

DPS, tabled document,
Australian Gov. Bargaining Framework

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From: Greening, Karen (DPS)
Sent: Monday, 26 May 2008 10:26 AM
To: Dolan, Kathryn (DPS)
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<http://www.workplace.gov.au/workplace/Organisation/Government/Federal/AgreementMaking/AustralianGovernmentBargainingFramework.htm>

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Australian Government Bargaining Framework

Bargaining Framework

The [Australian Government Employment Bargaining Framework](#) ('Bargaining Framework') (PDF 16kB) sets out Australian Government policy as it applies to workplace relations arrangements in Australian Government employment.

Supporting Guidance

The [Supporting Guidance to the Australian Government Bargaining Framework](#)(PDF 130kB) is intended to assist agencies in applying the Government's policy on agreement making in Australian Government Employment.



Australian Government

Department of Education, Employment and Workplace Relations

Australian Government Employment Bargaining Framework

*Supporting Guidance
February 2008*

Table of Contents

| | |
|--|-----------|
| Australian Government Employment Bargaining Framework | 1 |
| Introduction..... | 3 |
| The Australian Government Employment Bargaining Framework..... | 3 |
| Application of the Bargaining Framework | 4 |
| APS Agencies | 4 |
| Non APS Commonwealth Authorities and other Government employers | 4 |
| Types of Workplace Arrangements | 4 |
| Collective Agreement | 4 |
| Determination | 4 |
| Common law agreement | 4 |
| Stakeholders in the Bargaining Framework..... | 5 |
| Agency Heads | 5 |
| Employees..... | 6 |
| Agency/Authority Minister..... | 6 |
| Department of Education, Employment and Workplace Relations (DEEWR)..... | 6 |
| Australian Public Service Commission (APSC)..... | 7 |
| Workplace Authority | 7 |
| DEEWR Assessments | 8 |
| Introduction..... | 8 |
| Assessment of a Collective Agreement or applicable Collective Determination | 8 |
| Assessment of Individual Arrangements | 8 |
| Assessment of Policies and Practices | 9 |
| Part 1 – Workplace Relations Policy | 10 |
| 1.1 Senior Executive Service (SES) Terms and Conditions | 10 |
| 1.2 Non-SES employees’ Terms and Conditions | 12 |
| 1.3 Matters which would be prohibited from inclusion in a workplace agreement | 13 |
| 1.4 Ensuring employees have genuine choice regarding representation in the workplace, including in agreement making | 13 |
| 1.5 Facilitating genuine bargaining with employees and their representatives .. | 14 |
| 1.6 Ensuring employees’ terms and conditions are to be set out in modern, flexible and streamlined instruments | 14 |
| 1.7 Requirement to obtain Ministerial approval | 15 |
| 1.8 Application of the right of entry and freedom of association provisions of the Workplace Relations Act in a fair and reasonable manner..... | 15 |
| Part 2 – Remuneration Policy | 17 |
| 2.1 Improvements in remuneration are to be offset by genuine quantifiable productivity initiatives | 17 |
| 2.2 Salary advancement for individuals within classifications and broadbands is subject to at least satisfactory performance | 17 |
| 2.3 Remuneration increases are to apply prospectively, other than in exceptional circumstances..... | 18 |
| Part 3 – Funding Policy | 19 |
| 3.1 Funding from within Agency budgets | 19 |
| Part 4 – Staffing Policy | 20 |

| | | |
|-----|--|-----------|
| 4.1 | Flexible attraction and retention initiatives, including terms and conditions which assist employees in maintaining a healthy work-life balance | 20 |
| 4.2 | Leave policies and employment practices that support the release of community service volunteers for emergency services and Defence Reservists for peacetime training and deployment | 21 |
| 4.3 | Maintaining consistency with the APS Classification Rules | 22 |
| | APS classification structure | 22 |
| | Broadbanding of the APS classification structure | 23 |
| | Agency specific classification structures | 24 |
| | Local designations | 24 |
| | Work Level Standards..... | 24 |
| 4.4 | Retaining the portability of accrued paid leave entitlements..... | 24 |
| 4.5 | Include compulsory redeployment, reduction and retrenchment provisions, without enhancing existing redundancy arrangements | 25 |
| | SES employees..... | 25 |
| | No enhancement of existing obligations..... | 26 |
| | Flexibilities for Redeployment, Retention and Retrenchment arrangements | 28 |
| | Statutory obligations and termination of employment..... | 28 |
| | Legal advice | 29 |
| | Further Advice and Information | 30 |
| | DEEWR Client Contact Teams | 30 |
| | The Australian Public Service Commission | 30 |
| | The Workplace Authority | 30 |
| | Definitions | 31 |
| | Attachment A - Remuneration and Funding Declaration..... | 33 |

Australian Government Employment Bargaining Framework

PART 1 – Workplace Relations Policy

Workplace Arrangements should:

- 1.1 set out Senior Executive Service (SES) and equivalent employees' terms and conditions in either:
 - (a) Determinations issued under the employing legislation (where available) or individual common law arrangements; or
 - (b) where the majority of SES officers choose, in a Collective Agreement;
- 1.2 set out non-SES employees' terms and conditions in Collective Agreements whose coverage excludes SES employees, except for the following limited cases:
 - (a) small Agencies where the SES and non-SES have uniform functions and conditions; or
 - (b) defined specialist SES in non-managerial positions.

In addition to complying with all relevant legislative requirements, all Workplace Arrangements (including workplace agreements, common law arrangements, Determinations issued under the employing legislation, and workplace policies and practices) are to:

- 1.3 not include matters which would be prohibited from inclusion in a workplace agreement;
- 1.4 ensure employees have genuine choice regarding representation in the workplace, including in agreement making;
- 1.5 facilitate genuine bargaining with employees and their representatives;
- 1.6 ensure employees' terms and conditions are to be set out in modern, flexible and streamlined instruments;
- 1.7 obtain Ministerial approval of proposed collective terms and conditions prior to finalising negotiations and putting to staff for consideration; and
- 1.8 apply the right of entry and freedom of association provisions contained in the Workplace Relations Act in a fair and reasonable manner.

PART 2 – Remuneration Policy

Improvements in pay and conditions are to be linked to improvements in productivity:

- 2.1 improvements in remuneration are to be offset by genuine quantifiable productivity initiatives;
- 2.2 salary advancement for individuals within classifications and broadbands is subject to at least satisfactory performance; and
- 2.3 remuneration increases are to apply prospectively, other than in exceptional circumstances.

PART 3 – Funding Policy

- 3.1 Improvements in pay and conditions are to be funded from within existing budgets.

PART 4 – Staffing Policy

All Workplace Arrangements (including workplace agreements, Determinations issued under the employing legislation, common law arrangements and workplace policies and practices) are to:

- 4.1 incorporate flexible attraction and retention initiatives, including incorporating terms and conditions which assist employees in maintaining a healthy work-life balance; and
- 4.2 incorporate leave policies and employment practices that support the release of community service volunteers for emergency services duties and Defence Reservists for peacetime training and deployment.

In addition, APS Workplace Arrangements must also comply with the following:

- 4.3 maintaining structures that are consistent with the APS Classification Rules;
- 4.4 retaining the portability of accrued paid leave entitlements; and
- 4.5 include compulsory redeployment, reduction and retrenchment provisions, without enhancing existing redundancy arrangements.

Introduction

The Australian Government Employment Bargaining Framework

The Australian Government Employment Bargaining Framework ('Bargaining Framework') sets out Australian Government policy as it applies to workplace relations arrangements in Australian Government employment.

The Bargaining Framework balances the workplace interests of the Australian Government with those of Australian Government employees.

The aim of the Bargaining Framework is to implement the Government's workplace relations policy with respect to Australian Government employment, namely to:

- ensure fairness and flexibility;
- promote productivity;
- provide for Collective Agreements, negotiated at the individual Agency level, as the principal means of setting terms and conditions of employment for non-Senior Executive Service level employees; and
- enshrine accountability for compliance with the Bargaining Framework with individual Agencies.

From time to time, the Department of Education, Employment and Workplace Relations (DEEWR) will issue Workplace Relations Advices to provide information regarding relevant aspects of workplace relations policy and legislation. WR Advices can be found on the www.workplace.gov.au website under 'Federal Government'.

This document provides guidance for Agencies on the implementation of the Bargaining Framework when making workplace agreements and other Workplace Arrangements with their employees. It is not a definitive guide to all aspects of the Government's workplace relations policy or federal workplace relations legislation.

Application of the Bargaining Framework

Australian Government policy is for the Bargaining Framework to apply to Collective Agreements, Determinations made under section 24(1) of the *Public Service Act 1999* or other relevant employing legislation (Determinations) and common law agreements. Agencies will also ensure that workplace policies and practices are consistent with the Bargaining Framework.

APS Agencies

The Australian Government requires all Australian Public Service (APS) Agencies and the Members of Parliament Staff employment arrangements to comply with the relevant sections of the Bargaining Framework.

Non APS Commonwealth Authorities and other Government employers

Non-APS Commonwealth Authorities and other Australian Government employers should apply the Bargaining Framework as directed by their responsible Minister. Where the responsible Minister does not have the power to direct a non-APS Commonwealth Authority to apply the Bargaining Framework, those Authorities are encouraged to voluntarily apply the Bargaining Framework.

This Bargaining Framework does not apply to Government Business Enterprises or the Australian Defence Force. However, Government Business Enterprises are encouraged to apply the Government's workplace relations policy.

Types of Workplace Arrangements

Collective Agreement

A union Collective Agreement or employee Collective Agreement as defined in the *Workplace Relations Act 1996* (WR Act).

Determination

A Determination made by an authorised office holder under the relevant employing legislation. A Determination may apply to an individual employee or a group of employees.

Common law agreement

For the purposes of the Bargaining Framework, a common law agreement should be a written agreement made between an Agency and another party, generally, an employee of that Agency.

Definitions of key terms are provided at page 31.

Stakeholders in the Bargaining Framework

Agency Heads

Agency Heads are responsible for the application of the Bargaining Framework within their respective organisations.

Each Agency Head will:

- ensure that all Workplace Arrangements are consistent with the Bargaining Framework and Australian Government policy;
- engage genuinely with employees and their representatives in negotiating Collective Agreements and making other Workplace Arrangements;
- advise the Agency Minister of any significant proposed workplace relations initiatives prior to implementation;
- advise the Agency Minister, copied to the Minister for Employment and Workplace Relations, of any workplace matters (potential or actual) which could significantly affect delivery of services and any proposed response.

With respect to Collective Agreements, each Agency Head will:

- negotiate a Collective Agreement with their non SES employees (and SES employees where applicable) consistent with the Bargaining Framework;
- ensure the terms of a proposed Collective Agreement are provided to DEEWR for assessment for consistency with the Bargaining Framework prior to seeking Ministerial approval;
- ensure Ministerial approval on the terms of a proposed Collective Agreement is obtained before final approval of the agreement is obtained from employees;
- ensure any inconsistencies between the terms of a proposed Collective Agreement and Bargaining Framework are either:
 - (i) rectified prior to the Agency Head seeking the approval of the Agency Minister to offer the Workplace Arrangement to staff; or
 - (ii) drawn to the Agency Minister's attention when requesting the approval of the Minister to proceed;
- advise DEEWR if a Collective Agreement containing inconsistencies with the Bargaining Framework is approved by the Agency Minister;
- provide DEEWR with a copy of the Collective Agreement following final approval from staff.

With respect to a Determination which applies to a group of employees, Agency Heads will follow their obligations with respect to Collective Agreements.

- An exception to this requirement is where a Determination is necessary solely to preserve pre-existing terms and conditions immediately following machinery of government change.

Agency Heads will ensure that any individual arrangements, including Determinations or common law agreements, are consistent with the Bargaining Framework and Australian Government policy.

Employees

Employees are responsible for providing feedback to Agencies on terms and conditions of employment and, where applicable, approving Collective Agreements.

Employees will follow genuine bargaining rules when negotiating Collective Agreements.

Agency/Authority Minister

The Agency or Authority Minister is responsible for the application of the Bargaining Framework.

Agency or Authority Ministers will:

- either approve or reject a proposed Collective Agreement, having taken account of all relevant information, including the Bargaining Framework and DEEWR's Bargaining Framework assessment;
- either approve or reject a proposed Determination applying to more than one employee, except where the Determination is to give effect to a Machinery of Government change;
- not approve arrangements that cannot be funded from the Agency or Authority's existing Budget allocation;
- ensure that all Workplace Arrangements are consistent with the Bargaining Framework and Australian Government policy; and
- write to the Minister for Employment and Workplace Relations if they, as Agency or Authority Minister, have agreed to approve an arrangement which is inconsistent with the Bargaining Framework, advising the reasons for that decision.

Department of Education, Employment and Workplace Relations (DEEWR)

DEEWR is responsible for the application of the Bargaining Framework.

DEEWR will:

- publish and maintain the Bargaining Framework in accordance with Government policy;
- provide all APS Agencies and Authorities with information and advice on workplace relations policy and the application of the Bargaining Framework through various means, including the issuing of WR Advices;
- provide APS Agencies, and Authorities where applicable, with written advice on whether a proposed Collective Agreement or Determination is consistent with the Bargaining Framework;
- provide preliminary informal advice on early drafts of a proposed Collective Agreement, when requested to do so;
- provide advice on whether a Workplace Arrangement complies with the Bargaining Framework;

- provide information, advice and recommendations on Workplace Arrangements which represent current best practice across the APS and are designed to improve the operation and administration of Workplace Arrangements in Australian Government employment; and
- provide information and advice to Agencies and Authorities on specific workplace relations matters, including consistency of Workplace Arrangements with the Bargaining Framework, where the Agency or Authority requests.

Australian Public Service Commission (APSC)

The role of the APSC is to promote good practice across the APS and assist Agencies and their employees in working in accordance with the APS Values.

The APSC will:

- provide advice to DEEWR on the consistency of an Agency's Workplace Arrangements, policies and practices with the Bargaining Framework in relation to adherence to Redeployment, Retrenchment and Redundancy provisions, the *Public Service Act 1999* (PS Act) and relevant subordinate legislation.

Workplace Authority

The Workplace Authority does not have a direct role in the application of the Bargaining Framework.

However, the Workplace Authority may assist Agencies, Authorities and other bargaining participants by providing information and advice on:

- workplace agreement lodgement processes; and
- whether a proposed Collective Agreement or other workplace agreement contains prohibited content.

DEEWR Assessments

Introduction

As set out above, DEEWR is responsible for providing advice on Australian Government workplace relations policy, the application of the Bargaining Framework and assessing Collective Agreements for compliance with the Bargaining Framework.

Agencies are encouraged to seek information and advice from DEEWR on these matters when required.

Assessment of a Collective Agreement or applicable Collective Determination

Agencies subject to the Bargaining Framework are required to submit Collective Agreements and Determinations, where applicable, to DEEWR for assessment prior to the Agency seeking final employee approval of the terms of the agreement.

DEEWR will assess the Collective Agreement or Determination and provide a written assessment to the Agency Head.

Agencies are strongly encouraged to contact their DEEWR client contact team to discuss the development of any Collective Agreement or Determination and the Bargaining Framework before an agreement is finalised.

DEEWR can provide, on request, preliminary assessments of proposed collective Workplace Arrangements to assist Agencies identify any potential inconsistencies with the Bargaining Framework at an early stage.

Where a Collective Agreement or Determination has been provided to DEEWR for assessment DEEWR will discuss all identified inconsistencies with the Agency's nominee prior to finalising the written assessment.

A written assessment will generally be provided within 10 working days of DEEWR receiving all relevant information, unless DEEWR and the Agency otherwise agree.

Where a Collective Agreement or Determination is significantly amended or altered following DEEWR's written assessment (other than to amend any inconsistencies raised in the assessment), including amendments to the total remuneration provided in the agreement or the nominal expiry date, the agreement must be resubmitted to DEEWR for assessment.

Assessment of Individual Arrangements

Agency Heads are responsible for ensuring that individual arrangements, including common law agreements, are consistent with the Bargaining Framework and the Government's workplace relations policy.

Agency Heads may request DEEWR to assess individual arrangements for consistency with the Bargaining Framework, however formal assessment is not required under the Bargaining Framework.

DEEWR is available to provide advice to Agencies about individual arrangements which relate to the Bargaining Framework or the Government's workplace relations policy where an Agency requests.

Assessment of Policies and Practices

Agency Heads are responsible for ensuring that their workplace policies and practices are consistent with the Bargaining Framework and the Government's workplace relations policy.

Agency Heads may request DEEWR assess workplace policies and practices for consistency with the Bargaining Framework, however formal assessment of policies and practices is not required under the Bargaining Framework.

DEEWR is also available to provide advice to Agencies about policies and practices which relate to the Bargaining Framework or the Government's workplace relations policy where an Agency requests.

Part 1 – Workplace Relations Policy

Workplace Arrangements should:

- 1.1 set out Senior Executive Service (SES) and equivalent employees' terms and conditions in either:
 - (a) Determinations issued under the employing legislation (where available) or individual common law arrangements; or
 - (b) where the majority of SES officers choose, in a Collective Agreement;
- 1.2 set out non-SES employees' terms and conditions in Collective Agreements whose coverage excludes SES employees, except for the following limited cases:
 - (a) small Agencies where the SES and non-SES have uniform functions and conditions; or
 - (b) defined specialist SES in non-managerial positions.

In addition to complying with all relevant legislative requirements, all Workplace Arrangements (including workplace agreements, common law arrangements, Determinations issued under the employing legislation, and workplace policies and practices) are to:

- 1.3 not include matters which would be prohibited from inclusion in a workplace agreement;
- 1.4 ensure employees have genuine choice regarding representation in the workplace, including in agreement making;
- 1.5 facilitate genuine bargaining with employees and their representatives;
- 1.6 ensure employees' terms and conditions are to be set out in modern, flexible and streamlined instruments;
- 1.7 obtain Ministerial approval of proposed collective terms and conditions prior to finalising negotiations and putting to staff for consideration; and
- 1.8 apply the right of entry and freedom of association provisions contained in the Workplace Relations Act in a fair and reasonable manner.

1.1 Senior Executive Service (SES) Terms and Conditions

In accordance with the Government's workplace relations policy, Australian Workplace Agreements (AWAs) and Individual Transitional Employment Agreements (ITEAs) may not be offered to employees covered by the Bargaining Framework.

It is Australian Government policy that the terms and conditions for SES employees and their equivalents be reflected in either:

- Determinations;
- individual common law arrangements; or
- where a majority of SES officers in an Agency choose, a Collective Agreement.

SES Collective Agreement Option

Given the different nature of the duties of SES and non SES employees, where a majority of affected SES level employees choose to negotiate a Collective Agreement, it is Government policy that a separate Collective Agreement for SES level employees be negotiated.

A 'majority of SES officers' means either 50 per cent plus one of affected SES employees in the Agency (or relevant business function where the Agency chooses to implement separate Collective Agreements) or, if a vote is conducted, a majority of affected SES employees in the Agency who vote.

An 'affected SES employee' means an SES employee who may be covered by the Collective Agreement during its nominal duration.

It is Government policy that a separate Collective Agreement will be made between and Agency and SES employees under this option in all cases other than the following:

- (a) small Agencies where SES and non-SES level employees have uniform or highly similar functions and conditions; or
- (b) defined specialist SES employees in non-managerial positions.

Agencies considering a single Collective Agreement for SES and non-SES employees are encouraged to consult with DEEWR about the application of these exceptions.

SES Individual Arrangement Options

Where no Collective Agreement is in place in an Agency, SES employees' terms and conditions of employment will remain subject to all applicable minimum standards contained in a relevant award (such as the APS Award 1998) and relevant legislation.

Agencies should be conscious that Determinations and common law agreements may be more limited in their operation than Collective Agreements (for instance, they must comply in every respect with the conditions of an applicable award, whereas a Collective Agreement can, subject to an overall no disadvantage test, alter those conditions).

When using common law agreements, APS Agencies must include provisions which:

- mirror the protections afforded APS employees who are subject to machinery of government transfers by s.72 of the PS Act (in circumstances where an Agency is moved outside the APS, a common law agreement will cease to apply, and those protections would not be maintained);
- allow the common law agreement to be overridden by a s.24(3) Determination subsequently issued by the Public Service Minister; and
- include dispute resolution arrangements.

Agencies should note that the Australian Industrial Relations Commission (AIRC) does not have any jurisdiction to hear and determine disputes in relation to common law agreements. Agencies should seek advice from the Australian Industrial Registry

when drafting their dispute resolution arrangements if it is intended the AIRC should have a dispute resolution role. DEEWR can also provide advice about options for dispute resolution arrangements.

APS Agencies should note a Determination cannot alter an employee's salary for superannuation purposes. A separate common law agreement will be required for this purpose.

Further information on the use of Determinations and common law agreements is available for Agencies from their DEEWR client contact team or at the 'Frequently Asked Questions' page of the 'Federal Government' section of the Australian Workplace internet site.

As the issues associated with Determinations and common law agreements will vary on a case by case basis, Agencies are invited to contact DEEWR for further advice.

Existing SES Employees' Australian Workplace Agreements (AWA)

In accordance with the Government's workplace relations policy all existing workplace agreements, including Australian Workplace Agreements, will continue to operate until they are terminated or replaced in accordance with the WR Act.

Further information on the termination or replacement of existing workplace agreements is available for Agencies from their DEEWR client contact team or at the 'Frequently Asked Questions' page of the Australian Workplace internet site.

1.2 Non-SES employees' Terms and Conditions

In accordance with the Government's workplace relations policy, AWAs and ITEAs may not be offered to employees covered by the Bargaining Framework.

It is Australian Government policy that terms and conditions for non-SES employees be negotiated at each Agency in separate Collective Agreements.

Circumstances may arise where it is prudent or necessary for the terms of a Collective Agreement to be supplemented by a Determination or common law agreements. A Determination or common law agreement cannot replace a Collective Agreement. However, the terms and conditions of the Determination or common law agreement will apply to the employee/s where they supplement the terms of the Collective Agreement.

For non-SES employees, a Determination or a common law agreement is not a satisfactory alternative to a Collective Agreement to set terms and conditions in the medium to long term. However, it may also be necessary for interim periods to use a Determination or common law agreements to set terms and conditions of employment while a Collective Agreement is negotiated.

Further information on the use of Determinations and common law agreements is available for Agencies from their DEEWR client contact team or at the 'Frequently

Asked Questions' page of the 'Federal Government' section of the Australian Workplace internet site.

Existing Non-SES Employees' AWAs and CAs

In accordance with the Government's workplace relations policy, all existing workplace agreements, including Australian Workplace Agreements, continue to operate until they are terminated or replaced in accordance with the *Workplace Relations Act 1996*.

Further information on the termination or replacement of existing workplace agreements is available for Agencies from their DEEWR client contact team or at the 'Frequently Asked Questions' page of the 'Federal Government' section of the Australian Workplace internet site.

1.3 Matters which would be prohibited from inclusion in a workplace agreement

All Workplace Arrangements must comply with all relevant legislative requirements, including, for example, the discrimination and freedom of association rules in the WR Act.

The Government's policy is that the current legislated prohibition on bargaining for, or including, prohibited content in workplace agreements must not be subverted by incorporating this content in a separate written agreement or document.

DEEWR will endeavour to identify potential non compliance during formal assessments of Collective Agreements and where an Agency has requested assessment of other workplace agreements or arrangements. However, DEEWR cannot provide definitive advice as to whether a particular clause or agreement complies with all relevant legislation, including rules relating to prohibited content.

Where DEEWR identifies inconsistencies during its assessment of Collective Agreements, Agencies will ensure that the inconsistency is immediately rectified.

1.4 Ensuring employees have genuine choice regarding representation in the workplace, including in agreement making

It is Government policy that every employee is free to decide whether or not to join and be represented by a union in the workplace, including in bargaining.

It is unlawful for anyone to try to stop an employee exercising this choice by threats, pressure, discrimination or victimisation.

An individual employee's choice to be represented must be respected by all parties in the workplace. Where an employee elects to be a member of a union, their Agency must respect the employee's right to deal on workplace matters through their representative.

Employees have the right to seek advice, assistance and representation from their union in the workplace. Workplace delegates will be able to represent their colleagues in the workplace.

It is Government policy that Agencies should facilitate employee access to their representatives, including unions, in the workplace in a fair and reasonable way. This includes the provision of information to employees by their representatives.

The Government expects that all arrangements will take into account the specific circumstances of an Agency and will not prejudice the efficient operation of, or service provision by, the Agency.

1.5 Facilitating genuine bargaining with employees and their representatives

It is Australian Government policy that Agencies will genuinely bargain with their employees when making Collective Agreements.

Agencies will observe the right of employees who are union members to be represented by their union in bargaining.

Genuine bargaining requires all bargaining participants to consider issues relevant to the Agency and its workplaces. Genuine bargaining requires all bargaining participants to bargain and consult on a cordial and professional basis.

The Agency Head will genuinely consult employees on the form of Collective Agreement they would prefer for the Agency. Where there is no clear view, an Agency Head, employees or their representatives may test the views of employees on the form of Collective Agreement for the Agency.

Generally, revisiting the decision on the form of Collective Agreement or, for example, a bargaining unit, during collective bargaining would not constitute genuine bargaining.

Where an Agency believes that the form of Collective Agreement may need to be revisited during collective bargaining, the Agency will seek advice from DEEWR.

Agency Heads will genuinely consult with employees and their representatives in relation to other Workplace Arrangements.

1.6 Ensuring employees' terms and conditions are to be set out in modern, flexible and streamlined instruments

Collective Agreements may include as much or as little detail as agreed between Agencies and their employees.

The terms of Collective Agreements should facilitate ongoing productivity initiatives and the capacity to meet changing and evolving business needs in a fair and reasonable manner.

It is government policy that Collective Agreements include flexibility clauses to enable an Agency and individual employee to make individual arrangements that meet the genuine needs of an individual employee without disadvantaging that employee.

These requirements will apply to other collective Workplace Arrangements.

1.7 Requirement to obtain Ministerial approval

It is a requirement that Ministerial approval of the terms of a Collective Agreement or Determination is obtained prior to the Collective Agreement being formally approved by employees or the collective Determination is made.

When seeking Ministerial approval, an Agency must inform the Agency Minister of:

- the findings of the DEEWR assessment against the Bargaining Framework; and
- the financial implications of the proposed agreement or Determination.

1.8 Application of the right of entry and freedom of association provisions of the Workplace Relations Act in a fair and reasonable manner

The role of workplace representatives, including union delegates and employee representatives, is to be respected and facilitated.

It is the Government's expectation that Agencies and employee representatives, including unions, will work together collaboratively and professionally.

The Government recognises the legitimate role played by unions in the workplace, including the rights and obligations provided for under legislation. The Government recognises the legitimate role of unions to act on behalf of their members and for the benefit of workers and to organise and bargain collectively.

In accordance with longstanding practice, Agencies are to provide the facility for an employee to have their union membership fees deducted from their pay upon the request of the employee.

To enable the best possible representation of employees and to enhance more productive relationships and working arrangements within an Agency, union delegates and/or employee representatives may require training in workplace relations matters including occupational health and safety matters.

Reasonable access to training is to be facilitated. This may, for example, include training during work time if that does not prejudice the efficient operation of, or service provision by, the Agency.

Agencies and unions will comply with the terms of the WR Act, including with respect to right of entry.

It is recommended that each Agency develops, in consultation with employee representatives, a timely process to resolve issues arising from these arrangements.

To enable proper representation and communication Agencies will provide specified areas for the display of union information outside public contact areas.

Part 2 – Remuneration Policy

Improvements in pay and conditions are to be linked to improvements in productivity:

- 2.1 improvements in remuneration are to be offset by genuine quantifiable productivity initiatives;
- 2.2 salary advancement for individuals within classifications and broadbands is subject to at least satisfactory performance; and
- 2.3 remuneration increases are to apply prospectively, other than in exceptional circumstances.

2.1 Improvements in remuneration are to be offset by genuine quantifiable productivity initiatives

The Australian Government requires improved remuneration and conditions for Australian Government employees to be underpinned by improved productivity and performance.

While Agencies are not required to provide detailed productivity estimates to DEEWR for review, Agencies will ensure that they are able to demonstrate, to their Minister's satisfaction, that proposed improvements to the terms and conditions of employment for Agency employees are underpinned by quantifiable productivity initiatives.

For the purposes of the DEEWR assessment, this requirement will be satisfied by completion of the template declaration at [Attachment A](#).

2.2 Salary advancement for individuals within classifications and broadbands is subject to at least satisfactory performance

Salary advancement through a classification and/or broadband is only to occur where an employee's performance has been assessed at least at the satisfactory level. This does not prevent Agencies from setting additional requirements.

Agencies have the flexibility to develop performance management systems that meet the particular needs of their organisation and employees, noting that the Public Service Commissioner's Directions 1999 (Chapter 2.12) require Agencies to put in place a fair and open performance management system that:

- covers all employees;
- guides salary movement;
- is linked to organisational and business goals and the maintenance of the APS Values;
- provides employees with a clear statement of performance expectations; and
- provides employees with an opportunity to comment on those expectations.

Advancement within a broadband should also be guided by work availability and application of the merit principle.

2.3 Remuneration increases are to apply prospectively, other than in exceptional circumstances

Other than in exceptional circumstances, pay increases must only apply prospectively from the date of operation of a Collective Agreement or other Workplace Arrangement.

Should an Agency consider exceptional circumstances exist such that it is necessary to include a remuneration clause in a Collective Agreement or collective arrangement which applies retrospectively, the Agency should consult with DEEWR.

The inability of the negotiating parties to reach agreement through genuine bargaining would not be considered an exceptional circumstance.

Salary increases should not be scheduled to take effect after the proposed nominal expiry date of a Collective Agreement.

Bonus payments, including where a bonus is payable on commencement of an agreement, are increases in remuneration and, in accordance with Government policy, must be linked to improvements in productivity and performance.

Note: Should an Agency wish to calculate the Average Annualised Wage Increase (AAWI) arising from any proposed pay increases, the following formula applies:

$$AAWI(\%) = \frac{TotalPayIncrease(\%) \times 365}{DurationOfAgreementInDays}$$

Part 3 – Funding Policy

3.1 Improvements in pay and conditions are to be funded from within existing budgets.

3.1 *Funding from within Agency budgets*

It is Australian Government policy that Agencies and Agency Ministers may not enter into arrangements which cannot be met from within existing Agency budgets.

Therefore improvements in pay and conditions will be funded from within existing Agency budget allocations for the life of a Collective Agreement or other Workplace Arrangement.

In determining appropriate remuneration levels in their Workplace Arrangements, Agencies should take into account any approved funding increases, including annual indexation, and the application of all efficiency dividends.

As noted under Part 2.1, Agencies are required to provide a signed declaration covering remuneration and funding policy. A template for that declaration is at Attachment A.

To ensure an accurate assessment of the cost impact of Workplace Arrangements Agencies should seek to assess any potential increases in costs from the flexibility clause and from the implementation of any incomplete reviews of terms and conditions contained within the agreement.

Agencies may wish to use the following clause in their Collective Agreements:

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

Part 4 – Staffing Policy

All Workplace Arrangements (including workplace agreements, common law arrangements, Determinations issued under the employing legislation, and workplace policies and practices) are to:

- 4.1 incorporate flexible attraction and retention initiatives, including incorporating terms and conditions which assist employees in maintaining a healthy work-life balance; and
- 4.2 incorporate leave policies and employment practices that support the release of community service volunteers for emergency services duties and Defence Reservists for peacetime training and deployment.

In addition, APS Workplace Arrangements must also comply with the following:

- 4.3 maintaining structures that are consistent with the APS Classification Rules;
- 4.4 retaining the portability of accrued paid leave entitlements; and
- 4.5 include compulsory redeployment, reduction and retrenchment provisions, without enhancing existing redundancy arrangements.

4.1 Flexible attraction and retention initiatives, including terms and conditions which assist employees in maintaining a healthy work-life balance

The Government acknowledges the wide range of flexible working arrangements which exist throughout Australian Government employment to support the needs of employees and assist Agencies in attracting and retaining valuable staff.

Such arrangements include parental leave above minimum legislative entitlements, employee initiated part-time work, purchased leave and annual leave at half pay, career break schemes and flexible working hours.

Nevertheless, each Agency should continue to work proactively with employees and their representatives to consider how their Workplace Arrangements might be used to support the needs of employees to retain existing employees and to assist the attraction of new employees to the APS.

It is Government policy that Agencies' Collective Agreements and other Workplace Arrangements should allow flexible work arrangements to be agreed between the Agency Head and employees.

The Government is committed to assisting employees to maintain a healthy work-life balance. To this end it is expected that Agencies will take into account the work-life issues facing employees in the development of their Collective Agreements and other Workplace Arrangements. The cost and productivity benefits of any proposed initiatives must be taken into account when determining the overall affordability of the proposed arrangements.

4.2 Leave policies and employment practices that support the release of community service volunteers for emergency services and Defence Reservists for peacetime training and deployment

The Government supports employees participating in emergency services duties and Defence Force Reserve activities.

The Australian Government therefore expects that Agencies will lead the way in employment policies and practices which support the release of community service personnel for emergency services duties and Defence Reservists for peacetime training and deployment.

Agencies may determine their own approach to these leave types provided they remain consistent with the broader Government policy of support for these functions.

In acknowledgement of the Government's objectives in this area, Agencies are encouraged to promote the benefits of community service and Defence Reserve service to their employees.

The provision of unpaid leave to community service personnel for emergency services duties should encompass leave for regular training, all emergency services responses, reasonable recovery time and ceremonial duties.

Defence Reserve Support Council

The Defence Reserves Support Council (DRSC) has developed a public sector leave policy which it recommends to Australian Government employers. Specifically, the DRSC recommends that employers:

- provide four weeks (20 working days or 28 calendar days) leave on full pay each year for Reservists undertaking Defence service;
- provide an additional two weeks paid leave to allow for a Reservists' attendance at recruit/initial employment training;
- provide scope for additional leave for Defence service, either on a paid, unpaid or top-up pay basis;
- not require Reservists to pay their tax-free Reserve salary to their Agency in any circumstances;
- allow Defence leave entitlements to accumulate and be taken over a two year period;
- treat leave for Defence service, whether with or without pay or on top-up pay, as service for all purposes – the exception being that a period or periods of leave without pay in excess of six months not count as service for annual leave purposes;
- provide Reservists with continued access to other components of their remuneration package, e.g. Superannuation (subject to the rules of the CSS, PSS and Military Superannuation and Benefits Scheme), studies assistance, salary reviews, cars, during periods of Defence service; and
- keep Reservists informed of developments in the workplace, e.g. Reservists absent from the workplace on Reserve Service should have the opportunity to

participate in any ballot on a proposed workplace agreement where their employment is or will be subject to the agreement.

These arrangements are consistent with the Government's commitment to supporting Reserve service. The Government therefore supports Agencies implementing arrangements along these lines through their Workplace Arrangements.

In recognition of the potential impact of Defence service on employers, the Australian Defence Force has undertaken to provide Agencies, whenever possible, with at least three months notice of a requirement for a Reservist to undertake Defence service. A number of Agencies also require Reservists to provide written evidence of their attendance for Defence service.

APS Agencies are eligible to receive the Employer Support Payment (ESP). The ESP Scheme provides a financial benefit to those employers who provide leave, other than normal paid leave entitlements (e.g. annual leave), to Reservists to undertake peacetime training and deployment. Under the ESP Scheme an employer is eligible to receive the ESP once a Reservist has completed 14 days continuous Reserve service in any financial year. The qualifying period can be undertaken as a single period or as multiple periods of continuous Defence Service, as long as each period of continuous Defence Service is a minimum of five consecutive days.

Further information on the ESP, including assistance in developing Reserve service promotional material, can be obtained by contacting the DRSC on 1800 803 485.

Requirements specific to APS Agencies only

4.3 Maintaining consistency with the APS Classification Rules

Section 23 of the PS Act provides for the Public Service Minister to make rules about classifications of APS employees. *The Public Service Classification Rules 2000* (the Classification Rules) allow employees and duties to be classified on the basis of work value and enable the grouping of classifications at comparable levels.

The Classification Rules are available at [DEEWR's Workplace website](#).

The Bargaining Framework requires that the classification structures contained in Agency agreements be consistent with the Classification Rules.

APS classification structure

The Classification Rules provide for APS Levels 1 to 6, Executive Levels 1 and 2, Senior Executive Bands 1, 2 and 3 and a limited number of approved Agency specific classification structures. In addition, the Classification Rules provide for associated training classifications including for trainees, cadets, graduates and apprentices.

Rule 6 of the Classification Rules requires an Agency Head to allocate an approved classification to each APS employee in the Agency. Approved classifications are only those that appear in Schedules 1 and 2 of the Classification Rules.

Broadbanding of the APS classification structure

Rule 9 of the Classification Rules allows an Agency Head to allocate more than one classification to a group of duties. This is the process of combining several classification levels into a broadband. The broadband encompasses the full range of work values and work level standards of the group of classifications from the base of the lowest to the top of the highest.

It should be noted that the broadband is allocated to the group of duties and not the individual employee. An employee can only hold one classification at any given time and each employee must hold a classification. As such, any title given to a broadband by an Agency should be regarded as a local designation and not an approved classification. Agreements should be drafted in a way that allows the Agency and employees to clearly identify, at any point in time, what approved classification each employee holds.

Agencies should ensure that as each employee moves through a particular broadband, the employee's APS classification is adjusted to remain consistent with the relevant classification for the substantive duties that the employee is performing and the employee's position in the broadband.

The three band classification framework for the SES **can not** be broadbanded.

If Agencies are considering broadbanding the non-SES APS classification structure, it is important for Agencies to look carefully at the homogeneity or commonality of functions, including supervisory needs, when developing broadbands, and to place barriers appropriately. Agencies should be mindful that it would be difficult to meet the APS Values without incorporating at least two breaks that would require open competitive selection, that is, a minimum of three broadbands.

The extent of a broadbanded structure and the location of the breaks requiring open competitive selection will depend upon the particular organisational structure of the Agency. Whilst Agency Heads have the flexibility to agree on broadbanding arrangements which best suit the needs of their Agency, they must take into account the APS Values relating to merit, community access to employment and leadership when establishing such arrangements.

To this end, Agencies with new or revised broadbanding proposals will be required to provide evidence to DEEWR and the APSC that such proposals meet the APS Values and legislative requirements in relation to merit and leadership, as part of the Bargaining Framework assessment process.

It is therefore strongly recommended that Agencies consult DEEWR for clarification on classification issues and the APSC for merit and leadership issues during the early stages of development of any proposed broadbanding to ensure consistency with the Classification Rules and the APS Values.

Agency specific classification structures

Agencies contemplating moving to an Agency specific classification structure should discuss their needs with DEEWR.

Local designations

Agency specific classification structures should not be confused with local designations. The confusion usually occurs when Agencies develop a broadbanded structure and give their broadbands a locally designated classification. For example, a broadband of APS 1 to APS 3 may be locally designated as 'Agency X Level 1'.

Agencies utilising local designations must ensure that the equivalent APS classifications are included next to references to the local designation in their Collective Agreement.

Work Level Standards

The Classification Rules require Agencies to determine Work Level Standards (WLS) for each classification being utilised in the Agency through genuine consultation with employees and their representatives. WLS specify the distinctive features of work at each level, characterising the type of duties undertaken and assessing the relative worth of jobs in terms of work value.

4.4 Retaining the portability of accrued paid leave entitlements

Agreements and other Workplace Arrangements are to retain portability of accrued annual leave and personal/carer's leave entitlements (however described) within the APS, with future entitlements being those prevailing at the receiving Agency. Entitlements to leave will subsequently accrue at the rate applying in the receiving Agency.

The provisions of the *Parliamentary Service Act 1999* and the *Australian Capital Territory Government Service (Consequential Provisions) Act 1994* require Agencies to recognise certain leave accrued in these services. Accordingly, Workplace Arrangements should provide for the portability of annual and personal/carer's leave (however described) between the Parliamentary Service and the APS, and accrued annual leave between the ACT Public Service and the APS. Workplace Arrangements should also provide for the portability of personal/carer's leave between the ACT Public Service and the APS as this is the basis of ongoing inter-government agreement.

The portability of leave within the APS requires receiving Agencies to act on the advice of an employee's former employing Agency in determining their accrued leave entitlement. For example, Agencies have previously used a range of terms to describe personal/carer's leave in their existing Workplace Arrangements and have done so for varying reasons. A receiving Agency is required to recognise leave accrued in an employee's former Agency, even if the purpose for which it was provided is not recognised in the receiving Agency's agreement. However, leave accrued from

commencement with the receiving Agency, will generally accrue in accordance with that Agency's arrangements, unless specified otherwise.

Certain other terms and conditions of employment set out in Commonwealth legislation and applying to the APS will continue to apply and cannot be overridden by Workplace Arrangements. In particular, these include long service leave, maternity leave, workers' compensation and occupational health and safety.

A suggested clause providing for portability of accrued leave between the Parliamentary Service and the APS, the ACT Public Service and the APS follows:

Where an employee joins the Agency on or after the lodgement date from an employer staffed under the Public Service Act 1999, the Parliamentary Service Act 1999, from the ACT Government Service, accrued annual leave and personal/carers leave (however described) will be transferred, provided there is no break in continuity of service.

Further information on payments related to the portability of accrued annual and long service leave entitlements is set out in the Financial Management and Accountability Orders.

4.5 Include compulsory redeployment, reduction and retrenchment provisions, without enhancing existing redundancy arrangements

All Collective Agreements, Determinations where relevant and common law agreements must provide for access to compulsory redeployment, reduction and retrenchment (RRR) for excess APS staff. This will ensure that Agencies maintain the capacity to resolve excess staff situations by either:

- moving the employee to a suitable job at or below their substantive classification level (with or without the employee's agreement); or
- terminating the employee's employment under section 29 of the PS Act if the employee does not wish to accept voluntary retrenchment and there is no useful work for the employee to perform.

SES employees

Section 37 of the PS Act provides that an Agency Head may give notice in writing to an SES employee stating that the employee will become entitled to a payment of a specified amount if the employee retires within a period specified in the notice – i.e. an incentive to retire.

The purpose of this provision is to instigate change and effectively manage an Agency's SES workforce particularly in downsizing situations. It is likely that most situations involving excess SES employees will be managed under section 37 of the PS Act.

Chapter 6 of the Public Service Commissioner's Directions (the Commissioner's Directions) sets out the minimum requirements that must be met in relation to an Agency head giving notice to an SES employee under section 37 of the PS Act, and in

particular provides that the Commissioner must have agreed to the amount to be paid to the employee in these circumstances. A Determination or common law agreement should not bind the Commissioner to a certain level of payment for redundancy or retrenchment and as such should be silent on the quantum of the payment.

As this incentive to retire provision requires the agreement of the individual SES employee, Collective Agreements, Determinations or common law agreements applying to SES employees should continue to include provisions that make it clear that the employee may be redeployed to other duties, including at a lower level, or have their employment terminated without their agreement on the grounds that they are excess to an Agency's requirements.

However, it is inappropriate for SES Collective Agreements, Determinations or common law agreements to include provisions which provide a redundancy benefit or similar type of payment to persons whose employment is terminated involuntarily under s.29 of the PS Act. Similarly SES Collective Agreements, Determinations or common law agreements should not include retention arrangements for excess SES employees.

Agencies should however note that Chapter 6 of the Commissioner's Directions establishes minimum requirements that Agency Heads must satisfy before retiring, redeploying (including to a lower classification level) or terminating the employment of an SES employee. In relation to section 37 retirements, the Directions require that an employee must be given access to independent financial advice and career counselling.

In addition, section 38 of the PS Act provides that before an Agency Head can terminate the employment of an SES employee under s.29 of the PS Act, the Commissioner must have issued a certificate stating that all the relevant requirements of the Commissioner's Directions have been satisfied in relation to the proposed termination being in the public interest.

No enhancement of existing obligations

In relation to non-SES employees, Collective Agreements and Determinations, where applicable, must include compulsory redeployment, reduction and retrenchment provisions for excess APS employees. These provisions, or other arrangements (i.e. a Determination) which are used to supplement Collective Agreements cannot enhance the Agency's existing redundancy obligations. The term 'existing redundancy arrangements' should be interpreted as follows:

- for existing APS Agencies that have a Collective Agreement in place, (or are covered by a Determination made under s.24 (1) or s.24(3) of the PS Act as a result of a machinery of government change which sets out the RRR arrangements for the Agency or preserves RRR arrangements that applied before the machinery of government change), the assessment of a new Collective Agreement should be made against the provisions set out in the existing Collective Agreement, s.24(1) Determination or those preserved by the s24(3) Determination;

- for newly established APS Agencies that do not have a Collective Agreement in place and are not covered by a Determination made under s.24(1) or s.24(3) of the PS Act, the assessment of a new Collective Agreement should be made against the redundancy pay and notice of termination provisions set out in the APS Award, with the following additional provisions able to be included:
 - access to a retention period of up to 13 months for excess employees with 20 or more years of service or those who are over 45 years of age, and up to 7 months for all other excess employees, commencing when the employee is advised that they are excess, or one month after an offer of voluntary retrenchment is made, whichever is the earlier. These retention periods may be extended by periods of certificated sick leave taken during the actual retention period;
 - where access to an extended period of retention under the redundancy provisions is included, the Agency will need to ensure that a redundancy benefit is not made available to an employee who has rejected voluntary retrenchment and had elected to access the extended period of retention in employment. Under the APS Award, there is no retention period so a redundancy benefit is paid to an excess employee on termination regardless of the employee's consent. Where a retention period is included, it needs to be made explicit that a redundancy benefit is only payable where an employee has agreed to voluntary retrenchment and the employment is terminated;
 - Agencies need to make it clear that an excess employee is eligible to receive only one offer of voluntary retrenchment during any redundancy process;
 - a discussion period (also referred to as a consultation period) of up to four weeks and a consideration period of up to four weeks;
 - financial advice and/or career counselling up to a specified dollar amount (on provision of receipts that services have been provided);
 - assistance with redeployment and/or referral to a provider of redeployment services where the excess employee elects the retention option; and
 - in circumstances where an Agency involuntarily reduces an excess employee to a lower classification level, provision for salary maintenance at the person's former level for the balance of the employee's retention period;
- for Agencies or parts of Agencies that are outside the APS and are moved under PS Act coverage as a result of a machinery of government change, the assessment of a new Collective Agreement should be made against the redundancy pay and notice of termination provisions set out in the APS Award. In addition, the additional measures identified above may be included, provided that they are not greater than the benefits that already apply in the

Agency (or part of the Agency) as set out in the Agency's current Collective Agreement.

Flexibilities for Redeployment, Retention and Retrenchment arrangements

Agencies are able to adapt their redundancy provisions to meet their specific needs, subject to the test of no enhancement of existing arrangements.

The APSC is able to provide further advice to Agencies on these issues.

Statutory obligations and termination of employment

Agencies need to be aware that a Collective Agreement, Determination or common law agreement cannot override statutory obligations or remedies relating to termination of employment under the WR Act or the PS Act.

Legal advice

At various stages during the agreement making process, Agencies may wish to seek legal advice on various aspects of related legislation.

The Attorney-General has directed that Agencies consult with the Agency responsible for the relevant legislation by providing a reasonable opportunity to provide advice on the relevant matter prior to seeking formal legal advice. Agencies should also provide a copy of the request for advice and the advice to the administering Agency.

Accordingly, Agencies requiring legal advice on provisions in the WR Act should contact their DEEWR Client Contact Team in the first instance.

It is important that DEEWR be kept fully informed of legal advice that impacts on the interpretation of the WR Act. Agencies are therefore reminded that, under clause 10 of the Legal Services Directions, copies of such legal advice should be provided to DEEWR.

Copies should be sent to:

Assistant Secretary
Legal Policy Branch 1
Workplace Relations Legal Group
GPO Box 9879
CANBERRA ACT 2601

Similarly, for any legal advice related to the operation of the *Public Service Act 1999*, Agencies should consult with the APSC and provide copies of any legal advice to:

Legal Adviser
Australian Public Service Commission
16 Furzer St
WODEN ACT 2606

For further information consult the Attorney-General's Department's Legal Services Directions.

Further Advice and Information

DEEWR Client Contact Teams

DEEWR provides support and advice to Agencies on the Government's workplace relations policies in order to promote effective agreement making across the APS. DEEWR's Client Contact Teams have been established for all Portfolios.

Your team can provide up-to-date advice and information in relation to agreement making and other workplace relations issues.

Further information about DEEWR's role, services it provides, and publications, along with updates to this policy document can be obtained from www.workplace.gov.au.

The Australian Public Service Commission

The APSC can provide advice and guidance to Agencies on those policy areas for which it is responsible. The APSC has responsibility for:

- supporting the Public Service Minister on the administration of the *Public Service Act 1999* (PS Act), including the APS Values, and subordinate legislation. The APSC can provide advice to Agencies on request on all matters covered by the PS Act except for remuneration and other conditions (section 24) and the classification rules;
- in particular, the APSC has policy responsibility for redeployment, reduction and retrenchment arrangements, and will provide advice to APS Agencies on Bargaining Framework issues in relation to these matters.

Further information is available from the APSC's Adviceline by phone on 02 6202 3859 or email employmentadvice@apsc.gov.au. It would be appreciated if complex or sensitive queries are submitted by e-mail.

The Workplace Authority

The Workplace Authority is responsible for accepting lodgement of workplace agreements under the WR Act and providing advice in relation to prohibited content.

Further advice on approval requirements can be obtained from the Workplace Authority's website: www.workplaceauthority.gov.au or by calling 1300 366 632.

Definitions

‘Agency Heads’

Except where another intent is clear, all APS Agency Heads and Heads or Chief Executive Officers of other organisations to the extent that the Bargaining Framework applies.

‘APS Agencies’ or ‘Agencies’

Agencies which employ staff under the *Public Service Act 1999*. Where applicable, generic references to Agencies should be taken to include any non-APS Commonwealth Authorities who are subject to the Bargaining Framework.

‘APSC’

The Australian Public Service Commission.

‘Bargaining Framework’

The ‘Australian Government Employment Bargaining Framework’, as agreed by Cabinet and amended from time to time.

‘Collective Agreement’

An employee Collective Agreement or union Collective Agreement made pursuant to Part 8 of the WR Act.

‘Collective Arrangement’

A Collective Agreement or a Determination under the PS Act or other employing legislation applying to more than one employee.

‘DEEWR’

The Department of Education, Employment and Workplace Relations.

‘Determination’

A Determination made under section 24(1) of the *Public Service Act 1999* or other relevant employing legislation.

‘MoPS’

Members of Parliament (Staff) – Persons employed under the *Members of Parliament (Staff) Act 1984*.

‘Non-APS Commonwealth Authorities’ or ‘Authorities’

Commonwealth bodies which employ staff under legislation other than the *Public Service Act 1999*, such as Agency-specific legislation.

‘PS Act’

The *Public Service Act 1999*.

‘SES’

Senior Executive Service.

'Workplace Arrangement'

Collective Agreements, other workplace agreements, common law arrangements, Determinations issued under the employing legislation and workplace policies and practices.

'WR Act'

The *Workplace Relations Act 1996*.

Attachment A - Remuneration and Funding Declaration

I insert Agency Head name certify that having taken account of:

1. our existing financial position, including out-year appropriations and known efficiency dividends;
2. known operational requirements for the foreseeable future; and
3. expected increases in pay and conditions to be provided to insert Agency name staff employed under the proposed arrangement;

that all additional costs arising from the insert name of Agency collective Workplace Arrangement can be funded from within the insert Agency name budget for the life of the arrangement.

Further, I certify that the improvements in terms and conditions contained within the proposed arrangement will be offset over the life of that arrangement by genuine and quantifiable productivity initiatives.

Signature: _____

Name: _____

Position: _____

Date: _____