

## **ASBESTOS SAFETY AND ERADICATION AGENCY**

### **Agency Determination 2022/01**

I, Justine Ross, Chief Executive Officer of the Asbestos Safety and Eradication Agency acting under subsection 24(1) of the *Public Service Act 1999*, make the following Determination.



Chief Executive Officer  
Asbestos Safety and Eradication Agency  
11 February 2022

#### **Citation**

This Determination may be cited as Agency Determination 2022/01.

#### **Commencement**

This Determination takes effect from the day it is signed.

#### **Interpretation**

1. In this Determination:
  - a. a reference to legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - b. a singular word includes the plural, and vice versa;
  - c. a word which suggests one gender includes the other gender;
  - d. if a word is defined, another part of speech has the corresponding meaning; and
  - e. if an example is given of anything (including a right or obligation), such as by saying it includes something else, the example does not limit the scope of that thing.

#### **Application**

2. This Determination applies to all employees of ASEA employed under the PS Act with the exception of SES employees or employees whose salaries are not paid by ASEA.

### **Australian Public Service Award**

3. A term or condition of this Determination is of no effect to the extent that it would reduce the benefit to an employee of an individual term or condition of:
  - a. the Australian Public Service Enterprise Award 2015; or
  - b. the NES.

### **Policies**

4. The terms and conditions in this Determination will be administered in accordance with relevant ASEA policies and guidelines.
5. This Determination will prevail to the extent of any inconsistency with an ASEA policy or guideline.

### **Period of Operation**

6. This Determination of three years' duration continues in force until:
  - a. it is revoked;
  - b. it is replaced with another subsection 24(1) determination; or
  - c. an enterprise agreement applies to the employee.

### **Delegation**

7. The CEO may delegate any or all of their powers and functions under this Determination, including this power of delegation, and may do so subject to conditions.
8. A person exercising powers or functions under a delegation must comply with any directions of the CEO in relation to the exercise of those powers or functions.

## **REMUNERATION**

### **Salary and annual adjustments**

9. An employee will be paid fortnightly by electronic funds transfer into a financial institution account of the employee's choice.
10. The fortnightly rate of pay is calculated using the following formula: annual rate of pay multiplied by 12 and divided by 313.
11. Employees' salaries set out in Column 3 of Table 1 at Attachment A are adjusted by 1.9 per cent from 14 February 2022.

Note: Employees' salaries will be further adjusted from 14 February 2023 and 14 February 2024 by the WPI – Private Sector Adjustment percentage through subsequent determinations.

### **Salary on Engagement, Promotion or Movement**

12. A person who is:
  - a. engaged to work at ASEA or
  - b. an existing APS employee promoted or moved to ASEA or
  - c. an existing employee promoted or moved within the broadband in ASEAwill be paid at the base pay point of the relevant classification unless the CEO approves payment of a higher salary having regard to the experience, qualifications, skills and pre-promotion or pre-movement salary of the employee.
13. An employee, who immediately before promotion, is in receipt of Temporary Performance Loading (TPL) above the base pay point due to receiving salary advancement at the TPL classification, will be paid at the higher pay point from the date of promotion.

### **Salary on Reduction**

14. Where an employee requests or agrees in writing, to permanently or temporarily perform work at a lower classification level, salary will be determined at a rate applicable to the lower level for the period specified. The CEO will determine salary within the lower classification level having regard to the experience, qualifications and skills of the employee, and the circumstances under which the reduction occurred.

### **Casual Employees**

15. Casual employees are entitled to a salary loading of 25% in lieu of public holidays not worked and all leave entitlements except for long service leave and leave as provided by the NES.

### **Supported Wage System**

16. Employees who are eligible for a supported salary who meet the impairment criteria for the Disability Support Pension will be paid the applicable percentage of the relevant rate for the work value they are performing in accordance with the Special Supported Wage System (Employees with a Disability) Australian Pay and Classification Scale.

## Supported Wage Prescribed Rates

17.

Assessed Capacity	% of prescribed salary rate	Assessed Capacity	% of prescribed salary rate
10%	10%	60%	60%
20%	20%	70%	70%
30%	30%	80%	80%
40%	40%	90%	90%
50%	50%		

## Junior Rates

18. Junior rates of pay are only applicable to the APS 1 level as detailed in Table 1 at Attachment A.

## Training Classifications

19. The Training Classifications detailed in Table 1 at Attachment A are used for those employees required to undertake a mandatory training or development program whose progression is subject to successful completion of that program.
20. In addition to the training classifications provided for in this Determination, the CEO may assign other classifications to the Training Classifications relevant to the training and development program being undertaken by an employee or to ensure consistency with whole of government approaches.

## Graduates

21. Graduates will enter the agency at the Graduate (APS) classification level within the Training Classification. The salary will be set at the base salary point of the APS 3 classification level unless the CEO approves payment of a higher salary having regard to the experience, qualifications, skills and pre-promotion salary of the employee.
22. On successful completion of the Graduate Program the classification of ASEA Graduates will be assessed for advancement to the top of the Graduate (APS) classification level.

## Cadet APS

23. Employees recruited as Cadet APS will undertake a course of study as determined by the CEO. Cadet APS will be assigned a classification level within the Training Classifications. On successful completion of their course of study and a final 12-week work placement, Cadets will be allocated to the APS 3 classification level. The salary will be set at the base salary

point of the APS 3 classification level unless the CEO determines otherwise having regard to the experience, qualifications and skills of the employee.

#### **Trainee APS (Administrative)**

24. Trainee APS (Administrative) employees will be assigned a classification within the Training Classification and undertake a course of study determined by the CEO. On successful completion of their training requirements, the classification of Trainee APS (Administrative) will be the APS 1 classification level. The salary will be the base point of the APS 1 classification level unless the CEO determines otherwise having regard to the experience, qualification and skills of the employee.

#### **Superannuation**

25. The agency's default superannuation fund is the PSSap and the agency will provide contributions to members of PSSap in accordance with the PSSap Trust Deed and Rules.
26. Employees in other accumulation schemes will receive employer superannuation contributions at the same rate as is provided by the agency's default superannuation fund. This will not be reduced by any other contributions made through salary sacrifice arrangements. This section does not apply where a superannuation fund cannot accept employer superannuation contributions (e.g. unable to accept contributions for people aged over 75).
27. Employer superannuation contributions will not be paid on behalf of employees during periods of unpaid leave that do not count as service, unless otherwise required under legislation.
28. Any fees applied by a chosen fund associated with the administration of superannuation contributions will be borne by the employee.

#### **Salary Packaging**

29. Employees may access salary packaging and may package up to 100% of salary.
30. Where an employee elects to access salary packaging, the employee's salary for the purposes of superannuation, severance and termination payments, and any other purposes, will be determined as if the salary packaging arrangement had not occurred.
31. Any fringe benefits tax incurred in relation to an individual employee as a result of his or her salary packaging arrangement will be met by the individual employee.

#### **Payment on Death**

32. Where an employee dies, or the CEO directs that an employee will be presumed to have died on a particular date, the CEO may authorise the payment of the amount of salary, TPL,

annual leave and allowances to which the former employee would have been entitled had employment been ceased by resignation or retirement.

## ALLOWANCES

### **School Holiday Care Allowance**

- 33. The agency will contribute to the cost of school holiday care for primary school children of employees, when the employee is at work. Where both carers work for the agency, the allowance will only be paid when both are at work.
- 34. On production of a receipt from an approved school holiday program provider, the agency will reimburse \$19 per child per day up to a maximum of \$189 per family per week.

### **Workplace Responsibility Allowance**

- 35. An ongoing employee is entitled to a workplace responsibility allowance per fortnight where they are appointed to a workplace responsibility role and have successfully completed a training program and any refresher courses required.
- 36. The Workplace Responsibility Allowance is the rate set out in Column 3 of Table 2 at Attachment A and is adjusted at the same time and by the same percentage as the salary adjustment specified at clause 11.
- 37. A workplace responsibility role includes a First Aid Officer, Emergency Warden or Health and Safety Representative.
- 38. Where agreed by the CEO, a part time or non-ongoing employee may be appointed to a workplace responsibility role.
- 39. If an employee undertakes more than one of the recognised workplace responsibilities, they will not be entitled to multiple payment of the workplace responsibility allowance.

## FLEXIBLE WORKING ARRANGEMENTS

### **Working Hours**

- 40. APS employees are required to maintain a record of attendance.
- 41. Employees may be required to work reasonable additional hours in accordance with the NES.

42. Under this Determination the following definitions apply:

'Ordinary Hours'	Means a 7-hour 30-minute day within the Bandwidth. #
'Standard Day'	Is 8:30 am to 12:30 pm and 1:30 pm to 5:00 pm (or 8:00 am to 12:00 pm and 1:00 pm to 4:30 pm in the Northern Territory) Monday to Friday, except where a public holiday occurs.
'Settlement Period'	Is the four-week period beginning on a pay Thursday for the purposes of determining flex debit / credit carryover.
'Bandwidth'	Is 8am to 6pm, from Monday to Friday, for APS 1-3 employees and 7:00 am to 7:00 pm, from Monday to Friday, for APS4 and above employees. The exception to this is on a public holiday or where different start time is approved for travel purposes.

*# Note: The definition of Ordinary Hours is inclusive of 7 hours and 21 minutes to be ordinarily worked and the additional 9 minutes for Christmas closedown. Employees will work an additional 9 minutes per day as an offset for the Christmas closedown in clause 59. The 9 minutes per day is reflected in salary rates at Attachment A.*

### **Ordinary Hours – Full Time Employees**

43. The Ordinary Hours for full time ASEA employees equal 150 hours per settlement period, which includes the additional nine minutes per day which is included in the salary rates.
44. Employees must take an unpaid meal break of at least 30 minutes after five continuous hours of work. The maximum number of agreed working hours to be worked in a day is 10 hours, unless also working overtime.

### **Part Time Employees**

45. The agency may engage an employee on a permanent part time basis. An employee engaged on a permanent part time basis does not have an automatic right to vary their part time hours or access full time hours.
46. A part time employee is an employee whose Ordinary Hours equal less than 150 hours in a settlement period. Employees are required to work at least three continuous hours, or an alternative period agreed by the CEO and the employee, on any agreed working day.
47. Remuneration, with the exception of expense related allowances and reimbursements, are calculated on a pro rata basis. Leave for part time employees is provided in accordance with relevant legislation and this Determination. Payment of salary when an employee takes leave will be reflective of the part-time hours except during long service leave where salary will be calculated in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976* (LSL Act).
48. Employees who work part time can agree to work outside their agreed hours and pattern of work. In such instances part time employees will be entitled to flextime or TOIL

provisions (as applicable), but where work is directed outside their agreed hours, overtime rates are applicable.

### **Request for Part Time Work**

49. All employees have the ability to request flexible working arrangements consistent with the relevant provisions of this Determination and the FW Act.
50. A request made in accordance with clause 49 must be in writing and set out details of the change sought and the reasons for the change. The CEO will consider the request and respond in writing. Such requests may be refused on reasonable business grounds.
51. Part time work arrangements will be set out in a written agreement which will include the employee's hours of duty, the duration of the agreement and details of any specific arrangements that are necessary to facilitate the part time employment.
52. The terms of a part time agreement cannot be varied without the agreement of the employee and the CEO. This includes reversion or conversion to full time arrangements before the originally agreed date. Part time hours can be varied by agreement between the employee and the manager on a short-term basis to facilitate access to training or other agency opportunities. At the end of the part time agreement the employee can either return to full time work or apply for a further period of part time employment.
53. Employees returning from maternity, parental, adoption or foster care leave will be provided with access to a part time working arrangement, upon application, up until the child reaches three years of age. The part time hours and days of work are to be agreed between the manager and employee having regard to operational requirements and the employee's circumstances and will be at least three continuous hours one any one day unless otherwise agreed between the employee and the employer. In these circumstances a written agreement can be entered into up until the time the child reaches three years of age.

### **Public Holidays**

54. Employees employed in Australia will observe the following public holidays each year and will be paid salary as if that day were not a public holiday and the employee would have ordinarily worked on that day:
  - a. New Year's Day – 1 January
  - b. Australia Day - 26 January
  - c. Good Friday
  - d. Easter Monday
  - e. Anzac Day – 25 April
  - f. in each State and Territory, the day observed to celebrate the anniversary of the Queen's birthday holiday
  - g. Christmas Day - 25 December



- h. Boxing Day - 26 December
  - i. An additional day within the Christmas/New Year period in accordance with the Australian Public Service Award
  - j. additional local public holidays legislated, declared, proclaimed, gazetted or otherwise prescribed as a holiday in a State, Territory or locally, other than a day or part day, or a kind of day or part day, that is excluded by the Fair Work Regulations 2009 from counting as a public holiday.
55. 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.
56. 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.
57. Where a public holiday falls during a period when an employee is absent on leave (other than annual or paid personal 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).
58. An employee and the CEO may come to an agreement to substitute any holiday prescribed above for a cultural or religious day of significance to the employee.

### **Christmas Closedown**

59. All ASEA workplaces will be closed from 12.30 pm of the last working day before Christmas Day and re-open the first working day following the first day of January; this will be known as the Christmas Closedown and is inclusive of the Australian Public Service Award additional leave day.
60. Employees are not required to attend for duty during the Christmas Closedown, unless directed otherwise by the CEO. Employees will be provided with time off for the Christmas Closedown 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). There will be no deduction from annual or personal leave credits for the Christmas Closedown.

### **Flextime**

61. Flextime is available to all APS level (or equivalent) employees (APS levels 1 – 6). Flextime allows for employees and managers to vary working hours and patterns to provide maximum organisational flexibility. It allows the manager and employee to design flexible working arrangements that take account of the need to balance the achievement of organisational outcomes and the individual's personal commitments. All hours must be recorded on the agency flex sheet.

62. The ordinary pattern of hours for a full-time employee will be a Standard Day, unless an agreement is reached with the employee's manager for a different ordinary pattern of hours. Full time employees may be required by their manager to vary their ordinary pattern of hours within the bandwidth to meet operational requirements.
63. An employee and their manager may agree to new arrangements in relation to ordinary pattern of hours at any time.
64. Employees accumulate flextime within the Bandwidth.
65. A flex credit is where an employee accumulates hours in excess of ordinary hours. An employee may only carry over a maximum of 37.5 hours flex credit into the next settlement period in exceptional circumstances and where the manager has expressly agreed to the additional hours being worked.
66. A flex debit occurs when the employee works less time than their ordinary hours. A maximum of 22.5 hours debit can be accumulated and carried over to the next settlement period. An employee carrying over an amount in excess of 22.5 hours to the next settlement period must use miscellaneous leave without pay for the period in excess of 22.5 hours. Any flex debit will be deducted from a person's final monies if they cease to work for ASEA.
67. Flex leave is where an employee works less than their ordinary hours on any given day and is not on any other form of leave. An employee may use up to the equivalent of five days flex credits in a settlement period. Flex leave requires prior approval and for periods of one day or more reasonable notice is required.
68. Where there is demonstrably insufficient work, a manager may require an employee not to work hours in addition to their ordinary hours.
69. Where an employee's manager considers the employee's attendance is unsatisfactory or that the employee is misusing flex, the employee will be advised in writing and will be required to work a standard day for a period specified by the manager.

## **Overtime**

70. Where operational requirements make it necessary, a manager may direct an employee to work outside their ordinary hours on any day. Employees may also be restricted to be contactable to return to work outside ordinary hours. The restriction provisions will apply in these cases.
71. The manager will give reasonable notice about the requirement to work overtime and be mindful of the personal responsibilities of the employee.
72. An APS level employee directed to perform work outside and in excess of their ordinary hours on a given day is eligible for an overtime payment, or where agreed, time off in lieu of overtime payment.

73. Where a period of overtime is not continuous with ordinary time work, the base period of overtime payment for such work will be calculated as if the employee had worked for four hours. When determining whether a period is continuous with ordinary time work, meal breaks should not be regarded as breaking continuity.
74. Overtime payments will be calculated as follows:
- a. **Monday to Saturday:** one and a half times the hourly rate for the first three hours each day and double the hourly rate thereafter
  - b. **Saturday:** double the hourly rate for Shift Workers (as per Shift Work provisions)
  - c. **Sunday:** double the hourly rate
  - d. **Public Holiday:** two and a half times the hourly rate. (Duty on a public holiday not in excess of an employee's ordinary hours - that is, duty that is not overtime but which is part of the employee's ordinary hours - will be paid at one and a half times the hourly rate additional to payment for the holiday).
75. Time off in lieu of overtime payment may be taken as follows:
- a. where the manager/supervisor and the employee agree, on an "hour for hour" basis with an entitlement to residual payment (for example - three hours' time off plus three hours pay at half time, in lieu of three hours overtime at time and a half), or
  - b. on a penalty time basis, for example, four and a half hours' time off in lieu of overtime payment.
76. Where time off in lieu of payment has been agreed and the employee has not been granted time off within four weeks or another agreed period, due to operational requirements, payment of the original entitlement will be made.
77. Executive Level employees will only be eligible to receive overtime payments in exceptional circumstances with the approval of the CEO.

#### **Executive Level Employees – Flexible Working Arrangements and Time Off in Lieu (TOIL)**

78. The hours of duty worked by EL employees are not regular and EL employees may be required to work additional time beyond ordinary hours. Where an EL employee makes a significant productive effort by working considerable additional hours, managers will, subject to operational requirements, approve access to reasonable time off in lieu as recognition of additional hours worked. This means that variations in attendance times and absences, including for part-day or full-day absences may be agreed with managers without the need for a leave application.

#### **Restriction Allowance**

79. A manager may direct an employee to be contactable and available to return to work to perform extra duty outside their agreed ordinary hours (i.e. be restricted) with the agreement of the employee, subject to the payment of an allowance.

80. Restricted employees will receive a Restriction Allowance at the rate of 9% of their hourly rate for each hour they are restricted outside the bandwidth, subject to:
- a. prior approval of the CEO and
  - b. the employee remaining contactable and available to perform extra duty and
  - c. the employee not being in receipt of any other payment for the period for which Restriction Allowance would otherwise be payable, except as provided for in the following clause.
81. Restriction Allowance is payable whether or not the restricted employee is required to perform duty outside the agreed ordinary hours. Where a restricted employee, entitled to overtime payment is required to perform duty, overtime will be payable and subject to:
- a. a one-hour base rate of payment when work is performed without the necessity to travel to the workplace
  - b. a three-hour base rate of payment including travel time if work is required to be performed at the workplace.
82. If an employee is required to perform subsequent periods of duty within the one-hour minimum payment period, only the initial one hour minimum is payable. Where an employee is required to undertake a second period of duty that commences after the one-hour minimum payment period has elapsed for the previous first period of duty, a further second one-hour minimum payment period commences and a further one hour minimum is payable.
83. Restriction Allowance will continue to be paid for periods of overtime worked while restricted.

### **Emergency Duty**

84. Emergency duty will attract a base payment of two hours (which includes reasonable travel time) at double the hourly rate, which will be payable for all emergency callouts without prior notice. Executive Level employees will only be eligible to receive emergency duty payments in exceptional circumstances with the approval of the CEO.

### **Overtime Meal Allowance**

85. Where an employee is directed to work overtime for at least three hours outside their ordinary hours they will receive an overtime meal allowance. The meal allowance rate will be equivalent to that set by the Australian Taxation Office (ATO), currently \$32.50. Where an employee works a further five hours overtime on a Saturday, Sunday or public holiday, they will receive an additional overtime meal allowance at the rate set by the ATO.

## **Rest Break**

86. Employees should not commence work on any day without having at least eight hours plus reasonable travelling time minimum break from the previous day's work, including any overtime worked, without specific approval from the CEO.
87. Where the CEO requires an employee to resume or continue work without having had a minimum break, the employee will be paid at double the hourly rate for the hours worked, until he or she has had an eight-hour break.
88. Where all or some of the employee's minimum break occurs during ordinary hours, the employee will not lose pay for the absence.

## **Working from Home**

89. Arrangements may be entered into between the manager and employee for regular or ad hoc working from home arrangements. These provisions also apply to mobile arrangements where employees are working away from their usual workplace.

## **Unauthorised Absences**

90. Where an employee is absent from duty without approval, all pay and other benefits provided under this Determination, cease to be available until the employee resumes duty, or is granted leave or ceases employment. Such absences will not count as service for any purpose.
91. Unauthorised absences may be referred to the CEO to determine the appropriate action under the PS Act.

## **LEAVE**

### **Recognition of Prior Service**

92. Where an employee joins ASEA on an ongoing or non-ongoing basis from an employer staffed under the PS Act, the *Parliamentary Services Act 1999* or from the ACT Government Service, the employees unused accrued annual leave (however described) and personal/carers leave (however described) will be transferred or recognised, provided there is no break in continuity of service.
93. Service with organisations where the employee was previously employed under the PS Act, the *Parliamentary Service Act 1999*, or from the ACT Government Service may be recognised for personal leave purposes if the break in service is not more than two calendar months.

### **Deferral of Leave Accruals**

94. Where an employee takes 30 or more days leave without pay in a calendar year it does not count as service for any purpose unless otherwise provided for by legislation.
95. Where an employee takes 30 or more days leave without pay during the calendar year, annual and personal leave accruals are to be reduced on a pro-rata basis. Where the accumulated period of leave without pay is 30 calendar days or more, the entire period will affect leave accruals and/or deferral of leave accruals.

### **Cancellation of Leave or Recall to Duty from Leave**

96. Where an employee's leave is cancelled by his or her manager without reasonable notice, or they are recalled to work from leave, ASEA will determine and reimburse reasonable travel costs, travelling time, incidental costs and any other unavoidable costs arising from the recall to duty where they are not recoverable under insurance or from another source. All unused leave will be re-credited. Further information is available in ASEA's Official Travel Policy.

### **Recrediting Periods of Approved Leave**

97. An employee who becomes eligible for another form of paid leave that is required to be granted in accordance with legislation, or this Determination, while on annual or long service leave, may apply for that leave. Subject to the provision of satisfactory evidence to support the approval of alternative leave, annual leave, long service leave or purchase leave will be recredited to the extent of the other leave granted. Such other leave that may be required to be granted includes, but may not be limited to:
  - a. Personal carer's leave;
  - b. Compassionate leave;
  - c. Community and volunteer leave;
  - d. Defence reservists' leave;
  - e. War service sick leave; and
  - f. Paid maternity and paid parental leave types.

### **Annual Leave**

98. A full-time employee is entitled to accrue four weeks' paid annual leave for each year of service. Annual leave accrues progressively and employees are able to access leave entitlements as they accrue.
99. Where an employee works part time, the employee's annual leave entitlement will accrue on a pro-rata basis according to the approved part time hours.

100. Annual leave credits may be taken at any time, subject to operational requirements and the approval of the employee's manager. Any unused annual leave accumulates.
101. An employee may seek approval from their manager to take annual leave at half pay. Where an employee takes annual leave at half pay, the employee cannot access purchased leave in the same calendar year.
102. An employee who ceases employment with the APS will be paid for unused annual leave credits. Payment includes allowances in the nature of salary which are paid during periods of annual leave and on a regular basis, excluding allowances which are a reimbursement for expenses incurred.
103. Periods of long service leave cannot be broken with annual leave, except as provided for by legislation.

### **Purchased Leave**

104. With the approval of the CEO, employees may elect to purchase up to eight weeks additional annual leave per year. Employees will have an amount deducted from their annual salary, dependent on the amount of leave purchased and the employee's salary, which will be reflected in their fortnightly salary.
105. Purchased leave is intended for use in a planned manner with the timing and expected pattern of purchased leave to be discussed and approved by the employee's manager taking account of operational requirements and the reasons for the employee's request.
106. Where an employee chooses to purchase leave they cannot take annual leave at half pay in the same calendar year.
107. Where an employee who has taken purchased leave either proceeds on extended leave or leaves ASEA before having repaid the full amount, the amount outstanding must be repaid in full before the employee's departure.
108. Unless otherwise agreed, purchased leave not taken during the nominated 12-month period will automatically be reimbursed as salary.
109. Purchased leave counts as service for all purposes including superannuation. Superannuation will be paid in accordance with the relevant superannuation legislation.

### **Personal Leave**

110. Ongoing employees are entitled to 18 days' paid personal leave for each year of service which will accrue daily and accumulate from year to year. Part-time employees accrue paid personal leave on a pro rata basis.
111. On initial engagement with the agency, ongoing employees will be credited with 18 working days paid personal leave. On the following 1 January, their credits will be calculated on a pro-rata basis for service between the engagement date and 31 December

of the year of engagement less any periods of leave taken. Ongoing employees engaged on a part time basis will accrue paid personal leave in the same manner based on their actual hours worked.

112. For the purposes of calculating the amount of paid personal leave to be credited where a period of non-APS service is recognised for paid personal leave purposes, leave taken or paid out in lieu during the period of recognised service will reduce the paid personal leave credit on engagement.
113. Employees commencing with the agency after the commencement of this determination who have their existing personal leave credits, however described, transferred to, or recognised by the agency, will have their paid personal leave credits adjusted on commencement to align with an accrual date of 1 January if leave was credited on a basis other than 1 January each year.
114. Non-ongoing employees will be entitled to an initial credit of seven working days paid personal leave on commencement where there is no prior service recognised. A further credit of one day for each following month of service up to a maximum of 18 days paid personal leave in a calendar year will then accrue. After 12 months service with ASEA, the provisions for ongoing employees will apply.
115. Personal leave gives employees access to paid personal leave to be used when they are absent:
  - a. due to personal illness or injury including attendance at medical appointments or
  - b. due to a member of the employee's family or household requiring care or support related to an illness or injury or
  - c. to provide care or support for a member of the employee's family or household who is affected by an unexpected emergency or special circumstance
116. Personal leave may be granted with pay or, where paid personal leave credits are exhausted, without pay.
117. Employees may be granted paid personal leave at half pay instead of full pay where extraordinary circumstances exist. Where leave at half pay is granted, deductions from leave credits will also be halved.
118. A casual employee, or an employee who has exhausted their paid personal leave entitlements they may take two days unpaid leave for each occasion where a member of their family or household requires care because of illness, injury or unexpected emergency. The employee must provide medical or other reasonable evidence to their manager in support of their leave application.
119. An employee cannot take unpaid personal leave during a particular period if the employee could instead take paid personal leave.



## **Use of Personal Leave**

- 120. There is no cap placed on the use of paid personal leave for caring purposes, provided it is consistent with clause 115 and subject to available credits and medical or other reasonable evidence where required.
- 121. There is no limit to the maximum continuous amount of paid personal leave which may be granted for absences due to personal illness or injury, subject to available credits, medical documentary evidence and, if required, the opinion of a medical practitioner nominated by ASEA.

## **Provision of Medical Certificates or other Evidence**

- 122. No more than three consecutive days of personal leave may be taken without medical or other reasonable evidence. Further information can be found in the ASEA Personal and Miscellaneous Leave Policy.

## **Managing Extended and Excessive Absences Related to Illness or Injury**

- 123. Where an employee is, or is likely to be, on extended absence due to illness or injury they should contact their manager as soon as practicable and outline the reason for the absence and likely expected period.
- 124. An employee who takes large or frequent periods of personal leave may be directed to attend a medical examination under guidelines on fitness for continued duty, to determine whether continued personal leave is justified.
- 125. The opinion of a medical practitioner nominated by ASEA will be accepted over that of a medical practitioner nominated by an employee, to the extent that their opinions differ. Should a medical practitioner nominated by ASEA be of the opinion that an employee is fit for work the employee will not be entitled to personal leave with or without pay unless that practitioner subsequently assesses the employee as unfit for work.

## **Maternity and Maternal Leave**

- 126. An eligible employee is entitled to maternity leave in accordance with the *Maternity Leave (Commonwealth Employees) Act 1973* (Maternity Leave Act) and/or FW Act.
- 127. An eligible employee who is entitled to paid leave under the Maternity Leave Act is also entitled to two weeks of paid maternal leave to be taken immediately following the paid component of maternity leave.
- 128. In order to provide more flexible provisions for maternity leave, eligible employees have the option to spread the payment of paid maternity leave and maternal leave over a period of up to 28 weeks at a rate of half normal salary. The maximum of 14 weeks of leave (12 weeks under the Maternity Leave Act and two weeks maternal leave) count as service for all purposes. Any maternity leave/maternal leave in excess of 14 weeks does not count as

service for any purpose and this administrative arrangement does not extend the total period of paid or unpaid maternity leave available under the Maternity Leave Act.

129. An employee is unable to access personal leave while on paid maternity and maternal leave.
130. A period of maternity or maternal leave is not broken by public holidays or Christmas Closedown.
131. Upon request from the employee, ASEA will agree to unpaid parental leave for a further period of up to 12 months, immediately following the end of the initial 12-month period of maternity leave.
132. Where an employee returns to work after a period of maternity leave, the employee will be assigned to the duties previously performed or to alternative duties where appropriate to the employee's skills and classification.
133. Where the returning employee seeks part time working arrangements her previous duties must be considered for conversion initially.

#### **Primary Carer Leave**

134. An ongoing employee, other than the birth mother, who becomes the primary care giver for a newborn baby will be entitled to a period of six weeks paid primary carer leave. In order to provide flexibility, an employee taking paid primary carer leave may elect to spread the payment over a maximum period of 12 weeks, at a rate of half normal salary. Where an employee elects to spread the payment for this leave, a maximum of six weeks will count as service.

#### **Adoption Leave**

135. Following adoption approval, an employee who has a period of qualifying service the same as that required by an employee to be entitled to paid maternity leave under the Maternity Leave Act , and who is the primary carer of the child, is entitled to up to 14 weeks of paid adoption leave where:
  - a. the adoptive child is under the age of 16 as at the day of placement and
  - b. the adoptive child did not previously live with the employee for a period of six months or more before the day of placement and
  - c. the adoptive child is not a child or step-child of the employee or the employee's partner, unless that child had not been in the custody and care of the employee or the employee's partner for a significant period of time.
136. Documentary evidence of approval for adoption must be submitted to the CEO when applying for adoption leave.
137. Adoption leave is available from one month prior to the date of placement of a child. Adoption leave must be taken as a single, unbroken period.

138. An employee is unable to access personal leave while on paid adoption leave.
139. In order to provide more flexible provisions for adoption leave, employees have the option to spread the payment for adoption leave over a period of up to 28 weeks at a rate of half normal salary. A maximum of 14 weeks of adoption leave counts as service for all purposes. Any adoption leave in excess of 14 weeks does not count as service for any purpose.
140. Where an employee returns to work after a period of adoption leave, the employee will be assigned to the duties previously performed or to alternative duties appropriate to the employee's skills and classification.

#### **Long Term Foster Care and Permanent Care Orders**

141. An employee who has a period of qualifying service the same as that required by an employee to be entitled to paid maternity leave under the Maternity Leave Act is entitled to up to 14 weeks paid foster care leave from the date of the placement of a child where:
  - a. the employee becomes the primary care giver of a long-term foster child or
  - b. is granted custody and guardianship of a child is under the age of 16 as at the day of placement as a result of a permanent care order and
  - c. the child did not previously live with the employee for a period of six months or more before the day of placement.
142. Employees have the option to spread the payment for foster care leave over a period of up to 28 weeks at a rate of half normal salary. A maximum of 14 weeks of foster leave counts as service for all purposes. Any foster care leave in excess of 14 weeks does not count as service for any purpose.
143. Paid foster care leave must be taken as a single unbroken period.
144. An employee who has a period of qualifying service the same as that required by an employee to be entitled to paid maternity leave under the Maternity Leave Act, and for whom these provisions apply, may access up to 52 weeks unpaid foster care leave. This leave is not to count as service for any purpose.
145. The maximum period of 52 weeks is inclusive of any period of paid or unpaid foster care leave.
146. In exceptional circumstances, the CEO may approve paid and/or unpaid foster care leave under these provisions for short-term fostering arrangements or kinship care.

### **Supporting Partner Leave**

147. An employee, except a casual employee, whose partner gives birth, fosters or adopts a child, and is not entitled to paid parental leave under any other term of this determination, will be entitled to a period of two weeks of paid or four weeks at half pay supporting partner leave directly following the placement of a foster child, or the birth or adoption of a child.
148. The two weeks of paid supporting partner leave counts as service for all purposes. Any supporting partner leave in excess of two weeks does not count as service for any purpose.
149. Documentary evidence must be submitted to the CEO when applying for supporting partner leave.

### **Compassionate Leave**

150. An employee is entitled to a period of three days of paid compassionate leave for each occasion when a member of the employee's family or household:
  - a. contracts or develops a personal illness or sustains a personal injury that poses a serious threat to his or her life, or
  - b. dies.
151. An employee may be required to provide reasonable evidence to the CEO in support of an application for compassionate leave.
152. Compassionate leave will count for service for all purposes.

### **Miscellaneous leave**

153. The CEO may approve miscellaneous leave for employees, with or without pay. The CEO may also prescribe the circumstances under which the leave without pay may count as service.

### **Cultural Leave**

154. Employees may be granted up to two days paid cultural leave in a calendar year for religious or cultural activities associated with their culture or ethnicity.
155. Aboriginal and Torres Strait Islander employees may access the two days of paid cultural leave in clause 154 to participate in NAIDOC or other cultural or ceremonial events.
156. The CEO may grant ceremonial leave to Aboriginal and Torres Strait Islander employees for ceremonial purposes:
  - a. arising from the death of an immediate or extended family member or

b. for other ceremonial obligations under Aboriginal or Torres Strait Islander law.

157. The entitlement of ceremonial leave is 20 days in any two calendar years. Ceremonial leave is without pay and does not count as service. Ceremonial leave is in addition to compassionate leave.

### **Defence Reserve Leave**

158. An employee will 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.

159. An employee is entitled to ADF Reserve leave with pay, for up to four weeks during each financial year for the purpose of fulfilling service in the ADF Reserve. These purposes include training and operational duty as required.

160. During the employee's first year of ADF Reserve service, a further two weeks paid leave may be granted to facilitate participation in additional ADF Reserve training, including induction requirements.

161. With the exception of the additional two weeks in the first year of service, leave can be accumulated and taken over a period of two years, to enable the employee to undertake training as a member of the ADF Reserves.

162. Employees are not required to pay their tax free ADF Reserve salary to ASEA in any circumstances.

163. Defence Reserve leave counts as service for all purposes, except for unpaid leave to undertake CFTS. Unpaid leave for the purposes of CFTS counts for all purposes except annual leave

164. Eligible employees may also apply for annual leave, long service leave, leave without pay, top-up pay or they may use flextime or make up time for the purpose of fulfilling ADF Reserve, CFTS or Cadet Force obligations.

165. 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.

### **Community and Volunteer Leave**

166. Employees will be entitled to paid leave for the purposes of engaging in community service activities, including jury service and emergency management activities, as per section 108 of the FW Act. For jury service, the employee will be required to pay ASEA any amount received from the Court with the exception of an amount that is or is in the nature of an expense-related amount

167. Leave to community service personnel for emergency services duties encompasses leave for required regular training, all emergency services responses, reasonable travelling time associated with the activity, reasonable recovery time and ceremonial duties.
168. Employees may be granted up to two days paid (and thereafter reasonable unpaid) miscellaneous leave each calendar year to volunteer with a registered community organisation other than for those covered under clause 166.
169. Paid leave will not be available to attend ceremonial functions unless the organisation certifies in writing that the employee is required to attend as part of their duties.
170. Volunteer work must not:
  - a. involve any payment in cash or kind for work performed
  - b. replace a paid worker
  - c. as a general rule be undertaken solely for direct personal benefit
  - d. be work which does not have a community focus
  - e. present a conflict of interest for ASEA
  - f. be primarily focused on promoting particular religious or political views.
171. The amount of leave granted will take account of operational requirements.

#### **Defence Service Sick Leave**

172. The CEO will grant Defence service sick leave to employees who are unfit for duty because of an accepted injury or disease.
173. An accepted injury or disease means a condition accepted by the Department of Veterans' Affairs to be:
  - a. a war-caused or Defence-caused injury or disease meeting the requirements under the *Veterans' Entitlements Act 1986*; or
  - b. a service injury or service disease that meeting the requirements under the *Military Rehabilitation and Compensation Act 2004*; or
  - c. a defence-related injury or defence-related disease meeting the requirements under the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*.
174. An employee who is or becomes eligible for Defence service sick leave is entitled to:
  - a. a one-off special credit of nine weeks Defence Service Sick Leave from the latter of:
    - i. the date of their commencement in the APS; or
    - ii. the date on which liability for their injury or disease is accepted under the relevant Act of Parliament; and
    - iii. each year thereafter, and subject to paragraph 4, an annual credit of three weeks Defence Service Sick Leave.

175. An eligible employee can accrue Defence service sick leave up to a maximum annual credit balance of nine weeks.
176. An eligible employee must use all of their special credit before their annual credit.
177. Where an employee's Defence service sick leave credits have been exhausted, personal leave provisions will apply.
178. Approval of Defence service sick leave is subject to:
  - a. the provision of a medical certificate stating the nature of the medical condition; and
  - b. Written advice from the Department of Veterans' Affairs verifying that the medical condition constitutes an accepted injury or disease.
179. Defence service sick leave counts as service for all purposes.
180. Leave that counts as service for personal/carers' leave purposes will count as service for the accrual of Defence service sick leave.
181. Where an employee's war service sick leave credits have been exhausted, the employee may apply for personal leave.
182. Employees who re-join the APS following an earlier period of APS employment in which they had been credited with war service sick leave will be credited with the following:
  - a. any special credit that remained unused at the final day of the prior APS employment
  - b. any annual credit held on the final day of the prior APS employment.

### **Long Service Leave**

183. An employee is eligible for LSL in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976*.
184. The minimum period during which long service leave can be taken is seven calendar days (at full pay, or 14 calendar days at half pay). LSL cannot be broken with other periods of leave, except as otherwise provided for in legislation.

## **WORKFORCE PLANNING AND PERFORMANCE MANAGEMENT**

### **Temporary Performance Loading (TPL)**

185. Temporary performance means work at a higher classification level.
186. An employee performing duties of a higher classification will be paid TPL.
187. A manager may split the temporary performance duties between employees for development purposes.

188. Where TPL is payable this would normally be at the base pay point of the higher classification.
189. A manager may approve payment of TPL at a pay point above the base pay point. In considering such an approval, a manager will take into account the employee's previous periods of temporary performance, the employee's performance, and relevant experience or skills.
190. Salary advancement on TPL will be in accordance with clauses 198-204.
191. A non-SES employee, who is directed to temporarily perform work at the SES level will be paid at a rate determined by the CEO for the period of temporary performance.
192. An employee may decline a manager's invitation to perform duties temporarily at a higher classification level.

### **Temporary Performance Loading on Leave**

193. Where an employee is absent on paid leave, or observes a public holiday and has been directed to perform duties at a higher classification, payment of TPL will continue during the absence as if the employee was still at work, to the extent of the continued operation of the direction.
194. The payment of TPL will be appropriately adjusted if the period of leave is on half pay.

### **Performance Management and Salary Advancement Arrangements**

195. The Performance Management and Development arrangements contain dual performance ratings for key business deliverables and observable work behaviours. These dual ratings will be assessed separately against the following four-point rating scale:

- |  |
|--|
| <ol style="list-style-type: none"><li>1. Consistently Exceeds</li><li>2. Consistently Achieves</li><li>3. Satisfactory</li><li>4. Unsatisfactory</li></ol> |
|--|

196. Where employees are rated as unsatisfactory for either their business deliverables or observable work behaviours an underperformance procedure will be triggered.
197. Further information is contained in the ASEA Performance Management and Development Policy.

### **Salary Advancement**

198. Salary advancement is aligned to the performance review process, which will occur from 1 July each year for the preceding 12 months. The actual payment of salary advancement will generally occur from the beginning of the first full pay period commencing on or after 1 August each year, back paid to 1 July.



199. To be eligible for salary advancement, an employee must:
- a. not already be at the top pay point of their classification
  - b. complete the requirements of their performance agreement
  - c. be rated as *satisfactory* or better on the performance rating scale at the end of the performance cycle; and
  - d. perform duties at the employee's substantive level or above, within the Agency, for an aggregate of 6 months or more within the performance cycle ended 30 June.
200. If the employee does not meet conditions in subclauses 199a to 199d, above, the CEO may approve the salary advancement.
201. Non-ongoing employees will be eligible for salary advancement where they have been engaged at the same classification to perform the same duties continuously for 6 months during the PDF cycle and receive a performance rating in line with clause 199.
202. Employees who are not eligible for salary advancement in accordance with clause 199 will not be able to progress to another pay point within the classification salary range until salary advancement occurs in the following year.
203. An ongoing employee who is not already on the top pay point applying to his or her current APS classification within the ASEA Structure who receives ratings of 'Consistently Exceeds' for both key business deliverables and observable work behaviours will be advanced by two pay points within his or her current classification level.

#### **Performance Ratings and TPL**

204. Where an employee is in receipt of TPL during their performance review, they will be eligible for salary advancement at both their temporary performance and substantive levels, where the employee:
- a. was in receipt of continuous TPL at the same classification and pay point from 1 January to 30 June that year (i.e. the immediately preceding 6 months) and
  - b. has received ratings of 'satisfactory' better for both key business deliverables and observable work behaviours at the TPL classification as part of the end cycle performance review ending 30 June that year.

#### **Performance Ratings and Promotion**

205. An employee who is promoted between 1 January and 30 June each year is eligible for salary advancement from a performance rating to the next pay point, where the employee:
- a. was in receipt of continuous TPL at the same classification and pay point from 1 January to immediately before the promotion and

- b. has received ratings of 'Satisfactory' or better for both key business deliverables and observable work behaviours at the promotion or movement classification as part of the end cycle performance appraisal ending 30 June that year.

## LEARNING AND DEVELOPMENT

### Studies Assistance

- 206. Studies assistance is one way the agency supports lifelong learning for employees and may include approved paid and unpaid leave, and/or reimbursement of costs up to \$3,147 per calendar year.
- 207. An employee undertaking an approved course can request paid leave up to eight hours per week. Employees can request leave without pay for up to 12 months for study purposes. Where studies assistance is approved, additional time off for attendance at compulsory examinations and assessments (including reasonable travel time) will be approved.
- 208. Further information about studies assistance can be found in the Studies Assistance policy.

## REASSIGNMENT AND TERMINATION ARRANGEMENTS FOR EXCESS EMPLOYEES

### Application

- 209. The following provisions apply to all employees, covered by this Determination excluding:
  - a. an employee serving a probationary period and
  - b. a non-ongoing employee.
- 210. An offer of voluntary termination to an employee who is not fit for and not at work may be made to an employee who is excess in accordance with the Excess Employee circumstances outlined in the Definitions section below, only where the CEO, having regard to the Commonwealth's potential liability, decides it is appropriate.

## Definitions

211. The following definitions apply:

Excess Employee	<p>An employee will be considered excess where:</p> <ul style="list-style-type: none"><li>• the employee is part of a class of employees that is larger in size than is necessary for the efficient and economical working of the agency or</li><li>• the services of an employee cannot be effectively used because of technological or other changes in the work methods of the agency, or structural or other changes in the nature, extent or organisation of the functions of the agency or</li><li>• the duties usually performed by the employee are to be performed in a different locality, the employee is not willing to perform the duties at the other locality and the CEO has determined that these provisions will apply to that employee.</li></ul>
Consideration Period	<p>is a period of four weeks commencing from the date the CEO makes an employee a formal offer of voluntary termination</p>
Salary	<p>includes:</p> <ul style="list-style-type: none"><li>• the employee's substantive salary on the date of termination and</li><li>• allowances in the nature of salary which are paid during periods of annual leave and on a regular basis, excluding allowances which are</li><li>• a reimbursement for expenses incurred, or a payment for disabilities associated with the performance of duty.</li></ul>
Retention Period	<p>is a period of 30 weeks for eligible employees.</p>

## Consideration Period

212. Where an excess employee situation is identified the CEO will:

- a. advise in writing, the employee(s) directly affected of the situation, the reasons and scope
- b. discuss the voluntary termination and reassignment processes with affected employees
- c. hold discussions with the employee(s)
- d. offer the affected employee(s) voluntary termination.

## **Voluntary Termination Offer**

213. A voluntary termination offer will only be offered once in an identified excess situation.
214. The offer must state when the CEO proposes to issue the termination notice if the offer is accepted.
215. The offer should include the following information to assist the employee in their considerations:
  - a. amount payable as termination pay, pay in lieu of notice and accrued annual and long service leave credits
  - b. amount of accumulated superannuation contributions
  - c. superannuation options
  - d. taxation rules applicable to the various payments
  - e. the availability of financial assistance, on a reimbursement basis, towards obtaining independent financial advice up to the value of \$839
216. The employee(s) will have four weeks in which to consider the offer of voluntary termination. An employee who has received an offer of voluntary termination must advise the CEO, in writing, before the end of the discussion and consideration period whether the employee wishes to be considered for re-assignment or voluntary termination.
217. If the employee does not accept the formal offer of voluntary termination or express a preference for reassignment, the employee will be taken to have a preference to be considered for reassignment, and their retention period will commence in accordance with clause 233.
218. Employees will be become excess four weeks after the date the employee receives a formal offer of voluntary termination unless during this time their employment has been terminated, they have been redeployed or the CEO decides they are no longer in an excess situation.
219. Should the employee request an earlier termination date that falls within the discussion and consideration period, and employment is terminated before the expiry of that period, the employee will be entitled to receive payment for the unexpired portion of the discussion and consideration period.

## **Voluntary Termination Process**

220. If an employee accepts an offer of voluntary termination, and the CEO agrees to the termination, the CEO will issue a “notice of termination” under section 29 of the PS Act.
221. The period of notice will be four weeks, or five weeks for an employee over 45 years of age with at least five years of continuous, current APS service at the time of the offer. Where an employee elects to terminate their employment before the expiration of the

notice period, and employment is terminated before the expiry of that period, payment in lieu for the unexpired portion of the notice period will be made.

- 222. Notice of termination will not be given before the end of the discussion and consideration period without the agreement of the employee.
- 223. Only one offer of voluntary termination will be made to an employee.
- 224. An employee will not be involuntarily terminated if the employee has not been invited to elect for retrenchment with the payment of a redundancy benefit or has elected for retrenchment but the CEO has refused to accept it.
- 225. The CEO may, prior to the conclusion of these discussions, invite an employee who is not a potentially excess employee to express interest in voluntary retrenchment, where the retrenchment of that employee would permit the redeployment of an employee who is potentially excess.

### **Severance Pay**

- 226. An employee who accepts voluntary termination and whose employment is terminated under section 29 of the PS Act on the grounds that they are excess to requirements will be entitled to the following severance pay, subject to any minimum amount the employee is entitled to under the NES:
  - a. two weeks' salary for each completed continuous year of service
  - b. a pro-rata payment for completed continuous months of service since the last completed year of service.
- 227. The minimum amount of severance pay is an amount equal to four weeks' salary and the maximum amount payable is an amount equal to 48 weeks' salary.
- 228. Severance pay is calculated on a pro-rata basis for any period of service when the employee worked part time, subject to any minimum amount the employee is entitled to under the NES.

### **Service for Severance Pay Purposes**

- 229. Service for severance pay purposes means:
  - a. service in the agency
  - b. Government service as defined in section 10 of the *Long Service Leave (Commonwealth Employees) Act 1976*
  - c. service with a Commonwealth body (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 Forces

- e. service in another organisation where the employee was transferred from the APS to that organisation; or an employee engaged by that organisation on work within a function is engaged as an APS employee as a result of the transfer of that function to the APS; and such service is recognised for long service leave purposes.
230. For earlier periods of service to count, there must be no breaks between the periods of service, except where the break in service is less than one month and occurs where an offer of employment with the new employer was made and accepted by the employee before ceasing employment with the preceding employer.

#### **Service Not to Count for Severance Pay Purposes**

231. Periods of service that will not count as service for redundancy pay purposes are periods of service that ceased by way of:
- a. termination under section 29 of the PS Act, or
  - b. prior to the commencement of the PS Act, by way of redundancy; forfeiture of office, retirement on the grounds of invalidity, inefficiency or loss of qualifications; dismissal or termination of probationary appointment for reasons of unsatisfactory service, or
  - c. voluntary retirement at or above the minimum retiring age applicable to the employee, or
  - d. payment of a redundancy benefit or a similar payment or an employer-financed retirement benefit.
232. Absences from duty which do not count as service for long service leave purposes will not count for severance pay purposes.

#### **Retention Period**

233. Should an employee not accept the formal offer of voluntary termination, the employee will commence their retention period on the day after the expiry of the discussion and consideration period. The notice period will be concurrent with the retention period.
234. The retention period is 30 weeks for eligible employees and the retention period commences the day after the expiry of the discussion and consideration period.
235. The intention of the retention period is to enable excess employees to be reassigned within the APS or to find other suitable employment. Consistent with this intention, during the retention period:
- a. the agency may provide and resource reasonable career transition services and support, and take reasonable steps to move an excess employee to a suitable vacancy, to another agency and to pursue placements outside the APS consistent with this Determination
  - b. employees will take reasonable and genuine steps to secure permanent re-assignment or placement.

236. If an employee is entitled to a redundancy payment under the NES, the relevant period in clause 234 is reduced by the number of weeks redundancy pay that the employee will be entitled to under the NES on termination, as at the expiration of the retention period (as adjusted by this clause).
237. If after taking reasonable steps, the CEO is satisfied that there is insufficient productive work available for the employee during the remainder of their retention period and there is no reasonable redeployment prospects in the APS, the CEO may, after undertaking consultation with the affected employee, terminate his or her employment under section 29 of the PS Act.
238. Upon termination the employee will be paid a lump sum comprising:
- a. The balance of the retention period (as shortened by the NES under sub-clause (b)) and this payment will be taken to include payment in lieu of notice of termination of employment and
  - b. The employee's NES entitlement to redundancy pay.

### **Reassignment Services and Reduction in Classification**

239. The following provisions will apply to employees during their retention period:
- a. The employee can access up to \$1,259 for payment for outplacement services or training opportunities that would be expected to enhance the employment prospects of employees.
  - b. Excess employees will be considered first and in isolation from, and not in competition with, other applicants who are not excess for an advertised vacancy to which the employee seeks transfer but only at or below the employee's level. In placing excess employees consideration will be given to the employee's current skills and experience or the employee's ability to acquire the relevant skills for the advertised vacancy in a short period of time.
  - c. Suitable trial placements in another organisation including private sector organisations will be funded for up to three months where there is an identifiable opportunity for permanent placement and no job swap arrangement is involved. An individual employee may undertake more than one trial placement.
  - d. The excess employee may request assistance in meeting reasonable travel costs and incidental expenses incurred in seeking alternative employment where these expenses are not met by the prospective employer.
  - e. If a suitable vacancy does not exist at the same level within or where the CEO proposes to reduce an excess employee's classification as a means of securing alternative employment, the employee will be given four weeks' notice. If reduction occurs after the offer of voluntary termination and before the end of the retention period the employee will receive payments to maintain the employee's salary level for the balance of the retention period.

### **Leave during the Retention Period**

240. Retention periods will only be extended by any periods of approved leave due to illness or injury of the employee (supported by medical evidence) taken during the retention period. The period will not be extended on these grounds beyond an additional eight weeks.

### **Involuntary Termination**

241. If an excess employee is unsuccessful in obtaining permanent reassignment at the end of the retention period, his or her employment will be terminated under section 29 of the PS Act.
242. Where an excess employee's employment is to be terminated the employee will be given four weeks' notice of termination (or five weeks for an employee over 45 years of age with at least five years of continuous, current APS service). This period of notice will be served, as far as practicable, concurrently with the retention period. Where an employee elects to terminate their employment before the expiration of the notice period, payment in lieu for the unexpired notice period will be made.
243. In deciding whether to terminate an excess employee, the CEO will take account of any re-assignment process that may be in progress.
244. An excess employee may consent to involuntary termination during the retention period. Severance benefits are not available to employees who resign or consent to involuntary termination during the retention period. An employee may be entitled to a redundancy payment under the NES.

### **Breaches of the APS Code of Conduct and Underperformance during the Retention Period**

245. Where action in relation to a suspected breach of the APS Code of Conduct or action relating to unsatisfactory performance extends into, or commences, during the retention period the matter will be dealt with in accordance with the relevant agency provisions as varied from time to time.

### **Termination of Employment**

246. An employee's employment may be terminated under Section 29 of the PS Act. Termination of, or a decision to terminate employment cannot be reviewed under the Dispute Resolution procedures outlined in this determination. The sole and exhaustive rights and remedies of an employee in relation to termination of employment are:
- a. the FW Act
  - b. other Commonwealth laws (including the Constitution)
  - c. at common law.



247. Nothing in this Determination prevents the CEO from terminating the employment of an employee for serious misconduct, without further notice or payment in lieu, in accordance with section 123(1) of the FW Act subject to compliance with the procedures established by the CEO for determining whether an employee has breached the Code of Conduct under section 15 of the PS Act.

## CONSULTATION AND DISPUTE RESOLUTION

### Consultation relating to major change

248. This consultation term applies if ASEA has made a definite decision to introduce major change to production, program, organisation, structure, technology that are likely to have significant effects on employees.
249. For a major change referred to in clause 255:
- a. the employer must notify the relevant employees of the decision to introduce the major change; and
  - b. clauses 250 to 256 apply.
250. The relevant employees may appoint a representative for the purposes of the procedures in this term.
251. 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 CEO must recognise the representative.
252. As soon as practicable after making its decision, the CEO 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. the measures being taken 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.
253. However, the CEO is not required to disclose confidential or commercially sensitive information to the relevant employees.

254. The CEO must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
255. In this section, 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 ASEA's workforce or to the skills required of employees; or
  - c. the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
  - d. the alteration of hours of work; or
  - e. the need to retrain employees; or
  - f. the need to relocate employees to another workplace; or
  - g. the restructuring of jobs.
256. In this section the term "***relevant employees*** " means the employees who may be affected by a change referred to in subclause 249a.

## **Dispute Resolution**

### **General**

257. If a dispute relates to a matter arising under this Determination, or the NES, the parties to the dispute must first attempt to resolve the matter at the workplace level by discussions between the employee or employees concerned and the relevant supervisor/manager.
258. If a resolution to the dispute has not been achieved after discussions have been held in accordance with clause 257, the parties to the dispute will endeavour to resolve the dispute in a timely manner either through discussions with more senior levels of management where appropriate or through alternative dispute resolution methods.
259. If discussions at the workplace level do not resolve the dispute, and all appropriate steps have been taken in accordance with clauses 257 and 258, a party to the dispute may refer the matter to Fair Work Commission.
260. 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
  - 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
    - 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 FW Act. 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 FW Act. Therefore, an appeal may be made against the decision.

261. The agency or an employee who is a party to the dispute may appoint another person, organisation or association to accompany and/or represent them for the purposes of this term.
262. While the parties are trying to resolve the dispute using the procedures in this term:
- a. an employee will continue to perform his or her work in accordance with established custom and practice at the workplace unless he or she has a reasonable concern about an imminent risk to his or her health or safety
  - b. an employee must comply with a direction given by the CEO to perform other available work at the same workplace, or at another workplace, unless:
    - i. the work is not safe or
    - ii. applicable work health and safety legislation would not permit the work to be performed or
    - iii. the work is not appropriate for the employee to perform, or
    - iv. there are other reasonable grounds for the employee to refuse to comply with the direction.
263. The parties to the dispute agree to be bound by a decision made by Fair Work Commission in accordance with this term.
264. Unless otherwise agreed, each party shall bear their own costs.

## TRAVEL

### Principle

265. While travelling on agency business, all employees are entitled to a reasonable standard of accommodation, meals and transport without personal expense. Travel must be organised to ensure maximum value to the Commonwealth with no personal expense, monetary gain or other type of benefit to the employee. The agency will determine and meet the reasonable costs associated with official domestic and international travel. Further information is in ASEA's Official Travel Policy.
266. The following principles apply in relation to employees undertaking travel on official business:
- a. subject to clause 265, employees will not be out of pocket for the reasonable costs of accommodation, meals, incidentals and other expenses incurred through travelling on official business ; and
  - b. in organising and approving business travel, managers shall be flexible in accommodating the needs of individuals and should take into account family

responsibilities, personal circumstances and other relevant factors that may affect an employee's ability to travel.

267. Managers may agree to reasonable compensatory time off in recognition of any additional time spent travelling outside normal working hours. Any such absences will be recorded for workers' compensation purposes.

### **Class of Travel**

268. Domestic air travel will be by economy class. International air travel will be by business class. Travel by bus or train will be by first class, where available.

### **Reviewed Travel Allowance**

269. Payment arrangements and the level of entitlement for travel expenses will be reviewed after 21 days away from home (in the one location) and paid on the basis of reasonable actual expenses or an alternative package of assistance agreed between the employee and the CEO. A trip home will not be regarded as a break for the purposes of determining reviewed travel allowance.

### **Emergency Situations while Travelling on Official Business**

270. Assistance may be authorised by the CEO in situations where:
- a. an employee becomes critically or dangerously ill while travelling on official business and the employee's partner or a family member travels to visit the employee
  - b. a member of the employee's family or the employee's partner's family dies or becomes critically or dangerously ill while the employee is on official business and the employee travels to visit the critically or dangerously ill family member.
271. The assistance may comprise:
- a. reimbursement to the employee for the cost of an economy return airfare in respect of travel within Australia
  - b. where the use of a motor vehicle is approved, or is the most appropriate form of travel, motor vehicle allowance consistent with provisions in this Determination.

### **Motor Vehicle Allowance**

272. Where the CEO authorises an employee to use their private vehicle for official business purposes the employee will be entitled to a flat rate Motor Vehicle Allowance based on the current ATO cents per kilometre rate. Where the cost of the MVA exceeds the lowest practical fare of the day of travel, the expenditure approved will be the amount equivalent to the lowest practical fare.

## RELOCATION

### Principle

- 273. When an existing employee permanently or temporarily relocates for employment purposes, the agency will contribute towards reasonable costs associated with the relocation subject to the eligibility provisions and monetary limits detailed in these provisions.
- 274. When a new ongoing employee moves from one geographic location to another to join the agency, relocation assistance for the removal of furniture and effects and travel to the new locality may be provided at the discretion of the CEO.
- 275. Any assistance provided will take into account the business requirements and the monetary limits of the relocations provisions for employee initiated moves.
- 276. Any relocation assistance provided will be agreed in writing between the CEO and employee before any relocation action takes place.
- 277. Employees who temporarily transfer at the initiative of the agency for a period of at least 13 weeks or more may negotiate a relocation package for reimbursement of reasonable expenses limited to a maximum of \$14,686.

## DEFINITIONS

ASEA	means the Asbestos Safety and Eradication Agency
Agency	means a statutory agency as defined in the <i>Public Service Act 1999</i>
APS	means the Australian Public Service
ATO	means the Australian Taxation Office
CEO	means the Agency Head of the Asbestos Safety and Eradication Agency
Delegate	means a person to whom the CEO of has delegated a power or function under this Determination
Dependant	means the spouse of the employee; and/or a child or parent of the employee, or of the spouse of the employee, being a child or parent who ordinarily resides with the employee and who is wholly or substantially dependent upon the employee
Employee	means an employee of the Asbestos Safety and Eradication Agency, whether ongoing, non-ongoing, full time or part time within the meaning of the <i>Public Service Act 1999</i>
Extended absence due to illness or injury	means an absence of at least four continuous weeks or a combined total absence of four weeks within a 13-week period whether based on a single or separate illness or injury
FW Act	means the <i>Fair Work Act 2009</i>
Family	means:  a person's spouse, dependant or immediate family member (includes a former spouse)  a de facto partner (includes a same sex partner and a former de factor partner)  a person related by adoption or fostering  a person related by traditional kinship  a parent, child, grandparent, grandchild or sibling of the employee's spouse or de facto partner
IPAD	means Individual Performance and Development Plan
LSL Act	means the <i>Long Service Leave (Commonwealth Employees) Act 1976</i>

Manager	means the person to whom an employee is responsible and who is authorised by the CEO to exercise the powers and responsibilities of manager in relation to that employee
NES	means the National Employment Standards established under the <i>Fair Work Act 1999</i>
Partner	means a person who is a member of a couple, the other member of the couple
PS Act	means the <i>Public Service Act 1999</i>
SES	means a Senior Executive level employee as defined under the <i>Public Service Act 1999</i>
WPI – Private Sector Adjustment percentage	means the figure advised by the Australian Public Service Commission to be the year-to-date percentage change in the Wage Price Index for the private sector from the most recently released June quarter. The WPI adjustment percentage at a point in time applies to adjustments to be made under the instrument from 1 September in a calendar year to 31 August in the following calendar year

## ATTACHMENT A - GENERAL CLASSIFICATIONS, SALARY AND ALLOWANCE INCREASES

Table 1

Column 1	Column 2	Column 3	Column 4
Classification	Pay Point	Current Salary (\$)	Salary from 14 February 2022 (\$)
<b>Exec Level 2</b>	4	152,273	155,166
	3	142,581	145,290
	2	134,523	137,079
	1	126,855	129,265
<b>Exec Level 1</b>	4	119,142	121,406
	3	113,154	115,304
	2	110,390	112,487
	1	107,801	109,849
<b>APS 6</b>	3	96,403	98,235
	2	90,519	92,239
	1	87,666	89,332
<b>APS 5</b>	3	83,368	84,952
	2	79,642	81,155
	1	77,980	79,462
<b>APS 4</b>	3	75,533	76,968
	2	72,597	73,976
	1	70,627	71,969
<b>APS 3</b>	2	67,627	68,912
	1	64,927	66,161
<b>APS 2</b>	3	61,954	63,131
	2	60,810	61,965
	1	58,140	59,245
<b>APS 1</b>	2	54,122	55,150
	1	49,501	50,442
	Age 20	45,046	45,902
	Age 19	40,098	40,860
	Age 18	34,649	35,307
	Under 18	29,700	30,264



## ATTACHMENT A - GENERAL CLASSIFICATIONS, SALARY AND ALLOWANCE INCREASES

Column 1		Column 2	Column 3	Column 4
Training Classification	Operational Classification	Pay Point	Current Salary (\$)	Salary from 14 February 2022 (\$)
<b>Cadet APS (Research Scientist)</b>	<b>APS 6</b>	3	96,403	98,235
		2	90,519	92,239
		1	87,666	89,332
<b>Graduate APS Cadet APS</b>	<b>APS 3</b>	2	67,627	68,912
		1	64,927	66,161
<b>Apprentice APS (Trades)</b>	<b>APS 2</b>	3	61,954	63,131
		2	60,810	61,965
		1	58,140	59,245
<b>Trainee APS (Administrative)</b>	<b>APS 1</b>	2	54,122	55,150
		1	49,501	50,442
		Age 20	45,046	45,902
		Age 19	40,098	40,860
		Age 18	34,649	35,307
		Under 18	29,700	30,264

**Note:**

- 1) Cadet APS undertaking full time study will be paid 57% of the minimum (including junior rates where applicable) that would be payable to the Cadet APS if he or she was performing practical training.
- 2) Junior rates of pay are only applicable to the APS 1 classification level and will be calculated as a percentage of an APS 1 equivalent adult base rate of pay as follows:
  - i. under 18 years of age 60%
  - ii. at 18 years of age 70%
  - iii. at 19 years of age 81%
  - iv. at 20 years of age 91%

## ATTACHMENT A - GENERAL CLASSIFICATIONS, SALARY AND ALLOWANCE INCREASES

Table 2

Column 1	Column 2	Column 3
Allowance	Current Rate (\$)	Rate from 14 February 2022 (\$)
Workplace Responsibility	28.40	28.94