



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Defence Housing Australia
(AG2020/3755)

DEFENCE HOUSING AUSTRALIA ENTERPRISE AGREEMENT 2021

Commonwealth employment

DEPUTY PRESIDENT YOUNG

MELBOURNE, 15 JANUARY 2021

Application for approval of the Defence Housing Australia Enterprise Agreement 2021.

[1] Defence Housing Australia (the Employer) has made an application for approval of an enterprise agreement known as the *Defence Housing Australia Enterprise Agreement 2021* (the Agreement) pursuant to s 185 of the *Fair Work Act 2009* (the Act). The Agreement is a single-enterprise agreement.

[2] The Employer has provided written undertakings. A copy of the undertakings is attached at Annexure A. I am satisfied that the undertakings will not cause financial detriment to any employee covered by the Agreement and the undertakings will not result in substantial changes to the Agreement. The undertakings are taken to be a term of the Agreement.

[3] Subject to the undertakings referred to above, and on the basis of the material contained in the application, the accompanying statutory declaration, and the additional information provided by the Employer, I am satisfied that each of the requirements of ss 186, 187, 188 and 190 as are relevant to this application for approval have been met.

[4] CPSU, the Community and Public Sector Union, being a bargaining representative for the Agreement, has given notice under s 183 of the Act that it seeks to be covered by the Agreement. In accordance with s 201(2) and based on the statutory declaration provided by the organisation, I note that the Agreement covers the organisation.

[5] The Agreement was approved on 15 January 2021 and, in accordance with s 54, will operate from 22 January 2021. The nominal expiry date of the Agreement is 22 January 2024.



DEPUTY PRESIDENT

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Annexure A

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IN THE FAIR WORK COMMISSION

FWC Matter No.:
AG2020/3755

Applicant:
Defence Housing Australia

Section 185 - Application for approval of a single enterprise agreement

Undertaking - Section 190

I, Barry Jackson, Managing Director have the authority given to me by Defence Housing Australia to give the following undertakings with respect to the Defence Housing Australia Enterprise Agreement 2021 ("the Agreement"):

1. Defence Housing Australia (DHA) undertakes that where an employee is engaged as either a Cadet or a Graduate, the employee will be classified as a Broadband 2.
2. Any broadbanded classifications created in accordance with clause 20.3, will only be formed by banding together existing classifications as identified in Appendix 1. Employees who fall within a newly created broadbanded classification will not be assigned a classification lower than their existing classification at the time the broadbanded classification was created. These employees will be eligible for upward movement within the broadband in accordance with clause 20.2.
3. Where DHA requires an employee to work according to a roster which includes ordinary hours falling between 6:30pm and 6:30am Monday to Friday, or from 6:00 pm to 6:30 am Monday to Friday if the employee is classified as a trainee, the employee will be entitled to a shift penalty of 15 per cent.
4. Where DHA requires an employee to work a continuous night shift during Monday to Friday, the employee will be entitled to a shift penalty of 30 per cent. A continuous night shift is where the shifts fall wholly within the period 6:00pm and 8:00am and are worked for a period exceeding four weeks.
5. DHA undertakes that where an employee is required to work overtime not continuous with normal duty between 6:30pm and 6:30am Monday to Friday, the employee will be entitled to overtime in accordance with the provisions of clauses 32.4 to 32.6 of the Agreement.

These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.



Signature

12/01/21.

Date

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Defence Housing Australia Enterprise Agreement 2021

Note - this agreement is to be read together with an undertaking given by the employer. The undertaking is taken to be a term of the agreement. A copy of it can be found at the end of the agreement.

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PART A. TECHNICAL MATTERS

1. Title of this Agreement

- 1.1 This Agreement shall be known as the Defence Housing Australia Enterprise Agreement 2021.

2. Coverage, parties and persons bound

- 2.1 This Agreement is made pursuant to Section 172 of the *Fair Work Act 2009*. In accordance with Section 53 of that Act, this Agreement covers:
- (a) the Managing Director of DHA, on behalf of the Commonwealth of Australia; and
 - (b) employees of DHA engaged under the *Public Service Act 1999*, excluding Senior Executive Service employees.

3. Commencement and duration

- 3.1 This Agreement commences on the seventh day after the Agreement is approved by the Fair Work Commission.
- 3.2 The nominal expiry date is three (3) years after commencement.

4. National Employment Standards

- 4.1 Nothing in this Agreement reduces the entitlement available to an employee under the National Employment Standards (NES).

5. Effect of Agreement on other employment instruments

- 5.1 The conditions and entitlements in this Agreement replace any conditions and entitlements included in any other employment instrument, whether this is a formal or informal instrument that previously applied to an employee who is covered by this Agreement.
- 5.2 DHA guidelines, policies or procedures referred to in this Agreement are not incorporated into, and do not form part of the Agreement.
- 5.3 Where such policies are inconsistent with the provisions of this Agreement then this Agreement prevails.
- 5.4 Employees will make themselves familiar with DHA guidelines, policies and procedures as they may be varied from time to time and will be applied on the basis of their terms at the time of any relevant action or decision.

6. Delegations

- 6.1 All the powers and authorities in this Agreement are held by the Managing Director of DHA.

- 6.2 The Managing Director may, by instrument in writing, delegate or authorise to a person any of the Managing Director's powers, authorities or functions under this Agreement, excluding the power to delegate or authorise unless otherwise specified by the Managing Director.
- 6.3 The Managing Director may issue instructions relating to the exercise of a delegated power, authority or function.

PART B. REMUNERATION

7. Pay rates

- 7.1 The pay rates for employees are as set out at Appendix 1 to this Agreement.

8. Salary increases

- 8.1 Annual salaries to be paid from the commencement of this Agreement are specified in Appendix 1.
- 8.2 The following pay increases will be payable under this Agreement:
- (a) 2 per cent from the commencement of this Agreement¹; and
 - (b) 2 per cent 12 months from the commencement of this Agreement; and
 - (c) 2 per cent 24 months from the commencement of this Agreement.

9. Performance Bonus Buy-out

- 9.1 Ongoing and non-ongoing employees who are employed on the day this agreement commences will be paid a one off performance bonus buy-out determined on their substantive classification as specified in Appendix 2.
- 9.2 The bonus buy-out will be payable on the first pay day in July 2021. If an eligible employee as defined in clause 9.1, ceases employment prior to the first pay day in July 2021 they will receive payment of the bonus buy-out in their final monies.

10. Method of payment

- 10.1 Employees will be paid fortnightly in arrears and the fortnightly rate of pay will be calculated using the following formula:

$$\text{Fortnightly pay} = \text{Annual Salary} \times 12/313$$

¹ Note: The Public Service (Terms and Conditions of Employment)(General wage increase deferrals during the COVID-19 pandemic) Determination made under subsection 24(3) of the *Public Service Act 1999* has the effect of deferring the first salary increase by six months from the date of the Agreement's commencement.

- 10.2 Payment will be made to a financial institution account nominated by each employee, subject to the financial institution accepting payment by electronic funds transfer.

11. Salary on commencement, movement or promotion

- 11.1 Where an employee commences employment with DHA or is promoted to a higher classification level, the Managing Director will determine their salary, having regard to the qualifications, knowledge, experience, ability of the employee and market rates. This will normally be the base salary of the classification.
- 11.2 Where an employee is being paid under a higher duties arrangement and that employee is promoted, that employee's salary will be equivalent to the combination of salary and higher duties allowance paid prior to the promotion or higher as determined by the Managing Director having regard to the qualifications, knowledge, experience and ability of the employee.

12. Salary advancement

- 12.1 On 1 October each year, the Managing Director will advance an employee's salary within the employee's substantive classification pay band in Appendix 1 by two (2) per cent, subject to the employee:
- (a) participating in the DHA performance management framework;
 - (b) receiving a final end of cycle performance rating of 'met all targets' or an equivalent or higher rating;
 - (c) being classified at that level for at least six months as at 30 June; and
 - (d) not exceeding the top of their salary band, in which case an advancement of less than two (2) per cent will apply.
- 12.2 Periods of unpaid leave are not to count as service and unauthorised absences will not be included in the period of service required under sub-clause 12.1(c).

13. Grandfathered Northern Territory Retention

- 13.1 An employee who is employed in the Northern Territory on the date of commencement of this agreement will be eligible for an additional week's paid leave to be provided in February each year where:
- (a) the employee has worked for DHA for a continuous period covering at least 1 August in the previous year to 30 January in the relevant year;

- (b) the employee has not had an unauthorised absence or more than four (4) weeks of paid and/or unpaid leave between 1 October in the previous year and 30 January in the relevant year;
 - (c) the employee has been assessed as having 'met all targets' or a higher rating during the previous 12 months; and
 - (d) the employee is working in a Northern Territory based role on 30 January of the relevant year.
- 13.2 This clause does not apply to non-ongoing employees engaged on an irregular or intermittent basis (casual).
- 13.3 The Northern Territory Retention arrangements will be provided to part time employees on a pro rata basis.
- 13.4 The paid leave specified in clause 13.1 must be used by 30 November in the year granted.
- 13.5 Employees who commence in a position in the Northern Territory after the date of commencement of this agreement will not be entitled to an additional weeks leave as specified in clause 13.1.

14. Casual loading

- 14.1 Casual employees are engaged under paragraph 22(2)(c) of the *Public Service Act 1999* on an irregular or intermittent basis.
- 14.2 Casual employees will be paid a 25 per cent loading on their salary in lieu of access to all forms of paid leave (other than Long Service Leave), payment for public holidays on which the employee is not rostered to work and the Christmas break period.
- 14.3 When a casual employee is required to work on a particular day and attends for the required hours, the minimum payment for that day will be based on three (3) hours' work.

15. Salary Packaging

- 15.1 Employees may have access to a salary packaging scheme. The scheme allows an employee to receive non-salary benefits in lieu of salary.
- 15.2 The key requirements of the scheme are that:
- (i) the scheme operates at no cost to DHA;
 - (ii) participation is entirely voluntary; and
 - (iii) employees may be required to obtain financial advice to be able to participate in the scheme.
- 15.3 Salary for superannuation, severance and termination purposes for an employee who has elected to convert part of their salary to non-salary

benefits, shall be determined as if the salary packaging arrangements did not exist.

16. Overpayment of entitlements

- 16.1 Where an employee is overpaid an amount of salary or other remuneration, the amount of the overpayment may be recovered from amounts payable to the employee by deductions authorised by the employee or by DHA's Accountable Authority Instructions. A plan for recovery will be considered by the Managing Director in cases of financial hardship and a reasonable recovery plan will not be refused.

17. Superannuation

- 17.1 DHA will make compulsory employer contributions as required by the applicable legislation and fund requirements.
- 17.2 Where an employee has chosen an accumulation superannuation fund other than the PSS Accumulation Plan (PSSap), the employer contribution will be the same percentage of the fortnightly superannuation contribution salary as that required for employees who are members of PSSap which will be no less than 15.4 per cent. This will not be reduced by any other contributions made through salary sacrifice arrangements. This clause does not apply where a superannuation fund cannot accept employer superannuation contributions (for example, unable to accept contributions for people aged over 75).
- 17.3 Employer superannuation contributions will not be paid on behalf of employees during periods of leave that do not count as service, unless otherwise required under legislation or fund requirements.
- 17.4 Employer superannuation contributions will be paid to accumulation superannuation funds during periods of paid and unpaid parental leave (including maternity and parental) for periods of leave to a maximum of 52 weeks.

18. Supported salary for employees with a disability

- 18.1 An employee who is unable to perform duties to the competence level required because of a disability and who meets the criteria for receipt of a Disability Support Pension will be paid the applicable percentage of the relevant pay rate that corresponds to their assessed capacity to do the work.
- 18.2 Specific conditions relating to the supported wages scheme are detailed in Appendix 4.

19. Individual Flexibility Arrangements

- 19.1 The Managing Director and an employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of the following terms of this Agreement:

- (a) arrangements about when work is performed;
 - (b) overtime rates;
 - (c) penalty rates;
 - (d) allowances;
 - (e) remuneration; and/or
 - (f) leave.
- 19.2 An individual flexibility arrangement must meet the genuine needs of DHA and the employee in relation to one or more of the matters mentioned in sub-clause 19.1 and must be genuinely agreed to by the Managing Director and the employee.
- 19.3 DHA must ensure that the terms of an individual flexibility arrangement:
- (a) are about permitted matters under section 172 of the *Fair Work Act 2009*;
 - (b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
 - (c) result in the employee being better off overall than the employee would be if no arrangement was made.
- 19.4 DHA must ensure that the individual flexibility arrangement:
- (a) is in writing;
 - (b) includes the name of DHA and the employee;
 - (c) is signed by the Managing Director and the employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee;
 - (d) includes details of:
 - (i) the terms of this Agreement that will be varied by the arrangement;
 - (ii) how the arrangement will vary the effect of the terms;
 - (iii) how the employee will be better off overall in relation to the terms and conditions of their employment as a result of the arrangement; and
 - (e) states the day on which the arrangement commences and, where applicable, when the arrangement ceases.
- 19.5 The Managing Director must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed.
- 19.6 The Managing Director or the employee may terminate the individual flexibility arrangement:

- (c) at 19 years 81% of the minimum pay point
- (d) at 20 years 91% of the minimum pay point

23. Higher duties

- 23.1 Where an employee performs the duties of a higher classified role for a continuous period of 10 working days or more at the DHA 3-6 level, or for a continuous period of 30 working days or more at the EL1-2 level, including public holidays, the Managing Director will determine a higher duties allowance for the employee. This will normally be the minimum salary at the higher classification.
- 23.2 A non-SES employee who is temporarily reassigned to perform work at an SES classification for a continuous period of 30 working days or more, will be paid at a rate determined by the Managing Director for the period of the higher duties.
- 23.3 Where an employee is initially required to work at a higher level for a period that does not qualify for additional payment and the higher level work is later extended for a continuous period beyond the qualifying period, the Managing Director will pay the employee for the entire duration of the higher duties.
- 23.4 The Managing Director may determine that an employee who is entitled to additional payment under this clause will be paid a higher amount than specified in sub-clause 23.1.

PART D. PERFORMANCE MANAGEMENT

24. Performance management framework

- 24.1 All employees are required to participate in the performance management framework which requires each employee to enter into an annual performance Agreement.
- 24.2 DHA is committed to a performance management framework that operates transparently and consistently, supports employees, provides regular objective feedback and focuses on learning and development opportunities.
- 24.3 The purpose of the performance management framework is to:
 - (a) develop a culture of high performance in DHA;
 - (b) align individual performance requirements with business requirements;
 - (c) ensure that employees have a clear understanding of their role, and the performance standards expected of them; and
 - (d) identify and plan for learning and development needs.
- 24.4 The principles of the performance management framework are:

- (a) joint responsibility – employees and managers will participate in all aspects of the performance management process, including initiating reviews, and seeking and providing feedback as required.
- (b) no surprises – the performance process will ensure that employees are aware of their performance progress. Managers should identify and address performance concerns at the earliest opportunity.
- (c) fair – the performance process will provide employees with an opportunity to respond to performance feedback, consistent with natural justice principles.

25. Managing underperformance

- 25.1 The provisions of Part D do not apply to employees during their first six (6) months of employment in the APS.
- 25.2 Where the Managing Director considers that an employee's performance is below the minimum level required at the employee's classification level, an underperformance process may be initiated. Further information is in DHA's guidelines for managing underperformance.
- 25.3 Where an employee's performance continues to be below the minimum level required at the employee's classification level, the Managing Director may:
 - (a) reduce the employee's classification level;
 - (b) transfer the employee to another position at the same level; or
 - (c) terminate the employee's employment.

PART E. HOURS OF WORK

26. Ordinary hours of work

- 26.1 All employees covered by this agreement are required to accurately record their working hours, including break times and any leave.
- 26.2 The ordinary hours of work for a full time employee are 7 hours and 30 minutes per day, Monday to Friday. A standard day is defined as being worked from 8:30am to 5:00pm with an hour for lunch.
- 26.3 The span within which ordinary hours may be worked are:
 - (a) 6:30am to 12:00 midnight, Monday to Friday for shiftworkers; and
 - (b) 6:30am to 6:30pm, Monday to Friday for all other employees.
- 26.4 A manager and employee may agree to a different pattern of hours by which the employee will meet their ordinary hours of duty.

- 26.5 The ordinary hours of duty for a part time employee are as specified in the part time agreement.
- 26.6 Employees should not work more than 10 hours in any one day and employees should have at least a 30 minute break after 5 hours of continuous work.
- 26.7 Non-ongoing employees working on an irregular or intermittent basis (casual) do not have set ordinary hours of work.
- 26.8 Employees at or below DHA6 level will not be required to be on call outside of the employee's paid working hours.

27. Christmas stand down

- 27.1 Employees other than those on parental leave (including paid maternity leave), long-service leave and leave without pay, will be provided paid time off without deduction from leave credits, for the three days between Christmas and New Years' day which would otherwise be working days.
- 27.2 Employees at DHA6 level and below who are required to work on any of the working days between Christmas and New Year to provide the skeleton staffing required to meet operational requirements will be paid at the rate of:
 - (a) double time and a half for all hours required to be worked on the first working day after Boxing Day;
 - (b) double time for all hours required to be worked on the other two days.

28. Flextime arrangements

- 28.1 All full time and part time employees at DHA6 level and below, unless otherwise determined by the Managing Director are eligible to participate in flextime arrangements.
- 28.2 Any authorised time worked on a day that is in excess of 7 hours 30 minutes will accrue a flex credit. Where an employee works less than 7 hours 30 minutes, the employee will accrue a flex debit for the reduced hours.
- 28.3 Employees, other than those working according to a roster, may choose to start between 8.00 am and 8.30 am or finish between 5.00 pm and 5.30 pm without requiring approval from their manager.
- 28.4 An employee may start and/or finish outside those times and within the span of hours on a single day or on an ongoing basis with the prior approval of their manager and subject to operational requirements. This clause does not apply to employees who are working shiftwork or who are working according to a roster.
- 28.5 Accrual of flex credits above 7 hours and 30 minutes must be approved in advance by the employee's manager.

- 28.6 Each employee will be entitled to a flex day each four (4) weeks subject to the employee having a credit of at least 7 hours and 30 minutes before taking the day off.
- 28.7 The timing of the flex day will be agreed between the manager and employee and must be able to be taken within a reasonable period, if delayed due to operational requirements.
- 28.8 An employee may take additional flex days (which may be as a full or part day) where they have sufficient credits accrued, subject to the approval of their manager.
- 28.9 The maximum credit a full time employee may accrue is 37 hours and 30 minutes.
- 28.10 The maximum credit a part time employee can accrue is the agreed hours to be worked over a four (4) week period, divided by four (4).
- 28.11 The maximum debit a full time or part time employee may accrue is 10 hours. Any debit that would take the employee beyond 10 hours debit will be treated as unpaid leave and may be regarded as an unauthorised absence.
- 28.12 Employees who work according to a roster (including shiftworkers) will have their rosters include sufficient additional time each day for full time employees at DHA6 level and below to allow such employees to take a flex day each four (4) weeks. The flex day will then be included in the roster.
- 28.13 An employee who works according to a roster may work in excess of the roster with the approval of the relevant manager. Where this is the case, the employee will accrue a credit for the additional time other than where the additional time is approved overtime.
- 28.14 Where a DHA level 6 or below employee is temporarily reassigned for more than three (3) months or promoted to an Executive level role, the manager and the employee should take all reasonable steps to balance any flex credits or debits to zero.
- 28.15 An employee will not be paid for any credits held by the employee on cessation of employment with DHA. Managers and employees have a joint obligation to reduce flex credits to zero prior to the employee ceasing employment.
- 28.16 The value of any debits held by the employee on cessation of employment will be treated as an overpayment and must be repaid. This repayment will normally be by way of a reduction in the employee's final payment. Further information can be found in DHA's Accountable Authority Instructions.

29. Working hours for EL1 and EL2 employees

- 29.1 EL1 and EL2 employees are required to ensure their working hours are sufficient to meet all reasonable operational requirements, achieve required outcomes and, for full time employees be at least 150 hours for every four (4) weeks. They are not subject to flex leave provisions.
- 29.2 An EL1 and EL2 employee who consistently works additional hours may, with the agreement of the manager, be granted time off in lieu subject to managerial approval and operational requirements. This can be a short term absence, including full day absence. Time off in lieu will not be on an hour for hour basis.
- 29.3 Reasonable additional hours includes travel time.

30. Shiftwork

- 30.1 Shiftworker means an employee who works shifts according to a roster which includes ordinary hours falling between 6:30pm and 12:00 midnight - Monday to Friday.
- 30.2 A shiftworker will receive a shift penalty of 15 per cent for any shift that includes ordinary hours between 6:30pm and 12:00 midnight, Monday to Friday.
- 30.3 Shift penalties will not be payable in respect of any overtime worked by a shiftworker.
- 30.4 The Managing Director will not generally change a shift roster with less than seven (7) days' notice to an employee without the employee's agreement unless at least seven (7) days' notice is not possible because the roster change is necessitated by:
 - (a) an unexpected absence of another employee; or
 - (b) operational necessity caused by an event or incident not controlled by DHA.
- 30.5 Shift penalties will not be paid for a flex day.

31. Part time work

- 31.1 The Managing Director may engage employees on a part time basis or approve an employee's request to work part time.
- 31.2 A part time employee is one whose ordinary hours of work are less than 37 hours and 30 minutes per week.
- 31.3 Part time employees will not be required to work less than three (3) continuous hours per day (or an alternative period agreed by the Managing Director and the employee).
- 31.4 The minimum period of part time work that will be approved is four (4) weeks.

- 31.5 A part time work agreement should be reviewed annually and the employee provided with at least four (4) weeks' notice of the review. Where a change to an existing part time agreement is required due to operational requirements, the employee should be given four (4) weeks' notice before any change is implemented.
- 31.6 An employee returning from parental leave (including maternity, adoption/foster and primary carer leave) will be given access to part time employment for up to two (2) years.
- 31.7 Unless otherwise specified in this Agreement, remuneration and other conditions for part time employees, including leave, will be calculated on a pro rata basis. Except long service leave, which will be administered in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976*.
- 31.8 Allowances of a reimbursement nature will not be prorated for part time employees.
- 31.9 All part time employees, unless engaged in a prescribed part time role, will have a written part time work agreement specifying the prescribed weekly hours of duty and the agreed pattern of hours. Part time work agreements must be reviewed annually. Additional part time work agreement reviews may be initiated by the employee or the Managing Director with either party giving four weeks' notice in writing.
- 31.10 Where an employee makes an application to work part time for caring purposes, DHA will not unreasonably refuse the application where it can be accommodated within operational requirements.

32. Overtime

- 32.1 The Managing Director may approve overtime for employees at classification levels of DHA6 level and below.
- 32.2 Overtime for a non shiftworker applies when an employee is required to work beyond 6:30pm or on public holidays or on weekends. Where an employee is required to work beyond 6:30pm, overtime will be paid from 5:30pm unless the employee and the Managing Director agree to a later commencement of payment for overtime. The Managing Director may approve overtime outside of these criteria where it is considered appropriate in the circumstances.
- 32.3 Overtime for a shiftworker is where the Managing Director directs an employee to work more than 30 minutes in excess of their rostered hours (in which case the overtime will commence from the end of the employee's rostered shift), on public holidays or on weekends.
- 32.4 The normal means of compensation for overtime will be time off in lieu (TOIL), accrued at the overtime rate, which must be taken within eight (8) weeks of the overtime being worked. For a shiftworker, shift penalties will not be paid for time off in lieu. Where the employee's manager is

unable to identify a time within the following eight (8) weeks for the employee to take time off in lieu, the employee will be paid for the overtime.

- 32.5 For the purposes of calculating the entitlement, the following rates apply:
- (a) Monday to Friday (excluding public holidays) - time and a half;
 - (b) Saturday – time and a half for the first three (3) hours and double time thereafter;
 - (c) Sunday – double time; and
 - (d) Public holidays:
 - (i) where the employee is being paid for the public holiday in accordance with sub-clause 52.4 – time and a half for all hours worked in addition to the employee’s normal pay for that day;
 - (ii) where the employee would not otherwise be paid for the public holiday – double time and a half for all hours worked.
- 32.6 For the purposes of sub-clause 32.5 the minimum period of overtime where it is not continuous with ordinary hours is three (3) hours.

33. Meal allowance

- 33.1 An employee is entitled to claim a meal allowance of \$31.95 where the employee is required to work:
- (a) more than two (2) hours overtime where the overtime is continuous with normal work; or
 - (b) more than four (4) hours overtime on weekends or public holidays.
- 33.2 Meal allowance is not payable if the employee is receiving a meals and incidentals allowance.
- 33.3 Meal allowance will be adjusted in line with the Australian Taxation Office rate for overtime meal expenses.

PART F. LEAVE

34. General provisions

- 34.1 Public holidays that fall during a period of paid leave other than long service leave, maternity and parental leave, will not be deducted from the employee’s leave credits.
- 34.2 Leave taken by a full time employee will be treated as:
- (a) 7 hours 30 minutes of work for a full day of leave; or

- (b) the actual hours the employee was absent for a part day of leave.
- 34.3 Leave taken by a part time employee will be treated as:
 - (a) the actual hours to be worked on the relevant day of leave for full day absences; or
 - (b) the actual hours the employee was absent for a part day of leave.

35. Portability of leave

- 35.1 Where an ongoing APS employee moves (including on promotion or for an agreed period) from another agency to DHA, the employee's unused accrued annual leave and personal/carer's leave (however described) will be transferred, provided there is no break in continuity of service.
- 35.2 Where a person is engaged as an ongoing employee, and immediately prior to the engagement the person was employed as a non-ongoing APS employee, the Managing Director may at the employee's request, recognise any accrued annual leave and personal/carer's leave (however described), provided there is no break in continuity of service.
- 35.3 Any recognised annual leave excludes any accrued leave paid out on separation from the employee's former agency.
- 35.4 Where an employee is engaged as either an ongoing or non-ongoing APS employee immediately following a period of ongoing employment in the Parliamentary Service or the ACT Government Service, the employee's unused accrued annual leave and personal/carer's leave (however described) will be recognised, provided there is no break in continuity of service.
- 35.5 For the purposes of this clause:
 - (a) 'APS employee' has the same meaning as the same term in the *Public Service Act 1999*;
 - (b) 'Parliamentary Service' refers to employment under the *Parliamentary Service Act 1999*.

36. Family or domestic violence support

- 36.1 DHA is committed to supporting employees affected by domestic or family violence. DHA will take a flexible and supportive approach to assisting affected employees, as appropriate, in individual circumstances. Employees are encouraged to discuss which avenues of support are available to them with their manager or Human Resources.
- 36.2 Leave is available to employees who are affected by family or domestic violence. Employees can apply for either paid or unpaid other leave or personal/carer's leave to cover absences for the purpose of, but not limited to:

- (a) illness or injury resulting from family or domestic violence;
 - (b) providing care or support to a family or household member who is ill or injured as a result of family or domestic violence;
 - (c) providing care or support to a family or household member who is affected by an unexpected emergency as a result of family or domestic violence;
 - (d) obtain legal advice;
 - (e) attend to Protection Order matters and Domestic Violence Order matters, however termed;
 - (f) attend to issues arising through urgent property damage that is a consequence of family or domestic violence;
 - (g) attend appropriate medical and/or counselling appointments;
 - (h) access alternative accommodation; and
 - (i) access alternative childcare or schooling for children.
- 36.3 These entitlements are in addition to any entitlement applying under the National Employment Standards.
- 36.4 Managers are to keep all information concerning the leave application strictly confidential. This includes after sighting any supporting documentation, returning that documentation to the employee.
- 36.5 Access to flexible working arrangements as per clause 28 may also be granted.
- 36.6 Further information is available in the DHA's Domestic or family violence policy.

37. Annual leave

- 37.1 Full time employees are entitled to 20 days of annual leave per year of employment, accrued and credited on a daily basis.
- 37.2 A shiftworker for the purposes of the additional week of annual leave provided for in the National Employment Standards is an employee who is regularly rostered to work their ordinary hours on a Sunday.
- 37.3 The Managing Director may approve the taking of annual leave, subject to the availability of credits.
- 37.4 DHA will not unreasonably refuse a request by an employee to take paid annual leave.
- 37.5 Employees will not accrue any annual leave during any unauthorised absences or unpaid leave that is not to count as service of more than 30 calendar days in a calendar year.
- 37.6 Employees on worker's compensation leave for more than 45 weeks commencing on the day after Comcare first determines the claim, will

have annual leave credits calculated according to actual hours worked after completion of the 45 week period.

Half pay annual leave

- 37.7 An employee may elect to take annual leave at half pay. Where this occurs, only half of the period of leave will count as service. An employee's annual leave balance will be reduced at half the rate.

Recall from leave

- 37.8 Where the Managing Director cancels approved annual leave, the affected employee will be entitled to the reimbursement of reasonable expenses incurred by the employee that are not otherwise recoverable under any insurance or from any other source and which are a direct result of the cancellation of the leave.

Maximum annual leave credits

- 37.9 Where an employee has more than eight (8) weeks of annual leave credits (or 10 weeks for a shiftworker), the Managing Director may require the employee to take sufficient annual leave to reduce their credits to four (4) weeks (or five (5) weeks for a shiftworker). Where possible, any leave taken under this sub-clause will be at an agreed time. Where DHA and an employee are unable to agree on the timing for a required period of leave, the Managing Director may specify the timing of the leave as long as the employee has been provided with at least four weeks' notice.

Cashing out of annual leave credits

- 37.10 The Managing Director may agree to an employee's request to 'cash out' annual leave once per calendar year in accordance with the following:
- (a) the cashing out must not result in the employee having less than four (4) weeks of annual leave credits remaining;
 - (b) each cashing out of a particular amount of paid annual leave must be by a separate agreement in writing;
 - (c) the employee must be paid at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.

Payment for annual leave credits on termination of employment

- 37.11 Employees will be paid for any unused annual leave credits on resignation or cessation of employment.

38. Purchased leave

- 38.1 The Managing Director may approve an employee's request to purchase leave, funded by salary deductions.

- 38.2 Purchased leave is additional leave credits purchased by an employee through a reduction in an employee's fortnightly salary for a period of time.
- 38.3 The minimum amount of leave that can be purchased is one (1) week and there is no upper limit. However, approval for access to purchased leave is subject to whether there will be an adverse operational impact and any costs involved in mitigating this impact.
- 38.4 Except where purchased leave is taken as part of a period of parental leave, purchased leave in excess of four (4) weeks does not count as service for any purpose and will not affect salary for superannuation or any other purpose.

39. Personal leave

Approval of personal leave

- 39.1 The Managing Director will, subject to the availability of personal leave credits, approve paid personal leave for an employee in the following circumstances:
- (a) where the employee is not fit for work due to personal illness or injury affecting the employee;
 - (b) to provide care or support for a member of the employee's immediate family or household who requires care or support because of:
 - (i) a personal illness or personal injury affecting the member; or
 - (ii) an unexpected emergency affecting the member;
 - (c) to attend preventative medical or health practitioner appointments.
- 39.2 Ongoing employees will accrue personal leave credits in accordance with the following:
- (a) employees commencing with DHA who have not had leave credits transferred under the portability provisions of clause 35 will receive 15 days of personal leave credits on commencement with DHA and after each subsequent 12 months of continuous service, an additional 15 days;
 - (b) employees commencing with DHA who have transferred leave, or have had leave credits transferred under the portability provisions of clause 35, from an agency that credits personal leave annually will be credited with 15 days of personal leave credits 12 months after the last credit of leave. Then, after each subsequent 12 months' continuous service, they will be credited with a further 15 days personal leave;

- (c) employees commencing with DHA who have transferred leave, or have had leave credits transferred under the portability provisions of clause 35, from an agency that credits personal leave on a pro rata basis will be credited with 15 days personal leave on commencement with DHA and, after each subsequent 12 months' continuous service, they will be credited with a further 15 days personal leave.
- 39.3 Non-ongoing employees who are not employed on an irregular or intermittent basis (casual) will accrue personal leave credits in accordance with this clause as follows:
 - (a) 15 days during their first 12 months of employment, on a pro rata basis; and
 - (b) 15 days of personal leave credits at the commencement of the second and subsequent years of employment.
- 39.4 The date for accrual of personal leave credits will be deferred by the length of any period of unauthorised absence or leave not to count as service during the previous 12 months.
- 39.5 Part time employees will accrue, and be credited with, personal leave based on their ordinary part-time hours as at the accrual date.
- 39.6 Employees on worker's compensation leave for more than 45 weeks commencing on the day after Comcare first determines the claim, will have personal leave credits calculated according to actual hours worked after completion of the 45 week period.
- 39.7 Unused personal leave credits will accumulate from year to year without limit.
- 39.8 Acceptable evidence must be provided by employees for absences due to personal injury or illness unless waived by the Managing Director where:
 - (a) the employee has already taken five (5) days of personal leave in the accrual year without providing evidence; or
 - (b) the absence is for more than two (2) consecutive days.
- 39.9 The Managing Director may require:
 - (a) acceptable evidence where the leave is taken due to an illness or injury of the employee or an immediate family or household member; or
 - (b) a statutory declaration where the leave is due to an unexpected emergency affecting an immediate family or household member.
- 39.10 In exceptional circumstances, such as chronic illness, where it is not reasonably practicable to provide evidence for each absence in excess of five (5) days in a calendar year, employees may provide medical evidence for a defined period.

- 39.11 Acceptable evidence will be evidence that would satisfy a reasonable person that the leave was taken in accordance with paragraph 39.1. Medical evidence from registered health practitioners will be accepted for the purposes of personal illness or injury or where required to undertake carer's responsibilities. Where it is not reasonably practicable to provide a medical certificate from a registered health practitioner, a statutory declaration signed by the employee will be acceptable.
- 39.12 Personal leave will not be granted during a period of paid parental leave.

Unpaid personal leave

- 39.13 Where an employee is unfit for work in accordance with paragraph 39.1 and has no personal leave credits, the Managing Director may grant unpaid personal leave for a maximum continuous period of three (3) months, subject to the production of satisfactory medical evidence for the period granted. Unpaid leave under this sub-clause will count as service for all purposes other than for the purpose of accrual of annual and personal leave credits.
- 39.14 Any subsequent unpaid leave that is required by the employee will not count as service for any purpose unless provided for by legislation.

40. Unpaid carer's leave

- 40.1 In accordance with section 102 of the *Fair Work Act 2009*, an employee is entitled to two (2) days' unpaid carer's leave per permissible occasion where an employee has exhausted paid credits.
- 40.2 Unpaid carer's leave does not count as service for any purpose.

41. War service sick leave

- 41.1 The Managing Director may grant an eligible employee war service sick leave while unfit for duty because of a war-caused or defence-caused condition.
- 41.2 A war caused condition means an injury or disease of an employee that has been determined under the *Veterans' Entitlements Act 1986* or *Military Rehabilitation and Compensation Act 2004* or other relevant legislation as amended from time to time, to be war-caused or defence-caused.
- 41.3 Eligible employees will accrue a special credit of nine (9) weeks on commencement with the APS and an annual credit of three (3) weeks for each year of APS service. Unused credits will accumulate to a maximum of nine (9) weeks.
- 41.4 The special credit must be used before the annual credits. Where an employee's war service sick leave credits have expired, personal leave provisions will apply.

- 41.5 Approval of a grant of war service sick leave will be subject to the provision of a medical certificate stating the nature of the medical condition and a statement from the Department of Veterans' Affairs stating the medical condition is a war-caused condition.
- 41.6 Leave that counts as service for personal leave purposes will count as service for war service sick leave purposes.

42. Compassionate leave

- 42.1 The Managing Director will grant an employee paid compassionate leave of three (3) days on each occasion when a member of the employee's immediate family or household:
- (a) is suffering from an illness or injury that poses a serious threat to their life; or
 - (b) dies.
- 42.2 Casual employees will receive two (2) days unpaid compassionate leave for each occasion specified in clause 42.1.
- 42.3 This entitlement may be taken in a single continuous period or separate periods as agreed.
- 42.4 The Managing Director may require an employee accessing this leave to provide evidence of the illness, injury or death including certification from a medical practitioner that the illness or injury poses a serious threat to the person's life.

43. Special leave

- 43.1 The Managing Director may approve special leave where an employee is unable to attend work due to unforeseen, emergency or special circumstances. Access to special leave is subject to:
- (a) the availability of credits;
 - (b) a satisfactory reason for taking the leave;
 - (c) operational requirements; and
 - (d) consideration of the employee's personal circumstances.
- 43.2 Special leave will not be approved for a reason that is covered by the personal leave provisions.
- 43.3 Ongoing employees will accrue three (3) days of special leave on commencement with DHA and an additional three (3) days at the commencement of each subsequent 12 months of service.
- 43.4 Unused special leave will accumulate for the first two (2) years of service with DHA. At the end of the second and subsequent years of employment with DHA, unused special leave credits will be paid out in full.

- 43.5 Non-ongoing employees who are engaged for a term that exceeds 12 months will have the same entitlement to special leave as ongoing employees except that the initial three (3) days of special leave credits will not accrue until after the first two (2) months of service.
- 43.6 Payment in lieu of unused special leave credits will not be paid to an employee on cessation of employment with DHA.

44. Maternity and parental leave

- 44.1 The Managing Director will grant maternity and parental leave to eligible employees in accordance with the *Maternity Leave (Commonwealth Employees) Act 1973* (Maternity Leave Act) and the National Employment Standards, with additional conditions set out in this clause.
- 44.2 An employee who is entitled to paid maternity leave under the Maternity Leave Act will be entitled to an additional two (2) weeks of paid maternity leave to be taken continuous with the entitlement to paid maternity leave provided by the Maternity Leave Act.
- 44.3 An employee is entitled to up to 52 weeks of unpaid parental leave on the birth of a child to the employee, the employee's spouse or the employee's de facto partner.
- 44.4 Employees are entitled to up to 52 weeks unpaid parental leave for adoption or permanent foster care where the child:
- (a) is, or will be, under the age of 16 years as at the day of placement or the proposed day of placement; and
 - (b) has not, or will not have previously, lived continuously with the employee for a period of six (6) months or more as at the day of placement or the proposed day of placement; and
 - (c) is not a child or step-child of the employee or the employee's spouse or partner.
- 44.5 Documentary evidence of approval for adoption or enduring parental responsibilities under formal fostering arrangements must be submitted when applying for parental leave for adoption or permanent foster carer purposes.
- 44.6 If the employee is the primary caregiver to the child, up to 14 weeks of parental leave will be paid, commencing from the time of birth or placement of the child, provided the employee has completed 12 months continuous employment.
- 44.7 Where an employee is entitled to paid maternity or parental leave, the employee may elect to have the payment for that leave spread over a maximum of 28 weeks at a rate half of normal salary. Where the employee elects to take this option, a maximum of 14 weeks will count as service.

- 44.8 At the completion of the initial 52 weeks of maternity or parental leave, on request, employees will be granted an extension of unpaid parental leave for a further period of up to 52 weeks. The second period of unpaid leave is to commence immediately following the initial 52 week leave period.
- 44.9 Unpaid maternity or parental leave will not count as service for any purpose.
- 44.10 On ending maternity or parental leave, employees have the return to work guarantee and the right to request reasonable flexible working arrangements that are provided by the *Fair Work Act 2009*.

45. Supporting partner/other primary care giver leave

- 45.1 The Managing Director will approve 10 days of paid parental leave for an employee who is not otherwise entitled to paid maternity or parental leave under the Maternity Leave Act or this agreement on the birth, adoption or permanent foster care placement of a child or their partner's child.
- 45.2 The leave must be taken within 52 weeks of the birth/placement of the child and is inclusive of public holidays. If the leave is not taken within the first six (6) weeks of the birth or placement of the child, the taking of leave must be agreed by the employee and manager, subject to operational requirements.
- 45.3 This paid leave will count as service for all purposes. Employees may elect to have the payment for that leave spread out over 20 days at a rate of half normal salary. Where payment is spread over a longer period, only half the total leave period will count as service.
- 45.4 An employee who adopts a child is also entitled to two (2) days of unpaid pre-adoption leave to attend interviews or examinations required to obtain approval.
- 45.5 Documentary evidence as outlined in clause 44.5, or a birth certificate following the birth of a child, must be submitted when applying for supporting partner/other primary caregiver leave.
- 45.6 An employee who receives paid parental leave under clause 44 is not entitled to paid parental leave under this clause.

46. Recognition of other parental roles

- 46.1 Where an employee is an enduring primary care giver, and has a parental role, for a child of an immediate family member, the Managing Director will approve parental leave under the same arrangements as provided in clause 44.3 to 44.9; however, the employee does not have an entitlement to payment for any leave (specifically payment of up to 14 weeks) as provided under clause 44.3.

47. Career break leave

- 47.1 The Managing Director may approve unpaid career break leave of up to six (6) months for an ongoing employee who has at least two (2) years of continuous employment with DHA.
- 47.2 Approval of leave under this clause will be subject to consideration of any operational impact and any costs involved in mitigating that impact. Career break leave may only be taken by an employee once every three (3) years.
- 47.3 Any leave approved under this clause will not count as service for any purpose.

48. Long service leave

- 48.1 Long service leave is provided in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976* and will only be granted in minimum periods of 7 consecutive calendar days at full pay or 14 days at half pay.
- 48.2 Periods of long service leave cannot be broken with other periods of leave, except as otherwise provided for by legislation.

49. Community service leave

- 49.1 The Managing Director will approve community service leave for an employee as provided in the *Fair Work Act 2009*.
- 49.2 All community service leave is unpaid except for:
- (a) periods of jury service, subject to the employee submitting to DHA any payments made to the employee for jury service other than reimbursement of costs;
 - (b) the first five (5) days of voluntary emergency management activity in a calendar year; and
 - (c) where otherwise approved by the Managing Director.

50. Defence Reservists leave

- 50.1 The Managing Director may grant an employee leave (with or without pay) to enable the employee to fulfil Australian Defence Force (ADF) Reserve and Continuous Full Time Service (CFTS) or Cadet Force obligations.
- 50.2 An employee is entitled to leave with pay, for up to four (4) weeks during each calendar year, and an additional two (2) weeks paid leave in the first year of ADF Reserve Service, for the purpose of fulfilling service in the ADF Reserve.
- 50.3 With the exception of the additional two (2) weeks in the first year of service, leave can be accumulated and taken over a period of two (2)

years, to enable the employee to undertake training as a member of the ADF Reserves.

- 50.4 Defence Reserve leave counts as service for all purposes, except for unpaid leave to undertake CFTS. Unpaid leave for the purpose of CFTS counts for all purposes except annual leave accrual.
- 50.5 Eligible employees may also apply for annual leave, long service leave or flex days, for the purpose of fulfilling ADF Reserve, CFTS or Cadet Force obligations.

51. Other leave

- 51.1 The Managing Director may approve paid, part paid or unpaid leave in exceptional circumstances and/or for a reason considered by the Managing Director to be appropriate and/or in the interests of DHA.
- 51.2 Such leave may be approved subject to conditions and/or to count as service or not to count as determined by the Managing Director.
- 51.3 Other leave for a part day will not normally be approved.
- 51.4 Where an employee is on unpaid other leave on the working days immediately before and after a public holiday, payment will not be made for the public holiday.

52. Public holidays

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

- 52.2 If under a State or Territory law, a day or part-day is substituted for one (1) of the public holidays listed above, then the substituted day or part-day is the public holiday.
- 52.3 The Managing Director and an employee may agree on the substitution of a day or part-day that would otherwise be a public holiday, having regard to operational requirements.
- 52.4 An employee, who is absent on a day or part-day that is a public holiday in a place where the employee is based for work purposes, is entitled to be paid for the part or full day absence as if that day or part-day was not a public holiday, except where that person would not normally have worked on that day.
- 52.5 Where a public holiday occurs in a period when an employee is absent on paid leave (other than long service leave or paid maternity/parental leave) the public holiday will not be deducted from the employee's paid leave entitlement.
- 52.6 Where an employee is on a period of leave without pay and a public holiday occurs, the employee will not be entitled to payment for the public holiday.

53. Unauthorised absences

- 53.1 Where an employee is absent from duty without approval the absence will be without pay and will not count as service for any purpose. Other benefits provided under this Agreement will cease to be available to the employee until the employee resumes duty or is granted leave. Any amounts paid to an employee in respect of an unauthorised absence are overpayments and DHA will seek to recover those amounts.
- 53.2 Where an employee has been absent from work for five (5) or more consecutive working days without authorisation, DHA will make all reasonable efforts to contact an employee and the employee's emergency contact, provide the employee with an opportunity to explain the absence and give genuine consideration to any explanation provided by the employee for the absence.
- 53.3 Where the employee fails to provide an explanation for the absence or the Managing Director considers that the explanation provided by the employee is not reasonable in the circumstances, the Managing Director may initiate action to terminate the employee's employment on the grounds of non-performance of duty.

54. Non-accrual of leave under suspension

- 54.1 If an employee has been suspended without pay under the *Public Service Regulations 1999* because of suspected misconduct, the

Managing Director may decide that the period of suspension will not count as service for the accrual of annual and personal leave credits.

- 54.2 If an employee has ceased to accrue credits under clause 54.1 and is not found to have breached the APS Code of Conduct, the employee will be credited with the leave credits which did not accrue.

PART G. ALLOWANCES

55. Travel

- 55.1 Where an employee is required to undertake travel on official business and is required to be away from home overnight:
- (a) The cost of reasonable accommodation will be paid by DHA; and
 - (b) The employee will either:
 - (i) be paid an allowance to cover the cost of meals and incidentals; or
 - (ii) have reasonable meals and incidentals expenditure paid by DHA using a credit card or other suitable means.

56. Part day travel allowance

- 56.1 Where an employee is required to be absent from their home locality for more than 10 hours, but is not required to be away overnight, the employee will be paid a taxable Part Day Travel Allowance of \$50.00.

57. Motor vehicle allowance

- 57.1 The Managing Director can authorise an employee to use an employee's private vehicle for work related purposes and approve payment of a motor vehicle allowance.
- 57.2 The rate of motor vehicle allowance is the same as the rate determined by the "cents per kilometre" method used by the Australian Taxation Office.

58. Additional role allowances

- 58.1 The Managing Director will approve payment of an additional role allowance of \$28 per fortnight, fixed for the life of this agreement, for employees performing one or more of the following roles:
- (a) First Aid Officer;
 - (b) Fire Warden or Deputy Fire Warden;
 - (c) Harassment Contact Officer; and/or
 - (d) Health and Safety Representative.

58.2 Any costs involved in attaining or retaining required qualifications for the additional roles will be paid or reimbursed as approved by the Managing Director.

59. School holiday care allowance

59.1 The Managing Director may approve a school holiday care allowance where the employee has:

- (a) more than 12 months continuous service with DHA;
- (b) less than 20 days of Annual leave credits, or the employee has more than 20 days of Annual leave credits, but the employee's manager is unable to approve an application for Annual leave during the school holidays due to operational requirements; and
- (c) children under the age of 12 who are being cared for during the school holidays by a child care provider or a person who is not the employee's partner or older child.

59.2 Where eligible for the school holiday care allowance, and upon production of evidence of expenditure, the employee will be paid a taxable allowance of \$30 per day per child to a maximum of \$300 per week for an individual employee.

PART I. OTHER ENTITLEMENTS

60. Professional memberships

60.1 Where the Managing Director requires an employee to hold a professional membership, DHA will pay or reimburse the costs of such membership.

61. Relocation assistance

61.1 Where an employee is required by the Managing Director to relocate to another DHA office that requires the employee to move residence, the Managing Director will pay or reimburse reasonable costs incurred by the employee as a result.

62. Employee Assistance Program

62.1 DHA will make available to all employees and their immediate families a service to provide confidential, professional counselling to help resolve work related and personal problems.

63. Flu vaccination

63.1 DHA will provide all employees with the opportunity to receive a flu vaccination each year by either provision of or reimbursement for a flu vaccination service.

PART J. CONSULTATION

64. Staff Consultative Group

64.1 DHA will continue to operate a Staff Consultative Group (SCG) under this Agreement.

65. Consultation

65.1 This term applies if the employer:

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

Major change

65.2 For a major change referred to in clause 65.1(a):

- (a) the employer must notify the relevant employees of the decision to introduce the major change; and
- (b) clauses 65.3 to 65.9 apply.

65.3 The relevant employees may appoint a representative for the purposes of the procedures in this term.

65.4 If:

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

the employer must recognise the representative.

65.5 As soon as practicable after making its decision, the employer must:

- (a) discuss with the relevant employees:
 - (i) the introduction of the change;
 - (ii) the effect the change is likely to have on the employees; and
 - (iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and
- (b) for the purposes of the discussion—provide, in writing, to the relevant employees:
 - (i) all relevant information about the change including the nature of the change proposed; and

- (ii) information about the expected effects of the change on the employees; and
 - (iii) any other matters likely to affect the employees.
- 65.6 The employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 65.7 The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- 65.8 If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in paragraph 65.2(a) and subclauses 65.3 and 65.5 are taken not to apply.
- 65.9 In this term, a major change is **likely to have a significant effect on employees** if it results in:
 - (a) the termination of the employment of employees; or
 - (b) major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
 - (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
 - (d) the alteration of hours of work; or
 - (e) the need to retrain employees; or
 - (f) the need to relocate employees to another workplace;
 - (g) the restructuring of jobs.

Change to regular roster or ordinary hours of work

- 65.10 For a change referred to in clause 65.1(b):
 - (a) the employer must notify the relevant employees of the proposed change; and
 - (b) clauses 65.11 to 65.15 apply.
- 65.11 The relevant employees may appoint a representative for the purposes of the procedures in this term.
- 65.12 If:
 - (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - (b) the employee or employees advise the employer of the identity of the representative;the employer must recognise the representative.
- 65.13 As soon as practicable after proposing to introduce the change, the employer must:

- (a) discuss with the relevant employees the introduction of the change; and
- (b) for the purposes of the discussion—provide to the relevant employees:
 - (i) all relevant information about the change, including the nature of the change; and
 - (ii) information about what the employer reasonably believes will be the effects of the change on the employees; and
 - (iii) information about any other matters that the employer reasonably believes are likely to affect the employees; and
- (c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).

65.14 However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.

65.15 The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.

65.16 In this term:

relevant employees means the employees who may be affected by a change referred to in clause 65.1.

PART K. REDUNDANCY

66. General

66.1 This part only applies to an ongoing employee not subject to a probation period.

66.2 The Managing Director may retrench an employee where DHA has made a definite decision that it no longer requires an employee's job to be performed by the employee, or anyone else.

66.3 DHA may no longer require an employee's job to be performed by anyone, for reasons including:

- (a) there is a greater number of employees at a particular classification than is necessary for the efficient and economical working of DHA; or
- (b) the services of the employee cannot be effectively used because of technological or other changes in the work methods of DHA or structural or other changes in the nature, extent or organisation of the functions of DHA.

67. Assistance to employees

- 67.1 An employee who may be retrenched will be entitled to the following:
- (a) information about the value of the employee's termination payments if the employee is retrenched;
 - (b) discussions about possible redeployment opportunities;
 - (c) reimbursement of reasonable costs associated with the provision of financial assistance as approved prior to the retrenchment date of effect; and
 - (d) where the employee chooses, referral to a career transition service.

68. Severance entitlements

- 68.1 An employee terminated by the Managing Director on the grounds that the employee is excess to the requirements of DHA is entitled to payment of a redundancy benefit of an amount equal to two (2) weeks' salary for each completed year of continuous service, plus a pro rata payment for completed months of service since the last completed year of service, subject to any minimum amount the employee is entitled to under the National Employment Standards.
- 68.2 Earlier periods of service may count provided there are no breaks between the periods of service, except where a break in service is less than one (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.
- 68.3 Any period of service which ceased by way of any of the grounds for termination specified in Section 29 of the *Public Service Act 1999* (including any additional grounds prescribed in the Public Service Regulations); or on a ground equivalent to any of these grounds; or through voluntary retirement at or above the minimum retiring age applicable to the employee; or with the payment of a redundancy or similar payment or an employer-financed retirement benefit; will not count as service for severance pay purposes.
- 68.4 The minimum severance payment will be four (4) weeks' salary and the maximum will be 48 weeks' salary.
- 68.5 The redundancy benefit will be calculated on a pro rata basis for any period where an employee has worked part-time hours during the period of service and the employee has less than 24 years of full-time service, subject to any minimum amount the employee is entitled to under the National Employment Standards.
- 68.6 For the purposes of sub-clause 68.1, the period of continuous service includes Government service as defined in Section 10 of the *Long Service Leave (Commonwealth Employees) Act 1976*.

- 68.7 For the purposes of sub-clause 68.1, absences from work which do not count as service for long service leave purposes will not count as continuous service for severance pay purposes.
- 68.8 For the purposes of sub-clause 68.1, the employee's salary will be the higher of:
- (a) the employee's annual base salary at their permanent classification level; or
 - (b) the salary payable at a higher classification level where the employee has been temporarily performing work and has been paid at that higher classification level for a period of 12 months or more immediately preceding the date on which DHA gave the employee notice of their termination.
- 68.9 An employee will not be entitled to severance pay where DHA offers the employee comparable employment and the employee refuses that offer.

69. Notice of termination on retrenchment

- 69.1 Where the employee is to be terminated or retrenched, the Managing Director will provide the employee with the notice of termination set out in clauses 73.2 to 73.4.

70. Reduction in classification

- 70.1 The Managing Director may, in order to prevent an employee being retrenched, reduce the employee's classification by one (1) level, or two (2) levels with the employee's consent, provide alternative duties or secure comparable employment for the employee with another employer.
- 70.2 Where the Managing Director reduces the classification level of the employee under sub-clause 70.1, the employee will be entitled to income maintenance payments to maintain salary at the previous classification level for a period that is equal to two (2) weeks for every year of service (as defined by sub-clauses 68.6 and 68.7), subject to a minimum period of four (4) weeks and a maximum period of 48 weeks.

PART L. DISPUTE RESOLUTION

71. Procedures for preventing and settling disputes

- 71.1 If a dispute relates to:
- (a) a matter arising under this Agreement; or
 - (b) the National Employment Standards;
- this part sets out procedures to settle the dispute.
- 71.2 An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this part.

- 71.3 In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the employee or employees and the relevant supervisors and/or managers.
- 71.4 If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to the Fair Work Commission.
- 71.5 The Fair Work Commission may deal with the dispute in two stages:
- (a) The Fair Work Commission will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
 - (b) if the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:
 - (i) arbitrate the dispute; and
 - (ii) make a determination that is binding on the parties.

Note: If the Fair Work Commission arbitrates the dispute, it may also use the powers that are available to it under the Fair Work Act 2009. A decision that the Fair Work Commission makes when arbitrating a dispute is a decision for the purpose of Division 3 of Part 5.1 of the Fair Work Act 2009. Therefore, an appeal may be made against the decision.

- 71.6 While the parties are trying to resolve the dispute using the procedures in this part:
- (a) an employee must continue to perform work normally unless the employee has a reasonable concern about an imminent risk to health or safety; and
 - (b) an employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace, unless:
 - (i) the work is not safe;
 - (ii) applicable occupational health and safety legislation would not permit the work to be performed;
 - (iii) the work is not appropriate for the employee to perform; or
 - (iv) there are other reasonable grounds for the employee to refuse to comply with the direction.
- 71.7 The parties to the dispute agree to be bound by a decision made by the Fair Work Commission in accordance with this part.

PART M. TERMINATION OF EMPLOYMENT

72. Resignation

72.1 An employee may resign at any time, and for whatever reason, and should give two (2) weeks written notice of their resignation from employment. The required notice period may be shortened or waived by the Managing Director.

73. Cessation of employment

Termination for serious misconduct

73.1 Nothing in this Agreement prevents DHA from terminating the employment of an employee for breaching the APS Code of Conduct, without further notice or payment in lieu of notice, in accordance with the *Fair Work Act 2009* and associated regulations dealing with serious misconduct, and the *Public Service Act 1999*.

Notice of termination

73.2 The Managing Director will provide employees with notice of termination in accordance with the following notice periods:

Period of continuous service in the APS	Period of notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

73.3 The required period of notice set out in sub-clause 73.2 is increased by one (1) week where the employee:

- (a) is over 45 years of age; and
- (b) has completed at least two (2) years of continuous service with the APS.

73.4 The Managing Director may elect to pay an employee in lieu of all or part of the required notice provided for in sub-clauses 73.2 and 73.3.

Invalidity retirement

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

Termination payments

- 73.6 Where an employee ceases employment with DHA, the employee will receive payment in lieu of unused annual leave credits. This payment will be based on the employee's final base salary.

Payment on death

- 73.7 Where an employee dies, or is assumed by DHA to have died, the Managing Director will authorise the payment of the amount to which the former employee would have been entitled had the employee resigned on that date, including accrued annual leave and long service leave, taking into account any relevant taxation legislation.
- 73.8 Payment of an amount authorised by DHA under sub-clause 73.7 shall be made to the executor of the former employee's estate, the administrator of the former employee's estate, the public trustee or such other person as the law requires in the jurisdiction pertaining to the former employee.

74. Review of decisions to terminate employment

- 74.1 Termination of, or a decision to terminate, employment cannot be reviewed under the dispute prevention and settlement procedures addressed in clause 71 of this Agreement.

Appendix 1 - Pay rates – Classification Structure

DHA level	Pay point	Salary from start of this Agreement	Higher duties adjustment to pay scales	Initial pay increase	Salary 12 months from start of Agreement	Salary 24 months from start of Agreement
DHA Trainee (APS Technical)	Min	\$49,334	\$49,334	\$50,321	\$51,327	\$52,354
	Max	\$56,184	\$56,184	\$57,308	\$58,454	\$59,623
Broadband 1						
DHA Level 1 (APS Level 1)	Min	\$51,598	\$51,598	\$52,630	\$53,683	\$54,757
	Max	\$57,700	\$57,700	\$58,854	\$60,031	\$61,232
DHA Level 2 (APS Level 2)	Min	\$56,568	\$58,700	\$59,874	\$61,071	\$62,292
	Max	\$63,424	\$63,424	\$64,692	\$65,986	\$67,306
Broadband 2						
DHA Level 3 (APS Level 3)	Min	\$64,752	\$64,752	\$66,047	\$67,368	\$68,715
	Max	\$71,748	\$71,748	\$73,183	\$74,647	\$76,140
DHA Level 4 (APS Level 4)	Min	\$70,394	\$72,748	\$74,203	\$75,687	\$77,201
	Max	\$78,662	\$78,662	\$80,235	\$81,840	\$83,477
Broadband 3						
DHA Level 5 (APS Level 5)	Min	\$79,309	\$79,662	\$81,255	\$82,880	\$84,538
	Max	\$86,564	\$86,564	\$88,295	\$90,061	\$91,862
DHA Level 6 (APS Level 6)	Min	\$87,550	\$87,564	\$89,315	\$91,101	\$92,923
	Max	\$100,665	\$100,665	\$102,678	\$104,732	\$106,827
Executive Level						
Executive Level 1	Min	\$106,293	\$106,293	\$108,419	\$110,587	\$112,799
	Max	\$129,722	\$129,722	\$132,316	\$134,962	\$137,661
Executive Level 2	Min	\$126,316	\$131,722	\$134,356	\$137,043	\$139,784
	Max	\$162,076	\$162,076	\$165,318	\$168,624	\$171,996

Appendix 2 – Performance bonus buy-out

In accordance with clause 9, ongoing and non-ongoing employees working full time or part time covered by this agreement will be paid a one off taxable performance bonus buy out based on their substantive classification in accordance with the following table:

Classification	Bonus buy out
DHAL3	\$5,500
DHAL4	\$6,500
DHAL5	\$7,500
DHAL6	\$9,000
EXECL1	\$11,000
EXECL2	\$13,100

Appendix 3 – Definitions

Term	Definition
APS	Australian Public Service.
DHA	Defence Housing Australia, the body created under the <i>Defence Housing Australia Act 1987</i> .
Employee	Means a person employed and paid by DHA and who is covered by this Agreement.
Fair Work Act	The <i>Fair Work Act 2009</i> (Commonwealth) as amended or replaced.
Fair Work Commission	Fair Work Commission as established under the Fair Work Act.
Fair Work Regulations	Fair Work Regulations as established under the Fair Work Act.
Home	The place that the employee normally resides and travels to and from in order to meet employment obligations.
Household member	A person who usually resides in the same dwelling as the employee, with common provision for food or other essentials for living.
Immediate family	(a) Means a spouse (includes a former spouse), de facto partner (includes a former de facto partner), child, foster child, parent, grandparent, grandchild or sibling of the employee; or (b) Means a child, foster child, parent, grandparent, grandchild or sibling of a spouse (includes a former spouse) or de facto partner (includes a former de facto partner) of the employee; and (c) Includes a member of the employee's cultural kinship group or extended family where the employee is able to establish that the person has a similar relationship to that of a parent, grandparent, child, grandchild or sibling.
Medical certificate	Means a certificate signed by a registered health practitioner.
Non-ongoing (temporary) APS employee	An employee who is a non-ongoing employee as defined by the <i>Public Service Act 1999</i> .
Ongoing APS employee	An employee who is an ongoing employee as defined by the <i>Public Service Act 1999</i> .
De facto partner	Means a person who, although not legally married to the employee, (a) lives with the employee in a relationship as a couple on a genuine domestic basis (whether the employee and the person are of the same sex or different sexes); and (b) includes a former de facto partner of the employee.
Public Service Act	The <i>Public Service Act 1999</i> (Commonwealth).

Registered health practitioner	Means a health practitioner registered, or licensed, as a health practitioner (or as a health practitioner of a particular type) under a law of a State or Territory that provides for the registration or licensing of health practitioners (or health practitioners of that type).
Retrenchment	The termination of an employee's employment under section 29 of the Public Service Act on the grounds that the employee is excess to the requirements of DHA.

Appendix 4 – Supported salary rates and conditions of employment

- 4.1 Supported salary rates and conditions of employment will apply to an employee with a disability who is eligible for consideration under the Supported Wage System (the System).
- 4.2 Employees covered by the System will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged, because of the effects of a disability on their productive capacity and who meet the impairment criteria test for a Disability Support Pension.
- 4.3 The schedule does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this agreement relating to the rehabilitation of employees who are injured in the course of their employment.

Supported wage rates

- 4.4 Employees to whom the System applies will be paid the applicable percentage of the salary prescribed by this Agreement for the class of work which the person is performing according to the following schedule:

Assessed Capacity	% of Prescribed Salary
10%	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

(Provided that the minimum amount payable is not less than the minimum amount determined by the Annual Wage Review by the Fair Work Commission).

- 4.5 When an employee's assessed capacity is 10 per cent, a higher degree of assistance and support will be provided. Assessment made under this schedule must be documented in a Supported Wage System wage assessment agreement, and retained by the employer as a time and wage record in accordance with the Act.

Assessment of capacity

- 4.6 For the purpose of establishing the percentage of the salary to be paid to an employee, the productive capacity of the employee will be assessed in accordance with the System and documented in the assessment instrument.

Lodgement of assessment instrument

- 4.7 All assessment instruments will be agreed and signed by the parties to the assessment. All assessment instruments, including the appropriate percentage of the salary to be paid to the employee, will be lodged by the employer with the Fair Work Commission.

Review of assessment

- 4.8 The assessment of the applicable percentage should be subject to annual review or earlier, on the basis of a reasonable request for a review. The process of review will be in accordance with the procedures for assessing capacity under the System.

Other terms and conditions of employment

- 4.9 Where an assessment has been made, the applicable percentage will apply to salary only. Employees covered by the provisions of the System will be entitled to the same terms and conditions of employment as all other workers covered by the Agreement, paid on a pro rata basis.

Workplace adjustment

- 4.10 DHA will take reasonable steps to enhance the employee's capacity to undertake assigned work. This may include re-design of role duties, changing working time arrangements and work organisation.

Trial period

- 4.11 In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of the System for a trial period not exceeding twelve weeks, except that in some cases additional work adjustment time (not exceeding four (4) weeks) may be needed.
- 4.12 During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined. The minimum amount payable to the employee during the trial period will be not less than the minimum amount determined by the Annual Wage Review by the Fair Work Commission.
- 4.13 Work trials should include induction or training as appropriate to the job being trialled.
- 4.14 Where DHA and the employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment.

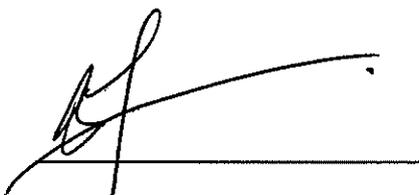
SIGNATORIES

Defence Housing Australia

Signed for Defence Housing Australia by:

Barry Jackson
Managing Director
26 Brisbane Avenue
BARTON ACT 2600

Signature:



Date:

7 / 12 / 2020

Employee Bargaining Representative: Community and Public Sector Union

Signed for and on behalf of the Community and Public Sector Union as a bargaining representative:

Melissa Payne
CPSU Deputy National President
40 Brisbane Avenue
BARTON ACT 2600

Signature:



Date:

7 / 12 / 2020

IN THE FAIR WORK COMMISSION

FWC Matter No.:
AG2020/3755

Applicant:
Defence Housing Australia

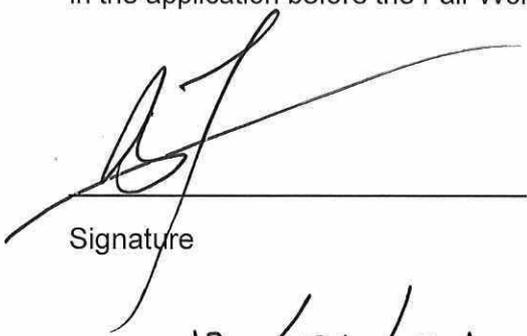
Section 185 - Application for approval of a single enterprise agreement

Undertaking - Section 190

I, Barry Jackson, Managing Director have the authority given to me by Defence Housing Australia to give the following undertakings with respect to the Defence Housing Australia Enterprise Agreement 2021 ("the Agreement"):

1. Defence Housing Australia (DHA) undertakes that where an employee is engaged as either a Cadet or a Graduate, the employee will be classified as a Broadband 2.
2. Any broadbanded classifications created in accordance with clause 20.3, will only be formed by banding together existing classifications as identified in Appendix 1. Employees who fall within a newly created broadbanded classification will not be assigned a classification lower than their existing classification at the time the broadbanded classification was created. These employees will be eligible for upward movement within the broadband in accordance with clause 20.2.
3. Where DHA requires an employee to work according to a roster which includes ordinary hours falling between 6:30pm and 6:30am Monday to Friday, or from 6:00 pm to 6:30 am Monday to Friday if the employee is classified as a trainee, the employee will be entitled to a shift penalty of 15 per cent.
4. Where DHA requires an employee to work a continuous night shift during Monday to Friday, the employee will be entitled to a shift penalty of 30 per cent. A continuous night shift is where the shifts fall wholly within the period 6:00pm and 8:00am and are worked for a period exceeding four weeks.
5. DHA undertakes that where an employee is required to work overtime not continuous with normal duty between 6:30pm and 6:30am Monday to Friday, the employee will be entitled to overtime in accordance with the provisions of clauses 32.4 to 32.6 of the Agreement.

These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.


Signature

12/01/21.
Date