



# DECISION

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

**Australian Skills Quality Authority**  
(AG2024/380)

## AUSTRALIAN SKILLS QUALITY AUTHORITY (ASQA) ENTERPRISE AGREEMENT 2024-2027

Commonwealth employment

DEPUTY PRESIDENT MASSON

MELBOURNE, 28 FEBRUARY 2024

*Application for approval of the Australian Skills Quality Authority (ASQA) Enterprise Agreement 2024-2027.*

[1] An application has been made for approval of an enterprise agreement known as the *Australian Skills Quality Authority (ASQA) Enterprise Agreement 2024-2027* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Australian Skills Quality Authority. The Agreement is a single enterprise agreement.

[2] The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) (Amending Act) made a number of changes to enterprise agreement approval processes in Part 2-4 of the Fair Work Act, which commenced operation on 6 June 2023. By reason of the transitional arrangements for the Amending Act and the *notification time* for the Agreement of 23 February 2023, the *genuine agreement* requirements for agreement approval in Part 2-4 of the Fair Work Act, as it was just before 6 June 2023 apply to the present application. Further, as the Agreement was *made* on 15 February 2024 the *better off overall test* provisions in Part 2-4 of the Fair Work Act as amended on 6 June 2023 apply.

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

[4] The notice of employee representational rights provided to employees (NERR) contained the title of the previous Agreement. I am satisfied that in all of the circumstances and having regard to the Full Bench decision in *Huntsman Chemical Company Australia Pty Limited T/A RMAX Rigid Cellular Plastics & Others*<sup>1</sup>, this constitutes a minor procedural or technical error for the purpose of s.188(2)(a) of the Act as it was prior to 6 June 2023. Further, I am satisfied that the employees covered by the Agreement were not likely to be disadvantaged by the error.

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<sup>1</sup> [2019] FWCFB 318.

[5] The Community and Public Sector Union being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) I note that the Agreement covers the organisation.

[6] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 6 March 2024. The nominal expiry date of the Agreement is 28 February 2027.



DEPUTY PRESIDENT

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**Australian Skills Quality Authority (ASQA)  
Enterprise Agreement  
2024-2027**

## Contents

<b>Part A: Technical Matters</b> .....	<b>5</b>
Title .....	5
Parties to the agreement .....	5
Operation of the agreement .....	5
Delegations .....	5
National Employment Standards (NES) Precedence .....	5
Closed comprehensive agreement .....	5
Individual Flexibility Arrangements (IFAs) .....	5
Definitions .....	6
<b>Part B: Remuneration</b> .....	<b>10</b>
Salary .....	10
Payment of salary .....	10
Salary setting .....	10
Incremental advancement .....	11
Salary on reduction .....	11
Salary packaging .....	11
Superannuation .....	12
Overpayments .....	12
Supported Wage System .....	13
<b>Part C: Allowances and reimbursements</b> .....	<b>14</b>
Higher duties allowance .....	14
Motor vehicle allowance .....	14
Healthy lifestyle allowance .....	14
Workplace responsibility allowances .....	15
Overtime meal allowance .....	15
Community language allowance .....	16
<b>Part D: Classifications and broadbands</b> .....	<b>17</b>
Work Level Standards .....	17
<b>Part E: Working hours and arrangements</b> .....	<b>18</b>
Job security .....	18
Casual (irregular or intermittent) employment .....	18
Non-ongoing employment .....	18
Working hours and part time arrangements .....	19
Recording attendance .....	19

Flexitime for APS 1-6 classifications.....	20
Executive Level Time Off In Lieu (EL TOIL) .....	21
Outside employment .....	22
Service Delivery rostering .....	22
Overtime .....	22
Emergency duty .....	23
Flexible working arrangements.....	24
Christmas closedown .....	27
Public holidays .....	28
<b>Part F: Leave .....</b>	<b>30</b>
General provisions .....	30
Annual leave.....	30
Purchased leave .....	31
Personal leave .....	31
Portability of leave .....	34
Re-crediting of leave .....	35
Long service leave .....	35
Miscellaneous leave .....	36
Cultural, ceremonial and NAIDOC leave .....	36
Parental leave .....	37
Compassionate leave .....	39
Bereavement leave .....	40
Emergency response leave .....	40
Jury duty.....	41
Community service leave .....	41
Defence reservist leave.....	41
Defence service sick leave .....	42
Leave to attend proceedings .....	42
Unauthorised absences.....	42
<b>Part G: Employee support and workplace culture.....</b>	<b>43</b>
Blood donation.....	43
Vaccinations .....	43
Employee Assistance Program (EAP) .....	43
Respect at work .....	43
Family and domestic violence support .....	43
Integrity in the APS .....	45

First Nations cultural competency training.....	45
Lactation and breastfeeding support.....	45
Disaster support.....	46
<b>Part H: Performance and development.....</b>	<b>47</b>
Performance management.....	47
Workloads.....	48
Study assistance.....	49
<b>Part I: Travel and location-based conditions.....</b>	<b>50</b>
Class of travel.....	50
Travel allowance.....	50
Part day travel allowance.....	50
Review travel allowance.....	50
Overseas conditions.....	50
Travel time.....	50
Relocation assistance.....	51
<b>Part J: Consultation, representation and dispute resolution.....</b>	<b>53</b>
Consultation.....	53
Agency consultative committee.....	56
APS consultative committee.....	56
Dispute resolution.....	56
Delegates' rights.....	57
<b>Part K: Separation and retention.....</b>	<b>59</b>
Resignation.....	59
Payment on death of an employee.....	59
Termination of employment.....	59
Redeployment, retirement, and redundancy.....	59
<b>Attachment A: Base salaries.....</b>	<b>65</b>
<b>Attachment B: Supported Wage System.....</b>	<b>66</b>
<b>Signature page.....</b>	<b>69</b>

## Part A: Technical Matters

### Title

1.1 This agreement shall be known as the Australian Skills Quality Authority (ASQA) Enterprise Agreement 2024-2027.

1.2 It will be referred to throughout this document as the “agreement” or “EA”.

### Parties to the agreement

2.1 This agreement covers:

- (a) the Chief Executive Officer of ASQA, for and on behalf of the Commonwealth of Australia as the employer.
- (b) all employees in ASQA employed under the *Public Service Act 1999* other than:
  - (i) Senior Executive Service employees or equivalent.
- (c) subject to notice being given in accordance with section 183 of the *Fair Work Act 2009*, and the following employee organisation/s which were a bargaining representative for this agreement:
  - (i) the Community Public Sector Union (CPSU).

### Operation of the agreement

3.1 This Agreement will commence operation seven days after approval by the Fair Work Commission.

3.2 This Agreement will nominally expire on 28 February 2027.

### Delegations

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

### National Employment Standards (NES) Precedence

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

### Closed comprehensive agreement

6.1 This agreement states the terms and conditions of employment of employees covered by this agreement, other than terms and conditions applying under relevant Commonwealth laws.

6.2. This agreement will be supported by policies and guidelines, as implemented and varied from time to time.

6.3. Policies and guidelines are not incorporated into and do not form part of this agreement. To the extent that there is any inconsistency between policies and guidelines and the terms of this agreement, the terms of this agreement will prevail.

### Individual Flexibility Arrangements (IFAs)

7.1 ASQA and an employee covered by this agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:

- (a) the agreement deals with one or more of the following matters:
  - (i) arrangements about when work is performed
  - (ii) overtime rates
  - (iii) penalty rates
  - (iv) allowances
  - (v) remuneration
  - (vi) leave and leave loading; and
- (b) the arrangement meets the genuine needs of ASQA and the employee in relation to one or more of the matters mentioned in clause 7.1(a); and
- (c) the arrangement is genuinely agreed to by ASQA and the employee.

7.2. ASQA must ensure that the terms of the individual flexibility arrangement:

- (a) are about permitted matters under section 172 of the *Fair Work Act 2009*;
- (b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
- (c) result in the employee being better off overall than the employee would be if no arrangement was made.

7.3. ASQA must ensure that the individual flexibility arrangement:

- (a) is in writing;
- (b) includes the name of ASQA and the employee;
- (c) is signed by the Chief Executive Officer and the employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
- (d) includes details of:
  - (i) the terms of the enterprise agreement that will be varied by the arrangement;
  - (ii) how the arrangement will vary the effect of the terms;
  - (iii) how the employee will be better off overall in relation to the terms and conditions of their employment as a result of the arrangement; and
  - (iv) states the day on which the arrangement commences.

7.4. ASQA must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.

7.5. ASQA or the employee may terminate the individual flexibility arrangement:

- (a) by giving no more than 28 days written notice to the other party to the arrangement; or
- (b) if ASQA and the employee agree in writing – at any time.

7.6. ASQA and the employee are to review the individual flexibility arrangement at least every 12 months.

## Definitions

8.1 The following definitions apply to this agreement:



**APS agency** means an agency whose employees are employed under the *Public Service Act 1999*, including an agency as defined in section 7 of the *Public Service Act 1999* whose employees are employed under that Act.

**Agency Head** means the Chief Executive Officer of the Australian Skills Quality Authority or the Chief Executive Officer's delegate.

**Agreement** means the Australian Skills Quality Authority (ASQA) Enterprise Agreement 2024-2027.

**APS** means the Australian Public Service.

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

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

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

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

**Casual employee (irregular or intermittent employee)** means an employee engaged under section 22(2)(c) of the *Public Service Act 1999* who:

- (a) is a casual employee as defined by the *Fair Work Act 2009*; and
- (b) works on an irregular or intermittent basis.

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

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

**De facto partner** means a person who, regardless of gender, is living in a common household with the employee in a bona fide, domestic, interdependent partnership, although not legally married to the employee. This includes a former de facto partner.

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

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

**Employee** means an employee of the Commonwealth engaged under section 22(2) of the *Public Service Act 1999* who is covered by this agreement (whether full time, part time or casual, ongoing, or non-ongoing).

**Employee representative** means a person (whether an employee or not) elected or chosen by an employee, or elected or chosen by a group of employees in a workplace, to represent the individual and/or collective views of those employees in relation to a matter under this agreement.

**Family** means:

- (a) a spouse, former spouse, de facto partner or former de facto partner of the employee;
- (b) a child, parent, grandparent, grandchild, or sibling of the employee;
- (c) a child, parent, grandparent, grandchild, or sibling of a spouse, former spouse, de facto partner or former de facto partner of the employee;
- (d) a member of the employee's household; or
- (e) a person with whom the employee has a relationship of traditional kinship where there is a relationship or obligation, under customs and traditions of the community or group to which the employee belongs.

**Family and domestic violence** has the same meaning as in section 106B(2) of the *Fair Work Act 2009*.

**Full time employee** means an employee employed to work an average of 36 hours and 45 minutes per week in accordance with this agreement.

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

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

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

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

**NES** means the National Employment Standards at Part 2-2 of the *Fair Work Act 2009*.

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

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

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

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

**Part-time employee** means an employee employed to work less than an average of 36 hours and 45 minutes per week in accordance with this agreement.

**Primary caregiver** for the purposes of the parental leave clause means a pregnant employee with an entitlement under the ML Act, or an employee other than a casual employee who has primary care responsibility for a child who is born to them or who is adopted or in long-term foster care as per the clauses on adoption and long-term foster care in this agreement.

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

**Relevant employee** means an affected employee.

**Secondary caregiver** for the purposes of the parental leave clause means an employee, other than a pregnant employee or casual employee, who has secondary care responsibility for a child who is

born to them, or for a child who is adopted or in long-term foster care as per the clauses on adoption and long-term foster care in this agreement.

**Standard day** means the ordinary hours of work for an employee. Specific definitions are outlined in Part H.

## Part B: Remuneration

### Salary

9.1 Salary rates will be as set out in Attachment A of this agreement.

9.2 The base salary rates in Attachment A include the following increases:

- (a) 4.0 per cent from the first full pay period on or after 1 March 2024 (the 14 March 2024);
- (b) 3.8 per cent from the first full pay period on or after 1 March 2025 (the 13 March 2025);  
and
- (c) 3.4 per cent from the first full pay period on or after 1 March 2026 (the 12 March 2026).

9.3 In recognition of a common alignment date of the first full pay period on or after 1 March each year, the base salary rates in Attachment A were calculated based on base salary rates as at 31 August 2023.

### Payment of salary

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

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

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

### Salary setting

11.1 Where an employee is engaged, moves to or is promoted in ASQA, the employee's salary will be paid at the minimum of the salary range of the relevant classification, unless the Chief Executive Officer determines a higher salary within the relevant salary range under these clauses.

11.2 The Chief Executive Officer may determine the payment of salary at a higher value within the relevant salary range of the relevant classification and the date of effect at any time.

11.3 In determining a salary under these clauses, the Chief Executive Officer will have regard to relevant factors including the employee's experience, qualifications and skills.

11.4 Where an employee commences ongoing employment in ASQA immediately following a period of non-ongoing employment in ASQA, the Chief Executive Officer will determine the employee's salary within the relevant salary range of the relevant classification which recognises the employee's prior service as a non-ongoing employee in ASQA.

11.5 Where an employee commences ongoing employment in ASQA immediately following a period of casual employment in ASQA, the Chief Executive Officer will determine the salary within the relevant salary range of the relevant classification which recognises the employee's prior service as a casual employee in ASQA.

11.6 Where an APS employee moves to ASQA at level from another APS agency, and their salary is above the maximum of the salary range for their classification, the Chief Executive Officer will maintain the employee's salary at that level, until it is absorbed into the salary range for that classification.

11.7 Where the Chief Executive Officer determines that an employee's salary has been incorrectly set, the Chief Executive Officer may determine the correct salary and the date of effect.

### Incremental advancement

12.1 An employee will advance by one pay point with effect from 1 July where the employee has been:

- (a) at their pay point for a total of at least six months as at 30 June in that year (excluding any unpaid leave that does not count as service or any unauthorised absence);
- (b) achieves a satisfactory rating (as defined in the performance management policy) for the previous performance cycle; and
- (c) the employee is not already at or above the highest pay point for their classification.

12.2 Where an employee has been on higher duties for at least six months during the previous 12 months and satisfies all of the criteria for advancement set out in clause 12.1, they will advance to a higher pay point for higher duties purposes if they are still performing duties at the higher level as at 1 July. In this instance, the employee's pay point at his or her substantive level will also increase subject to the employee satisfying the criteria set out in clause 12.1 at the substantive level.

12.3 Salary progression while acting at a higher classification, will be retained for future acting duties at, or promotion to, that classification regardless of elapsed time.

12.4 Eligible service for salary progression will include:

- (a) periods of paid leave and unpaid parental leave;
- (b) periods of unpaid leave that count as service; and
- (c) service while employed on a non-ongoing basis.

12.5 During a period of unpaid parental leave employees will be eligible to advance a maximum of one increment, regardless of the length of unpaid parental leave.

### Salary on reduction

13.1 Where an employee is transferred to a lower classification level, either on a permanent or temporary basis, the employee will be paid at the lower classification level. The pay point of the employee will be determined by the Chief Executive Officer based on the employee's experience, qualifications and skills.

### Salary packaging

14.1 Employees may package salary and allowances payable as salary except that any compulsory superannuation contribution will still be required to be paid by the employee.

14.2 The Chief Executive Officer will determine the circumstances in which salary and allowances may be salary packaged.

14.3 Where employees take up the option of salary packaging, the employee's salary for purposes of superannuation, severance, and termination payments, and for any other purposes, will be determined as if the salary packaging arrangements had not occurred.

14.4 Any fringe benefits tax payable as a result of a salary packaging arrangement will be met by the individual employee.

14.5 Employees are responsible for the payment of any administration fees charged by the salary packaging administrator.

## Superannuation

15.1 ASQA will make compulsory employer contributions as required by the applicable legislation and fund requirements.

15.2 Employer superannuation contributions will be paid on behalf of employees during periods of paid leave that count as service.

15.3 ASQA will make employer superannuation contributions to any eligible superannuation fund, provided that it accepts payment by fortnightly electronic funds transfer (EFT) using a file generated by ASQA's payroll system.

### **Method for calculating super salary**

15.4 ASQA will provide an employer contribution of 15.4 per cent of the employee's Fortnightly Contribution Salary (FCS) for employees in the Public Sector Superannuation Accumulation Plan (PSSap) and employees in other accumulation superannuation funds.

15.5 Employer contributions will be made for all employees covered by this agreement.

15.6 Employer contributions will not be reduced by any other contributions made through salary sacrifice arrangements.

### **Payment during unpaid parental leave**

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

## Overpayments

16.1 An overpayment occurs if the Chief Executive Officer or ASQA provides an employee with an amount of money to which the employee was not entitled (including but not limited to salary, entitlements, allowances, travel payment and/or other amount payable under this agreement).

16.2 Where the Chief Executive Officer considers that an overpayment has occurred, the Chief Executive Officer will provide the employee with notice in writing. The notice will provide details of the overpayment.

16.3 If an employee disagrees that there has been overpayment including the amount of overpayment, they will advise the Chief Executive Officer in writing within 28 calendar days of receiving the notice. In this event, no further action will be taken until the employee's response has been reviewed.

16.4 If after considering the employee's response (if any), the Chief Executive Officer confirms that an overpayment has occurred, the overpayment will be treated as a debt to the Commonwealth that must be repaid to the agency in full by the employee.

16.5 The Chief Executive Officer and the employee will discuss a suitable recovery arrangement. A recovery arrangement will take into account the nature and amount of the debt, the employee's circumstances and any potential hardship to the employee. The arrangement will be documented in writing.

16.6 ASQA and employee may agree to make deduction from final monies where there is an outstanding payment upon cessation of employment.

16.7 Interest will not be charged on overpayments.

16.8 Nothing in clause 16.1 to 16.7 prevents:

- (a) ASQA from pursuing recovery of the debt in accordance with an Accountable Authority Instruction issued under the *Public Governance, Performance and Accountability Act 2013*;
- (b) ASQA from pursuing recovery of the debt through other available legal avenues; and
- (c) the employee or ASQA from seeking approval to waive the debt under the *Public Governance, Performance and Accountability Act 2013*.

### Supported Wage System

17.1 An employee may be paid a percentage of the relevant pay rate for their classification in line with their assessed capacity to do the work if they:

- (a) have a disability;
- (b) meet the criteria for a Disability Support Pension; and
- (c) are unable to perform duties to the capacity required.

17.2 Specific conditions relating to the supported wage system are detailed in Attachment B.

## Part C: Allowances and reimbursements

### Higher duties allowance

18.1 Where a role needs to be filled for one or more working weeks, higher duties allowance will be paid to any employee temporarily occupying the role acting at a classification higher than their substantive classification level.

18.2 Higher duties allowance will be equal to the difference between the employees' current salary and the salary that would be payable if they were promoted to the higher classification, or a higher amount determined by the Chief Executive Officer.

18.3 Where an employee is found to be eligible for salary progression at their acting classification, they will receive an appropriate increase in the rate of higher duties allowance. The employee's salary level will be retained for all future periods of acting regardless of elapsed time.

18.4 Where an employee is assigned only part of the higher duties, the Chief Executive Officer will determine the amount of allowance payable.

18.5 Higher duties allowance will be payable while an employee is acting at a higher classification as part of a job sharing arrangement where the duration of the arrangement is at least one working week.

18.6 The Chief Executive Officer may shorten the qualifying period for higher duties allowance on a case-by-case basis.

### Motor vehicle allowance

19.1 A Motor Vehicle Allowance is payable where an employee is required by the Chief Executive Officer to use their private vehicle for work related purposes.

19.2 The rates for motor vehicle allowance will be the rates specified by the Australian Taxation Office using the "cents per kilometre" method. This rate covers all vehicle running expenses and depreciation.

### Healthy lifestyle allowance

20.1 ASQA will reimburse ongoing employees and non-ongoing employees with at least 12 months service for expenditure on healthy lifestyle activities and personal needs up to a maximum of \$300 each calendar year.

20.2 The activities that will be accepted for reimbursement under this clause include, but are not limited to:

- (a) Gym membership or sporting club;
- (b) Exercise classes;
- (c) Wellbeing programs;
- (d) Purchase of exercise or athletic equipment;
- (e) Programs to assist with quitting smoking, gambling, drug or alcohol addiction; and
- (f) Health insurance premiums.

20.3 Only one eligible claim may be made per calendar year.



## Workplace responsibility allowances

21.1 An employee will be paid a workplace responsibility allowance where the employee:

- (a) holds an appropriate First Aid qualification and the Chief Executive Officer appoints the employee as a First Aid Officer; or
- (b) is appointed as the Fire or Emergency Warden; or
- (c) is the Health and Safety Representative for their workplace; or
- (d) has been appointed as a Harassment Contact Officer; or
- (e) has been appointed as a Mental Health First Aid officer.

21.2 An employee is not to receive more than one workplace responsibility allowance unless approved by the Agency Head due to operational requirements.

21.3 The rate will be:

<b>Rate from commencement of the agreement</b>	<b>Rate from 13 March 2025</b>	<b>Rate from 12 March 2026</b>
\$31.50 per fortnight	\$32.70 per fortnight	\$33.81 per fortnight

21.4 As a salary-related allowance, this value will continue to be increased in line with headline wage increases. These increases are incorporated in the minimum rates in the table above.

21.5. The full allowance is payable regardless of flexible work and part-time arrangements.

21.6. An employee's physical availability to undertake the role will be considered by agencies when appointing and reappointing employees to these roles. This is noting that not all workplace responsibility roles will necessarily require a physical presence in the workplace for the role to be successfully undertaken depending on work group arrangements.

21.7. Casual employees who are eligible to receive a workplace responsibility allowance will be paid the full amount (noting the minimum rate), as varied from time to time provided they engage in work during any given pay cycle, irrespective of the frequency and duration of the work undertaken.

## Overtime meal allowance

22.1 An employee is entitled to payment of a meal allowance where they:

- (a) work overtime outside the bandwidth hours, Monday to Friday; or
- (b) work on a Saturday, Sunday or public holiday such that they are working overtime for the duration of a meal allowance period.

22.2 The meal allowance periods are:

- (a) 7.00 a.m. to 9.00 a.m.;
- (b) 12 noon to 2.00 p.m.;
- (c) 6.00 p.m. to 7.00 p.m.; and
- (d) midnight to 1.00 a.m.

22.3 Meal allowance is not payable if the employee is receiving travel allowance for an overnight stay.

22.4 The meal allowance rate will be the same as the rate set by the Australian Taxation Office as a reasonable amount for overtime meal allowance expenses. This rate is \$35.65 for the 2023-24 financial year.

### Community language allowance

23.1 A community language allowance will be paid where the Chief Executive Officer determines that an employee is regularly required to use their ability to communicate in Braille or a language other than English (including First Nations languages and AUSLAN) in the course of their work, and the employee meets the required level of competency set by the Chief Executive Officer. Further information is included in policy.

23.2 The allowance is paid in accordance with the employee's level of competency:

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

23.3 The allowance is calculated annually and paid fortnightly.

23.4 The full allowance is payable regardless of flexible work and part-time arrangements.

23.5 The allowance is payable during periods of paid leave.

23.6 The allowance counts as salary for superannuation purposes and for calculating retirement and redundancy entitlements.

## Part D: Classifications and broadbands

### Work Level Standards

24.1 The APS Work Level Standards continue to operate and describe the work at each of the classification levels in this agreement, consistent with the *Public Service Classification Rules 2000*, made in accordance with section 23 of the *Public Service Act 1999*.

24.2 The ASQA classification structure is outlined in Attachment A.

## Part E: Working hours and arrangements

### Job security

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

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

#### Reporting

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

#### Pathways to permanency

25.3 ASQA and the APS will comply with the casual conversion provision(s) of the *Fair Work Act 2009*. In addition, ASQA recognises that a proactive approach, including regularly reviewing casual and non-ongoing arrangements, is both a fair and efficient approach to supporting ongoing employment as the usual form of employment.

### Casual (irregular or intermittent) employment

26.1 A casual (irregular or intermittent) employee is defined in the definitions section.

26.2 A decision to expand the use of casual employees is subject to Part J of this agreement.

26.3 ASQA will regularly review the working arrangements of casual employees to assess if they are genuinely performing irregular or intermittent duties, and report de-identified outcomes to the consultative committee, where one is in place.

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

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

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

26.7 A casual employee who is eligible for a workplace responsibility allowance will be paid the full amount.

### Non-ongoing employment

27.1 A non-ongoing employee is defined in the definitions section.

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

- (a) personal/carer's leave accrual at clause 42; and
- (b) redundancy provisions at clause 84, subject to clause 27.3.

27.3 If the non-ongoing employee's contract is not permitted by section 333E of the *Fair Work Act 2009*, then the redundancy provisions at clause 84 will apply.

27.4 If the redundancy provisions apply to an employee under clause 27.3, ASQA must adhere to the consultation requirements at clause 77.

## Working hours and part time arrangements

28.1 The ordinary hours of work for a full-time employee are 36 hours 45 minutes per week worked within the bandwidth hours except where this is otherwise specified.

28.2 A part time employee is one whose ordinary hours of work are less than 36 hours and 45 minutes per week.

28.3 The ordinary hours of work for a part time employee are as specified in their Part Time Work Agreement. The pattern of hours specified under clauses 28.2 and 28.3 will provide for no less than three hours per day (or an alternative period agreed by the Chief Executive Officer and the employee) and will be continuous on any one day

28.4 Employees engaged on an irregular or intermittent (casual) basis do not have set ordinary hours of work.

28.5 Part time work agreements in existence immediately before the Commencement Date will continue under this Agreement in accordance with any agreement in relation to that part time work.

28.6 Unless otherwise specified in this Agreement, remuneration and other conditions for part time employees, including leave other than Long Service Leave, will be calculated on a pro rata basis. The arrangements for Long Service Leave and part-time employment are provided for in the *Long Service Leave Act*.

28.7 Expense related allowances and reimbursements will be paid at the same rate for part time and full time employees.

28.8 All part time employees will have a part time work agreement prepared which will specify:

- (a) the ordinary hours of work;
- (b) the standard day that will apply to the employee;
- (c) the days of the week on which the employee will work their ordinary hours;
- (d) the duration of the part time work; and
- (e) any specific arrangements that are needed to facilitate the part time work.
- (f) Requests for part-time work will not be refused, except in accordance with clause 36 of this agreement.

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

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

## Recording attendance

29.1 All employees at levels below EL1 are required to record their actual time of arrival and departure and any meal breaks or other breaks taken during their working day.

29.2 The method of recording attendance will be as determined and advised by the Chief Executive Officer.

29.3 EL employees seeking to access time off in lieu (TOIL) are required to keep records of their working hours using a method determined by ASQA.

### Flexitime for APS 1-6 classifications

30.1 Flexitime is a system that enables employees to vary their working hours subject to the provisions of this Agreement. Under the flexitime system, employees average their ordinary hours of work over an extended period.

30.2 Flexitime is available to all employees in the APS1 to APS6 levels other than casual employees, unless the Chief Executive Officer removes an employee from the flexitime system for a period of time for disciplinary reasons.

30.3 The following are standard terms and concepts used in the flexitime system:

- (a) The bandwidth hours are 7.00 a.m. to 7.00 p.m., Monday to Friday, except where otherwise agreed.
- (b) *Flex credit* is a tally of hours an employee has worked under the flexitime system that are in excess of their ordinary hours of work.
- (c) *Flex debit* is a tally of hours an employee has worked under the flexitime system that are less than their ordinary hours of work.
- (d) *Flex leave* is an approved absence for one or more days (or parts thereof) other than a form of leave provided for in Part F of this Agreement.
- (e) *Settlement period* is a four-week period that provides the basis for reconciling an employee's actual working hours with their ordinary hours of work.
- (f) *Standard day* is the basis for calculating leave credits and debits and is the working day for employees who have been removed from the flexitime system:
  - (i) for full time employees, the standard day is 7 hours 21 minutes with a minimum 30 minute unpaid break with agreed hours performed within the bandwidth; and
  - (ii) for part-time employees, the standard day is as specified in their part-time work agreement.

30.4 Employees working under the flexitime system may commence and finish work at any time within the bandwidth hours, subject to the following:

- (a) an employee must perform duties unless they are on an approved form of leave, including flex leave;
- (b) for operational reasons, an employee's supervisor may require an employee to:
  - (i) start work no later than a specific time within the standard day;
  - (ii) work up until at least the end of the standard day; or
- (c) have at least a 30 minute unpaid lunch break for every 5 hours worked;
- (d) an employee's supervisor may require the employee to not work hours that are outside the standard day where the supervisor does not consider there is sufficient priority work available;
- (e) an employee must not work more than ten ordinary hours of work in a day – this limit does not include any travel time;

- (f) an employee should not work for more than five hours without taking a meal break of at least 30 minutes;
- (g) an employee notifies their supervisor where they intend to start or finish at a time that is significantly different from the employee's normal practice, including where the employee intends to work substantially less (two hours or more) than the standard day; and
- (h) an employee should not work hours that would result in them exceeding the maximum flex debit.

30.5 Employees may take flex leave subject to the following:

- (a) reasonable notice being provided to the employee's supervisor; and
- (b) prior approval from the employee's supervisor is obtained.

30.6 The maximum flex credit is 36.45 hours for full time employees and a pro rata amount for part time employees.

30.7 Employees and their supervisors have a joint responsibility to take positive steps to reduce flex credits and flex debits.

30.8 Where an employee is at or above the maximum flex credit at the end of a settlement period, they must reduce the flex credit to the maximum flex credit or less by the end of the next settlement period. Where flex leave is not approved due to operational requirements, the Chief Executive Officer may determine that the period in which the employee has to take the flex leave be extended.

30.9 Where an employee is above the maximum flex credit at the end of two consecutive settlement periods, their flex credits may be reduced to the maximum flex credit at the beginning of the following settlement period unless the Chief Executive Officer has extended the period in which the employee has to reduce the flex credit or unless the flex accrual is for a particular purpose.

30.10 The maximum flex debit is ten hours for both full time and part time employees. Any debit in excess of the maximum debit at the end of the settlement period will be cancelled using leave without pay.

30.11 Where an employee is found to have breached their obligations under the flextime system, the Chief Executive Officer may require the employee to work a scheduled pattern of hours for a nominated period.

30.12 Where an employee is promoted to an EL role, any unused flextime credits accrued in line with the provisions of this section and unable to be taken as flex prior to promotion, shall, with CEO approval, either be paid out to them based on their salary immediately prior to promotion, or the employee may seek to have flextime credits transferred to TOIL or to be used under the current flextime provisions within 4 weeks of promotion with agreement from their manager.

## Executive Level Time Off In Lieu (EL TOIL)

31.1 Executive level (EL) employees are sometimes required to work reasonable additional hours. Consistent with the NES, employees may refuse to work unreasonable additional hours.

31.2 EL employees seeking to access time off in lieu (TOIL) are required to keep records of their working hours using a method determined by ASQA.

31.3 A manager is to grant TOIL in recognition of reasonable additional hours worked. TOIL granted to employees can be taken as whole or part days.

31.4 The working arrangements for an EL employee should be agreed through discussion between the manager and the EL employee. The discussion should include consideration of the work requirements that will safely get the job done and reasonably allow the employee to balance their work and personal life.

31.5 An EL employee's working arrangements and actual hours worked should be discussed on at least a quarterly basis between the EL employee and their manager.

31.6 The pattern of hours is to be flexible enough to accommodate short term peaks and troughs in workload and include expected reasonable additional hours. The agreed pattern of hours is to be recorded.

31.7 Requests from EL employees to access flexible time off which are consistent with their agreed working arrangements are to be supported, subject to operational requirements.

### Outside employment

32.1 All employees must seek approval from the Chief Executive Officer to run a business or be engaged in any paid or unpaid work outside ASQA. Such approval may be withheld in circumstances where there is a real or perceived conflict of interest; where the outside employment is likely to have or is having a detrimental effect on the employee's work at ASQA; or where there is an impact on the ability to perform their official duties safely.

32.2 Employees must declare to the Chief Executive Officer any shares, business transactions or relationship they may have with a Registered Training Organisation or consulting auditor. The Chief Executive Officer may require an employee to take reasonable actions required to avoid any actual or perceived conflict of interest.

32.3 Any approval of outside employment by ASQA before the Commencement Date will continue under this Agreement unless revoked by the Chief Executive Officer.

### Service Delivery rostering

33.1 Rostering of employees is essential to ASQA's Service Delivery function. ASQA seeks to balance flexibility and certainty for employees, to assist in the design of quality jobs, a better work/life balance and a healthy and safe work environment.

33.2 Rosters will apply for four-week periods and may be determined up to 12 weeks in advance.

33.3 Employee start and finish times will be primarily scheduled during the Service Delivery line's operating hours. An employee may request their manager roster start and finish times outside of the Service Delivery team's operating hours, subject to operational requirements.

33.4 An employee may request changes to their roster at any stage. Agreement by the manager will not be unreasonably refused.

33.5 Where ASQA needs to change regular rosters or develop new rosters due to operational requirements the consultation provisions set out in clause 77 will be applied.

### Overtime

34.1 Overtime is available to employees at classification levels below EL1.

34.2 This clause does not apply to Emergency Duty as specified in clause 35 or Travel Time as specified in clause 75.



34.3 The Chief Executive Officer may require an employee to work overtime. Employees have the right to refuse a request to work unreasonable additional hours under the National Employment Standards.

34.4 Subject to clause 34.1, overtime is payable where prior approval has been given by the Chief Executive Officer, and;

- (a) an employee is required to work outside the bandwidth; or
- (b) the employee is at the maximum flex credit.

34.5 Where the criteria for payment of overtime set out in clause 34.4 are satisfied, overtime is payable for the overtime hours that are worked outside the bandwidth hours or where the employee is at the maximum flex credit any time in excess of the standard day.

34.6 Overtime will be paid in arrears at the following rates:

- (a) Monday to Saturday - time and a half for the first three hours and double time thereafter;
- (b) Sunday – double time; and
- (c) public holidays – double time and a half.

#### **Minimum overtime payment**

34.7 The minimum overtime payment for work that is not continuous with normal work is four hours on any day with the exception of Emergency Duty as specified in clause 35.

34.8 For the purposes of clause 34.7, overtime that extends past midnight will be treated as overtime worked on one day. Where the overtime rate is higher before or after midnight, the higher rate will apply in respect of minimum overtime payments.

#### **Time in lieu**

34.9 An employee may elect to take time off in lieu of overtime. Where the employee so elects, the time in lieu is calculated at the overtime rate.

34.10 Where the time off in lieu of overtime is not taken within four weeks of the overtime being worked, or such other timeframe as may be agreed between the employee and their supervisor, the employee will be paid for the overtime.

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

34.11 Subject to clause 34.12, an employee is entitled to at least eight hours break plus reasonable travel time between finishing overtime duty and next commencing duty.

34.12 Where for operational reasons, the Chief Executive Officer requires an employee to commence work without at least an eight hour break plus reasonable travel time, the employee will be paid for all work hours at double time until the required break has been taken.

### **Emergency duty**

35.1 This clause does not apply to employees at the EL1 and EL2 level.

35.2 Employees who are called to duty to meet an emergency at a time when they would ordinarily not have been on duty and no notice of the requirement was given before ceasing duty will be paid

for the emergency duty at the rate of double time. Emergency Duty includes time travelling to and from work.

35.3 The minimum payment for Emergency Duty will be two hours.

35.4 Rest relief provisions apply to emergency duty of three hours or more.

## Flexible working arrangements

36.1 ASQA, employees and their union recognise:

- (a) the importance of an appropriate balance between employees' personal and working lives, and the role flexible working arrangements can play in helping to achieve this balance;
- (b) access to flexible work can support strategies to improve diversity in employment and leadership in the APS;
- (c) access to flexible work supports APS capability, and can assist in attracting and retaining the employees needed to deliver for the Australian community, including employees located at a wider range of locations;
- (d) that flexibility applies to all roles in ASQA, and different types of flexible working arrangements may be suitable for different types of roles or circumstances; and
- (e) requests for flexible working arrangements are to be considered on a case-by-case basis, with a bias towards approving requests.

36.2 ASQA is committed to engaging with employees and their union to build a culture that supports flexible working arrangements across the agency at all levels. This may include developing and implementing strategies through an ASQA consultative committee.

36.3 Flexible working arrangements include, but are not limited to, changes in hours of work, changes in patterns of work and changes in location of work.

### **Requesting formal flexible working arrangements**

36.4 The following provisions do not diminish an employee's entitlement under the NES.

36.5 An employee may make a request for a formal flexible working arrangement.

36.6 The request must:

- (a) be in writing;
- (b) set out details of the change sought (including the type of arrangement sought and the proposed period the arrangement will operate for); and
- (c) set out the reasons for the change, noting the reasons for the change may relate to the circumstances set out at section 65(1A) of the *Fair Work Act 2009*.

36.7 The Chief Executive Officer must provide a written response to a request within 21 days of receiving the request.

36.8 The response must:

- (a) state that the Chief Executive Officer approves the request and provide the relevant detail in clause 36.9; or

- (b) if following discussion between ASQA and the employee, ASQA and the employee agree to a change to the employee's working arrangements that differs from that set out in the request – set out the agreed change; or
- (c) state that the Chief Executive Officer refuses the request and include the following matters;
  - (i) details of the reasons for the refusal; and
  - (ii) set out ASQA's particular business grounds for refusing the request, explain how those grounds apply to the request; and
  - (iii) either:
    - i. set out the changes (other than the requested change) in the employee's working arrangements that would accommodate, to any extent, the employee's circumstances outlined in the request and that the agency would be willing to make; or
    - ii. state that there are no such changes; and
  - (iv) state that a decision to refuse the request, or failure to provide a written response within 21 days is subject to the dispute resolution procedures of the enterprise agreement, and if the employee is an eligible employee under the *Fair Work Act 2009*, the dispute resolution procedures outlined in section 65B and 65C of the *Fair Work Act 2009*.

36.9 Where Chief Executive Officer approves the request this will form an arrangement between ASQA and the employee. Each arrangement must be in writing and set out:

- (a) any security and work health and safety requirements;
- (b) a review date (subject to clause 36.13); and
- (c) the cost of establishment (if any).

36.10 The Chief Executive Officer may refuse to approve the request only if:

- (a) ASQA has discussed the request with the employee; and
- (b) ASQA has genuinely tried to reach an agreement with the employee about making changes to the employee's working arrangements to accommodate the employee's circumstances (subject to any reasonable business grounds for refusal); and
- (c) ASQA and the employee have not reached such an agreement; and
- (d) ASQA has had regard to the consequences of the refusal for the employee; and
- (e) the refusal is on reasonable business grounds.

36.11 Reasonable business grounds include, but are not limited to:

- (a) the new working arrangements requested would be too costly for ASQA;
- (b) there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested;
- (c) it would be impractical to change the working arrangements of other employees, or to recruit new employees, to accommodate the new working arrangements requested;
- (d) the new working arrangements requested would be likely to result in a significant loss in efficiency or productivity;

- (e) the new working arrangements requested would be likely to have a significant negative impact on customer service; and
- (f) it would not be possible to accommodate the working arrangements without significant changes to security requirements, or where work health and safety risks cannot be mitigated.

36.12 For First Nations employees, ASQA must consider connection to country and cultural obligation in responding to requests for altering the location of work.

36.13 Approved flexible working arrangements will be reviewed by ASQA and the employee after 12 months, or a shorter period, if agreed by the employee. This is to ensure the effectiveness of the arrangement.

#### **Varying, pausing, or terminating flexible working arrangements**

36.14 An employee may request to vary an approved flexible working arrangement in accordance with clause 36.6. An employee may request to pause or terminate an approved flexible working arrangement.

36.15 The Chief Executive Officer may vary, pause or terminate an approved flexible working arrangement on reasonable business grounds, subject to clause 36.17.

36.16 ASQA must provide reasonable notice if varying, pausing or terminating a flexible working arrangement without the agreement of the employee, having regard to the circumstances of the employee. Exceptions to this requirement are urgent and critical operational circumstances or an employee's demonstrated and repeated failure to comply with the agreed arrangements.

36.17 Prior to the Chief Executive Officer varying, pausing or terminating the arrangement under clause 36.15, ASQA must have:

- (a) discussed with the employee their intention to vary, pause or terminate the arrangement with the employee;
- (b) genuinely tried to reach an agreement with the employee about making changes to the employee's working arrangements to accommodate the employee's circumstances (subject to any reasonable business grounds for alteration);
- (c) had regard to the consequences of the variation, pause or termination for the employee;
- (d) ensured the variation, pause or termination is on reasonable business grounds; and
- (e) informed the employee in writing of the variation, pause or termination to the approved flexible working arrangement, including details set out in clause 36.8(c).

#### **Working from home**

36.18 ASQA will not impose caps on groups of employees on the time that may be approved to work from home or remotely, with each request to be considered on its merits.

36.19 ASQA may provide equipment necessary for, or reimbursement, for all or part of the costs associated with establishing a working at home arrangement.

36.20 An employee working at home is covered by the same employment conditions as an employee working at an office site under this agreement.

36.21 ASQA will provide employees with guidance on working from home safely.

36.22 Employees will not be required by the agency to work from home unless it is lawful and reasonable to do so. This may include where circumstances prevent attendance at an office during a pandemic or natural disaster. In these situations, ASQA will consider the circumstances of the employees and options to achieve work outcomes safely.

#### **Ad-hoc arrangements**

36.23 Employees may request ad hoc flexible working arrangements. Ad hoc arrangements are generally one-off or short-term arrangements for circumstances that are not ongoing.

36.24 Employees should, where practicable, make the request in writing and provide as much notice as possible.

36.25 Requests for ad-hoc arrangements are not subject to the request and approval processes detailed in clauses 36.4 to 36.13.

36.26 ASQA should consider ad-hoc requests on a case-by-case basis, with a bias to approving ad-hoc requests, having regard to the employee's circumstances and reasonable business grounds.

36.27 Where a regular pattern of requests for ad-hoc arrangements from an employee emerges, ASQA should consider whether it is appropriate to seek to formalise the arrangement with the employee.

#### **Altering span of hours**

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

#### **Usual location of work**

36.29 The employee's usual location of work will be the designated office location identified in the employee's letter of offer or other engagement documentation.

36.30 ASQA and the employee may agree to vary the employee's designated office location on a temporary or permanent basis.

### **Christmas closedown**

37.1 ASQA will close its normal operations from close of business on the last working day before Christmas, with business resuming on the first working day after New Year's Day.

37.2 Employees will be provided with time off for the working days between Christmas and New Year's Day and will be paid in accordance with their ordinary hours of work. Where an employee is absent on leave, payment for the Christmas closedown provision will be in accordance with the entitlement for that form of leave, (for example, if on long service leave half pay, payment is at half pay).

37.3 There will be no deduction from Annual or Personal Leave credits for the closedown days.

37.4 Where an employee at APS1 to APS6 level is required by the Chief Executive Officer to work on:

- (a) the first working day between Christmas and New Year, the employee will be entitled to the same entitlements that would apply if that day was a public holiday;

- (b) the remaining two working days between Christmas and New Year, the employee will either be paid at double time for any time worked on that day or be provided with time off in lieu for the hours actually worked.

## Public holidays

38.1 Employees are entitled to the following holidays each year as observed at their normal work location in accordance with the *Fair Work Act 2009*:

- (a) 1 January (New Year's Day);
- (b) 26 January (Australia Day);
- (c) Good Friday and the following Monday;
- (d) 25 April (Anzac Day);
- (e) the King's birthday holiday (on the day on which it is celebrated in a State or Territory or a region of a State or Territory);
- (f) 25 December (Christmas Day);
- (g) 26 December (Boxing Day); and
- (h) any other day, or part day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday, other than a day or part day, or a kind of day or part day, that is excluded by the *Fair Work Regulations 2009* from counting as a public holiday.

38.2 If a public holiday falls on a Saturday or Sunday, and if under a State or Territory law, a day or part day is substituted for one of the public holidays listed above, then the substituted day or part day is the public holiday.

38.3 The Chief Executive Officer and an employee may agree on the substitution of a day or part day that would otherwise be a public holiday, having regard to operational requirements.

38.4 The Chief Executive Officer and an employee may agree to substitute a cultural or religious day of significance to the employee for any day that is a prescribed holiday. If the employee cannot work on the prescribed holiday, the employee will be required to work make-up time at times to be agreed. This substitution does not impact or reduce an employee's entitlement to First Nations ceremonial leave, NAIDOC leave or cultural leave.

38.5 Where an employee substitutes a public holiday for another day, they will not be paid penalty rates for working their normal hours on the public holiday.

38.6 Where a public holiday falls during a period when an employee is absent on leave (other than annual leave, paid personal/carer's leave or defence service sick leave) there is no entitlement to receive payment as a public holiday. Payment for that day will be in accordance with the entitlement for that form of leave (e.g. if on long service leave on half pay, payment is at half pay.)

38.7 If under a law of a State or Territory every Sunday is declared or prescribed by or under that law to be a public holiday, there is no entitlement to receive payment as a public holiday if the employee would have worked, or does perform work, on that day. In these circumstances, payment will only be made at the public holiday rate if the employee performs work on that day, and the Sunday would otherwise be a public holiday under clause 38.1 to 38.8.

38.8 An employee, who is absent on a day or part day that is a public holiday in their normal work location, is entitled to be paid for the part or full day absence as if that day or part day was not a public holiday, except where that person would not normally have worked on that day.

38.9 Where a full-time employee, including but not limited to employees on compressed hours, has a regular planned day off which would fall on a public holiday, the Chief Executive Officer may allow the employee to change their planned day off so that it does not fall on a public holiday. If it is not possible to change their planned day off, the employee will be credited an equivalent amount of time to their regular hours for the day in flex credits or EL TOIL in recognition of their planned day off.

## Part F: Leave

### General provisions

39.1 Current ASQA employees will retain all leave credits that were held before the Commencement Date.

39.2 All deductions of leave credits will be based on the employee's ordinary hours of work and the standard day to apply to that employee.

39.3 The provisions of this clause do not apply to casual employees who are in receipt of a casual loading, except where specified.

### Annual leave

40.1 Employees (other than casual employees) are entitled to four weeks (20 days) paid annual leave per year of service, accruing daily, credited at least monthly. Annual leave for part-time employees accrues on a pro-rata basis.

40.2 The Chief Executive Officer may approve a period of annual leave where an employee has available credits, subject to operational requirements.

40.3 Annual leave may be taken at half pay. However, unless approved by the Chief Executive Officer (or delegate), it may not be taken at half pay where the employee has an excess leave balance.

40.4 Annual leave does not accrue during any period of unauthorised absence or leave which does not count as service.

40.5 Where annual leave is cancelled or the employee is recalled to duty, the employee will be reimbursed travel costs not recoverable from insurance or other sources. Evidence of costs may be required.

40.6 Employees will receive payment in lieu of any unused annual leave credits upon separation from the APS, paid at the amount payable to the employee as if the employee had taken that period of leave.

### Excess leave

40.7 Where an employee has more than eight weeks annual leave credits, or the equivalent pro-rata amount for part-time employees, the Chief Executive Officer may require the employee to take a period of annual leave at a mutually agreeable time. The amount of annual leave the employee may be required to take will be the amount necessary to reduce the employee's annual leave credits to eight weeks or less. Where the employee and the Chief Executive Officer are unable to agree on the timing of the annual leave under this clause, the Chief Executive Officer may specify the timing of the leave as long as the employee has at least four weeks of notice. A direction to take leave under this clause must be reasonable in the circumstances.

### Cashing out of annual leave credits

40.8 The Chief Executive Officer may agree to an employee's request to 'cash out' annual leave in accordance with the following:

- (a) the employee retains at least four weeks of annual leave credits immediately following the cashing out;
- (b) each cashing out of a particular amount of annual leave must be by a separate agreement in writing between the employee and the Chief Executive Officer;



- (c) the employee must be paid at least the full amount that would have been payable to the employee had the employee taken the leave;
- (d) a maximum of ten days may be cashed out in any year at the employee's rate of pay at the time the leave is cashed out; and
- (e) the employee must have already taken at least ten days of annual leave in the previous 12 months or be taking at least two weeks leave at the time the annual leave is cashed out.

## Purchased leave

41.1 Employees may apply to the Chief Executive Officer to purchase from one to four weeks of Purchased Leave each calendar year. Purchased leave will not be approved in the same year that an employee has accessed annual leave at half pay.

41.2 Without limiting the flexibility of the purchased leave option, the following arrangements will apply:

- (a) purchased leave is subject to approval by the Chief Executive Officer;
- (b) purchased leave arrangements can be cancelled by the Chief Executive Officer;
- (c) in agreeing to purchased leave, the Chief Executive Officer may also come to an agreement with the employee on the proposed timing of the leave and the amount to be taken each time;
- (d) purchased leave must be taken in whole days;
- (e) purchased leave will count as service for all purposes;
- (f) purchased leave will not be cumulative and unused purchased leave will be cashed out if not used within one year of being purchased or on separation from ASQA;
- (g) purchased leave cannot be taken at half pay.

41.3 Where the Chief Executive Officer approves the application for purchased leave, the employee will have an amount deducted from their fortnightly salary over a period of up to 52 weeks (as determined by the employee) according to the following formula:

Gross weekly salary X number of weeks of purchased leave

number of weeks of salary deduction

41.4 Approval of purchased leave does not affect the employee's salary for superannuation purposes.

41.5 An employee may cancel the purchased leave arrangements by giving four weeks' notice to ASQA. In this case, the employee will be refunded the salary deductions made less any purchased leave already taken.

41.6 Where an employee leaves ASQA employment after accessing the purchased leave and before all salary deductions have been made, the employee will be required to pay to ASQA the outstanding amount.

## Personal leave

42.1 Full time employees are entitled to 18 days of personal leave credits for each 12 months of service, pro-rata for part-time employees.

42.2 Personal leave may be taken at half pay where approved by the Chief Executive Officer. Personal leave at half pay is granted on the basis that one day of personal leave at full pay is equivalent to two days of personal leave at half pay.

#### **Personal leave accrual – transitional arrangements**

42.3 Ongoing employees engaged by ASQA who are not eligible to have existing credits recognised under clause 43 will be allocated 18 days of full pay Personal Leave credits on commencement and a further 18 days of full pay personal leave credits at the beginning of each subsequent 12 months of employment.

42.4 Where an employee already has personal leave credits on commencement with ASQA under the provisions of clause 43, the date on which the employee will first receive 18 days of personal leave credits in ASQA will be based on the arrangements in place at their former agency with the aim of ensuring that an employee does not accrue personal leave credits twice for the same period.

- (a) where the employee accrued a full year's personal leave in advance at the former agency, they will first accrue personal leave at ASQA 12 months after last accruing personal leave at the former agency;
- (b) where the employee accrued personal leave on a progressive basis at the former agency, the employee will commence accruals as per clause 42.3 from their first day of employment with ASQA.

#### **Personal leave accrual**

42.5 During the life of this Agreement, and prior to 1 January 2026, ASQA will implement accrual methods as outlined clauses 42.6 to 42.9. This will replace the accrual method outlined in clause 42.3 which will be in place until this accrual method is implemented.

42.6 For an ongoing employee, 18 days personal leave will be credited upon the employee's commencement with ASQA. In subsequent years on the 12-month anniversary, personal leave will accrue daily, credited at least monthly.

42.7 For a non-ongoing employee, personal leave will be credited upon the employee's commencement with ASQA. This will be 18 days leave pro-rated based on the employee's initial contract period and is capped at 18 days. After the initial contract period or 12 months, whichever is shorter, or where the employee has an existing entitlement to personal leave, leave will accrue daily, credited at least monthly.

42.8 A casual (irregular or intermittent duties) employee may be absent without pay when not fit for work due to personal illness or injury. A casual (irregular or intermittent duties) employee may access two days unpaid carer's leave per occasion, consistent with the NES.

42.9 Notwithstanding anything else in this clause, the date of accrual of each year's personal leave credits will be deferred by any periods of unpaid leave not to count as service where the total unpaid leave during the year covers more than 30 calendar days or any period of unauthorised absence.

42.10 Where an employee:

- (a) has, or cares for someone with, a chronic condition or other ongoing illness; or
- (b) is recovering from surgery; or
- (c) is pregnant; or
- (d) is returning from parental leave or has a child commencing day care;

and, as a result of the transition to daily accrual of personal/carer's leave, does not have sufficient credit to cover an absence for which they would otherwise be able to take personal/carer's leave, the Chief Executive Officer may advance the employee's accrual up to the 12-month anniversary when their leave would otherwise be credited during the life of this Agreement.

42.11 Unused personal leave credits will accumulate as per the provisions of this clause without limit.

### **Personal Leave usage**

42.12 Subject to the availability of personal leave credits, employees are entitled to paid personal leave for the following purposes:

- (a) due to personal illness or injury;
- (b) to attend appointments with a registered health practitioner;
- (c) to manage a chronic condition; and
- (d) to provide care or support for a family or household member or a person they have caring responsibilities for; because:
  - (i) of a personal illness or injury affecting the person; and
  - (ii) of an unexpected emergency affecting the other person.

42.13 A person that an employee has caring responsibilities for may include a person who needs care because they:

- (a) have a medical condition, including when they are in hospital;
- (b) have a mental illness;
- (c) have a disability;
- (d) are frail or aged; and
- (e) are a child, not limited to a child of the employee.

42.14 Employees are entitled to unpaid personal leave where the employee is unfit for work due to a personal illness or injury and the employee does not have any available paid personal leave credits and subject to the employee providing a medical certificate verifying that the employee was unfit for work.

### **Approval of personal leave**

42.15 Evidence may be requested for absences due to personal injury or illness or to care for ill members of the employee's immediate family or household where:

- (a) the employee has had more than eight days of absence on personal leave without evidence in the previous 12 months;
- (b) the absence is for more than three consecutive days; or
- (c) where the employee is taking unpaid personal leave in accordance with clause 42.14.

42.16 For the provisions in this clause, acceptable evidence includes:

- (a) a certificate from a registered health practitioner;
- (b) a statutory declaration; and

- (c) another form of evidence approved by the Chief Executive Officer.
- (d) A certificate from a registered health practitioner may be used as evidence of a chronic condition for up to 12 months for both personal and carer's leave.

42.17 An employee who is retired from the APS on the grounds of invalidity and is subsequently re-appointed as a result of action taken under section 75 of the *Superannuation Act 1976*, or the *Superannuation Act 1990*, is entitled to be credited with Personal Leave equal to the balance of Personal Leave or equivalent leave types, that were in credit at the time of retirement.

#### **Personal leave notification**

42.18 An employee must notify their supervisor of their absence and intention to apply for personal leave as soon as reasonably practicable.

#### **Failure to comply with obligations**

42.19 Where an employee fails to comply with their obligations as specified in this clause, other than for reasons beyond the reasonable control of the employee, the absence may be regarded as unauthorised and without pay, in which case the provisions of clause 57 will apply.

#### **Unpaid carer's leave**

42.20 Employees are entitled to unpaid carer's leave of up to two days for each occasion where a member of the employee's immediate family or household requires care or support because of the reasons outlined in clause 42.13.

42.21 This provision applies to all employees, including non-ongoing employees engaged on a casual (irregular or intermittent) basis who are in receipt of a casual loading.

42.22 Unpaid carer's leave is not available where the employee has access to paid personal leave.

42.23 The Chief Executive Officer may require a medical certificate or other evidence considered acceptable by the Chief Executive Officer to verify the reason for the employee's absence.

### **Portability of leave**

43.1 Where an employee moves into ASQA from another APS agency where they were an ongoing employee, the employee's unused accrued annual leave and personal/carer's leave will be transferred, provided there is no break in continuity of service.

43.2 Where an employee is engaged in ASQA immediately following a period of ongoing employment in the Parliamentary Service or the ACT Government Service, the employee's unused accrued annual leave and personal/carer's leave will be recognised unless the employee received payment in lieu of those entitlements on cessation of employment.

43.3 Where an employee is engaged as an ongoing employee in ASQA, and immediately prior to the engagement the person was employed as a non-ongoing APS employee (whether in the agency or another), at the employee's request, any unused accrued annual leave (excluding accrued leave paid out on separation) and personal/carer's leave will be recognised.

43.4 Where an employee is engaged as a non-ongoing APS employee, and immediately prior to the engagement the person was employed as a non-ongoing APS employee (whether in the agency or another) at the employee's request, any unused accrued annual leave (excluding accrued leave paid out on termination of employment) and personal/carer's leave will be recognised.

43.5 Where a person is engaged as an ongoing employee in ASQA, and immediately prior to the engagement the person was employed by a Commonwealth employer (other than in the Parliamentary Services which are covered in clause 43.2), the Chief Executive Officer will recognise any unused accrued personal/carer's leave at the employee's request. ASQA will advise the employee of their ability to make this request. An employee is only eligible for parental leave with pay as either a primary caregiver or a secondary caregiver for the particular parental leave period, and cannot switch roles for the purpose of accessing additional paid leave.

43.6 Where an employee is engaged as an ongoing employee in ASQA, and immediately prior to the engagement the person was employed by a State or Territory Government, the Chief Executive Officer may recognise any unused accrued personal/carer's leave, provided there is not a break in continuity of service.

43.7 For the purposes of this provision, an employee with a break in service of less than 2 months is considered to have continuity of service.

### Re-crediting of leave

44.1 When an employee is on:

- (a) annual leave;
- (b) purchased leave;
- (c) defence reservist leave;
- (d) First Nations ceremonial leave;
- (e) NAIDOC leave;
- (f) cultural leave; or
- (g) long service leave; and

becomes eligible for, under legislation or this agreement:

- (a) personal/carer's leave; or
- (b) compassionate or bereavement leave; or
- (c) jury duty; or
- (d) emergency services leave; or
- (e) leave to attend to family and domestic violence circumstances; or
- (f) parental leave, premature birth leave, stillbirth leave or pregnancy loss leave;

the affected period of leave will be re-credited.

44.2 When an employee is on personal/carer's leave and becomes eligible for parental leave, premature birth leave, stillbirth leave or pregnancy loss leave, the affected period of leave will be re-credited.

44.3 Re-crediting is subject to appropriate evidence of eligibility for the substituted leave.

### Long service leave

45.1 An employee is eligible for long service leave in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976*.

45.2 The minimum period for which long service leave will be granted is seven calendar days (whether taken at full or half pay). Long service leave cannot be broken with other periods of leave,

except as otherwise provided by legislation or provided for in the re-crediting of leave clause at clause 44 of this agreement.

### Miscellaneous leave

46.1 The Chief Executive Officer may approve paid or unpaid miscellaneous (other leave), which may count as service or not count as service, for any reason considered by the Chief Executive Officer to be appropriate and subject to any conditions which may be set by the Chief Executive Officer.

46.2 ASQA will respond to applications for miscellaneous leave within 21 days and will advise an employee of reasons where their application has not been supported.

46.3 With the exception of leave for personal and development training, any continuous period of other leave without pay, greater than 30 calendar days, will not count as service for any purpose unless otherwise provided by legislation.

### Miscellaneous leave and public holidays

46.4 Where an employee is on unpaid miscellaneous leave on the working days immediately before and after a public holiday, they will not be paid for the public holiday.

### Miscellaneous leave and casual employees

46.5 Casual employees are eligible for paid or unpaid miscellaneous leave for the purposes of family and domestic violence support and otherwise by government directive.

### Cultural, ceremonial and NAIDOC leave

#### NAIDOC leave

47.1 First Nations employees may access up to one day of paid leave per calendar year to participate in NAIDOC week activities.

47.2 NAIDOC leave can be taken in part days.

#### First Nations ceremonial leave

47.3 First Nations employees may access up to six days of paid leave over two calendar years to participate in significant activities associated with their culture or to fulfil ceremonial obligations.

47.4 The Chief Executive Officer may approve additional leave for cultural or ceremonial purposes as miscellaneous leave, with or without pay.

47.5 First Nations ceremonial leave can be taken as part days.

47.6 First Nations ceremonial leave is in addition to compassionate and bereavement leave.

#### Cultural leave

47.7 The Chief Executive Officer may grant up to three days of paid leave per calendar year for the purpose of attending significant religious or cultural obligations associated with the employees' particular faith or culture.

47.8 The Chief Executive Officer may approve additional leave for cultural purposes as miscellaneous leave, with or without pay.

47.9 Cultural leave can be taken as part days.

47.10 For the avoidance of doubt, this leave does not cover cultural purposes or obligations which are eligible for paid leave under clauses 47.3 to 47.6.

## Parental leave

48.1 A primary caregiver, secondary caregiver and ML Act is defined in the definitions section.

48.2 An employee who is a primary caregiver or secondary caregiver is entitled to parental leave up until 24 months from the date of the child's birth or placement (parental leave period). For the avoidance of doubt, this is inclusive of all legislated leave entitlements. The parental leave period does not extend non-ongoing employment where the employment period remaining is less than 24 months. An employee is only eligible for parental leave with pay as either a primary caregiver or a secondary caregiver for the particular parental leave period and cannot switch roles for the purpose of accessing additional paid leave.

48.3 For the pregnant employee, the parental leave period starts on commencement of maternity leave as per ML Act requirements and ceases 24 months from the date of birth. Medical certification requirements for the pregnant employee will be as required by the ML Act.

48.4 Conditions in this agreement will continue to apply in circumstances where successor legislation to the ML Act does not provide parental leave conditions included in this agreement.

### Payment during parental leave

48.5 An employee is entitled to parental leave with pay as per clauses 48.7 and 48.8 below within the parental leave period. Any further parental leave during the parental leave period is without pay. Unused paid parental leave remaining at the end of the employee's parental leave period will lapse. An employee may choose to use their accrued paid leave entitlements in accordance with usage and eligibility requirements in this agreement during the parental leave period that would otherwise be without pay.

48.6 Employees newly engaged or who have moved to ASQA from another APS agency are eligible for the paid parental leave in clauses 48.7 and 48.8 where such paid leave had not already been provided by another APS or Commonwealth employer in the 24 months since the child's date of birth or placement. If the paid leave used by the employee with the previous Commonwealth or APS employer is less than the limits specified in clauses 48.7 and 48.8, the balance is available to the employee.

48.7 An employee who is a primary caregiver is entitled to parental leave with pay during the parental leave period to a maximum of 18 weeks as provided in the table below.

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

48.8 An employee who is a secondary caregiver is entitled to parental leave with pay during the parental leave period as provided in the table below.

<b>Period which coincides with the parental leave period for the secondary caregiver</b>	<b>Parental Leave with pay under this agreement</b>
Date of commencement of this agreement to 28 February 2025	8 weeks, or top up to 8 weeks where a lesser period of parental leave has already been provided
1 March 2025 to 28 February 2026	11 weeks, or top up to 11 weeks where a lesser period of parental leave has already been provided
1 March 2026 to 27 February 2027	14 weeks, or top up to 14 weeks where a lesser period of parental leave has already been provided
On and from 28 February 2027	18 weeks, or top up to 18 weeks where a lesser period of parental leave has already been provided

**48.9 Flexibility.** Parental Leave with pay, whether provided as maternity leave under the ML Act or under this agreement, can be accessed flexibly during the parental leave period and does not have to be taken in a single block. For the avoidance of doubt, parental leave can be used to replicate a part time work arrangement and can be taken concurrently with another parent in relation to the same child.

**48.10 Rate of payment** during paid parental leave is the same as for an absence on personal/carer's leave and based on the employee's weekly hours at the time of the absence.

**48.11 Half-pay option.** The payment of any paid parental leave may be spread over a maximum period of 36 weeks at the rate of, no less than, half the normal rate of salary. All paid parental leave counts as service for all purposes, where permitted by legislation.

#### **Adoption and long-term foster care**

**48.12** An employee who is a primary caregiver or secondary caregiver is entitled to parental leave in accordance with this agreement for adoption or long-term foster care, provided that the child:

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

**48.13** Documentary evidence of approval for adoption or enduring parental responsibilities under formal fostering arrangements must be submitted when applying for parental leave for adoption or long-term foster carer purposes.

#### **Stillbirth**

**48.14** Parents of a stillborn child remain eligible for parental leave, except for paid leave for the secondary caregiver which is two weeks.

**48.15** A stillborn child is a child:

- (a) who weighs at least 400g at delivery or whose period of gestation was 20 weeks or more;



- (b) who has not breathed since delivery; and
- (c) whose heart has not beaten since delivery.

### **Pregnancy loss leave**

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

48.17 Pregnancy loss leave is in addition to entitlements to compassionate leave for miscarriage provided under the *Fair Work Act 2009* and this agreement.

### **Premature birth leave**

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

### **Transitional provisions**

48.19 Employees eligible for paid leave under the ML Act are required under legislation to use their paid maternity leave first. In this circumstance, the employee may postpone their paid premature birth leave otherwise payable under clause 48.18 until after the legislated paid maternity leave is used.

### **Return to work after parental leave**

48.20 On ending unpaid parental, adoption and fostering or maternity leave, an employee is entitled to return to:

- (a) the employee's pre parental, adoption and fostering or maternity leave duties; or
- (b) if those duties no longer exist, an available position for which the employee is qualified and suited nearest in status and pay as applied to the pre parental leave position. Where this is not practical, other duties will be sought, with the redeployment, reduction and redundancy provisions applying to any placement.

48.21 For the purposes of this clause, duties means those performed:

- (a) if the employee was moved to safe duties because of the pregnancy – immediately before the move; or
- (b) if the employee began working part-time because of the pregnancy – immediately before the part-time employment began; or
- (c) otherwise – immediately before the employee commenced parental, adoption and fostering or maternity leave.

48.22 Where an employee requests to return to work from parental leave on a part-time basis, the Chief Executive Officer will approve the request until at least the child's third birthday.

### **Compassionate leave**

49.1 Employees will be eligible for three days paid compassionate leave on each occasion when:

- (a) a member of their family (including a member of their household) or someone they have a close personal relationship with contracts, develops or sustains a life-threatening illness or injury; or
- (b) the employee or their spouse/partner has a miscarriage.

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

49.3 Compassionate leave for an occasion may be taken as three consecutive days or in separate periods totalling three days. This can include part days.

49.4 For casual employees, compassionate leave is unpaid.

## Bereavement leave

50.1 Employees will be eligible for 3 days paid bereavement leave on each occasion when:

- (a) a member of their family (including a member of their household) or someone they had a close personal relationship with dies; or
- (b) a child is stillborn, where the child was a member of their family (including a member of their household).

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

50.3 Bereavement leave for an occasion may be taken as 3 consecutive days or in separate periods totalling 3 days. This can include part days.

50.4 For casual employees, bereavement leave is unpaid.

## Emergency response leave

51.1 In line with section 108 of the *Fair Work Act 2009*, an employee who engages in an eligible community service activity can get emergency response leave to volunteer for emergency management duties for:

- (a) the time engaged in the activity;
- (b) reasonable travelling time; and
- (c) reasonable recovery time.

51.2 Full-time and part-time employees will be able to access 20 working days of paid emergency response leave at their full rate of pay per year if required. The Chief Executive Officer may provide additional emergency response leave with pay.

- (a) For the purposes of this clause, full rate of pay is to be as if the employee was at work.

51.3 Paid leave may be refused where the employee's role is essential to ASQA's response to the emergency.

51.4 An employee must provide evidence that the organisation requests their services. Employees can provide evidence before or as soon as practical after their emergency service activity.

51.5 The Chief Executive Officer may approve reasonable paid or unpaid leave for ceremonial duties and training.

51.6 Emergency response leave, with or without pay, will count as service.

## Jury duty

52.1 Employees who are required by a court to attend either for jury selection, or to act as a juror, will be released from duty for the required period, without the need to apply for leave.

52.2 Full and part-time employees will be released from duty on their full rate of pay. Payment for casuals will be as per the relevant state legislation.

(a) For the purposes of this clause, full rate of pay is to be as if the employee was at work.

52.3 The employee is required to inform their manager before they are released from duty and provide evidence of the need to attend.

52.4 If the employee receives a payment from the court for attendance (which are not expense related such as allowances and reimbursements), they must repay that amount to ASQA for the period of absence. This will be administered in accordance with the overpayment clauses (clause 16).

## Community service leave

53.1 All other community service leave not covered by elsewhere in this Part is unpaid except where otherwise approved by the Chief Executive Officer.

## Defence reservist leave

54.1 The Chief Executive Officer will give an employee leave with or without pay to undertake:

- (a) Australian Defence Force (ADF) Reserve and continuous full-time service (CFTS); and
- (b) Australian Defence Force Cadet obligations.

54.2 An employee who is a Defence Reservist can take leave with pay for:

- (a) up to four weeks (20 days) in each financial year (pro-rata for part-time employees); and
- (b) an extra two weeks (10 days) in the first year of ADF Reserve service (pro-rata for part-time employees).

54.3 Leave can be built up and taken over two consecutive years. This includes the extra two weeks in the first year of service.

54.4. An employee who is an officer or instructor in a Cadet Force can get paid leave up to three weeks in each financial year to perform their duties. Cadet Force means:

- (a) Australian Navy Cadets;
- (b) Australian Army Cadets; and
- (c) Australian Air Force Cadets.

54.5 In addition to the entitlement at clause 54.2, paid leave may be granted to an employee to attend an interview or medical examination in connection with the enlistment of the employee in a Reserve Force of the Defence Force.

54.6 Paid defence reservist leave counts for service.

54.7 Unpaid defence reservist leave for six months or less counts as service for all purposes. This includes periods of CFTS.

54.8 Unpaid leave taken over six months counts as service, except for annual leave.

54.9 An employee will not need to pay their tax free ADF Reserve salary to their agency for any reason.

### Defence service sick leave

55.1 An employee is eligible for defence service sick leave credits when the Department of Veterans Affairs (DVA) has certified that an employee's medical condition is as a result of either:

- (a) war-like service; or
- (b) non-war like service.

55.2 An eligible employee can get two types of credits:

- (a) an initial credit of nine weeks (45 days) defence service sick leave will apply as of the later below option:
  - (i) they start employment with the APS; or
  - (ii) DVA certifies the condition; and
- (b) an annual credit of three weeks (15 days) defence service sick leave.

55.3 An employee can use their defence service sick leave when a recognised medical practitioner provides a certificate that says they were away due to their DVA certified medical condition.

55.4 Unused annual credits can be built up to nine weeks.

55.5 An employee cannot use annual credits until the initial credit is exhausted.

55.6 Defence service sick leave is paid and counts as service for all purposes.

### Leave to attend proceedings

56.1 An employee giving evidence before a Court, Tribunal or Royal Commission on behalf of the Commonwealth or a Commonwealth party in the course of their duties, will be considered on duty.

56.2 An employee who is not covered under clause 56.1, and is required to give evidence to, appear before or attend to instruct a representative at a Court, Tribunal or Royal Commission in relation to their duties will be released from duty without loss of pay. This includes in proceedings relating to a dispute between the employee and ASQA.

56.3 An employee may otherwise be granted paid or unpaid miscellaneous leave by the Chief Executive Officer if required to give evidence to a Court, Tribunal or Royal Commission for any other reason. Where approval for unpaid leave is given, the employee may elect to use accrued annual leave, flex leave or TOIL.

56.4 The Chief Executive Officer may refuse to release an employee from duty having regard to business requirements and whether the employee's attendance is necessary for the Court, Tribunal or Royal Commission hearing.

### Unauthorised absences

57.1 Where an employee is absent from work without approval, the absence will be without pay and will not count as service for any purpose. Other benefits provided under this Agreement, including the Flextime Scheme, will cease to be available to the employee until they resume duty or are granted leave.

## Part G: Employee support and workplace culture

### Blood donation

58.1 An employee can take reasonable time away from duty during their ordinary work hours to donate blood, plasma or platelets. It includes reasonable travel time and employers will consider employees on duty.

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

### Vaccinations

59.1 ASQA will offer annual influenza vaccinations at no cost to all employees.

59.2 Where ASQA requires an employee performing a role to be vaccinated for a particular condition, this vaccination will be offered at no expense to the employee.

### Employee Assistance Program (EAP)

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

### Respect at work

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

61.2 ASQA recognises that approaches to prevent sexual harassment, sex discrimination, sex-based harassment and victimisation in the workplace should be holistic and consistent with the Australian Human Rights Commission's guidance including the *Good Practice Indicators Framework for Preventing and Responding to Workplace Sexual Harassment*.

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

### Family and domestic violence support

62.1 ASQA will provide support for employees affected by family and domestic violence, depending on the employee's circumstances.

62.2 ASQA recognises that a holistic approach should be taken to support the employee, appropriate for the employee's individual circumstances.

62.3 Family and domestic violence support, including paid leave, are available to all employees covered by this agreement.

62.4 An employee experiencing family and domestic violence is able to access paid miscellaneous leave. Reasons an employee experiencing family and domestic violence may access this leave include, but are not limited to:

- (a) illness or injury affecting the employee resulting from family and domestic violence;
- (b) providing care or support to a family (including a household member) who is also experiencing family and domestic violence, and is ill or injured as a result of family and domestic violence;

- (c) providing care or support to a family (including a household member) who is also experiencing family and domestic violence, and is affected by an unexpected emergency as a result of family and domestic violence;
- (d) making arrangements for the employee's safety, or the safety of a close relative;
- (e) accessing alternative accommodation;
- (f) accessing police services;
- (g) attending court hearings;
- (h) attending counselling; and
- (i) attending appointments with medical, financial or legal professionals.

62.5 This entitlement exists in addition to an employee's existing leave entitlements and may be taken as consecutive days, single days or part days and will count as service for all purposes.

62.6 Given the emergency context in which leave may need to be accessed, employees can proceed to take the leave and seek approval at a later date, as soon as practicable.

62.7 These provisions do not reduce an employee's entitlement to family and domestic violence leave under the NES.

62.8 Paid miscellaneous leave available under this clause is paid for ongoing and non-ongoing employees at their full rate as if they were at work.

62.9 Paid leave for casual employees under this clause is paid at their full pay rate for the hours they were rostered to work in the period they took leave.

62.10 Evidence may be requested to support ASQA in approving leave. In most cases, this will not be required. Where it is required, this will be discussed with the employee and a statutory declaration is the only form of evidence ASQA will require, unless the employee chooses to provide another form of evidence.

62.11 An employee may also choose to provide other forms of evidence, including a medical certificate, or document issued by the Police Service, a Court, a Doctor, district Nurse, a Family Violence Support Service or Lawyer.

62.12 ASQA will take all reasonable measures to treat information relating to family and domestic violence confidentially. ASQA will adopt a 'needs to know' approach regarding communication of an employee's experience of family and domestic violence, subject to steps ASQA may need to take to ensure the safety of the employee, other employees or persons, or mandatory reporting requirements.

62.13 Where ASQA needs to disclose confidential information for purposes identified in clause 62.12, where it is possible, ASQA will seek the employee's consent and take practical steps to minimise any associated safety risks for the employee and/or privacy breaches.

62.14 ASQA will not store or include information on the employee's payslip in relation to the employee's experience of family and domestic violence; any leave accessed for the purposes of family and domestic violence; or support(s) provided by the employer, unless otherwise required by legislation.

62.15 Other available support may include, but is not limited to, flexible working arrangements, additional access to EAP, changes to their span of hours or pattern of hours and/or shift patterns and/or location of work where reasonably practicable.

62.16 ASQA will acknowledge and take into account an employee's experience of family and domestic violence if an employee's attendance or performance at work is affected.

62.17 Further information about leave and other support available to employees affected by family and domestic violence may be found in policy.

### Integrity in the APS

63.1 ASQA understands that procedural fairness is essential in building and maintaining trust with APS employees, and that it requires fair and impartial processes for employees affected by APS-wide or ASQA decisions.

63.2 Employees are to give advice that is frank, honest, timely and based on the best available evidence. This includes scientific and engineering advice based on evidence-based facts guided by the best available science and data. Employees will not be disadvantaged or discriminated against because they have given advice in accordance with their expertise or professional qualifications and in accordance with the APS Code of Conduct in the *Public Service Act 1999*.

63.3 Employees can, during their ordinary work hours, take time to:

- (a) access an APS-wide ethics advisory service or another similar service provided by a professional association such as a law society or in the agency; and
- (b) attend ASQA mandated training about integrity.

### First Nations cultural competency training

64.1 The Chief Executive Officer will take reasonable steps to ensure all substantive, ongoing EL2 employees employed at the commencement of this agreement or any new substantive, ongoing EL2 employees who commence within the first six months of this agreement will complete relevant First Nations cultural competency training within 12 months of the commencement of the agreement.

64.2 Any new substantive, ongoing EL2 employee who commences after six months of the commencement of this agreement will be required to complete a relevant First Nations cultural competency training course within six months of their engagement or promotion.

### Lactation and breastfeeding support

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

65.2 ASQA will provide access to appropriate facilities for the purpose of breastfeeding or expressing milk, subject to clause 65.3. In considering whether a space is appropriate, an agency should consider whether:

- (a) there is access to refrigeration;
- (b) the space is lockable; and
- (c) there are facilities needed for expressing such as appropriate seating.

65.3 Where it is not practicable for an agency site to have a designated space, a flexible approach will be taken so that the employee can access the support required.

65.4 ASQA will facilitate discussion between individual employees and their managers about accommodating the employee's lactation needs and practical arrangements to meet these needs.

65.5 The manager and employee shall discuss any flexible working arrangements that may be needed to support lactation. This may include consideration of arrangements such as working from home and/or remote working or varying work hours on an ad hoc or regular basis. Wherever

possible, requests by an employee will be accommodated, noting these needs may be changed over time.

65.6 Further information is available in policy.

### Disaster support

66.1 Where an official disaster or emergency is declared and this prevents an employee from reasonably attending work, or where it impacts their household or home, the Chief Executive Officer will consider flexible working arrangements to assist the employee to perform their work.

66.2 Where flexible working arrangements are not appropriate, the Chief Executive Officer may grant paid miscellaneous leave to an employee with regard to the scale and nature of the emergency. This leave counts as service and may be approved retrospectively.

66.3 In considering what period of leave is appropriate, the Chief Executive Officer will take into account the safety of the employee, their family (including their household) and advice from local, State and Commonwealth authorities.



## Part H: Performance and development

### Performance management

#### General

67.1 All ASQA employees must participate in the performance development process as developed by ASQA.

67.2 The link between assessment outcomes under the performance development process and pay point advancement is set out in clause 12.

67.3 The performance cycle begins on 1 July of each year and finishes on 30 June of the following year.

#### Purpose of performance development

67.4 The purpose of the performance development process is to:

- (a) ensure that all employees are aware of the expectations placed on them relevant to their role and classification, including how these align with ASQA's outcomes;
- (b) provide a framework for ongoing two-way performance feedback that is regular, honest and constructive;
- (c) establish a culture where how outcomes are achieved is valued as much as the achievement of the outcomes themselves;
- (d) provide a framework for career development, recognising that it is a responsibility of both the employee and their supervisor; and
- (e) provide a fair, equitable and objective mechanism for performance assessment.

67.5 There are three main phases to the performance cycle:

- (a) Performance Agreements are developed for every ASQA employee as an integrated activity in the business planning cycle each year. Performance Agreements are developed using information from ASQA's Strategic and Operational Plans, the employee's work area business plan, the employee's position description and any relevant project plans.
- (b) The Performance Agreements are required to be in place within four weeks of commencement with ASQA or within four weeks of commencement of the performance cycle.
- (c) A mid-cycle review must be undertaken to review and discuss the employee's performance and behaviours up to that point against their Performance Agreement.

67.6 An end of cycle review is to take place by the end of July each year to review the employee's performance over the full performance and skill development cycle. The employee receive a performance rating that indicates they are meeting expectations or unsatisfactory with ratings specified in the performance development policy.

67.7 Where an employee commences in a new position during the performance development cycle a Performance Agreement is required to be developed within four weeks of commencement in the position.

67.8 Where an employee undertakes higher duties for a period which is expected to be greater than three months a Performance Agreement is required to be developed within four weeks of commencement of higher duties.

## **Managing underperformance**

67.9 The provisions related to managing underperformance do not apply to:

- (a) non-ongoing employees employed for less than 12 months; or
- (b) ongoing employees during their first six months of employment in the APS.

67.10 Where an employee is assessed as unsatisfactory under the performance development process or has otherwise been identified as not meeting required standards of work, the Chief Executive Officer may initiate an underperformance management process.

67.11 Before the commencement of an underperformance process under this clause, an informal process, including consideration of suitable development and learning options, will have been undertaken aimed at assisting the employee to achieve the required level of performance.

67.12 The underperformance process will be aimed at the recovery of the employee's performance such that they are able to continue in employment with ASQA at the same classification level.

67.13 Consistent with the aim of the process as specified in clause 25.3, the underperformance process will include consideration of suitable development and learning options to assist the employee to meet required standards.

67.14 Throughout an underperformance process, the employee will be entitled to provide comments on any relevant documentation, in addition to providing documentation from peers and other parties in support of their performance for consideration by the supervisor and/or Chief Executive Officer.

67.15 The employee will be entitled to be accompanied by another ASQA employee at any meetings at which the employee's performance is being discussed. Where the employee elects to be so accompanied, the person accompanying the employee will be present for support and assistance.

67.16 The underperformance process will include an assessment of the employee's work by their supervisor over a period that is agreed between the employee and the supervisor. Where the employee and their supervisor do not reach agreement on the length of the assessment period, it will be determined by the employee's supervisor based on the length of time that the employee would reasonably require to demonstrate whether the required improvement has been achieved and subject to a minimum of six weeks.

67.17 Following the completion of an underperformance process, the Chief Executive Officer may:

- (a) take no further action as the employee has met the required standards;
- (b) extend the assessment period;
- (c) reduce the employee's classification level;
- (d) redeploy the employee at the same level; or
- (e) terminate the employee's employment.

## **Workloads**

68.1 ASQA recognises the importance of employees balancing their work and personal life. While it is acknowledged that at times it may be necessary for some extra hours being worked by some employees, this should be regarded as the exception rather than the rule.

68.2 When determining workloads for an employee or group of employees, ASQA will consider the need for employees to strike a balance between their work and personal life.

68.3 Where an employee or group of employees raise that they have experienced significant workload pressures over a prolonged period of time, ASQA and employee/s together must review the employees' workloads and priorities and determine appropriate strategies to manage the impact on the employee or group of employees.

### Study assistance

69.1 Where the Chief Executive Officer determines that a course of study being undertaken by an employee is potentially of benefit to ASQA, the following assistance may be provided to the employee:

- (a) up to eight hours per week paid study leave; and/or
- (b) up to \$1,500 per six monthly semester or up to \$1,000 per trimester to cover course costs.

69.2 For a course of study to be of potential benefit to ASQA, the course must either be:

- (a) relevant to the employee's current position; or
- (b) relevant to the potential career path for the employee within the APS.

## Part I: Travel and location-based conditions

### Class of travel

70.1 All travel within Australia will be by economy class.

### Travel allowance

71.1 Where an employee is required and approved by the Chief Executive Officer to travel on official business and be absent from their normal location overnight, the employee will either be paid or reimbursed the reasonable cost of accommodation, meals and incidentals or will be paid an allowance for all or part of those costs.

71.2 The rates for travel allowance will be the same as the reasonable rates for travel allowance set by the Australian Taxation Office.

71.3 Travel allowance will be paid in advance wherever possible by electronic funds transfer to the employee's bank or financial institution account.

71.4 All travel arrangements must be made using the whole of Australian Government arrangements and comply with all relevant ASQA and Australian Government travel policies.

### Part day travel allowance

72.1 Where an employee is required by ASQA to travel away from their work locality without a requirement to stay overnight and the employee is away from their home for more than ten hours as a direct result of the work requirement, the employee will be paid a part day travel allowance of \$52.15 to cover meals and incidentals. This rate may be adjusted to align with the Australian Tax Office travel rates.

72.2 Approved travel costs will also be paid by ASQA.

### Review travel allowance

73.1 Where an employee is required to temporarily reside in a locality away from home a review travel allowance will be payable after the first 21 calendar days. The review travel allowance will be calculated based on the actual accommodation costs being incurred by the employee and other costs that are considered by the Chief Executive Officer to be reasonable in the circumstances.

73.2 During the first 21 days of temporary residence, the provisions of clause 71 will apply.

73.3 For the purposes of determining when the first 21 calendar days have elapsed under clause 73.1, short returns home (of three days or less) or trips to other locations will not break the continuity of the elapsed period.

### Overseas conditions

74.1 ASQA will reimburse reasonable costs for accommodation, meals, and incidentals while on approved travel outside of Australia.

74.2 Wherever possible, employees will be paid an advance for accommodation, meals and incidentals costs associated with overseas travel, subject to any required acquittal of the employee's entitlement on completion of the travel.

### Travel time

75.1 ASQA will ensure that employees will not be required to travel outside the bandwidth hours or on weekends or public holidays unless there are important operational requirements that can only reasonably be met by travel during those times.

75.2 Where an employee at APS1 to APS6 level is required to travel within the bandwidth hours:

- (a) any time spent travelling within the standard day will be regarded as work for all purposes; and
- (b) any time spent travelling outside the standard day and within the bandwidth hours may be recorded as hours worked in the flextime system, less the time the employee normally spends travelling to or from work.

75.3 Where an employee at APS1 to APS6 level is required to travel outside the bandwidth hours, Monday to Friday:

- (a) any time spent travelling outside the standard day and within the bandwidth hours may be recorded as hours worked in the flextime system, less the time the employee normally spends travelling to or from work; and
- (b) the time spent travelling outside the bandwidth hours accumulates time off in lieu on an hour for hour basis, less any time normally spent travelling to or from work that has not already been deducted from the travel time.

75.4 Where an employee at APS1 to APS6 level is required to travel on a non-working day, the employee accumulates time off in lieu on an hour for hour basis from the time the employee leaves their home to the time the employee arrives at their accommodation, subject to the employee travelling direct to the employee's accommodation.

75.5 Time off in lieu accumulated under this clause will be taken within eight weeks of accrual at a mutually agreeable time wherever reasonably possible. Where an employee and their supervisor are unable to agree on a time to take the time off in lieu, the supervisor may determine the timing of the time off in lieu.

75.6 Where ASQA is unable to release an employee to take time off in lieu under this clause within eight weeks of its accrual, the employee will be paid for the time off in lieu at the rate of time and a half unless the employee and their supervisor have agreed on a time to take the time off in lieu at a later time.

75.7 Where an employee chooses to travel outside the standard day or on weekend or public holidays, the employee is not entitled to the accumulation of any time off in lieu.

## Relocation assistance

76.1 Where an existing employee is required to relocate at the request of ASQA (such as a promotion), the employee will be provided with financial relocation assistance. Employees who relocate on a temporary basis to take up higher duties are entitled to removal expenses if they relocate for a period of 13 weeks or more.

76.2 Where an employee is required to relocate on engagement with ASQA, the employee will be provided with financial relocation assistance.

76.3 Reasonable expenses associated with the relocation include:

- (a) the cost of transport of the employee, their dependants and partner by the most economical means;
- (b) removal expenses, namely the reimbursement of reasonable incurred costs of the removal of furniture and household effects of the employee, their dependants and partner;

- (c) the reimbursement of the cost of the insurance premium based on a reasonable replacement value; and
- (d) the reasonably incurred expenses in kennelling and transport of pets, up to the amount specified in the APS Award.

76.4 Additional relocation assistance may be considered by Chief Executive Officer discretion.

## Part J: Consultation, representation and dispute resolution

### Consultation

#### Principles

77.1 Genuine and effective consultation with employees and the relevant union(s), taking into account the diverse needs of employees, fosters a positive and inclusive workplace, enabling the views of employees to be considered.

77.2 ASQA recognises:

- (a) the importance of inclusive and respectful consultative arrangements;
- (b) employees and the relevant union(s) should have a genuine opportunity to influence decisions;
- (c) the nature and extent of consultation will vary depending on the proposed change and the likely impact on employees. Consultation on agency policies may occur over at least two weeks, whereas a major change is likely to require a more extensive consultation process;
- (d) consultation with employees and relevant unions(s) on workplace matters that significantly affect or materially impact them is sound management practice; and
- (e) the benefits of employee and union involvement and the right of employees to be represented by their union.

77.3 Genuine and effective consultation involves:

- (a) providing employees and the relevant union(s) with a genuine opportunity to influence the decision prior to a decision being made;
- (b) providing all relevant information to employees and the relevant union(s) in a timely manner to support consideration of the issues;
- (c) considering feedback from employees and the relevant union(s) in the decision-making process; and
- (d) advising employees and the relevant union(s) of the outcome of the process, including how their feedback was considered in the decision-making process.

#### When consultation is required

77.4 Consultation is required in relation to:

- (a) changes to work practices which materially alter how an employee carries out their work;
- (b) changes to or the introduction of policies or guidelines relevant to workplace matters (unless the changes are minor or procedural);
- (c) major change that is likely to have a significant effect on employees;
- (d) implementation of decisions that significantly affect employees;
- (e) changes to employees' regular roster or ordinary hours of work (subject to any other relevant provisions in this agreement); and
- (f) other workplace matters that are likely to significantly or materially impact employees.

77.5 ASQA, employees and the relevant union(s) recognise that consultation prior to a decision may not be practicable where a decision is made by Government or is required due to matters beyond

the reasonable control of the agency. In these circumstances, consultation regarding the implementation of the decision will occur as early as is reasonably practicable.

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

77.6 This clause applies if ASQA:

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

### **Representation**

77.7 Employees may appoint a representative for the purposes of the procedures in this clause. A representative for the purpose of this clause may be a union representative.

77.8 ASQA must recognise the representative if:

- (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
- (b) the employee or employees advise the employer of the identity of the representative.

### **Major change**

77.9 In this clause, a major change is **likely to have a significant effect on employees** if it results in, for example:

- (a) the termination of the employment of employees; or
- (b) major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
- (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
- (d) the alteration of hours of work; or
- (e) the need to retrain employees; or
- (f) the need to relocate employees to another workplace; or
- (g) the restructuring of jobs.

77.10 The following additional consultation requirements in clauses 77.11 to 77.17 apply to a proposal to introduce a major change referred to in clause 77.4(c).

77.11 Consultation with employees and the relevant union(s) and/or recognised representatives will occur prior to a decision being made, subject to clause 77.5.

77.12 Where practicable, an ASQA change manager or a primary point of contact will be appointed and their details provided to employees and the relevant union(s) and/or their recognised representatives.

77.13 ASQA must notify employees and relevant union(s) and/or recognised representatives of the proposal to introduce the major change as soon as practicable.



77.14 As soon as practicable after proposing the change, or notifying of the change in circumstances described at clause 77.5, ASQA must:

- (a) discuss with affected employees and relevant union(s) and/or other recognised representatives:
  - (i) the proposed change;
  - (ii) the effect the proposed change is likely to have on the employees; and
  - (iii) proposed measures to avert or mitigate the adverse effect of the proposed change on the employees; and
- (b) for the purposes of the discussion – provide, in writing, to employees and the relevant union(s) and/or other recognised representatives:
  - (i) all relevant information about the proposed change, including the nature of the change proposed; and
  - (ii) information about the expected effects of the proposed change on the employees; and
  - (iii) any other matters likely to affect the employees.

77.15 ASQA must give prompt and genuine consideration to matters raised about the major change by employees and the relevant union(s) and/or other recognised representatives.

77.16 However, ASQA is not required to disclose confidential or commercially sensitive information to employees and the relevant union(s) and/or other recognised representatives.

77.17 If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of ASQA, the requirements set out in clauses 77.9 to 77.14 are taken not to apply.

#### **Change to regular roster or ordinary hours of work**

77.18 The following additional consultation requirements in clauses 77.18 to 77.22 apply to a proposal to introduce a change referred to in clause 77.4.

77.19 ASQA must notify affected employees and the relevant union(s) and/or other recognised representatives of the proposed change.

77.20 As soon as practicable after proposing to introduce the change, ASQA must:

- (a) discuss with employees and the relevant union(s) and/or other recognised representatives the proposed introduction of the change; and
- (b) for the purposes of the discussion – provide to the employees and relevant union(s) and/or other recognised representatives:
  - (i) all relevant information about the proposed change, including the nature of the proposed change; and
  - (ii) information about what the employer reasonably believes will be the effects of the proposed change on the employees; and
  - (iii) information about any other matters that the employer reasonably believes are likely to affect the employees; and
- (c) invite employees and the relevant union(s) and/or other recognised representatives to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities). However, ASQA is not required to disclose confidential

or commercially sensitive information to the relevant employees and the relevant union(s) and/or other recognised representatives.

77.21 ASQA must give prompt and genuine consideration to matters raised about the proposed change by the employees and the relevant union(s) and/or other recognised representatives.

#### **Interaction with emergency management activities**

77.22 Nothing in this term restricts or limits the ability of a designated emergency management body to undertake activities provided at section 195A(1) of *the Fair Work Act 2009*.

#### **Agency consultative committee**

78.1 The Chief Executive Officer may establish an ASQA consultative committee to discuss relevant workplace matters.

78.2 ASQA consultative committees will operate subject to an agreed terms of reference and structure for the term of the agreement. Representation on the committee will be in accordance with the terms of reference.

#### **APS consultative committee**

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

#### **Dispute resolution**

80.1 If a dispute relates to:

- (a) a matter arising under the agreement; or
- (b) the National Employment Standards;

this term sets out procedures to settle the dispute.

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

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

80.4 Parties to the dispute must attempt to resolve the dispute at the workplace level, by discussion between the employee or employees and relevant managers. Parties to the dispute will notify higher level managers to assist in the resolution of the dispute. Parties will give genuine consideration to proposals to resolve the dispute.

80.5 If a dispute about a matter arising under this agreement is unable to be resolved at the workplace level, and all appropriate steps under clause 80.4 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.

80.6 The Fair Work Commission may deal with the dispute in two stages:

- (a) the Fair Work Commission will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
- (b) if the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:

- (i) arbitrate the dispute; and
- (ii) make a determination that is binding on the parties.

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

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

- (a) an employee must continue to perform their work as they would normally in accordance with established custom and practice at ASQA that existed immediately prior to the dispute arising unless they have a reasonable concern about an imminent risk to their health or safety; and
- (b) subject to clause 80.7(a), an employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace, unless:
  - (i) the work is not safe; or
  - (ii) applicable work health and safety legislation would not permit the work to be performed; or
  - (iii) the work is not appropriate for the employee to perform; or
  - (iv) there are other reasonable grounds for the employee to refuse to comply with the direction.

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

80.9 Any disputes arising under ASQA Enterprise Agreement 2017-2020 as maintained by the ASQA Determination 2020 or the National Employment Standards that were formally notified under clause 80 of that agreement before the commencement of this agreement, that remain unresolved at the date of commencement of this agreement, will be progressed under the dispute resolution procedures in this agreement.

#### **Leave of absence to attend proceedings**

80.10 Where the provisions of clauses 80.1 to 80.9 have been complied with, and to assist in the resolution of the matter, the employee, and/or the union delegate or other employee representative referred to in clause 80.2, or employee required to provide evidence, will be granted paid time to attend dispute resolution processes and proceedings in the Fair Work Commission arising from referral of the matter in clause 80.5.

#### **Delegates' rights**

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

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

81.3 ASQA and union delegates will work together respectfully and collaboratively.

#### **Supporting the role of union delegates**

81.4 ASQA respects the role of union delegates to:

- (a) provide information, consult with and seek feedback from employees in the workplace on workplace matters;
- (b) consult with other delegates and union officials, and get advice and assistance from union officials;
- (c) represent the interests of members to the employer and industrial tribunals; and
- (d) represent members at relevant union forums, consultative committees or bargaining.

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

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

81.7 To support the role of union delegates, ASQA will, subject to legislative and operational requirements, including privacy and security requirements:

- (a) provide union delegates with reasonable access to agency facilities and resources, including for paid or unpaid meetings between employees and their unions and to communicate with union officials;
- (b) advise union delegates and other union officials of the agency facilities and resources available for their use, which may include telephone, photocopying, internet, and email;
- (c) allow reasonable official union communication appropriate to the agency from union delegates with employees, including through email, intranet pages and notice boards. This may include providing a link to a union website for employees to access union information. Any assistance in facilitating email communications does not include an agency vetoing reasonable communications;
- (d) provide access to new employees as part of induction; and
- (e) provide reasonable access to union delegates to attend appropriate paid time training in workplace relations matters, during normal working hours.

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

## Part K: Separation and retention

### Resignation

82.1 An employee may resign from their employment by giving the Chief Executive Officer at least 14 calendar days' notice.

82.2 At the instigation of the Chief Executive Officer, the resignation may take effect at an earlier date within the notice period. In such cases, the employee will receive paid compensation in lieu of the notice period which is not worked.

82.3 The Chief Executive Officer has the discretion to agree to a shorter period of notice or waive the requirement to give notice.

### Payment on death of an employee

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

### Termination of employment

#### Termination for serious misconduct

83.1 Nothing in this Agreement prevents the Chief Executive Officer from terminating the employment of an employee for serious misconduct, without further notice or payment in lieu, in accordance the *Fair Work Act 2009* and associated regulations subject to compliance with the procedures established by the Chief Executive Officer for determining whether an employee has breached the Code of Conduct under section 15 of the *Public Service Act*.

#### Notice of termination

83.2 Except where clause 83.1 applies, the Chief Executive Officer must provide an employee with no less than the notice periods provided for by this Agreement or the *Fair Work Act 2009*, whichever is the greater. This clause does not apply to non-ongoing employees who are engaged on an irregular or intermittent basis and who are paid a loading in accordance with clause 26.

83.3 The Chief Executive Officer may pay an employee in lieu of all or part of the required period of notice.

#### Invalidity retirement

83.4 An employee will not, without their consent, be terminated on invalidity grounds before their available personal leave credits have been used, unless as otherwise provided by legislation.

### Redeployment, retirement, and redundancy

#### General

84.1 The following redeployment, reduction and retrenchment provisions will apply to ongoing employees who are not on probation.

#### Definition of excess employee

84.2 An employee is excess when:

- (a) the employee is included in a class of employees employed in ASQA, which class comprises a greater number of employees than is necessary for the efficient and economical working of ASQA;
- (b) the services of the employee cannot be effectively used because of technological or other changes in the work methods of ASQA or changes in the nature, extent or organisation of the functions of ASQA; or
- (c) the duties usually performed by the employee are to be performed at a different locality, the employee is not willing to be assigned a new usual location of work, and the Chief Executive Officer has determined that the provisions of this clause will apply to that employee.

84.3 Where the Chief Executive Officer determines that an employee is excess, the Chief Executive Officer may do one or more of the following:

- (a) reassign duties to the employee within ASQA and determine the place at which the duties are performed;
- (b) reduce the classification level of the employee (with their consent) on the grounds that the employee is excess to the requirements of ASQA at the higher classification level;
- (c) move an ongoing employee (with their consent) from ASQA to another APS agency; and/or
- (d) terminate the employment of the employee on the grounds that the employee is excess to the requirements of ASQA.

### **Consultation**

84.4 When the Chief Executive Officer is aware that an employee is likely to become excess, the Chief Executive Officer will advise the employee at the earliest practicable time.

84.5 Discussions with the potentially excess employee, and where they choose, their representative, will be held to consider:

- (a) redeployment opportunities for the employee concerned; and
- (b) whether voluntary retrenchment might be appropriate.

84.6 Unless a lesser period has been agreed between the Chief Executive Officer and the potentially excess employee, the discussion period will last for four weeks from the date the employee is notified that they are likely to become excess. During the discussion period, the Chief Executive Officer will not:

- (a) invite the employee to accept an offer of voluntary retrenchment; or
- (b) advise the employee in writing that they are excess.

84.7 The Chief Executive Officer may, prior to or after the conclusion of the discussion period, invite employees who are not potentially excess to express an interest in voluntary retrenchment, where those retrenchments would permit the redeployment of employees who are potentially excess.

### **Voluntary retrenchment**

84.8 Where the Chief Executive Officer offers an excess employee voluntary retrenchment, the employee will have four weeks to decide whether to accept the offer. The Chief Executive Officer will not give notice of termination under section 29 of the *Public Service Act* on the grounds that the employee is excess to requirements before the end of that period or until the employee's decision is received (in circumstances where the decision is received before the end of that period).

84.9 Where an employee has not already received the following information, they must be provided with information on the:

- (a) amounts of severance pay, payment in lieu of notice, and paid up leave credits;
- (b) amount of accumulated superannuation contributions;
- (c) options open to the employee concerning superannuation; and
- (d) taxation rules applying to the various payments.

84.10 Where the employee agrees to be voluntarily retrenched, and the Chief Executive Officer approves their termination under section 29 of the *Public Service Act*, the required notice of termination will be given.

84.11 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 service).

84.12 Where an employee retires, or is retired, at the beginning of, or within the notice period, he or she will receive payment in lieu of notice for the unexpired portion of the notice period.

#### **Payment on voluntary retrenchment**

84.13 An excess employee who agrees to be voluntarily retrenched and whose employment is terminated by the Chief Executive Officer under section 29 of the *Public Service Act* on the grounds that they are excess to the requirements of ASQA, is entitled to paid redundancy pay of a sum equal to two weeks' salary for each completed year of continuous service, plus a pro rata payment for completed months of service since the last completed year of service, subject to any minimum amount the employee is entitled to under the National Employment Standards.

84.14 The minimum sum payable will be four weeks' salary and the maximum will be 48 weeks' salary.

84.15 For the purpose of calculating an entitlement in accordance with clause 84.13, "service" means:

- (a) Government service as defined in section 10 of the *Long Service Leave (Commonwealth Employees) Act 1976*;
- (b) service with the Commonwealth (other than service with a joint Commonwealth-State body or a body corporate in which the Commonwealth does not have a controlling interest) which is recognised for long service leave purposes;
- (c) service with the Australian Defence Forces; and
- (d) service in another organisation where:
  - (i) an employee was moved from the APS to give effect to an administrative re-arrangement; or
  - (ii) an employee of that organisation is engaged as an APS employee as a result of an administrative re-arrangement; and
  - (iii) such service is recognised for long service leave purposes.

84.16 For the purpose of calculating an entitlement in accordance with clause 84.13, service does not include any period of service which ceased:

- (a) through termination on the following grounds:

- (i) the employee lacks, or has lost, an essential qualification for performing their duties;
  - (ii) non-performance, or unsatisfactory performance, of duties;
  - (iii) inability to perform duties because of physical or mental incapacity;
  - (iv) failure to satisfactorily complete an entry level training course;
  - (v) failure to meet a condition imposed under subsection 22(6) of the *Public Service Act*;
  - (vi) breach of the Code of Conduct; or
  - (vii) any other ground prescribed by the Public Service Regulations; or
- (b) through voluntary retirement at or above the minimum retiring age applicable to the employee; or
  - (c) with the payment of a redundancy benefit or similar payment or an employer-financed retirement benefit.

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

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

84.19 The redundancy benefit will be calculated on a pro rata basis for any period where an employee has worked part-time hours during their period of service and the employee has less than 24 years full-time service, subject to any minimum amount the employee is entitled to under the National Employment Standards.

84.20 For the purposes of calculating any payment under clause 84.13, "salary" will include:

- (a) the employee's full time salary, adjusted on a pro rata basis for periods of part time service; and
- (b) allowances that are payable during periods of Annual Leave and on a regular basis and are not a reimbursement for expenses incurred or a payment for disabilities associated with the performance of a duty.

84.21 Additional payments for the performance of duties at a higher classification level are to be included in salary where the employee has been performing duties at the higher classification level for a continuous period of at least 12 months immediately preceding the date on which the employee is given notice of termination.

### **Involuntary Retrenchment**

84.22 Where an excess employee has not accepted an offer of voluntary retrenchment, unless they agree otherwise, the excess employee will not have their employment terminated by the Chief Executive Officer under section 29 of the *Public Service Act* until the following retention periods have elapsed:

- (a) 56 weeks where an employee has 20 or more years of service or is over 45 years of age; or
- (b) 30 weeks for other employees.



84.23 If an employee is entitled to a redundancy payment in accordance with the National Employment Standards, the relevant period in clause 84.22 is reduced by the number of weeks redundancy pay that the employee will be entitled to under the National Employment Standards on termination, as at the expiration of the retention period (as adjusted by this clause).

84.24 Service for the purposes of this clause has the same meaning as in clauses 84.15 and 84.16.

84.25 The retention period will commence on the earlier of the following:

- (a) the day the employee is advised in writing by the Chief Executive Officer that they are an excess employee; or
- (b) four weeks after the day on which the Chief Executive Officer invites the employee to elect to be voluntarily retired.

84.26 During a retention period the Chief Executive Officer will continue to provide appropriate training and take all reasonable steps to find alternative employment for the excess employee, including consideration of options such as reduction of classification.

84.27 The retention period as provided for in this clause will be extended by periods of leave for personal illness or injury, where supported by acceptable medical evidence.

84.28 In accordance with section 29 of the *Public Service Act*, the Chief Executive Officer may involuntarily terminate the employment of an excess employee at the end of the retention period.

84.29 The excess employee may request assistance in meeting reasonable travel and incidental expenses incurred in seeking alternative employment where these expenses are not met by the prospective employer.

84.30 Where the Chief Executive Officer believes there is insufficient productive work available for an excess employee in ASQA during the retention period, and that there are no reasonable redeployment prospects in the APS:

- (a) the Chief Executive Officer may, with the agreement of the employee, terminate the employee's employment under section 29 of the *Public Service Act*; and
- (b) upon termination the employee will be paid a lump sum comprising:
  - (i) the balance of the retention period (as shortened for the National Employment Standards under clause 84.23) and this payment will be taken to include payment in lieu of notice of termination of employment;
  - (ii) an additional redundancy payment equal to the amount the retention period was shortened under clause 84.23.

84.31 An excess employee will not have their employment terminated where the employee:

- (a) has not been invited to choose to be voluntarily retrenched; or
- (b) has decided to be voluntarily retrenched but the Chief Executive Officer has refused to approve it.

84.32 An excess employee will be given four weeks' notice (or five weeks' notice for an employee over 45 years of age with at least five years of continuous service) where it is proposed that he or she will have his or her employment terminated under section 29 of the *Public Service Act*. Wherever possible, the notice period will be concurrent with the retention period.

84.33 The Chief Executive Officer may, with four weeks' notice, reduce the excess employee's classification as a means of securing alternative employment for the excess employee.

84.34 Where an excess employee is reduced in classification before the end of the appropriate retention period, they will continue to be paid at their previous level for the balance of the retention period.

## Attachment A: Base salaries

Classification level	Salary levels	As at 31 August 2023	From the later of commencement of the agreement or 14 March 2024	From 13 March 2025	From 12 March 2026
APS1	1	\$53,487	\$55,626	\$57,740	\$59,703
	2	\$54,377	\$56,552	\$58,701	\$60,946
APS2	1	\$60,099	\$62,503	\$64,878	\$67,084
	2	\$61,227	\$63,676	\$66,096	\$68,343
	3	\$62,245	\$64,735	\$67,195	\$69,480
APS3	1	\$66,835	\$69,508	\$72,149	\$74,602
	2	\$67,942	\$70,660	\$73,345	\$76,820
APS4	1	\$71,747	\$74,617	\$77,452	\$80,085
	2	\$74,647	\$77,633	\$80,583	\$83,323
	3	\$75,886	\$78,921	\$81,920	\$84,705
	4	New pay point to be added in 2026			\$86,246
APS5	1	\$78,707	\$81,855	\$84,965	\$88,834
	2	\$82,392	\$85,688	\$88,944	\$91,968
	3	\$83,760	\$87,572	\$90,900	\$93,991
	4	New pay point to be added in 2025		\$91,809	\$94,931
	5	New pay point to be added in 2026			\$96,829
APS6	1	\$89,459	\$93,037	\$96,572	\$99,855
	2	\$95,274	\$99,085	\$102,850	\$106,347
	3	\$96,855	\$101,022	\$105,910	\$109,511
	4	New pay point to be added in 2026			\$111,701
EL1	1	\$109,098	\$113,462	\$117,774	\$121,778
	2	\$111,826	\$116,299	\$120,718	\$124,822
	3	\$117,747	\$122,457	\$127,110	\$131,432
	4	\$119,701	\$124,489	\$129,220	\$133,613
EL2	1	\$132,945	\$138,263	\$143,517	\$148,397
	2	\$140,910	\$146,546	\$152,115	\$157,287
	3	\$150,489	\$156,509	\$162,456	\$167,980
	4	\$152,988	\$159,108	\$165,154	\$170,769

## Attachment B: Supported Wage System

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

### Definitions

2. In this schedule:

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

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

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

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

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

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

### Eligibility criteria

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

### Supported wage rates

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

Assessed capacity	Percentage of agreement rate
10 per cent	10 per cent
20 per cent	20 per cent

30 per cent	30 per cent
40 per cent	40 per cent
50 per cent	50 per cent
60 per cent	60 per cent
70 per cent	70 per cent
80 per cent	80 per cent
90 per cent	90 per cent

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

#### **Assessment of capacity**

8. For the purposes of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the Supported Wage System by an approved assessor, having consulted the employer and the employee, and if the employee so desires, a union which the employee is eligible to join.
9. Assessment made under this schedule must be documented in a SWS wage assessment agreement, and retained by the employer as a time and wages record in accordance with the *Fair Work Act 2009*.

#### **Lodgement of SWS wage assessment agreement**

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

#### **Review of assessment**

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

#### **Other terms and conditions of employment**

13. Where an assessment has been made, the applicable percentage will apply to the relevant wage rate only. Employees covered by the provisions of the schedule will be entitled to the same

terms and conditions of employment as all other workers covered by this agreement paid on a pro-rata basis.

### **Workplace adjustment**

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

### **Trial Period**

15. In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a Trial Period not exceeding twelve weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
16. During that Trial Period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.
17. The minimum amount payable to the employee during the Trial Period must be no less than the current weekly rate, as determined by the Fair Work Commission.
18. Work trials should include induction or training as appropriate to the job being trialled.
19. Where the employer and employee wish to establish a continuing employment relationship following the completion of the Trial Period, a further contract of employment will be entered into based on the outcome of assessment under clause 8 in this Attachment.


## Signature page

### **Australian Skills Quality Authority (ASQA)**

Signed for the Australian Skills Quality Authority by Saxon Rice

Address of signatory: Level 7, 215 Adelaide Street, Brisbane QLD 4001

Position in ASQA: Chief Executive Officer

Signature:  \_\_\_\_\_

Date: 19/02/2024

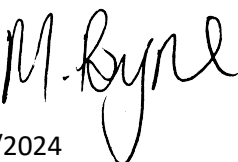
### **Employee Bargaining Representatives**

#### **Community Public Sector Union (CPSU)**

Signed for the CPSU by: Melissa Payne

Address of signatory: 54-58 Foveaux St, Surry Hills NSW 2010

Position in CPSU: Assistant National Secretary

Signature: 

Date: 16/02/2024