



DECISION

Fair Work Act 2009

s.185 - Application for approval of a single-enterprise agreement

Office of the Inspector-General of Intelligence and Security
(AG2016/7502)

OIGIS ENTERPRISE AGREEMENT 2016-2019

Australian Capital Territory

COMMISSIONER ROE

MELBOURNE, 30 JANUARY 2017

Application for approval of the OIGIS Enterprise Agreement 2016-2019.

[1] An application has been made for approval of an enterprise agreement known as the *OIGIS Enterprise Agreement 2016-2019* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Office of the Inspector-General of Intelligence and Security. The Agreement is a single enterprise agreement.

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

[3] The Agreement was approved on 30 January 2017 and, in accordance with s.54, will operate from 6 February 2017. The nominal expiry date of the Agreement is 6 February 2020.



COMMISSIONER

Printed by authority of the Commonwealth Government Printer

<Price code J, AE423169 PR589736>



ENTERPRISE AGREEMENT

2016-2019

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PART A – TECHNICAL AND GENERAL MATTERS

1. Title

- 1.1. This Agreement is called the OIGIS Enterprise Agreement 2016-2019.

2. Coverage

- 2.1. This Agreement is made as an Enterprise Agreement under Part 2-4 of the *Fair Work Act 2009* (the Fair Work Act). It covers the Inspector-General of Intelligence and Security (Inspector-General) on behalf of the Commonwealth of Australia and employees of the Inspector-General employed under the Public Service Act 1999 (the Public Service Act).
- 2.2. This Agreement does not cover the employment terms and conditions of:
 - a. the Inspector-General; or
 - b. SES employees in the Office of the Inspector-General of Intelligence and Security (OIGIS); or
 - c. persons whose salary is paid by another government agency or employer.

3. Delegations

- 3.1. The Inspector-General may delegate to or authorise a person to perform any of the Inspector-General's powers or functions under this Agreement. Details are in the OIGIS Accountable Authority Instructions (AAIs) and Personnel Management Guidelines.

4. Operation of the Agreement

- 4.1. This Agreement will come into operation 7 days after this Agreement is approved by the Fair Work Commission and nominally expires three years after commencement.
- 4.2. Policies and procedures provide further information about employment provisions contained within this agreement. OIGIS AAIs and Personnel Management Guidelines are not incorporated into and do not form part of this Agreement and if there is any conflict this Agreement will prevail.

- 4.3. The Inspector-General and OIGIS employees agree that such policies and guidelines will be available to all employees and will be updated as necessary following reasonable consultation.

5. Individual Flexibility

- 5.1. The Inspector-General and an employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
- a. the agreement deals with (as a minimum) one or more of the following matters:
 - i. arrangements about when work is performed;
 - ii. overtime rates;
 - iii. penalty rates;
 - iv. allowances;
 - v. remuneration; and/or
 - vi. leave and leave loading; and
 - b. the arrangement meets the genuine needs of the Inspector-General and employee in relation to one or more of the matters mentioned in clause 5.1.a above; and
 - c. the arrangement is genuinely agreed to by the Inspector-General and employee.
- 5.2. The Inspector-General must ensure that the terms of the individual flexibility arrangement:
- a. are about permitted matters under section 172 of the Fair Work Act; and
 - b. are not unlawful terms under section 194 of the Fair Work Act; and
 - c. result in the employee being better off overall than the employee would be if no arrangement was made.
- 5.3. The Inspector-General must ensure that the individual flexibility arrangement:
- a. is in writing; and
 - b. includes the name of the Inspector-General and employee; and
 - c. is signed by the Inspector-General and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
 - d. includes details of:

- i. the terms of the Agreement that will be varied by the arrangement; and
 - ii. how the arrangement will vary the effect of the terms; and
 - iii. how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
 - e. states the day on which the arrangement commences and, where applicable, when the arrangement ceases.
- 5.4. The Inspector-General must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- 5.5. The Inspector-General or employee may terminate the individual flexibility arrangement:
 - a. by giving no more than 28 days written notice to the other party to the arrangement; or
 - b. if the Inspector-General and employee agree in writing – at any time.

6. Staff Consultation

- 6.1. This clause applies if the Inspector-General:
 - a. has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to OIGIS 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

- 6.2. For a major change referred to in clause 6.1 (a):
 - a. the Inspector-General must notify the relevant employees of the decision to introduce the major change; and
 - b. subclauses 6.3 to 6.9 apply.
- 6.3. The relevant employees may appoint a representative for the purposes of the procedures in this term.
- 6.4. 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 Inspector-General of the identity of the representative;
- the Inspector-General must recognise the representative.
- 6.5. As soon as practicable after making his or her decision, the Inspector-General must:
- a. discuss with the relevant employees:
 - (i) the introduction of the change; and
 - (ii) the effect the change is likely to have on the employees; and
 - (iii) measures the Inspector-General 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.
- 6.6. However, the Inspector-General is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 6.7. The Inspector-General must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- 6.8. If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the OIGIS, the requirements set out in clause 6.2(a) and clauses 6.3 and 6.5 are taken not to apply.
- 6.9. In this clause, *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 OIGIS workforce or to the skills required of employees; or
 - (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
 - (d) the alteration of hours of work; or
 - (e) the need to retrain employees; or
 - (f) the need to relocate employees to another workplace; or
 - (g) the restructuring of jobs.

Change to regular roster or ordinary hours of work

- 6.10. For a change referred to in clause 6.1(b):
- (a) the Inspector-General must notify the relevant employees of the proposed change; and
 - (b) clauses 6.11 to 6.15 apply.
- 6.11. The relevant employees may appoint a representative for the purposes of the procedures in this clause.
- 6.12. 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 Inspector-General of the identity of the representative; the Inspector-General must recognise the representative.
- 6.13. As soon as practicable after proposing to introduce the change, the Inspector-General 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).
- 6.14. However, the Inspector-General is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 6.15. The Inspector-General must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- 6.16. In this clause:

relevant employees means the employees who may be affected by a change referred to in clause 6.1.

7. Dispute Resolution

7.1. If a dispute relates to:

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

this clause sets out procedures to settle the dispute.

7.2. An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this clause.

7.3. 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 relevant supervisors and/or management.

7.4. If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to Fair Work Commission.

7.5. The Fair Work Commission may deal with the dispute in 2 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 Fair Work Commission arbitrates the dispute, it may also use the powers that are available to it under the Act. A decision that Fair Work Commission makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the Act. Therefore, an appeal may be made against the decision.

7.6. While the parties are trying to resolve the dispute using the procedures in this term:

- a. an employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and
- b. an employee must comply with a direction given by the Inspector-General to perform other available work at the same workplace, or at another workplace, unless:
 - (i) the work is not safe; or

- (ii) applicable occupational health and safety legislation would not permit the work to be performed; or
- (iii) the work is not appropriate for the employee to perform; or
- (iv) there are other reasonable grounds for the employee to refuse to comply with the direction.

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

PART B - OUR WORKPLACE

8. Health and Wellbeing

- 8.1. OIGIS will provide employees with access to health and wellbeing initiatives. Further information is available in OIGIS policy.

9. Learning and Development

- 9.1. OIGIS aims to provide learning and development opportunities appropriate to the needs of each employee.
- 9.2. Should an employee undertake a formal course of studies that has been approved by the Inspector-General, he or she may apply for study leave and for the provision of financial studies assistance. The amount of study leave and financial studies assistance payable (if any) will be at the discretion of the Inspector-General.

10. Performance Management

- 10.1. Each employee is required to participate in performance evaluation exchanges with his or her supervisor. Details can be found in the OIGIS Personnel Management guidelines.

PART C - EMPLOYMENT CONDITIONS

11. Hours of Work

- 11.1. Ordinary hours of work for full-time employees are 38 hours per week. This equates to a standard day of 7 hours and 36 minutes. An employee's ordinary hours of work will be averaged over a 12 month averaging period. This means that an employee's average ordinary hours of work will be calculated at any particular time by calculating the average during the 12 month period immediately preceding that time.
- 11.2. The span of hours during which an employee may work his or her ordinary hours is 7am to 7pm Monday to Friday. The span of hours may be varied in special circumstances by agreement between an employee and his or her supervisor.
- 11.3. An employee at or below the APS 6 level (OIGIS Bands 1 and 2) must record his or her attendance on the timekeeping system.
- 11.4. The Inspector-General may consider the pattern of hours by which an employee will work with due consideration to the employee's individual performance, personal needs and operational requirements. However, employees will be available for reasonable direction to work outside the agreed pattern of hours.
- 11.5. Employees will not normally be required to work for more than 10 hours on any one day. Employees should take a minimum meal break of 30 minutes after working continuously for a 5 hour period, except when the hours worked on that day are 6 hours or less and the employee has requested to work beyond the 5 hour period.
- 11.6. Standard attendance hours are 7 hours and 36 minutes from 8.30am to 12.30pm and 1.30pm to 5.06pm Monday to Friday. Standard attendance hours will apply:
 - a. if an employee and his or her supervisor cannot agree on a pattern of hours; or
 - b. if an employee's supervisor considers that the employee's attendance is unsatisfactory or that the employee is misusing flex time.

12. Flex Time And Overtime

- 12.1. Employees at or below the APS 6 level (OIGIS Bands 1 and 2), including part-time employees can use flex time. Details can be found in the OIGIS Personnel Management guidelines.

- 12.2. A flex time settlement period is a period of 4 weeks. A maximum flex time credit of 38 hours (one standard week) can be accumulated and carried over from one flex time settlement period to the next. Flex credits in excess of 25 hours may be paid out once per financial year at the employee's hourly rate of pay.
- 12.3. A maximum of 10 hours debit can be accumulated and carried over from one flex time settlement period to the next. Employees who accumulate a debit in excess of 10 hours have 2 flex time settlement periods to reduce the debit. If the debit is not reduced at the end of 2 flex time settlement periods the excess debit is treated as leave without pay and deducted from the employee's salary.
- 12.4. If an employee has a flex debit upon leaving OIGIS the debit will be treated as leave without pay and deducted from the employee's final salary. Flex credits less than 25 hours will not be paid out upon leaving OIGIS.
- 12.5. An APS level 6 or below employee who is required to work outside their ordinary span of hours or on a public holiday is eligible to receive extra duty payment (overtime). The rates are set out in Attachment 2 to this Agreement.
- 12.6. An employee cannot claim flex and also receive an extra duty payment in respect of the same hours. An employee should have a break of at least 8 hours between finishing the extra duty and commencing work again.
- 12.7. Executive Level 1 and Executive Level 2 (OIGIS Bands 3 and 4) employees will work reasonable additional hours as required. Time Off in Lieu (TOIL) may be provided to Executive Level 1 and Executive Level 2 employees at the Inspector-General's discretion.

13. Flexible working arrangements

- 13.1. A part-time employee is one whose ordinary hours of work are less than 152 over a 4 week period. Employees who job share will be classed as part-time.
- 13.2. Remuneration and other employment conditions are calculated on a pro-rata basis. For allowances of an expense or reimbursement nature part-time employees receive the same amount as full-time employees.
- 13.3. The Inspector-General will consider, and respond in writing to, written applications to access regular part-time work, including job sharing arrangements, in light of operational requirements and the National Employment Standards relating to flexible work arrangements.

PART D – LEAVE

14. Calculation Of Payment For Leave

- 14.1. An employee on paid leave is entitled to receive:
- a. the employee's base rate of pay for the employee's ordinary hours of work during the period of paid leave;
 - b. the Australian Intelligence Community Allowance in respect of the period of paid leave;
 - c. any Skills and Responsibilities Loading in respect of the period of paid leave that the employee would have been entitled to receive if the employee was not absent from work during the period of paid leave; and
 - d. Temporary Performance Allowance (TPA) in respect of the period of paid leave if the employee has received TPA for more than 12 months prior to taking the leave unless otherwise required by legislation.

15. Portability of Leave

- 15.1. Where an employee moves (including on promotion or for an agreed period) from another agency where they were an ongoing APS employee, the employee's unused accrued annual leave and personal/carers leave (however described) will be transferred, provided there is no break in continuity of service.
- 15.2. 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/carers leave (however described) will be recognised.
- 15.3. For the purpose of this clause:
- a. 'APS employee' has the same meaning as the Public Service Act.
 - b. 'Parliamentary Service' refers to employment under the Parliamentary Service Act 1999.
- 15.4. An employee's entitlement to these accrued leave credits and any future leave entitlements will be in accordance with this Agreement.

16. Annual Leave

- 16.1. A full-time employee is entitled to 20 days leave per year of service.
- 16.2. Annual leave accrues on a pro-rata basis for part-time employees.
- 16.3. Annual leave accrues progressively.
- 16.4. Annual leave counts as service for all purposes.
- 16.5. The taking of annual leave is subject to approval by the Inspector-General. Further details can be found in the OIGIS Personnel Management guidelines.
- 16.6. If more than 30 days leave that is not to count as service for any purpose is taken in a calendar year that whole period of leave will not count towards accrual of annual leave.
- 16.7. An employee with an accrued annual leave credit of 20 days or less may apply to take some or all of his or her annual leave on half pay. Annual leave credits will only be deducted at half the duration. Requests for leave on half pay will be considered on a case-by-case basis, taking into account the operational needs of the work area.
- 16.8. An employee with more than 60 days annual leave may be directed to take annual leave or enter into a managed leave plan. An employee will not be directed to take more than 25% of their annual leave credit at the time of the direction.

17. Cashing Out of Annual Leave

- 17.1. Once per calendar year, an employee may make a written election to cash out up to 2 weeks of their accrued annual leave entitlement, provided that:
 - a. the employee has taken at least 2 weeks annual leave in the 12 month period immediately preceding the election; and
 - b. the employee's remaining accrued annual leave entitlement, after the election, will be 4 weeks or more.
- 17.2. If the Inspector-General approves the employee's election to cash out an accrued annual leave entitlement, the Inspector-General and the employee will make an agreement in writing to that effect.

- 17.3. The Inspector-General must pay the employee at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.

18. Purchased Leave

- 18.1. Employees may apply to purchase one or more additional weeks of leave per year, up to a maximum of 8 weeks, subject to approval by the Inspector-General.
- 18.2. The employee will have an amount deducted from his or her annual pre-tax salary, on a fortnightly basis, dependent on the amount of leave purchased. Further details can be found in the OIGIS Personnel Management guidelines.
- 18.3. Purchased leave counts for service for all purposes. Salary for superannuation purposes continues to be the employee's salary as if the employee had not purchased leave.

19. Cancelled Leave

- 19.1. Employees may be reimbursed for reasonable costs not otherwise recoverable from other sources incurred as a result of their leave being cancelled. Further details can be found in the OIGIS Personnel Management guidelines.
- 19.2. If an employee is recalled to duty during annual leave the employee will be re-credited with a period equivalent to the ordinary hours worked during the annual leave and reimbursed for any reasonable costs, as determined by the Inspector-General, not otherwise recoverable from other sources incurred as a result of being recalled to duty.
- 19.3. An employee who is eligible for personal/carer's leave, community service leave or compassionate leave while on annual leave will have their leave re-credited on the provision of suitable documentary evidence.

20. Christmas Close Down

- 20.1. The OIGIS will close its normal operations from close of business on the last working day before Christmas, with business resuming on the first working day after New Year's Day.
- 20.2. Employees will be provided with time off for the working days between Christmas and New Year's Day and will be paid in accordance with their ordinary hours of work. Where an employee is absent on leave, payment for the Christmas

closedown provision will be in accordance with the entitlement for that form of leave, (e.g. if on long service leave half pay, payment is on half pay).

- 20.3. There will be no deduction from annual or personal/carer's leave credits for the closedown days.
- 20.4. Any decision to re-open OIGIS during the Christmas/New Year period shall be wholly at the discretion of the Inspector-General.
- 20.5. Employees may be reimbursed for reasonable costs not otherwise recoverable from other sources incurred as a result of being recalled to duty over the Christmas Close Down. Further details can be found in the OIGIS Personnel Management guidelines.
- 20.6. An APS level employee who is required to work on any of those working days referred to in clause 20.1 above will receive an extra duty payment. An Executive Level employee will receive an equivalent period of time off in lieu.

21. Public Holidays

- 21.1. Employees will be entitled to the following public holidays:
 - 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);
 - 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.
- 21.2. If under a state or territory law, a day or part day is substituted for one of the public holidays listed above, then the substituted day or part day is the public holiday.

- 21.3. The Inspector-General 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.
- 21.4. An employee, who is absent on a day or part-day that is a public holiday in the 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.
- 21.5. Where a public holiday falls during a period when an employee is absent on leave (other than annual or paid personal/carers leave) there is no entitlement to receive payment as a public holiday. Payment for that day would be in accordance with the entitlement for that form of leave (e.g. if on long service leave on half pay, payment is on half pay).
- 21.6. Employees may be requested to work on particular public holiday, and must work on the public holiday unless the request to work is not reasonable or the employee refuses the request on reasonable grounds.

22. Long Service Leave

- 22.1. An employee is eligible for long service leave in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976*.
- 22.2. The minimum period during which long service leave can be taken is 7 calendar days (seven calendar days at full pay or 14 calendar days at half pay). Long service leave cannot be broken with other periods of leave, except as otherwise provided by legislation.
- 22.3. The Inspector-General will consider applications for long service leave in light of operational requirements. Further details can be found in the OIGIS Personnel Management guidelines.

23. Personal/Carer's Leave

- 23.1. If an employee is unexpectedly unable to attend work the employee or his or her representative should make a reasonable effort to notify the relevant supervisor before 9:30am.
- 23.2. The Inspector-General may require that the employee provide documentary evidence in respect of any period of personal leave. Documentary evidence is required in respect of any period of personal leave exceeding 3 consecutive days.
- 23.3. Full-time ongoing employees accrue 18 days paid personal/carers' leave for each 12 months of service.

- 23.4. Ongoing OIGIS employees new to the APS are credited with their full entitlement of 18 days paid personal/carer's leave on commencement and thereafter annually on the anniversary of commencement.
- 23.5. Non-ongoing employees are entitled to one and a half days of paid personal/carer's leave for every completed month of service, accruing progressively.
- 23.6. Non-ongoing employees do not receive an initial credit in accordance with 23.3 above.
- 23.7. Personal/carer's leave accrues on a pro-rata basis for part-time employees.
- 23.8. Unused personal leave will accumulate, but cannot be paid out on separation.
- 23.9. If an employee takes more than 30 days leave that does not count as service within a 12 month period or has any unauthorised absence, the date of the next personal/carer's leave credit will be deferred by that amount of days.
- 23.10. An employee is entitled to take personal/carer's leave where the employee:
- a. is ill or injured; or
 - b. provides care or support to a member of the employee's immediate family, or a member of the employee's 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.
- 23.11. At the discretion of the Inspector-General, personal/carer's leave may also be approved if an employee is required to be absent from work due to unforeseen circumstances and has insufficient annual leave credits available.
- 23.12. Leave must not be taken under clause 23.11 to the extent that it results in less than 10 days' of an employee's personal/carer's leave credits per year being available for use for personal injury or illness and caring as provided under the Fair Work Act.
- 23.13. In exceptional situations, the Inspector-General may grant an employee who has used all of his or her personal/carer's leave credits additional personal/carer's leave on half pay. The employee must provide supporting evidence.

24. Unpaid Carer's Leave

- 24.1. Employees, including casual employees, are entitled to 2 days' unpaid carer's leave for each occasion when a member of the employee's immediate family or household, requires care or support during such a period because of:
 - a. a personal illness, or injury, of the immediate family/household member; or
 - b. an unexpected emergency affecting the immediate family/household member.
- 24.2. The entitlement in clause 24.1 is to 2 days' leave for full-time, part-time and casual employees, and is not subject to a pro rata.
- 24.3. Employees are entitled to unpaid carer's leave for a particular period only if the employee has exhausted their personal/carer's leave entitlement and cannot take an amount of personal leave under clause 23.10 or 23.13 during the period.
- 24.4. A period of unpaid carer's leave will not count as service for any purpose. However, it will not break an employee's continuity of service.

25. Compassionate Leave

- 25.1. An ongoing or non-ongoing employee is entitled to paid compassionate leave of 2 days on each occasion where a member of the employee's immediate family or household:
 - a. contracts or develops an illness or injury that poses a serious threat to his or her life; or
 - b. sustains a personal injury that poses a serious threat to his or her life.
- 25.2. If subclause 25.1 applies, an employee may apply to take additional days on personal leave. Leave must not be taken under this clause to the extent that it results in less than 10 days' of an employee's credits per year being available for use for personal injury or illness and caring as provided under the Fair Work Act.
- 25.3. An ongoing or non-ongoing employee is entitled to paid compassionate leave of 3 days on each occasion of the death of a member of the employee's immediate family or household.
- 25.4. If subclause 25.3 applies, an employee may apply to take additional days on personal leave. Leave must not be taken under this clause to the extent that it results in less than 10 days' of an employee's credits per year being available for use for personal injury or illness and caring as provided under the Fair Work Act.

26. Volunteer Leave

- 26.1. An employee may apply for one day's paid leave per calendar year to perform voluntary work for a not-for-profit community organisation. The timing of the leave should be agreed to by the employee's supervisor and supporting evidence must be provided in relation to the voluntary work to be performed.

27. War service sick Leave

- 27.1. Employees may be eligible to be granted war service sick leave while unfit for duty because of a war or defence caused condition.
- 27.2. A war-caused condition means an injury or disease of an employee that has been determined and accepted by the Department of Veterans' Affairs under the relevant legislation to be war-caused or defence-caused.
- 27.3. Eligible employees will accrue a special credit of nine weeks on commencement in the APS and an annual credit of three weeks for each year of APS service. Unused credits will accumulate to a maximum of nine weeks.

28. Defence Force Reserve Leave

- 28.1. An employee may be granted leave (with or without pay) to enable the employee to fulfil Australian Defence Force (ADF) Reserve and Continuous Full Time Service (CFTS) or Cadet Force obligations.
- 28.2. An employee is entitled to ADF Reserve leave with pay, for up to 4 weeks during each financial year for the purpose of fulfilling service in the ADF Reserve. These purposes include training and operational duty as required.
 - a. During the employee's first year of ADF Reserve service, a further 2 weeks paid leave may be granted to facilitate participation in additional ADF Reserve training, including induction requirements.
 - b. With the exception of the additional 2 weeks in the first year of service, leave can be accumulated and taken over a period of 2 years, to enable the employee to undertake training as a member of the ADF Reserves.
 - c. Employees are not required to pay their tax free ADF Reserve salary to the agency in any circumstances.
- 28.3. Defence Reserve leave counts as service for all purposes, except for unpaid leave to undertake Continuous Full Time

Service (CFTS). Unpaid leave for the purpose of CFTS counts for all purposes except annual leave.

- 28.4. An employee who is an officer or instructor of cadets in a Cadet Force may be granted paid leave of up to 3 weeks each financial year to perform duties as an officer or instructor of Cadets. For these purposes 'Cadet Force' means the Australian Navy Cadets, Australian Army Cadets, or the Australian Air Force Cadets.
- 28.5. Eligible employees may also apply for annual leave, long service leave, leave without pay, top-up pay or they may use flex time or make up time for the purpose of fulfilling ADF Reserve, CFTS or Cadet Force obligations.
- 28.6. Employees are to notify supervisors at the earliest opportunity once the dates for ADF Reserve, CFTS or Cadet Force activities are known and/or changed.

29. Community Service Leave

- 29.1. An employee who engages in an eligible community service activity is entitled to community service leave to fulfil his or her emergency service duties.
- 29.2. For the purposes of subclause 29.1 eligible community service activity has the same meaning as it does in s109 of the Fair Work Act.
- 29.3. In order to access community service leave, an employee must provide notice of the absence as soon as practicable (which may be after the absence has started) and must advise of the expected period of the absence.
- 29.4. The Inspector-General may require an employee to provide evidence that would satisfy a reasonable person that the absence is because the employee has been or will be engaging in a community service activity.
- 29.5. If an employee undertakes community service leave to undertake jury service, the employee will be entitled to full pay for the first 10 days of absence.
- 29.6. An employee will be required to pay any jury service fees received from the Court in the first 10 days of jury service, with the exception of expense allowances.
- 29.7. With the exception of the first 10 days of community service leave taken to render jury duty, all other community service leave is unpaid.

30. Cultural, ceremonial and NAIDOC obligations

- 30.1. An employee may apply for leave with or without pay to fulfil cultural, ceremonial and NAIDOC obligations.
- 30.2. Requests for leave under 30.1 will be considered on a case by case basis taking into account the circumstances, including:
 - a. the nature of the request;
 - b. the amount of time requested; and
 - c. the operational needs of the work area.

31. Miscellaneous Leave

- 31.1. An employee may apply for miscellaneous leave with or without pay, for a purpose not provided for elsewhere.
- 31.2. Requests for miscellaneous leave will be considered on a case by case basis taking into account the circumstances, including:
 - a. the nature of the request;
 - b. the amount of time requested; and
 - c. the operational needs of the work area.

32. Unauthorised Absence

- 32.1. If an employee is absent from work without permission all pay and other benefits provided under this Agreement will cease to be available until the employee resumes work or is granted leave. A period of unauthorised absence does not count as service for any purpose.

PART E – MATERNITY AND PARENTAL LEAVE

33. Maternity and parental leave

- 33.1. Employees who are pregnant, or who have given birth, are covered by the provisions of the *Maternity Leave (Commonwealth Employees) Act 1973* (the ML Act).
- 33.2. Employees with an entitlement to paid leave under the ML Act are provided with an additional 2 weeks of paid leave, to be taken continuous with a period of paid maternity leave provided by the ML Act.
- 33.3. Employees who adopt or permanently foster a child, and who have or will have responsibility for the child, are entitled to up to 52 weeks of parental leave. For primary caregivers, up to 14 weeks of that leave will be paid leave, commencing from the time of placement of the child, provided the employee satisfies the same qualifying requirements as those required to receive paid leave in accordance with the ML Act.
- 33.4. Employees are entitled to parental leave for adoption or permanent foster care when that child:
 - a. is under 16 years of age;
 - b. has not, or will not have, lived continuously with the employee for a period of 6 months or more as at the day (or expected day) of placement; and
 - c. is not (otherwise than because of the adoption) a child of the employee or the employee's spouse/partner.
- 33.5. 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.
- 33.6. Employees who are eligible for paid maternity or parental leave may elect to have the payment for that leave spread over a maximum of 28 weeks at a rate no less than half normal salary. Where payment is spread over a longer period, a maximum of 14 weeks of the leave period will count as service.
- 33.7. On ending the initial period of up to 52 weeks of maternity or parental leave, employees may request 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 leave period.

- 33.8. Unpaid maternity or parental leave will not count as service for any purpose except for any unpaid leave taken during the first 12 weeks.
- 33.9. This leave is inclusive of public holidays and will not be extended because a public holiday [or Christmas closedown] falls during a period of paid or unpaid maternity or parental leave. On ending maternity or parental leave, employees have the return to work guarantee and the right to request flexible working arrangements provided by (or the equivalent to those provided by) the *Fair Work Act 2009*.

34. Supporting Partner leave

- 34.1. An employee with 12 months continuous service in the APS who is not the primary care giver to a dependent child is entitled to 10 days of paid supporting partner's leave immediately following the birth, adoption or fostering of the dependent child. The leave must be taken on full pay.
- 34.2. An employee with 12 months continuous service in the APS who has or will have the responsibility for the care of the child is entitled to 52 weeks unpaid leave (not to count as service) commencing at any time within 12 months from the date of the birth of the dependent child. The period of 52 weeks is reduced by any period of leave taken under subclauses 33.1 and 33.3
- 34.3. Any period of unpaid leave taken under this clause must be taken in accordance with Division 5 of Part 2-2 of the Fair Work Act as applicable.
- 34.4. An employee returning from leave under this clause is entitled to access part-time employment in accordance with subclause 13.3 of this Agreement.

35. Return to Work after Parental Leave

- 35.1. On ending maternity or parental leave, employees have the return to work guarantee provided by the Fair Work Act.

36. Flexible Work Arrangements for Parents

- 36.1. Eligible employees have a right to request flexible working arrangements in accordance with the Fair Work Act.

PART F - CLASSIFICATION AND REMUNERATION

37. Broadbanded Classification Structure

37.1. OIGIS has broadbanded the APS employee classification structure:

| | |
|------------|--------------------|
| OIGIS Band | APS Classification |
| Band 1 | APS Level 1 - 3 |
| Band 2 | APS Level 4 - 6 |
| Band 3 | Executive Level 1 |
| Band 4 | Executive Level 2 |

38. Salary advancement

38.1. On 1 July each year, an ongoing employee who is not already on the maximum pay point applying to his or her current classification within the OIGIS Band may advance to the next pay point if the employee has:

- a. received a rating of at least satisfactory against the relevant work level standards for their classification in the appraisal cycle ending 30 June; and
- b. been at his or her current pay point for at least 3 months.

38.2. An Executive Level 2 (OIGIS Band 4) employee who is on the fifth or sixth pay point may advance to the next pay point if the employee:

- a. has been at his or her current pay point for at least 3 months, and
- b. has, in the opinion of the Inspector-General, been consistently performing at a high level.

38.3. Advancement to the next classification level within an OIGIS APS Band is subject to the application of a Work Availability Test (WAT) and the employee performing at least at a satisfactory level. The WAT can be applied if:

- a. an employee is receiving a Temporary Performance Allowance for performing duties at a higher classification level;
- b. the Inspector-General determines that there is sufficient ongoing work available at the higher classification; and
- c. the employee has the necessary skills and proficiencies to perform that work.

39. Rates of Pay

- 39.1. In recognition of the productivity gains to be achieved during the period of operation of this Agreement, base rates of pay for all OIGIS employees will be increased at each pay point of each classification as follows:
 - a. 3% on commencement of this agreement;
 - b. 2% 12 months from commencement of agreement; and
 - c. 1% 24 months from commencement of agreement.
- 39.2. Base rates of pay by classification are set out in Attachment 1.
- 39.3. An employee whose base rate of pay prior to the commencement of this Agreement exceeds the maximum pay point in OIGIS for that classification will be maintained on that base rate of pay until it is absorbed by OIGIS pay increases at the relevant classification level at which time the employee will move to the next pay point.

40. Salary on Engagement, Promotion or Movement

- 40.1. A person who is new to the APS or an existing APS employee who is promoted to a job in OIGIS will be paid at the minimum pay point of the relevant classification unless the Inspector-General approves payment of a higher base rate of pay based on experience, qualifications and skills.
- 40.2. Unless the Inspector-General determines otherwise, an existing APS employee moving to OIGIS at the same classification level whose current base rate of pay exceeds the maximum pay point in OIGIS for that classification will be maintained on that base rate of pay until it is absorbed by OIGIS pay increases at the relevant classification level at which time the employee will move to the next pay point.
- 40.3. Unless the Inspector-General determines otherwise, an existing APS employee moving to OIGIS at the same classification level whose current base rate of pay does not match an OIGIS pay point for that classification and is below the maximum pay point in OIGIS for that classification will be paid at the next highest pay point.

41. Casual Employees

- 41.1. Casual employees are engaged to perform duties that are irregular or intermittent. A casual employee is entitled to be paid an additional 20% loading on the hourly base rate of pay that is

payable to a full-time employee at the same pay point in the relevant classification.

- 41.2. The additional payment is in lieu of all paid leave except long service leave and payment for public holidays on which the employee is not rostered to work.
- 41.3. Casual employees are entitled to unpaid leave in accordance with the National Employment Standards.
- 41.4. Eligible casual employees are entitled to parental leave in accordance with subclause 33.1.

42. Supported Wage System

- 42.1. An employee who is affected by a disability may be eligible for a supported wage. See Attachment 4.

43. Payment of Salary

- 43.1. An employee will be paid fortnightly by electronic funds transfer into a financial institution account of the employee's choice.
- 43.2. The fortnightly rate of pay is calculated using the following formula: annual base rate of pay multiplied by 12 and divided by 313.

44. Flexible Remuneration Packaging

- 44.1. Ongoing employees, and non-ongoing employees with initial engagements of greater than 9 months, may apply to the Inspector-General to access flexible remuneration packaging. Any additional costs incurred by OIGIS in relation to the flexible remuneration packaging arrangements must be met by the employee.

45. Employer Superannuation Contributions

- 45.1. The agency will make compulsory employer contributions as required by the applicable legislation and fund requirements.
- 45.2. 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. 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 (e.g. unable to accept contributions for people aged over 75).

- 45.3. Employer superannuation contributions will not be paid on behalf of employees during periods of unpaid leave that does not count as service, unless otherwise required under legislation.
- 45.4. The Inspector-General may choose to limit superannuation choice to complying superannuation funds that allow employee and/or employer contributions to be paid through fortnightly electronic funds transfer using a file generated by the agency's payroll system.

46. Salary on Reduction

- 46.1. An employee's classification may be reduced at the employee's request or if the Inspector-General directs.
- 46.2. Reduction by the Inspector-General may occur in the following circumstances:
 - a. as a sanction in the event of a breach of the APS Code of Conduct;
 - b. where the employee is excess to requirements at the higher classification;
 - c. where the employee lacks or has lost an essential qualification for performing duties at the higher classification;
 - d. on the ground of non-performance or unsatisfactory performance of duties at the higher classification; or
 - e. where the employee is unable to perform duties at the higher classification because of physical or mental incapacity.
- 46.3. If an employee requests in writing or is directed to perform work at a lower classification level temporarily or permanently, the Inspector-General will determine the base rate of pay at the lower classification level. The determination will reflect the employee's experience, qualifications and skills and the circumstances under which the reduction occurred.

PART G – ALLOWANCES

47. Australian Intelligence Community Allowance

- 47.1. Employees will be paid a special allowance in recognition of the fact that the employee fills a position which requires regular, intrusive, high level security assessments, and which imposes other restrictions as a consequence of overseeing the activities of the Australian Intelligence Community.
- 47.2. The Australian Intelligence Community Allowance will increase 3% on commencement of the agreement, 2% 12 months after commencement of the agreement and 1% 24 months after commencement of the agreement as follows:
- a. \$1,125 on commencement
 - b. \$1,148 12 months from commencement of agreement
 - c. \$1,159 24 months from commencement of agreement
- 47.3. The additional payment does not form part of an employee's base rate of pay and will not count for superannuation purposes unless the relevant superannuation fund rules require otherwise.

48. Skills and Responsibilities Loading

- 48.1. The Inspector-General may authorise an additional payment to an employee who is directed to undertake a task over and above normal duties or is at the maximum pay point of his or her classification and provides additional skills in excess of the relevant work level standards.
- 48.2. The loading may be applied at the Inspector-General's discretion, if in the judgment of the Inspector-General, the employee brings a significantly higher degree of skill, expertise or experience to a position than would normally be expected, or fills a position which is either extremely complex or difficult, or has demands beyond those which would normally be expected of an employee paid within the relevant salary range and performing the duties of the position. The additional payment does not form part of an employee's base rate of pay and will not count for superannuation purposes unless the relevant superannuation fund rules require otherwise.

49. Temporary Performance Allowance

- 49.1. An employee who is reassigned duties at a higher non-SES classification level either within an OIGIS Band or in a higher OIGIS Band for a period of 20 consecutive working days or more will be paid a Temporary Performance Allowance (TPA) equal to the difference between the employee's current annual base rate of pay and pay point of the higher classification as determined by the Inspector-General.
- 49.2. TPA is not payable for periods of 19 consecutive working days or less. If an employee is reassigned duties at a higher level for more than 10 but less than 20 consecutive working days during a busy period the Inspector-General may authorise payment of a Skills and Responsibilities Loading.
- 49.3. TPA does not form part of an employee's base rate of pay and will not count for superannuation purposes unless paid for 12 continuous months or more, or where the relevant superannuation fund rules require otherwise.

50. Travel Assistance

- 50.1. Domestic and international travel entitlements may be payable in relation to an employee's official travel. Travel entitlements will be paid at the rate of the most recent Australian Taxation Office Determination relating to reasonable travel and meal allowance expenses.
- 50.2. The Inspector-General may authorise the payment of an employee's airline lounge membership, at the Inspector-General's discretion.
- 50.3. Where the Inspector-General has decided not to authorise the payment of an employee's airline lounge membership, the employee may purchase an airline lounge membership at a discounted corporate rate (if any) negotiated with OIGIS' domestic travel provider.
- 50.4. Frequent flyer points accumulated as a result of travel on official business can only be used for official business purposes and not private purposes.

51. Motor Vehicle Allowance

- 51.1. The Inspector-General may authorise an employee to use a private vehicle at the employee's expense for official purposes, where the Inspector-General considers that it will result in greater efficiency or involve less expense for OIGIS.

- 51.2. The employee, if authorised accordingly, may receive a Motor Vehicle Allowance. Motor Vehicle Allowance will be paid at the rate of the most recent relevant Australian Taxation Office Determination.
- 51.3. Any allowance shall not exceed the amount that would have been payable to transport the employee by the most efficient means.

52. Reimbursement for Loss or Damage

- 52.1. The Inspector-General may approve reimbursement to an employee for loss or damage to clothing and/or personal effects, where the Inspector-General considers that the loss or damage:
- a. occurred while the employee was protecting Commonwealth property from loss or damage;
 - b. was caused by a fault or defect in goods or other property belonging to the Commonwealth;
 - c. resulted from an act or omission by a Commonwealth employee (other than by the employee claiming reimbursement); or
 - d. in the circumstances, may reasonably be regarded as having occurred in the course of the employee's duties.
- 52.2. If approval is given, the amount to be reimbursed is the amount that the Inspector-General considers to be reasonable for the loss or damage.
- 52.3. To claim reimbursement for loss or damage, the employee should make a written submission to the Inspector-General stating how the damage occurred, seeking reimbursement and attaching relevant receipts.

53. Relocation Assistance

- 53.1. An employee may be entitled to assistance with relocation expenses. Further details can be found in the OIGIS Personnel Management guidelines.

54. First Aid and Fire Warden Allowance

- 54.1. The First Aid Allowance for First Aid Officers appointed by the Inspector-General will be \$28 per fortnight.
- 54.2. A Fire Warden Allowance of \$28 per fortnight will be paid to Fire Wardens appointed by the Inspector-General.
- 54.3. An employee who is both a First Aid Officer and a Fire Warden is to receive both allowances.

PART H - TERMINATION OF EMPLOYMENT

55. Termination by Employee

- 55.1. An employee may terminate his or her employment at any time by giving 2 weeks notice in writing to his or her supervisor.

56. Termination of Employment by OIGIS

- 56.1. The sole and exhaustive rights and remedies of an employee in relation to termination of employment are those available:
- a. under the Fair Work Act;
 - b. under other Commonwealth laws (including the Constitution), and
 - c. at common law.
- 56.2. Termination of, or a decision to terminate employment, cannot be reviewed under the dispute resolution procedures set out in clause 7.
- 56.3. Nothing in this Agreement prevents the Inspector-General from terminating the employment of an employee for serious misconduct, without further notice or payment in lieu, in accordance with the Fair Work Act, subject to compliance with the procedures established by the Inspector-General for determining whether an employee has breached the APS Code of Conduct under section 15 of the Public Service Act. Further details can be found in the OIGIS Personnel Management guidelines.

ATTACHMENT 1 – CLASSIFICATIONS & BASE RATES OF PAY

| OIGIS Band | APS Level | Previous EA rate | Pay point/range from commencement of agreement | 12 months from commencement of agreement | 24 months from commencement of agreement |
|------------|-----------|------------------|--|--|--|
| 4 | EL2 | 133,967 | 137,986 | 140,746 | 142,153 |
| | | 130,796 | 134,720 | 137,414 | 138,788 |
| | | 128,258 | 132,106 | 134,748 | 136,095 |
| | | | 127,344 | 129,891 | 131,190 |
| | | 119,013 | 122,583 | 125,035 | 126,285 |
| | | | 119,262 | 121,647 | 122,863 |
| | | 112,564 | 115,941 | 118,260 | 119,442 |
| 3 | EL1 | 107,810 | 111,044 | 113,265 | 114,398 |
| | | 104,635 | 107,774 | 109,930 | 111,029 |
| | | | 103,692 | 105,766 | 106,824 |
| | | 96,710 | 99,611 | 101,604 | 102,620 |
| 2 | APS 6 | 89,973 | 92,672 | 94,526 | 95,471 |
| | | 87,199 | 89,815 | 91,611 | 92,527 |
| | | 84,027 | 86,548 | 88,279 | 89,162 |
| | | 80,063 | 82,465 | 84,114 | 84,955 |
| | APS 5 | 76,101 | 78,384 | 79,952 | 80,751 |
| | | 74,513 | 76,748 | 78,283 | 79,066 |
| | | 72,531 | 74,707 | 76,201 | 76,963 |
| | | 70,155 | 72,260 | 73,705 | 74,442 |
| | APS 4 | 68,569 | 70,626 | 72,039 | 72,759 |
| | | 66,586 | 68,584 | 69,955 | 70,655 |
| | | 65,003 | 66,953 | 68,292 | 68,975 |
| | | 63,021 | 64,912 | 66,210 | 66,872 |
| | | | | | |
| 1 | APS 3 | 61,038 | 62,869 | 64,127 | 64,768 |
| | | 59,453 | 61,237 | 62,461 | 63,086 |
| | | 57,866 | 59,602 | 60,794 | 61,402 |
| | | 56,680 | 58,380 | 59,548 | 60,143 |
| | APS 2 | 55,092 | 56,745 | 57,880 | 58,458 |
| | | 53,509 | 55,114 | 56,217 | 56,779 |
| | | 51,129 | 52,663 | 53,716 | 54,253 |
| | | 49,543 | 51,029 | 52,050 | 52,570 |
| | APS 1 | 48,355 | 49,806 | 50,802 | 51,310 |
| | | 46,373 | 47,764 | 48,719 | 49,207 |
| | | 45,184 | 46,540 | 47,470 | 47,945 |
| | | 45,138 | 46,492 | 47,422 | 47,896 |
| | | | | | |

————— Top of salary band

----- To be regarded as the top of a salary band unless otherwise approved by the Inspector-General.

ATTACHMENT 2 – EXTRA DUTY PAYMENTS

The rate of extra duty payment will increase 3% on commencement of the agreement, 2% 12 months after commencement of the agreement and 1% 24 months after commencement of the agreement as set out in the table below.

If an employee performs approved extra duty for less than one hour, a minimum payment of one hour will be made. After the first hour, if less than a whole hour is worked; payment will be calculated at the nearest hour.

The rate is higher for the first hour of extra duty on a weekend or public holiday because it takes into account the cost of travel to work.

| | Commence- ment of agreement \$/hour | As of 12 months from commenceme nt of agreement \$/hour | As of 24 months from commencement of agreement \$/hour |
|--|--|--|--|
| APS 1-3 (OIGIS Band 1) Monday-Friday | 48 | 49 | 50 |
| APS 1-3 (OIGIS Band 1) Sat, Sun, Public Holiday – 1st hour | 76 | 77 | 78 |
| APS 1-3 (OIGIS Band 1) Sat, Sun, Public Holiday – after 1st hour | 48 | 49 | 50 |
| APS 4-6 (OIGIS Band 2) Monday-Friday | 65 | 66 | 67 |
| APS 4-6 (OIGIS Band 2) Sat, Sun, Public Holiday – 1st hour | 90 | 92 | 93 |
| APS 4-6 (OIGIS Band 2) Sat, Sun, Public Holiday – after 1st hour | 65 | 66 | 67 |

ATTACHMENT 3 - REDEPLOYMENT, REDUCTION & RETRENCHMENT

Application

1. The following provisions will apply to excess or potentially excess OIGIS employees, other than non-ongoing employees or employees on probation.

Identification

2. Where the Inspector-General becomes aware that an employee is likely to become excess or has become excess, the Inspector-General will advise the employee in writing, as soon as is practicable, of the reasons for this decision.
3. Within 30 calendar days of notification, the Inspector-General will hold discussions with the employee, and where they choose, the employee's nominated representative (if applicable), to consider:
 - a. any measures that could be taken to remove or reduce the incidence of an employee becoming excess;
 - b. redeployment opportunities;
 - c. referral to a redeployment programme; and
 - d. whether voluntary retrenchment, redeployment or re-assignment of duties may be appropriate.
4. Where an employee has been notified that he or she is potentially excess, and the employee (or where they choose, the employee's nominated representative) has declined to participate in the consultation process, i.e. to discuss the issue, the Inspector-General may immediately identify the employee as excess to the requirements of OIGIS.
5. Where an employee has not expressed a preference during the consultation process in relation to whether he or she prefers redeployment or voluntary retrenchment, the Inspector-General may identify the employee as excess to the requirements of OIGIS 30 calendar days after the employee was notified that he or she is potentially excess.
6. Where, during the consultation process, an employee has expressed an interest in redeployment or reassignment of duties, then the Inspector-General may immediately identify the employee as excess to the requirements of OIGIS and the process under clauses 10 to 14 of this Attachment may apply.
7. Where, during the consultation process, an employee has expressed an interest in voluntary retrenchment, then the Inspector-General may immediately identify the employee as excess to the

requirements of OIGIS and the process under clauses 15 to 16 of this Attachment may apply.

Invitation to Express Interest in Voluntary Retirement

8. The Inspector-General may, prior to the conclusion of these discussions, invite the employees who are not potentially excess to express interest in voluntary retrenchment, where this would permit the redeployment of employees who are potentially excess.
9. Any invitation made by the Inspector-General under clause 8 of this Attachment is not an offer of a voluntary retrenchment for a particular employee.

Redeployment and Re-Assignment of Duties

10. Within a reasonable time frame, the Inspector-General will take all reasonable steps, consistent with the interests of the efficient administration of OIGIS, including merit based selection, to re-assign the duties of an excess employee at the same level, within OIGIS, or to assist in the movement of an employee to another APS agency.
11. The Inspector-General will consider an excess employee in isolation from and not in competition with other applicants for an advertised job in OIGIS at or below the employee's classification level for which the employee has applied.
12. Those employees seeking redeployment may be referred to a redeployment programme, if redeployment is not readily available within OIGIS. Any costs associated with this will be borne by OIGIS.
13. An excess employee who declines an offer of voluntary retrenchment or does not accept the offer within the 30 day period will be immediately referred to a redeployment programme, unless the employee was referred prior to receiving the offer. The employee's retention period will commence in accordance with paragraph 35 of this Attachment.
14. If an employee has been referred to a redeployment programme before being offered voluntary retrenchment, the employee must be offered voluntary retrenchment 2 months after the referral if the redeployment is not successful.

Voluntary Retirement

15. An employee who has been advised that he or she is excess and who is not seeking redeployment will be made only one offer of voluntary retrenchment in respect of any single retrenchment situation, and will be given 30 days in which to consider the offer commencing on the day after the offer is made.

16. Where an offer of voluntary retrenchment is accepted by the employee, the Inspector-General can terminate the employee's employment under section 29 of the Public Service Act and give the required notice of termination of 4 weeks (or 5 weeks for an employee over 45 years of age with at least 5 years of continuous service). The period of notice will commence the day after the employee is notified of his or her termination of employment.

Accelerated Separation

17. The Inspector-General may provide employees likely to be subject to the redundancy provisions of this Agreement with an accelerated separation option. In addition to the severance benefit, this option provides employees who have been identified as eligible to be made an offer of voluntary redundancy and whose employment is terminated by the Inspector-General under section 29 of the Public Service Act on the grounds that they are excess to requirements within 14 days of receiving it, an amount of 10 weeks salary (or 11 weeks salary for an employee 45 years of age with a least 5 years continuous service). The payments made under this clause are inclusive of the period of consideration and any statutory entitlement to payment in lieu of notice.
18. This option is available to employees who exit from OIGIS prior to the commencement of any formal consultation with employees and, where they choose, their nominated representatives, noting that at any time, the employee may nominate a representative they wish to be involved in this matter, in which case the Inspector-General will hold discussion with the employee and their representative.
19. Where an employee has elected not to accept an offer under this option, the Redundancy provisions of this Agreement will then apply.
20. Where an employee requests or where the Inspector-General directs an earlier termination date within the notice period, the employee's employment will be terminated under section 29 of the Public Service Act on that date. Where an employee's employment is terminated at the beginning of, or within, the notice period, the employee will receive payment in lieu of notice for the unexpired portion of the notice period on the basis of:
 - a. the employee's current ordinary hours of work,
 - b. the amounts payable to the employee in respect of those hours, eg allowances and Skills and Responsibilities Loading, and
 - c. any other payments under the employee's contract of employment except for accruals that would have occurred had the person remained as an employee during the relevant notice period.

Where an offer of Voluntary Retrenchment has been accepted

21. When an employee is invited to accept voluntary retrenchment, or has been notified in writing that he or she is potentially excess, he or she will be given information on the:
- a. amount of his or her severance pay, pay in lieu of notice and the balance of any annual leave and Long Service Leave credits;
 - b. amount of accumulated superannuation contributions;
 - c. options available to the employee concerning his or her superannuation;
 - d. taxation rules applying to the various payments; and
 - e. access to career advisory services and any financial assistance which will be available to access such services.
22. In the circumstances outlined in paragraph 21 of this Attachment, the Inspector-General will reimburse the employee up to \$500 for professional financial advice. Where the Inspector-General judges it appropriate, he or she may reimburse in excess of \$500 for professional financial advice.

Severance Benefit – Recognition of Service

23. An employee who accepts voluntary retrenchment and whose employment is terminated by the Inspector-General under section 29 of the Public Service Act on the grounds that he/she is excess to requirements is entitled to be paid;
- a. where the employee's period of continuous service is less than 4 years, a sum equal to the number of weeks salary for each completed year of continuous service in accordance with table at section 119(2) of the Fair Work Act; or
 - b. where the employee's period of continuous service is 4 years or greater, a sum equal to 2 weeks salary for each completed year of continuous service, plus a pro-rata payment for each completed month of continuous service since the last completed full year of continuous service.
24. The minimum amount payable will be 4 weeks salary and the maximum will be 48 weeks salary.
25. Severance payments involving part-time employees will be calculated on a pro-rata basis for any period where they have worked part-time hours during their period of service and where they have less than the equivalent of 24 years full-time service.
26. Service for severance pay purposes means:

- a. service in OIGIS;
 - b. Government service as defined in section 10 of the *Long Service Leave Act 1976*;
 - c. service with the Commonwealth (other than service with a joint Commonwealth- State body corporate in which the Commonwealth does not have a controlling interest) which is recognised for long service leave purposes;
 - d. service with the Australian Defence Force;
 - e. APS service immediately preceding deemed resignation under the repealed Section 49 of the repealed Public Service Act 1922 if the service has not previously been recognised for severance pay purposes; and
 - f. service in another organisation where the employee was moved from the APS to give effect to an administrative re-arrangement, or an employee of that organisation is engaged as an APS employee as a result of an administrative rearrangement, and such service is recognised for long service leave purposes.
27. Service that will not count as service for severance pay purposes is any period of service which ceased through termination on the following grounds:
- a. the employee lacks, or has lost, an essential qualification for performing his or her duties;
 - b. non-performance, or unsatisfactory performance, of duties;
 - c. inability to perform duties because of a physical or mental incapacity;
 - d. failure to satisfactorily complete an entry level training course;
 - e. failure to meet a condition of engagement imposed under subsection 22(6) of the Public Service Act;
 - f. breach of the Code of Conduct;
 - g. any other ground prescribed by the Public Service Regulations;
 - h. on a ground equivalent to those above under the repealed Public Service Act 1922;
 - i. through voluntary retirement at or above the minimum retiring age applicable to the employee; or
 - j. with the payment of a retrenchment benefit or similar payment or an employer financed retirement benefit.

28. For earlier periods of service to count as severance pay, there must be no breaks between periods of service, except where:
- a. the break in service is less than 1 month and occurs where an offer of employment with the new employer was made and accepted by the employee before ceasing employment with the preceding employer; or
 - b. the earlier period of service was with the APS and ceased because the employee was deemed to have resigned from the APS on marriage under the repealed section 49 of the Public Service Act, 1922.
29. Absences from work which do not count as service for long service leave purposes will not count as service for severance pay purposes.

Severance Benefit – Rate of Payment

30. Salary for severance pay purposes will include:
- a. the employee's base rate of pay adjusted on a pro-rata basis for periods of part-time service,
 - b. TPA for performance of duties at a higher classification level where the employee has been performing duties at the higher classification level for a continuous period of at least 12 months immediately prior to the date on which the employee was given notice of termination of employment, and
 - c. other allowances in the nature of salary which have been paid to the employee on a regular basis and have continued to be paid during periods of annual leave, excluding allowances which are a reimbursement for expenses incurred.

Commencement of Retention Period

31. A retention period will commence in accordance with paragraph 35 of this Attachment in relation to an employee who has sought redeployment, has declined an offer of voluntary retrenchment and has been referred to a redeployment programme prior to the offer being made.
32. If an excess employee does not accept voluntary retrenchment, unless the employee agrees, he/she will not be involuntarily terminated by the Inspector-General under section 29 of the Public Service Act until the retention period has lapsed.
33. The retention period for an employee will be 7 months less the NES redundancy pay period.

34. The NES redundancy pay period is the number of weeks specified in the table at section 119(2) of the Fair Work Act which would have applied to the employee at the date 7 months after the commencement of the retention period.

Note: Where, at the date 7 months after the commencement of the retention period, an employee would have been eligible to receive a redundancy payment equivalent to 12 weeks' salary under Division 11 of Part 2-2 of the Fair Work Act, the retention period for that employee would be 7 months minus 12 weeks.

35. The retention period will commence on whichever is the earlier:

- a. the day the employee is advised in writing by the Inspector-General that he or she is an excess employee, or
- b. 30 days after the day on which the Inspector-General invites the employee to accept voluntary retrenchment.

36. The retention period and the notice period may be extended by any periods of paid personal leave not exceeding 6 months, which is supported by medical evidence, taken in these periods.

37. During the retention period, the Inspector-General:

- a. will continue to take reasonable steps to find alternative suitable employment for the excess employee, and/or
- b. may after giving 4 weeks notice to the employee, reduce his or her classification as a means of securing alternative employment for the excess employee.

38. If the employee's classification is reduced during the retention period, he or she will continue to be paid at his or her previous level of salary for the balance of the retention period.

39. Where the Inspector-General believes there is insufficient productive work available for the excess employee during the retention period, the Inspector-General may, with the agreement of the excess employee, terminate the employee's employment under section 29 of the Public Service Act on the grounds that he/she is excess to requirements and pay the balance of the retention period as a lump sum amount.

40. The lump sum payment in paragraph 39 of this attachment will be:

- a. an amount equivalent to:
 - i. the balance of the retention period; plus
 - ii. the number of weeks salary that would have been payable in accordance with the table at section 119(2) of the Fair Work Act if the retention period had been completed; and

- b. taken to include payment in lieu of notice of termination.

Involuntary Retrenchment

41. At the end of the retention period, the Inspector-General, subject to redeployment, may involuntarily retrench the excess employee under section 29 of the Public Service Act on the grounds that the employee is excess to requirements.
42. An employee who is involuntarily retrenched under either clause 39 or clause 41 of this Attachment is entitled to receive a sum equal to the number of weeks salary for each completed year of continuous service in accordance with table at section 119(2) of the Fair Work Act.
43. An excess employee will not be retrenched involuntarily where:
 - a. the employee has not been invited to accept an offer of voluntary retrenchment;
 - b. the employee has elected to be retrenched, but the Inspector-General has refused approval;
 - c. the employee has not been given 4 weeks notice of termination of employment (or 5 weeks notice for a employee over 45 years of age with at least 5 years continuous service), or payment in lieu of notice;
 - d. there remain employees who have elected voluntary retrenchment, been refused, and still wish voluntary retrenchment in the situation where a redundancy situation affects a number of employees engaged in the same work at the same level and location and the employees have been invited to retire; or
 - e. the employee has not consented and a vacancy exists in OIGIS that would permit the retention in employment of the employee (in such cases the employee would have preference in employment before an employee who is not engaged by OIGIS).
44. An excess employee may request assistance in meeting reasonable travel and incidental expenses incurred in seeking alternative employment where these are not met by the prospective employer and will be entitled to reasonable leave with full pay to attend necessary employment interviews.

ATTACHMENT 4 - SCHEDULE 1: SUPPORTED WAGE SYSTEM

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

2 In this schedule:

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

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

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

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

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

SWS wage assessment agreement means the document in the form required by the Department of Education, Employment and Workplace Relations that records the employee's productive capacity and agreed wage rate

3 Eligibility criteria

3.1 Employees covered by this schedule will be those who are unable to perform the range of duties to the competence level required within the class for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.

3.2 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 award relating to the rehabilitation of employees who are injured in the course of their employment.

4 Supported wage rates

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

| Assessed capacity | % of prescribed award rate |
|-------------------|----------------------------|
| 10% | 10% |
| 20% | 20% |
| 30% | 30% |
| 40% | 40% |
| 50% | 50% |
| 60% | 60% |
| 70% | 70% |
| 80% | 80% |
| 90% | 90% |

4.2 Provided that the minimum amount payable must be not less than \$82 per week.

4.3 Where an employee's assessed capacity is 10%; they must receive a high degree of assistance and support.

5 Assessment of capacity

5.1 For the purposes of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the Supported Wage System by an approved assessor, having consulted the employer and the employee, and if the employee so desires, a union which the employee is eligible to join.

5.2 Assessment made under this schedule must be documented in a SWS wage assessment agreement, and retained by the employer as a time and wages record in accordance with the Act.

6 Lodgement of SWS wage assessment agreement

6.1 All SWS wage assessment agreements under the conditions of this schedule, including the appropriate percentage of the relevant minimum wage to be paid to the employee, must be lodged by the employer with the Fair Work Commission.

6.2 All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment. Where a union which has an interest in the award is not a party to the assessment, the assessment will be referred by the Fair Work Commission to the union by certified mail and the agreement will take effect unless an objection is notified to the Fair Work Commission within 10 working days.

7 Review of assessment

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

8 Other terms and conditions of employment

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

9 Workplace adjustment

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

10 Trial Period

10.1 In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a Trial Period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.

10.2 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.

10.3 The minimum amount payable to the employee during the Trial Period must be no less than \$82 per week.

10.4 Work trials should include induction or training as appropriate to the job being trialled.

10.5 Where the employer and employee wish to establish a continuing employment relationship following the completion of the Trial Period, a further contract of employment will be entered into based on the outcome of assessment under clause 5.

ATTACHMENT 5 – KEY TERMS

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| Agreement | The Office of the Inspector-General of Intelligence and Security Enterprise Agreement –2016-2019. |
| APS | The Australian Public Service. |
| Base rate of pay | A rate of pay for a period worked that does not include loadings, monetary allowance or any other similar separately identifiable entitlements. |
| Excess Employee | <p>An employee who is excess to the requirements of the department if the Inspector-General determines:</p> <ul style="list-style-type: none"> • the employee is included in a class of employees employed by OIGIS, and there are more employees in the class than is necessary for the efficient and economical working of OIGIS; • the services of the employee cannot be effectively used because of technological or other changes in the work methods, or changes in the nature, extent or organisation of the functions of OIGIS; or • the duties usually performed by the employee are to be performed by the employee at a different locality, and the employee is not willing to perform duties at that locality. |
| Immediate family | <p>immediate family means:</p> <p>(a) is related by blood or by marriage to the employee;</p> <p>(b) is a de facto spouse, former spouse or former de facto spouse, child, parent, grandparent, grandchild or sibling of the employee; or</p> <p>(c) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee.</p> |
| Inspector-General | The Inspector-General of Intelligence and Security. |
| Non-ongoing employee | An employee engaged for a specific period, the duration of a specified task or duties that are irregular or intermittent, as defined by the Public Service Act. |
| OIGIS | The Office of the Inspector-General of Intelligence and Security. |
| Ongoing | An employee engaged under paragraph 22(2)(a) of the |

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| employee | Public Service Act. |
| Salary | The employee's annual rate of pay under this Agreement set in accordance with Attachment 1 of this Agreement. |
| Substantive | An employee's permanent classification level. |