

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



Australian Government

IP Australia

IP Australia Enterprise Agreement 2024





DECISION

Fair Work Act 2009

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

IP Australia

(AG2024/482)

IP AUSTRALIA ENTERPRISE AGREEMENT 2024

Commonwealth employment

COMMISSIONER PLATT

ADELAIDE, 19 MARCH 2024

Application for approval of the IP Australia Enterprise Agreement 2024

[1] An application has been made for approval of an enterprise agreement known as the *IP Australia Enterprise Agreement 2024* (the Agreement) pursuant to s.185 of the *Fair Work Act 2009* (the Act) by IP Australia (the Applicant). The agreement is a single enterprise agreement.

[2] The matter was allocated to my Chambers on 4 March 2024.

[3] On 6 March 2024, I conducted a telephone conference with the parties to seek clarification about aspects of the Agreement and invited the Applicant to address these matters including through the provision of an undertaking.

[4] The Agreement contains a number of changes which when considered in isolation, are less advantageous than the Award. These include the expansion of the spread of hours and penalty rates. I note that the Agreement also confers benefits of universal application including paid leave between Christmas and New Year and increased Superannuation Contributions. I have not considered additional benefits which were conditional in their application and/or difficult to quantify in monetary terms. I find that the universal improvements offset the disadvantage referred to.

[5] Two matters of concern remained, with respect to Part Time employees and Overtime and secondly Higher Duties.

[6] The Applicant has submitted an undertaking in the required form dated 15 March 2024, a copy of which is attached to this Agreement. The undertaking deals with the following topics:

- A Part-time minimum engagement has been inserted, consistent with the *Australian Public Service Enterprise Award 2015*.

- The requirement to prescribe the agreed part time hours of working including the start and finish times so as to determine when overtime is payable has been inserted, consistent with the *Australian Public Service Enterprise Award 2015*.
- For BOOT issues relating to Higher Duties, the Applicant has implemented a reconciliation process in line with *Shop, Distributive and Allied Association v Beechworth Bakery Employee Co Pty Ltd T/A Beechworth Bakery*.ⁱ

[7] A copy of the undertaking has been provided to the bargaining representatives and I have sought their views in accordance with s.190(4) of the Act. The bargaining representatives did not express any view on the undertaking.

[8] The undertaking appears to meet the requirements of s.190(3) of the Act and I have accepted it. As a result, the undertakings are taken to be a term of the Agreement.

[9] The Community and Public Sector Union, being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) of the Act I note that the Agreement covers this organisation.

[10] I am satisfied that each of the requirements of ss.186, 187, 188 and 190 of the Act as are relevant to this application for approval have been met.

[11] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 7 days after the date of approval of the Agreement. The nominal expiry date is 28 February 2027.



COMMISSIONER

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<AE523879 PR772499>

ⁱ [2017] FWCFB 1664.



Commissioner Platt
Fair Work Commission
Riverside Centre
Level 6 North terrace
Adelaide SA 5000
Email chambers.platt.c@fwc.gov.au

ABN: 38 113 072 755
Phone: 1300 651 010
International: +61 2 6283 2999
www.ipaustralia.gov.au

Applicant:
IP Australia

AG2024/482 – Application for the approval of the IP Australia Enterprise Agreement 2024

Section 185 – Application for Approval of a single enterprise agreement

Undertaking – Part-Time Hours and Higher Duties Provisions

I, Doug Pereira, General Manager Finance and People Services Group and Chief Financial Officer for IP Australia, give the following undertaking with respect to the IP Australia Enterprise Agreement 2024 ('the Agreement'):

1. I have the authority given to me by IP Australia to provide this undertaking in relation to the application before the Fair Work Commission.
2. Undertake the following –

Part-Time:

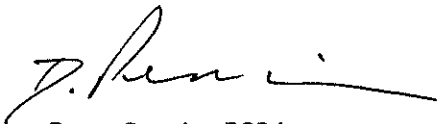
For the purposes of clauses 129 of the Agreement, the part-time work agreement setting out an employee's agreed part time hours will be issued before the part-time arrangement commences and will include:

- a. the ordinary hours the employee will work each week; and
- b. the pattern of hours to be worked, including starting and finishing times for employees other than shift workers, on each or any day of the week, within the bandwidth. The pattern of hours will provide for no less than three hours per day, or an alternative period agreed.

Higher Duties:

If, during a four-week settlement period, an APS employee temporarily occupies a role acting at a higher classification level for which they are not entitled to receive higher duties allowance, IP Australia will:

- a. at the end of that settlement period, conduct a reconciliation between the amount the employee would have been entitled to be paid under the Australian Public Service Enterprise Award 2015 (APS Award) and the amount they are entitled to under the Agreement for that period; and
 - b. if there is any shortfall between the amount the employee is entitled to be paid under the Agreement and the amount that would have been paid to the employee under the APS Award, pay the employee the amount of that shortfall plus \$5.00 in the next pay period.
3. This undertaking is provided on the basis of the issues raised by the Fair Work Commission in our meeting held on Wednesday 6 March 2024.



Doug Pereira FCPA
General Manager Finance and People Services Group
Chief Financial Officer
IP Australia

15 March 2024

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Formal acceptance of agreement and signatures

This Agreement is made under section 172 of the *Fair Work Act 2009*.

Employer

Signed for, and on behalf of, the Commonwealth by the Director General, IP Australia

Signed: 

Full Name: Michael Schwager

Address: 47 Bowes Street, Phillip ACT 2606

Bargaining representatives

Signed for, and on behalf of, the Community and Public Sector Union (CPSU)

Signed: 

Full Name: John Ryall

Position: National Organiser, CPSU

Address: 1/54-58 Foveaux Street, Surry Hills NSW 2010

Signed: 

Full Name: Clarissa Barbosa

Position: Employee Representative

Address: 47 Bowes Street, Phillip ACT 2606

Signed: 

Full Name: Nicole Peterson

Position: Employee Representative

Address: 47 Bowes Street, Phillip ACT 2606

Signed: 

Full Name: Michael Constance

Position: Employee Representative

Address: 47 Bowes Street, Phillip ACT 2606

Signed: 

Full Name: Belinda Saunders

Position: Employee Representative

Address: 47 Bowes Street, Phillip ACT 2606

Signed: 

Full Name: Mladen Mitic

Position: Employee Representative

Address: 47 Bowes Street, Phillip ACT 2606

Part 1 – Operation of the Agreement

Agreement Title

1. This agreement is made under section 172 of the *Fair Work Act 2009* and shall be known as the **IP Australia Enterprise Agreement 2024**.

Parties to the agreement

2. This Agreement covers:
 - 2.1. the Director General of IP Australia, for and on behalf of the Commonwealth of Australia as the employer;
 - 2.2. all employees in IP Australia employed under the *Public Service Act 1999* other than:
 - 2.2.1. Senior Executive Service employees or equivalent;
 - 2.3. subject to notice being given in accordance with section 183 of the *Fair Work Act 2009*, and the following employee organisation which was a bargaining representative for this Agreement:
 - 2.3.1. Community and Public Sector Union (CPSU).

Operation of the agreement

3. This Agreement will commence operation seven days after approval by the Fair Work Commission.
4. This agreement will nominally expire on 28 February 2027.

Delegations

5. The Director General may delegate to or authorise any person to perform any or all of the Director General's powers or functions under this agreement, including the power of delegation, and may do so subject to conditions.

National Employment Standards precedence

6. The terms of this Agreement are intended to apply in a manner that does not derogate from the National Employment Standards (NES). The NES will continue to apply to the extent that any term of this Agreement is detrimental to an employee of IP Australia in any respect when compared with the NES.

Closed comprehensive agreement

7. This Agreement states the terms and conditions of employment of the employees covered by this Agreement, other than terms and conditions applying under relevant Commonwealth laws.
8. This Agreement will be supported by policies and guidelines, as implemented and varied from time to time.
9. Policies and guidelines are not incorporated into and do not form part of this Agreement. To the extent that there is any inconsistency between policies and guidelines and the terms of this Agreement, the terms of this Agreement will prevail.

Individual Flexibility Arrangements

10. IP Australia 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:
 - 10.1. the arrangement deals with one or more of the following matters:
 - 10.1.1. arrangements about when work is performed;
 - 10.1.2. overtime rates;
 - 10.1.3. penalty rates;
 - 10.1.4. allowances;
 - 10.1.5. remuneration;
 - 10.1.6. leave and leave loading and;
 - 10.2. the arrangement meets the genuine needs of IP Australia and the employee in relation to one or more of the matters mentioned in clause 10.1; and
 - 10.3. the arrangement is genuinely agreed to by IP Australia and the employee.
11. IP Australia must ensure that the terms of the individual flexibility arrangement:
 - 11.1. are about permitted matters under section 172 of the *Fair Work Act 2009*,
 - 11.2. are not unlawful terms under section 194 of the *Fair Work Act 2009*, and
 - 11.3. result in the employee being better off overall than the employee would be if no arrangement was made.

12. IP Australia must ensure that the individual flexibility arrangement:
 - 12.1. is in writing;
 - 12.2. includes the names of IP Australia and the employee;
 - 12.3. is signed by IP Australia and the employee and, if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
 - 12.4. includes details of:
 - 12.4.1. the terms of the enterprise agreement that will be varied by the arrangement;
 - 12.4.2. how the arrangement will vary the effect of the terms;
 - 12.4.3. how the employee will be better off overall in relation to the terms and conditions of their employment as a result of the arrangement, and
 - 12.5. states the day on which the arrangement commences.
13. IP Australia must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
14. IP Australia or the employee may terminate the individual flexibility arrangement:
 - 14.1. by giving no more than 28 days written notice to the other party to the arrangement;
or
 - 14.2. if IP Australia and employee agree in writing – at any time.
15. IP Australia and the employee are to review the individual flexibility arrangement at least every 12 months.

Part 2 - Remuneration

Salary Increase

16. Salary rates will be as set out in Attachment A and Attachment B to this agreement.
17. The base salary rates in Attachment A and Attachment B include the following increases:
 - 17.1. **4.0 per cent** from the first full pay period on or after commencement 1 March 2024 (the 14 March 2024);
 - 17.2. **3.8 per cent** from the first full pay period on or after 1 March 2025 (the 13 March 2025); and
 - 17.3. **3.4 per cent** from the first full pay period on or after 1 March 2026 (the 12 March 2026).
18. In recognition of a common alignment date of the first full pay period on or after 1 March each year, the payments in Attachment A and Attachment B were calculated based on base salary rates as at 31 August 2023.

Payment of Salary

19. Employees will be paid fortnightly in arrears by electronic funds transfer into a financial institution account of the employee's choice, based on their annual salary using the following formula:

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

Note: This formula is designed to achieve a consistent fortnightly pay rate without significant variability year-to-year. It reflects that the calendar year is not neatly divisible into 26 fortnightly periods. There are 313 fortnightly pay cycles within a 12-year period.

20. Remuneration and other benefits for part-time employees are calculated on a pro rata basis, apart from allowances for which a reimbursement is made for the actual costs incurred.

Salary setting

21. Where an employee is engaged, moves to or is promoted in IP Australia, the employee's salary will be paid at the minimum of the salary range of the relevant classification, unless the Director General determines a higher salary within the relevant salary range under these provisions.
22. The Director General may determine the payment of salary at a higher value within the relevant salary range of the relevant classification and the date of effect at any time.
23. In determining a salary under these provisions, the Director General will have regard to a range of factors including the employee's experience, qualification and skills.
24. Where an employee commences ongoing employment in IP Australia immediately following a period of non-ongoing employment in IP Australia for a specified term or task, the Director General will determine the payment of the employee's salary within the relevant salary range of the relevant classification which recognises the employee's prior service as a non-ongoing employee in IP Australia.
25. Where an employee commences ongoing employment in IP Australia immediately following a period of casual employment in IP Australia, the Director General will determine the payment of salary within the relevant salary range of the relevant classification which recognises the employee's prior service as a casual employee in IP Australia.
26. Where an APS employee moves to IP Australia at level from another APS agency, and their salary is above the maximum of the salary range for their classification, the Director General will maintain the employee's salary at that level, until it is absorbed into the salary range for that classification.
27. Where the Director General determines that an employee's salary has been incorrectly set, the Director General may determine the correct salary and the date of effect.

Incremental advancement

28. Salary advancement to the next available pay point will occur on 1 September each year, within the salary range applicable to the employee's substantive classification and in accordance with IP Australia's policy.
29. For the employee to be eligible for salary advancement in accordance with clause 28, they must:
 - 29.1. have not received a rating of unsatisfactory (or equivalent) in the relevant performance management cycle; and
 - 29.2. have performed a minimum of 6 months of eligible service at IP Australia at or above their substantive classification. If an employee has less than 6 months of eligible service, the Director General may determine a higher salary under clause 22.
30. Where an employee's performance has been assessed as unsatisfactory and the employee does not receive salary advancement under clause 28, they may be granted salary advancement following a sustained period of satisfactory performance. A sustained period will generally be considered to be a minimum of 6 continuous months or as determined by the Director General. Salary adjustments under this clause will not be retrospective.
31. Eligible service for salary progression will include:
 - 31.1. periods of paid leave and unpaid parental leave;
 - 31.2. periods of unpaid leave that count as service; and
 - 31.3. service while employed on a non-ongoing basis.
32. During a period of unpaid parental leave employees will be eligible to advance a maximum of one increment, regardless of the length of unpaid parental leave.
33. Employees who have been performing duties at a higher classification and meet the above requirements will be eligible for a salary progression at both their actual and substantial classifications.
34. Progression at a higher level, as per clause 33, will be retained for future periods of higher duties.
35. Casual employees will not usually be eligible for incremental advancement.

Transitional arrangements

36. Employees due for incremental advancement between the date of commencement of this agreement and 1 September 2024 will:
 - 36.1. receive a one-off payment equivalent to the salary advancement for the period of their current increment to 1 September 2024, and
 - 36.2. have their pay point adjusted on 1 September 2024.

Superannuation

37. IP Australia will make compulsory employer contributions as required by the applicable legislation and fund requirements.
38. Employer superannuation contributions will be paid on behalf of employees during periods of paid leave that count as service.
39. IP Australia will provide an employer contribution of 15.4% of the employee's Fortnightly Contribution Salary (FCS) for employees in the Public Sector Superannuation Accumulation Plan (PSSap) and employees in other accumulation superannuation funds.
40. Employer contributions will be made for all employees covered by this agreement.
41. Employer contributions will not be reduced by any other contributions made through salary sacrifice arrangements.
42. IP Australia will make employer superannuation contributions to any eligible superannuation fund, provided that it accepts payment by fortnightly electronic funds transfer (EFT) using a file generated by the IP Australia's payroll system.

Payment during unpaid parental leave

43. Employer contributions will be paid on periods of unpaid parental leave in accordance with the requirements of the PSSap fund where the employee is a member of the PSSap, and up to a maximum of 52 weeks where the employee is a member of an accumulation fund other than PSSap.

Overpayments

44. An overpayment occurs if IP Australia provides an employee with an amount of money to which the employee was not entitled (including but not limited to salary, entitlements, allowances, travel payment and/or other amount payable under this agreement).
45. Where the Director General considers that an overpayment has occurred, the Director General will provide the employee with notice in writing. The notice will provide details of the overpayment.
46. If an employee disagrees that there has been an overpayment including the amount of the overpayment, they will advise the Director General in writing within 28 calendar days of receiving the notice. In this event, no further action will be taken until the employee's response has been reviewed.
47. If after considering the employee's response (if any), the Director General confirms that an overpayment has occurred, the overpayment will be treated as a debt to the Commonwealth that must be repaid to the agency in full by the employee.

48. The Director General and the employee will discuss a suitable recovery arrangement. A recovery arrangement will take into account the nature and amount of the debt, the employee's financial circumstances and any potential hardship to the employee. The arrangement will be documented in writing.
49. The Director General and employee may agree to make a deduction from final monies where there is an outstanding overpayment upon cessation of employment.
50. Interest will not be charged on overpayments.
51. Nothing in clauses 44 to 50 prevents:
 - 51.1. IP Australia from pursuing recovery of the debt in accordance with an Accountable Authority Instruction issued under the *Public Governance, Performance and Accountability Act 2013*;
 - 51.2. IP Australia from pursuing recovery of the debt through other available legal avenues; or
 - 51.3. the employee or IP Australia from seeking approval to waive the debt under the *Public Governance, Performance and Accountability Act 2013*.

Supported Wage System

52. An employee can get a percentage of the relevant pay rate in line with their assessed capacity to do the work if they:
 - 52.1. have a disability;
 - 52.2. meet the criteria for a Disability Support Pension; and
 - 52.3. are unable to perform duties to the capacity required.
53. Specific conditions relating to the supported wage system are detailed in Attachment D.

Part 3 - Allowances

Adjustment of Allowances

54. Except as specified in this Agreement allowance rates subject to update during the life of this Agreement will be adjusted as indicated in Attachment C.
55. Further information is contained in IP Australia's policy.

Higher Duties

56. Where a role needs to be filled for 2 or more working weeks, higher duties allowance will be paid to any employee temporarily occupying the role acting at a classification level higher than their substantive classification level.
57. Higher duties allowance will be equal to the difference between the employees' current salary and the salary that would be payable if they were promoted to the higher classification, or a higher amount determined by the Director General.
58. Where an employee is found to be eligible for salary progression at their acting classification level they will receive an appropriate increase in the rate of higher duties allowance. The employee's salary level will be retained for all future periods of acting regardless of elapsed time.
59. Where an employee is assigned only part of the higher duties, the Director General will determine the amount of allowance payable.
60. Higher duties allowance will be payable while an employee is acting at a higher classification as part of a job-sharing arrangement where the duration of the arrangement is at least 2 working weeks.
61. The Director General may shorten the qualifying period for higher duties allowance on a case-by-case basis.

Workplace Responsibility Allowance

62. A workplace responsibility allowance (WRA) will be paid where an employee who is appointed by the agency or elected by eligible peers to one of the following roles:
 - 62.1. First Aid Officer
 - 62.2. Health and Safety Representative
 - 62.3. Emergency Warden
 - 62.4. Harassment Contact Officer
 - 62.5. Mental Health First Aid Officer
63. An employee is not to receive more than one WRA unless approved by the Director General due to operational requirements.
64. Full allowance is payable regardless of flexible work and part-time arrangements.
65. An employee's physical availability to undertake the role will be considered by agencies when appointing and reappointing employees to these roles. This is noting that not all workplace responsibility roles will necessarily require a physical presence in the workplace for the role to be successfully undertaken, such as Harassment Contact Officers, Mental First Aid Officers and Health and Safety Representatives depending on work group arrangements.
66. Casual employees who are eligible to receive a workplace responsibility allowance will be paid the full amount (noting the minimum rate), as varied from time to time provided they engage in work during any given pay cycle, irrespective of the frequency and duration of the work undertaken.
67. WRA will be paid fortnightly at the rate specified in Attachment C.

EL2 additional responsibility

68. EL2 employees whose duties involve supervision of one or more other EL2 employees may receive a skills and tasks allowance via an Individual Flexibility Arrangement (IFA).
69. Further information is contained in IP Australia's policy.

Community language allowance

70. A community language allowance will be paid where the Director General determines that an employee is regularly required to use their ability to communicate in Braille or a language other than English (including First Nations languages and AUSLAN) in the course of their work, and the employee meets the required level of competency set by the Director General.
71. This allowance will also be paid to a Patent Examiner or Senior Patent Examiner who has been directed in writing by the Commissioner of Patents to translate disclosures from other languages as required by IP Australia in its capacity as an International Searching Authority.
 - 71.1. The allowance is not payable beyond three months if a Patent Examiner or Senior Patent Examiner temporarily moves into a position not involving patent examination unless the Commissioner of Patents determines that it continues.
72. An employee who has adequate language skills, as determined by an individual or body approved by the Director General for simple communication will be eligible to receive rate 1 specified in Attachment C.
73. An employee who is certified by the National Accreditation Authority for Translators and Interpreters (NAATI) as a Translator or Interpreter at any level; or is assessed to be at the equivalent level by an individual or body approved by the Director General will be eligible to receive rate 2 specified in Attachment C.
74. The allowance is calculated annually and paid fortnightly at the rates specified in Attachment C.
75. The full allowance is payable regardless of flexible work and part-time arrangements.
76. The allowance is payable during periods of paid leave.
77. The allowance counts as salary for superannuation purposes and for calculating retirement and redundancy entitlements.
78. Further information is contained in IP Australia's policy.

Healthy lifestyle reimbursement

79. The healthy lifestyle reimbursement as outlined in Attachment C will be an annual payment to encourage employees to participate in healthy lifestyle activities. The payment is available to:
 - 79.1. ongoing employees;
 - 79.2. non-ongoing employees with a contract of 12 months or more
80. Payment is payable once in each financial year and is for expenses incurred in that year.
81. Payment is made on production of receipts for healthy lifestyle expenses.
82. Further information is contained in IP Australia's policy.

Glasses reimbursement

83. An employee whose job involves significant screen-based work may be eligible for reimbursement of the reasonable cost of a pair of glasses.
84. The reasonable cost for the purposes of this Agreement is outlined in Attachment C.
85. Further information is contained in IP Australia's policy.

Loss and damage of personal effects

86. The Director General may approve reimbursement to an employee for loss or damage to clothing or personal effects which occurred in the course of the employee's work.
87. Further information is contained in IP Australia's policy.

Salary packaging

88. All employees covered by this Agreement can access IP Australia's Salary Packaging Scheme.
89. The employee's pre-sacrifice salary will be their salary for the purposes of this Agreement.
90. Further information is contained in IP Australia's policy.

Family assistance

91. IP Australia will provide vacation childcare subsidy for accredited providers at the rate specified in Attachment C.
92. To be eligible for this subsidy:
 - 92.1. the employee must be at work on the day for which they are claiming the subsidy except where the employee is on approved personal/carer's leave; and
 - 92.2. the child attended; or
 - 92.3. the child was enrolled on the day but could not attend due to illness or injury and the employee had to provide care.
93. For the purposes of this clause, a child is considered primary school age from the January of the year they commence kindergarten until the date they would ordinarily commence high school.
94. In recognition of dependant care responsibilities, the Director General may authorise the reimbursement of costs incurred arising from additional family care arrangements made necessary in exceptional circumstances.
95. Further information is contained in IP Australia's policy.

Part 4 – Classifications and broadbands

Work Level Standards

96. The Australian Public Service (APS) Work Level Standards continue to operate and describe the work at each of the classification levels in this Agreement, consistent with the *Public Service Classification Rules 2000*, made in accordance with section 23 of the *Public Service Act 1999*.

Classifications and broadbands

97. Classifications and associated salary ranges are set out in Attachment A.
98. This agreement provides for incremental advancement in accordance with clauses 28-33 for the below classifications:
- 98.1. General APS classification
 - 98.2. Examiner of Patents (including Plant Breeder's Rights) classification
99. Further information on incremental advancement is contained in IP Australia's Policy.
100. Broadbands and associated salary ranges are set out in Attachment B.
101. Broadbands are designed to provide advancement across classifications where IP Australia has identified a job of duties within a span of work value.
102. This agreement provides for broadband advancement within:
- 102.1. Trainee broadband
 - 102.2. Graduate broadband
 - 102.3. Examiner of Trade Marks broadband
 - 102.4. Examiner of Designs broadband
103. The Director General may advance an employee to the higher classification in a broadband subject to:
- 103.1. the requirement to demonstrate role-related capabilities at the higher level;
 - 103.2. the availability of work at the higher level; and
 - 103.3. the performance of the employee being satisfactory.
104. Where the above-mentioned requirements have been met, advancement through a broadband should not be unreasonably withheld.
105. The Director General may, through consultation, amend, revoke, or create broadbands during the operation of this agreement.
106. Further information on classifications and broadbands is contained in IP Australia's Policy.

Part 5 – Working hours and arrangements

Employment Types

107. **Ongoing employee** is an employee engaged under section 22(2)(a) of the *Public Service Act 1999*.
108. **Non-ongoing employee** is an employee engaged under section 22(2)(b) of the *Public Service Act 1999* for a specified term or for the duration of a specified task, and consistent with the *Fair Work Act 2009*.
109. **Casual employee (irregular or intermittent)** means an employee engaged under section 22(2)(c) of the *Public Service Act 1999* who:
- 109.1. is a casual employee as defined by the *Fair Work Act 2009*; and
 - 109.2. works on an irregular or intermittent basis.
110. **Full-time employee** is an employee whose ordinary hours are in accordance with clause 126 of this Agreement.
111. **Part-time employee** is an employee whose ordinary hours are less than the standard hours specified at clause 126 of this Agreement.

Job security, Casual and Non-Ongoing Employment

Commitment to ongoing employment and rebuilding APS capacity

112. The APS is a career-based public service. In its engagement decisions, IP Australia recognises that the usual basis for engagement is an ongoing APS employee.

Reporting

113. Where a consultative committee is in place, IP Australia will report to the IP Australia consultative committee on an annual basis, or more frequently if agreed, on the number, duration, classification and location of non-ongoing and casual employees engaged by IP Australia.

Casual employees

114. A casual employee is defined at clause 109.
115. A decision to expand the use of casual employees is subject to the consultation obligations set out in Part 10 of this agreement.
116. IP Australia will regularly review the working arrangements of casuals to assess if they are genuinely performing irregular or intermittent duties, and report de-identified outcomes to the consultative committee, where one is in place.

117. Remuneration for casual employees shall be on an hourly basis. A casual employee shall receive a 25 per cent loading on the base hourly rate of their classification as set out in this Agreement.
118. The casual loading is paid in lieu of payment for public holidays not worked, notice of termination of employment, redundancy benefits and all paid leave entitlements, other than leave required by legislation including long service leave in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976* and leave for family and domestic violence support.
119. A casual employee shall be engaged for a minimum of 3 hours per engagement or shall be paid for a minimum of 3 hours at the appropriate casual rate.
120. A casual employee who is eligible for a workplace responsibility allowance will be paid the full amount.

Non-ongoing employees (specified term or task)

121. A non-ongoing employee is defined at clause 108
122. Non-ongoing employees will generally have the same terms and conditions of employment as ongoing employees under this agreement's terms, except:
 - 122.1. Personal/carer's leave accrual at clause 252
 - 122.2. the redundancy provisions at clauses 463 to 503 subject to clause 123.
123. If the non-ongoing employee's contract is not permitted by s333E of the *Fair Work Act 2009*, then the redundancy provisions at clauses 463 to 503, will apply.
124. If the redundancy provisions apply to an employee under clause 123, IP Australia must adhere to the consultation requirements at clause 418.

Pathways to permanency

125. IP Australia and the APS will comply with the casual conversion provision of the *Fair Work Act 2009*. In addition, IP Australia recognises that a proactive approach, including regularly reviewing casual and non-ongoing arrangements, is both a fair and efficient approach to supporting ongoing employment as the usual form of employment.

Working hours

126. The ordinary hours of work for full-time employees are 36 hours and 45 minutes per week, to be generally worked as 7 hours and 21 minutes each day, Monday to Friday.
127. The standard working day is 8:30 am to 12:30 pm and 1:30 pm to 4:51 pm Monday to Friday.
128. An employee may only work a maximum of 10 ordinary hours per day.
129. For part-time employees, ordinary hours of work are the hours of work approved in their part-time work agreement and will provide for no less than 3 hours per day.

Bandwidth

130. The bandwidth during which employees may work their ordinary hours will be 12 hours in length, Monday to Friday, usually 7:00am to 7:00pm.

Altering span of hours

131. An employee may request to work an alternative regular span of hours (bandwidth hours). If approved by the Director General, hours worked on this basis will be treated as regular working hours and will not attract overtime payments. IP Australia will not request or require that any employee alter their regular span of hours (bandwidth hours) under these provisions.

Meal breaks

132. Employees must not work for more than 5 consecutive hours without a break of at least 30 minutes.

Recording Working Hours

133. Employees are required to record the times they commence and finish work (including breaks) each day. Employees on either Flextime or EL1 TOIL arrangements are required to use IP Australia's designated timesheet.

134. Part-time employees are required to record their hours based on their agreed part-time working arrangement.

Advising of Absence

135. Where an employee is unable to attend work (e.g. they are unwell) they are to advise their manager of their absence as soon as practicable to do so, preferably before they would normally commence work.

Unauthorised Absences

136. Where an employee is absent from duty and the absence is not authorised by IP Australia, all pay and other benefits provided under this Agreement will cease to be available until the employee resumes duty or is granted leave.

137. All periods of unauthorised absence do not count for service and affect leave accrual and the eligibility date for pay point advancement.

Out of hours duty

138. This provision recognises employees who are required to engage with international stakeholders, as part of their ordinary duty.
139. Where an employee is required by the Director General to undertake their ordinary duty outside of bandwidth hours ('unsocial hours'), they will be entitled to time off in lieu (TOIL) at the applicable penalty rates.
140. Where the employee has an approved agreement for varied bandwidth hours, they will only be eligible to TOIL at the applicable rates in Table 5.1 which are outside of their agreed bandwidth hours.
141. In circumstances where the employee has worked 7 hours and 21 minutes prior to undertaking the required duty this is considered extra duty and must be managed in accordance with clauses 168-187.
142. TOIL will accrue in accordance with Table 5.1.

Table 5.1 TOIL rates for Out of hours duty

Period of required duty	TOIL rate
Duty commenced and concluded between 7.00pm and 7.00am Monday to Saturday	Time and a half for the first three (3) hours Double time after the first three (3) hours
Duty worked on a Sunday	Double time
Duty worked on a Public Holiday	Double time and a half (for duty outside standard hours); or Time and a half for duty within standard hours (as employees would already be paid single time for the public holiday).

Rest relief after out of hours duty

143. Where an employee has been required to undertake out of hours duty, they must take an eight-hour break before recommencing duty. They will be credited as having worked whatever time falls within the standard hours occurring during the employee's absence.

Flexitime

144. Flexitime is available to all employees at APS 1 to APS 6 classification.
145. Employees may carry over a maximum flex credit equivalent to their normal weekly hours from the end of each accounting period to the next. That is:
 - 145.1. full time employee the maximum carry over will be 36.75 hours.
 - 145.2. part-time employees can carry over a maximum equivalent to half their approved fortnightly hours.
146. Maximum debit that can be carried over is 10 hours.
147. The settlement period is four weeks, commencing on alternate paydays.
148. The amount by which the maximum flex debit at the end of the accounting period is exceeded should be treated as leave without pay or annual leave and appropriate salary action taken.
149. An employee can request to utilise annual leave credits to reduce a flex debit.
150. Employees may take no more than 5 days, based on their ordinary hours, of flex leave (either consecutive or individual days) per settlement period.
151. Employees must obtain prior approval before taking flex leave. Approval of flex leave is subject to operational requirements of the work area and, where possible, the employee's personal needs should be considered.
152. Employees are encouraged to use flex leave to cover part day absences.
153. The Director General may remove an employee's access to flexitime arrangements:
 - 153.1. where there is insufficient work; or
 - 153.2. due to operational requirements; or
 - 153.3. where an employee does not adhere to the flexitime requirements; or
 - 153.4. where an employee's attendance is unsatisfactory.
154. After discussion with the employee, the Director General will provide a written explanation of the reasons for their decision.
155. Access to flexitime will be restored when the Director General is satisfied the employee's attendance is satisfactory and misuse of flexitime arrangements is unlikely to reoccur.

Executive Level working arrangements

156. Executive level (EL) employees are sometimes required to work reasonable additional hours. Consistent with the NES, employees may refuse to work unreasonable additional hours.
157. EL employees seeking to access time off in lieu (TOIL) are required to keep records of their working hours using a method determined by IP Australia.
158. A manager is to grant TOIL in recognition of reasonable additional hours worked. TOIL granted to employees can be taken as whole or part days.
159. The working arrangements for an EL employee should be agreed through discussion between the manager and the EL employee. The discussion should include consideration of the work requirements that will safely get the job done and reasonably allow the employee to balance their work and personal life.
160. An EL employee's working arrangements and actual hours worked should be discussed on at least a quarterly basis between the EL employee and their manager.
161. The pattern of hours is to be flexible enough to accommodate short term peaks and troughs in workload and include expected reasonable additional hours. The agreed pattern of hours is to be recorded.
162. Requests from EL employees to access flexible time off which are consistent with their agreed working arrangements are to be supported, subject to operational requirements.
163. EL1 employees are entitled to be compensated with time off on an hour for hour basis for additional hours worked within their regular span of hours, that is, for time worked in excess of 7 hours and 21 minutes per day.
164. EL1 employees will have access to TOIL arrangements for additional hours worked within the bandwidth of 7.00am to 7.00pm Monday to Friday except for overtime approved in accordance with clause 169.
165. EL1 employees may carry over a maximum TOIL balance of equivalent to their normal weekly hours from the end of each accounting period to the next. That is:
 - 165.1. full time employee the maximum carry over will be 36.75 hours.
 - 165.2. part-time employees can carry over a maximum equivalent to half their approved fortnightly hours.
166. TOIL in excess of 36.75 hours at the end of a settlement period will not be carried over nor can the balance be in debit.

Overtime

167. Employees undertaking Field Examination or official domestic travel are excluded from overtime provisions in clauses 168 to 187, however, can access:

167.1. Field Examination – extra duty in the field as per clauses 408 to 414

167.2. Official travel – additional hours are to be recorded as TOIL on an hour for hour basis. Further information is contained in IP Australia’s policy.

168. Overtime is payable where an employee at or below the APS 6 classification is required by the Director General to work additional hours:

168.1. outside of the employee’s approved ordinary hours (in excess of 7 hours and 21 minutes per work day for full-time employees and for part-time employees it is the hours in excess of their approved work arrangement); or

168.2. outside of the employee’s approved bandwidth hours; or

168.3. in excess of 36 hours and 45 minutes in a week for a casual employee. The casual loading set out in clause 118 is not paid for overtime.

For the purposes of clauses 168.1 and 168.2 ordinary hours may comprise of duty, flextime or TOIL.

169. Executive level 1 and 2 employees are not eligible for overtime payments except in exceptional circumstances as determined by the Director General.

170. The Director General may require an employee to work a reasonable amount of overtime each year. However, with reasonable cause an employee may decline to work outside standard hours on a particular day.

171. Overtime is only to be worked at the prior direction of the Director General or, if the circumstances do not permit prior direction, subsequent approval in writing by the Director General will be required before payment is made.

172. The Director General may approve the reimbursement of reasonable expenses incurred by an employee because of a requirement to work overtime. To be eligible for reimbursement, the Director General’s approval must be obtained in advance.

173. Employees working overtime who have a flex debit on the day the overtime is worked will not be eligible for overtime payment until the flex debit has been reduced to 10 hours. Such debits are to be reduced by the period of overtime worked with the reduction being calculated at the applicable overtime rate.

Overtime payment rates

174. The penalty rates for overtime performed are outlined in table 5.2.

Table 5.2 Overtime rates

Day overtime performed	Conditions	Rate
Monday to Saturday	First three hours worked	Time and a half (x1.5)
	After first three hours	Double time (x2)
Sunday	All hours worked	Double time (x2)
Public holiday [^]	Within standard hours*	Time and a half (x1.5)
	Outside standard hours	Double time (x2)

Note:

[^] as outlined at clause 222

* the employee would already be paid single time for the public holiday.

175. Where an employee works approved overtime, the employee may opt to take time off in lieu of payment for any overtime worked. The time off in lieu will be calculated at the rates prescribed in clause 174.

176. If overtime is worked over midnight and a higher rate of overtime applies on one of the days, the overtime payment will be calculated at the higher rate.

177. Where more than one attendance is involved in a day, only one minimum overtime payment will be payable.

Emergency duty

178. This clause only applies to employees in classifications at the APS 1 to APS 6 level. Where an employee is called on duty to respond to an emergency at a time when they would not normally have been on duty and has been given no notice of such a call prior to ceasing ordinary duty, they will be paid for the emergency duty at one and half times their regular rate of pay.

179. The period for which this emergency payment will be made will include time necessarily spent travelling to and from an IP Australia workplace. The minimum payment under this clause will be 3 hours.

Recall to duty

180. Where a period of overtime is not continuous with ordinary duty (e.g. where an employee is called back to duty for overtime after the end of ordinary duty for the day), the minimum overtime payment is 4 hours at the relevant overtime rate.
181. Minimum payment for employees who perform additional hours when on restriction duty (on-call) is 3 hours.

Overtime meal allowance

182. An employee who is required to undertake extra duty which is not continuous with their ordinary approved hours, and the overtime commences prior to the start of an overtime meal period, and ends at or after the end of an overtime meal period will be eligible for an overtime meal allowance in accordance with Attachment C.
183. An employee who performs overtime at home is not eligible for a meal allowance.
184. Where overtime commences immediately following an employee's working ordinary hours, the ordinary hours may be counted in the five hours referred to in clause 132.
185. Meal periods are:
- 185.1. 7:00 am to 8:00 am;
 - 185.2. 12 noon to 2:00 pm;
 - 185.3. 6:00 pm to 7:00 pm; and
 - 185.4. midnight to 1:00 am

Rest relief after overtime

186. Where there is less than 8 hours, plus reasonable travel time, between the cessation of overtime and the commencement of the standard hours on the employee's next day of business, they will be entitled to be absent from work until the 8 hours plus reasonable travel time has elapsed. They will be credited as having worked whatever time falls within the standard hours occurring during the employee's absence.
187. If an employee is required to resume or continue work on the direction of the Director General, without having had 8 consecutive hours plus reasonable traveling time off duty, the employee will be paid at double ordinary time rates (for time worked) until the employee has had 8 consecutive hours, plus reasonable travel time between finishing overtime and recommencing duty.

Restriction duty (on-call)

188. Where the Director General requires an Employee to remain contactable and available to perform extra duty outside the Employee's standard hours of duty the Employee will be paid a restriction allowance.
189. Restriction allowance is payable whether or not the restricted employee is required to perform duty outside their standard hours of duty;
- 189.1. is paid up to the maximum of the salary rate of the APS level 6 classification, unless otherwise determined by the Director General ;
 - 189.2. will be paid at the rate of:
 - 189.2.1. 10% of the employee's hourly rate of salary for each hour restricted Monday to Sunday;
 - 189.2.2. 15% of the employee's hourly rate of salary for each hour restricted on public holidays as outlined in clause 222.
 - 189.3. The employee's salary will include higher duties allowance and any other salary related allowances;
 - 189.4. is not paid during any periods of overtime or emergency duty; and
 - 189.5. will not be paid if the employee is not contactable.
190. An alternative rate of restriction allowance may be determined by the Director General having regard to the circumstances of the restriction situation.
191. Where a restricted employee is required to perform duty, they will be paid overtime subject to:
- 191.1. a 1 hour minimum payment when work is performed without the necessity to travel to the workplace; or
 - 191.2. a 3 hour minimum payment including travel time if work is required to be performed at the workplace.

Flexible Working Arrangements

Commitment to flexible work

192. IP Australia, employees, and their unions recognise:

- 192.1. the importance of an appropriate balance between employees' personal and working lives, and the role flexible working arrangements can play in helping to achieve this balance
- 192.2. access to flexible work can support strategies to improve diversity in employment and leadership in the APS
- 192.3. access to flexible work supports APS capability, and can assist in attracting and retaining the employees needed to deliver for the Australian community, including employees located at a wider range of locations
- 192.4. that flexibility applies to all roles in IP Australia, and different types of flexible working arrangements may be suitable for different types of roles or circumstances; and
- 192.5. requests for flexible working arrangements are to be considered on a case-by-case basis, with a bias towards approving requests.

193. IP Australia is committed to engaging with employees and their union to build a culture that supports flexible working arrangements across IP Australia at all levels. This may include developing and implementing strategies through an IP Australia consultative committee.

194. Flexible working arrangements include, but are not limited to, changes in hours of work, changes in patterns of work and changes in location of work. Further information is contained in IP Australia's Policy

Requesting formal flexible working arrangements

195. The following provisions do not diminish an employee's entitlements under the NES.

196. An employee may make a request for a formal flexible working arrangement.

197. The request must:

- 197.1. be in writing
- 197.2. set out details of the change sought (including the type of arrangement sought and the proposed period the arrangement will operate for); and
- 197.3. set out the reasons for the change, noting the reasons for the change may relate to the circumstances set out at section 65(1A) of the *Fair Work Act 2009*.

198. The Director General must provide a written response to a request within 21 days of receiving the request.

199. The response must:

- 199.1. state that the Director General approves the request and provide the relevant detail in 200; or

- 199.2. if following discussion between IP Australia and the employee, IP Australia and the employee agree to a change to the employee's working arrangements that differs from that set out in the request – set out the agreed change; or
 - 199.3. state that the Director General refuses the request and include the following matters:
 - 199.3.1. details of the reasons for the refusal; and
 - 199.3.2. set out IP Australia's particular business grounds for refusing the request, explain how those grounds apply to the request; and
 - 199.3.3. either:
 - 199.3.3.1. set out the changes (other than the requested change) in the employee's working arrangements that would accommodate, to any extent, the employee's circumstances outlined in the request and that IP Australia would be willing to make; or
 - 199.3.3.2. state there are no such changes; and
 - 199.3.4. state that a decision to refuse the request, or failure to provide a written response within 21 days is subject to the dispute settlement procedures of this Agreement, and if the employee is an eligible employee under the *Fair Work Act 2009*, the dispute resolution procedures outlined in Section 65B and 65C of the *Fair Work Act 2009*.
200. Where the Director General approves the request this will form an arrangement between IP Australia and the employee. Each arrangement must be in writing and set out:
- 200.1. any security and work health and safety requirements;
 - 200.2. a review date (subject to clause 204); and
 - 200.3. the cost of establishment (if any).
201. The Director General may refuse to approve the request only if:
- 201.1. IP Australia has discussed the request with the employee; and
 - 201.2. IP Australia has genuinely tried to reach an agreement with the employee about making changes to the employee's working arrangements to accommodate the employees' circumstances (subject to any reasonable business grounds for refusal); and
 - 201.3. IP Australia and the employee have not reached such an agreement; and
 - 201.4. IP Australia has had regard to the consequences of the refusal for the employee; and
 - 201.5. the refusal is on reasonable business grounds.

202. Reasonable business grounds include, but are not limited to:
- 202.1. the new working arrangements requested would be too costly for IP Australia
 - 202.2. there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested
 - 202.3. it would be impractical to change the working arrangements of other employees, or recruit new employees, to accommodate the new working arrangements requested
 - 202.4. the new working arrangements requested would be likely to result in a significant loss in efficiency or productivity
 - 202.5. the new working arrangements requested would be likely to have a significant negative impact on customer service
 - 202.6. it would not be possible to accommodate the working arrangements without significant changes to security requirements, or where work health and safety risks cannot be mitigated.
203. For First Nations employees, IP Australia must consider connection to country and cultural obligations in responding to requests for altering the location of work.
204. Approved flexible working arrangements will be reviewed by IP Australia and the employee after 12 months, or a shorter period, if agreed by the employee. This is to ensure the effectiveness of the arrangement.

Varying, pausing or terminating flexible working arrangements

205. An employee may request to vary an approved flexible working arrangement in accordance with clause 197. An employee may request to pause or terminate an approved flexible working arrangement.
206. The Director General may vary, pause or terminate an approved flexible working arrangement on reasonable business grounds, subject to clause 208.
207. IP Australia must provide reasonable notice if varying, pausing or terminating a flexible working arrangement without the agreement of the employee, having regard to the circumstances of the employee. Exceptions to this requirement are urgent and critical operational circumstances or an employee's demonstrated and repeated failure to comply with the agreed arrangements.
208. Prior to the Director General varying, pausing or terminating the arrangement under clause 206 IP Australia must have:
- 208.1. discussed with the employee their intention to vary, pause or terminate the arrangement with the employee; and
 - 208.2. genuinely tried to reach an agreement with the employee about making changes to the employee's working arrangements to accommodate the employees' circumstances (subject to any reasonable business grounds for alteration)
 - 208.3. had regard to the consequences of the variation, pause or termination for the employee;

- 208.4. ensured the variation, pause or termination is on reasonable business grounds; and
- 208.5. informed the employee in writing of the variation, pause or termination to the approved flexible working arrangement, including details set out in clause 199.3.

Working from home

- 209. IP Australia will not impose caps on groups of employees on the time that may be approved to work from home or remotely, with each request to be considered on its merits.
- 210. IP Australia may provide equipment necessary for, or reimbursement for all or part of the costs associated with, establishing a working at home arrangement.
- 211. An employee working at home is covered by the same employment conditions as an employee working at an office site under this Agreement.
- 212. IP Australia will provide employees with guidance on working from home safely.
- 213. Employees will not be required by IP Australia to work from home, unless it is lawful and reasonable to do so. This may include where circumstances prevent attendance at an office during a pandemic or natural disaster. In these situations, IP Australia will consider the circumstances of employees and options to achieve work outcomes safely.

Ad-Hoc arrangements

- 214. Employees may request ad hoc flexible working arrangements. Ad hoc arrangements are generally one-off or short-term arrangements for circumstances that are not ongoing.
- 215. Employees should, where practicable, make the request in writing and provide as much notice as possible.
- 216. Requests for ad-hoc arrangements are not subject to the request and approval processes detailed in clauses 195 to 204.
- 217. IP Australia should consider ad-hoc requests on a case-by-case basis, with a bias to approving ad-hoc requests, having regard to the employee's circumstances and reasonable business grounds.
- 218. Where a regular pattern of requests for ad-hoc arrangements from an employee emerges, IP Australia should consider whether it is appropriate to seek to formalise the arrangement with the employee.

Part-time work

- 219. Employees engaged on a:
 - 219.1. full-time basis will not be compelled to convert to part-time employment.
 - 219.2. part-time basis will not be compelled to convert to full-time employment.

Annual closedown

220. The Director General will declare that the IP Australia Offices will not be open for business from for the period 25 December to 1 January (inclusive) each year. Employees will not be required to perform normal duties on these days and for days not declared as public holidays will be granted paid leave without deduction from leave credits.
221. An employee who is directed to work on a day when the offices are closed has the option of an overtime payment at time and a half or time off in lieu at time and a half. Time off in lieu is to be taken within four weeks or at an alternative time convenient to the employee and agreed with the Director General.

Public Holiday

222. Employees are entitled to the following holidays each year as observed at their normal work location in accordance with the *Fair Work Act 2009*:
- 222.1. 1 January (New Year's Day)
 - 222.2. 26 January (Australia Day)
 - 222.3. Good Friday and the following Monday
 - 222.4. 25 April (Anzac Day)
 - 222.5. the King's birthday holiday (on the day on which it is celebrated in a State or Territory or a region of a State or Territory)
 - 222.6. 25 December (Christmas Day)
 - 222.7. 26 December (Boxing Day)
 - 222.8. 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 2009* from counting as a public holiday.
223. If a public holiday falls on a Saturday or Sunday, and 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.
224. The Director 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.
225. The Director General and an employee may agree to substitute a cultural or religious day of significance to the employee for any day that is a prescribed holiday. If the employee cannot work on the prescribed holiday, the employee will be required to work make-up time at times to be agreed. This substitution does not impact or reduce an employee's entitlement to First Nations Ceremonial Leave or Cultural Leave.

226. Where an employee substitutes a public holiday for another day, they will not be paid penalty rates for working their normal hours on the public holiday.
227. Where a public holiday falls during a period when an employee is absent on leave (other than annual leave, paid personal/carer's leave or defence service sick leave) there is no entitlement to receive payment as a public holiday. Payment for that day will be in accordance with the entitlement for that form of leave (e.g. If on long service leave on half pay, payment is at half pay).
228. If under a law of a State or Territory every Sunday is declared or prescribed by or under that law to be a public holiday, there is no entitlement to receive payment as a public holiday if the employee would have worked, or does perform work, on that day. In these circumstances, payment will only be made at the public holiday rate if the employee performs work on that day, and the Sunday would otherwise be a public holiday under clause 222.1 to 222.8.
229. An employee, who is absent on a day or part day that is a public holiday in their normal work location, 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.
230. Where a full-time employee, including but not limited to employees on compressed hours, has a regular planned day off which would fall on a public holiday, the Director General may allow the employee to change their planned day off so that it does not fall on a public holiday. If it is not possible to change their planned day off, the employee will be credited an equivalent amount of time to their regular hours for the day in flex credits or EL TOIL in recognition of the planned day off.

Part 6 – Leave

231. All references to leave entitlements apply to full-time employees. Leave entitlements for part-time employees will be a pro rata amount based on their part-time hours as outlined in their part-time agreement, except for Family and Domestic Violence leave.

Annual Leave

232. An employee, other than a casual employee, is entitled to 4 weeks (20 days) of paid annual leave for each year of service.
233. Annual leave accrues daily according to the employee's ordinary hours of work and is credited fortnightly. Annual leave does not accrue during periods of leave that do not count as service, including unauthorised absences.
234. Annual leave accumulates from year to year.
235. Annual leave counts as service for all purposes.
236. Annual leave may be taken at any time, subject to operational requirements and the Director General's approval. The Director General will not unreasonably refuse to agree to a request by the employee to take annual leave.

Annual leave at half pay

237. Annual leave may be granted at half pay on the basis that deductions from leave credits will be half of the duration of the leave.
238. An employee may not be granted annual leave at half pay where they have an excess annual leave balance, unless approved by the Director General.

Excess annual leave

239. An annual leave balance is in excess if an employee has a balance of 11 weeks or more.
240. Where an employee has an excess annual leave balance, IP Australia and the employee will seek to reach agreement on a plan to reduce the employee's leave balance to below the excess balance.
241. Where a plan to reduce the employee's leave balance cannot be agreed, the Director General may direct the employee to reduce the employee's leave balance to below the excess leave balance.
242. The Director General may approve for an employee to accrue excess leave.

Cash out of annual leave

243. An employee may request in writing to cash out an amount of annual leave. The Director General may approve requests to cash out an amount of annual leave provided:
- 243.1. The employee has taken a minimum of 2 weeks (pro-rata for part time employees) annual or long service leave during the 12 months preceding the request;
 - 243.2. cashing out does not result in the employee's remaining entitlement to annual leave being less than 4 weeks; and
 - 243.3. the employee and Director General agree in writing to cash out the amount of annual leave on each separate occasion.
244. The employee must be paid the amount that would have been payable to the employee had the employee taken the leave at the time the cash out agreement is made.

Cancellation of leave or Recall to Duty from Annual Leave

245. Where an employee's annual leave is cancelled by IP Australia without reasonable notice or an employee is recalled to duty from annual leave, the employee will be entitled to be reimbursed reasonable travel costs and incidental expenses not otherwise recoverable from insurance or other sources.
246. The employee will be re-credited the period of unused leave equivalent to the days or part days they have been recalled to duty.

Purchased Leave

247. Purchased leave, of up to 8 weeks per year, is available to:
- 247.1. all ongoing employees; and
 - 247.2. non-ongoing employees with a contract for a period greater than 12 months.
248. Unless approved otherwise by the Director General, an employee with excess leave, as defined in clause 239 will not be able to access purchased leave.
249. Purchased leave must be taken at full-pay for a period of one or more days and counts for service for all purposes.

Personal/carer's leave

250. Employees (excluding those receiving a casual loading) will accrue the equivalent of 20 days personal/carer's leave for each full year of service. Employees may apply to use their personal/carer's leave as it accrues.
251. Ongoing employees will be credited 20 days of personal/carer's leave upon commencement with the APS. Progressive accrual will commence 12 months from commencement and will accrue daily and be credited at least fortnightly.

252. Non-ongoing employees will be credited personal/carer's commensurate to the length of their contract upon commencement. After the initial contract or 12 months (whichever is shorter) or they have an existing entitlement, leave will accrue daily and be credited at least fortnightly.
253. Casuals may be absent without pay when unable to work due to illness or injury. Casuals are also entitled to access, on each occasion, 2 days unpaid carers leave.
254. Personal/carer's leave may be used for periods of one day or less. Employees may elect to take personal/carer's leave at half pay, in which case existing leave credits will be deducted by half of the duration of the leave taken.
255. Employees may take personal/carer's leave:
- 255.1. due to personal illness/injury;
 - 255.2. to attend appointments with a registered health practitioner;
 - 255.3. to manage a chronic condition; and/or
 - 255.4. to provide care or support for a member of their family or household or other person for whom they have caring responsibilities for, because:
 - 255.4.1. of a personal illness or injury affecting the other person, including when they are in hospital;
 - 255.4.2. of an unexpected emergency affecting the other person.
256. Carer has the same meaning as the *Carer Recognition Act 2010* and is an individual who provides personal care, support and assistance to another individual who needs it because that other individual:
- 256.1.1. has a disability; or
 - 256.1.2. has a medical condition (including a terminal or chronic illness); or
 - 256.1.3. has a mental illness; or
 - 256.1.4. is frail and aged; and/or
 - 256.1.5. is a child, not limited to a child of the employee.
257. Personal/carer's leave will not be debited where an employee is medically unfit for duty on a public holiday on which the employee would have otherwise been absent.
258. Personal/carer's leave cannot be converted to salary and cashed out upon termination of employment.
259. Transitional arrangements will be provided to employees who have commenced in the preceding 12-month period of the commencement of this agreement.

Evidence

260. Employees may be granted personal/carer's leave with pay (subject to available credits) without production of supporting evidence for absences of no more than 3 consecutive days.
261. If the number of days without supporting evidence exceeds 10 days in the previous 12 months, the employee may be requested to provide evidence for any further absences. The Director General must inform the employee in advance of any requirement for supporting evidence for further absences.
262. The following evidence can be provided to support a period of absence because of personal illness or injury or for caring responsibilities:
 - 262.1. Medical certificate from a registered health practitioner or provider;
 - 262.2. Statutory declaration
 - 262.3. Other form of evidence as determined by the Director General.
263. The Director General may determine other forms of evidence employees can use.
264. An Employee with a chronic condition or who is a Carer of an individual with a chronic condition may provide a certificate from a registered health practitioner to cover absences for a 12-month period.
265. Further information is contained in IP Australia's policy.

Portability of leave

266. Where an employee moves into IP Australia from another APS agency where they were an ongoing employee, the employee's unused accrued annual leave and personal/carer's leave will be transferred, provided there is no break in continuity of service.
267. Where an employee is engaged in IP Australia immediately following a period of ongoing employment in the Parliamentary Service or the ACT Government Service, the employee's unused accrued annual leave and personal/carer's leave will be recognised unless the employee received payment in lieu of those entitlements on cessation of employment.
268. Where an employee is engaged as an ongoing employee in IP Australia, and immediately prior to the engagement the person was employed as a non-ongoing APS employee (whether in IP Australia or another agency), at the employee's request, any unused accrued annual leave (excluding accrued leave paid out on separation) and personal/carer's leave will be recognised.
269. Where an employee is engaged as a non-ongoing APS employee, and immediately prior to the engagement the person was employed as a non-ongoing APS employee (whether in IP Australia or another agency) at the employee's request, any unused accrued annual leave (excluding accrued leave paid out on termination of employment) and personal/carer's leave will be recognised.

270. Where an employee is engaged as an ongoing employee in IP Australia, and immediately prior to the engagement the person was employed by a Commonwealth employer (other than in the Parliamentary Services which are covered in clause 267, IP Australia will recognise any unused accrued personal/carer's leave at the employee's request. The Director General will advise the employee of their ability to make this request.
271. Where an employee is engaged as an ongoing employee in IP Australia, and immediately prior to the engagement the person was employed by a State or Territory Government, the Director General may recognise any unused accrued personal/carer's leave, provided there is not a break in continuity of service.
272. For the purposes of clauses 266 to 271 an employee with a break in service of less than 2 months is considered to have continuity of service.

Leave without pay

273. Periods of leave without pay for periods longer than 12 months will be considered in exceptional circumstances.
274. Leave without pay does not count as service for any purpose except as provided for elsewhere in this Agreement or under the *Long Service Leave (Commonwealth Employees) Act 1976*, the *Superannuation Act 1976*, the *Superannuation Act 1990* or the *Superannuation Act 2005*.
275. Further information is contained in IP Australia's Policy.

Re-crediting of leave

276. Where an employee is on:
- 276.1. annual leave;
 - 276.2. purchased leave;
 - 276.3. defence reservist leave;
 - 276.4. First Nations Ceremonial leave;
 - 276.5. cultural leave; or
 - 276.6. long service leave; and
- becomes eligible for, under legislation or this agreement:
- 276.7. personal/carer's leave;
 - 276.8. compassionate or bereavement leave;
 - 276.9. jury duty;
 - 276.10. emergency services leave;
 - 276.11. leave to attend to family and domestic violence circumstances; or
 - 276.12. parental leave, premature birth leave, stillbirth leave or pregnancy loss;
- the affected period of leave will be re-credited.
277. When an employee is on personal/carer's leave and becomes eligible for parental leave, premature birth leave, stillbirth leave or pregnancy loss leave, the affected period of leave will be re-credited.
278. Re-crediting is subject to appropriate evidence of eligibility for the substituted leave.

Long service leave

279. An employee is eligible for long service leave in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976*.
280. The minimum period for which long service leave will be granted is 7 calendar days (whether taken at full or half pay). Long service leave cannot be broken with other periods of leave, except as otherwise provided by legislation or as provided for in the re-crediting of leave clause 276 of this Agreement.

Miscellaneous leave

- 281. IP Australia may provide employees with miscellaneous leave on paid or unpaid basis. These requests will be made by the employee and will be assessed on a case-by-case basis by the Director General.
- 282. The Director General may approved miscellaneous leave for a casual experiencing family and domestic violence or due to Government directive.
- 283. Further information is contained in IP Australia's policy.

Cultural leave

- 284. The Director General may grant up to 3 days of paid leave per annum for the purpose of attending significant religious or cultural obligations associated with the employees' particular faith or culture.
- 285. The Director General may approve additional leave for cultural purposes as miscellaneous leave, with or without pay.
- 286. Cultural leave can be taken as part days.
- 287. For the avoidance of doubt, this leave does not cover cultural purposes or obligations which are eligible for paid leave under First Nations Ceremonial leave (clauses 288 and 291).

First Nations Ceremonial leave

- 288. First Nations employees may access 5 days paid leave per year to fulfil cultural or ceremonial obligations or participate in NAIDOC weeks activities. Employees can accrue and use this leave over a 2 year period.
- 289. The Director General may approve additional leave for cultural or ceremonial purposes as miscellaneous leave, with or without pay.
- 290. First Nations ceremonial leave can be taken as part days.
- 291. First Nations ceremonial leave is in addition to Compassionate and Bereavement Leave.

Parental leave

Definitions

292. **Primary caregiver** - is a pregnant employee with an entitlement under the ML Act, or an employee other than a casual employee who has primary care responsibility for a child who is born to them or who is adopted or in long-term foster care as per clause 306.
293. **Secondary caregiver** - is an employee, other than a pregnant employee or a casual employee, who has secondary care responsibility for a child who is born to them, or for a child who is adopted or in long-term foster care as per clause 306.
294. **ML Act** refers to the *Maternity Leave (Commonwealth Employees) Act 1973* as amended from time to time and any successor legislation.

Parental leave

295. An employee who is a **primary caregiver** or **secondary caregiver** is entitled to parental leave up until 24 months from the date of the child's birth or placement (**parental leave period**). For the avoidance of doubt, this is inclusive of all legislated leave entitlements. The parental leave period does not extend non-ongoing employment where the employment period remaining is less than 24 months.
296. An employee is only eligible for parental leave with pay as either a primary caregiver or a secondary caregiver for the particular parental leave period, and cannot switch roles for the purpose of accessing additional paid leave.
297. For the pregnant employee, the parental leave period starts on commencement of maternity leave as per ML Act requirements and ceases 24 months from the date of birth. Medical certification requirements for the pregnant employee will be as required by the ML Act.
298. Conditions in this agreement will continue to apply in circumstances where successor legislation to the ML Act does not provide parental leave conditions included in this agreement.

Payment during parental leave

299. An employee is entitled to parental leave with pay as per clauses 301 and 302 below within the parental leave period. Any further parental leave during the parental leave period is without pay. Unused paid parental leave remaining at the end of the employee’s parental leave period will lapse. An employee may choose to use their accrued paid leave entitlements in accordance with usage and eligibility requirements in this agreement during the parental leave period that would otherwise be without pay.
300. Employees newly engaged or who have moved to IP Australia from another APS agency are eligible for the paid parental leave in clauses 301 and 302 where such paid leave had not already been provided by another APS or Commonwealth employer in the 24 months since the child’s date of birth or placement. If the paid leave used by the employee with the previous Commonwealth or APS employer is less than the limits specified in clauses 301 and 302, the balance is available to the employee.
301. An employee who is a **primary caregiver** is entitled to parental leave with pay during the parental leave period to a maximum of 18 weeks as provided in Table 6.1 below.

Table 6.1: Primary caregivers – circumstances for paid parental leave

Paid leave entitlement under the ML Act	Additional parental leave with pay under this agreement
12 weeks’ paid maternity leave, including any reduced paid maternity leave period due to ML Act qualifying period rules	Paid leave to bring the total period of paid parental leave to 18 weeks
No ML Act eligibility or coverage	18 weeks

302. An employee who is a **secondary caregiver** is entitled to parental leave with pay during the parental leave period as provided in Table 6.2 below.

Table 6.2: Secondary caregivers – circumstances for paid parental leave

Period which coincides with the parental leave period for the secondary caregiver	Parental Leave with pay under this agreement
Date of commencement of this agreement to 28 February 2025	8 weeks, or top up to 8 weeks where a lesser period of parental leave has already been provided
1 March 2025 to 28 February 2026	11 weeks, or top up to 11 weeks where a lesser period of parental leave has already been provided
1 March 2026 to 27 February 2027	14 weeks, or top up to 14 weeks where a lesser period of parental leave has already been provided
On and from 28 February 2027	18 weeks, or top up to 18 weeks where a lesser period of parental leave has already been provided

303. **Flexibility.** Parental Leave with pay, whether provided as maternity leave under the ML Act or under this agreement, can be accessed flexibly during the parental leave period and does not have to be taken in a single block. For the avoidance of doubt, parental leave can be used to replicate a part time work arrangement, and can be taken concurrently with another parent in relation to the same child.
304. **Rate of payment** during paid parental leave is the same as for an absence on personal/carer’s leave and based on the employee’s weekly hours at the time of the absence.
305. **Half-pay option.** The payment of any paid parental leave may be spread over a maximum period of 36 weeks at the rate of, no less than, half the normal rate of salary. All paid parental leave counts as service for all purposes, where permitted by legislation.

Adoption and long-term foster care

306. An employee who is a **primary** or **secondary** caregiver is entitled to parental leave in accordance with this agreement for adoption or long-term foster care, provided that the child:
- 306.1. is under 16 as at the day (or expected day) of placement;
 - 306.2. has not lived continuously with the employee for a period of 6 months or more as at the day (or expected day) of placement; and
 - 306.3. is not (otherwise than because of the adoption) a child of the employee or the employee’s spouse or de facto partner.
307. 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 long-term foster carer purposes.

Stillbirth

308. Parents of a stillborn child remain eligible for parental leave, except for paid leave for the secondary caregiver which is two weeks.
309. A stillborn child is a child:
- 309.1. who weighs at least 400g at delivery or whose period of gestation was 20 weeks or more; and
 - 309.2. who has not breathed since delivery; and
 - 309.3. whose heart has not beaten since delivery.

Pregnancy loss leave

310. A pregnant employee who experiences, or an employee whose partner experiences, pregnancy loss is entitled to one weeks' paid leave. Pregnancy loss is a miscarriage or other loss of pregnancy that occurs between 12- and 20-weeks' gestation that is not a stillbirth.
311. Pregnancy loss leave is in addition to entitlements to compassionate leave for miscarriage provided under the *Fair Work Act 2009* and this agreement.

Premature birth leave

312. In circumstances of a live birth before 37 weeks' gestation a pregnant employee, or an employee whose partner has given birth prematurely, is entitled to paid premature birth leave from the date of the child's birth up to just before 37 weeks' gestation. Parental leave with pay is then available from what would have been 37 weeks' gestation in accordance with Parental leave in this agreement, noting the parental leave period commences on the child's date of birth.
313. Employees eligible for paid leave under the ML Act are required under legislation to use their paid maternity leave first. In this circumstance, the employee may postpone their paid premature birth leave otherwise payable under clause 312 until after the legislated paid maternity leave is used.

Compassionate leave

314. Employees will be eligible for three days paid compassionate leave on each occasion when:
- 314.1. a member of their family (including a member of their household) or someone they have a close personal relationship with contracts, develops or sustains a life-threatening illness or injury; or
 - 314.2. the employee or their partner has a miscarriage.
315. An employee may be asked to provide evidence to support their absences on compassionate leave.
316. Compassionate leave for an occasion may be taken as 3 consecutive days or in separate periods totalling three 3 days. This can include part days.
317. For casual employees, compassionate leave is unpaid.

Bereavement leave

318. Employees will be eligible for 3 days paid bereavement leave on each occasion when:
- 318.1. a member of their family (including a member of their household) or someone they had a close personal relationship with dies; or
 - 318.2. a child is stillborn, where the child was a member of their family (including a member of their household).
319. An employee may be asked to provide evidence to support their absences on bereavement leave.
320. Bereavement leave for an occasion may be taken as 3 consecutive days or in separate periods totalling 3 days. This can include part days.
321. For casual employees, bereavement leave is unpaid.

Emergency response leave

322. In line with section 108 of the *Fair Work Act 2009*, an employee who engages in an eligible community service activity can get emergency response leave to volunteer for emergency management duties for:
- 322.1. time engaged in the activity
 - 322.2. reasonable travelling time
 - 322.3. reasonable recovery time.
323. Full-time and part-time employees will be able to access 20 working days of paid Emergency Response Leave at their full rate of pay per year if required. The Director General may provide additional Emergency Response Leave with pay.
- 323.1. For the purposes of this clause, full rate of pay is to be as if the employee was at work.
324. Paid leave may be refused where the employee's role is essential to IP Australia's response to the emergency.
325. An employee must provide evidence that the organisation requests their services. Employees can provide evidence before or as soon as practical after their emergency service activity.
326. The Director General may approve reasonable paid or unpaid leave for ceremonial duties and training.
327. Emergency Response Leave, with or without pay, will count as service.

Jury duty leave

328. Employees who are required by a court to attend either for jury selection, or to act as a juror, will be released from duty for the required period, without the need to apply for leave.
329. Full and part-time employees will be released from duty on full pay. Payment for casuals will be as per the relevant state legislation.
- 329.1. For the purposes of this clause, full rate of pay is to be as if the employee was at work.
330. The employee is required to inform their manager before they are released from duty and provide evidence of the need to attend.
331. If the employee receives a payment from the court for attendance (which are not expense related such as allowances and reimbursements), they must repay that amount to IP Australia for the period of absence. This will be administered in accordance with the overpayments clause.

Defence Reservist leave

332. The Director General will give an employee leave with or without pay to undertake:
- 332.1. Australian Defence Force (ADF) Reserve continuous and full-time service (CFTS); and
 - 332.2. Australian Defence Cadet Force obligations.
333. An employee who is a Defence Reservist can take leave with pay for:
- 333.1. Up to 4 weeks (20 days) in each financial year (pro-rata for part-time employees); and
 - 333.2. an extra 2 weeks (10 days) paid leave to facilitate participation in additional ADF Reserve service (pro-rata for part-time employees).
334. Leave can be built up and taken over 2 consecutive years. This includes the extra 2 weeks in the first year of service.
335. An employee who is an Australian Defence Force Cadet officer or instructor can get paid leave up to 3 weeks in each financial year to perform their duties. Australian Defence Force Cadets means:
- 335.1. Australian Navy Cadets;
 - 335.2. Australian Army Cadets; and
 - 335.3. Australian Air Force Cadets.
336. In addition to the entitlement at clause 333, paid leave may be granted to an employee to attend an interview or medical examination in connection with the enlistment of the employee in a Reserve Force of the Defence Force.
337. Paid Defence Reservist leave counts for service.
338. Unpaid Defence Reservist leave for 6 months or less counts as service for all purposes. This includes periods of CFTS.
339. Unpaid leave taken over 6 months counts as service, except for annual leave.
340. An employee will not need to pay their tax free ADF Reserve salary to IP Australia for any reason.

Defence services sick leave

341. An employee is eligible for Defence Service Sick Leave credits when the Department of Veterans Affairs (DVA) has certified that an employee's medical condition is as a result of either:
 - 341.1. war-like service
 - 341.2. non-war like service.
342. An eligible employee can get 2 types of credits:
 - 342.1. an initial credit of 9 weeks (45 days) defence service sick leave (pro-rata for part-time employees) will apply as at the following dates, whichever is later:
 - 342.1.1. they start employment with the APS; or
 - 342.1.2. DVA certifies the condition; and
 - 342.2. an annual credit of 3 weeks (15 days) Defence Service Sick Leave (pro-rata for part-time employees).
343. An employee can use their Defence Service Sick Leave when a recognised medical practitioner provides a certificate that says they were away due to their DVA certified medical condition.
344. Unused annual credits can be built up to 9 weeks.
345. An employee cannot use annual credits until the initial credit is exhausted.
346. Defence Service Sick Leave is paid and counts as service for all purposes.

Leave to attend proceedings

347. An employee giving evidence before a Court, Tribunal or Royal Commission on behalf of the Commonwealth or a Commonwealth party in the course of their duties, will be considered on duty.
348. An employee who is not covered under clause 347, and is required to give evidence to, appear before or attend to instruct a representative at a Court, Tribunal or Royal Commission in relation to their duties will be released from duty without loss of pay. This includes in proceedings relating to a dispute between the employee and IP Australia.
349. An employee may otherwise be granted paid or unpaid leave by the Director General if required to give evidence to a Court, Tribunal or Royal Commission for any other reason. Where approval for unpaid leave is given, the employee may elect to use accrued annual leave, flex leave or time off in lieu.
350. The Director General may refuse to release an employee from duty having regard to business requirements and whether the employee's attendance is necessary for the Court, Tribunal or Royal Commission hearing.

Part 7 – Employee support and workplace culture

Blood donation

351. An employee can take reasonable time away from duty during their ordinary work hours to donate blood, plasma or platelets. It includes reasonable travel time and IP Australia will consider employees on duty.
352. The employee must inform their manager in advance of when they will be away from work before donating blood, plasma or platelets.

Vaccinations

353. IP Australia will offer annual influenza vaccinations at no cost to all employees.
354. Where IP Australia requires an employee performing a role to be vaccinated for a particular condition, this vaccination will be offered at no expense to the employee.

Employee Assistance Program

355. Employees, their partners, and their dependants/children will have access to a confidential, professional counselling service to assist employees to manage personal and work issues. This service will be provided at no cost to employees by IP Australia and will be accessible on paid time.

Respect at Work

Principles

356. IP Australia values a safe, respectful and inclusive workplace free from physical and psychological harm, harassment, discrimination and bullying. IP Australia recognises that preventing sexual harassment, sex discrimination, sex-based harassment and victimisation in the workplace is a priority.
357. IP Australia recognises that approaches to prevent sexual harassment, sex discrimination, sex-based harassment and victimisation in the workplace should be holistic and consistent with the Australian Human Rights Commission's guidance including the *Good Practice Indicators Framework for Preventing and Responding to Workplace Sexual Harassment*.

Consultation

358. IP Australia will consult with employees and their union in developing, reviewing and evaluating approaches to prevent sexual harassment, sex discrimination, sex-based harassment and victimisation in the workplace.

Family and domestic violence support

359. IP Australia will provide support for employees affected by family and domestic violence, depending on the employees' circumstances.
360. IP Australia recognises that a holistic approach should be taken to support the employee, appropriate for the employee's individual circumstances.
361. Family and domestic violence support provisions, including paid leave, are available to all employees covered by this Agreement.
362. An employee experiencing family and domestic violence is able to access paid miscellaneous leave. Reasons an employee experiencing family and domestic violence may access this leave include, but are not limited to:
- 362.1. illness or injury affecting the employee resulting from family and domestic violence
 - 362.2. providing care or support to a family member (including a household member) who is also experiencing family and domestic violence, and is ill or injured as a result of family and domestic violence
 - 362.3. providing care or support to a family member (including a household member) who is also experiencing family and domestic violence, and is affected by an unexpected emergency as a result of family and domestic violence
 - 362.4. making arrangements for the employee's safety, or the safety of a close relative
 - 362.5. accessing alternative accommodation
 - 362.6. accessing police services
 - 362.7. attending court hearings
 - 362.8. attending counselling; or
 - 362.9. attending appointments with medical, financial or legal professionals.
363. This entitlement exists in addition to an employee's existing leave entitlements and may be taken as consecutive days, single days or part days and will count for service for all purposes.
364. Given the emergency context in which leave may need to be accessed, employees can proceed to take the leave and seek approval at a later date, as soon as practicable.
365. These provisions do not reduce an employee's entitlement to family and domestic violence leave under the National Employment Standards (NES).
366. Paid miscellaneous leave available under this clause is paid for ongoing and non-ongoing employees at their full rate as if they were at work.
367. Paid leave for casual employees under this clause is paid at their full pay rate for the hours they were rostered to work in the period they took leave.

368. Evidence may be requested to support IP Australia in approving leave. In most cases, this will not be required. Where it is required, this will be discussed with the employee and a statutory declaration is the only form of evidence IP Australia will require, unless the employee chooses to provide another form of evidence.
369. An employee may also choose to provide other forms of evidence, including a medical certificate, or document issued by the police service, a court, a doctor, district nurse, a Family Violence Support Service or lawyer.
370. IP Australia will take all reasonable measures to treat information relating to domestic and family violence confidentially. IP Australia will adopt a 'needs to know' approach regarding communication of an employee's experience of family domestic violence, subject to steps IP Australia may need to take to ensure the safety of the employee, other employees or persons, or mandatory reporting requirements.
371. Where IP Australia needs to disclose confidential information for purposes identified in sub-clause 370, where it is possible IP Australia will seek the employee's consent and take practical steps to minimise any associated safety risks for the employee and/or privacy breaches.
372. IP Australia will not store or include information on the employee's payslip in relation to the employee's experience of family domestic violence; any leave accessed for the purposes of family domestic violence; or support(s) provided by the employer, unless otherwise required by legislation.
373. Other available support may include, but is not limited to, flexible working arrangements, additional access to EAP, changes to their span of hours or pattern of hours and/or shift patterns and/or location of work where reasonably practicable.
374. IP Australia will acknowledge and take into account an employee's experience of family and domestic violence if an employee's attendance or performance at work is affected.
375. Further information about leave and other support available to employees affected by family and domestic violence is contained in IP Australia's policy.

Integrity in the Australia Public Service

376. IP Australia understands that procedural fairness is essential in building and maintaining trust with APS employees, and that it requires fair and impartial processes for employees affected by APS-wide or IP Australia decisions.
377. Employees are to give advice that is frank, honest, timely and based on the best available evidence. This includes scientific and engineering advice based on evidence-based facts guided by the best available science and data. Employees will not be disadvantaged or discriminated against because they have given advice in accordance with their expertise or professional qualifications and in accordance with the APS Code of Conduct in the *Public Service Act 1999*.
378. Employees can, during their ordinary work hours, take time to:
- 378.1. access an APS-wide ethics advisory service or another similar service provided by a professional association such as a law society or in the agency
 - 378.2. attend IP Australia mandated training about integrity.

First Nations Cultural Competency Training

379. The Director General will take reasonable steps to ensure all substantive, ongoing Executive Level 2 employees employed at the commencement of this agreement or any new substantive, ongoing Executive Level 2 employees who commence within the first 6 months of this agreement will complete relevant First Nations cultural competency training within 12 months of the commencement of the agreement.
380. Any new substantive, ongoing Executive Level 2 who commences after 6 months of the commencement of this agreement will be required to complete a relevant First Nations cultural competency training course within 6 months of their engagement or promotion.

Lactation and Breastfeeding support

381. Reasonable paid time during work hours will be provided for lactation breaks for breastfeeding, expressing milk and other associated activities.
382. IP Australia will provide access to appropriate facilities for the purpose of breastfeeding or expressing milk, subject to clause 383. In considering whether a space is appropriate, IP Australia should consider whether:
- 382.1. there is access to refrigeration;
 - 382.2. the space is lockable; and
 - 382.3. there are facilities needed for pumping, such as appropriate seating.
383. Where it is not practicable for IP Australia to have a designated space, a flexible approach will be taken so that the employee can access the support required.
384. IP Australia will facilitate discussions between individual employees and their managers about accommodating the employee's lactation needs and practical arrangements to meet these needs.
385. The manager and employee shall discuss any flexible work arrangements that may be needed to support lactation. This may include consideration of arrangements such as working from home and/or remote working or varying work hours on an ad hoc or regular basis. Wherever possible, requests by an employee will be accommodated, noting these needs may change over time.
386. Further information is contained in IP Australia's policy.

Disaster Support

387. Where an official disaster or emergency is declared and this prevents an employee from reasonably attending work, or where it impacts their household or home, the Director General will consider flexible working arrangements to assist the employee to perform their work.
388. Where flexible working arrangements are not appropriate, the Director General may grant paid miscellaneous leave to an employee with regard to the scale and nature of the emergency. This leave counts as service and may be approved retrospectively.
389. In considering what period of leave is appropriate, the Director General will take into account the safety of the employee, their family (including their household) and advice from local, State and Commonwealth authorities.

Part 8 - Performance and development

Performance management

391. All employees are to participate in IP Australia's performance management process except for:
 - 391.1. examiner trainees;
 - 391.2. those on irregular or intermittent contracts; and
 - 391.3. non-ongoing employees on contracts of less than three months.
392. The scheme aims to provide each employee with regular opportunities to discuss with their manager performance expectations and the extent to which expectations have been met. It also enables employees to discuss with their manager their development needs for both their current responsibilities and broader career development.
393. Employees are expected, as a minimum, to maintain a satisfactory standard of performance consistent with their performance agreement. Where a manager believes that an employee's work performance is unsatisfactory the manager will work with the employee to address the causes of the unsatisfactory performance. Where the employee's performance does not improve to a satisfactory level the manager may initiate a formal underperformance management process.
394. The formal underperformance process is designed to:
 - 394.1. restore the employee's performance to a satisfactory standard in a timely way
 - 394.2. have regard to the individual circumstances of the employee, including any health issues
 - 394.3. ensure natural justice and procedural fairness
 - 394.4. respond to any learning and development needs where appropriate and
 - 394.5. ensure performance expectations, measures and standards are clearly defined.
395. Further information is contained in IP Australia's policy.

Workloads

396. IP Australia recognises the importance of employees balancing their work and personal life. While it is acknowledged that at times it may be necessary for some extra hours being worked by some employees, this should be regarded as the exception rather than the rule.
397. When determining workloads for an employee or group of employees, IP Australia will consider the need for employees to strike a balance between their work and personal life.
398. Where an employee or group of employees raise that they have experienced significant workload pressures over a prolonged period of time, IP Australia and employee/s together must review the employee's workloads and priorities and determine appropriate strategies to manage the impact on the employee or group of employees.

Study assistance

399. IP Australia is committed to supporting the development of a high-performance culture and equip employees with professional skills and knowledge.
400. IP Australia may provide employees with financial assistance and leave to undertake approved study.
401. Applications for study assistance must be:
- 401.1. able to demonstrate a benefit to both the employee and IP Australia;
 - 401.2. made in advance prior to the study commencing;
 - 401.3. limited to one study period at a time, rather than the entire course of study;
 - 401.4. negotiated between the applicant, the supervisor/manager, and the delegate; and
 - 401.5. granted on a discretionary basis by the delegate.
402. Further information is contained in IP Australia's policy.

Part 9 – Travel and location-based conditions

Relocation assistance

403. Where an existing employee is required to relocate at the request of IP Australia (such as a promotion), the employee will be provided with financial relocation assistance. Employees who relocate on a temporary basis to take up higher duties are entitled to removal expenses if they relocate for a period of 13 weeks or more.
404. Where an employee is required to relocate on engagement with IP Australia, the employee will be provided with financial relocation assistance.
405. Reasonable expenses associated with the relocation include:
- 405.1. the cost of transport of the employee, dependants and partner by the most economical means;
 - 405.2. removal expenses, namely the reimbursement of reasonable incurred costs of the removal of furniture and household effects of the employee, dependants and partner;
 - 405.3. the reimbursement of the cost of the insurance premium based on a reasonable replacement value for the furniture and household effects; and
 - 405.4. the reasonably incurred expenses in kennelling and transport of pets, up to the amount specified in the APS Award.
406. Additional relocation assistance may be considered at the Director General's discretion.
407. Further information is contained in IP Australia's policy.

Field Examination

408. This provision only applies to employees performing Plant Breeder's Rights examinations in the field.

Extra Duty worked in the field

409. Extra duty worked in the field is where an employee performs field examination beyond 7 hours 21 minutes per day, or during hours outside of the bandwidth hours specified at clause 130.

410. Where an employee works additional hours they will:

410.1. Accrue time off in lieu at a rate of 1:1.6

410.2. Not have access to overtime provisions

410.3. Be required to use the accrued hours at an agreed time within three months of accruing the time off in lieu.

411. The employee can opt to have the accrued hours paid out at any time. If the time is not used within the three month it will be paid out.

412. The payment will be based on the employee's normal hourly rate.

413. Employees working in the field will not be eligible to accumulate flex credits or TOIL.

414. Further information is contained in IP Australia's policy.

Part 10 - Consultation, representation and dispute resolution

Consultation

Principles

415. Genuine and effective consultation with employees and the relevant union(s), taking into account the diverse needs of employees, fosters a positive and inclusive workplace, enabling the views of employees to be considered.

416. IP Australia recognises:

- 416.1. the importance of inclusive and respectful consultative arrangements;
- 416.2. employees and the relevant union(s) should have a genuine opportunity to influence decisions;
- 416.3. the nature and extent of consultation will vary depending on the proposed change and the likely impact on employees. Consultation on agency policies may occur over at least 2 weeks, whereas a major change is likely to require a more extensive consultation process;
- 416.4. consultation with employees and relevant unions(s) on workplace matters that significantly affect or materially impact them is sound management practice; and
- 416.5. the benefits of employee and union involvement and the right of employees to be represented by their union.

417. Genuine and effective consultation involves:

- 417.1. providing employees and the relevant union(s) with a genuine opportunity to influence the decision prior to a decision being made;
- 417.2. providing all relevant information to employees and the relevant union(s) in a timely manner to support consideration of the issues;
- 417.3. considering feedback from employees and the relevant union(s) in the decision-making process; and
- 417.4. advising employees and the relevant union(s) of the outcome of the process, including how their feedback was considered in the decision-making process.

When consultation is required

418. Consultation is required in relation to:

- 418.1. changes to work practices which materially alter how an employee carries out their work;
- 418.2. changes to or the introduction of policies or guidelines relevant to workplace matters (unless the changes are minor or procedural);
- 418.3. major change that is likely to have a significant effect on employees;
- 418.4. implementation of decisions that significantly affect employees;
- 418.5. changes to employees' regular roster or ordinary hours of work (subject to any other relevant provisions in this agreement); and
- 418.6. other workplace matters that are likely to significantly or materially impact employees.

419. IP Australia, employees and the relevant union(s) recognise that consultation prior to a decision may not be practicable where a decision is made by Government or is required due to matters beyond the reasonable control of IP Australia. In these circumstances, consultation regarding the implementation of the decision will occur as early as is reasonably practicable.

Provisions for consultation on major change and introduction of a change to regular roster or ordinary hours of work of employees

420. This clause applies if IP Australia proposes to introduce a:

- 420.1. major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or
- 420.2. change to the regular roster or ordinary hours of work of employees.

Representation

421. Employees may appoint a representative for the purposes of the procedures in this clause. A representative for the purpose of this clause may be a union representative.

422. IP Australia must recognise the representative if:

- 422.1. a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
- 422.2. the employee or employees advise the employer of the identity of the representative.

Major change

423. In this clause, a major change is **likely to have a significant effect on employees** if it results in, for example:
- 423.1. the termination of the employment of employees; or
 - 423.2. major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
 - 423.3. the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
 - 423.4. the alteration of hours of work; or
 - 423.5. the need to retrain employees; or
 - 423.6. the need to relocate employees to another workplace; or
 - 423.7. the restructuring of jobs.
424. The following additional consultation requirements in clause 425 to 431 apply to a proposal to introduce a major change referred to in clause 418.3.
425. Consultation with employees and the relevant union(s)/or recognised representatives will occur prior to a decision being made, subject to clause 419.
426. Where practicable, an IP Australia change manager or a primary point of contact will be appointed and their details provided to employees and the relevant union(s) and/or their recognised representatives.
427. IP Australia must notify employees and relevant union(s) and/or recognised representatives of the proposal to introduce the major change as soon as practicable.
428. As soon as practicable after proposing the change, or notifying of the change in circumstances described at clause 419, IP Australia must:
- 428.1. discuss with affected employees and relevant union(s) and/or other recognised representatives:
 - 428.1.1. the proposed change;
 - 428.1.1.1. the effect the proposed change is likely to have on the employees; and
 - 428.1.1.2. proposed measures to avert or mitigate the adverse effect of the proposed change on the employees; and
 - 428.1.2. for the purposes of the discussion – provide, in writing, to employees and the relevant union(s) and/or other recognised representatives:
 - 428.1.2.1. all relevant information about the proposed change, including the nature of the change proposed; and

428.1.2.2. information about the expected effects of the proposed change on the employees; and

428.1.2.3. any other matters likely to affect the employees.

429. IP Australia must give prompt and genuine consideration to matters raised about the major change by employees and the relevant union(s) and/or other recognised representatives.

430. However, IP Australia is not required to disclose confidential or commercially sensitive information to employees and the relevant union(s) and/or other recognised representatives.

431. If a term in this Agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of IP Australia, the requirements set out in clauses 425 and 429 are taken not to apply.

Change to regular roster or ordinary hours of work

432. The following additional consultation requirements in clauses 433 to 436 apply to a proposal to introduce a change referred to in clause 418.5.

433. IP Australia must notify affected employees and the relevant union(s) and/or other recognised representatives of the proposed change.

434. As soon as practicable after proposing to introduce the change, IP Australia must:

434.1. discuss with employees and the relevant union(s) and /or other recognised representatives:

434.1.1. the proposed introduction of the change; and

434.2. for the purposes of the discussion – provide to the employees and relevant union(s) and/or other recognised representatives:

434.2.1. all relevant information about the proposed change, including the nature of the proposed change; and

434.2.2. information about what the employer reasonably believes will be the effects of the proposed change on the employees; and

434.2.3. information about any other matters that the employer reasonably believes are likely to affect the employees; and

434.3. invite employees and the relevant union(s) and/or other recognised representatives to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities). However, IP Australia is not required to disclose confidential or commercially sensitive information to the relevant employees the relevant union(s) and/or other recognised representatives.

435. IP Australia must give prompt and genuine consideration to matters raised about the proposed change by the employees and the relevant union(s) and/or other recognised representatives.

IP Australia Consultative Committee

436. The Director General may establish an IP Australia consultative committee to discuss relevant workplace matters.
437. IP Australia consultative committees will operate subject to an agreed terms of reference and structure for the term of the agreement. Representation on the committee will be in accordance with the terms of reference.

Interaction with emergency management activities

438. Nothing in this term restricts or limits the ability of a designated emergency management body to undertake activities provided at section 195A(1) of the *Fair Work Act 2009*.

APS Consultative Committee

439. The Director General will support the operation of the APS Consultative Committee to the extent possible. This includes providing information requested by the Australian Public Service to support the operation of the APS consultative committee, subject to legislative requirements.

Dispute resolution

440. If a dispute relates to:
- 440.1. a matter arising under the Agreement; or
 - 440.2. the NES;
- this term sets out procedures to settle the dispute.
441. An employee or union who is covered by this Agreement may initiate and/or be a party to a dispute under this term.
442. An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term. Representatives will be recognised and dealt with in good faith.
443. Parties to the dispute must attempt to resolve the dispute at the workplace level, by discussion between the employee or employees and relevant managers. Parties to the dispute will notify higher level managers to assist in the resolution of the dispute. Parties will give genuine consideration to proposals to resolve the dispute.
444. If a dispute about a matter arising under this Agreement is unable to be resolved at the workplace level, and all appropriate steps under clause 443 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.

445. The Fair Work Commission may deal with the dispute in 2 stages:

445.1. 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

445.2. if the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:

445.2.1. arbitrate the dispute; and

445.2.2. make a determination that is binding on the parties.

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

446. While the parties are attempting to resolve the dispute using the procedures in this term:

446.1. an employee must continue to perform their work as they would normally in accordance with established custom and practice at IP Australia that existed immediately prior to the dispute arising unless they have a reasonable concern about an imminent risk to their health or safety; and

446.2. subject to 446.1, an employee must comply with a direction given by the Director General to perform other available work at the same workplace, or at another workplace, unless:

446.2.1. the work is not safe; or

446.2.2. applicable work health and safety legislation would not permit the work to be performed; or

446.2.3. the work is not appropriate for the employee to perform; or

446.2.4. there are other reasonable grounds for the employee to refuse to comply with the direction.

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

448. Any disputes arising under the IP Australia Enterprise Agreement 2017 or the National Employment Standards that were formally notified under clause 109 of the IP Australia Enterprise Agreement 2017 before the commencement of this Agreement and remain unresolved at the date of commencement of this Agreement, will be progressed under the dispute resolution procedures in this Agreement.

Leave of absence to attend proceedings

449. Where the provisions of 440 to 444 have been complied with, and to assist in the resolution of the matter, the employee, and/or the union delegate or other employee representative referred to in 441, or employee required to provide evidence, will be granted paid time to attend dispute resolution processes and proceedings in the Fair Work Commission arising from referral of the matter in 444.

Delegates' rights

450. Union delegates play an important and legitimate role in the workplace. This includes representing their members and supporting employee access to union officials and providing employee views to IP Australia.

451. The role of union delegates is to be respected and supported.

452. IP Australia and union delegates will work together respectfully and collaboratively.

Supporting the role of union delegates

453. IP Australia respects the role of union delegates to:

- 453.1. provide information, consult with and seek feedback from employees in the workplace on workplace matters;
- 453.2. consult with other delegates and union officials, and get advice and assistance from union officials;
- 453.3. represent the interests of members to the employer and industrial tribunals; and
- 453.4. represent members at relevant union forums, consultative committees or bargaining.

454. IP Australia and union delegates recognise that undertaking the role of a union delegate is not the primary purpose of an employee's engagement, and must work with and not unreasonably impact their regular duties. Honorary officials may request additional time and facilities from time to time.

455. Union delegates will be provided with reasonable paid time during their normal working hours to perform their union delegate role. The paid time provided should not result in disruption to critical services or operational requirements.

456. To support the role of union delegates, IP Australia will, subject to legislative and operational requirements, including privacy and security requirements:

- 456.1. provide union delegates with reasonable access to IP Australia facilities and resources, including for paid or unpaid meetings between employees and their unions and to communicate with union officials;
- 456.2. advise union delegates and other union officials of IP Australia facilities and resources available for their use, which may include telephone, photocopying, internet, and email;

- 456.3. allow reasonable official union communication appropriate to IP Australia from union delegates with employees, including through email, intranet pages and notice boards. This may include providing a link to a union website for employees to access union information. Any assistance in facilitating email communications does not include IP Australia vetoing reasonable communications.
 - 456.4. provide access to new employees as part of induction; and
 - 456.5. provide reasonable access to union delegates to attend appropriate paid time training in workplace relations matters, during normal working hours.
457. Where APS employees are elected as officials of a trade union or professional association, they are not required to seek permission from the workplace or IP Australia before speaking publicly in that capacity, subject to the APS Code of Conduct and legislative requirements.

Part 11 – Separation and retention

Resignation

458. An employee may resign from their employment by giving the Director General at least 14 calendar days' notice.
459. At the instigation of the Director General the resignation may take effect at an earlier date within the notice period. In such cases, the employee will receive paid compensation in lieu of the notice period which is not worked.
460. The Director General has the discretion to agree to a shorter period of notice or waive the requirement to give notice.

Payment on death of an employee

461. When an employee dies, or the Director General has directed that an employee is presumed to have died on a particular date, subject to any legal requirements, the Director General must authorise payments to the partner, dependants or legal representative of the former employee, the amount to which the former employee would have been entitled had they ceased employment through resignation or retirement, or where legislation provides specifically for amounts calculated based on the death of the employee, those amounts. If payment has not been made within a year of the former employee's death, it should be made to their legal representative.

Payments on separation from the APS

462. On separation from the APS an employee's payment in lieu of any remaining annual leave entitlement will be calculated using the employee's final rate of salary and allowances considered as salary for all purposes as at the date of exit. Refer to Attachment C.

Managing excess employees

463. The following redeployment, retirement and redundancy (RRR) provisions will apply to excess and potentially excess employees of IP Australia. These provisions do not apply to:
- 463.1. non-ongoing employees; or
 - 463.2. ongoing employees who are on probation.
464. An excess employee situation will exist where:
- 464.1. there are a greater number of employees at a particular level than is necessary for the efficient and economical operations of IP Australia; or
 - 464.2. the services of an employee cannot be used effectively because of technological or other changes in the work methods of IP Australia or structural or other changes in the nature, extent or organisation of the functions of IP Australia; or
 - 464.3. the duties usually performed by an employee are to be performed at another locality and the employee is not willing to perform the duties at that locality and the Director General has determined that the excess employee provisions of this agreement apply to the employee.
465. Where such a situation has been identified, the Director General will establish which employees are potentially excess.
466. At the time of the offer of voluntary termination or as soon as possible thereafter but, in any event, no later than one month after the offer, employees(s) will be provided with Career Transition Assistance which will include:
- 466.1. advice on the re-assignment and redundancy process;
 - 466.2. a point of contact for individual queries;
 - 466.3. assistance with identifying re-assignment opportunities; and
 - 466.4. training/redeployment assistance.

Excess Employee consultation

467. IP Australia will inform an employee if they are likely to become excess and hold discussions with the employee which will include:
- 467.1. the reasons they are likely to become excess;
 - 467.2. redeployment options available, including possible referral to a relevant placement agency; and
 - 467.3. voluntary and involuntary redundancy options.
468. If requested by the employee, an employee representative will be involved in these discussions.
469. The Director General may call for expressions of interest from employees who wish to be offered voluntary redundancy in lieu of those who do not wish to accept such an offer.

Voluntary Redundancy

470. The Director General may make an offer of voluntary redundancy to the employees who are potentially excess to IP Australia's requirements:
- 470.1. after the discussions referred to in clause 467 have been held; or
 - 470.2. if the employee or, where they choose, their representative has declined to discuss the matter, at least 14 calendar days after the advice, in clause 467 that the employee is likely to become excess.
471. At the time of receiving the offer, the employee will be reimbursed for obtaining financial advice in accordance with Attachment C and provided with the following information:
- 471.1. the amount of severance pay, pay in lieu of notice and leave credits;
 - 471.2. the amount of their accumulated superannuation contributions and their options concerning superannuation for CSS and PSSdb members only; and
 - 471.3. the taxation rules applying to the various payments.
472. An employee may be formally declared excess at the time the offer of voluntary redundancy is made or at the end of the election period referred to in clause 473.
473. From the date of the receipt of the above offer of voluntary redundancy, the employee will have one month in which to accept the offer. If the employee fails to respond within the one month period, they will be taken to have declined the offer.
474. Where the offer of voluntary redundancy is accepted, the Director General may, with the consent of the employee, give notice of termination of their employment under section 29 of the *Public Service Act 1999* before the end of the one month period. In such cases, salary and other pro rata benefits in lieu of the election period will be paid.

475. Only one offer of voluntary redundancy will be made to an excess employee in each exercise; that is, if they are redeployed in one exercise, they are no longer excess. They may become excess in a new position.

Period of Notice

476. Where an employee agrees to voluntary redundancy, the Director General can approve the individual's termination of employment under section 29 of the *Public Service Act 1999* and upon approval, will give the required Notice of Retirement. The period of notice will be 4 weeks (or 5 weeks if the employee is over 45 years of age with at least 5 years of continuous service).
477. 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.

Severance Benefit

478. An employee who accepts an offer of voluntary redundancy and whose employment is terminated by the Director General under section 29 of the *Public Service Act 1999* on the grounds that they are excess to requirements is entitled to be paid:
- 478.1. a sum equal to 2 week's salary for each completed year of service, subject to any minimum amount the employee is entitled to under the National Employment Standards; and
 - 478.2. a pro rata payment for completed months of service since the last completed year of service.
479. The minimum sum payable is 4 weeks' salary and the maximum sum payable is 48 weeks' salary.
480. The severance benefit will be calculated to take account of any period where the employee has worked part-time hours during their period.

Period of Service for Severance Pay Purposes

481. Period of service for severance pay purposes means:

- 481.1. service in IP Australia;
- 481.2. Government service as defined in section 10 of the *Long Service Leave (Commonwealth Employees) Act 1976*;
- 481.3. service with the Commonwealth (other than service with a Joint Commonwealth-State body corporate in which the Commonwealth has a controlling interest) that is recognised for long service leave purposes;
- 481.4. service with the Australian Defence Forces;
- 481.5. service in another organisation where an employee was transferred from the APS to that organisation with a transfer of function, or an employee engaged by that organisation to work within a function, is appointed as a result of the transfer of that function to the APS and such service is recognised for long service leave purposes.

482. 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 (or notification of intention to offer employment) with the new employer was made and accepted by the employee before ceasing employment with the preceding employer.

483. Any period of service which ceased by way of:

- 483.1. redundancy;
- 483.2. retirement on the grounds of invalidity;
- 483.3. inefficiency or loss of essential qualifications;
- 483.4. forfeiture of office;
- 483.5. dismissal;
- 483.6. termination of probationary period for reasons of unsatisfactory service; or
- 483.7. voluntary retirement at or above the minimum retiring age (for superannuation purposes) applicable to the employee, or with the payment of a redundancy benefit or similar payment, or with an employer-financed retirement benefit does not count as service for severance pay purposes.

484. In calculating the period of service, periods of leave without pay will be taken into consideration and may not count as service.

Rate of Payment for Severance Purposes

485. For the purpose of calculating payment of a severance benefit, salary will include:

- 485.1. the employee's salary at the date of termination;
- 485.2. any higher duties allowance where the employee has been in receipt of the allowance for a continuous period of at least 12 months immediately preceding the date of termination; and
- 485.3. 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, or a payment for disabilities associated with the performance of duty.

Accelerated Separation

486. IP Australia may offer an accelerated separation option to employees who have been identified as eligible to be made an offer of voluntary redundancy. This option provides employees whose employment is terminated under section 29 of the *Public Service Act 2009* within 14 days of receiving an offer of voluntary redundancy an amount of four weeks' salary (or 5 weeks salary for an employee over 45 years of age with at least 5 years continuous service) as payment in lieu of notice, as provided in clause 476.

487. Where an employee elects not to accept an offer of this option, the normal separation provisions apply.

Retention Periods

488. If an excess employee does not accept voluntary redundancy, the Director General shall not involuntarily terminate the employee's employment under section 29 of the *Public Service Act 2009* until either of the following retention periods has elapsed, the duration of which will be reduced by an amount equivalent to the National Employment Standards redundancy entitlement:

- 488.1. 13 months where an employee has completed 20 or more years of service or is over 45 years of age; or
- 488.2. 7 months for other employees.

489. The retention period will commence on the day on which an employee is notified in writing that they are excess.

490. If an employee is entitled to a redundancy payment in accordance with the National Employment Standards, the relevant period as set out in clause 488 above is reduced by the number of weeks redundancy pay that the employee will be entitled to under the National Employment Standards on termination, as at the expiration of the retention period (as adjusted by this clause).

491. During the retention period, IP Australia:
- 491.1. Will continue to take reasonable steps to find alternative employment for the employee including referral to a relevant placement agency.
 - 491.2. Will consider an excess employee in isolation from and not in competition with other applicants for an advertised vacancy within IP Australia to which an excess employee seeks transfer.
 - 491.3. May, with 4 weeks' notice, transfer the excess employee to a lower level vacancy. Where an excess employee is reduced in classification before the end of the retention period, the employee will receive income maintenance to maintain their salary at the previous higher level for the balance of the retention period. The amount of income maintenance to be paid will be calculated in accordance with clause 485 for the remainder of the period that the excess employee would have occupied the higher position during the retention period.
492. During the retention period, the employee:
- 492.1. will take reasonable steps to find alternative employment; and
 - 492.2. actively participate in learning and development activities, trial placements or other arrangements to assist in obtaining a permanent placement.
493. The employee may request assistance in meeting reasonable travel and incidental expenses incurred in seeking alternative employment. The Director General may approve such a request.
494. Where it is necessary as a result of transfer or reduction in classification for an excess employee to move the employee's household to a new locality, the employee may be entitled to reasonable expenses in accordance with IP Australia relocation provisions (clause 403 to 407) where these are not met by the prospective employer.
495. The retention periods under clause 488 will be extended by any periods of paid certificated leave for personal illness or injury taken during the original retention period. Any leave taken for these purposes during the period beyond the original retention period will not have any effect on extending the retention period. If considered appropriate a medical appointment will be made with a registered medical practitioner nominated by IP Australia and the excess employee will attend.
496. The specified periods of notice will be, as far as practicable, concurrent with the retention periods.

Involuntary Termination

497. The Director General may not involuntarily terminate an excess employee's employment under section 29 of the *Public Service Act 1999* until the end of the retention period.
498. Where the Director General believes that there is insufficient productive work for an excess employee during the retention period, the Director General may, with the agreement of the excess employee, terminate the employee's employment under section 29 of the *Public Service Act 1999* and pay the balance of the retention period as a lump sum. Any such payment will be reduced by an amount equivalent to the employee's entitlement to redundancy pay under the National Employment Standards:
- 498.1. the balance of the retention period as shortened by the National Employment Standards. This payment will be taken to include the payment in lieu of notice of termination of employment; and
 - 498.2. an amount of redundancy pay as per the National Employment Standards.
499. An excess employee will not be terminated involuntarily if the employee has not been invited to accept an offer of voluntary redundancy or has elected to be retired but the Director General has refused to approve the retirement.
500. An excess employee will not be terminated involuntarily without being given 4 weeks' notice (or 5 weeks for an employee over 45 with at least 5 years of continuous service) of termination.
501. Excess employees will be informed of IP Australia's review mechanisms as action is taken.
502. Where an excess employee's employment is terminated, the only right of review against termination of employment shall be in accordance with the:
- 502.1. *Fair Work Act 2009*;
 - 502.2. Other Commonwealth laws; and
 - 502.3. Common law.
503. Termination or the decision to terminate an employee cannot be reviewed under the dispute resolution procedures of this Agreement.

Attachment A – Classification structure and salary ranges

General classifications

Table A.1 General salary levels

Classification	Salary levels	As at 31 August 2023	From the later of commencement of the agreement or 14 March 2024	From 13 March 2025	From 12 March 2026
APS 1	1	\$50,512	\$52,532	\$54,529	\$57,497
	2	\$52,353	\$54,447	\$56,516	\$58,438
	3	\$54,192	\$56,360	\$58,502	\$60,491
	4	\$56,036	\$58,277	\$60,492	\$62,549
APS 2	1	\$58,094	\$60,418	\$62,714	\$64,846
	2	\$59,934	\$62,331	\$64,700	\$66,900
	3	\$61,770	\$64,241	\$66,682	\$68,949
	4	\$63,609	\$66,153	\$68,667	\$71,002
APS 3	1	\$65,308	\$67,920	\$70,501	\$72,898
	2	\$67,163	\$69,850	\$72,504	\$74,969
	3	\$69,016	\$71,777	\$74,505	\$77,038
	4	\$70,873	\$73,708	\$76,509	\$79,110
APS 4	1	\$72,669	\$75,576	\$78,448	\$81,115
	2	\$74,700	\$77,688	\$80,640	\$83,382
	3	\$76,731	\$79,800	\$82,832	\$85,648
	4	\$78,765	\$81,916	\$85,029	\$87,920
APS 5	1	\$80,916	\$84,153	\$87,351	\$90,321
	2	\$82,848	\$86,162	\$89,436	\$92,477
	3	\$84,778	\$88,169	\$91,520	\$94,631
	4	\$86,713	\$90,182	\$93,609	\$96,829
APS 6	1	\$88,368	\$91,903	\$95,395	\$99,734
	2	\$92,375	\$96,070	\$99,721	\$103,112
	3	\$96,377	\$100,232	\$104,041	\$107,578
	4	\$100,383	\$104,398	\$108,365	\$112,049
Executive Level 1	1	\$110,917	\$115,354	\$119,737	\$123,808
	2	\$115,558	\$120,180	\$124,747	\$128,988
	3	\$120,195	\$125,003	\$129,753	\$134,165
	4	\$124,837	\$129,830	\$134,764	\$139,346
Executive Level 2	1	\$135,875	\$141,310	\$146,680	\$151,667
	2	\$143,378	\$149,113	\$154,779	\$160,041
	3	\$150,884	\$156,919	\$162,882	\$168,420
	4	\$158,395	\$164,731	\$170,991	\$176,805

Examiner of Patents (including Plant Breeder Rights)

Table A.2 Examiner of Patents salary levels

Classification	Salary levels	As at 31 August 2023	From the later of commencement of agreement or 14 March 2024	From 13 March 2025	From 12 March 2026
Examiner of Patents	1	\$89,807	\$93,399	\$96,948	\$100,244
	2	\$92,222	\$95,911	\$99,556	\$102,941
	3	\$97,188	\$101,076	\$104,917	\$108,484
	4	\$102,154	\$106,240	\$110,277	\$114,026
	5	\$106,834	\$111,107	\$115,329	\$119,250
	6	\$111,518	\$115,979	\$120,386	\$124,479
	7 [^]	\$117,193	\$121,881	\$126,512	\$130,813

Note: Additional requirements may apply to progress to salary level 7. Further information is contained in the IP Australia policy.

Attachment B – IP Australia broadbands

Table B.1 Trainee broadband salary levels

Classification	Salary levels	As at 31 August 2023	From the later of commencement of the agreement or 14 March 2024	From 13 March 2025	From 12 March 2026
Trainee	APS2.1	\$58,094	\$60,418	\$62,714	\$64,846
	APS2.2	\$59,934	\$62,331	\$64,700	\$66,900
	APS2.3	\$61,770	\$64,241	\$66,682	\$68,949
	APS2.4	\$63,609	\$66,153	\$68,667	\$71,002
	APS3.1	\$65,308	\$67,920	\$70,501	\$72,898
	APS3.2	\$67,163	\$69,850	\$72,504	\$74,969
	APS3.3	\$69,016	\$71,777	\$74,505	\$77,038
	APS3.4	\$70,873	\$73,708	\$76,509	\$79,110
	APS4.1	\$72,669	\$75,576	\$78,448	\$81,115
	APS4.2	\$74,700	\$77,688	\$80,640	\$83,382
	APS4.3	\$76,731	\$79,800	\$82,832	\$85,648
	APS4.4	\$78,765	\$81,916	\$85,028	\$87,920

Table B.2 Graduate broadband salary levels

Classification	Salary levels	As at 31 August 2023	From the later of commencement of the agreement or 14 March 2024	From 13 March 2025	From 12 March 2026
Graduate	APS3.1	\$65,308	\$67,920	\$70,501	\$72,898
	APS3.2	\$67,163	\$69,850	\$72,504	\$74,969
	APS3.3	\$69,016	\$71,777	\$74,505	\$77,038
	APS3.4	\$70,873	\$73,708	\$76,509	\$79,110
	APS4.1	\$72,669	\$75,576	\$78,448	\$81,115
	APS4.2	\$74,700	\$77,688	\$80,640	\$83,382
	APS4.3	\$76,731	\$79,800	\$82,832	\$85,648
	APS4.4	\$78,765	\$81,916	\$85,029	\$87,920
	APS5.1	\$80,916	\$84,153	\$87,351	\$90,321
	APS5.2	\$82,848	\$86,162	\$89,436	\$92,477
	APS5.3	\$84,778	\$88,169	\$91,519	\$94,631
	APS5.4	\$86,713	\$90,182	\$93,609	\$96,829

Table B.3 Examiner of Trade Marks broadband salary levels

Classification	Salary levels^	31 August 2023	From 14 March 2024	13 March 2025	12 March 2026
Examiner of Trade Marks broadband	TM1 (4.2)	\$74,700	\$77,688	\$80,640	\$83,382
	TM2 (4.3)	\$76,731	\$79,800	\$82,833	\$85,649
	TM3 (4.4)	\$78,765	\$81,916	\$85,028	\$87,919
	TM4 (5.1)	\$80,916	\$84,153	\$87,350	\$90,320
	TM5 (5.2)	\$82,848	\$86,162	\$89,436	\$92,477
	TM6 (5.3)	\$84,778	\$88,169	\$91,520	\$94,631
	TM7 (5.4)	\$86,713	\$90,182	\$93,608	\$96,829
	TM8 (6.1)	\$88,368	\$91,903	\$95,395	\$99,734
	TM9 (6.2)	\$92,375	\$96,070	\$99,721	\$103,111
	TM10 (6.3)	\$96,377	\$100,232	\$104,041	\$107,578
	TM11 (6.4)	\$100,383	\$104,398	\$108,365	\$112,050
Discretionary	TM12	\$104,707	\$108,895	\$113,033	\$116,876

Note: ^requirements to progress through the broadband are outlined in the IP Australia policy.

Table B.4 Examiner of Designs broadband salary levels

Classification	Salary levels^	31 August 2023	From 14 March 2024	13 March 2025	12 March 2026
Examiner of Designs broadband	D1 (4.2)	\$74,700	\$77,688	\$80,640	\$83,382
	D2 (4.3)	\$76,731	\$79,800	\$82,833	\$85,649
	D3 (4.4)	\$78,765	\$81,916	\$85,028	\$87,919
	D4 (5.1)	\$80,916	\$84,153	\$87,350	\$90,320
	D5 (5.2)	\$82,848	\$86,162	\$89,436	\$92,477
	D6 (5.3)	\$84,778	\$88,169	\$91,520	\$94,631
	D7 (5.4)	\$86,713	\$90,182	\$93,608	\$96,829
	D8 (6.1)	\$88,368	\$91,903	\$95,395	\$99,734
	D9 (6.2)	\$92,375	\$96,070	\$99,721	\$103,111
	D10 (6.3)	\$96,377	\$100,232	\$104,041	\$107,578
	D11 (6.4)	\$100,383	\$104,398	\$108,365	\$112,050
Discretionary	D12	\$104,707	\$108,895	\$113,033	\$116,876

Note: ^requirements to progress through the broadband are outlined in the IP Australia policy.

Attachment C – Allowances

Allowance type	Basis of payment	Count as salary for overtime and penalty rates	Count as salary for superannuation purposes	Paid during periods of leave	Salary for payment of entitlements on separation	Amount	Adjustment method
First Aid Officer	Fortnightly	No	Yes	Yes - up to 3 months and in accordance with Long Service Leave provisions	Yes	\$30.51	13 Mar 2025 - \$31.67 12 Mar 2026 – \$32.75
Emergency Warden	Fortnightly	No	Yes	Yes - up to 3 months and in accordance with Long Service Leave provisions	Yes	\$30.51	13 Mar 2025 - \$31.67 12 Mar 2026 – \$32.75
Harassment Contact Officer	Fortnightly	No	Yes	Yes - up to 3 months and in accordance with Long Service Leave provisions	Yes	\$30.51	13 Mar 2025 - \$31.67 12 Mar 2026 – \$32.75
Health and Safety Representative	Fortnightly	No	Yes	Yes - up to 3 months and in accordance with Long Service Leave provisions	Yes	\$30.51	13 Mar 2025 - \$31.67 12 Mar 2026 – \$32.75
Deputy Health and Safety Representative	Fortnightly	No	Yes	Yes - up to 3 months and in accordance with Long Service Leave provisions	Yes	\$30.51	13 Mar 2025 - \$31.67 12 Mar 2026 – \$32.75
Mental Health First Aid Officer	Fortnightly	No	Yes	Yes - up to 3 months and in accordance with Long Service Leave provisions	Yes	\$30.51	13 Mar 2025 - \$31.67 12 Mar 2026 – \$32.75
Community language allowance – Rate 1	Annually	No	Yes	Yes	Yes	\$1435	13 Mar 2025 - \$1490 12 Mar 2026 – \$1541
Community language allowance – Rate 2	Annually	No	Yes	Yes	Yes	\$2870	13 Mar 2025 - \$2979 12 Mar 2026 – \$3080
Meal Allowance	Per occurrence	No	No	No	N/A	\$33.32	Annually – CPI*
On Call Allowance	per occurrence	No	No	N/A	N/A	\$63.67	Annually – CPI*
Healthy lifestyle (access to Canberra office)	Once per FY	No	No	N/A	No	\$185	Annually – CPI*
Healthy lifestyle (no access to Canberra office)	Once per FY	No	No	N/A	No	\$246	Annually – CPI*
Vacation care subsidy	Each day	No	No	N/A	N/A	\$31.98	Annually – CPI*
Glasses reimbursement	Once per 2 years	No	No	N/A	N/A	\$313.88	Annually – CPI*
Financial advice (clause 471)	Per occurrence	No	No	N/A	N/A	\$553.18	Annually – CPI*

*Will be adjust annually by CPI for the life of this agreement.

Attachment D – Supported Wage System

Purpose

D1. 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 agreement.

Definitions

D2. 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 agreement 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 agreement 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 Social Services that records the employee's productive capacity and agreed wage rate.

Eligibility criteria

D3. 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 agreement, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.

D4. The schedule does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this agreement relating to the rehabilitation of employees who are injured in the course of their employment.

Supported wage rates

- D5. Employee to whom this clause applies shall be paid the applicable percentage of the relevant minimum wage according to the following schedule:

Table C1 Application percentage of relevant minimum wage paid to applicable employees

Assessed capacity	Percentage of agreement rate
10 per cent	10
20 per cent	20
30 per cent	30
40 per cent	40
50 per cent	50
60 per cent	60
70 per cent	70
80 per cent	80
90 per cent	90

- D6. Provided that the minimum amount payable to an employees to whom the SWS applies is not less than the amount prescribed in the National Minimum Wage Order.

Note: The minimum amount payable is reviewed every year in July.

- D7. Where an employee's assessed capacity is 10%, they must receive a high degree of assistance and support.

Assessment of capacity

- D8. 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.
- D9. 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.

Lodgement of Support Wage System (SWS) wage assessment agreement

- D10. 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.
- D11. 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 agreement 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.

Review of assessment

- D12. 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.

Other terms and conditions of employment

- D13. 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 agreement paid on a pro rata basis.

Workplace adjustment

- D14. 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.

Trial period

- D15. 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.
- D16. 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.
- D17. The minimum amount payable to the employee during the Trial Period must be no less than the current weekly rate, as determined by the Fair Work Commission.
- D18. Work trials should include induction or training as appropriate to the job being trialled.
- D19. 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 clauses D8 and D9.

Attachment E - Interpretations and Definitions

The following definitions apply to this Agreement:

- E1. **Agreement** means the IP Australia Enterprise Agreement 2023.
- E2. **APS** means the Australian Public Service.
- E3. **APS agency** means an agency whose employees are employed under the Public Service Act 1999, including an agency as defined in section 7 of the *Public Service Act 1999* whose employees are employed under that Act.
- E4. **APS consultative committee** means the committee established by the APS Commissioner to consider matters pertaining to the (APS) employment relationship and of interest to the APS as a whole.
- E5. **Bandwidth** means the span of hours during which an employee can perform ordinary hours.
- E6. **Broadband** refers to the allocation of more than one approved classification by the Director General to a group of duties involving work value applying to more than one classification under sub-rule 9(4) of the Public Service Classification Rules 2000. A broadband encompasses the full range of work value of the classifications contained within it.
- E7. **Cadet APS** means an employee allocated the classification of Cadet APS in accordance with the Classification Rules. Cadets undertake a Cadetship with IP Australia involving a combination of full-time tertiary study and work placement throughout the duration of their studies.
- E8. **Cadet Force** for the purposes of this agreement 'Cadet Force' means the Australian Navy Cadets, Australian Army Cadets or the Australia Air Force Cadets.
- E9. **Casual employee** (irregular or intermittent) means an employee engaged under section 22(2)(c) of the *Public Service Act 1999* who:
 - a. is a casual employee as defined by the *Fair Work Act 2009*; and
 - b. works on an irregular or intermittent basis.
- E10. **Child** means a biological child, adopted child, foster child, step child, or ward.
- E11. **Classification or classification level** means the approved classifications as set out in rule 5 of the Public Service Classification Rules 2000.
- E12. **Commissioner of Patents** refers the person who holds the position and exercises the statutory powers of the Commissioner of Patents as per section 207 of the *Patents Act 1990*.
- E13. **De facto partner** means a person who, regardless of gender, is living in a common household with the employee in a bone fide, domestic, interdependent partnership, although not legally married to the employee.

- E14. **Delegate** means someone to whom a power or authority has been delegated.
- E15. **Dependent** means the Employee's spouse or de facto partner, a child, parent or aged relative of the Employee or the Employee's spouse or de facto partner, who ordinarily lives with the Employee and who is substantially dependent on the Employee. Dependant also includes a Child of the employee who does not ordinarily live with the Employee but for whom the Employee provides substantial financial support.
- E16. **Director General** is the Director General of IP Australia or the Director General's delegate.
- E17. **EDFA** means Extra Duty in the Field Allowance.
- E18. **Employee** means an employee of Commonwealth engaged under section 22(2) of the *Public Service Act 1999* who is covered by this Agreement (whether full time, part time or casual, ongoing or non-ongoing).
- E19. **Employee representative** means a person (whether an employee or not) elected or chosen by an employee, or elected or chosen by a group of employees in a workplace, to represent the individual and/or collective views of those employees in relation to a matter under this Agreement.
- E20. **Excess employee** means an employee declared to be excess in accordance with Part 11 of this Agreement.
- E21. **Executive Level (EL)** employee means Executive Level 1 and Executive Level 2 employees.
- E22. **Fair Work Act** or **FW Act** means the *Fair Work Act 2009* as amended from time to time.
- E23. **Family** means a:
- spouse, former spouse, de facto partner or former de facto partner of the employee;
 - child, parent, grandparent, grandchild, or sibling of the employee;
 - child, parent, grandparent, grandchild, or sibling of a spouse, former spouse, de facto partner or former de facto partner of the employee;
 - member of the employee's household; or
 - person with whom the employee has a relationship of traditional kinship where there is a relationship or obligation, under customs and traditions of the community or group to which the employee belongs.
- E24. **Family and Domestic Violence** has the same meaning as in Section 106B(2) of the *Fair Work Act 2009*.
- E25. **Field Examination** is the performance of duties, away from the employee's ordinary work location, often in rural or remote areas of Australia. This primarily involves Plant Breeder's Rights Examiners who are required to undertake examination work in a location other than their usual place of work.
- E26. **Field Area** means the area in which field work is to be undertaken.
- E27. **Flexible** working arrangements is an employment arrangement which allows employees freedom in choosing when, where, and how they work.

- E28. **Flextime** is a system of flexible working arrangements which enables an employee and the Director General to vary working hours, patterns and arrangements (subject to operational requirements) to average working hours of 36 hours and 45 minutes, or regular agreed part-time hours, per week for the settlement period.
- E29. **Foster care** means an arrangement whereby an employee, as primary carer, assumes long term responsibility for a child:
- arising from the placement of the child by a `fostering` arrangement or Parentage Order by a person / organisation with statutory responsibility for the placement of the child;
 - where the child is, or will be, under 16 years of age as at the day of placement, or the expected day of placement, of the child;
 - where the placement of the child:
 - is for a period longer than six months; and
 - in circumstances where it is not expected that the child will return to their family;and
 - the child is not (otherwise than because of the fostering) a child of the employee or the employee's spouse or de facto partner.
- E30. **Full time employee** means an employee employed to work an average of 36 hours and 45 minutes per week in accordance with this agreement.
- E31. **FW Act** means the Fair Work Act 2009 as amended from time to time.
- E32. **FWC** means the Fair Work Commission.
- E33. **Irregular or intermittent (casual) employee** is an employee engaged under section 22(2)(c) of the *Public Service Act 1999* who:
- is a casual employee as defined by the *Fair Work Act 2009*; and
 - works on an irregular or intermittent basis.
- E34. **Long Service Leave Act** means the *Long Service Leave (Commonwealth Employees) Act 1976* as amended from time to time.
- E35. **Manager** means an employee's direct manager who is usually the person to whom an employee reports to on a day-to-day basis for work related matters, and may include a person referred to as a supervisor.
- E36. **Maternity Leave Act** or **ML Act** means the *Maternity Leave (Commonwealth Employees) Act 1973* and any successor legislation.
- E37. **National Employment Standards (NES)** means those minimum terms and conditions that apply to all national system employees, as outlined in Part 2-2 of the *Fair Work Act 2009*.
- E38. **Non-ongoing employee** has the same meaning as in the *Public Service Act 1999*.

- E39. **Official travel** means travel that an employee is requested to undertake on behalf of IP Australia.
- E40. **Ongoing employee** has the same meaning as in the Public Service Act 1999.
- E41. **Ordinary hours**, duty or work means an employee's usual hours worked in accordance with the Agreement and does not include additional hours.
- E42. **Out of hours duty** is when an employee is required by the Director General to work all or part of their ordinary hours of duty outside of the employees agreed bandwidth hours (i.e., for international obligations).
- E43. **Parliamentary service** means employment under the Parliamentary Service Act 1999.
- E44. **Parliamentary Services Act** means the *Parliamentary Service Act 1999* as amended from time to time.
- E45. **Partner** means a spouse, former spouse, de facto or de facto partner.
- E46. **Placement of a child** means the earlier of the following days:
- the day on which the employee first takes long term care of the child; or
 - the day on which the employee starts any travel that is reasonably necessary to take custody of the child.
- E47. **Primary caregiver** for the purposes of the parental leave clause means a pregnant employee with an entitlement under the ML Act, or an employee other than a casual employee who has primary care responsibility for a child who is born to them or who is adopted or in long-term foster care as per the clauses on adoption and long-term foster care in this agreement.
- E48. **Public Service Act** or **PS Act** means the *Public Service Act 1999* as amended from time to time.
- E49. **Public Service Classification Rules** means the *Public Service Classification Rules 2000* as amended from time to time.
- E50. **Relevant employee** means an affected employee.
- E51. **Secondary caregiver** for the purposes of the parental leave clause means an employee, other than a pregnant employee or casual employee, who has secondary care responsibility for a child who is born to them, or for a child who is adopted or in long-term foster care as per the clauses on adoption and long-term foster care in this agreement.
- E52. **Settlement period** means a four-week period beginning on a pay day Thursday for the purposes of determining flextime debit or credit carryover.
- E53. **Usual work location** means the approved location of work, where an employee is required to perform their duty. This is agreed on commencement or through a formal agreement as outlined in IP Australia's Policy.
- E54. **Working day** is Monday to Friday and excludes public holidays and the annual closedown.