

Australian Workplace
Agreement
2003-2005

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1 Introduction

1.1 Operation of the agreement

This Agreement will commence to operate on the day after a filing receipt is issued for new employees. The nominal expiry date shall be 30 June 2005.

1.2 Definitions

Delegate

An employee authorised to be a delegate of the Secretary of the Department of Employment and Workplace Relations or of the Employment Advocate.

Department

The Department of Employment and Workplace Relations.

Employee

An employee of the Department of Employment and Workplace Relations, made available by the Secretary of that department to the Employment Advocate for the purposes of staffing the Office of the Employment Advocate, whether full-time or part-time, who is employed under and within the meaning of the *Public Service Act 1999*.

Employer

The Secretary of the Department of Employment and Workplace Relations on behalf of the Commonwealth.

Employment Advocate

The person appointed to exercise the functions of the Employment Advocate under Part IVA, Division 1, of the *Workplace Relations Act 1996*. In the absence of there being a person appointed to exercise the functions of the Employment Advocate, the responsibilities of the Employment Advocate under this agreement will revert to the Secretary of the Department of Employment and Workplace Relations.

Excess employee

An employee:

- ❑ who belongs to a class of employees employed in the OEA whose services are no longer required for the efficient and economical working of the OEA, eg. because of changes in the nature, extent or organisation of the functions of the agency;
- ❑ whose services cannot be effectively used because of technological or other changes in work methods;
- ❑ whose work is to be performed in a different locality and the employee is not willing to relocate to that locality and the Employment Advocate has determined that the redeployment and redundancy provisions of this agreement apply to the employee.

Family member

- ❑ is related by blood, by adoption or by marriage (including recognised de facto relationships); or
- ❑ has strong affinity with the employee; or
- ❑ who stands in a bona fide domestic or household relationship with the employee without discrimination as to sexual preference, including the children of such a person.

Office of the Employment Advocate (OEA)

The agency within the Employment and Workplace Relations portfolio established to assist the Employment Advocate, staffed by employees of the Department of Employment and Workplace Relations made available by the Secretary of that department to the Employment Advocate under s.83BD of the *Workplace Relations Act 1996*.

2 Salary and Remuneration

2.1 Classification structure and associated arrangements

The 8-level APS classification structure as set out in Table 1 applies to the OEA. The structure and associated remuneration arrangements are:

- ❑ each classification level has a salary range and a number of pay points attached to it;
- ❑ progression through pay points within each classification level will occur as provided for in the OEA's Performance, Recognition and Development Policy;
- ❑ the Employment Advocate will determine the process to be followed to effect broadbanding. The Employment Advocate, in consultation with employees, will determine areas where broadbanding will benefit the OEA and the relevant employees.
- ❑ The OEA Executive 2.5 pay point relates to jobs of a higher work value level in the Executive Level 2 classification, which will be determined on a case by case basis by the Employment Advocate in line with OEA Work Level Standards, including the higher level of contribution to work value by the employee.
- ❑ The Employment Advocate may approve the payment of a skills allowance to an employee for a specified period, where there is a labour market shortage of their skills.

The Senior Executive Service structure is separate from the classification arrangements in this agreement.

2.2 Salary rates

On 1 June 2004 base salary rates will increase by 3.5%. Table 1 details the salary rates payable to employees.

2.3 Fortnightly payment of salary

The fortnightly rate of pay will be based on the following formula:

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

2.4 Method of payment

The employee's fortnightly salary will be paid by electronic funds transfer into a financial institution account of the employee's choice. There will be scope for deductions to be made at the employee's request prior to his or her fortnightly salary being transferred into his or her nominated account. Additional financial institution fees or other direct costs incurred by employees as a result of DEWR systems failures will be reimbursed on a case by case basis.

2.5 Performance, Recognition and Development Policy

From 1 July 2003, a new Performance, Recognition and Development Policy will be introduced. This new policy will remain in place until 30 June 2005.

2.6 Temporary assignment to duties of a higher classification

Where a decision is taken to approve temporary assignment to duties of a higher classification for one week or more, an allowance will be paid for the period of temporary higher performance. Where the employee is initially temporarily assigned to duties of a higher classification for less than one week, but the period is extended to one week or more, the applicable allowance will be payable automatically for the whole period.

The employee will generally be paid at the minimum point of the salary range applicable to the classification of the higher job, unless the Employment Advocate or delegate determines payment of salary above the minimum point in that salary range, having regard to the employee's previous experience and salary at or above that level, qualifications and skills of the employee and his or her expected immediate contribution at that level.

Allowance paid during leave

If the employee is receiving the allowance, and is granted paid leave or observes a public holiday, the allowance will continue to be paid during that absence. However, the allowance will not be paid beyond the date for which the allowance was granted, unless renewal or continuity of the allowance would otherwise occur.

Temporary assignment to SES position

If the employee is required to undertake a temporary assignment to duties in a Senior Executive Service Band 1 position, an allowance and other benefits will be determined by the Employment Advocate for the period of temporary assignment.

2.7 Salary at commencement

When the employee commences duty or new duties on an ongoing or non-ongoing basis, salary will be payable at the minimum point of the salary range applicable to the classification of the job, unless the Employment Advocate determines payment of salary above the minimum point in that salary range, having regard to the employee's experience and salary at or above that level, qualifications and skills of the employee and his or her expected immediate contribution to the job at that level.

2.8 Salary packaging

Employees may choose to sacrifice part of their salary from a menu of non-cash benefits consistent with DEWR guidelines. Participation in salary packaging will not affect salary for superannuation purposes or any other purpose.

3 Working time

3.1 Hours of work

Ordinary hours of work for full time employees are 152 hours in a four week period

3.2 Decreased ordinary hours of work

A full-time employee may elect to decrease their ordinary hours of work on an indefinite basis to 147 hours over a four week period. An election under this clause to start or cease working decreased hours may only be made once each 12 calendar months. The employee will be paid at the applicable 36 $\frac{3}{4}$ hrs/week salary point. The lower salary will count for superannuation purposes.

Working at a 36 $\frac{3}{4}$ hrs/wk salary point will not affect the employee's access to flexible working arrangements and overtime. Remuneration and other benefits for the employee will be accrued and used on a pro rata basis, apart from those allowances of a reimbursement nature, where the employee will receive the same amount as full-time employees. Payment on separation of unused leave, and any severance payable, will be calculated at the salary point they are on.

3.3 Span of hours

The span of hours during which the employee may work ordinary hours are 7.00am to 7.00pm Monday to Friday. Within the span of hours the employee may be required to attend work and to work as directed.

On an ad hoc basis, the employee may request to work outside this span of hours, and may do so with the agreement of the relevant supervisor. Any hours worked on this basis will be considered ordinary hours and will not attract overtime rates.

3.4 Safety when working late

If the employee, with the agreement of the relevant supervisor, works later than 7pm they will be entitled to a Cabcharge for travel home.

3.5 Working patterns

The employee's pattern of work will be mutually agreed with his or her supervisor. The employee, if working flex-time, will not work more than 10 hours ordinary time on any day, and will not work more than 5 consecutive hours without a minimum unpaid meal break of 30 minutes.

On an ad hoc basis, the employee may request to work more than 10 hours in one day at ordinary time, and may do this with the prior approval of the supervisor. The employee may request to work non-standard ordinary hours, eg to support family or study commitments, and may do this with the prior approval of the supervisor.

In determining work patterns, employees and supervisors will have regard to OEA office hours. The chosen work pattern will not impact negatively on clients and/or other members of the work-group.

3.6 Recording attendance

Employees at the OEA 1-6 (APS 1 - 6) classifications will record attendance using flex-sheets.

3.7 Flex-time

An employee at the OEA 1-6 levels may access flex-time arrangements under this agreement.

Managers and employees will manage attendance so that employees do not consistently work excessive hours.

The following flex-time arrangements will apply:

- maximum carry over - 40 hours credit or 15 hours debit at the end of the four week settlement period
- maximum flex leave - five days in each four week settlement period
- flex-time will be subject to operational requirements.
- An employee with flex credits in excess of the maximum carry over may (with the delegate's approval):
 - bank credits and use these at a later date independently of, or in conjunction with, recreation leave, with the necessary records to be maintained locally. These credits will be paid out at ordinary time rates on termination of employment; or
 - have the credits in excess of 40 hours time paid out at ordinary time rates at the end of the settlement period.

The employee and the relevant manager may agree to local flex-time arrangements which increase the maximum carry over credit (but not debit), and/or the maximum flex leave.

3.8 Reversion to standard hours

The relevant delegate may withdraw access to flexible working arrangements and the employee will work standard hours, if:

- the employee's supervisor reasonably considers the employee's attendance is unsatisfactory; and/or
- the employee's supervisor reasonably considers that the employee is misusing the arrangements.

If the employee requests, the delegate will provide a written statement of reasons for requiring the employee to revert to standard hours. Access to flexible working arrangements may be restored when the delegate is satisfied that the employee's attendance is satisfactory.

What are standard hours?

Where flex-time no longer applies, the employee will revert to standard hours and be paid at the 36 hour 45 minute rate. Standard hours are 7 hours and 21 minutes per day, to be worked from 8.30am to 12.30pm and 1.30pm to 4.51pm.

3.9 OEA Manager's hours

OEA Manager working hours are flexible, and will be agreed between the manager and their supervisor.

3.10 Overtime

The employee may be directed to work reasonable overtime, with reasonable notice wherever practicable. Overtime is payable for work performed by OEA 1-6 level employees outside the span of hours, or on a public holiday, or in excess of ten hours on any one day, at the prior direction of the relevant manager, or when circumstances do not permit prior direction, subsequently approved by the relevant manager.

Payment of overtime worked for the purposes of emergency duty will be approved, notwithstanding that it may have been worked without prior direction from the relevant manager.

Manager to decide if payment made or hours credited

The manager will at the time of approving overtime determine, and advise the employee, whether overtime will be paid or credited as hours worked.

Overtime rates

When overtime is worked, the rate of payment or the hours credited to the employee's flex-time balance are calculated at the following rates:

Monday to Saturday	Time and one half for the first three hours each day and double time thereafter
Sunday	Double time
Public Holiday	Time and a half, in addition to payment at single time for the public holiday

Where a period of overtime is not continuous with ordinary duty, the minimum period of payment for such work will be 4 hours at the overtime rate.

3.11 Rest relief after overtime

Following overtime, the employee is entitled to an 8 hour break plus reasonable travelling time before recommencing work without incurring any loss of pay. When this break is not possible due to operational requirements, the employee will be paid double time for any hours worked until the break can be taken.

4 Public Holidays

4.1 Public holidays

Employees will observe the following holidays each year and will be paid as if that day were not a public holiday:

- New Year's Day (or substitute)
- Australia Day (or substitute)
- Good Friday and the following Saturday and Monday
- 25 April – Anzac Day (or substitute)
- the relevant Queen's Birthday observance day
- the relevant labour day or equivalent
- Christmas Day (or substitute)
- Boxing Day (or substitute)
- the additional public service holiday (which is to be observed on the next normal working day after the Boxing Day holiday), and
- up to two further local public holidays observed by the OEA.

Where:

- New Year's Day or Australia Day, fall on a Saturday or Sunday, the following Monday will be observed by employees as a public holiday
- Christmas Day falls on a Saturday or Sunday, 27 December will be observed by employees as a public holiday
- Boxing Day falls on a Saturday or Sunday, 28 December will be observed by employees as a public holiday, and
- 25 April (Anzac Day) is substituted by State or Territory governments; that day will be observed by employees as a public holiday in that State or Territory.

Where the manager and the affected employee agree, another day may be substituted for any public holiday.

4.2 Christmas/New year arrangements

Only a skeleton staff will be required to work in the following period from 25 December to 1 January. Staff not required to work will not have leave deducted for this period. The OEA will continue to provide services to clients through a skeleton staff in the Sydney office. These staff will be volunteers wherever possible, and they will receive time off in lieu of the time worked.

5 Leave

5.1 General principles of leave management

When considering an application for leave, managers will have regard to operational requirements, client service needs, the well-being of the employee requesting leave (including family responsibilities), leave requirements of other employees in the work area, and available leave credits, if applicable.

The employee:

- Must obtain prior approval for planned leave
- Must notify the relevant manager of any unplanned absence from work by 10am on the day of absence (or by local arrangement); and
- Will not have access to pay and other benefits when absent from duty without approval, until the employee resumes work or is granted leave.

If practicable, managers will keep employees on long term leave informed of developments at the workplace.

5.2 Short periods of leave

For absences of less than one day for either annual or personal leave, other than for personal illness or injury, the supervisor may require that the absence be recorded as flex-leave or time off in lieu, although a record will be maintained for worker's compensation purposes.

5.3 Annual leave

Staff working 36 hour and 45 minute hours per week will accrue 20 x 7 hour 21 minute working days; i.e. 147 hours paid annual leave for each full year worked.

Staff working 38 hours per week will accrue 20 x 7 hour 36 minute working days, ie. 152 hours paid annual leave for each full year worked.

Annual leave is calculated daily and can be accessed to the extent of the employee's monthly pro-rata entitlement.

Annual leave will be debited at the hour per week rate at which the employee is paid during the leave eg if being paid at the 38 hours per week rate, 7 hours and 36 minutes is debited for a full day's annual leave.

The taking of annual leave is subject to the approval of the delegate. Annual leave counts as service for all purposes. If any public holiday occurs and the employee is entitled to payment during any period of annual leave, the period of the public holiday is not deducted from the employee's annual leave credit.

Periods of long service leave cannot be broken with annual leave (except as provided for by the Maternity Leave (Commonwealth Employees) Act 1973).

If the employee is on annual leave and applies for sick/personal leave supported by a medical certificate or bereavement leave, his or her annual leave will be re-credited to the extent of the sick/personal or bereavement leave with pay granted.

5.4 Additional annual leave

The employee may elect to purchase between one and eight week's additional leave per year. If the employee purchases additional leave, an amount will be deducted from annual salary in lieu of the additional leave, which will be reflected in an adjustment to fortnightly salary payments. The amount deducted will depend on the amount of leave purchased and the employee's salary. Purchased leave counts as service for all purposes. The employee's salary for superannuation purposes continues to be their full-time salary.

5.5 Half pay annual leave

The employee may take annual leave at half pay, provided that the period of time off on annual leave is no less than one week at half pay. Half-pay leave counts as service for all purposes.

5.6 Cashing out annual leave

The employee may choose to cash out one, two or three weeks annual leave in any financial year. However the employee may only request one transaction per financial year. An employee who has been on temporary assignment to duties of a higher classification for more than 3 months may cash out leave accrued during the period at the higher classification, up to the three week annual maximum.

5.7 Payment in lieu of annual leave on separation

When the employee ceases employment with the Australian Public Service, the employee is to receive payment in lieu of unused annual leave credits. Payment will be calculated using the employee's final rate of salary, including allowances that would have been included in the employee's pay during a period of annual leave. If the employee dies or is presumed to have died on a particular date, the delegate may authorise the payment of the amount to which the former employee would have been entitled had the employee ceased employment otherwise than by death. Payment may be made to the partner or other family members of the former employee or the former employee's legal personal representative. If a payment has not been made within 12 months of the former employee's death, it should be paid to the legal personal representative.

5.8 Personal leave

Seventeen (17) days full-pay will be credited on the date of an ongoing employee's engagement with the OEA (following the commencement of operation of this agreement), and thereafter each year on the anniversary of the ongoing employee's date of engagement.

Where an employee moves to the OEA from another APS agency, they will retain all unused personal leave and may use such leave during the operation of this agreement. Personal leave of 17 days full pay will be credited on their next and subsequent anniversaries.

Personal leave counts as service for all purposes.

Paid personal leave shall be available to the employee when they are absent:

- due to personal illness or injury; or
- for the purposes of caring for an ill family member.

Although no cap is placed on the use of personal leave for caring purposes, it is only to be used for occasional non-enduring situations while longer-term arrangements are being made, if necessary.

The taking of personal leave is subject to approval of the Delegate.

Unused personal leave will accumulate, but cannot be paid out on separation. When absent due to personal illness or injury, the employee may use personal leave accumulated in previous years if their current year's leave has been exhausted.

Up to 5 days personal leave per annum may be taken without the employee being required to provide medical evidence (or personal declaration in the case of caring responsibilities). Of these 5 days, up to 3 consecutive days of personal leave may be taken without satisfactory medical evidence. The delegate may require the employee provide medical evidence for any period of personal leave.

Medical evidence means a certificate provided by:

- a registered medical practitioner, dentist, optometrist, optician, radiographer, physiotherapist, chiropractor or podiatrist; or
- a health practitioner other than a doctor (eg. naturopath, herbalist, homoeopath, iridologist, osteopath, acupuncturist) if the employee has either been referred to that health practitioner by a doctor or obtains a doctor's endorsement that the treatment provided was desirable.

Personal leave will not be debited when the employee is medically unfit on a public holiday, which the employee would otherwise have observed. When the employee is ill or injured while on annual leave and applies for personal leave with medical evidence, the annual leave may be re-credited to the extent of the personal leave granted.

The maximum continuous period of personal leave will be 78 weeks of which no more than 52 weeks may be paid personal leave.

Personal leave beyond 78 weeks will be treated as if the employee has been granted additional personal leave without pay, subject to the production of satisfactory medical evidence. A period of leave taken under this paragraph does not count as service for any purpose.

The employee will not, without the employee's consent, be retired on invalidity grounds before the employee's full-pay personal leave credits have been exhausted.

An employee who is receiving workers' compensation for more than 45 weeks will accrue personal leave based on hours actually worked.

The following prior service will be recognised for the purposes of accrued personal leave:

- ❑ an employee who has previous APS employment of less than 12 months immediately prior to ongoing employment will accrue a personal leave credit on employment as an ongoing employee as above, less any personal leave with pay previously granted;
- ❑ an employee who has previously been employed in the APS, or in government service as defined in s10 of the Long Service Leave (Commonwealth Employees) Act 1976, or a service referred to in s11(2) of that Act, may have that period of previous employment recognised as service for personal leave purposes provided that any break in employment between employers is no more than 2 months, or a longer period when the delegate determines special circumstances exist; and
- ❑ an employee who is employed after having been deemed to have resigned following marriage under the former s 49 of the Public Service Act 1922, or who is reemployed following invalidity retirement from the APS, the employee will be credited with any personal leave credits held at the time of ceasing the earlier period of employment.

The Employment Advocate may, subject to the provision of medical evidence, grant the employee additional personal leave on full-pay when paid personal leave is exhausted.

5.9 Personal leave at half-pay

The following arrangements apply to the employee's personal leave at half-pay accrued prior to this agreement:

- ❑ may only be used for absences due to personal illness or injury
- ❑ may only be accessed when the employee has exhausted their accrued full-pay personal leave credits

may be converted on use to full-pay personal leave.

5.10 Maternity leave

Employees are entitled to maternity leave in accordance with the provisions of the *Maternity Leave (Commonwealth Employees) Act 1973*. OEA employees will be granted up to 13 weeks paid maternity leave. In order to provide more flexible administration of maternity leave, an employee may elect to spread the payment for the period of required absence up to a period of 26 weeks at a rate of no less than half the normal salary. The additional leave beyond the 12 weeks provided in the legislation will not count as service for any purpose, except long service leave. An employee is unable to access personal leave while on paid maternity leave. The additional week that the OEA recognises as paid leave over the minimum under the *Maternity Leave (Commonwealth Employees) Act 1973* will count as service.

5.11 Parental leave

To enable an employee to care for a new born or newly adopted child, he or she will be entitled to other leave without pay for parental purposes. 52 weeks parental leave can be taken over a 66 week period, with the 66 week period commencing on the day of the birth of the child or, in the case of an adopted child (under five years of age), on the day the employee assumes responsibility for the child.

5.12 Paternity leave

Up to 5 days paid paternity leave may be taken by fathers within 1 month of the birth of their child without deduction from other leave credits.

5.13 Adoption leave

Up to 6 weeks paid leave will be granted to employees when adopting a child. The requirements of Regulation 30H(2) of the Workplace Relations Regulations apply.

5.14 Bereavement leave

The employee will be entitled to 5 days leave with pay on the occasion of the death of a family member. Bereavement leave counts as service for all purposes.

5.15 Special leave

The Delegate may grant the employee up to 3 days leave with pay each year to attend to domestic emergencies, or moving house (to a maximum of one day, or 2 days if moving interstate). Special leave counts as service for all purposes.

5.16 Other leave

The employee may be granted leave for any purpose by the delegate, who will give the employee written notice of a decision to grant or refuse leave under this clause.

The notice must state:

- if granted, the period of leave, whether the leave is with or without pay, any conditions to which the leave is subject, and – if leave is granted without pay – whether the leave will count as service and for what purposes; and
- if not granted, the reasons for not granting leave.

Leave with pay counts as service for all purposes. Other leave provides flexibility to managers and employees. It can be made available with or without pay for a variety of purposes. Where other leave is refused the manager will advise the employee in writing of the reason for the decision. Other leave without pay does not count as service for any purpose.

Leave with pay may be granted for: NAIDOC (one day); bereavement; defence training and enlistment; emergency services; disasters; returned soldiers - pension and medical purposes; jury duty; or any other approved purpose. Leave with pay counts as service for all purposes.

Leave without pay may be granted for: defence service; engagement in work or employment in the interests of defence or public safety; engagement in private sector employment associated with compensation leave; parental and adoption leave in addition to parental leave entitlements; caring responsibilities; ceremonial reasons; employment in the interests of the APS; days of cultural significance for employees; accompanying a spouse on a posting; campaign purposes; career interval purposes; or any other approved purpose. Leave without pay does not count as service.

5.17 Unauthorised absence

Where an employee is absent from work without approval, all pay and other benefits provided under this Agreement will cease to be available until the employee resumes work or is granted leave. An employee who fails to return to work and perform duties may be dealt with under Section 29(3)(c) of the *Public Service Act 1999*.

5.18 Defence Reservists leave

Where an employee is a Defence Reservist:

- ❑ The employee will be provided with 4 weeks (20 working days or 28 calendar days) leave on full pay each year to undertake Defence service;
- ❑ The employee will be provided 2 weeks paid leave for attendance at recruit/initial employment training;
- ❑ The employee will not be required to pay their tax-free Reserve salary to the OEA;
- ❑ The employee may accumulate Defence leave entitlements and take any accumulated entitlements over a 2 year period.

Leave for Defence purposes will be counted as service for all purposes, except that a period or periods of leave without pay in excess of 6 months will not count as service for annual leave purposes.

Employees are required to provide written evidence of their attendance for Defence service, and reasonable prior notice of their requirement to undertake Defence service.

6 Travel

6.1 Domestic travel

Economy class travel (or business class where the duration of the flight is 2 hours and 45 minutes or longer) will be used when an employee other than a Senior Executive Service level employee is required to travel by air within Australia on official business. Business class travel will be used when a Senior Executive Service level employee is required to travel by air within Australia on official business. Domestic flights must be on the preferred service provider for air travel.

Travelling allowance will be payable to an employee who travels on official business and is away from home overnight. Travelling allowance is payable for the first 21 days, after which temporary relocation assistance is payable.

Travelling allowance, which is payable in advance, is to meet the cost of accommodation, meals and any incidental expenses incurred by the employee while travelling on official business and will be calculated in accordance with the rates as advised by the Department of Employment and Workplace Relations. No allowance is payable when travel does not involve an overnight stay.

The delegate may, subject to the presentation of receipts, authorise an additional payment if the employee has incurred reasonable costs in excess of the Travelling Allowance payable.

When the employee is provided with either accommodation or meals, the employee will not be paid for those components of Travelling Allowance in respect of any accommodation or meals provided.

The employee agrees to comply with all requirements in the OEA Travel Policy.

6.2 Temporary relocation assistance

When the employee temporarily works in a different geographic location he or she will be paid Travelling Allowance for the first 21 days (see Domestic Travel).

When the employee temporarily works in a different geographic location for a period in excess of 21 days from the day on which he or she commenced work at the new location, the delegate and the employee will negotiate an agreed package of temporary relocation assistance to meet the additional costs incurred as a result of the employee being temporarily relocated.

An employee who temporarily works in another geographic location at his or her request may receive temporary relocation assistance at the discretion of the delegate.

6.3 Relocation assistance

Employees and new employees who relocate permanently to a different geographic location will be paid \$8,000. They will be responsible for all relocation arrangements and expenses. An existing employee who asks to be relocated may be paid expenses at the discretion of the Delegate.

6.4 Excess travelling time

If an employee below the OEA 4.2 salary point (or equivalent) is required to temporarily work away from his or her usual place of work and this involves travelling time in excess of the employee's usual travelling time, of between 30 minutes and 5 hours in any one day, he or she will be paid at ordinary rates for this excess travelling time. If the excess travelling time occurs on a weekend or public holiday, the payment will be calculated at a rate of time and a half. The employee may choose to take time off in lieu instead of payment for excess travelling time.

The relevant delegate may approve time off in lieu for any employee not otherwise eligible for excess travelling time benefits in circumstances where the amount or duration of official travel is a disproportionate or excessive burden on the employee, such as regular travel between Perth or Darwin and the eastern seaboard.

7 Benefits

7.1 Loss, damage and indemnity

The delegate may reimburse the employee for loss or damage to clothing or personal effects, which occurred in the course of his or her work.

7.2 First aid allowance

If the delegate is satisfied that the employee possesses a first aid certificate and continuing ability commensurate with that qualification and the employee has first aid responsibilities, the employee will be paid an allowance of \$16.00 per fortnight.

7.3 Community language allowance

The delegate may approve payment of Community Language Allowance if there is an identifiable and continuing need in the OEA for skills in languages other than English, including Aboriginal and Torres Strait Islander languages and AUSLAN or other deaf communication skills, for the provision of client service. The delegate may require any employee to undergo NAATI or other recognised testing prior to payment of Community Language Allowance. The level of Community Language Allowance will be in accordance with APS rates as varied from time to time.

7.4 Building activities

The OEA will wherever possible, arrange for building activities to be undertaken outside of normal working hours. In the event that this is not possible, the OEA will take reasonable steps to prevent detrimental effects on employees, eg temporary relocation or other arrangements. If it is not possible to prevent detrimental effects on employees, the delegate may approve the payment of an allowance for the period of the building activities.

7.5 Reimbursement of fares

Where an employee becomes critically or dangerously ill while he or she is travelling on official business and a family member travels to visit the critically or dangerously ill employee, the OEA will, where requested and supplied with satisfactory medical evidence, reimburse the relative for reasonable travel costs.

7.6 Motor vehicle allowance

The delegate may authorise the employee to use a private car owned, leased or hired by the employee at their own expense for official purposes, where the delegate considers that it will result in greater efficiency or involve less expense for the OEA. Such authorised employees will receive a Motor Vehicle Allowance according to the APS rates published by the Department of Employment and Workplace Relations from time to time.

7.7 Encouragement of fitness activities

From 1 July 2003 the employee will be eligible for reimbursement of up to \$270 per financial year for expenses incurred from that date on fitness related fees or expenses. Details on the implementation of this clause are included in the Occupational Health and Safety Policy.

7.8 Use of mobile telephones

In addition to official use, and use related to official travel, as prescribed under the OEA Mobile Telephone policy, employees issued mobile telephones for official purposes may make limited use of those telephones for a reasonable amount of personal calls, which will be identified by the employee. An indication of a reasonable amount would be around \$120 per annum.

Where the employee uses the mobile telephone for more than a reasonable amount of personal calls, they will be liable for payment for the excess calls on a 3 monthly basis. This process will be managed by the local manager.

7.9 Professional Organisation Fees

Professional organisation fees will be paid by the OEA where qualifications and/or membership of an organisation are a requirement of employment in the employee's current role.

7.10 Study assistance

Staff may apply for study leave or financial assistance through the OEA's Studybank Policy which is available on the OEA's intranet.

8 General Conditions

8.1 Noticeboards

Employees will have access to noticeboards for the display of work-related information.

8.2 Accrual and retention of entitlements

The employee will retain all unused leave, other entitlements and pre-approved arrangements approved under previous OEA Australian workplace agreements accrued prior to the operation of this agreement and may use them during the operation of this agreement.

8.3 Code of conduct

In addition to the APS values and standards of conduct the OEA Code of Conduct, as varied from time to time, applies to all employees. The OEA Code of Conduct is available on the OEA Intranet. Procedures for possible breaches of the OEA Code of Conduct are specified on the OEA Intranet.

8.4 Mobility

The employee will not be required to be reassigned to duties at another geographic location. The employee may be reassigned to duties within their usual geographic location. A reassignment to duties under this clause will be at a classification equal to the employee's classification.

8.5 Managing under-performance

Instances of under-performance will be addressed promptly and fairly, with feedback being the initial and primary channel for discussing these issues. The employee will be informed of his/her duties and the standard of work expected. When a significant problem with an employee's performance comes to a manager's attention, the manager will attempt to identify and address the factors contributing to the problem.

Consideration will be given to the following measures before action is taken under the process set out below:

- providing appropriate training
- rearranging the employee's duties
- changing the procedures relating to the employee's duties
- specialised counselling for the employee
- reassignment of duties at the same level

Where an employee's individual rating at a quarterly or 6 monthly assessment is Unsatisfactory, the relevant supervisor and employee will promptly and jointly develop and implement strategies to address the under-performance. These strategies should be given no less than 4 weeks to take effect before the following procedure can be initiated.

If, despite genuine attempts to improve performance through feedback and other measures, performance consistently falls below the expected standard the following procedure will apply:

- The relevant manager will provide the employee with a written warning of the need for performance to improve. The warning will specify the acceptable standard of work, how the employee's work does not meet that standard and how performance will need to improve over the next 2 months. A copy of the written warning will also be provided to the relevant member of the Executive.
- During the 2 month period, the manager, in conjunction with the employee's supervisor, will assess the employee's performance on a fortnightly basis and prepare a progress report on the employee's performance. The employee must be given the opportunity to provide comments on the progress report. Where the member of the Executive considers that it would be inappropriate for either the manager or supervisor to undertake the assessment of the employee's performance, he or she will appoint an independent person from outside the employee's work area to undertake the assessment.
- At the end of the 2 month period, the manager will forward to the member of the Executive an assessment of whether the employee has met the expected standard of performance, together with their progress reports and any other relevant documentation.
- If the employee has met the expected standard of performance at the end of the 2 month period, no further action will be taken.

If performance fails to meet the expected standard at the end of the 2 month period, the member of the Executive will write to the employee asking him or her to show cause within seven days as to why he or she should not be retired. The member of the Executive will then decide whether to recommend, attaching all relevant documentation, to the Employment Advocate who shall determine the matter, that the employee:

- be retired; or
- be subject to some other action, including reassignment of duties at the same level or reduction in classification.

If the employee is reduced in classification without consent, the employee may lodge an appeal with the Secretary of the Department of Employment and Workplace Relations (the Secretary) within 14 days of the notice of reduction on the ground that he or she met the expected standard of performance and/or there was a serious defect in the application of the above procedure.

A notice of reduction takes effect after one month unless the employee lodges an appeal. Where the employee lodges an appeal, the reduction takes effect on the day the appeal is dismissed or withdrawn or one month after the notice is issued, whichever is the later. In the event of an appeal, the employee will remain in his or her current job.

An employee who appeals against reduction must submit a statement in support of the appeal to the Secretary within 21 days of the issue of the notice of reduction. Where the employee, without due cause, fails to submit a statement within the time allowed or fails to appear at a scheduled hearing of the appeal, the Secretary may dismiss the appeal. The Secretary may deal with the matter or may appoint a person from outside the employee's work area to hear the appeal. This person will make a recommendation to the Secretary who shall decide to confirm or revoke the notice of reduction. The appeal will be finalised within four weeks from the date of lodgement. If the appeal is successful, the notice of reduction is revoked without detriment to the employee.

The employee may seek review of termination in accordance with 'Termination of employment – review mechanism'. An employee may receive guidance or assistance from a person of his or her choice at any stage of the procedure.

The procedure is not to be used for disciplinary or invalidity reasons.

8.6 Valuing diversity

The OEA is committed to ensuring that it is a workplace where all staff treat each other with mutual respect. The OEA values and welcomes the diversity of its staff.

The parties to this AWA agree that:

- ❑ it is their intention to achieve the principal object in paragraph 3 (j) of the *Workplace Relations Act 1996*, which is to respect and value the diversity of the work force by helping to prevent and eliminate discrimination at their enterprise on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin; and
- ❑ any dispute concerning these provisions and their operation will be progressed initially under the dispute settlement procedure in this AWA; and
- ❑ nothing in these provisions allows any treatment that would otherwise be prohibited by anti-discrimination provisions in applicable Commonwealth, State or Territory legislation; and nothing in these provisions prohibits:
 - any discriminatory conduct (or conduct having a discriminatory effect) that is based on the inherent requirements of a particular position; or
 - any discriminatory conduct (or conduct having a discriminatory effect) if the employee is a member of staff of an institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed; and the conduct was in good faith to avoid injury to the religious susceptibilities of that religion or creed.

8.7 Resolving workplace issues

Where local disagreements arise over decisions or actions affecting the employee, every effort will be made to resolve the matter through discussions between the employee and the relevant manager. When any discussions under this clause occur, the employee may be accompanied by an independent representative.

Where the matter is not resolved, the employee may refer it to the next level of management for resolution. In circumstances where it would be inappropriate for the employee to raise the matter with the relevant manager, the employee may initiate the matter at the next level of management.

In circumstances where a personal matter remains unresolved, or relates to the conduct of a manager, the employee may act under the OEA Review of Actions Policy, which is available on the OEA Intranet.

8.8 Dispute settlement

Where disagreements arise over the interpretation or implementation of this Agreement, work will continue in accordance with established custom and practice at the workplace while the procedure outlined below is applied. In instances where a genuine safety issue is involved, the employee will not be required to work in an unsafe environment, but will undertake suitable alternative work until the issue is resolved. When any discussions under this clause occur, the employee may be accompanied by an independent representative.

Where such disagreements arise, the following procedure will apply:

- The employee(s) will discuss the matter with the immediate supervisor.
- If the matter is not resolved at that level, further discussions will be arranged involving more senior levels of management.
- A member of the Executive may refer the matter to the appropriate level of management if that level of management has been by-passed by the employee(s).
- If the matter cannot be resolved by agreement, the services of an agreed independent mediator will be engaged, at OEA expense, to facilitate resolution of the matter between the employee and/or their representative and the Employment Advocate and/or his/her representative. Referral of the matter will be by agreement between the employee (or their representative) and the employer.
- If the matter is not resolved through mediation, the agreed mediator will provide a written opinion as to the most equitable outcome of the dispute, which will be binding on all parties. This will occur within 20 working days of the issue being discussed with the immediate supervisor.

8.9 Termination of employment - review mechanism

An employee will have the right to bring an action under Part VIA, Divisions 3 – Termination of Employment, of the *Workplace Relations Act 1996* in respect of any termination of employment under this Agreement. This will be the sole right of review in respect of such actions. In particular, termination of, or a decision to terminate employment, cannot be reviewed under review of actions/dispute avoidance and settlement procedures processes addressed in this Agreement. Nothing in this Agreement prevents the Agency Head from terminating an employee without notice for serious misconduct in accordance with subsection 170CM(7) of the *Workplace Relations Act 1996*.

8.10 Resignation

The employee must provide the delegate with a minimum period of written notice of 2 weeks when resigning, unless agreed otherwise.

8.11 Ongoing part-time work

The employee may request a transition to part-time work at any time under the term of this agreement. Such a request will be agreed subject to operational requirements. The delegate may initiate the introduction of part-time employment. A full-time employee will not be required to convert to part-time hours without their agreement. Employees returning directly from parental leave will be provided with access to regular part-time work upon application. Any part-time work arrangement will be documented and include a start date and an end date, although the part-time work arrangement may be extended beyond this date by agreement.

A part-time employee is one whose regular hours of work are less than 147 hours over a four week period. Ordinary hours of work for part-time employees, unless otherwise agreed between the employee and his or her manager, will be continuous and no less than 3 hours per day on any day worked by the employee, except as provided for under the *Maternity Leave (Commonwealth Employees) Act 1973*. A pattern of usual hours of work will be agreed at the commencement of part-time hours of work, and may only be varied by agreement. An unpaid meal break will not be regarded as breaking the continuity of hours of work. A part-time employee and his or her supervisor may, by agreement, vary regular hours of work. Similarly, part-time working arrangements may, for other than designated part-time jobs, be terminated by agreement.

A part-time employee will have access to the same overtime and flexible working arrangements as other employees.

Remuneration, leave entitlements and other benefits for part-time employees will be calculated on a pro rata basis apart from those allowances of a reimbursement nature, when part-time employees will receive the same amount as full-time employees.

Part-time employees will accrue personal leave on a pro rata basis. Leave will be credited based on the weekly hours worked as at the date of personal leave accrual. Personal leave granted will be deducted from credits on an hour for hour basis, with no salary variation.

8.12 Working from home

By agreement with his or her manager, the employee may work from home on either a temporary or occasional basis. Separate conditions will apply for regular or continuing home-based work arrangements – see 'Home-based work'.

8.13 Home Based Work

Some staff may be eligible for home based work under the OEA's Home Based Work Policy, which is available on the OEA Intranet.

9 Redeployment and Redundancy

9.1 Retirement, redeployment and redundancy (RRR)

These provisions only apply to ongoing employees whose employment has been confirmed. Throughout the application of the following provisions:

- ❑ the Employment Advocate will take all reasonable steps, consistent with the efficient management of the OEA, to move an excess employee to a suitable vacancy at an equal classification level within the OEA or in another APS agency; and
- ❑ the employee or his or her representative may raise issues concerning a redundancy situation directly with his or her supervisor or manager.

9.2 Consultation process

When the Employment Advocate is aware that the employee is expected to become excess, the Employment Advocate will at the earliest practicable time advise the employee of the situation.

Within a month of notification, discussions with the potentially excess employee and, where an employee requests, with the employee's representative, will be held to consider:

- ❑ measures which might be taken to reduce the incidence of an employee becoming excess; and
- ❑ redeployment or job swap opportunities for the employee concerned, including identifying whether the employee seeks redeployment.

If 15 or more employees are expected to become excess employee representatives will be invited to participate in the discussions and be provided with information regarding the excess employee situation.

9.3 Voluntary retrenchment

Employees who are advised they are potentially excess will also be made an offer of voluntary retrenchment, which they will have two months to consider. Unless the employee agrees, notice of termination will not occur before the two months have passed.

Within a month of receiving the offer the employee must be given advice on the amount of his or her severance pay, pay in lieu of notice and paid up leave credits; the amount of his or her accumulated superannuation contributions; options open to him or her concerning superannuation; and the taxation rules applying to the various payments.

The OEA will meet the cost of a financial planning consultation for the employee, to a reasonable cost determined in advance. The employee will be provided with outplacement assistance to the value of \$3,000 for OEA 1-6 employees, \$5,000 for OEA Managers, and \$10,000 for SES employees during the voluntary retrenchment consideration period, continuing into the retention period where necessary.

The two month consideration period can be reduced by agreement between the employee and the Secretary where the employee advises that they have been provided with the advice outlined above. Where the period is reduced, the employee will be paid for the unexpired period of the consideration period as at the date of termination; any leave benefits which may have accrued had the employee worked through the consideration period; and payment in lieu of the relevant period of notice.

Employees who are not potentially excess may be invited to express an interest in voluntary retrenchment, and other APS agencies may be canvassed for suitable job swap opportunities where these would permit the redeployment of employees who are potentially excess.

9.4 Period of notice

Where the employee agrees to be voluntarily retrenched, the Employment Advocate can approve the employee's retirement and upon approval will give the required notice of retirement. The period of notice will be 4 weeks (or 5 weeks for an employee over 45 with at least 5 years of continuous service).

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

9.5 Severance benefit

An employee retired under the provisions of Clause 9.3 is entitled to be paid a sum equal to two weeks salary for each completed year of service, plus a pro rata payment for completed months of service since the last completed year of service. For earlier periods of service to count there must be no breaks between the periods of service, except where the break in service is less than 1 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.

The minimum sum payable will be 4 weeks salary and the maximum will be 48 weeks salary.

The severance benefit will be calculated on a pro rata basis for any period where the employee has worked part-time hours during their period of service and the employee has less than 24 years full time service.

Service for severance pay purposes means:

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

Any period of service which ceased by way of retrenchment; retirement on grounds of invalidity; inefficiency or loss of qualifications; forfeiture of office; dismissal; termination for reasons of unsatisfactory service; or voluntary retirement at or above the minimum retiring age applicable to the employee or with the payment of an employer-financed retirement benefit will not count as service for severance pay purposes.

Absences from work which do not count as service for any purpose will not count as service for severance pay purposes.

For the purpose of calculating any severance benefit payment, salary will include the employee's salary, higher duties allowance where it has been received for a continuous period of at least 12 months preceding the date of the notice of retirement, and any allowances in the nature of salary which are paid during periods of annual leave and on a regular basis, but excluding allowances which are a reimbursement for expenses incurred, or a payment for disabilities associated with the performance of duty.

9.6 Retention periods

If an excess employee does not accept voluntary retrenchment, unless the employee agrees, an excess employee will not be involuntarily retired until the following retention periods have elapsed:

- 13 months where the employee has 20 or more years of service (as defined in Clause 9.5) or is over 45 years of age; or
- 7 months for other employees.

The retention period will commence two months after the day on which the Employment Advocate makes the offer of voluntary retrenchment. During the retention period the Employment Advocate will continue to take reasonable steps to find alternative employment for the excess employee; and/or

The excess employee may request assistance in meeting reasonable travel and incidental expenses incurred in seeking alternative employment, including interview skills training and other short courses. The retention period and the notice period will be extended by any periods of personal leave supported by medical evidence taken during these periods.

The Employment Advocate, if requested by the employee, will retire the employee and pay the balance of the retention period as a lump sum.

An excess employee will not be retired involuntarily if the employee has not been invited to elect to be voluntarily retrenched or has elected to be voluntarily retrenched but the Employment Advocate refuses to approve it.

An excess employee will be given 4 weeks notice (or 5 weeks notice for the employee over 45 with at least 5 years of continuous service) where it is proposed that the employee be involuntarily retired.

9.7 Major Organisational Change

Where a separate payment would facilitate the speedy resolution of major organisational change and it can be demonstrated that special circumstances exist, the Employment Advocate may, with the agreement of the Minister for Workplace Relations and the Public Service Minister, make a separate financial payment in addition to and separate from the entitlements prescribed in the RRR provisions in this agreement for excess employees.

10 Scope of Agreement

10.1 Coverage and persons bound

In accordance with section 170VF of the *Workplace Relations Act 1996* this Agreement binds the Secretary of the Department of Employment and Workplace Relations on behalf of the Commonwealth and the employee whose name and signature appears in Section 11 of this agreement.

10.2 Making a new agreement

The employer and the employee agree that work on an agreement to replace this agreement will commence not later than 3 months prior to the nominal expiry date of this agreement, with a view to this agreement being superseded.

10.3 Delegations

The Secretary may delegate any or all of his or her powers and functions under this agreement, including this power of delegation, and may do so subject to conditions.

11 Execution

Signed for the **Employer**,

Peter Boxall

(or name and signature of authorised officer) for and on behalf of the Secretary of the Department of Employment and Workplace Relations

Date:

Witnessed by,

Signature:

Name (printed):

Address:

Signed for the **Employee**,

Signature:

Name of Employee (printed):

Date:

Witnessed by,

Signature:

Name (printed):

Address:

Table 1

OEA Designation (APS equivalent)	1 June 2003 36.75 hr/week	1 June 2003 38 hr/week	1 June 2004 36.75 hr/week	1 June 2004 38 hr/week
OEA 1.1 (APS 1.1)	\$30,868	\$31,918	\$31,948	\$33,035
OEA 1.2 (APS 1.2)	\$31,428	\$32,498	\$32,528	\$33,635
OEA 1.3 (APS 1.3)	\$32,364	\$33,464	\$33,497	\$34,636
OEA 1.4 (APS 1.4)	\$33,588	\$34,731	\$34,763	\$35,946
OEA 2.1 (APS 2.1)	\$34,789	\$35,973	\$36,007	\$37,232
OEA 2.2 (APS 2.2)	\$35,763	\$36,980	\$37,015	\$38,275
OEA 2.3 (APS 2.3)	\$36,765	\$38,014	\$38,051	\$39,345
OEA 2.4 (APS 2.4)	\$38,127	\$39,426	\$39,462	\$40,806
OEA 3.1 (APS 3.1)	\$39,175	\$40,506	\$40,546	\$41,924
OEA 3.2 (APS 3.2)	\$40,185	\$41,551	\$41,592	\$43,006
OEA 3.3 (APS 3.3)	\$41,197	\$42,598	\$42,638	\$44,088
OEA 3.4 (APS 3.4)	\$42,302	\$43,741	\$43,783	\$45,272
OEA 4.1 (APS 4.1)	\$43,656	\$45,141	\$45,184	\$46,721
OEA 4.2 (APS 4.2)	\$45,050	\$46,583	\$46,627	\$48,213
OEA 4.3 (APS 4.3)	\$46,217	\$47,789	\$47,834	\$49,462
OEA 4.4 (APS 4.4)	\$47,439	\$49,052	\$49,099	\$50,769
OEA 5.1 (APS 5.1)	\$48,742	\$50,399	\$50,448	\$52,163
OEA 5.2 (APS 5.2)	\$50,275	\$51,984	\$52,034	\$53,804
OEA 5.3 (APS 5.3)	\$51,686	\$53,442	\$53,495	\$55,313
OEA 6.1 (APS 6.1)	\$52,842	\$54,640	\$54,691	\$56,553
OEA 6.2 (APS 6.2)	\$54,361	\$56,211	\$56,263	\$58,178
OEA 6.3 (APS 6.3)	\$55,877	\$57,779	\$57,833	\$59,801
OEA 6.4 (APS 6.4)	\$58,149	\$60,127	\$60,185	\$62,232
OEA 6.5 (APS 6.5)	\$60,461	\$62,517	\$62,577	\$64,705
OEA Manager 1.1 (APS Executive 1.1)	\$67,394	\$69,686	\$69,752	\$72,125
OEA Manager 1.2 (APS Executive 1.2)	\$70,083	\$72,468	\$72,536	\$75,004
OEA Manager 1.3 (APS Executive 1.3)	\$72,773	\$75,248	\$75,320	\$77,882
OEA Manager 2.1 (APS Executive 2.1)	\$77,721	\$80,365	\$80,441	\$83,177
OEA Manager 2.2 (APS Executive 2.2)	\$80,703	\$83,447	\$83,527	\$86,368
OEA Manager 2.3 (APS Executive 2.3)	\$83,683	\$86,529	\$86,612	\$89,557
OEA Manager 2.4 (APS Executive 2.4)	\$88,185	\$91,185	\$91,272	\$94,376
OEA Manager 2.5 (APS Executive 2.5)	\$91,061	\$94,159	\$94,249	\$97,454
OEA Legal Manager 2.5 (APS Executive 2.5)	\$92,942	\$96,104	\$96,195	\$99,468