



Australian Government

Department of Employment and Workplace Relations

DEPARTMENT OF EMPLOYMENT AND WORKPLACE RELATIONS

Public Service Act 1999

DEPARTMENT OF EMPLOYMENT AND WORKPLACE RELATIONS DETERMINATION 2022/2 (NON-SES EMPLOYEES) PURSUANT TO SECTION 24(1)

I, Natalie James, Secretary of the Department of Employment and Workplace Relations (**department**), make the following determination under section 24(1) of the *Public Service Act 1999* (**PS Act**).

1. **General**

This Determination may be cited as *DEWR Determination 2022/2* (Non-SES Employees).

2. **Application**

This Determination provides terms and conditions of employment for non-SES employees of the department (**Employees**).

This Determination replaces the *DEWR Determination 2022/1* in its entirety.

3. **Period of operation**

This Determination applies to the Employees on and from the date it is signed.

This Determination will cease to apply to an Employee if:

- (a) it is revoked;
- (b) it is replaced by another Determination that applies to the Employee and is expressed to replace this Determination in its entirety; or
- (c) an enterprise agreement that covers the Employee commences operation.

4. **Terms and conditions**

The terms and conditions of employment set out in **Annexure A** will apply to the Employees' employment with the department by force of this Determination.

This Determination is of no effect to the extent that it reduces the benefit to an Employee of any individual term or condition applicable to the Employee under the National Employment Standards (**NES**) or the *Australian Public Service Enterprise Award 2015* (**APS Award**).

5. **Continued operation of Education guidelines, policies and procedures**

The *Department of Education and Training Enterprise Agreement 2016-2019* refers to various guidelines, policies and procedures which are relevant to the Employees' employment. Those guidelines, policies and procedures:

- (a) will continue to apply to Employees in their current form, except:
 - (i) that any reference to the Department of Education, Skills and Employment is substituted with a reference to the department (except where context provides otherwise);
 - (ii) to the extent that a policy, guideline or procedure is not capable of meaningful operation when applied to the department, it will have no effect;
- (b) will cease to apply to the Employees if replaced or amended by the department; and
- (c) do not form part of this Determination. This Determination prevails over any policy, guideline or procedure to the extent of any inconsistency.

6. **Delegation**

The Secretary may delegate any of his or her powers and functions under this Determination, including the power to sub delegate.



Natalie James
Secretary
Department of Employment and Workplace Relations

17 August 2022

ANNEXURE A

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Part A – Consultation Arrangements

1. The department is committed to communicating and consulting with employees and, where they choose, their representative about the implementation and operation of this Determination and issues affecting their entitlements and conditions of employment.

Consultation

2. These provisions apply if the department:
 - a. has made a definite decision to introduce a major change to production, programme, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees or
 - b. proposes to introduce a change to the regular roster or ordinary hours of work of employees.

Major change

3. When a major change occurs:
 - a. the department must notify the relevant employees of the decision to introduce the major change and
 - b. clauses 4-10 apply.
4. The relevant employees may appoint a representative for the purposes of the procedures in these provisions.
5. If a relevant employee(s) appoints a representative for the purposes of consultation and the employee(s) advise the department of the identity of the representative, the department must recognise the representative.
6. As soon as practicable after making its decision, the department must:
 - a. discuss with the relevant employees:
 - the introduction of the change
 - the effect the change is likely to have on the employees and
 - measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and
 - b. for the purposes of the discussion—provide, in writing, to the relevant employees:
 - all relevant information about the change including the nature of the change proposed
 - information about the expected effects of the change on the employees and
 - any other matters likely to affect the employees.
7. The department is not required to disclose confidential or commercially sensitive information to the relevant employees.
8. The department must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
9. If a provision in this Determination provides for a major change to production, programme, organisation, structure or technology in relation to the enterprise of the department, the requirements set out in clauses 3(a), 4 and 6 are taken not to apply.
10. A major change is likely to have a significant effect on employees if it results in:
 - a. the termination of the employment of employees
 - b. major change to the composition, operation or size of the department's workforce or to the skills required of employees

- c. the elimination or diminution of job opportunities (including opportunities for promotion or tenure)
- d. the alteration of hours of work
- e. the need to retrain employees
- f. the need to relocate employees to another workplace or
- g. the restructuring of jobs.

Change to regular roster or ordinary hours of work

11. For a change that proposes to introduce a change to the regular roster or ordinary hours of work of employees:
 - a. the department must notify the relevant employees of the proposed change and
 - b. clauses 12-15 apply.
12. The relevant employees may appoint a representative for the purposes of the procedures in these provisions.
13. If a relevant employee(s) appoint(s) a representative for the purposes of consultation and the employee(s) advises the department of the identity of the representative, the department must recognise the representative.
14. As soon as practicable after proposing to introduce the change, the department must:
 - a. discuss with the relevant employees the introduction of the change; and
 - b. for the purposes of the discussion—provide to the relevant employees:
 - all relevant information about the change, including the nature of the change;
 - information about what the department reasonably believes will be the effects of the change on the employees; and
 - information about any other matters that the department reasonably believes are likely to affect the employees; and
 - c. invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
15. The department is not required to disclose confidential or commercially sensitive information to the relevant employees.
16. The department must give prompt and genuine consideration to matters raised about the change by the relevant employees.
17. For the purposes of Part B, 'relevant employees' means the employees who may be affected by a change referred to in clause 2.

Consultation committees

18. The department will establish and maintain a consultative committee for the duration of this Determination. The committee will be the key mechanism for general staff consultation between the department and employee representatives.
19. The roles and composition of the Consultative Committee will be detailed in the Consultative Committee Terms of Reference, based on an appropriate representation of the department's workforce.

Part B – Employment classification structure

20. The department's classification structures and broadbands are detailed in Attachments A, B, C and D.

Department's Training Broadband

21. The department's Training Broadband at Attachment B is used for those employees required to undertake a mandatory training or development programme as a condition of advancement to the next classification within the broadband. Salary progression is subject to successful completion of that programme.
22. The Secretary may assign other classifications to the department's Training Broadband relevant to the training and development programme being undertaken by an employee or to ensure consistency with whole of government approaches.

Graduates

23. Graduates will enter the department at the APS 3 classification level within the department's Training Broadband. On successful completion of the Graduate Programme, Graduates will be advanced to the APS 4 classification level within the Training Broadband, and then be moved at the APS 4 classification level into the department's Broadband 2.

Cadets

24. Employees recruited as a Cadet will undertake a course of study as determined by the Secretary. Cadets will be assigned a classification level within the department's Training Broadband. On successful completion of their course of study and a final 12 week work placement, Cadets will be assessed for advancement to the APS 3 classification level within the department's Broadband 1.

Trainee APS (Administrative)

25. Trainee APS (Administrative) employees will be assigned a classification within the department's Training Broadband and undertake a course of study determined by the Secretary. On successful completion of their training requirements, the classification of Trainee APS (Administrative) will be not less than the APS 3 classification level, subject to work being available at the APS 3 level. They will then be integrated into the department's Broadband 1.

Ongoing movement within a broadband

26. Permanent movement between classification levels within a broadband applies to ongoing employees only.
27. Movement to a higher APS classification level within a broadband is not automatic and can only occur when:
- a. there is work available at the higher level in accordance with the APS work level standards for that classification and
 - b. the employee's performance is assessed as meeting the requirements for salary advancement for both key business deliverables and observable work behaviours and
 - c. the employee demonstrates an ability to undertake the higher level work, and if appropriate has the necessary qualifications, skills and/or experience or
 - d. an employee is successful in an open merit selection process consistent with the PS Act.

Part C – Remuneration

Salary

28. The salary rates are detailed in Attachments A, B, C and D of this Determination.
29. Employees, whose salary rate is above the rates for their classification in Attachment A on commencement of this Determination, will remain on that salary until their salary falls within the salary rates for their classification.
30. Employees' salary rates set out in Attachments A, B, C and D of this Determination are adjusted:
 - a. by X% with effect from 9 April 2023, where X is the applicable percentage adjustment in salary in line with the most recently published annual June Private Sector WPI% as advised by the Australian Public Service Commission; and
 - b. by X% with effect from 9 April 2024, where X is the applicable percentage adjustment in salary in line with the most recently published annual June Private Sector WPI% as advised by the Australian Public Service Commission.
31. Departmental Liaison Officer and Workplace Responsibility allowances are adjusted on the dates and by the percentages specified in clause 30.
32. Each adjustment of an allowance is to be calculated based on the allowance immediately before the adjustment in clause 30.
33. Any entitlement under the APS Award will be calculated by reference to the employee's applicable rate of pay in the APS Award.

Salary payment

34. An employee will be paid fortnightly in arrears by electronic funds transfer into a financial institution account of the employee's choice.
35. The fortnightly rate of salary is calculated using the following formula: annual rate of salary, multiplied by twelve, and divided by 313.

Salary on engagement, promotion or movement

36. A person who is engaged to the APS by the department, an existing ongoing APS employee promoted or moved to the department, or an existing departmental ongoing employee promoted or moved within the broadband in the department, will be paid at the minimum salary of the relevant classification unless the Secretary approves payment of a higher salary within the salary range for that classification.
37. An ongoing employee, who immediately before a movement within the broadband or promotion, is in receipt of Temporary Performance Loading (TPL) above the base salary due to receiving salary advancement at the TPL classification under the salary advancement provisions of this EA, will be paid at the higher TPL salary rate from the date of promotion or movement.
38. Unless the Secretary determines a higher salary, an existing ongoing APS employee moving to the department at the same classification level, whose salary immediately prior to transfer is below the maximum salary in the department for that APS classification, will have their salary rates set within the salary range for that classification at a rate closest to, but no lower than the existing salary.
39. Unless the Secretary determines otherwise, an existing ongoing APS employee moving to the department at the same classification level, whose salary in their previous APS agency exceeds the maximum salary in the department for that classification, will be maintained on that salary

until such time as the salary differential is absorbed by departmental salary increases at the relevant classification level.

40. Where an ongoing employee's salary exceeds the maximum salary range at the relevant departmental classification level and is set by an Individual Flexibility Arrangement (IFA) under an enterprise agreement or an instrument other than an enterprise agreement, the Secretary will determine the salary on movement to the department.
41. Clauses 36-40 do not apply to a departmental employee returning to the department following a temporary movement with another agency.
42. If an employee's salary is set in error at the time of engagement or promotion, the Secretary may subsequently determine that the employee's salary may be adjusted within the relevant classification with effect from the date of their engagement or promotion.

Salary on reduction

43. Where an ongoing employee requests or agrees in writing to perform work at a lower classification level for a specified period, salary will be determined by the Secretary at a rate applicable to the lower level for the period specified. The rate will normally be the top of the range of the lower classification.
44. Where an employee permanently reduces to a lower classification level, by consent or direction from the Secretary, the Secretary will determine salary within the lower classification level having regards to the experience, qualifications and skills of the employee. The rate will normally be the top of the range of the lower classification.

Salary advancement

45. On 15 July each year, an ongoing employee (excluding employees under the department's Training Broadband), who is not already on the maximum salary, will be eligible for salary advancement to the next pay point in their classification if the employee:
 - a. has performed duties:
 - i. in the department; or
 - ii. in the performance year ending on 15 July 2022, in the former Department of Education, Skills and Employment,
at that classification level or higher for a period of three continuous months or more in the performance cycle; and
 - b. has received ratings of 'Meets Expectations' (or equivalent) for both business deliverables and observable work behaviours as part of the end cycle performance appraisal ending 30 June each year.
46. Salary advancement provisions for Government Lawyers are outlined in Attachment C.

Salary advancement and Temporary Performance Loading

47. Where an ongoing employee is in receipt of TPL on 15 July, they will be eligible for salary advancement at both their temporary performance and substantive levels, if they are not already on the maximum salary, effective from 15 July, where the employee:
 - a. was in receipt of continuous TPL at the same classification or higher and salary level from 1 April to 15 July that year and
 - b. has received ratings of 'Meets Expectations' for both business deliverables and observable work behaviours at the TPL classification as part of the end cycle performance appraisal ending 30 June that year.
48. Where there is a break in TPL between 30 June and 15 July of the same calendar year the employee is still eligible for salary advancement at both levels.

49. An ongoing employee who is promoted or moved within the broadband between 1 April and 15 July each year, and was in receipt of continuous TPL at the same classification and salary level from 1 April to immediately before the promotion, will be eligible for salary advancement subject to meeting the requirements in clause 45.

Part time employees

50. Remuneration and other benefits for part time employees will be calculated on a pro rata basis according to hours worked, with the exception of reimbursement benefits and expense-related allowances, which will be paid at the same amount as full time employees.

Casual employees

51. Casual employees are entitled to a salary loading of 20 per cent in lieu of public holidays on which the employee is not rostered to work and all paid leave entitlements, except long service leave. Casual employees are entitled to access unpaid compassionate leave and unpaid carers leave of two days per each permissible occasion.
52. The employee's salary rate and casual loading under clause 51 includes payment for the casual loading the employee is entitled to receive under the APS Award.
53. Casual loading is not paid for overtime.

Supported salary rates

54. Supported wage rates as set out in Attachment G will apply to an employee with disability who is eligible for consideration under the Supported Wage System.

Junior rates

55. Junior rates of pay are only applicable to the APS 1 classification as detailed in Attachments A and B.

Superannuation

56. The department will provide employer superannuation contributions in accordance with the relevant legislative requirements.
57. The department will provide employer superannuation contributions to members of the PSSap of no less than 15.4% fortnightly contribution salary.
58. The department will provide employer superannuation contributions to members of a fund other than CSS, PSS or PSSap of no less than 15.4% ordinary time earnings.
59. For employees who take paid and/or unpaid parental leave (which includes maternity, supporting partner, adoption and foster care leave), employer contributions will be made for a period equal to a maximum of 52 weeks or as required by applicable legislation and fund requirements. Contributions will be based on the employer contribution amount in the full pay period immediately prior to commencing leave.
60. The Secretary may choose to limit superannuation choice to complying superannuation funds that meet the SuperStream standard.
61. Any fees applied by a chosen fund associated with the administration of superannuation contributions will be borne by the employee.

Salary packaging

62. Employees may access salary packaging and may package up to 100% of salary.
63. Where an employee elects to access salary packaging, the employee's salary for the purposes of superannuation, severance and termination payments, and any other purposes, will be determined as if the salary packaging arrangement had not occurred.

Part D – Capability development

64. The department is committed to promoting and supporting workplace diversity and inclusion, creating an environment that values the contributions of people with different experiences and perspectives regardless of their race, gender identity, sexual orientation, intersex status, age, disability, language or cultural and linguistically diverse backgrounds.
65. The department is an inclusive organisation that values fairness, equity and diversity, consistent with APS values and Code of Conduct.

Study assistance

66. An employee undertaking formal study may be eligible to apply for study assistance, which may include reimbursement of costs up to \$3000 per year and/or a maximum of eight hours per week paid leave (15 hours for Aboriginal and Torres Strait Islander employees), that can be used weekly, accumulated and used as a leave bank or both.

Performance management arrangements

67. Employees must participate in the department's performance management arrangements. The performance management cycle runs from July to June each year.
68. All employees will be required to have a current performance agreement, except non-ongoing employees engaged for less than three months.
69. For more information about the performance management processes, including the responsibilities, rights and obligations of managers and employees in managing performance, employees should consult the Performance Management Policy.

Managing underperformance

70. Where underperformance is identified, the department will work with affected employees and their managers to attain and sustain the standards required.
71. Underperformance is when a manager makes an assessment that an employee's performance does not meet expectations.
72. The underperformance procedures have been developed under the principles of procedural fairness, natural justice and provide rights to representation.
73. For more information on managing underperformance, employees should consult the Underperformance Procedures.

Part E – Allowances

Health allowance

74. To assist the promotion of good health, the department will provide each employee with a health related allowance to be paid as a lump sum on the first full pay period on or after 1 September each year as follows:
- a. APS 1–3 employees will receive \$500
 - b. APS 4–Executive Level 2 employees will receive \$200.
75. Employees who have commenced a period of LWOP (other than maternity leave without pay) for a period of six months or more on or before 1 September each year will not be entitled to receive the health related allowance for that year.

School holiday care allowance

76. The department will contribute to the cost of school holiday care for primary school children of employees required to work. If more than one carer works for the department, the allowance will only be paid when they are both at work.
77. On production of a receipt from an approved school holiday programme provider, the department will reimburse up to a maximum of \$18 per child per day up to \$180 per family per week.

Departmental Liaison Officer (DLO) allowance

78. An employee who receives the annual DLO allowance is not entitled to claim for flex time or any overtime worked while performing the duties of DLO. The rate of DLO allowance is \$20,789 per annum.

Workplace responsibility allowance

79. An ongoing employee is entitled to a workplace responsibility allowance of \$28 per fortnight where they are appointed to a workplace responsibility role and have successfully completed any training programmes and/or refresher courses required.
80. A workplace responsibility role includes a First Aid Officer, Emergency Warden or Health and Safety Representative.
81. If an employee undertakes more than one of the recognised workplace responsibilities they will not be entitled to multiple payment of the workplace responsibility allowance.

Community and Indigenous Australian languages allowance

82. Where the Secretary determines there is a continuing need to utilise an employee's particular language skills for communication (in languages other than English including deaf communication skills) in providing client or staff services, the employee will be entitled to the allowance provided in clause 11.15 of the APS Award.
83. Where an employee is accredited to a fluent level in a recognised Community or Indigenous Australian language by an appropriate individual or body, and where the employee is required to utilise the language in the delivery of the department's programmes, the employee is eligible to receive an allowance of \$1,700 per annum instead of the allowance at clause 82, which includes payment for any similar entitlement payable under the APS Award.

Cadet book and equipment

84. A cadet employee is entitled to reimbursement for all compulsory fees paid and reasonable expenses incurred for books and equipment during the year relating to the approved study paid for that year.

Remote Localities Assistance (RLA)

- 85. Where an employee is engaged or relocated to a remote locality, assistance will be provided.
- 86. Four categories have been determined for payment of RLA, depending on the level of remoteness. The amount payable per annum for the life of the Determination is at Attachment F. For further information, employees should consult the RLA Policy.

Temporary performance loading

- 87. TPL is payable when an employee has performed duties of a higher classification for 10 continuous working days or more.
- 88. Where the period of temporary performance is expected to be a continuous period of 10 days or more (whether or not that expectation is realised), temporary performance loading will be payable for the entire period worked at the higher level from the commencement of the period.
- 89. A manager may split temporary performance duties between employees for development purposes.
- 90. Where TPL is payable, this would normally be at the minimum salary of the higher classification. A manager may approve payment of TPL at a salary above the minimum salary for that classification. In considering such an approval, a manager will take into account the employee's previous periods of temporary performance, the employee's performance, and relevant experience or skills.
- 91. An employee may decline a manager's invitation to perform duties temporarily at a higher classification level.
- 92. An employee's substantive salary rate includes payment for the higher duties allowance under the APS Award in any circumstance where an employee performs duties at a higher classification for fewer than 10 days and would not be entitled to TPL under clause 87.

Temporary performance loading on leave

- 93. Where an employee is absent on paid leave, or observes a public holiday and has been directed to perform duties at a higher classification, payment of TPL will continue during the absence as if the employee was still at work, to the extent of the continued operation of the direction.

Relocation assistance

New employees

94. When a new ongoing employee moves from one geographic location to another to join the department, relocation assistance for the removal of furniture and effects and travel to the new locality may be provided at the discretion of the Secretary.
95. Any assistance provided will take into account the business requirements and the monetary limits of the relocation provisions for employee initiated moves.

Employer initiated transfers

96. Where the department initiates the transfer, term transfer or temporary transfer of greater than 13 weeks from one locality to another, the employee may request a relocation assistance package for reimbursement of reasonable expenses.
97. Where the transfer is initiated by the department, and the employee is an "eligible employee" for the purposes of clause 11.5 of the APS Award, the employee will be entitled to the greater of:
 - a. the entitlements in clause 96 (which includes payment for any similar entitlements payable under the APS Award); or
 - b. the entitlements in clause 11.5 of the APS Award (in which case the entitlements in clause 96 are not payable).

Employee initiated transfer

98. Where an employee of the department applies for promotion or transfer at level which involves permanently moving from one geographic locality to another, the employee may request a relocation assistance package for reimbursement of reasonable expenses.
99. Employees requesting transfer to another locality for personal reasons are generally not eligible for relocation assistance.
100. Where the transfer or promotion is initiated by the employee, and the employee is an "eligible employee" for the purposes of clause 11.5 of the APS Award, the employee will be entitled to the greater of:
 - a. the entitlements in clause 98 (which includes payment for any similar entitlements payable under the APS Award); or
 - b. the entitlements in clause 11.5 of the APS Award (in which case the entitlements in clause 98 are not payable).

Disturbance allowance

101. Where the household effects of an existing employee, to whom the relocation provisions apply, have been removed at departmental expense from the employee's former locality to the new locality, the employee is entitled to be paid a one-off disturbance allowance of \$810 for an employee who relocates alone or \$1,500 for an employee who relocates with a spouse, partner or dependant.
102. Where an employee has received disturbance allowance at the new locality and subsequently relocates within the new locality, no further disturbance allowance is payable.
103. Where an employee is an "eligible employee" for the purposes of clause 11.5 of the APS Award, the employee will be entitled to the greater of:
 - a. the disturbance allowance under clause 101 (which includes payment for any similar entitlements payable under the APS Award); or
 - b. the disturbance allowance clause 11.6(a) of the APS Award (in which case the disturbance allowance under clause 101 is not payable).

Part F – Travel

Travel expenditure

104. An employee who undertakes travel on official business and is required to be away from home overnight will be entitled to have actual travel expenditure within the indicative daily cap paid for or reimbursed by the department. For further information, employees should consult the Travel Policy.
105. Where the Secretary decides that the accommodation rate is insufficient in specific circumstances, a higher rate may be approved.
106. Employees whose travel includes an overnight stay may withdraw up to \$40 for incidentals and meals, from an Automatic Teller Machine without the requirement to provide receipts of expenditure. Any cash withdrawal will reduce the daily rates available for accommodation and other meals or incidental costs by the amount withdrawn.
107. Where an employee chooses to stay in non-commercial accommodation, employees may access up to \$55 per night to meet expenses associated with staying in non-commercial accommodation.

Part day travel

108. Where an employee is required to travel for official business purposes for a period of ten hours or more but no overnight stay is required, a part day travel allowance of \$40 will be payable to employees.

Reviewed travel allowance

109. Payment arrangements and the level of entitlement for travel expenses will be reviewed after 21 days away from home (in the one location) and paid on the basis of reasonable actual expenses or an alternative package of assistance approved by the Secretary. A trip home will not be regarded as a break for the purposes of determining reviewed travel allowance.

Recognition of travel time

110. For APS 1–6 (and equivalent) employees, travel on official business undertaken between 7:00 am to 7:00 pm may be recorded as flex time.
111. Travel time will not be paid as overtime.
112. Reasonable time off in lieu may be granted where employees are directed to travel outside the hours of 7:00 am to 7:00 pm.

Airline lounge membership

113. Where it is anticipated that eight or more business trips will be required to be undertaken in a 12 month period, airline lounge membership is available for that period.

Motor vehicle allowance

114. Where the Secretary authorises an employee to use their private vehicle for official business purposes, the employee will be paid a motor vehicle allowance in accordance with the Travel Policy, as updated from time to time.

Emergency situations while travelling on official business

115. Assistance may be authorised by the Secretary in situations where, while an employee is travelling on official business:
- a. an employee becomes critically or dangerously ill and the employee's partner or a family member travels to visit the employee or
 - b. a member of the employee's family or the employee's partner's family dies or becomes critically or dangerously ill and the employee travels to visit the critically or dangerously ill family member.
116. The assistance may comprise:
- a. reimbursement to the employee for the cost of an economy return airfare in respect of travel within Australia
 - b. where the use of a motor vehicle is approved, or is the most appropriate form of travel, motor vehicle allowance consistent with provisions in this Determination.

Family care expenses when travelling

117. When an employee with family caring responsibilities is required to travel away from home for official purposes, the department will provide reimbursement on production of receipts for the full cost of 'additional commercial care' (over normal caring arrangements).
118. Where commercial care is not available, the Secretary has the discretion to approve the cost of the care provided by other arrangements. This reimbursement will be up to \$60 per night subject to provision of satisfactory evidence.

Part G – Flexible working arrangements

119. The department recognises employees have family and personal commitments and is committed to providing flexibility in working arrangements that allow the department to be responsive and to assist employees to balance their personal and work commitments.
120. An employee, including casual employees, may request flexible working arrangements consistent with the *Fair Work Act 2009* (Cth) (**FW Act**).

Working hours

121. All employees are required to maintain a record of attendance.
122. Non-shiftworker full-time employees are required to work 7 hours and 30 minutes per day, being a total of 37.5 hours per week and 150 hours per four week settlement period. This time is made up of:
 - a. ordinary hours of work of 7 hours and 21 minutes per day, being a total of 36 hours and 45 minutes per week and 147 hours per four week settlement period; and
 - b. an additional 9 minutes per day, being a total of 45 additional minutes per week or 3 additional hours per settlement period. The employee's salary rate includes payment for this additional time, including any overtime payable under the APS Award. The additional time is treated as part of an employee's ordinary hours for all purposes under this Determination.
123. Shiftworker employees are required to work ordinary hours of 7 hours and 30 minutes per day averaged over a period of up to 28 days or the employee's roster cycle (whichever is the longest).
124. For all non-shiftworker employees:
 - a. the default span of hours (bandwidth) during which an employee may work their ordinary hours is 8:00 am to 6:00 pm, Monday to Friday. The bandwidth may be varied to an alternative 10 hour period between 6:00 am and 6:00 pm by agreement between an employee and the Secretary; and
 - b. where an employee requests to work ordinary hours during the period:
 - i. between 7:00 am and 8:00 am; and/or
 - ii. between the end of the bandwidth referred to in clause 124(a) and 7:00 pm,the employee's salary rate compensates the employee for performing work in that period, including any overtime or shift penalties payable under the APS Award. The time worked in that period will be treated as part of an employee's ordinary hours for all purposes under this Determination.
125. Employees must take a meal break at least 30 minutes after five continuous hours of work. The maximum number of agreed working hours to be worked in a day is 10 hours, unless also working overtime.
126. Employees should not commence work on any day without having at least eight hours plus reasonable travelling time minimum break from the previous day's work, including any overtime worked, without specific approval from the Secretary.
127. Where the Secretary requires an employee to resume or continue work without having had a minimum break, the employee will be paid at double the hourly rate for the hours worked, until they have had an eight hour break plus reasonable travelling time.
128. Where all or some of the employee's minimum break occurs during ordinary hours, the employee will not lose pay for the absence.
129. Arrangements for shiftworkers are contained in Attachment E of the Determination.

Ordinary hours – Full time employees

130. An employee's pattern of ordinary hours should be agreed between the employee and their manager. These ordinary hours may need to be varied on occasions by either the employee or the manager to accommodate operational or personal requirements.
131. Where agreement cannot be reached on the pattern of ordinary hours, the issue should be raised with the next level manager. Where agreement cannot be reached on the pattern of ordinary hours, the employee will work a standard day.

Part time employees

132. The department may engage an employee on a part time basis. An employee engaged on a part time basis does not have an automatic right to vary their part time hours or access full time hours.
133. A part time employee is an employee whose ordinary hours are less than 150 hours per settlement period (being made up of 147 ordinary hours plus the additional time referred to at clause 122(b)). Employees are required to work at least three continuous hours on any agreed working day.
134. Employees who work part time can agree to work outside their agreed ordinary hours and pattern of work. In such instances, part time APS employees will be entitled to access flex time provisions, and EL employees are entitled to access time off in lieu (TOIL), subject to the Executive Level TOIL provisions located in clauses 162-165. Where work is directed outside an APS employee's agreed ordinary hours, overtime rates are applicable.
135. An employee may request access to part time employment at any time. Managers will make every attempt to accommodate the request having regard to both operational requirements of the department and the personal needs of the employee.
136. Employees returning from maternity, parental, adoption or foster care leave will be provided with access to part time employment, upon application, until the child reaches three years of age. Thereafter, an employee may request flexible working arrangements in accordance with the FW Act.
137. The part time hours and days of work are to be agreed between the manager and employee having regard to operational requirements and the employee's circumstances. Before part-time duty commences, the Secretary will issue a notice in writing to the employee which will specify:
 - a. the prescribed weekly hours of duty; and
 - b. the pattern of hours to be worked including starting and finishing times for employees, on each or any day of the week, Monday to Friday, within the limits of 7:00 am to 7:00 pm.
138. Where a full-time employee is permitted to work part-time for an agreed period, the notice in writing under clause 137 will provide for the hours to be varied to full-time hours on a specified date. The employee will revert to full-time hours unless a further period of part-time employment is approved.
139. The prescribed weekly hours and the pattern of hours specified under clause 137 will not be varied, amended or revoked without the consent of the employee. Any agreed variation to the regular pattern of hours will be recorded in writing.

Flex time

140. Flex time is available to all (non-shiftworker) APS level employees. All hours must be recorded on the departmental flex sheet.
141. Employees accumulate flex time working between the hours of 7:00 am and 7:00 pm.

142. A flex credit is where an employee accumulates hours in excess of ordinary hours with the agreement of their manager. The additional time referred to in clause 122(b) will not be treated as time in excess of ordinary hours, but will be treated as part of an employee's ordinary hours, for the purpose of calculating the employee's flex credit. An employee may only carry over a maximum of 37.5 hours flex credit into the next settlement period. In exceptional circumstances and where the manager has expressly agreed to the additional hours being worked, greater than 37.5 hours may be carried over one settlement period.
143. In exceptional circumstances, the Secretary may:
- a. direct the excess flex leave to be taken so that the balance is below 37.5 hours or
 - b. offer the employee the option to cash out flex time credits in excess of 37.5 hours at an ordinary time rate or
 - c. convert the excess credits to annual leave on a one to one basis.
144. A flex debit occurs when the employee works less time than their ordinary hours. The additional time referred to in clause 122(b) will be treated as part of an employee's ordinary hours, for the purpose of calculating the employee's flex debit. An employee may only accrue a flex debit and carry over a maximum of 15 hours flex debit into the next settlement period with the agreement of their manager.
145. Flex leave is where an employee works less than their ordinary hours on any given day and is not on any other form of leave. The additional time referred to in clause 122(b) will be treated as part of an employee's ordinary hours, for the purpose of calculating any flex leave. Flex leave requires prior approval by the employee's manager, and for periods of one day or more reasonable notice is required.
146. Where there is insufficient work, a manager may require an employee not to work hours in addition to their ordinary hours.
147. Where an employee's manager considers the employee's attendance is unsatisfactory or that the employee is misusing flex, the employee may be required to work ordinary hours for a period specified by the manager.

Overtime

148. Where operational requirements make it necessary, a manager may direct an employee to work outside and in excess of their ordinary hours on any day.
149. An APS level employee directed to perform work outside and in excess of their ordinary hours on a given day will be paid overtime, or where agreed, time off in lieu of overtime payment at the applicable overtime rates.
150. A (non-shiftworker) casual employee will be entitled to overtime, but not casual loading, if the casual employee is directed perform work:
- a. on Monday to Friday, outside the hours of 7:00 am to 7:00 pm;
 - b. on a Saturday, Sunday or a holiday; or
 - c. in excess of 37.5 hours in a week.
151. Where a period of overtime is not continuous with ordinary time work, the base period of overtime payment for such work will be calculated as if the employee had worked for four hours. When determining whether a period is continuous with ordinary time work, meal breaks should not be regarded as breaking continuity.
152. Overtime payments approved by an employee's manager will be calculated as follows:
- **Monday to Saturday:** one and a half times the hourly rate for the first three hours each day and double the hourly rate thereafter
 - **Sunday:** double the hourly rate

- **Public Holiday:** two and a half times the hourly rate (except for duty on a public holiday within agreed ordinary time work, which will be paid at one and a half times the hourly rate in addition to normal salary payment for the day).
153. Time off in lieu of overtime payment may be approved by an employee's manager under certain circumstances. Where time off in lieu of payment has been agreed and the employee has not been granted time off within four weeks or another agreed period due to operational requirements, payment of the original entitlement or the residual entitlement where the full entitlement was not granted will be made.
154. Executive Level employees will only be eligible to receive overtime payments in exceptional circumstances with the approval of the Secretary.

Restriction allowance

155. Where an employee is required to remain contactable, available and able to perform extra duty outside their agreed ordinary hours (i.e. be restricted), they will be paid a restriction allowance, subject to approval by the Secretary.
156. Restricted employees will receive a restriction allowance at the rate of nine per cent of their ordinary hourly rate for each hour or part hour they are restricted outside their ordinary hours, subject to:
- a. the employee remaining contactable, fit and available to perform extra duty and
 - b. the employee not being in receipt of any other payment for the period for which restriction allowance would otherwise be payable, except as provided for in the following clause.
157. Restriction allowance is payable whether or not the restricted employee is required to perform duty outside the agreed ordinary hours. Where a restricted employee entitled to overtime payment is required to perform duty, overtime will be payable and subject to:
- a. a one hour base rate of payment when work is performed without the necessity to travel to the workplace
 - b. a three hour base rate of payment, including travel time, if work is required to be performed at the workplace.
158. If an employee is required to perform subsequent periods of duty within the one hour minimum payment period, only the initial one hour minimum is payable. Where an employee is required to undertake a second period of duty that commences after the one hour minimum payment period has lapsed for the first period of duty, a second one hour minimum payment period commences and a further one hour minimum is payable.
159. Restriction allowance will continue to be paid for periods of overtime worked while restricted.

Emergency duty

160. Emergency duty will attract a base payment of two hours (which includes reasonable travel time) at double the hourly rate, which will be payable for all emergency duty without prior notice. Executive Level employees will only be eligible to receive emergency duty payments in exceptional circumstances with the approval of the Secretary.

Overtime meal allowance

161. Where an employee (including a casual employee) who is eligible for overtime payment is directed to work overtime for at least three hours outside their ordinary hours, their manager will approve a flat rate overtime meal allowance at the applicable rate set by the applicable determination made by the Australian Taxation Office as being the reasonable amount for overtime meal allowance expenses. Where an employee works a further five hours overtime on a Saturday, Sunday or public holiday, they will receive an additional

overtime meal allowance of the applicable rate set by the applicable determination made by the Australian Taxation Office as being the reasonable amount for overtime meal allowance expenses.

Executive Level employees – flexibility and time off in lieu

162. The hours of duty worked by Executive Level employees are not regular and Executive Level employees may be required to work additional time beyond ordinary hours.
163. Executive Level employees are able to work flexible hours. This means that arrangements for managing variations in attendance times and short-term absences, including full days, may be agreed in advance with the manager.
164. Where substantial additional work is required, TOIL is able to be accessed by agreement with the manager. TOIL will not be on an hour for hour basis or replicate a flex time system.
165. Reasonable requests for time off under these arrangements will not be refused, except for operational reasons.

Working from home

166. Any employee may request approval to work from home, although arrangements must suit the type of work performed and operational requirements.

Christmas Closedown

167. All departmental workplaces will be closed from 12:30 pm on the last working day before Christmas Day and reopen the first working day following the first day of January. This period will be known as the Christmas Closedown.
168. Employees are not required to attend for duty during the Christmas Closedown, unless otherwise directed by the Secretary, and will be paid in accordance with their ordinary hours of work. Where an employee is absent on leave, payment for the Christmas Closedown will be in accordance with the entitlement for that form of leave (e.g. if on long service leave at half pay, payment is on half pay). There will be no deduction from annual or personal leave credits for the Christmas Closedown.
169. Where an employee who is eligible for overtime and restriction provisions is directed to attend work or be available for work during the Christmas Closedown, the overtime rate applicable to Sunday overtime will apply for the days designated as Christmas Closedown.

Part H – Leave

Portability of leave

170. Where an employee joins the department on an ongoing or non-ongoing basis from an employer staffed under the PS Act, the *Parliamentary Service Act 1999* or from the ACT Government Service, accrued annual and personal leave (however described) will be transferred or recognised, provided there is no break in continuity of service, or payments made to the employee in lieu of these entitlements from the previous employer.
171. Service with organisations where the employee was previously employed under the PS Act, the *Parliamentary Service Act 1999*, or from the ACT Government Service may be recognised for personal leave purposes if the break in service is not more than two calendar months.

Impact of leave without pay on personal and annual leave

172. Where an employee takes 30 or more days leave without pay in total in a calendar year, the whole period will not count as service for annual and personal leave purposes.
173. Where an employee takes 30 or more days leave without pay (including an accumulated period) during the calendar year, the whole period will not count as service.

Cancellation of leave or recall to duty from leave

174. Where an employee's leave is cancelled by their manager without reasonable notice, or they are recalled to work from leave, reasonable travel costs, travelling time, incidental costs and any other unavoidable costs arising from the recall to duty will be reimbursed where they are not recoverable under insurance or from another source. All unused leave will be re-credited.

Re-crediting periods of approved leave

175. An employee who becomes eligible for personal, carers or compassionate leave, or any non-discretionary leave under the National Employment Standards (NES), while on annual or long service leave may apply to have their annual or long service leave re-credited. Subject to the provision of satisfactory evidence, the employee's annual or long service leave will be re-credited to the extent of the leave subsequently granted.

Workers' compensation

176. An employee on workers' compensation leave under the *Safety, Rehabilitation and Compensation Act 1988*, whose compensation is calculated on the basis of actual hours worked, will have their annual and personal leave accrual calculated in the same way.

Annual leave

177. A full time employee is entitled to four weeks paid annual leave for each completed year of service, accruing daily.
178. A part time employee's annual leave entitlement will accrue on a pro rata basis.
179. Annual leave credits may be taken at any time with the approval of the manager. Any unused annual leave accumulates. Annual leave counts as service for all purposes.
180. An employee may be granted annual leave at half pay. Where an employee takes annual leave at half pay, the employee cannot access purchased leave in the same calendar year.
181. Periods of long service leave cannot be broken with annual leave, except as provided for by legislation.

Purchased leave

182. Employees may purchase up to eight weeks additional annual leave once per 12 month period by paying for the leave progressively over the course of the relevant period, subject to the approval of the Secretary.
183. Purchased leave is intended for use in a planned manner. When considering requests managers will take into account operational requirements and the reasons for the employee's request.
184. Where an employee has purchased leave approved, they cannot take annual leave at half pay in the same calendar year.
185. Unless otherwise agreed, purchased leave not taken during the nominated 12 month period will automatically be reimbursed as salary.
186. Purchased leave counts as service for all purposes including superannuation.

Personal leave

187. Ongoing and non-ongoing full time employees are entitled to 18 paid days personal leave every 12 months, accrued daily.
188. A part time employee's personal leave entitlement will accrue on a pro rata basis.
189. In the first year of employment, ongoing and non-ongoing employees will be given a credit, of seven days leave, or part time pro rata equivalent, in advance of accruing the entitlement. After the date on which the seven days would normally have accrued, accrual will be on a daily basis.
190. Existing employees and employees who transfer to the department from another APS agency will have their accruals adjusted to align with accrual on a daily basis of 18 days paid cumulative personal leave every 12 months.

Use of personal leave

191. Personal leave gives employees access to paid leave to be used when they are absent:
 - a. due to personal illness or injury including attendance at medical appointments
 - b. to provide care or support for a member of the employee's family who is ill or injured
 - c. to provide care or support for a member of the employee's family or household who is affected by an unexpected emergency or special circumstance
 - d. due to domestic or family violence or
 - e. as a result of special or exceptional circumstances.
192. Personal leave must not be used for the purposes of clauses 191(d) and 191(e) if it would be detrimental to an employee in any respect, when compared to the NES or the APS Award.
193. A manager may approve personal leave without pay only where paid personal leave credits are exhausted.
194. Employees may be granted personal leave at half pay instead of full pay where extraordinary circumstances exist, as determined by the Secretary.
195. Personal leave is cumulative but will not be paid out on separation.
196. Where an employee has exhausted their paid personal leave entitlements they are entitled to take two days unpaid leave for each occasion where a member of their family or household requires care because of illness, injury or unexpected emergency. The employee must provide medical or appropriate documentary evidence to their manager in support of their leave application.

Provision of medical certificates or other evidence

197. No more than three consecutive days of personal leave may be taken without medical or other evidence and no more than 12 days in total in a calendar year, unless the Secretary informs the employee that such evidence will not be required.
198. Medical certificates from registered medical practitioners will be accepted for the purpose of personal illness, injury or caring responsibilities. Where it is not reasonably practicable to provide a medical certificate a statutory declaration made by the employee may be accepted.
199. Statutory declarations used as evidence must set out why the employee is or was unable to attend work, and why it was not reasonably practicable for them to obtain a medical certificate for the purpose of personal illness, injury or caring responsibilities.
200. A manager may request that medical or other evidence is provided by the employee for any period of personal leave. This request should be made at the time the leave is notified or within a reasonable period of time after the leave is notified.
201. Where an employee does not provide satisfactory medical or other evidence any personal leave will be without pay and treated as unauthorised absence.
202. Where paid personal leave credits are exhausted, the employee must provide medical or other evidence for any period of unpaid personal leave.
203. The opinion of a medical practitioner nominated by the department will be accepted over that of a medical practitioner nominated by an employee, to the extent that their opinions differ. For further information, employees should consult the Rehabilitation and Return to Work Policy.

Compassionate leave

204. An employee is entitled to a period of three days of paid compassionate leave for each occasion when a member of the employee's family or household contracts or develops a personal illness or sustains a personal injury that poses a serious threat to their life, or dies.
205. An employee may be required to provide reasonable evidence to the Secretary in support of an application for compassionate leave.
206. Compassionate leave will count for service for all purposes.

Long service leave

207. An employee will be eligible for long service leave (LSL) in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976*.
208. The minimum period for which LSL will be granted is seven calendar days at full pay or 14 calendar days at half pay. A period of LSL cannot be broken by other periods of leave, a weekend or a public holiday, except as otherwise provided by legislation.
209. Long service leave credits may be taken at any time, subject to operational requirements and the approval of the employee's manager.

Community service leave

210. An employee is entitled to leave for the purposes of engaging in community service activities including jury service and emergency management activities as defined in the FW Act.
211. Participation in voluntary emergency management duties includes training, emergency service responses, reasonable recovery time and ceremonial duties. The Secretary may determine whether any or all of the leave taken for participation in voluntary emergency management activities will be with pay.
212. Leave with pay will be granted for any period of jury service.

213. An employee will be required to provide the department notice of the absence as soon as practicable and the period or expected period of absence.
214. An employee (other than a casual employee) will be reimbursed reasonable expenses incurred by the employee in excess of the NES entitlement while attending court to serve as a juror.
215. Despite clauses 172 and 173, a leave of absence granted under clause 210 will count as service for all purposes.

Community volunteer leave

216. Employees may be granted up to two days paid leave each calendar year to volunteer with a registered community organisation. Employees covered by the Government Lawyer Broadband may request to use the leave to volunteer legal services.
217. Paid leave will not be available to attend ceremonial functions unless the organisation certifies in writing that the employee is required to attend as part of their duties.

Defence reserve leave

218. An employee may be granted leave (with or without pay) to enable the employee to fulfil Australian Defence Force (ADF) Reserve and Continuous Full Time Service (CFTS) or Cadet Force obligations.
219. An employee is entitled to leave with pay, of up to four weeks during each financial year, and an additional two weeks paid leave in the first year of ADF Reserve Service, for the purpose of fulfilling service in the ADF Reserve.
220. With the exception of the additional two weeks in the first year of service, leave can be accumulated and taken over a period of two years.
221. Employees are not required to pay their tax free ADF Reserve salary to the department in any circumstances.
222. Defence Reserve leave counts as service for all purposes, except for unpaid leave to undertake CFTS. Unpaid leave for the purposes of CFTS counts for all purposes except annual leave accrual.
223. Eligible employees may also apply for annual leave, long service leave, leave without pay, top-up pay or they may use flex time or make up time for the purpose of fulfilling ADF Reserve, CFTS or Cadet Force obligations.

War service sick leave

224. The Secretary will grant war service sick leave to employees who are unfit for duty because of a war-caused or defence-caused condition as determined in accordance with relevant legislation.
225. Employees who are eligible war veterans will accrue two separate credits of paid war service sick leave:
 - a. Special credit – nine weeks war service sick leave credited on commencement with the APS following eligible military service.
 - b. Annual credit – three weeks annual credit on commencement and again following each 12 months of service. Unused credits accumulate up to a maximum credit balance of nine weeks. This credit cannot be accessed until the special credit has been exhausted.
226. Employees who re-join the APS following an earlier period of APS employment in which they had been credited with war service sick leave will be credited with:
 - a. any special credit that remained unused at the final day of the prior APS employment and
 - b. any annual credit held on the final day of the prior APS employment.

Miscellaneous leave

227. Miscellaneous leave provides flexibility to managers and employees. Miscellaneous leave may be granted for circumstances not provided for elsewhere in this Determination, either with or without pay, for a purpose that the Secretary considers to be in the interests of the department and having regard to operational requirements.
228. The leave granted may be for the period requested or for another period, and to count as service or not to count as service. Where miscellaneous leave is refused the manager will advise the employee (if requested) in writing of the reason for the decision to refuse leave.
229. Employees will be granted miscellaneous leave without pay where, due to an increase in their working hours, they have not accrued the equivalent of four weeks annual leave based on their current working hours. The maximum amount of leave provided will be the difference between the amount of leave accrued over the year and 20 days at their current working hours. This will count as service for all purposes except long service leave, unless the Secretary determines otherwise.
230. Employees may be granted up to two days paid cultural leave in a calendar year for religious or cultural activities associated with their culture or ethnicity.
231. Employees may access one additional day paid cultural leave to participate in NAIDOC.

Ceremonial leave

232. Managers may grant up to 20 days in any two calendar years of leave without pay to Aboriginal and Torres Strait Islander employees for ceremonial purposes arising from the death of a family member or other ceremonial obligations. Leave for a ceremonial obligation is without pay and does not count as service.
233. Ceremonial leave is in addition to compassionate leave.

Parental leave

234. For the purpose of this Determination, parental leave includes: maternity and maternal leave, primary carer leave, adoption leave, long term foster care and permanent care orders, supporting partner leave and unpaid parental leave.
235. All parental leave types must be taken in a single, unbroken period, unless otherwise provided for under legislation or this Determination.
236. All paid parental leave types will count as service for all purposes. For employees without the qualifying service period for paid maternity leave under the *Maternity Leave (Commonwealth Employees) Act 1973 (Maternity Leave Act)*, up to 12 weeks of unpaid maternity, adoption or long term foster care and permanent care orders leave will count for service. Unpaid parental leave types will not count as service unless otherwise provided for under legislation. Unpaid parental leave will not be taken to have broken service.
237. To provide for flexible administration, employees have the option to spread the payment for all paid parental leave types up to double the number of weeks at a rate of one-half of the normal salary for the employee. When payment is spread at half pay, only the full pay equivalent period will count as service (except to the extent this clause contradicts clause 236).

Maternity and maternal leave

238. Eligible employees can access maternity leave in accordance with the Maternity Leave Act.
239. An employee who is entitled to paid leave under the Maternity Leave Act is also entitled to two weeks of paid maternal leave, to be taken immediately following the paid component of maternity leave.
240. An employee is unable to access personal leave while on paid maternity/maternal leave.

241. A period of maternity/maternal leave is not broken or extended by public holidays or Christmas Closedown.

Adoption leave

242. An employee who has a period of service equal to that required for employees covered by the Maternity Leave Act to receive paid maternity leave, and will be the primary carer of the child they are adopting, is entitled to 14 weeks of paid adoption leave from the day of placement of a child where the child:
- a. is under school age on the day of placement
 - b. did not previously live with the employee for a period of six months or more as at the day of placement and
 - c. is not a child or step child of the employee or the employee's partner.

Long term foster care and permanent care orders

243. An employee who has a period of service equal to that required for employees covered by the Maternity Leave Act to receive paid maternity leave, and will be the primary carer of the child they are adopting, is entitled to 14 weeks paid foster care leave from the day of the placement of a child where:
- a. the employee becomes the primary care giver of a long term foster child or
 - b. is granted custody and guardianship of a child up to the age of 18 years as a result of a permanent care order and
 - c. the child did not previously live with the employee for a period of six months or more as at the day of placement.
244. In exceptional circumstances, the Secretary may approve paid and/or unpaid foster care leave under these provisions for short term fostering arrangements or kinship care. This will only be considered where legal reasons or circumstances beyond the employee's control mean the arrangements cannot be considered long term fostering, however are likely to become long term or permanent.

Primary carer leave

245. An ongoing employee, other than the mother, who becomes the primary care giver for a newborn baby will be entitled to a period of six weeks paid primary carer leave.

Supporting partner leave

246. An employee, who has 12 continuous months of APS service and is not otherwise entitled to paid maternity or parental leave under the Maternity Leave Act or this Determination, will be entitled to two weeks of paid supporting partner leave to commence within one month of the birth, adoption or permanent foster placement of a child or their partner's child.

Unpaid parental leave

247. An eligible employee is entitled to take a period of unpaid parental leave of up to 52 weeks, less any period of paid foster care leave or maternity and parental leave types taken in accordance with the FW Act.
248. An employee is not entitled to take paid personal or compassionate leave while they are taking unpaid parental leave.
249. On ending the initial 52 weeks of maternity or parental leave, employees are entitled on request to an extension of unpaid parental leave for a further period of up to 52 weeks. The second period of unpaid leave is to commence immediately following the initial 52 week leave period.

Returning from any type of parental leave

- 250. Employees returning to work after a period of parental leave will be assigned to the duties previously performed where available or to alternative duties where appropriate to the employee's skills and classification.
- 251. An employee returning to duty from parental leave will have the right to access part time work in accordance with the part time provisions in this Determination.

Unauthorised absences

- 252. Where an employee is absent from duty without approval, all pay and other benefits provided under this Determination cease to be available until the employee resumes duty, or is granted leave or ceases employment. Such absences will not count as service for any purpose. For further information on unauthorised absences, please refer to the Working Hours Policy.

Part I – Management of excess employees

253. The following provisions apply to all employees covered by this Determination, excluding an employee serving a probationary period and a non-ongoing employee.
254. The department will, as far as possible, avoid involuntary redundancies. Reasonable steps will be taken to facilitate redeployment opportunities at level across the department and the APS for excess or potentially excess employees.
255. An offer of voluntary redundancy to an employee who is not fit for and not at work may be made to an employee who is excess in accordance with the paragraph below only where the Secretary, having regard to the Commonwealth's liability, decides it is appropriate.

Discussion and consideration period

256. Where an excess employee situation is identified, the Secretary will:
- a. advise the employee(s) directly affected of the situation, the reasons and scope and invite the employee(s) to nominate a representative
 - b. discuss the voluntary redundancy and reassignment processes with affected employees
 - c. hold discussions with the employee(s) and their nominated representatives and
 - d. offer the affected employee(s) voluntary redundancy.
257. The employee(s) will have two months in which to consider the offer of voluntary redundancy. An employee who has received an offer of voluntary redundancy must advise the Secretary, in writing, before the end of the discussion and consideration period whether they wish to be considered for re-assignment or voluntary redundancy.
258. Employees will become excess one month after being made an offer of voluntary redundancy, unless during this time their employment has been terminated, they have been redeployed or the Secretary decides they are no longer in an excess situation.
259. If the employee does not respond, the employee will be taken to have a preference to be considered for reassignment, and their retention period will commence in accordance with clause 279.

Voluntary redundancy offer

260. The offer must state when the Secretary proposes to issue the termination notice if the offer is accepted.
261. The offer should include the following information to assist the employee in their considerations:
- amount payable as redundancy pay, pay in lieu of notice and accrued annual and long service leave credits
 - superannuation entitlements upon voluntary redundancy
 - superannuation options
 - taxation rules applicable to the various payments
 - the availability of financial assistance, on a reimbursement basis, towards obtaining independent financial advice up to the value of \$1,200.
262. Should the employee request and receive an earlier termination date that falls within the discussion and consideration period, the employee will be entitled to receive payment for the unexpired portion of the discussion and consideration period.

Career transition assistance

263. At the time the employee is offered a voluntary redundancy or as soon as possible thereafter but no later than two weeks after the voluntary redundancy offer, potentially excess employee(s) will be offered career transition assistance which will include:
- a. advice on the re-assignment and redundancy process
 - b. a point of contact for individual queries
 - c. assistance with identifying re-assignment opportunities and/or
 - d. training/redeployment assistance.
264. Employees may also access the department's Employee Assistance Program for free personal counselling.

Voluntary redundancy process

265. If an employee accepts an offer of voluntary redundancy, and the Secretary agrees to the redundancy, the Secretary will issue a 'notice of termination' under section 29 of the PS Act.
266. The period of notice will be four weeks, or five weeks for an employee over 45 years of age with at least five years of continuous, current APS service at the time of the offer. Where an employee elects to terminate their employment before the expiration of the notice period, payment in lieu for the unexpired portion of the notice period will be made.
267. Notice of termination will not be given before the end of the discussion and consideration period without the agreement of the employee.
268. Only one offer of voluntary redundancy will be made to an employee.
269. Job exchanges will be available until the end of the discussion and consideration periods. A job exchange is where a departmental employee who has been offered voluntary redundancy but does not want one, swaps jobs with an employee from within the Department or from another agency who is not excess but who wants voluntary redundancy. Job exchanges are subject to the Secretary's approval on a case by case basis.
270. An employee will not be made involuntarily redundant if the employee has not been offered a voluntary redundancy, or has requested, but not received an offer of voluntary redundancy.

Severance pay

271. An employee who accepts voluntary redundancy and whose employment is terminated under section 29 of the PS Act on the grounds that they are excess to requirements will be entitled to the following severance pay, subject to any minimum amount the employee is entitled to under the NES:
- a. two weeks of salary for each completed continuous year of service and
 - b. a pro rata payment for completed continuous months of service since the last completed year of service.
272. The minimum amount of severance pay is an amount equal to four weeks' salary and the maximum amount payable is an amount equal to 48 weeks' salary.
273. Severance pay is calculated on a pro rata basis for any period of service when the employee worked part time, subject to any minimum amount the employee is entitled to under the NES.
274. For an excess employee, salary includes:
- a. the employee's substantive salary on the date of termination and

- b. temporary performance loading where the employee has received the loading for a continuous period of at least 12 months immediately preceding the date on which the employee is given a formal offer of a voluntary redundancy and
- c. 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.

Service for severance pay purposes

275. Service for severance pay purposes means:

- a. service in the department
- b. Government service as defined in section 10 of the *Long Service Leave (Commonwealth Employees) Act 1976*
- c. service with a Commonwealth body (other than service with a Joint Commonwealth-State body corporate in which the Commonwealth does not have a controlling interest) which is recognised for long service leave purposes
- d. service with the Australian Defence Forces
- e. APS service immediately preceding deemed resignation under repealed section 49 of the *Public Service Act 1922*, if the service has not previously been recognised for severance pay purposes
- f. service in another organisation where an employee was transferred from that organisation with a transfer of function; or an employee engaged by that organisation on work within a function is appointed as a result of the transfer of that function to the APS and such service is recognised for long service leave purposes.

276. For earlier periods of service to count, there must be no breaks between the periods of service, except where:

- a. the break in service is less than one month and occurs where an offer of employment with the new employer was made and accepted by the employee before ceasing employment with the preceding employer or
- b. the earlier period of service was with the APS and ceased because the employee was deemed to have resigned from the APS under the repealed section 49 of the *Public Service Act 1922*.

Service not to count for severance pay purposes

277. Periods of service that will not count as service for redundancy pay purposes are previous periods of service that ceased by way of:

- a. termination under section 29 of the PS Act or
- b. prior to the commencement of the PS Act, by way of redundancy; forfeiture of office, retirement on the grounds of invalidity, inefficiency or loss of qualifications; dismissal or termination of probationary appointment for reasons of unsatisfactory service or
- c. voluntary retirement at or above the minimum retiring age applicable to the employee or
- d. payment of a redundancy benefit or a similar payment or an employer-financed retirement benefit.

278. Absences from duty which do not count as service for long service leave purposes will not count for severance pay purposes.

Retention period

279. Should an employee not accept the formal offer of voluntary redundancy, the employee will commence their retention period one month after the offer of voluntary redundancy. The notice period will be concurrent with the retention period.
280. The purpose of the retention period is to enable excess employees to be reassigned within the APS or to find other suitable employment. Consistent with this, during the retention period:
- a. the department will continue to provide and resource reasonable career transition services and support, and take all reasonable steps to move an excess employee to a suitable vacancy, to another agency or to pursue placements outside the APS consistent with this Determination and
 - b. employees will take all reasonable steps to secure permanent re-assignment or placement.
281. The retention period is:
- a. 13 months where an employee has 20 or more years of continuous, current service with the APS or is over 45 years of age
 - b. seven months for other employees.
282. If an employee is entitled to a redundancy payment under the NES, their retention period is 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).

Redeployment

283. The following provisions will apply to employees during their retention period:
- a. The employee can access up to \$1,200 for payment for outplacement services or training opportunities that would be expected to enhance the employment prospects of employees.
 - b. Excess employees of the department will be considered first and in isolation from, and not in competition with, other applicants who are not excess for an advertised vacancy to which the employee seeks transfer but only at or below the employee's level. In placing excess employees, consideration will be given to the employee's current skills and experience or the employee's ability to acquire the relevant skills for the advertised vacancy in a short period of time.
 - c. Suitable trial placements in other organisations, including private sector organisations, will be funded for up to three months where there is an identifiable opportunity for permanent placement and no job swap arrangement is involved. An individual employee may undertake more than one trial placement.
 - d. The employee will be entitled to reasonable paid leave for the purpose of attending employment interviews and may request assistance in meeting reasonable travel costs and incidental expenses incurred by the employee in seeking alternative employment, where these are not met by the prospective employer.
 - e. The employee may, after being given four weeks of notice (or five weeks for employees over 45 years old who have completed at least five years of continuous, current APS service), be reduced in classification as a means of securing alternative employment. If reduction occurs after the offer of voluntary redundancy and before the end of the retention period the employee will receive payments to maintain the employee's salary level for the balance of the retention period.

Extension of the retention period

284. Retention periods will only be extended by periods of approved leave due to the employee's illness or injury (supported by medical evidence) taken during the retention period. The period will not be extended on these grounds beyond an additional eight weeks.

Involuntary redundancy

285. If an excess employee is unsuccessful in obtaining permanent reassignment at the end of the retention period, the employee's employment will be terminated under section 29 of the PS Act. An employee may be entitled to a redundancy payment under the NES.

286. Where an excess employee's employment is to be terminated the employee will be given four weeks' notice of termination (or five weeks for an employee over 45 years of age with at least five years of continuous, current APS service). This period of notice will be served, as far as practicable, concurrently with the retention period.

Part J – Separation

Resignation

287. An employee, where practicable, is requested to give the Secretary at least two weeks' notice in writing of their intention to resign or retire (except where the employee has less than one year of continuous service, in which case the employee is required to give one weeks' notice). Where an employee submits a resignation which takes effect on a public holiday, the resignation will be deemed effective from close of business on the working day immediately prior to the public holiday. All resignations will be deemed to take effect at close of business of the resignation date.
288. Any outstanding payments for purchased leave or any flex debt will be deducted from a person's final monies if they cease to work for the department.

Payment on death

289. Where an employee dies, or the Secretary directs that an employee will be presumed to have died on a particular date, the Secretary may authorise the payment of an amount that would have been paid if the employee had otherwise ceased employment either by resignation or age retirement on that day.
290. Payment will be made to dependants or the partner of the former employee or the former employee's legal personal representative.

Part K – Dispute resolution

291. These provisions set out the procedures to settle disputes relating to:
- a. a matter arising under this Determination; or
 - b. the NES.
292. An employee who is a party to the dispute may appoint a representative for the purposes of the procedures of these provisions.
293. In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the employee or employees and the relevant supervisors and/or management.
294. If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to the Fair Work Commission (**FWC**).
295. The FWC may deal with the dispute in two stages:
- a. the FWC will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation and
 - b. if the FWC is unable to resolve the dispute at the first stage, the FWC may then:
 - arbitrate the dispute and
 - make a determination that is binding on the parties.
- Note: If the FWC arbitrates the dispute, it may also use the powers that are available to it under the FW Act. A decision that the FWC makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the FW Act. Therefore, an appeal may be made against the decision.
296. While the parties are trying to resolve the dispute using the procedures in this term:
- a. an employee must continue to perform their work as they would normally unless they have a reasonable concern about an imminent risk to their health or safety
 - b. an employee must comply with a direction given by the Secretary to perform other available work at the same workplace, or at another workplace, unless:
 - the work is not safe or
 - applicable work health and safety legislation would not permit the work to be performed or
 - the work is not appropriate for the employee to perform or
 - there are other reasonable grounds for the employee to refuse to comply with the direction.
297. The parties to the dispute agree to be bound by a decision made by the FWC in accordance with these provisions.

Attachment A – Department of Employment and Workplace Relations: General classifications, broadbands and salary increases

Broadband	Classification	Pay point	On commencement	
	Executive Level 2	4	159,076	
		3	148,951	
		2	140,532	
		1	132,522	
Hard barrier – Advancement subject to a merit process				
	Executive Level 1	4	124,466	
		3	118,209	
		2	115,321	
		1	112,617	
Hard barrier – Advancement subject to a merit process				
Broadband 2	APS 6	3	100,710	
		2	94,564	
		1	91,584	
	Soft barrier – Work value/work availability			
	APS 5	3	87,093	
		2	83,199	
		1	81,464	
	Soft barrier – Work value/work availability			
	APS 4	3	78,907	
		2	75,840	
		1	73,783	
	Hard barrier – Advancement subject to a merit process			
Broadband 1	APS 3	2	70,648	
		1	67,828	
	Soft barrier – Work value/work availability			
	APS 2	3	64,722	
		2	63,528	
		1	60,736	
	Soft barrier – Work value/work availability			
	APS 1	2	56,541	
		1	51,711	
		Age 20	47,057	
		Age 19	41,886	
		Age 18	36,198	
Under 18		31,027		

Attachment B – Department of Employment and Workplace Relations: Training broadband and salary increases

Broadband	Classification	Pay point	On commencement	
Training Broadband	APS 4	3	78,907	
		2	75,840	
		1	73,783	
	Soft barrier – Work value/work availability			
	APS 3	2	70,648	
		1	67,828	
	Soft barrier – Work value/work availability			
	APS 2	3	64,722	
		2	63,528	
		1	60,736	
	Soft barrier – Work value/work availability			
	APS 1	2	56,541	
		1	51,711	
		Age 20	47,057	
		Age 19	41,886	
		Age 18	36,198	
		Under 18	31,027	

Note: Cadets undertaking full time study will be paid 57 per cent of the minimum salary (including junior rates where applicable) that would be payable to the Cadets if they were performing practical training.

Note: Junior rates of pay are only applicable to the APS 1 classification.

**Attachment C – Department of Employment and Workplace Relations:
Government Lawyer Broadband and salary increases**

Classification	Pay point	On commencement
Principal Government Lawyer (Executive Level 2)	2	163,053
	1	150,644
Hard barrier – Advancement subject to a merit process		
Senior Government Lawyer (Executive Level 1)	3	137,955
	2	118,207
	1	112,617
Soft barrier – Work value/work availability		
Government Lawyer (APS 6)	6	100,710
	5	94,564
	4	91,584
Soft barrier – Work value/work availability		
Government Lawyer (APS 5)	3	83,199
Soft barrier – Work value/work availability		
Government Lawyer (APS 4)	2	75,840
Soft barrier – Work value/work availability		
Government Lawyer (APS 3)	1	70,648

Eligibility requirements

298. For a person to be eligible for employment as a Government Lawyer, the following criteria must be met:

- a. required to provide legal services in a dedicated legal practice area and
- b. will be substantially classified at the APS 3 to Executive Level 2 classification.

299. The eligibility requirements for entry on the Government Lawyer broadband are:

- a. a degree in Laws from an Australian tertiary institution, or a comparable overseas qualification, which is appropriate to the duties of the classification and
- b. admission as a legal practitioner, however described, of the High Court or the Supreme Court of an Australian State or Territory and
- c. if the Head of the Legal Area in which the employee works determines it appropriate, possession of a current restricted practising certificate issued by the ACT Law Society, or the obtaining of such a certificate within three months of commencing employment with the department.

Transfer to or from the Government Lawyer Broadband

300. Where an employee commences in, or is promoted to the Government Lawyer broadband, salary will be determined within the relevant classification level having regard to the experience, qualifications and skills of the employee and their likely corporate contribution.

301. Where the transfer to the Government Lawyer Broadband is approved, the employee will move from their current classification to the equivalent classification in the Government Lawyer Broadband.

302. Where the employee's salary is above the maximum salary rate of the relevant classification within the broadband, the employee will retain their current salary until such time as their salary falls within the salary range of the relevant classification within the broadband.
303. An employee who transfers at level or is promoted to a higher classification and is no longer required to provide legal services, will have their salary set in accordance with the salaries for the relevant classification in Attachment A of this Determination. The rate will normally be the top of the range where the transfer is at level.
304. Salary maintenance at the Government Lawyer Broadband salary will not be provided on transfer out of the Government Lawyer Broadband.

Government Lawyer advancement provisions

305. An employee may be eligible for advancement through the APS 3–EL 1 Government Lawyer broadband if the Secretary has determined that sufficient work is available at the relevant classification and the employee has:
 - a. been admitted as a legal practitioner, however described, of the High Court or Supreme Court of an Australian State or Territory and
 - b. demonstrated skills and capability at the higher classification and
 - c. met probation requirements and
 - d. is eligible for salary advancement as set out in Part C of this Determination and
 - e. received a performance rating of 'Meets Expectations' in the most recent performance cycle.
306. Where an employee is advanced to the Senior Government Lawyer level, an employee will only be advanced to the first salary point in the Senior Government lawyer scale and must remain at that level for at least 12 months before being eligible for further advancement within the Senior Government Lawyer scale.

Accelerated advancement

307. Subject to Secretary approval, if eligible for advancement in accordance with clauses 305 and 306, an employee on the Government Lawyer broadband may be advanced two pay points within the broadband. The decision to advance an employee more than one point in the broadband will take into account performance outcomes.

Attachment D – Department of Employment and Workplace Relations: Information Technology Specialist Designation and salary

Table 1 – Information Technology (IT) Specialist Designation

Classification	Pay point	On commencement
IT Specialist (Executive Level 1)	2	136,912
	1	130,689

308. The Designation structure will be available in limited circumstances where it is determined there is a requirement for particular highly specialised skills and expertise in the department’s IT areas that are required to support the delivery of important or critical business applications, projects or services.

Eligibility and selection

309. The eligibility requirements for movement to the Designation are:

- a. a degree in ICT from an Australian tertiary institution, or a comparable qualification, which is appropriate to the duties of the classification
- b. qualifications in an associated discipline
- c. highly specialised IT skills and expertise required to support the delivery of important or critical business applications, projects or services as determined by the relevant IT Group Manager and
- d. a level of IT specialist expertise held by the individual relevant to the department’s requirements.

Movement to or from the IT Specialist Designation

310. Executive Level 1 employees who work in an IT area of the department and meet the eligibility requirements for entry to the Designation may apply to their Group Manager to move to the Designation. Where movement to the Designation is approved, the employee will move at the Executive Level 1 classification to the IT Specialist Designation. Existing employees of the department will need to be able to demonstrate that they have met performance expectations for both key business deliverables and observable work behaviours.

Salary determination

- 311. Where an employee commences in, or is promoted to a role identified as an IT Specialist role, salary will be determined within the relevant classification level set out in Table 1 above, having regard to the experience, qualifications and skills of the employee and their likely corporate contribution.
- 312. The employee’s salary on movement to the Designation will be the equivalent of their current salary, or if there is no equivalent salary, to the salary closest to, but not lower than their current salary. Where the employee’s salary is above the maximum salary rate of the Designation, the employee will retain their current salary until such time as their salary falls within the salary range of the Designation.
- 313. An employee who transfers at level or is promoted to a higher classification to a position outside the Designation will have their salary set in accordance with the salaries for the relevant classification in Attachment A of this Determination. The rate will normally be the top of the range where the transfer is at level. Salary maintenance at the IT Specialist Designation salary will not be provided on transfer out of the IT Specialist Designation role.

Attachment E – Shiftworkers

314. Shiftworkers are those employees whose rostered ordinary hours fall outside the period 7:00 am–7:00 pm Monday to Friday and/or include Saturdays, Sundays or public holidays for an ongoing or fixed period.
315. Shift penalty payments will not be taken into account in the computation of overtime or in the calculation of any allowance based upon salary, nor will they be paid with respect to any shift for which any other form of penalty payment is made under this Determination. An employee's ordinary rate will include any Temporary Performance Loading for the shift.
316. Shiftworkers will receive the following rate:

Rostered time of work	Rate
Work performed on a shift, any part of which falls between 7:00 pm and 7:00 am.	115% of ordinary hourly rate
Work performed continuously for a period exceeding 4 weeks on a shift falling wholly between 7:00 pm and 7:00 am	130% of ordinary hourly rate
Work performed anytime on a Saturday	150% of ordinary hourly rate
Work performed anytime on a Sunday	200% of ordinary hourly rate
Work performed anytime on a public holiday	250% of ordinary hourly rate

317. For casual shiftworker employees, the ordinary hourly rate referred to in the table above does not include casual loading.

Rates for working Saturdays, Sundays or public holidays

318. Penalty rates for shift work performed on a Saturday, Sunday or public holiday will be payable for any time worked after midnight on those days, including where the shift commenced the day before.
319. The Saturday, Sunday, and Public Holiday penalty rates are in substitution for and not cumulative upon the other penalty rates.

Overtime

320. Shiftworkers directed to work overtime are entitled to the overtime payments calculated as follows:

For overtime worked	Overtime rate
Monday to Saturday – first three hours	150% of ordinary hourly rate
Monday to Saturday – after three hours	200% of ordinary hourly rate
Sunday – all day	200% of ordinary hourly rate
Public holidays or additional holiday – all day	250% of ordinary hourly rate

Crib time

321. Where an employee working a shift pattern is required to be on standby during meal breaks, they will be paid crib time of single time for the period they are required to be on standby.

Operation of shifts

322. Managers will allocate shifts equitably among employees undertaking shift work, with shift rosters specifying the standard hours of work for each shift.
323. A shift worker can be moved from one shift team to another by agreement at any time or with seven days' notice. If seven days' notice has not been given, except where this is not possible due to the illness or unanticipated absence of another employee, overtime will apply as per the overtime provisions of this Determination for work outside the employee's previously rostered hours of duty until the employee has received seven days' notice of the shift change.
324. Shiftworkers can exchange shifts or rostered days off by mutual agreement and with the approval of the relevant manager provided that the arrangement does not give rise to an employee working overtime.

Leave

325. Shiftworkers will accrue an additional half day of paid annual leave for each Sunday or public holiday worked, up to a maximum of five days for each calendar year in addition to penalty rates.
326. If the employee is rostered off on a public holiday, they will if practicable, within one month of that public holiday, be granted a day's paid leave in lieu of that holiday. Where it is impractical to grant a day's leave in lieu, the employee will be paid one day's pay at ordinary time.
327. Where a shiftworker takes annual leave, they will be paid shift penalty payments in respect of any duty which the shiftworker would have performed had they not been on approved annual leave.
328. Where a shiftworker takes a period of leave other than annual leave, shift penalties are not payable for the period of the absence.

Attachment F – Remote localities assistance

329. Remote localities assistance (RLA) is to recognise the climatic condition and lack of access to services in remote localities due to the geographical location.

330. Four categories have been determined for payment of RLA, depending on the level of remoteness. The amounts payable for the categories are:

	Category 1	Category 2	Category 3	Category 4
With dependents	\$5,974	\$11,950	\$16,729	\$20,911
Without dependents	\$4,182	\$8,365	\$11,710	\$14,638

331. Remote localities assistance for those employees, who, on commencement of this Determination, are in receipt of payments under the Transitional Arrangements in clause 498 of the *DEEWR Enterprise Agreement 2012–2014* or clause 102 of the *One Innovation Enterprise Agreement 2011*, will have these payments grandfathered over the life of this Determination.

	Darwin	Townsville
With dependants	\$ 12,000.00	\$ 4,200.00
Without dependants	\$ 7,200.00	\$ 3,000.00

Payment of RLA

332. Employees eligible for RLA will receive payment of the allowance as follows:

- a. 40% of the relevant amount paid fortnightly (pro rata for part time employees) from the date of commencement of service at the location and
- b. An annual payment of 60% of the relevant amount following completion of 12 months continuous service and after each completed 12 months service thereafter (pro rata basis for employees ceasing work at that location).

333. Accumulated periods of miscellaneous leave without pay not to count as service that exceed 30 calendar days or more will defer the annual 60% payment where the accumulated period of miscellaneous leave without pay exceeds 30 calendar days, the entire period will affect the annual payment.

334. The amount of RLA will be regarded as salary for taxation purposes.

Attachment G – Supported wage system

Eligibility criteria

335. Employees covered by this attachment 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 Determination because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.
336. The attachment does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this Determination relating to the rehabilitation of employees who are injured in the course of their employment.

Supported wage rates

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

Assessed capacity	% of prescribed salary rate
10%	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

338. Provided that the minimum amount payable must be not less than \$95 per week. The minimum amount payable is reviewed every year in July.
339. Where an employee's assessed capacity is 10 per cent; they must receive a high degree of assistance and support.

Assessment of capacity

340. 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 Supported Wage System (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.
341. 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.

Review of assessment

342. 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 support wage system.

Other terms and conditions of employment

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

Trial period

344. 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 four weeks) may be needed.

Definitions

Agency	a department as defined in the <i>Public Service Act 1999</i>
APS	the Australian Public Service
APS Award	<i>Australian Public Service Enterprise Award 2015</i>
Casual employee	An employee who works on an irregular or intermittent basis
Discussion and consideration period	a period of two months commencing from the date the Secretary makes an employee a formal offer of voluntary redundancy
Delegate	a person to whom the Secretary of the Department of Employment and Workplace Relations has delegated a power or function under this Determination
Department	the Department of Employment and Workplace Relations
Dependant	the spouse of the employee; and/or a child or parent of the employee, or of the spouse of the employee, being a child or parent who ordinarily resides with the employee and who is wholly or substantially dependent upon the employee
Determination	the <i>DEWR Determination 2022/2 (Non-SES Employees)</i> .
Employee	an employee, other than a casual employee, of the Department of Employment and Workplace Relations, whether ongoing, non-ongoing, full time or part time within the meaning of the <i>Public Service Act 1999</i>
Excess employee	An employee will be considered an excess employee where: <ul style="list-style-type: none"> a) the employee is part of a class of employees that is larger in size than is necessary for the efficient and economical working of the department or b) the services of an employee cannot be effectively used because of technological or other changes in the work methods of the department, or structural or other changes in the nature, extent or organisation of functions of the department or c) the duties usually performed by the employee are to be performed in a different locality, the employee is not willing to perform the duties at the other locality and the Secretary has determined that these provisions will apply to that employee.
Extended absence due to illness or injury	an absence of at least four continuous weeks or a combined total absence of four weeks within a 13 week period because of illness or injury

Family	a person who is related by blood, marriage (including a former spouse), adoption, fostering or traditional kinship; a de facto partner (including a former de facto partner); a person who has a strong affinity with the employee; or a parent, child, grandparent, grandchild or sibling of the employee's spouse or de facto partner
Manager	the person to whom an employee is responsible and who is authorised by the Secretary to exercise the powers and responsibilities of a manager in relation to that employee
Partner	where a person is a member of a couple, this refers to the other member of the couple
Purchased Leave	Additional annual leave that has been purchased through deductions from pay
Senior Executive Service (SES)	a Senior Executive Level employee as defined under the <i>Public Service Act 1999</i>
Secretary	the Agency Head of the Department of Employment and Workplace Relations
Settlement period	is the four week period beginning on a pay Thursday for the purposes of determining flex debit / credit carryover
Shiftworker	an employee who is rostered to work ordinary hours outside of the period 7:00 am to 7:00 pm Monday to Friday and/or Saturdays, Sundays or public holidays for an ongoing or fixed period, and does not include an employee who does not work in accordance with a roster or an employee who chooses to work their ordinary hours between the hours of 6:00 pm and 7:00 pm
Standard day	is 8:30 am to 12:30 pm and 1:30 pm to 5:00 pm (or 8:00 am to 12:00 pm and 1:00 pm to 4:30 pm in the Northern Territory) Monday to Friday, except where a public holiday occurs