grandchild, or sibling of a spouse, former spouse, de facto partner or former de facto partner of the employee;
- d. a member of the employee's household; or
- e. 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** means an employee employed to work an average of 37 hours and 30 minutes per week in accordance with this agreement.

**FW Act** means the *Fair Work Act 2009* as amended from time to time.

**Graduate** means the local title of MDBA Graduate and not an APS Graduate for the purpose of the *Public Service Classification Rules 2000*.

**Manager** means an employee's direct manager who is usually the person to whom an employee reports to on a day-to-day basis for work related matters and may include a person referred to as a supervisor.

**Meal Period** as for the purposes of overtime means any of the following periods:

- 7am – 9am
- 12 noon – 2pm
- 6pm – 7pm
- 12 midnight – 1am

**ML Act** means the *Maternity Leave (Commonwealth Employees) Act 1973* as amended from time to time and any successor legislation.

**Non-ongoing employee** means an employee engaged under section 22(2)(b) of the PS Act for a specified term or for the duration of a specified task, and consistent with the FW Act.

**NES** means the National Employment Standards at Part 2-2 of the FW Act.

**Ongoing employee** means an employee engaged under section 22(2)(a) of the PS Act.

**Ordinary hours, duty or work** means an employee's usual hours worked in accordance with this agreement and does not include additional hours.

**Parliamentary service** means employment under the *Parliamentary Service Act 1999*.

**Partner** means a spouse (including a former spouse) or de facto partner (including a former de facto partner).

**Part-time employee** means an employee whose ordinary hours are less than 37 hours and 30 minutes per week in accordance with this agreement.

**Primary caregiver** for the purposes of the parental leave clause means 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.

**PS Act** means the *Public Service Act 1999* as amended from time to time.

**Relevant employee** means an affected employee.

**Secondary caregiver** for the purposes of the parental leave clause means 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 this agreement.

## Section 2: Remuneration

### Salary

17. Salary rates will be as set out in Attachment A – Salaries and Allowances of this agreement.
18. The base salary rates in Attachment A in Table 1 – Base Salaries include the following increases:
  - 18.1 4.0 per cent from the first full pay period on or after 1 March 2024 (the 14 March 2024);
  - 18.2 3.8 per cent from the first full pay period on or after 1 March 2025 (the 13 March 2025); and
  - 18.3 3.4 per cent from the first full pay period on or after 1 March 2026 (the 12 March 2026).
19. In recognition of a common alignment date of the first full pay period on or after 1 March each year, the base salary rates in Attachment A in Table 1 – Base Salaries were calculated based on base salary rates as at 31 August 2023.

### Payment of salary

20. 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

21. Where an employee is engaged, moves to or is promoted in the MDBA, the employee's salary will be paid at the minimum of the salary range of the relevant classification, unless the Chief Executive determines a higher salary within the relevant salary range under these salary setting clauses.
22. The Chief Executive 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.
23. In determining a salary under these provisions, the Chief Executive will have regard to a range of factors (as relevant) including the employee's experience, qualifications and skills.

24. Where an employee commences ongoing employment in the MDBA immediately following a period of non-ongoing employment in the MDBA, the Chief Executive will determine 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 MDBA.
25. Where an employee commences ongoing employment in the agency immediately following a period of casual employment in the MDBA, the Chief Executive will determine the employee's salary within the relevant salary range of the relevant classification which recognises the employee's prior service as a casual employee in the MDBA.
26. Where an APS employee moves to the MDBA at level from another APS agency, and their salary is above the maximum of the salary range for their classification, the Chief Executive will maintain the employee's salary at that level, until it is absorbed into the salary range for that classification.
27. Where the Chief Executive determines that an employee's salary has been incorrectly set, the Chief Executive may determine the correct salary and the date of effect.

## **Incremental advancement**

28. Annual incremental advancement within a salary range, effective from 1 July 2024 is subject to the employee maintaining satisfactory performance, in accordance with the MDBA performance management arrangements.
29. An employee will advance one increment, within their substantive salary range, at the end of the annual assessment cycle of the MDBA performance management arrangements, where they have:
  - 29.1 achieved a satisfactory rating as defined in the most recent performance management assessment cycle;
  - 29.2 completed a minimum of six months of aggregate eligible service at the substantive classification or higher during the annual assessment cycle; and
  - 29.3 is not at the top salary point within the classification.
30. If an employee has less than 6 months of aggregate eligible service, the Chief Executive may exercise their discretion to determine a higher salary within the applicable classification subject to the employee's demonstration of satisfactory or higher performance.
31. Eligible service for salary progression will include:
  - 31.1 periods of paid leave and unpaid parental leave;
  - 31.2 periods of unpaid leave that counts as service; and
  - 31.3 service while employed on a non-ongoing basis.
32. During a period of unpaid parental leave employees will be eligible to advance a maximum of one increment, regardless of the length of unpaid parental leave.
33. Employees at the top or penultimate salary point of their substantive salary range may be eligible to receive a one-off performance bonus of \$1,000 recognising exceptional performance or contribution to the MDBA if approved by the Chief Executive.

34. An employee performing higher duties at the end of the annual assessment cycle will:
- 34.1 advance one increment at the **higher classification** where they have achieved a satisfactory rating as defined in the performance management arrangements, and has either:
    - 34.1.1 performed higher duties for a minimum of 6 months of aggregate eligible service during the annual assessment cycle; or
    - 34.1.2 the Chief Executive has certified that the employee is expected to be performing higher duties for a minimum of 6 months of aggregate eligible service; and
  - 34.2 advance one salary point at their **substantive classification** where they have achieved a satisfactory performance rating as defined in the performance management arrangements and has completed a minimum of 6 months duty in aggregate (including periods of paid and unpaid leave that counts as service) at the substantive classification or higher.
35. An employee who receives a performance rating indicating less than satisfactory performance as defined in the performance management arrangements will not be eligible for incremental advancement on 1 July.
36. If, on completion of an agreed review period, the employee's performance is rated as satisfactory, they will be eligible to receive an increment effective from the date of completion.

## Salary on Reduction

37. Where an employee requests, in writing, to temporarily perform duties at a lower classification level, the Chief Executive may determine in writing that the employee be paid at a rate applicable to the lower classification level for the period of the temporary reassignment of duties.
38. Where an employee is reduced in classification, either temporarily or permanently, the Chief Executive will take into account the salary point achieved at the higher classification level in determining the salary point at the lower classification level.
39. Where a reduction in classification relates to a breach of the APS Code of Conduct or a formal underperformance process the Chief Executive may determine a salary rate at any pay point within the pay range for the new classification.

## Superannuation

40. The MDBA will make compulsory employer contributions as required by the applicable legislation and fund requirements.
41. Employer superannuation contributions will be paid on behalf of employees during periods of paid leave that count as service.

42. The MDBA 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 MDBA's payroll system.

*Method for calculating superannuation salary*

43. The MDBA will provide an employer contribution of 15.4 per cent 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.
44. Employer contributions will be made for all employees covered by this agreement.
45. Employer contributions will not be reduced by any other contributions made through salary sacrifice arrangements.

*Payment during unpaid parental leave*

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

## **Salary Packaging**

47. All employees will have access to salary packaging provisions on a salary sacrifice basis, in accordance with the MDBA's policies and procedures. Employees will have the option of electing to take nominated benefits in lieu of their salary.
48. The arrangement must result in a cost neutral outcome for the MDBA, including any fees charged for the administration of the scheme and any Fringe Benefits Tax incurred as a result of the arrangement.
49. The employee's salary for all purposes including superannuation, severance and termination payments will be determined as if the salary packaging arrangement had not been entered into.

## **Overpayments**

50. An overpayment occurs if the Chief Executive (or the MDBA) 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).
51. Where the Chief Executive considers that an overpayment has occurred, the Chief Executive will provide the employee with notice in writing. The notice will provide details of the overpayment.
52. If an employee disagrees that there has been an overpayment including the amount of the overpayment, they will advise the Chief Executive 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.

53. If after considering the employee's response (if any), the Chief Executive confirms that an overpayment has occurred, the overpayment will be treated as a debt to the Commonwealth that must be repaid to the MDBA in full by the employee.
54. The Chief Executive 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 circumstances and any potential hardship to the employee. The arrangement will be documented in writing.
55. The MDBA and employee may agree to make a deduction from final monies where there is an outstanding payment upon cessation of employment.
56. Interest will not be charged on overpayments.
57. Nothing in clauses 50 to 56 prevents:
  - 57.1 the MDBA from pursuing recovery of the debt in accordance with an Accountable Authority Instruction issued under the *Public Governance, Performance and Accountability Act 2013*;
  - 57.2 the MDBA from pursuing recovery of the debt through other available legal avenues; or
  - 57.3 the employee or the MDBA from seeking approval to waive the debt under the *Public Governance, Performance and Accountability Act 2013*.

### **Supported wage system**

58. An employee may be paid a percentage of the relevant pay rate for their classification in line with their assessed capacity to do the work if they:
  - 58.1 have a disability;
  - 58.2 meet the criteria for a Disability Support Pension; and
  - 58.3 are unable to perform duties to the capacity required.
59. Specific conditions relating to the supported wage system are detailed in Attachment B – Supported Wage System.



## Section 3: Allowances and reimbursements

### Higher duties allowance

61. Where a role needs to be filled for a period of 5 or more working days or 2 or more working weeks, whichever period is shorter, higher duties allowance will be paid to any employee temporarily occupying the role acting at a classification level higher than their substantive classification level.
62. Higher duties allowance 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 level, or a higher amount determined by the Chief Executive.
63. Where an employee is found to be eligible for salary progression at their acting classification level they will receive an appropriate increase in the rate of higher duties allowance. The employee's salary level will be retained for all future periods of acting regardless of elapsed time.
64. Where an employee is assigned only part of the higher duties, the Chief Executive will determine the amount of allowance payable.
65. Higher duties allowance will be payable while an employee is acting at a higher classification level as part of a job sharing arrangement where the duration of the arrangement is at least 5 or more working days or 2 or more working weeks, whichever period is shorter.
66. The Chief Executive may shorten the qualifying period for higher duties allowance on a case-by-case basis.

### Workplace responsibility allowances

67. A workplace responsibility allowance will be paid where an employee has been appointed or elected to one of the following roles:
  - 67.1 First Aid Officer;
  - 67.2 Health and Safety Representative (HSR);
  - 67.3 Emergency Warden;
  - 67.4 Harassment Contact Officer (HCO); and/or
  - 67.5 Mental Health First Aid Officer.
68. An employee is not to receive more than one workplace responsibility allowance unless approved by the Chief Executive due to operational requirements.
69. The rate will be as set out in Attachment A in Table 2 – Workplace responsibilities allowance.
70. The allowance will continue to be increased in line with headline wage increases. These increases are incorporated in the minimum rates as set out in Attachment A in Table 2 – Workplace responsibilities allowance. Payment of the allowance will be subject to the employee having undertaken necessary training and/or having a current qualification.

- 71. A First Aid Officer is unable to be an Emergency Warden (and vice versa) due to the nature and responsibilities of the respective roles.
- 72. The full allowance is payable regardless of flexible work and part-time arrangements.
- 73. An employee's physical availability to undertake the role will be considered by the MDBA 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 First Aid Officers and Health and Safety Representatives depending on work group arrangements.
- 74. Casual employees who are eligible to receive a workplace responsibility allowance will be paid the full amount of the allowance in a pay cycle (noting the minimum rate), as varied from time to time provided they engage in work during that pay cycle, irrespective of the frequency and duration of the work undertaken.

### **Community language allowance**

- 75. A community language allowance will be paid where the Chief Executive 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 Chief Executive. Further information is included in policy.
- 76. The allowance is paid in accordance with the employee's level of competency as set out in Attachment A in Table 3 – Community Language Allowance.
- 77. The allowance is calculated annually and paid fortnightly.
- 78. The full allowance is payable regardless of flexible work and part-time arrangements.
- 79. The allowance is payable during periods of paid leave.
- 80. The allowance counts as salary for superannuation purposes and for calculating retirement and redundancy entitlements.

## Section 4: Classifications and broadbands

### Broadbanding

81. Broadbands for APS classifications are set out in Attachment A in Table 1 – Base Salaries. Clause 82 applies only to those broadbands contained in Attachment A in Table 1 – Base Salaries
82. Advancement to a higher APS classification level within a broadband is limited to ongoing employees, and is not automatic. Such advancement can only occur when either:
  - 82.1 the Chief Executive is satisfied that:
    - 82.1.1 there is work available at the higher level, on the basis of a detailed work value assessment against the higher classification using the APS work level standards;
    - 82.1.2 the employee has achieved at least a satisfactory rating as defined in the performance management arrangements; and
    - 82.1.3 the employee demonstrates an ability to undertake the higher level work, and if appropriate has the necessary qualifications, skills and/or experience; or
  - 82.2 the employee is successful in an open merit selection process consistent with the PS Act.

### MDBA Graduates

83. An MDBA Graduate will be engaged at an APS4.1 classification, as set out in Attachment A in Table 1 – Base Salaries and assigned the local title of 'MDBA Graduate'.
84. In order to complete the MDBA graduate development program, an MDBA graduate must:
  - 84.1 meet probation requirements;
  - 84.2 successfully complete scheduled learning activities;
  - 84.3 demonstrate that they have gained the necessary skills and experience; and
  - 84.4 perform at a satisfactory level.
85. On successful completion of the MDBA graduate development program
  - 85.1 an MDBA Graduate will advance within the classification structure to an APS5.1.
  - 85.2 A 2024 MDBA Graduate engaged at the minimum pay point in the MDBA Graduate Broadband will advance to the APS5.1 in MDBA's Graduate Broadband as set out in Attachment A in Table 4.
86. An MDBA Graduate will not be entitled to Higher Duties Allowance during the course of their MDBA graduate development program.

## **Work Level Standards**

87. The APS Work Level Standards continue to operate and describe the work at each of the classification levels in this agreement, consistent with the *Public Service Classification Rules 2000*, made in accordance with section 23 of the PS Act.

## Section 5: Working hours and arrangements

### Job security

#### *Commitment to ongoing employment and rebuilding APS capacity*

88. The APS is a career-based public service. In its engagement decisions, the MDBA recognises that the usual basis for engagement is as an ongoing APS employee.

#### *Reporting*

89. Where a consultative committee is in place, the MDBA will report to the MDBA consultative committee on an annual basis, or more frequently if agreed, on the number, duration, classification and location of ongoing, non-ongoing and casual employees engaged by the MDBA.

#### *Pathways to permanency*

90. The MDBA and the APS will comply with the casual conversion provision(s) of the FW Act. In addition, the MDBA 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 (irregular or intermittent) employment

91. A casual (irregular or intermittent) employee is defined in the definitions section.
92. A decision to expand the use of casual employees is subject to clauses 390 to 411 of this agreement.
93. The MDBA will regularly review the working arrangements of casual employees to assess if they are genuinely performing irregular or intermittent duties, and report de-identified outcomes to the consultative committee, where one is in place.
94. Remuneration for casual employees is on an hourly basis. A casual employee will receive a 25 per cent loading on the base hourly rate of their classification as set out in this agreement.
95. 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.
96. A casual employee will 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.
97. A casual employee who is eligible for a Workplace Responsibility Allowance will be paid the full amount.

## **Non-ongoing employment**

- 98. A non-ongoing employee is defined in the definitions section.
- 99. Non-ongoing employees will generally have the same terms and conditions of employment as ongoing employees under this agreement's terms, except:
  - 99.1 personal/carer's leave at clause 212 to 213;
  - 99.2 redundancy provisions at clauses 438 to 469, subject to clause 100.
- 100. If the non-ongoing employee's contract is not permitted by section 333E of the FW Act, then the redundancy provisions at clauses 438 to 469 will apply.
- 101. If the redundancy provisions apply to an employee under clause 100, the agency must adhere to the consultation requirements at clauses 390 to 411.

## **Working hours**

- 102. The ordinary hours of work per week for a full-time employee are 37 hours and 30 minutes per week (37.5 hours) which are to be performed on the basis of 7 hours and 30 minutes per day, Monday to Friday.
- 103. The standard hours of work are 8:30 am to 12:30 pm and 1:30 pm to 5:00 pm, Monday to Friday, local time.
- 104. The bandwidth during which employees may work is 7:00 am to 7:00 pm Monday to Friday.
- 105. This bandwidth may be varied by agreement between the Chief Executive and an employee to assist in meeting the employee's work/life balance or operational requirements of the MDBA. Where such a variation is agreed, the hours worked outside the standard bandwidth will be considered 'ordinary hours' and will not attract overtime rates.
- 106. For part-time employees, ordinary hours and standard hours will be those specified in each individual part-time work agreement.
- 107. An employee should not work more than 5 hours without a break of at least 30 minutes.
- 108. All employees have a mutual responsibility for managing their working hours and patterns, including leave planning, flex time arrangements, and minimising additional hours where possible. This agreement is designed to be sufficiently flexible for employees to meet business requirements and balance their personal needs with operational requirements.
- 109. An employee and their manager will work together to manage hours of work to ensure that an employee is not working excessive hours without the opportunity to take time off either as flex time for employees at or below APS 6 level or in the case of Executive Level employees, as Executive Level time off.
- 110. The pattern of hours by which an employee meets their ordinary hours of duty will be determined by the Chief Executive, in consultation with the employee, and with regard to the operational needs of the MDBA.

## **Flex for APS 1-6 classifications**

- 111. Employees, including part-time employees, at or below the APS 6 level will have access to flexible hours (flex time) provisions.
- 112. The flex time settlement period is 4 weeks.
- 113. The maximum flex time credit that can be accumulated and carried over into the next settlement period without approval of the Chief Executive is 37.5 hours for full-time employees. The carry over amount is pro-rata for part-time employees. In special circumstances, managers may approve the carry-over of a higher amount, which must be used in the following settlement period. However, the parties are responsible for identifying periods where credits can be used.
- 114. Where an employee has a flex credit of more than 37.5 hours, their manager will, subject to operational requirements, approve a request by an employee to take flex leave.
- 115. Where flex leave is not approved, the manager, on request, will provide reasons in writing, explaining the decision where possible within 5 working days.
- 116. The maximum flex time debit that can be accumulated and carried over into the next settlement period without approval of the Chief Executive is 15 hours. Any amount in excess of a 15 hour debit may be recovered as a deduction from the employee's salary.
- 117. Flex time credit and debit limits apply on a pro-rata basis for part-time employees.
- 118. On ceasing employment with the MDBA, a flex time credit will not be paid out but a flex time debit will be treated as leave without pay and deducted from the employee's final salary.

## **Executive Level Time Off in Lieu (EL TOIL)**

- 119. Executive level (EL) employees are sometimes required to work reasonable additional hours. Consistent with the NES, employees may refuse to work unreasonable additional hours.
- 120. EL employees seeking to access time off in lieu (TOIL) are required to keep records of their working hours using a method determined by the MDBA.
- 121. A manager is to grant TOIL in recognition of reasonable additional hours worked. TOIL granted to employees can be taken as whole or part days.
- 122. 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.
- 123. 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.
- 124. 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.

125. 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 and restriction**

126. An employee at or below APS 6 level will not unreasonably refuse to perform reasonable overtime following a request from their manager to work reasonable additional hours as required to meet operational needs and in line with the requirements of the Division 3 section 62 of the FW Act. They may elect to take time off in lieu or receive payment for the actual period worked in excess of their ordinary hours. Entitlement to time off in lieu will be equivalent to the hourly rates of payment.
127. If the employee elects to receive payment, the payment will only be made for the actual time worked except when working on Saturdays, Sundays, public holidays and when performing extra duty while on out of hours restrictions, where the minimum payment is 4 hours.
128. The Chief Executive may direct an employee to work a reasonable amount of overtime each year. However, with reasonable cause an employee may decline to work outside standard hours on a particular day.
129. The Chief Executive may approve the payment of overtime or time off in lieu (in accordance with clauses 119 to 125) to EL employees:
- 129.1 for River Murray Duty Operators;
  - 129.2 in exceptional circumstances, including operations in accordance with the River Murray Emergency Action Plan;
  - 129.3 Declared Flood Operations.
130. The rate of payment for overtime or time off in lieu of overtime will be:
- Monday to Saturday:
- for the first 3 hours of time worked, 1½ times hourly rate; and  
for time worked over 3 hours, 2 times hourly rate
- Sunday:
- for time worked, 2 times hourly rate
- Public Holidays:
- for time worked during a standard working day, 2½ times hourly rate and  
for time worked outside a standard working day, 3½ times hourly rate.
131. Where an employee is directed to work, for a continuous period of at least one hour outside the bandwidth which extends over a meal period, or on a weekend or public holiday, for a continuous period extending over a meal period, where there is at least a ½ hour unpaid break, they will be eligible for a meal allowance in accordance with a rate set by the Chief Executive.



132. Where an employee is required to work overtime or outside their normal pattern of work, the Chief Executive may approve, where appropriate, the reimbursement of other reasonable additional costs such as the cost of taxi fares to and from the employee's residence and reimbursement of reasonable expenses arising from additional family care arrangements.
133. If an employee at or below the APS 6 level is required by the Chief Executive to remain contactable and available to perform overtime outside their ordinary hours of work, they will be paid an hourly allowance in respect of each hour of restriction. Restriction allowance will not be paid during any period where overtime applies.
134. EL River Murray Duty Operators and employees undertaking operations in accordance with the River Murray Emergency Action Plan or Declared Flood Operations who remain contactable and available to perform overtime outside their ordinary hours of work will receive payment of an out of hours restriction allowance if approved by the Chief Executive.
135. In exceptional circumstances, other than those detailed in clause 134, the Chief Executive may approve the payment of out of hours restriction allowance to EL employees who remain contactable and available to perform overtime outside their ordinary hours of work.
136. The hourly allowance will be equivalent to the following percentages of the hourly salary payable to the employee:
- 136.1 where out of hours restriction occurs Monday - Friday: 7.5%;
  - 136.2 where out of hours restriction occurs on Saturday or Sunday: 10%;
  - 136.3 where out of hours restriction occurs on public holidays or during Christmas closedown: 15%.
137. Where an employee is contacted while subject to out of hours restriction, and is required to perform extra duty, overtime arrangements will, in accordance with clauses 126 to 132, apply including a minimum payment of 4 hours.

## **Flexible working arrangements**

138. The MDBA, employees and their union recognise:
- 138.1 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;
  - 138.2 access to flexible work can support strategies to improve diversity in employment and leadership in the APS;
  - 138.3 access to flexible work supports APS capability, and can assist in attracting and retaining the employees needed to deliver for the Australian community, including employees located at a wider range of locations;
  - 138.4 that flexibility applies to all roles in the MDBA, and different types of flexible working arrangements may be suitable for different types of roles or circumstances; and
  - 138.5 requests for flexible working arrangements are to be considered on a case-by-case basis, with a bias towards approving requests.

- 139. The MDBA is committed to engaging with employees and their union to build a culture that supports flexible working arrangements across the MDBA at all levels. This may include developing and implementing strategies through an MDBA consultative committee.
- 140. 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.
- 141. Variations in an employee's attendance times and short-term absences including full days may be agreed without the need to access leave.

*Requesting formal flexible working arrangements*

- 142. The following provisions do not diminish an employee's entitlement under the NES.
- 143. An employee may make a request for a formal flexible working arrangement.
- 144. The request must:
  - 144.1 be in writing;
  - 144.2 set out details of the change sought (including the type of arrangement sought and the proposed period the arrangement will operate for); and
  - 144.3 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.
- 145. The Chief Executive must provide a written response to a request within 21 days of receiving the request.
- 146. The response must:
  - 146.1 state that the Chief Executive approves the request and provide the relevant detail in clause 147; or
  - 146.2 if following discussion between the MDBA and the employee, the agency 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
  - 146.3 state that the Chief Executive refuses the request and include the following matters:
    - 146.3.1 details of the reasons for the refusal; and
    - 146.3.2 set out the MDBA's particular business grounds for refusing the request, explaining how those grounds apply to the request; and
    - 146.3.3 either:
      - 146.3.3.1 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 agency would be willing to make; or
      - 146.3.3.2 state that there are no such changes; and

- 146.3.4 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 FW Act, the dispute resolution procedures outlined in sections 65B and 65C of the FW Act.
147. Where the Chief Executive approves the request, this will form an arrangement between the agency and the employee. Each arrangement must be in writing and set out:
- 147.1 any security and work health and safety requirements;
  - 147.2 a review date (subject to clause 151); and
  - 147.3 the cost of establishment (if any).
148. The Chief Executive may refuse to approve the request only if:
- 148.1 the MDBA has discussed the request with the employee; and
  - 148.2 the MDBA 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
  - 148.3 the MDBA and the employee have not reached such an agreement; and
  - 148.4 the MDBA has had regard to the consequences of the refusal for the employee; and
  - 148.5 the refusal is on reasonable business grounds.
149. Reasonable business grounds include, but are not limited to:
- 149.1 the new working arrangements requested would be too costly for the MDBA;
  - 149.2 there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested;
  - 149.3 it would be impractical to change the working arrangements of other employees, or to recruit new employees, to accommodate the new working arrangements requested;
  - 149.4 the new working arrangements requested would be likely to result in a significant loss in efficiency or productivity;
  - 149.5 the new working arrangements requested would be likely to have a significant negative impact on customer service; and
  - 149.6 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.
150. For First Nations employees, the MDBA must consider connection to country and cultural obligations in responding to requests for altering the location of work.

151. Approved flexible working arrangements will be reviewed by the MDBA 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*

152. An employee may request to vary an approved flexible working arrangement in accordance with clause 144. An employee may request to pause or terminate an approved flexible working arrangement.
153. The Chief Executive may vary, pause or terminate an approved flexible working arrangement on reasonable business grounds, subject to clause 155.
154. The agency 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.
155. Prior to the Chief Executive varying, pausing or terminating the arrangement under clause 153, the MDBA must have:
- 155.1 discussed with the employee their intention to vary, pause or terminate the arrangement with the employee;
  - 155.2 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);
  - 155.3 had regard to the consequences of the variation, pause or termination for the employee;
  - 155.4 ensured the variation, pause or termination is on reasonable business grounds; and
  - 155.5 informed the employee in writing of the variation, pause or termination to the approved flexible working arrangement, including details set out in clause 146.3.

*Working from home*

156. The MDBA 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.
157. The MDBA may provide equipment necessary for, or reimbursement, for all or part of the costs associated with establishing a working from home arrangement.
158. An employee working from home is covered by the same employment conditions as an employee working at an office site under this agreement.
159. The MDBA will provide employees with guidance on working from home safely.
160. Employees will not be required by the MDBA 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 MDBA will consider the circumstances of the employees and options to achieve work outcomes safely.

### *Ad-hoc arrangements*

- 161. 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.
- 162. Employees should, where practicable, make the request in writing and provide as much notice as possible.
- 163. Requests for ad-hoc arrangements are not subject to the request and approval processes detailed in clauses 142 to 151.
- 164. The MDBA 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.
- 165. Where a regular pattern of requests for ad-hoc arrangements from an employee emerges, the MDBA should consider whether it is appropriate to seek to formalise the arrangement with the employee.

### *Altering span of hours*

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

### *Job Sharing*

- 167. Job sharing is an arrangement in which 2 or more employees share the duties of one full time position.
- 168. Employees are entitled to request job sharing arrangements. Subject to the approval processes detailed in clauses 142 to 151, an employee may enter into a job sharing arrangement.

## **Part-time work**

- 169. Salary for part-time employees will be calculated on a pro-rata basis commensurate to their approved hours. The pattern of hours specified in an approved arrangement to work part-time will provide for no less than three hours per day (or an alternative period agreed by the Chief Executive and the employee), and will be continuous on any one day.
- 170. Employees engaged on a full-time basis will not be compelled to convert to part-time employment.
- 171. Where a full-time employee is approved to work part-time for an agreed period, the employee will have a right to revert to full-time employment at the end of the agreed period, or earlier if approved.
- 172. Wherever possible, the employee will return to the duties they performed prior to entering into the part-time work arrangement.
- 173. Employees engaged on a part-time basis will not be compelled to convert to full-time employment.

## **Christmas closedown**

- 174. Employees will not usually be required to attend an MDBA workplace on those days which are not public holidays between 25 December and 1 January of the following year. There will be no requirement to take annual leave or use flex credits during this period.
- 175. Employees will be paid in accordance with their ordinary hours of work on these days.
- 176. In cases where any employee is required, by their manager, to work during the ordinary working days during the closedown period which are not public holidays, they are to be given at least 7 days' notice of such a requirement, unless exceptional circumstances apply. The employee will be paid at Sunday overtime rates and the minimum payment will be 4 hours. Where less than 7 days' notice is given the employee will be paid at public holiday rates with a minimum payment of 4 hours.
- 177. Any employee who is required to work during any part of the ordinary working days during the closedown period which are not public holidays may elect to take time off in lieu, rather than receive an overtime payment. The time off in lieu must be taken within 6 weeks of the time worked. The amount of time off equals:
  - 177.1 twice the hours paid if more than 7 days' notice was given; or
  - 177.2 three times the hours paid if less than 7 days' notice was given.
- 178. Normal overtime arrangements apply for employees who are required to work during weekends or declared public holidays during the Christmas/New Year period.
- 179. In cases where any employee is required, by their manager, to work on a public holiday during the Christmas/New Year period they are to be given at least 7 days' notice of such a requirement, unless exceptional circumstances apply.
- 180. Any employee who is subject to out of hours restriction during the closedown period will be paid an out of hours restriction allowance as outlined in clause 133 to 137 for each day including their ordinary working hours on such days.
- 181. In accordance with clause 129, the Chief Executive may, in certain circumstances, approve the payment of overtime or time off in lieu to EL employees.

## **Public holidays**

- 182. Employees are entitled to the following holidays each year as observed at their normal work location in accordance with the FW Act:
  - 182.1 1 January (New Year's Day);
  - 182.2 26 January (Australia Day);
  - 182.3 Good Friday and the following Monday;
  - 182.4 25 April (Anzac Day);
  - 182.5 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);
  - 182.6 25 December (Christmas Day);

- 182.7 26 December (Boxing Day); and
- 182.8 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, or a kind of day or part day, that is excluded by the *Fair Work Regulations 2009* from counting as a public holiday.
183. 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.
184. The Chief Executive 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.
185. The Chief Executive 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. This substitution does not impact or reduce an employee's entitlement to First Nations ceremonial leave, NAIDOC leave or cultural leave.
186. 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.
187. Where a public holiday falls during a period when an employee is absent on leave (other than annual leave, paid personal/carer's leave 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).
188. 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 clauses 182 to 182.8.
189. An employee, who is absent on a day or part day that is a public holiday in their normal work location, is entitled to be paid for the part or full day absence as if that day or part day was not a public holiday, except where that person would not normally have worked on that day.
190. 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 Chief Executive 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.

## Section 6: Leave

### Annual leave

191. Employees, other than casual employees, will progressively accrue 20 working days (4 weeks) paid annual leave for each full year worked. Part-time employees will accrue a pro-rata credit based on the number of part-time hours worked.
192. Paid annual leave accrues daily, credited fortnightly.
193. Annual leave may be approved by the Chief Executive to be taken at full or half pay. Leave taken at half pay will be debited at half the duration of the leave period approved. Unless approved by the Chief Executive it may not be taken at half pay where the employee has an excessive leave balance.
194. Leave taken at half pay, in excess of 30 calendar days, will receive credit for service purposes and accrue annual leave at the rate of 50 percent.
195. Annual leave requires prior approval except in exceptional circumstances and approval is subject to operational requirements.
196. 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.
197. Employees in receipt of compensation for incapacity under the *Safety, Rehabilitation and Compensation Act 1988* for more than 45 weeks will accrue annual leave credits on a pro-rata basis for hours worked.
198. Employees will receive payment in lieu of any untaken annual leave upon separation from the APS.

### *Cashing out annual leave*

199. The Chief Executive may approve an application by an employee to cash out annual leave of up to 10 days each calendar year as a lump sum on the following basis:
  - 199.1 the employee has already used a minimum of 2 weeks annual leave or long service leave, pro-rata for part-time employees, during the previous 12-month period;
  - 199.2 the employee will have at least 20 days, or pro-rata equivalent for part-time employees, of annual leave remaining after the cashing out; and
  - 199.3 each cashing out of a particular amount of annual leave must be by a separate agreement in writing between the employer and the employee; and
  - 199.4 the employee must be paid at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.



### *Excess leave*

200. Employees should not hold annual leave balances greater than 2 years accrual (40 days for full time employees and pro-rata for part-time employees). Where an employee has leave balances greater than 2 years, the employee and their manager – within 4 weeks – will take joint responsibility to develop an annual leave usage plan to reduce the leave.

### **Purchased leave**

201. The Chief Executive may approve the purchase of up to 8 weeks additional leave per year in return for a pro rata reduction in their annual salary (excluding allowances not in the nature of salary), before any adjustment for a salary packaging arrangement. Approval to purchase and use additional leave will be dependent upon the operational requirements of the workplace.
202. Eligibility to purchase additional leave is limited to ongoing and long term non-ongoing employees with at least a 12 month employment contract.
203. Purchased leave may be purchased on one occasion per year and may be used in single days, multiple days or in conjunction with a period of annual leave.
204. Purchased leave may not be used to change the regular pattern of working hours or to create a part-time pattern of hours where an employee is engaged as a full-time employee.
205. The value of purchased leave will be paid via a corresponding reduction in fortnightly pay over a period of no more than one calendar year.
206. Purchased leave taken, up to 30 calendar days per calendar year, will count as service and leave credits accrue accordingly. Days taken in excess of 30 calendar days will not count as service and no leave credits will accrue, but will not break continuity of service.
207. Purchased leave that remains untaken 12 months from the date of purchase (i.e. first repayment instalment) will be cancelled and the value repaid to the employee.
208. Where an employee leaves the MDBA, any surplus or deficit in contributions will be recovered or offset against final payment in accordance with the Accountable Authority Instructions or repaid to the employee.

### **Payment of Accrued Leave**

209. Where an employee ceases duty in the APS, they will receive payment in lieu, calculated at the employee's final rate of salary and allowances considered as salary for all purposes as at the date of exit, of:
- 209.1 unused accrued annual leave credits; and
  - 209.2 unused Long Service Leave (LSL) in accordance with:
    - 209.2.1 the *Long Service Leave (Commonwealth Employees) Act 1976*; or
    - 209.2.2 the *Long Service Leave Act 1976 (ACT)* for employees who transitioned from the former Murray–Darling Basin Commission.

210. Higher Duties Allowance is included as salary for payment in lieu of annual leave where the temporary reassignment of duties would have continued beyond the date of termination.

## **Personal/carer's leave (PCL)**

### *Ongoing employees*

211. Ongoing employees will be entitled to 18 days paid PCL credit for each full year of service (pro-rata for part-time employees) which will:
- 211.1 be credited upon commencement with the MDBA if they are new to the APS;
  - 211.2 accrue daily, and credited fortnightly, unless the employee has received paid PCL credit in accordance with clause 211.1, in which case the accrual of paid PCL will commence from the first anniversary of their commencement with the MDBA.

### *Non-ongoing employees*

212. Non-ongoing employees will be entitled to 18 days paid PCL credit for each full year of service (pro-rata for non-ongoing part-time employees and non-ongoing employees with an initial contract period of less than 12 months) which will:
- 212.1 be credited upon commencement with the MDBA, in accordance with clause 213;
  - 212.2 accrue daily, and credited fortnightly, unless the employee has received paid PCL credit in accordance with clause 213, in which case the accrual of paid PCL will commence from the expiry of the initial contract period, or a contract period of 12 months (whichever is shorter).
213. A non-ongoing employee who commences with the MDBA may not be entitled to paid PCL credit as described in clause 212.1, where the non-ongoing employee has an existing entitlement to paid PCL credit on commencement. Further detail is available in the Leave Policy.

### *Transitional Arrangements*

214. For existing ongoing employees at the commencement of this agreement, the accrual of paid PCL on a daily basis, and credit fortnightly as provided by clause 211 will commence on and from the next anniversary of their employment with the MDBA.
215. Existing non-ongoing employees on an initial contract with the MDBA, at the commencement of this agreement, may be entitled to a pro-rata paid PCL credit in accordance with clause 212. The pro-rata credit is for the period from commencement of this agreement to the end of the employee's initial contract period or a contract period of 12 months (whichever is shorter). The accrual of paid PCL on a daily basis, and credited fortnightly as provided by clause 212.2 will commence after the initial contract period or a contract period of 12 months (whichever is shorter). Further detail is available in the Leave Policy.
216. For existing non-ongoing employees on a second or subsequent contract with the MBDA, at the commencement of this agreement, the accrual of paid PCL on a daily basis, and credited fortnightly as provided by clause 212.2 will apply.

## *Usage*

217. All employees are entitled to access their paid PCL credits for a variety of personal circumstances which may arise and which require the employee to be absent from the workplace including:
- 217.1 personal injury or illness;
  - 217.2 caring for the employee's family, including a member of the employee's household, or a person that the employee has caring responsibilities for, who is ill, injured or has an ongoing medical condition, or an unexpected emergency affecting the family member;
  - 217.3 to manage a chronic condition;
  - 217.4 to attend appointments with a registered health practitioner;
  - 217.5 preventative health checks; and/or
  - 217.6 meeting family or personal responsibilities of an emergency, short-term and unscheduled nature.
218. A person that an employee has caring responsibilities for may include a person who needs care because they:
- 218.1 have a medical condition, including when they are in hospital;
  - 218.2 have a mental illness;
  - 218.3 have a disability;
  - 218.4 are frail or aged; or
  - 218.5 are a child, not limited to a child of the employee.
219. Where:
- 219.1 an employee:
    - 219.1.1 has, or cares for someone with, a chronic condition or other ongoing illness;
    - 219.1.2 is recovering from surgery;
    - 219.1.3 is pregnant and/or is returning from parental leave or has a child commencing day care, and
  - 219.2 the employee does not have sufficient paid PCL credits to cover an absence, in circumstances where the employee would have had sufficient paid PCL credits had the Murray–Darling Basin Authority Enterprise Agreement 2017-2020 continued to apply (that is, 18 days credited annually on anniversary of employment) to the employee,
- the Chief Executive will advance the employee's paid PCL accrual up to the 12 month anniversary of when their leave would have otherwise been credited.

220. When giving approval for paid PCL, the Chief Executive may require the employee to provide acceptable supporting evidence where more than 3 consecutive days have been taken.
221. A certificate from a registered health practitioner may be used as evidence of a chronic condition for up to 12 months' paid PCL.
222. In circumstances of personal illness or injury and caring purposes, the Chief Executive may require acceptable supporting evidence where an employee has taken more than 8 days paid PCL in a 12 month period without a medical certificate or other supporting evidence.
223. Acceptable supporting evidence, for the purposes of clauses 220 to 222 include:
- 223.1 a certificate from a registered health practitioner;
  - 223.2 a statutory declaration; or
  - 223.3 another form of evidence approved by the Chief Executive.
224. The Chief Executive will approve a request for up to 2 days unpaid PCL for each occasion where the employee is required to be absent from the workplace because of:
- 224.1 personal injury or illness;
  - 224.2 caring or support for an immediate family member or a member of the employee's household who is ill, injured or has an ongoing medical condition; or
  - 224.3 meeting family responsibilities of an emergency, short-term and unscheduled nature.
225. The Chief Executive may approve a request for unpaid PCL for a variety of personal circumstances where paid PCL credits have been exhausted.
226. The Chief Executive has discretion to grant additional paid PCL credits in exceptional circumstances where an employee, or immediate family member or member of an employee's household is suffering from a certified illness or injury.
227. The Chief Executive may, at the request of an employee, authorise the conversion of paid PCL to paid PCL on half pay for a specified period. Leave taken at half pay will be debited at half the duration of the leave period approved.
228. The Chief Executive may grant paid PCL in advance to an employee in exceptional circumstances. In such cases, PCL credits will be debited at the relevant full pay rate and will be repaid from debiting future entitlements or from final payment.
229. Unused paid PCL will accumulate but will not be paid out on an employee's cessation of employment.
230. Employees in receipt of compensation for incapacity under the Safety, Rehabilitation and Compensation Act 1988 for more than 45 weeks will accrue PCL credits on a pro-rata basis for hours worked.
231. On commencement, and on each anniversary of commencement, up to 2 days non-accruable paid leave will be available to ongoing employees to cover absences associated with PCL as described in clauses 217 and 218.

232. A casual employee may be absent without pay:
- 232.1 when not fit for work due to personal illness or injury; or
  - 232.2 for up to 2 days for unpaid carers leave on each occasion (consistent with the NES).

## **Portability of leave**

233. Where an employee moves into the MDBA from another APS agency where they were an ongoing employee, the employee's unused accrued annual leave and personal/carer's leave will be transferred, provided there is no break in continuity of service.
234. Where an employee is engaged in the MDBA immediately following a period of ongoing employment in the Parliamentary Service or the ACT Government Service, the employee's unused accrued annual leave and personal/carer's leave will be recognised unless the employee received payment in lieu of those entitlements on cessation of employment.
235. Where an employee is engaged as an ongoing employee in the MDBA, and immediately prior to the engagement the person was employed as a non-ongoing APS employee (whether in the agency or another), at the employee's request, any unused accrued annual leave (excluding accrued leave paid out on separation) and personal/carer's leave will be recognised.
236. Where an employee is engaged as a non-ongoing APS employee, and immediately prior to the engagement the person was employed as a non-ongoing APS employee (whether in the agency or another) at the employee's request, any unused accrued annual leave (excluding accrued leave paid out on termination of employment) and personal/carer's leave will be recognised.
237. Where a person is engaged as an ongoing employee in the MDBA, and immediately prior to the engagement the person was employed by a Commonwealth employer (other than in the Parliamentary Services which are covered in clause 234), the Chief Executive will recognise any unused accrued personal/carer's leave at the employee's request. The Chief Executive will advise the employee of their ability to make this request.
238. Where an employee is engaged as an ongoing employee in the MDBA, and immediately prior to the engagement the person was employed by a State or Territory Government, the Chief Executive may recognise any unused accrued personal/carer's leave, provided there is not a break in continuity of service.
239. For the purposes of clauses 233 to 238, an employee with a break in service of less than 2 months is considered to have continuity of service.

## **Leave without pay**

240. Leave without pay, other than in the case of maternity, parental, adoption and fostering leave or in accordance with the relevant Australian Public Service Commissioner's Directions may be granted subject to operational requirements by the Chief Executive to assist an employee to better balance their work and personal responsibilities. Such leave would normally be short term of up to 52 weeks.

241. 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.

## **Re-crediting of leave**

242. When an employee is on:

- 242.1 annual leave;
- 242.2 purchased leave;
- 242.3 defence reservist leave;
- 242.4 First Nations ceremonial leave;
- 242.5 NAIDOC leave;
- 242.6 cultural leave; or
- 242.7 long service leave; and

becomes eligible for, under legislation or this agreement:

- 242.8 PCL paid leave;
- 242.9 compassionate or bereavement leave;
- 242.10 jury duty;
- 242.11 emergency services leave;
- 242.12 leave to attend to family and domestic violence circumstances; or
- 242.13 parental leave, premature birth leave, stillbirth leave or pregnancy loss leave;

the affected period of leave will be re-credited.

243. When an employee is on PCL paid leave and becomes eligible for parental leave, premature birth leave, stillbirth leave or pregnancy loss leave, the affected period of leave will be re-credited.
244. Re-crediting is subject to appropriate evidence of eligibility for the substituted leave.

## **Long service leave**

245. The entitlement to LSL is as provided:

- 245.1 in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976*; or
- 245.2 for employees who transitioned from the former Murray–Darling Basin Commission (MDBC) and who are covered under the *Long Service Leave Act 1976 (ACT)*; LSL credits will accrue at the rate of six and a half working days for each year of service, accessible after 7 completed years of service. This rate of accrual overrides any lesser rate of accrual under the *Long Service Leave Act 1976 (ACT)*.

246. The minimum period for which long service leave will be granted is:
- 246.1 7 calendar days (whether taken at full or half pay) for employees covered under the *Long Service Leave (Commonwealth Employees) Act 1976*; or
  - 246.2 5 consecutive working days for employees who are covered under the *Long Service Leave Act 1976 (ACT)*.
247. Long service leave cannot be broken with other periods of leave, except as otherwise provided by legislation or provided for in the re-crediting of leave clauses at 242 to 244 of this agreement.
248. LSL may be taken at half pay and will utilise half the credit related to the period taken.

## **Miscellaneous leave**

249. The Chief Executive may grant employees miscellaneous leave with or without pay, for a purpose not covered by other leave provisions in this agreement.
250. Miscellaneous leave may be granted to casual employees to provide for paid family and domestic violence leave, or as otherwise permitted or required by Government directive.

## **Cultural, ceremonial and NAIDOC leave**

### *NAIDOC leave*

251. First Nations employees may access up to one day of paid leave per calendar year to participate in NAIDOC week activities.
252. NAIDOC leave can be taken in part days.

### *First Nations ceremonial leave*

253. First Nations employees may access up to 6 days of paid leave over 2 calendar years to participate in significant activities associated with their culture or to fulfil ceremonial obligations.
254. The Chief Executive may approve additional leave for cultural or ceremonial purposes as miscellaneous leave, with or without pay.
255. First Nations ceremonial leave can be taken as part days.
256. First Nations ceremonial leave is in addition to compassionate and bereavement leave.

### *Cultural leave*

257. The Chief Executive may grant up to 3 days of paid leave per calendar year for the purpose of attending significant religious or cultural obligations associated with the employees' particular faith or culture.
258. The Chief Executive may approve additional leave for cultural purposes as miscellaneous leave, with or without pay.
259. Cultural leave can be taken as part days.

260. For the avoidance of doubt, this leave does not cover cultural purposes or obligations which are eligible for paid leave under clauses 253 to 256.

## **Parental leave**

261. A primary caregiver, secondary caregiver and ML Act are defined in the definitions section.
262. 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. An employee is only eligible for parental leave with pay as either a primary caregiver or a secondary caregiver for the particular parental leave period, and cannot switch roles for the purpose of accessing additional paid leave.
263. 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.
264. 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*

265. An employee is entitled to parental leave with pay as per clauses 267 and 268 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.
- 265.1 On ending parental leave, an employee is entitled to return to:
- 265.1.1 the employee's pre-leave position; or
- 265.1.2 if that position no longer exists - an available position for which the employee is qualified and suited nearest the classification and pay to the pre-leave position. The employee will suffer no loss of salary by reason of returning to another position following parental leave.
- 265.2 An employee who is returning from parental leave is entitled to request part-time work for the purposes of caring for their child. Requests made in the first two years from the date of birth of the employee's child or two years from the placement of the child in relation to adoption or fostering will be approved.
266. Employees newly engaged in the agency or who have moved to the MDBA from another APS agency are eligible for the paid parental leave in clauses 267 and 268 where such paid leave had not already been provided by another APS agency or Commonwealth employer in the 24 months since the child's date of birth or placement. If the paid leave used by the employee with the previous Commonwealth employer or APS agency is less than the limits specified in clauses 267 and 268, the balance is available to the employee.



267. 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 1** below.

**Table 1: Primary caregivers - circumstances for paid parental leave**

<b>Paid leave entitlement under the ML Act</b>	<b>Additional parental leave with pay under this agreement for the primary caregiver</b>
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

268. An employee who is a secondary caregiver is entitled to parental leave with pay during the parental leave period as provided in **Table 2** below.

**Table 2: Secondary caregivers - circumstances for paid parental leave**

<b>Period which coincides with the parental leave period for the secondary caregiver</b>	<b>Parental Leave with pay under this agreement</b>
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
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

269. **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.
270. **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.
271. **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*

272. 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:
- 272.1 is under 16 as at the day (or expected day) of placement;
  - 272.2 has not lived continuously with the employee for a period of six months or more as at the day (or expected day) of placement; and
  - 272.3 is not (otherwise than because of the adoption) a child of the employee or the employee's spouse or de facto partner.
273. 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*

274. Parents of a stillborn child remain eligible for parental leave, except for paid leave for the secondary caregiver which is 2 weeks.
275. A stillborn child is a child:
- 275.1 who weighs at least 400 g at delivery or whose period of gestation was 20 weeks or more; and
  - 275.2 who has not breathed since delivery; and
  - 275.3 whose heart has not beaten since delivery.

#### *Pregnancy loss leave*

276. A pregnant employee who experiences, or an employee whose spouse or partner experiences, pregnancy loss is entitled to one 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.
277. Pregnancy loss leave is in addition to entitlements to compassionate leave for miscarriage provided under the FW Act and this agreement.

#### *Premature birth leave*

278. In circumstances of a live birth before 37 weeks' gestation a pregnant employee, or an employee whose spouse or 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*

279. 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 278 until after the legislated paid maternity leave is used.

## **Compassionate leave**

280. Employees will be eligible for 3 days paid compassionate leave on each occasion when:
- 280.1 a member of their family (including a member of their household) or someone they have a close personal relationship with contracts, develops or sustains a life-threatening illness or injury; or
  - 280.2 the employee or their partner has a miscarriage.
281. An employee may be asked to provide evidence to support their absences on compassionate leave.
282. Compassionate leave for an occasion may be taken as 3 consecutive days or in separate periods totalling 3 days. This can include part days.
283. For casual employees, compassionate leave is unpaid.

## **Bereavement leave**

284. Employees will be eligible for 3 days paid bereavement leave on each occasion when:
- 284.1 a member of their family (including a member of their household) or someone they had a close personal relationship with dies; or
  - 284.2 a child is stillborn, where the child was a member of their family (including a member of their household).
285. An employee may be asked to provide evidence to support their absences on bereavement leave.
286. Bereavement leave for an occasion may be taken as 3 consecutive days or in separate periods totalling 3 days. This can include part days.
287. For casual employees, bereavement leave is unpaid.

## **Emergency response leave**

288. In line with section 108 of the FW Act, an employee who engages in an eligible community service activity is entitled to emergency response leave to volunteer for emergency management duties for:
- 288.1 the time engaged in the activity;
  - 288.2 reasonable travelling time; and
  - 288.3 reasonable recovery time.
289. Full-time and part-time employees will be able to access 20 working days of paid emergency response leave at full pay per year if required. The Chief Executive may provide additional emergency response leave with pay.
- 289.1 For the purposes of this clause, full rate of pay is to be as if the employee was at work.

- 290. Paid leave may be refused where the employee's role is essential to the MDBA's response to the emergency.
- 291. 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.
- 292. The Chief Executive may approve reasonable paid or unpaid leave for ceremonial duties and training.
- 293. Emergency response leave, with or without pay, will count as service.

## **Jury duty**

- 294. Employees who are required by a court to attend either for jury selection, or to act as a juror, will be released from duty for the required period, without the need to apply for leave.
- 295. Full and part-time employees will be released from duty on their full rate of pay. Payment for casuals will be as per the relevant state legislation.
  - 295.1 For the purposes of this clause, full rate of pay is to be as if the employee was at work.
- 296. The employee is required to inform their manager before they are released from duty and provide evidence of the need to attend.
- 297. If the employee receives a payment from the court for attendance (which are not expense related such as allowances and reimbursements), they must repay that amount to the MDBA for the period of absence. This will be administered in accordance with the overpayments clause 50 to 57.

## **Defence reservist leave**

- 298. The Chief Executive will give an employee leave with or without pay to undertake:
  - 298.1 Australian Defence Force (ADF) Reserve and continuous full-time service (CFTS); and
  - 298.2 Australian Defence Force Cadet obligations.
- 299. An employee who is a Defence Reservist can take leave with pay for:
  - 299.1 up to 4 weeks (20 days) in each financial year (pro-rata for part-time employees); and
  - 299.2 an extra 2 weeks (10 days) in the first year of ADF Reserve service (pro-rata for part-time employees).
- 300. Leave can be built up and taken over 2 consecutive years. This includes the extra 2 weeks in the first year of service.

301. An employee who is an Australian Defence Force Cadet officer or instructor can get paid leave up to 3 weeks in each financial year to perform their duties. Australian Defence Force Cadets means:
- 301.1 Australian Navy Cadets;
  - 301.2 Australian Army Cadets; and
  - 301.3 Australian Air Force Cadets.
302. In addition to the entitlement at clause 299 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.
303. Paid defence reservist leave counts for service.
304. Unpaid defence reservist leave for 6 months or less counts as service for all purposes. This includes periods of CFTS.
305. Unpaid leave taken over 6 months counts as service, except for annual leave.
306. An employee will not need to pay their tax free ADF Reserve salary to their agency for any reason.

## **Defence service sick leave**

307. 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:
- 307.1 warlike service; or
  - 307.2 non-warlike service.
308. An eligible employee can get 2 types of credits:
- 308.1 an initial credit of 9 weeks (45 days) defence service sick leave (pro-rata for part-time employees) will apply as of the later below option:
    - 308.1.1 they start employment with the APS; or
    - 308.1.2 DVA certifies the condition; and
  - 308.2 an annual credit of 3 weeks (15 days) defence service sick leave (pro-rata for part-time employees).
309. 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.
310. Unused annual credits can be built up to 9 weeks.
311. An employee cannot use annual credits until the initial credit is exhausted.
312. Defence service sick leave is paid and counts as service for all purposes.

## **Leave to attend proceedings**

- 313. 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.
- 314. An employee who is not covered under clause 313 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 MDBA.
- 315. An employee may otherwise be granted paid or unpaid miscellaneous leave by the Chief Executive if required to give evidence to a Court, Tribunal or Royal Commission for any other reason. Where approval for unpaid leave is given, the employee may elect to use accrued annual leave, flex leave or time off in lieu.
- 316. The Chief Executive 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.

## **Unauthorised Absence**

- 317. Unauthorised absence from duty does not count as service for any purpose and no leave will accrue during such absence.

## Section 7: Employee support and workplace culture

### Blood donation

- 318. 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.
- 319. The employee must inform their manager in advance of when they will be away from work before donating blood, plasma or platelets.

### Vaccinations

- 320. The MDBA will offer annual influenza vaccinations at no cost to all employees.
- 321. Where the MDBA 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

- 322. Employees, their partners, and their dependants/children will have access to a confidential, professional counselling service to assist employees to manage personal and work issues. This service will be provided at no cost to employees by the MDBA and will be accessible on paid time.

### Healthy Lifestyle

- 323. The MDBA recognises the benefit to employees undertaking healthy lifestyle initiatives in their own time. Ongoing employees on 1 July each year, and non-ongoing employees with at least 6 months of continuous service as at 1 July each year, who have not taken more than six months leave without pay and submit a declaration to the MDBA about maintaining a healthy lifestyle will be paid \$299 towards their expenses.

### Respect at work

#### *Principles*

- 324. The MDBA values a safe, respectful and inclusive workplace free from physical and psychological harm, harassment, discrimination and bullying. The MDBA recognises that preventing sexual harassment, sex discrimination, sex-based harassment and victimisation in the workplace is a priority.
- 325. The MDBA 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*

326. The agency will consult with employees and their unions in developing, reviewing and evaluating approaches to prevent sexual harassment, sex discrimination, sex-based harassment and victimisation in the workplace.

### **Screen-based work**

327. Where an employee undertakes screen-based work, once every 2 years the MDBA will provide for eye sight testing and a capped reimbursement of the cost of prescription spectacles. Further information is in the MDBA's Screen-based Work Policy.

### **Reimbursement for Loss or Damage**

328. The Chief Executive may approve the payment of reasonable repair or replacement costs, taking into account depreciation, where evidence is submitted that an employee has lost or damaged their clothing and/or personal effects in the course of their duties.

### **Family and domestic violence support**

329. The MDBA will provide support for employees affected by family and domestic violence, depending on the employee's circumstances.
330. The MDBA recognises that a holistic approach should be taken to support the employee, appropriate for the employee's individual circumstances.
331. Family and domestic violence support, including paid leave, are available to all employees covered by this agreement.
332. 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:
- 332.1 illness or injury affecting the employee resulting from family and domestic violence;
  - 332.2 providing care or support to a family member (including a household member) who is also experiencing family and domestic violence, and is ill or injured as a result of family and domestic violence;
  - 332.3 providing care or support to a family member (including a 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;
  - 332.4 making arrangements for the employee's safety, or the safety of a close relative;
  - 332.5 accessing alternative accommodation;
  - 332.6 accessing police services;
  - 332.7 attending court hearings;
  - 332.8 attending counselling; and



- 332.9 attending appointments with medical, financial or legal professionals.
333. 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 as service for all purposes.
334. 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.
335. These family and domestic violence support clauses do not reduce an employee's entitlement to family and domestic violence leave under the NES.
336. 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.
337. 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.
338. Evidence may be requested to support the MDBA 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 MDBA will require, unless the employee chooses to provide another form of evidence.
339. 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.
340. The MDBA will take all reasonable measures to treat information relating to family and domestic violence confidentially. The MDBA will adopt a 'needs to know' approach regarding communication of an employee's experience of family and domestic violence, subject to steps the MDBA may need to take to ensure the safety of the employee, other employees or persons, or mandatory reporting requirements.
341. Where the MDBA needs to disclose confidential information for purposes identified in clause 340 where it is possible the MDBA will seek the employee's consent and take practical steps to minimise any associated safety risks for the employee and/or privacy breaches.
342. The MDBA will not store or include information on the employee's payslip in relation to the employee's experience of family and domestic violence; any leave accessed for the purposes of family and domestic violence; or support(s) provided by the employer, unless otherwise required by legislation.
343. 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.
344. The MDBA 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.
345. Further information about leave and other support available to employees affected by family and domestic violence may be found in the Domestic and Family Violence Policy.

## **Integrity in the APS**

- 346. The MDBA understands that procedural fairness is essential in building and maintaining trust with APS employees, and that it requires fair and impartial processes for employees affected by APS-wide or MDBA decisions.
- 347. Employees are to give advice that is frank, honest, timely and based on the best available evidence. This includes scientific and engineering advice based on evidence-based facts guided by the best available science and data. 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 APS Code of Conduct in the PS Act.
- 348. Employees can, during their ordinary work hours, take time to:
  - 348.1 access an APS-wide ethics advisory service or another similar service provided by a professional association such as a law society or in the agency; and
  - 348.2 attend MDBA mandated training about integrity.

## **First Nations cultural competency training**

- 349. The Chief Executive 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.
- 350. 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.

## **Diversity**

- 351. The MDBA is an organisation which values fairness, equity and diversity. Consistent with that aim, the MDBA 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.
- 352. The MDBA will maintain a Diversity program which recognises and values the diverse skills, cultural values and backgrounds of its employees and will incorporate actions detailed in relevant plans and strategies.

## **Lactation and breastfeeding support**

- 353. Reasonable paid time during work hours will be provided for lactation breaks for breastfeeding, expressing milk and other associated activities.

354. The MDBA will provide access to appropriate facilities for the purpose of breastfeeding or expressing milk, subject to clause 355. In considering whether a space is appropriate, an agency should consider whether:
- 354.1 there is access to refrigeration;
  - 354.2 the space is lockable; and
  - 354.3 there are facilities needed for expressing, such as appropriate seating.
355. Where it is not practicable for an MDBA site to have a designated space, a flexible approach will be taken so that the employee can access the support required.
356. The MDBA will facilitate discussion between individual employees and their managers about accommodating the employee's lactation needs and practical arrangements to meet these needs.
357. 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 and/or remote working or varying work hours on an ad-hoc or regular basis. Wherever possible, requests by an employee will be accommodated, noting these needs may be changed over time.
358. Further information is available in the Breastfeeding Policy.

## **Disaster support**

359. 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 Chief Executive will consider flexible working arrangements to assist the employee to perform their work.
360. Where flexible working arrangements are not appropriate, the Chief Executive 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.
361. In considering what period of leave is appropriate, the Chief Executive will take into account the safety of the employee, their family (including their household) and advice from local, State and Commonwealth authorities.

## Section 8: Performance and development

### Performance management

- 362. Performance management in the MDBA provides a holistic and supportive approach intended to promote positive engagement between each employee and their manager, and to foster strong team relationships. Performance management arrangements aim to provide all employees with an understanding of their individual work expectations and how they align to the strategic priorities.
- 363. All employees who are employed for 3 months or more (excluding those on probation) must participate in the performance management arrangements.
- 364. Performance management arrangements will provide a basis for:
  - 364.1 determining base pay;
  - 364.2 rewarding high performance;
  - 364.3 improving productivity;
  - 364.4 providing mechanisms for feedback between employees and managers;
  - 364.5 addressing underperformance; and
  - 364.6 developing employees in their current roles.
- 365. Underperformance will be managed by addressing and resolving identified underperformance in a timely and efficient manner, with the aim of returning an underperforming employee to a level of satisfactory performance.
- 366. Underperformance will be dealt with having regard to the principles of fairness and natural justice and the right to representation.
- 367. In addition, the following principles will apply:
  - 367.1 Working with the employee to restore performance to an acceptable level;
  - 367.2 Learning and development assistance where relevant to improve performance;
  - 367.3 Active performance management as an integral part of the workplace culture; and
  - 367.4 Position requirements and expectations are clearly defined and appropriate to the employee's classification.
- 368. Where monitoring and feedback does not improve performance to the required level, at a performance assessment, a formal underperformance process will begin.
- 369. An employee must be advised in writing of any proposed action arising from an underperformance process and have a reasonable opportunity to respond before action is taken.
- 370. Further information is available in the policy associated with managing underperformance.

## **Workloads**

- 371. The MDBA recognises the importance of employees balancing their work and personal life. 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.
- 372. When determining workloads for an employee or group of employees, the MDBA will consider the need for employees to strike a balance between their work and personal life.
- 373. Where an employee or group of employees raise that they have experienced significant workload pressures over a prolonged period of time, the MDBA and employee/s together must review the employees' workloads and priorities, and determine appropriate strategies to manage the impact on the employee or group of employees.

## **Study assistance**

- 374. Where an ongoing employee, or long term non-ongoing employee with at least a 12 month employment contract, receives approval prior to undertaking formal studies (including maintaining professional qualifications), relevant to the business needs of the MDBA, the Chief Executive may approve study assistance.
- 375. The study assistance approved by the Chief Executive may incorporate paid study leave and/or financial assistance up to a maximum of:
  - 375.1 5 hours per week paid leave for study purposes; or
  - 375.2 7.5 hours per week paid leave for study purposes for First Nations employees;
  - 375.3 an additional 5 hours per semester/per unit for preparation and attendance at examinations, subject to operational requirements may also be sought by all employees; and
  - 375.4 up to \$6,000 per calendar year (reimbursable upon successful completion of each unit/course).

## **Professional qualifications**

- 376. On-going employees may have professional fees reimbursed or paid annually subject to:
  - 376.1 the manager being satisfied that the professional membership, accreditation or registration is essential for the employees role; and
  - 376.2 the employee providing suitable evidence of incurring the fees.
- 377. Reimbursement/ payment of fees under this clause may be approved where it is not essential but considered in the interests of the MDBA.

## Section 9: Travel and location-based conditions

### Travel

- 378. Employees required to travel for official work purposes will have their accommodation, meals and incidental expenses met by the MDBA. Rates will be determined by the travel rate set by the Chief Executive and will be categorised as either full or part-day travel. Non-acquittable allowances will be received for any costs not paid using an MDBA credit card or purchase order. All arrangements will ensure that employees are not out of pocket or disadvantaged.
- 379. Absences that are over 10 hours and not overnight will receive the daily travel allowance rate set by the Chief Executive.
- 380. The calculation of travel time (for purposes of both travel entitlement and flexible working hours) commences one hour prior to the departure of the flight and one hour after the arrival of the return flight. If travel by car is approved by the Chief Executive as the most effective means of travel, travel time is based on actual departure time and arrival time at each destination.
- 381. Managers may approve reimbursement of reasonable expenses arising from additional family care arrangements or other costs, made necessary where an employee is required to travel away from their normal work location for business purposes, subject wherever possible, to prior approval being obtained.
- 382. The Chief Executive may approve business class or premium economy travel where appropriate for international flights.

#### *Travel greater than 21 days*

- 383. Where an employee is required to perform duty away from their home locality for a period of 21 days or longer, but has not formally relocated, the Chief Executive may approve a package of assistance:
  - 383.1 to meet the additional costs incurred, in lieu of entitlements under clause 378 above, which may include coverage of reasonable meal, accommodation expenses; and
  - 383.2 one-off taxable payments for disturbance; and a payment in recognition of dependent child accompanying the employee.
- 384. Further information on travel is contained in the travel policy.

### Relocation assistance

- 385. Where an APS employee is required to relocate at the request of the MDBA (such as a promotion), the employee will be provided with financial relocation assistance.
- 386. 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.

387. Where an employee is required to relocate on engagement with the MDBA, the employee will be provided with financial relocation assistance.
388. Reasonable expenses associated with the relocation include:
- 388.1 the cost of transport of the employee, their dependents and partner by the most economical means;
  - 388.2 removal expenses, namely the reimbursement of reasonable incurred costs of the removal of furniture and household effects of the employee, dependants and partner;
  - 388.3 the reimbursement of the cost of the insurance premium based on a reasonable replacement value; and
  - 388.4 the reasonably incurred expenses in kennelling and transport of pets, up to the amount specified in the APS Award.
389. Additional relocation assistance may be available at the discretion of the Chief Executive.

# Section 10: Consultation, representation and dispute resolution

## Consultation

### *Principles*

390. 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.
391. The MDBA recognises:
- 391.1 the importance of inclusive and respectful consultative arrangements;
  - 391.2 employees and the relevant union(s) should have a genuine opportunity to influence decisions;
  - 391.3 the nature and extent of consultation will vary depending on the proposed change and the likely impact on employees. Consultation on agency policies may occur over at least 2 weeks, whereas a major change is likely to require a more extensive consultation process;
  - 391.4 consultation with employees and relevant union(s) on workplace matters that significantly affect or materially impact them is sound management practice; and
  - 391.5 the benefits of employee and union involvement and the right of employees to be represented by their union.
392. Genuine and effective consultation involves:
- 392.1 providing employees and the relevant union(s) with a genuine opportunity to influence the decision prior to a decision being made;
  - 392.2 providing all relevant information to employees and the relevant union(s) in a timely manner to support consideration of the issues;
  - 392.3 considering feedback from employees and the relevant union(s) in the decision-making process; and
  - 392.4 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*

393. Consultation is required in relation to:
- 393.1 changes to work practices which materially alter how an employee carries out their work;
  - 393.2 changes to or the introduction of policies or guidelines relevant to workplace matters (unless the changes are minor or procedural);



- 393.3 major change that is likely to have a significant effect on employees;
  - 393.4 implementation of decisions that significantly affect employees;
  - 393.5 changes to employees' regular roster or ordinary hours of work (subject to any other relevant provisions in this agreement); and
  - 393.6 other workplace matters that are likely to significantly or materially impact employees.
394. The MDBA, 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 agency. 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*

395. This clause applies if the MDBA:

- 395.1 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
- 395.2 proposes to introduce a change to the regular roster or ordinary hours of work of employees.

*Representation*

396. Employees may appoint a representative for the purposes of the procedures in this clause. A representative for the purpose of this clause may be a union representative.
397. The MDBA must recognise the representative if:
- 397.1 a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
  - 397.2 the employee or employees advise the employer of the identity of the representative.

*Major change*

398. In this clause, a major change is likely to have a significant effect on employees if it results in, for example:
- 398.1 the termination of the employment of employees; or
  - 398.2 major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
  - 398.3 the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
  - 398.4 the alteration of hours of work; or
  - 398.5 the need to retrain employees; or

- 398.6 the need to relocate employees to another workplace; or
- 398.7 the restructuring of jobs.
- 399. The following additional consultation requirements in clauses 400 to 406 apply to a proposal to introduce a major change referred to in clause 393.3.
- 400. Consultation with employees and the relevant union(s) and/or recognised representatives will occur prior to a decision being made, subject to clause 394.
- 401. Where practicable, an MDBA 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.
- 402. The MDBA must notify employees and relevant union(s) and/or recognised representatives of the proposal to introduce the major change as soon as practicable.
- 403. As soon as practicable after proposing the change, or notifying of the change in circumstances described at clause 394, the MDBA must:
  - 403.1 discuss with affected employees and relevant union(s) and/or other recognised representatives:
    - 403.1.1 the proposed change:
    - 403.1.2 the effect the proposed change is likely to have on the employees; and
    - 403.1.3 proposed measures to avert or mitigate the adverse effect of the proposed change on the employees; and
  - 403.2 for the purposes of the discussion – provide, in writing, to employees and the relevant union(s) and/or other recognised representatives:
    - 403.2.1 all relevant information about the proposed change, including the nature of the change proposed; and
    - 403.2.2 information about the expected effects of the proposed change on the employees; and
    - 403.2.3 any other matters likely to affect the employees.
- 404. The MDBA 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.
- 405. However, the MDBA is not required to disclose confidential or commercially sensitive information to employees and the relevant union(s) and/or other recognised representatives.
- 406. 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 MDBA, the requirements set out in clauses 400 to 404 are taken not to apply.

*Change to regular roster or ordinary hours of work*

- 407. The following additional consultation requirements in clause 408 to 411 apply to a proposal to introduce a change referred to in clause 393.5.

408. The MDBA must notify affected employees and the relevant union(s) and/or other recognised representatives of the proposed change.
409. As soon as practicable after proposing to introduce the change, the MDBA must:
- 409.1 discuss with employees and the relevant union(s) and/or other recognised representatives:
    - 409.1.1 the proposed introduction of the change; and
  - 409.2 for the purposes of the discussion – provide to the employees and relevant union(s) and/or other recognised representatives:
    - 409.2.1 all relevant information about the proposed change, including the nature of the proposed change; and
    - 409.2.2 information about what the employer reasonably believes will be the effects of the proposed change on the employees; and
    - 409.2.3 information about any other matters that the employer reasonably believes are likely to affect the employees; and
  - 409.3 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). However, the MDBA is not required to disclose confidential or commercially sensitive information to the relevant employees and the relevant union(s) and/or other recognised representatives.
410. The MDBA 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.

*Interaction with emergency management activities*

411. Nothing in this term restricts or limits the ability of a designated emergency management body to undertake activities provided at section 195A(1) of the FW Act.

## **Agency consultative committee**

412. The Chief Executive may establish an agency consultative committee to discuss relevant workplace matters.
413. The MDBA consultative committee will operate subject to an agreed terms of reference and structure for the term of the agreement. Representation on the committee will be in accordance with the terms of reference.

## **APS consultative committee**

414. The Chief Executive will support the operation of the APS consultative committee to the extent possible. This includes providing information requested by the Australian Public Service Commission to support the operation of the APS consultative committee, subject to legislative requirements.

## Dispute resolution

415. If a dispute relates to:

415.1 a matter arising under the agreement; or

415.2 the NES;

this term sets out procedures to settle the dispute.

416. An employee or union who is covered by this agreement may initiate and/or be a party to a dispute under this term.

417. An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term. Representatives will be recognised and dealt with in good faith.

418. Parties to the dispute must attempt to resolve the dispute at the workplace level, by discussion between the employee or employees and relevant managers. 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.

419. 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 418 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.

420. The Fair Work Commission may deal with the dispute in 2 stages:

420.1 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

420.2 if the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:

420.2.1 arbitrate the dispute; and

420.2.2 make a determination that is binding on the parties.

*Note: If the Fair Work Commission arbitrates the dispute, it may also use the powers that are available to it under the 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 Act. Therefore, an appeal may be made against the decision.*

421. While the parties are attempting to resolve the dispute using the procedures in this term:

421.1 an employee must continue to perform their work as they would normally in accordance with established custom and practice at the MDBA that existed immediately prior to the dispute arising unless they have a reasonable concern about an imminent risk to their health or safety; and

421.2 subject to clause 421.1, 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:

421.2.1 the work is not safe; or

421.2.2 applicable work health and safety legislation would not permit the work to be performed; or

421.2.3 the work is not appropriate for the employee to perform; or

421.2.4 there are other reasonable grounds for the employee to refuse to comply with the direction.

422. The parties to the dispute agree to be bound by a decision made by the Fair Work Commission in accordance with this term.

423. Any disputes arising under the Murray–Darling Basin Enterprise Agreement 2017-20 or the NES that were formally notified under clause 9 of that agreement 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*

424. Where the provisions of clauses 415 to 419 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 416, 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 419.

## **Review of Actions**

425. Nothing in this Agreement will prevent an employee from exercising their rights under section 33 of the of the PS Act to seek a review of an employment related decisions.

## **Delegates' rights**

426. 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 agency.

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

428. The MDBA and union delegates will work together respectfully and collaboratively and in good faith.

*Supporting the role of union delegates*

429. The MDBA respects the role of union delegates to:

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

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

429.3 represent the interests of members to the employer and industrial tribunals; and

- 429.4 represent members at relevant union forums, consultative committees or bargaining.
430. The MDBA 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.
431. 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.
432. To support the role of union delegates, the MDBA will, subject to legislative and operational requirements, including privacy and security requirements:
- 432.1 provide union delegates with reasonable access to agency facilities and resources, including for paid or unpaid meetings between employees and their unions and to communicate with union officials;
  - 432.2 advise union delegates and other union officials of the agency facilities and resources available for their use, which may include telephone, photocopying, internet, and email;
  - 432.3 allow reasonable official union communication appropriate to the agency 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 an agency vetoing reasonable communications;
  - 432.4 provide access to new employees as part of induction; and
  - 432.5 provide reasonable access to union delegates to attend appropriate paid time training in workplace relations matters, during normal working hours.
433. Where APS employees are elected as officials of a trade union or professional association, they are not required to seek permission from the workplace or MDBA before speaking publicly in that capacity, subject to the APS Code of Conduct and legislative requirements.

## Section 11: Separation and retention

### Resignation

- 434. An employee may resign from their employment by giving the Chief Executive at least 14 calendar days' notice.
- 435. At the instigation of the Chief Executive, 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.
- 436. The Chief Executive has the discretion to agree to a shorter period of notice or waive the requirement to give notice.

### Payment on death of an employee

- 437. When an employee dies, or the Chief Executive has directed that an employee is presumed to have died on a particular date, subject to any legal requirements, the Chief Executive 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, redundancy

#### *Principles*

- 438. The following process applies to ongoing employees who are not on probation.
- 439. An employee will be an excess employee if:
  - 439.1 the employee is included in a class of employees employed in MDBA, which class comprises a greater number of employees than is necessary for the efficient and economical working of MDBA;
  - 439.2 the services of the employee cannot be effectively used because of technological or other changes in the work methods of MDBA or changes in the nature, extent or organisation of the functions of MDBA; or
  - 439.3 the duties usually performed by the employee are to be performed at a different locality, the employee is not willing to perform duties at the new locality and the Chief Executive has determined that the provisions of this clause apply to that employee.

440. In the circumstances where an employee is excess, or is likely to become excess, all reasonable steps will be taken to redeploy that employee either within the MDBA or elsewhere across the APS, in accordance with APS Redeployment policies and practices as in force from time to time.
441. An excess employee who is an applicant for a vacancy in the MDBA at or below the employee's substantive level will be considered for suitability in isolation from, and not in competition with, other applicants. Employees may be redeployed to other duties within the agency including on reduction to a lower level.
442. Discussions will be held with the excess or potentially excess employee and if requested, their nominated representative, to consider:
- 442.1 actions that might be taken to reduce the likelihood of the employee becoming excess;
  - 442.2 redeployment opportunities for the employee; and
  - 442.3 the availability of job swaps within the MDBA or another APS agency, at the discretion of the Chief Executive.

#### *Notification of Potentially Excess Status*

443. In circumstances where an employee may become excess, the employee and/or their representative will be provided with a consideration period of one month.
444. An employee may waive their entitlement to the one month consideration period.
445. The Chief Executive will advise an employee if they are likely to become excess at the earliest practicable time.

#### *Declaration of Excess Status*

446. In circumstances where an employee has been identified and declared as excess to requirements, the employee and/or their representative will be provided with notification of their excess status in writing. A consideration period of one month will apply.
447. An employee may waive their entitlement to the one month consideration period.
448. The Chief Executive will advise an employee when they are excess to requirements at the earliest practicable time.

#### *Voluntary Redundancy*

449. Within the first 2 weeks of the one month consideration period the employee will be given information which will contain:
- 449.1 an estimate of the amount of the severance pay;
  - 449.2 an estimate of the payment in lieu of notice;
  - 449.3 an estimate of accrued leave balances;
  - 449.4 an estimate of accumulated superannuation contributions;
  - 449.5 options open to them concerning superannuation; and



- 449.6 the taxation rules applicable to each form of payment.
450. The estimate is provided for guidance purposes only and is not an offer capable of forming a binding contract. The MDBA will fund up to \$500 for employees to seek independent financial advice in relation to an offer of voluntary redundancy.
451. The one month consideration period can be reduced by agreement between the employee and the Chief Executive as long as the employee has received the information outlined in clause 449. Unless the employee agrees to reduce the one month period, notice of termination will not occur before the end of that one month period.

#### *Redundancy Payments*

452. Where the one month consideration period is reduced, the employee will be paid for the unexpired portion of the one month period as at the date of termination.
453. An excess employee who elects for voluntary redundancy which is accepted by the MDBA and whose employment is terminated by the Chief Executive under section 29 of the PS Act on the grounds that they are excess to requirements will be paid:
- 453.1 subject to any minimum amount the employee is entitled to under the NES, a sum equal to 2 weeks' salary for each completed year of service; plus a pro-rata payment for completed months of service since the last completed year of service, with a minimum payment of 4 weeks and a maximum of 48 weeks' salary; or
  - 453.2 in accordance with clauses 460 and 461 for those employees who transitioned from the former Murray–Darling Basin Commission; and
  - 453.3 Payment in lieu of LSL (for employees with a minimum of 12 months service) and annual leave credits.
454. If an employee elects for voluntary redundancy, and this is accepted by the MDBA, the Chief Executive will give the employee the required notice of termination being 4 weeks, or 5 weeks if the employee is over 45 years of age and has at least 5 years continuous service. If the employee separates within the notice period, they will be paid in lieu for the unexpired portion of the notice period.

#### *Calculating Redundancy Payments*

455. Redundancy payments will be calculated on:
- 455.1 the employee's salary on the date of termination; and
  - 455.2 allowances in the nature of salary which are paid during periods of annual leave and on a regular basis, excluding allowances which are a reimbursement for expenses incurred or a payment for disabilities associated with the performance of duty.
456. The redundancy payment will be calculated on a pro-rata basis for any period where the employee has worked part-time hours during their period of service, and they have less than 24 years full time service.

457. Subject to clauses 458 and 459 service for severance pay purposes means:
- 457.1 service in the MDBA;
  - 457.2 “Government Service” as defined in section 10 of the *Long Service Leave (Commonwealth Employees) Act 1976* and MDBC transition arrangements;
  - 457.3 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 LSL purposes;
  - 457.4 service with a State or Territory Government which is recognised for LSL purposes;
  - 457.5 service with the Australian Defence Force;
  - 457.6 APS service immediately preceding deemed resignation under the then section 49 (as repealed in 1966) of the repealed *Public Service Act 1922*, if the service has not previously been recognised for severance pay purposes; and
  - 457.7 service in another organisation where an employee was transferred from the APS to that organisation with a transfer of function or an employee engaged by that organisation on work within a function was appointed as a result of the transfer of that function to the APS and such service is recognised for LSL purposes.
458. Periods of service that will not count as service for redundancy pay purposes are any periods of service that ceased by way of:
- 458.1 termination under section 29 of the PS Act;
  - 458.2 mechanisms prior to the commencement of the PS Act being: redundancy; retirement on ground of invalidity; inefficiency or loss of qualifications; forfeiture of office; dismissal or termination of probationary appointment for reasons of unsatisfactory service;
  - 458.3 voluntary retirement at or above the minimum retiring age applicable to the employee; or
  - 458.4 payment of a redundancy benefit or similar payment or an employer-financed retirement benefit.
459. For earlier periods of service to count there must be no breaks between the periods of service, except where the break in service was less than one month and occurred where an offer of employment in relation to the second period of service was accepted by the employee before the first period of service ended (whether or not the 2 periods of service are with the same employer or agency). Absences from work, which do not count as service for any purpose, will not count as service for redundancy pay purposes.

*Employees transitioned from the Murray–Darling Basin Commission*

460. The existing severance benefits of employees who transitioned from the MDBC on 15 December 2008 will be preserved at the benefit accrued as at the date of effect of the MDBA Enterprise Agreement 2009-2011. Any further severance benefit accruals will be at the standard APS rate of 2 weeks per year up to a maximum of 48 weeks in total where the preserved benefit is less than 48 weeks.

461. The severance benefits of a non-SES employee employed under an Individual Employment Contract (IEC), who transitioned from the MDBC will be preserved at the benefit set out in their IEC. The employee will not accrue further severance entitlements until such time as the amount they would have been entitled to under the standard APS arrangements (2 weeks pay per year of service) exceed their current contract entitlements.

#### *Involuntary Redundancy*

462. An employee will not have their employment terminated involuntarily if they have not been invited to elect for voluntary redundancy or if their election to be made redundant voluntarily has been refused.
463. If an employee does not elect for voluntary redundancy, the employee will not be terminated under section 29 of the PS Act without a retention period of 7 or 13 months as described in clauses 464 and 469.

#### *Retention Period*

464. A retention period of 13 months where an employee has 20 or more years of service or is over 45 years of age, or 7 months for other employees, commences on the day after the expiration of the consideration period in relation to voluntary redundancy.
465. Where there is insufficient productive work available for an employee and there is no realistic expectation of redeployment during the retention period, the Chief Executive may, with the agreement of the employee, terminate their employment before the end of the retention period and pay the balance of the retention period to the employee as a lump sum, comprising:
- 465.1 the balance of the retention period (as shortened for NES under clause 469) and this payment will be taken to include the payment in lieu of notice of termination of employment, plus
  - 465.2 the employee's NES entitlement to redundancy pay.
466. During the retention period the Chief Executive may:
- 466.1 assist the employee to find alternative employment;
  - 466.2 on request provide assistance to the employee on meeting reasonable travel costs and incidental expenses incurred while seeking alternative employment;
  - 466.3 provide the employee with appropriate support including training to assist in locating and securing employment and career counselling; and
  - 466.4 after giving 4 weeks' notice to the employee, reduce their classification as a means of securing alternative employment. If this occurs prior to the end of the retention period, the employee will continue to be paid at their previous level for the balance of the retention period.
467. The retention period will not normally be extended by any periods of paid or unpaid leave. The Chief Executive will extend a retention period by up to 2 months where medical evidence indicates the employee is substantially incapacitated and is considered to be unfit for work by a medical practitioner nominated by the MDBA. Only in exceptional circumstances would the retention period be extended beyond an additional 2 months.

468. An employee will be given 4 weeks' notice (or 5 weeks' notice for an employee over 45 years of age with at least 5 years of continuous service) of termination to be served (as far as practicable) concurrently with the retention period.
469. If an employee is entitled to a redundancy payment under the NES, the retention period at clause 464 will be reduced by the employee's redundancy pay entitlement under the NES on termination, calculated as at the expiration of the retention period (as adjusted by this clause).

## Attachment A – Salaries and Allowances

For all tables listed below:

— — — —	Indicates a 'Broadband' between classifications and designations
————	Indicates a barrier between classifications and designations – full merit process required to cross

**Table 1 – Base Salaries**

Classification	Salary levels	As at 31 August 2023	From the later of commencement of the agreement or 14 March 2024	From 13 March 2025	From 12 March 2026
EL 2	EL2.5	155,615	161,840	167,990	173,702
	EL2.4	150,128	156,133	162,066	167,576
	EL2.3	147,636	153,541	159,376	164,795
	EL2.2	139,623	145,208	150,726	155,851
	EL2.1	132,041	137,323	142,541	147,387
EL 1	EL1.3	124,875	129,870	134,805	139,388
	EL1.2	119,881	124,676	129,414	133,814
	EL1.1	113,509	118,049	122,535	126,701
APS 6	6.4	104,319	108,492	112,615	116,444
	6.3	101,037	105,078	109,071	112,779
	6.2	97,860	101,774	105,641	109,233
	6.1	94,784	98,575	102,321	105,800
APS 5	5.4	91,807	95,479	99,107	102,477
	5.3	88,918	92,475	95,989	99,253
	5.2	86,124	89,569	92,973	96,134
	5.1	83,418	86,755	90,052	93,114
APS 4	4.4	80,711	83,939	87,129	90,091
	4.3	78,510	81,650	84,753	87,635
	4.2	76,372	79,427	82,445	85,248
	4.1	74,294	77,266	80,202	82,929

Classification	Salary levels	As at 31 August 2023	From the later of commencement of the agreement or 14 March 2024	From 13 March 2025	From 12 March 2026
APS 3	3.4	72,270	75,161	78,017	80,670
	3.3	70,301	73,113	75,891	78,471
	3.2	68,386	71,121	73,824	76,334
	3.1	66,524	69,185	71,814	74,256
APS 2	2.4	62,945	65,463	67,951	70,261
	2.3	61,195	63,643	66,061	68,307
	2.2	59,495	61,875	64,226	66,410
	2.1	57,839	60,153	62,439	64,562
APS 1	1.4	54,666	56,853	59,013	61,019
	1.3	53,145	55,271	57,371	59,322
	1.2	51,666	53,733	55,775	57,671
	1.1	50,229	52,238	54,516	57,497

**Table 2 – Workplace Responsibility Allowance**

Name of allowance	As at 31 August 2023	Rate from commencement of the agreement	From 13 March 2025	From 12 March 2026
First Aid Officer	\$35.00 per fortnight	\$36.40 per fortnight	\$37.78 per fortnight	\$39.07 per fortnight
Health and Safety Representative (HSR)				
Emergency Warden				
Harassment Contact Officer (HCO)				
Mental Health First Aid Officer				

**Table 3 – Community Language Allowance**

Rate	Standard	Rate from commencement of the agreement	From 13 March 2025	From 12 March 2026
1	An employee who has adequate language skills, as determined by an individual or body approved by the Chief Executive, 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 Chief Executive.	\$2,870 per annum	\$2,979 per annum	\$3,080 per annum

**Table 4 – MDBA Graduate Broadband (for 2024 MDBA Graduates only)**

(Transitional for 2024 MDBA Graduates only)

Classification	Salary levels	As at 31 August 2023	From the later of commencement of the agreement or 14 March 2024	From 13 March 2025	From 12 March 2026
APS 5	5.4	91,807	95,479	99,107	102,477
	5.3	88,918	92,475	95,989	99,253
	5.2	86,124	89,569	92,973	96,134
	5.1	83,418	86,755	90,052	93,114
APS 4	4.4	80,711	83,939	87,129	90,091
	4.3	78,510	81,650	84,753	87,635
	4.2	76,372	79,427	82,445	85,248
	4.1	74,294	77,266	80,202	82,929
APS 3	3.4	72,270	75,161	78,017	80,670
	3.3	70,301	73,113	75,891	78,471
	3.2	68,386	71,121	73,824	76,334
	3.1	66,524	69,185	71,814	74,256

## Attachment B – Supported Wage System

1. This schedule defines the condition which will apply to employees because of the effects of a disability and who are eligible for a supported wage under the terms of this agreement.

### *Definitions*

2. In this schedule:

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

**Assessment instrument** means the tool provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system.

**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](http://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 schedule will be those who are unable to perform the range of duties to the competence level required within the class 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. The schedule 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 clause applies shall be paid the applicable percentage of the relevant minimum wage according to the following schedule:



**Table 1: Applicable percentage of relevant minimum wage paid to applicable employees**

Assessed capacity	Percentage of agreement rate
10 per cent	10 per cent
20 per cent	20 per cent
30 per cent	30 per cent
40 per cent	40 per cent
50 per cent	50 per cent
60 per cent	60 per cent
70 per cent	70 per cent
80 per cent	80 per cent
90 per cent	90 per cent

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 per cent, 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 schedule 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 schedule, 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 the agreement 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 supported wage system.

*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 the schedule 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 schedule 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 schedule 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. Work trials 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 under clause 8 and 9.