



FEDERAL MAGISTRATES COURT OF AUSTRALIA

COLLECTIVE AGREEMENT

2006 – 2009

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PART A – OBJECTIVES OF THE AGREEMENT

1. Objectives of this Agreement

- 1.1 The FMC provides a simple and accessible forum for resolution of disputes under federal law. This agreement aims to support this objective by:
- recognising the significant contribution and effort of our employees;
 - providing remuneration and conditions that are competitive and affordable and underpinned by productivity;
 - promoting flexibility and responsiveness to new challenges facing the court;
 - encouraging employees to support continuous improvement;
 - providing a safe and healthy workplace; and
 - promoting work and life balance.
- During the life of this agreement, the FMC will continue to implement systems and procedures that provide the Australian community with simpler, quicker and less costly alternatives for resolving disputes.
- 1.2 All employees are expected to support, and constructively participate in, initiatives that the FMC will implement to achieve organisational objectives.
- 1.3 Employees of the FMC are employed under the provisions of the *Public Service Act 1999*. Therefore, the APS Values and Code of Conduct underpin the employment of FMC staff and are reflected in this agreement.
- 1.4 On a day-to-day basis, employees within a Federal Magistrate’s chambers are responsible to the Federal Magistrate for whom they work. Other employees are responsible to the Chief Executive Officer.

PART B – PERFORMANCE IMPROVEMENT AND RECOGNITION

2. Salary Increases

- 2.1 On date of lodgement salary rates will increase as per Column 2 of Attachment 1A.
- 2.2 On 1 July 2007, salary rates will increase by 4.3 percent (see Column 3 of Attachment 1A).
- 2.3 On 1 July 2008, salary rates will increase by 4.3 percent (see Column 4 of Attachment 1A).

3. Salary Advancement

- 3.1 Progression through the salary band for each classification level will be based on the annual assessment due through the Performance Management Program.
- 3.2 Employees not at the top of the salary range of their classification level will be entitled to a salary advancement of 25% of the salary range for their classification

up to the maximum of the range for their classification, after having their overall performance assessed as 'satisfactory' or better, with effect from 1 July each year. Where the difference between the current salary rate and the top of the salary range is less than 25% of the range, the employee's salary will shift to the top of the range and the balance of the 25% will be paid as a performance bonus (see Subclause 5 on performance bonus below).

- 3.3 If an employee's performance is assessed as unsatisfactory their manager will defer advancement until such time as the employee achieves a satisfactory or better rating. The manager will address under performance in accordance with the process outlined at clause 7.

4. Common advancement date

- 4.1 Salary advancement within a classification level is available to employees who have performed duties at a point in the classification level for a total period of not less than six months, as at 30 June each year. Employees who commence or are promoted to a classification level between 1 January and 30 June inclusive will not be eligible for salary advancement until 30 June of the following year. Salary advancement will take effect from 1 July each year.

5. Performance Bonus

Notwithstanding subclause 3.2, employees who have been at the top of the salary range of their classification for a period of at least six months as at 30 June each year, and who receive a final overall performance rating of 'satisfactory' or higher at their performance assessment in June each year, will be entitled to a salary bonus of 3% of their annual salary, payable on 1 July of that year. This performance bonus will not count as salary for any purpose.

6. Performance Management

- 6.1 The performance management program will operate within the FMC as per guidelines issued by the CEO.
- 6.2 The objectives of performance management within FMC, upon which the performance management program is based, are to:
- link employees' work to the delivery of the FMC's goals;
 - assist employees to understand their work responsibilities and the performance standards expected of them;
 - provide the basis for salary advancement and/or bonus where appropriate;
 - improve communications between managers and their employees;
 - provide opportunities for identifying individual training and development needs;
 - improve mobility and flexibility in the deployment of employees; and
 - assist in identifying and managing underperformance.

- 6.3 The following employees will be required to participate in the performance management program:
- all on-going employees;
 - all non-ongoing employees who have been engaged for a period of at least six months or whose initial period of engagement is for more than six months;
 - all irregular and intermittent employees whose periods of employment span a period of more than six months where hours worked over that period are at least 30% of full time equivalent hours.

- 6.4 The outcome of each employee's performance assessment under the Performance Management Program will be an overall performance rating.

7. Managing Under-performance

- 7.1 Managers are required to address any concerns with an employee's perceived under-performance at the earliest possible stage. Initial concern that an employee may be under-performing should be gauged against the employee's responsibilities, outcomes and performance indicators as contained in any performance agreement, position description or other terms of employment. Action to address under-performance should not be delayed until the conclusion of a performance appraisal cycle.
- 7.2 Initially, under-performance should be addressed informally between the manager and the employee. If performance continues to be below agreed standards, or if the employee is rated below 'satisfactory' at the completion of the performance management cycle, the procedures in subclause 7.4 are to be followed.
- 7.3 If under-performance concerns an employee within a Federal Magistrate's chambers, following consultation between the Federal Magistrate for whom the employee concerned works and the CEO, the CEO may approach a person to assist the Federal Magistrate in the management of the procedures or to manage the employee in consultation with the Federal Magistrate during the currency of these procedures.
- 7.4 Following consultation between the manager and the CEO, the manager will immediately prepare a written advice to the employee that:
- the required standard of work performance is not being met and in what ways performance is required to improve;
 - the employee is entitled to submit a written response to this initial advice; and
 - the employee's performance will be monitored and assessed by the manager over the ensuing three months.
- 7.5 At the commencement of the assessment period, the manager is required to develop with the employee a plan to address the identified areas of performance deficiency. During this three-month period, the manager is required to provide the employee with written assessments of current work performance at least once

during, and again at the end of the three-month period. This three-month period may be extended by the CEO.

- 7.6 At the conclusion of the assessment period, the manager will prepare a written report of whether the employee's performance has met the required standard during the assessment period. This report will be submitted to the CEO and a copy provided to the employee. The employee is allowed seven days to provide comments to the CEO following receipt by them of the manager's report.
- 7.7 If the CEO considers that the employee has met the required work standard and that it is likely that the employee will sustain that standard, no further action will be taken.
- 7.8 If the CEO considers that the employee has not met the required work standard, the employee will be invited to show cause within 7 days, why they should not be directed to undertake reassigned duties, be reduced in classification or have their employment terminated.
- 7.9 After these 7 days, and taking into account all available written material, the CEO will:
- determine that no further action is to be taken, or
 - issue a notice of reassignment of duties; or
 - issue a notice of reduction in classification under section 23(4) of the *Public Service Act 1999*; or
 - issue a notice of termination of employment under section 29(3)(c) of the *Public Service Act 1999*.
- 7.10 A notice of reduction takes effect after one month unless the employee:
- applies for review of the decision in accordance with section 33 of the *Public Service Act 1999* within 14 days of receipt of the notice; and
 - the application for review is based on the ground that the action was unreasonable in that the employee met the required standard or that there was a serious defect in the application of these procedures.
- This clause does not limit the ability of an employee of the Court to seek a review of a reduction in classification after the 14 day period has elapsed, or on grounds other than those specified above. However, in such cases, the notice of reduction may be suspended or stayed without the agreement of the CEO.
- 7.11 Where such an application for review is made, the reduction takes effect on the day the review request is dismissed or withdrawn or one month after the notice is issued, whichever is the later. If the application is successful, the notice of reduction is revoked without detriment to the employee.
- 7.12 At any time after an employee receives written notice that their performance is unsatisfactory, the CEO may offer that employee the opportunity to have their employment terminated and that employee may agree. If this occurs, employment

may be terminated under section 29(3)(c) of the *Public Service Act 1999* and without the three month assessment period.

- 7.13 An employee may be accompanied by a person of their choice at any stage of these procedures. This person is allowed to provide support, and is not a representative of the employee.
- 7.14 The provisions of this clause apply to all employees of the FMC except those ongoing employees on probation and those engaged for a specified term or task or for duties that are irregular or intermittent.

8. Probation

- 8.1 This clause does not apply to non-ongoing employees engaged for less than 6 months or intermittent/irregular employees.
- 8.2 Non-ongoing employees (other than those excluded under clause 8.1) and employees engaged on an on-going basis to the FMC from outside the APS under section 22 of the *Public Service Act 1999* will normally be required to undergo a reasonable period of probation, having regard to the employee's level, before their engagement is confirmed. This probationary period will be set out in the employee's letter of engagement, which will include a reasonable maximum period of probation if probation is extended.
- 8.3 The FMC's performance management process will be the basis for assessing whether engagement should be confirmed.

PART C - CLASSIFICATIONS AND SALARY RATES

9. Classifications

- 9.1 The APS classification structure, as outlined in Column 1 of Attachment 1A (i.e. APS Levels 3 to 6 and Executive Levels 1 and 2), will continue to apply in the FMC.

10. Qualifications

- 10.1 Where the CEO considers it desirable that positions within the FMC be filled by employees with qualifications, or where qualifications are required under relevant State or Territory laws, the possession of such qualifications as are determined will be essential for employees recruited to these positions.

11. Remuneration

- 11.1 Employees will have their salary paid fortnightly (as calculated at 1.B.1 in Attachment 1B) in arrears by electronic funds transfer to an approved financial institution account of their choice.

12. Salary Rates

- 12.1 Attachment 1A details the salary rates payable to FMC employees through this Agreement.
- 12.2 Supported salary rates and conditions of employment, as set out in Attachment 2, will apply to an employee with a disability who is eligible for consideration under the supported wage system.

13. Junior Rates

- 13.1 Junior rates of pay as a percentage of the APS equivalent adult rate of pay are:
 - under 18 years of age – 60%
 - at 18 years of age – 70%
 - at 19 years of age – 81%
 - at 20 years of age – 91%

14. Salary on Engagement or Promotion

- 14.1 Employees commencing with the FMC, and existing FMC employees who are promoted within the FMC, will commence at the base rate for the relevant classification unless a higher rate is authorised by the CEO on the basis of qualifications, skills and experience. The CEO may approve, at the time of engagement or promotion, payment at a higher point within a classification band. These decisions will be made having regard to the skills, qualifications, experience and any other relevant factor.

15. Salary on Transfer

- 15.1 At the discretion of the CEO, an employee transferring to FMC whose salary in their previous agency (current salary) exceeds the current rate the employee would otherwise be entitled to under this Agreement, the employee will be maintained on their current salary until such time as their salary differential is absorbed by FMC pay increases.

16. Salary on Reduction

- 16.1 Where an employee agrees, in writing, to temporarily perform work at a lower classification level, the CEO may determine in writing that the employee will be paid a rate of salary applicable to that lower classification level.

17. Superannuation

- 17.1 The FMC will make employer contributions as required by law.

17.2 For those staff who from 1 July 2006 are entitled to superannuation choice but elect not to exercise choice of fund, the default superannuation fund will be the Public Sector Superannuation Accumulation Plan (PSSAP).

17.3 FMC may choose to limit superannuation choice to funds that allow employee and/or employer contributions to be paid fortnightly through electronic funds transfer (EFT) and accept group deductions.

18. Remuneration Packaging – Salary Sacrifice

18.1 Employees may choose to sacrifice part of their salary benefits outlined in the Guidelines which will be issued by the CEO regarding flexible remuneration packaging for employees, within three months of the agreement being lodged.

19. Notice of Resignation

19.1 An employee may end his or her employment with the Court by giving not less than 2 weeks advance notice in writing. The Court may in its discretion waive all or part of the required notice period.

PART D – INVESTING IN THE FUTURE OF OUR ORGANISATION AND EMPLOYEES

20. Developing a Skilled Workforce

20.1 The FMC wishes to build on the diverse range of skills, experience and commitment of its employees in order to achieve its organisational goals. It aims to do this through assisting employees to meet their developmental and career needs. The FMC is committed to providing opportunities for all employees to develop and enhance their skills and knowledge to meet the current and future requirements of the FMC and the wider APS.

20.2 The FMC expects its employees to take responsibility for identifying areas where further development would be of benefit to themselves and the FMC through the acquisition of additional skills and for maintaining skills of benefit to the FMC.

20.3 Employees and the FMC agree to use the FMC training and development programs to address individual needs identified in the performance management process.

21. Studies Assistance

21.1 The FMC is committed to encouraging its employees to pursue study to develop their skills and knowledge in areas of need identified by the FMC. To provide these opportunities the FMC has developed Studies Assistance Guidelines, issued by the CEO, which is designed to:

- encourage employees to maintain professional standards which will enable the FMC to better meet its objectives;

- foster skills to adapt to structural and technological change; and
- recognise the value of having a well-educated workforce which is able to contribute effectively to meeting the FMC's objectives.

21.2 The FMC will conduct a review of the Study Assistance Guidelines.

22. Professional Membership Fees

22.1 The FMC recognises the value to be obtained where employees are members of professional associations which are directly related to their role within the FMC. Reimbursement to employees of fees for membership of professional associations will be made where:

- membership of a professional association is a requirement under State or Territory laws for an employee to undertake their responsibilities for the FMC; or
- where the CEO is of the opinion that membership of a professional association would provide a real and distinct benefit for the FMC.

22.2 Renewal of such memberships for individual employees will be considered on a year by year basis.

23. Temporary Performance at a Higher Level

23.1 Employees required to work at a higher level than their classification, will be eligible for payment at the base rate of that higher classification.

23.2 The CEO will authorise when this payment is payable on occasions when the temporary reassignment is one or more grades above the employee's classification and is for a period of at least ten consecutive working days or ten or more working days over a five week period. Employees need to be assigned to the higher level classification (perform the full functions of the classification) to be eligible for payment - eligibility for payment does not arise just because a person in a higher level classification is away.

23.3 Arrangements for performing work at a higher level should avoid:

- individual employees being expected to perform work at a higher level in the same job on several occasions in the course of a year which results in the employee not receiving payment; and
- long periods of temporary performance at a higher level without an adequate merit selection.

23.4 Employees will be entitled to a salary advancement in a higher classification when they have acted at that higher classification for the equivalent of 12 months over a maximum period of 24 months, subject to a satisfactory rating in their performance assessment at that higher level. This calculation of acting time in a higher classification will include all paid and unpaid periods of acting.

PART E – WORKING ARRANGEMENTS AND FLEXIBILITIES

24. Balancing Work and Private Lives

24.1 The FMC acknowledges that employees have to balance their working life with other commitments, including family and the community. This is recognised through the provision of a range of flexible attendance arrangements and assistance programs as set out in this section.

25. Ordinary FMC Hours of Duty

25.1 The hours of duty for full time FMC employees will be 151 hours 40 minutes over each four-week period (**the ‘settlement period’**). An employee and their manager may agree on an alternative settlement period and pattern of hours, subject to hours of work averaging 37 hours 55 minutes per week or 7 hours 35 minutes per day. During periods where employees are not actually at work eg public holidays or periods of leave, excluding flex leave, employees will record 7 hours 35 minutes a day on their record of attendance for the purposes of calculating hours worked within a settlement period.

25.2 The standard FMC day applying to full time employees is from 8:30am to 5:05 pm with a one-hour meal period from 1:00pm to 2:00pm (**‘ordinary FMC hours’**).

25.3 Unless otherwise agreed between the employee and their manager, the minimum span of daily attendance, including meal break, is the six hours between 10:00am and 4:00pm.

25.4 Part-time employees will work hours agreed in their part-time work agreement or designated for the job. A part-time employee and their manager may agree to vary regular hours of work.

25.5 Absences of less than a full day should, where possible, be managed under flexible working arrangements (eg flextime or time off in lieu), rather than be taken as annual leave, personal leave or other leave.

25.6 The settlement period is 4 hours 40 minutes greater per four week period than standard FMC hours prior to the 2003-2006 Certified Agreement. The additional hours worked throughout the year allows employees to take paid leave over the Christmas/New Year shut down period as described in clause 28.

26. Pattern of Hours

26.1 The pattern of hours worked is a matter for agreement between managers and their employees. However, an employee will not usually be expected to work:

- more than ten hours on any day; and
- more than five consecutive hours without a meal break of at least 30 minutes.

- 26.2 The major consideration in determining the pattern of hours is the operational requirements of the work area. Other considerations include:
- the impact upon clients;
 - the impact upon other employees of the work group; and
 - the personal needs of the employee.

27. Ordinary Hours of Work Bandwidth

- 27.1 The bandwidth of hours within which an employee may work is 7:00am to 7:00pm Monday to Friday (**ordinary bandwidth**) provided that an employee will not be required to work outside the bandwidth 8am to 6pm (7:30am to 5:30pm in the Northern Territory) if they do not wish to do so.

28. Christmas / New Year Closedown

- 28.1 In recognition of the 4 hours 40 minutes additional to standard hours that employees have agreed to work in each four week settlement period, employees will be provided with paid time off for the days in between Christmas and New Year's Day (or equivalent) and the first working week of the new year (the shutdown period).
- 28.2 A small skeleton staff will be directed by the CEO to attend for work during the shutdown period. These employees must be provided with 6 days of time off in lieu to be taken within 4 weeks or at an alternative time convenient to each employee and agreed with their manager.

29. Recording Attendance

- 29.1 Employees are required to record their daily attendance in a manner advised by the FMC from time to time. The FMC will provide a mechanism for the electronic recording of attendance. Records must be available for monitoring by managers, and the CEO or his or her delegate.

30. Flextime Scheme

- 30.1 The FMC's flextime scheme applies to full time APS Level 3 - 6 employees.
- 30.2 Flextime is a system of flexible working arrangements which enables employees and managers to vary working hours and attendance patterns.
- 30.3 For the purposes of calculating flextime, the working day will be 7 hours 35 minutes.
- 30.4 Flextime arrangements will be as follows:
- An employee may carry over a maximum flextime credit of 20% of the employee's ordinary hours of work within a settlement period to the next

settlement period. Where an employee's flextime credits exceeds the maximum flex credit at the end of the settlement period, the employee and their manager will plan for the employee to take sufficient flex leave to reduce the credit to below the maximum over an agreed period of time;

- The maximum flex debit is 10% of the employee's ordinary FMC hours in a settlement period and can be carried indefinitely. Any debit in excess of the maximum debit at the end of the settlement period is to be reduced over an agreed period or the employee may elect for the excess flextime debit to be treated as other leave without pay and an appropriate deduction will be made from the employee's pay; and
- An employee may take up to five days flex leave in any one settlement period, subject to the agreement of the relevant manager.

30.5 It is acknowledged that the Court and individual employees share responsibility for managing workloads. When an employee accrues a flextime credit of 20 % of their ordinary hours of work, the manager and the employee must discuss options to reduce the credit by at least 7 hours and 35 minutes within the following settlement period.

30.6 If a manager identifies that an employee is working excessive hours, they will review staffing and work arrangements in the relevant area.

30.7 Where an employee's manager considers the employee's attendance is unsatisfactory or that the employee is misusing flextime, the employee will be advised in writing and will be required to work 8.30am to 1.00pm and 2.00pm to 5.05pm.

31. Flextime Credits/Debits on Cessation of APS Employment

31.1 Employees who cease employment in the APS are entitled to a payout of their accumulated flextime credit to a maximum of 10% of the ordinary FMC hours in a settlement period.

31.2 Employees with a flextime debit at the time of their cessation in the APS will have the salary equivalent of that debit deducted from their final moneys.

32. Time off in Lieu for Executive Level Employees

32.1 Employees classified as Executive Levels 1 and 2, in the absence of access to the flextime scheme, may, with the approval of their manager, utilize flexible working and attendance arrangements and are eligible for up to 12 days off per year (with a maximum of 5 days in any one settlement period) subject to satisfactory work performance and the agreement of their manager, in recognition of significant excess/out of hours work.

33. Work Outside Ordinary Bandwidth

- 33.1 An employee may request approval to perform their duties outside the ordinary bandwidth, eg on a Saturday or Sunday, in lieu of the equivalent period Monday to Friday. In deciding whether to approve such an application the principal consideration will be the impact on operational requirements. Any hours worked on this basis will be considered to be 'ordinary hours' and do not attract additional duty rates, i.e. penalty and overtime rates.

34. Part Time Work

- 34.1 A part time employee is one whose regular hours of work over the settlement period are less than 147 hours and who is approved by the CEO to be a part time employee on an ongoing basis or for a fixed period which is subject to review.
- 34.2 A full time employee may request in writing permission to work on a part time basis for a fixed period, subject to review and extension as agreed from time to time. As much notice as possible will be given where the FMC or the employee seek to vary the hours of part time work at the end of the fixed period.
- 34.3 A fixed period part time employee who was previously full time may seek to revert to full time employment before the expiry of the fixed period of part time employment, by request in writing to the manager, who will not unreasonably oppose such a request.
- 34.4 A manager may agree to reasonable requests for fixed period part time work, subject to operational requirements. Consideration of operational requirements will include an assessment of the effect of the proposal on the employee and other employees of the work area.
- 34.5 The FMC may establish permanent part time positions where the duties to be performed do not justify full time employment or where there are difficulties attracting full time employees. Full time employees may express an interest in converting to permanent part time work in order to undertake the duties. Ongoing employees who are engaged to undertake part time duties will not be required to convert from part time work to full time work, or vary their hours, without their agreement.
- 34.6 Remuneration and other entitlements for part time employees will be those applying to full time employees at the appropriate pro-rata rate. Allowances and reimbursements will be the same as those applying to full time employees. Overtime rates for part time employees are as specified in clause 37.
- 34.7 While part time employees must nominate fixed hours, these may be varied informally and interpreted flexibly with the agreement of the manager, consistent with the FMC's flex time guidelines. However, the fixed hours formally agreed apply for the purpose of public holidays, leave and other entitlements.

35. Working from Home

- 35.1 Home based work arrangements are intended to extend the range of flexible work options which are available to employees, and attempt to establish an appropriate balance between the needs of the workplace and the personal requirements of employees.
- 35.2 Employees may, with the agreement of the CEO, work from their homes. Any such arrangement will be subject to FMC guidelines as issued from time to time, and will be based on the following principles:
- a job that requires attendance at court is not a job suitable for home based work;
 - home based work is voluntary and may be suggested by the FMC or the employee;
 - home based work is neither a right nor an entitlement, with each application considered on its own merits;
 - arrangements must satisfy operational and security requirements, both nationally and locally, and not lead to significant additional resource requirements;
 - certain types of work are not appropriate for home based work;
 - home based work is not a substitute for dependant care;
 - arrangements may be terminated or varied at any time if such action is deemed appropriate by the CEO or the employee;
 - conditions of employment for home based work are the same as those at the office based site; and
 - home based employees will have the same opportunity for career development and training as office based employees.

36. Absence without Approval

- 36.1 If an employee is absent from duty without approval, all pay and other benefits provided under this Agreement will cease to be available until the employee resumes duty or is granted leave. Action will not be taken under this clause until all reasonable steps have been taken to contact the Employee in accordance with 'Unauthorised Absence Guidelines'.
- 36.2 All periods of unauthorised absence will not count as service for any purpose.

37. Overtime

- 37.1 Overtime is payable only to employees below the level of Executive Level 1, and is payable at the rates of:
- Monday to Saturday - time and a half for the first three hours and double time thereafter;
 - Sunday - double time; and
 - public holidays - time and a half for hours within standard hours and double time and a half for hours outside standard hours.

- 37.2 Employees may be directed to work reasonable overtime.
- 37.3 Overtime is payable only for additional directed work performed:
- before 8:00am on normal working days;
 - on normal working days where that work is after 6:00pm and after at least 7 hours 35 minutes normal duty has been worked that day; and
 - on Saturdays, Sundays and public holidays.
- 37.4 Overtime payments are calculated as per figure 1.B.2 and figure 1.B.3 in Attachment 1B.
- 37.5 Where the employee and the CEO agree, time off in lieu of the overtime payment may be granted. Time off in lieu is calculated on the basis of the payment the person would have received for overtime, eg three hours overtime at time and a half would equate to four and a half hours time off in lieu.
- 37.6 For part time employees, the entitlement to overtime rates occurs where the overtime is directed by the part time employee's manager. If agreed between the employee and the manager, time off in lieu for the additional hours worked may be granted.
- 37.7 For part time employees, directed hours worked which are above their specified working hours will be paid at the applicable overtime rate as specified in this clause. Where the overtime hours are undertaken between 8:00am to 6:00pm Monday to Friday, the rate of time and a half will apply.
- 37.8 Irregular and Intermittent employees will be entitled to payment at the applicable overtime rate as specified in this clause for any directed hours worked outside 8:00am to 6:00pm Monday to Friday.

38. Overtime Meal Allowance

- 38.1 A meal allowance will be available to employees required to work paid overtime for a continuous period of at least one hour which extends over or into any of the following meal periods:
- 7:00am to 8:30am, 12:00noon to 2:00pm, 7:00pm to 7:30pm and 12:00midnight to 1:00am.
- 38.1 The amount of the allowance is based on, and updated in accordance with, Australian Taxation Office Reasonable Allowances Amounts, as outlined in clause 90.

39. On-Call Allowance

- 39.1 Being on-call for the purpose of this clause means that the employee must be contactable outside standard work hours and available to report to the relevant workplace within a reasonable period.
- 39.2 Where a staff member is required to be contactable and available to work for a specified period outside standard work hours, the employee, other than an Executive Level employee, will be paid an on-call Allowance. An on-call week includes the weekend and is typically from close of business Friday until hand-over on Friday of the following week.
- 39.3 In addition to the On-call Allowance, where the staff member is required to perform duty, overtime will be paid in accordance with clause 37 and on the following basis:
- a minimum one hour, if duty is able to be performed away from the workplace (for example, when the work can be done at home); or
 - a minimum three hours including travel time, if duty is required to be performed at the workplace.

For the purpose of this clause, overtime during the Christmas court closure period will be the same as for public holidays. The CEO may direct a staff member to be 'on call', including during the Christmas/New Year closedown period.

40. Excess Fares

- 40.1 An employee will be entitled to the reimbursement of excess fares where performing work at a place other than his or her usual place of work, when the cost of travel to and from the employee's temporary place of work is greater than the cost of travel to and from the employee's usual place of work. Excess fares are not reimbursed where the employee is receiving travelling allowance related to the work at the different location.

41. Maternity Leave

- 41.1 Employees will be entitled to Maternity Leave in accordance with the *Maternity Leave (Commonwealth Employees) Act 1973*.
- 41.2 In addition to the provisions of the *Maternity Leave (Commonwealth Employees) Act 1973*, employees returning to work after parental leave and/or maternity leave, are eligible for permanent part-time work for a period of up to two years from the date of the birth or, in the case of adoption, from the date of the placement of the child. Alternatively, in these circumstances, employees will be entitled to access leave without pay provisions for up to two years.
- 41.3 Employees may elect to take paid maternity leave at half pay. Where an employee elects to take Maternity Leave at half pay, the second 12 weeks of leave does not count as service for any purpose.

42. Portability of Accrued Annual and Sick Leave Entitlements

- 42.1 Where an employee joins the FMC on or after the commencement of this Agreement from an employer staffed under the *Public Service Act 1999*, the *Parliamentary Service Act 1999* or from the ACT Government Service, accrued annual leave and personal/carers leave (however described) will be transferred, provided there is no break in continuity of service.
- 42.2 All future credits of leave for new employees will be under the terms of this Agreement.

43. Irregular/Intermittent Employees

- 43.1 Irregular/intermittent employees will receive a 20% loading on their pay in lieu of access to annual, personal and other paid leave.
- 43.2 Irregular/Intermittent employees will be entitled to long service leave.

44. Annual Leave

- 44.1 Employees are entitled to an annual leave credit of four weeks per full year worked. Annual leave will be credited on a monthly basis at the rate of 12 hours and 15 minutes (1²/₃ days) for each full calendar month worked. Employees may, with approval; access accrued annual leave at any time after it has been credited.
- 44.2 Annual leave will not accrue for periods of leave without pay which do not count as service and which total 22 or more days within any one calendar year. Any necessary adjustments to annual leave credit will be made on 1 January in each year. Where an employee has insufficient annual leave credit to offset the amount of an adjustment for leave without pay, an equivalent amount will be deducted from that employee's salary.
- 44.3 There is no provision to advance an annual leave credit, which has not accrued.
- 44.4 Managers are required to ensure that employees use an appropriate amount of annual leave each year in consideration of the welfare of employees and to ensure that the accrued liability for annual leave for their work area is not excessive.
- 44.5 Employees are to take a minimum of 10 working days of Annual Leave each financial year (1 July to 30 June).
- 44.6 Annual leave is exclusive of public holidays.
- 44.7 Annual leave credits will be paid in lieu to an employee on separation from the APS or to their estate in the event of their death. Annual leave credits will not be paid out where the employee is taking up a position with a new employer which

will recognise the leave credits upon separation from the APS, such as ACT Public Service.

45. Excess Recreation Leave

- 45.1 The Employer may direct the employee to take annual leave where employees have a large accumulated annual leave balance (in excess of 1/13 of the number of standard FMC hours that the employee has worked over a two year period). This amount is equivalent to approximately 8 weeks for an employee working 37.55 hours per week over a two year period.
- 45.2 Employees are entitled to cash out up to 1/26 of the standard FMC hours worked by employees during the previous 12 months. This is equivalent to approximately 2 weeks per year for employees whose hours do not change over the course of a 12 month period.
- 45.3 To cash out annual leave as detailed in subclause 45.2:
- the employee must provide the Executive Director, Operations, with a written request of the amount of annual leave to be cashed out;
 - the employee must have an accumulated annual leave balance of at least the amount requested at the time it is to be cashed out;
 - the rate at which the annual leave will be paid out is to be at least the rate of pay the employee is entitled to receive at the time of making the request; and
 - the Executive Director, Operations, must authorise the employee to forgo the amount of annual leave requested.

46. Purchased Leave

- 46.1 Employees may apply to the CEO to purchase up to 20 days additional annual leave per year in a single block of 20 consecutive working days, or in two blocks of 10 consecutive working days.
- 46.2 The recovery of salary for this leave will be averaged over a 12 month period. The salary rate for the recovery will be the salary received by the employee from time to time during the recovery period. The minimum amount of salary to be recovered will be the rate which applied to the employee during the period of leave. Purchased leave must be fully utilised during the 12 month salary recovery period.
- 46.3 Purchased leave is not included in the calculation of annual leave credit referred to in clause 42.
- 46.4 Where an employee who has a purchased leave arrangement ceases employment with the FMC, salary adjustment will be made as follows:
- where some or all of the purchased leave has been taken, the amount of salary still owing for that leave will be deducted, or

- where the purchased leave has not been taken or the amount taken is less than the equivalent amount of salary deducted, the excess amount of salary which has already been deducted from the employee in anticipation of the leave will be refunded.

46.5 Leave may not be purchased once an employee accrues over 40 days' annual leave, unless otherwise agreed with the CEO.

47. Personal Leave

47.1 Personal leave includes sick/carer's leave and special leave and may be granted, subject to available credit, in the following circumstances:

- where the employee is ill or injured;
- to care for members of their family who are ill;
- personal requirements associated with birth, adoption or fostering, but not where directly associated with maternity leave; or
- as a result of special or exceptional circumstances.

47.2 Employees are credited annually with fully cumulative personal leave credits of 18 days full pay for sick and carers' purposes. This credit accrues on their day of engagement, and on each anniversary of their engagement, subject to any adjustment for leave without pay which does not count as service.

47.3 A cap of 10 days per year is placed on the use of personal leave for caring purposes; it is only to be used for occasional non-enduring situations.

47.4 Where leave without pay, which does not count as service, has been granted in the accrual year, and totals 22 or more full day absences, the accrual will be reduced on a pro rata basis.

47.5 No more than three consecutive personal leave days may be taken without supporting medical evidence, or personal declaration in the case of caring responsibilities. Where over three days leave is taken without supporting medical evidence, the CEO will determine whether it is appropriate to grant paid personal leave for the first three days, taking into account any statement or evidence provided by the employee. A manager may request supporting evidence for any personal leave absence provided the request is not retrospective. Where leave for carer's purposes exceeds five continuous days, the manager will review the circumstances in consultation with the employee to consider other temporary options, such as part time work or home based work.

47.6 Medical evidence means a certificate provided by the following:

- registered medical practitioner, dentist, optometrist, optician, radiographer, physiotherapist, chiropractor or podiatrist; or
- health practitioner other than a doctor (eg. naturopath, herbalist, homeopath, osteopath, iridologist, acupuncturist) if the employee either has been referred

to that health practitioner by a doctor or obtains a doctor's endorsement that the treatment provided was desirable.

- 47.7 Non-ongoing employees on contracts of 12 months or less will receive a personal leave credit on engagement based on the length of their contract. Non-ongoing employees who work for more than 12 months or are engaged on a contract of 12 or more months are entitled to the same personal leave entitlements as other employees. Unused credits from the first year of employment will be retained.
- 47.8 Employees who are medically unfit for one day or more whilst on annual leave or long service leave and who produce a medical certificate may apply for personal leave. Annual leave and long service leave will be re-credited to the extent of the period of personal leave granted.
- 47.9 The maximum period of continuous personal leave is 78 weeks of which no more than 52 weeks may be paid personal leave. Personal leave beyond 78 weeks will be treated as if the employee has been granted additional personal leave without pay, subject to the production of satisfactory medical evidence. A period of personal leave beyond 78 weeks does not count for service for any purpose except long service leave.
- 47.10 In exceptional circumstances such as long periods of illness, the CEO may grant additional paid personal leave credits where existing credits have expired.
- 47.11 Compassionate leave can be accessed by employees:
- (a) for the purpose of spending time with a person who:
 - (i) is a member of the employee's immediate family or a member of the employee's household; and
 - (ii) has a personal illness, or injury, that poses a serious threat to his or her life; or
 - (b) after the death of a member of the employee's immediate family or a member of the employee's household.
- 47.12 An employee is entitled to two days compassionate leave upon each event described in subclause 47.11, however, the CEO may grant more than the two days in certain circumstances.
- 47.13 An employee's use of compassionate leave will reduce his or her personal leave balance by the amount of time taken.

48. Other Leave

- 48.1 To provide flexibility to managers and employees, the CEO may grant leave of absence to an employee in appropriate circumstances for reasons not covered by other leave provisions including:
- jury service;
 - where required to attend legal proceedings;

- general training leave;
- blood donation;
- defence force requirements;
- studies;
- war service sick leave;
- parental and adoption leave;
- participation in major sporting events;
- participation in emergency service activities;
- accompanying a partner on a posting; and
- any other purpose considered appropriate by the CEO.

48.2 Leave may be granted:

- for the period requested or for another period up to a maximum of 12 months with the option for extension;
- with or without pay;
- to count as service or, if it is without pay, to not count as service, and
- subject to conditions.

48.3 The CEO will provide an employee with a written advice of reasons for any decision to refuse leave.

49. Long Service Leave

49.1 Long service leave will accrue and be available to employees in accordance with the provisions of the *Long Service Leave (Commonwealth Employees) Act 1976*.

49.2 The minimum amount of accrued long service leave that may be taken at any one time is 7 calendar days. Continuous periods of long service leave taken may not be broken by annual leave.

50. Public Holidays

50.1 Employees will observe and with the exception of irregular or intermittent employees, be paid for the following holidays each year:

- New Year's Day (or substitute);
- Australia Day (or substitute);
- Good Friday and the following Saturday (a statutory public holiday) and Easter Monday;
- 25 April (ANZAC Day) (or substitute);
- the Queen's Birthday observance day;
- Labour Day or its equivalent;
- Christmas Day (or substitute);
- Boxing Day (or substitute);
- the additional Australian Public Service holiday; and
- up to two further authorised public holidays.

- 50.2 When New Year's Day, Australia Day, Christmas Day or Boxing Day fall on a Saturday or Sunday, a day designated under relevant State/Territory legislation will be substituted. In this case, the Saturday or Sunday for which substitution is made will be deemed not to be a public holiday.
- 50.3 Where a public holiday falls on a day that is not regularly worked by a part time employee, that employee will not be entitled to payment for that day.
- 50.4 Where there is prior agreement between an employee and the CEO, a cultural or religious day of significance to the employee may be taken with pay and the time made up as agreed with the manager, without entitlement to payment for the additional duty.
- 50.5 Employees required to work interstate when there is a public holiday in their home state are entitled to time off in lieu or payment at the normal overtime rate, calculated on the basis of hours worked.

51. Employment Outside the FMC

- 51.1 Except with the express permission of the CEO, employees may not engage in any remunerative employment outside the FMC. Approval so given by the CEO may be withdrawn at any time.

52. Payment on Death

- 52.1 Where an employee dies, or the CEO can reasonably presume an employee died on a particular date, the CEO may authorise the payment of the amount to which the former employee would have been paid if the employee had otherwise ceased employment on resignation or retirement. Payments may be made to the dependants or the partner of the former employee, or that employee's personal legal representative.

53. Travel Arrangements

- 53.1 Travel guidelines are issued from time to time by the CEO after consultation with the SCC.
- 53.2 Employees are entitled to economy class travel where required to travel on official business within Australia, except where the elapsed travel time (i.e. scheduled airport to airport as provided by the airline) is greater than 3 hours in which case staff may travel business class.
- 53.3 Accommodation of a reasonable standard will be made available to employees travelling on official business overnight. Wherever practical, employees will stay at FMC preferred accommodation provider/s.

- 53.4 Generally, accommodation would be booked in advance and with the manager's approval and be billed to the FMC by the accommodation provider. Alternative arrangements can be agreed between an employee and their manager, prior to the travel being undertaken which can include:
- the employee paying for their accommodation, and receiving reimbursement of these expenses on provision of receipts;
 - where an employee stays with a non-commercial provider, a lesser rate to cover reasonable expenses.
- 53.5 Employees whose official travel includes overnight absence are entitled to a meals and incidentals allowance comprising amounts for breakfast, lunch, dinner and incidentals depending on the period of absence. The amount of the allowance is based on, and updated in accordance with, the Australian Taxation Office Reasonable Allowances amounts, as outlined in clause 90. No allowance is payable for travel on official business which is commenced and completed on the same day. Where an employee incurs additional out-of-pocket expenses during travel, the CEO may approve reimbursement.
- 53.6 The normal method of payment of allowances for travel will be via direct credit to the employee's nominated account.
- 53.7 Frequent flyer points accumulated by employees as a result of travel on official business must be declared to the FMC. These points may be used for official travel only and are not available for private use. Details relating to the use of frequent flyer points are contained in the FMC's travel guidelines.
- 53.8 Where meals, excluding airline meals, are provided at no cost to the employee travelling, no allowance for that meal period will be provided.
- 53.9 The CEO may approve a return flight home after extended absences. Normally this would be after 10 working days although shorter periods may be considered where there is minimal additional cost to the FMC. Decisions will have regard to the circumstances of the case including the following factors:
- The cost to the FMC;
 - The personal circumstances of the employee;
 - The practicality of returning home; and
 - The length of the absence.

54. Extended Absences

- 54.1 Where an employee is absent in excess of 21 continuous days, the option of moving to longer-term accommodation with kitchen facilities should be considered by the employee and their manager. Where this is not practicable, travel allowance would continue in accordance with clause 53.
- 54.2 Where longer-term accommodation with kitchen facilities is appropriate in the circumstances and available, payment for meals will move to a rate determined by

the Chief Executive Officer and payment for incidentals will continue in accordance with clause 90.

- 54.3 The employee is entitled to comfortable, secure and clean accommodation within a reasonable distance of the workplace. Where rented accommodation cost exceeds the relevant Australian Taxation Office Reasonable Allowance rental ceiling (see clause 90), the employee will be required to demonstrate that suitable accommodation is not available within the ceiling, eg, by providing evidence of a genuine attempt to obtain suitable accommodation within the ceiling such as information obtained from local Real Estate Agents.

55. Motor Vehicle Allowance

- 55.1 Employees may be authorised to use a private motor vehicle for official travel where convenient to the FMC.
- 55.2 Employees using a private motor vehicle for official purposes will be entitled to payment of a motor vehicle allowance. This payment will not exceed the cost of the relevant economy class airfare. The amount of the allowance is based on, and updated in accordance with, the Australian Taxation Office Rates, as outlined in clause 90.

56. Language Allowance

- 56.1 The Court encourages its staff to utilise the full range of their skills and abilities in carrying out their work. To this end a language allowance will be payable where staff have cause to use foreign and indigenous language skills for work purposes. The Court will issue a policy on this allowance within three months of lodgement and the allowance will be payable from the date of issue of the policy.

PART F – WORKING ENVIRONMENT

57. Valuing Workplace Diversity

- 57.1 The FMC and its employees agree:
- to respect and value the diversity of its workforce, and
 - to ensure that our behaviour and treatment of others is always fair and equitable, and free from all forms of discrimination.

58. Occupational Health and Safety

- 58.1 The FMC's aim is to maintain a safe and healthy working environment and to fulfil its responsibilities under the *Occupational Health and Safety (Commonwealth Employment) Act 1991*. The FMC is committed to enhancing its policy on occupational health and safety (OHS) which enables effective cooperation between managers and employees on OHS matters.

59. Child Care Subsidy

- 59.1 Where employees, who are the sole available carer of dependant children, are required by the FMC to be away from their home base overnight, reimbursement of reasonable childcare costs that would otherwise not have been incurred, will be considered. Application for consideration, including an estimate of the cost involved, is to be made by the employee prior to the finalisation of travel arrangements. Evidence of expenditure must accompany any claim for reimbursement.

60. First Aid and Fire Warden Allowance

- 60.1 An employee who possesses a current first aid certificate and who is designated as a First Aid Officer will be paid a first aid allowance per fortnight.
- 60.2 An employee who is nominated by the Court to undertake the role of chief or Deputy Chief Fire Warden, will be paid an allowance per fortnight.

61. Relocation Assistance

- 61.1 Employees who are permanently relocated on either transfer or promotion to a different geographic location may, as approved by the CEO, be reimbursed for all reasonable costs associated with transport and removal, sale and purchase of home, and temporary accommodation costs in the new location.
- 61.2 Relocation assistance on engagement may be approved by the CEO and may include all or some of the costs referred to in the preceding clause.

62. Remote Localities Assistance

- 62.1 Employees who on 1 July 2001 were employed in the Federal Magistrates Court in remote localities and who had been entitled to remote localities assistance, will, whilst employed by the FMC at that remote locality, receive a package of benefits as determined by the CEO.

63. Employee Assistance Program

- 63.1 In accordance with FMC guidelines, employees and members of their families have access to the FMC's Judicial and Employee Counselling Program for personal or work related problems, at no cost to the employee.

64. Assisting Staff in Crisis

- 64.1 FMC recognises that there are times when personal emergencies arise which require staff to be absent from the workplace for a period of time.

64.2 When staff have urgent and short-term personal requirements the CEO may approve (where it is considered appropriate for them to be out of the workplace, and there is no other appropriate form of leave to cover the absence) occasional short term working arrangements such as working from home, part-time work and job share up to a period of four weeks.

65. Eye Sight Testing

65.1 The FMC will provide for eyesight testing and reimbursement for prescribed eyesight correction to all staff members (where not otherwise reimbursed under Medicare or private health insurance arrangements) using screen-based equipment.

65.2 Staff are entitled to retesting at two yearly intervals unless symptoms occur which indicate that further testing is necessary. Staff applying for testing more frequently than two-yearly intervals should support their application with medical evidence.

65.3 The FMC will pay the full cost of the initial testing. If a staff member is referred by the person conducting the initial test to an ophthalmologist for a condition related to the purpose for which they are being tested, this referral will also be paid by the FMC.

Where applicable, employees are to claim from Medicare before claiming reimbursement from the FMC.

65.4 Where corrective lenses are prescribed specifically for use with screen-based equipment, the FMC will reimburse the employee in accordance with FMC guidelines.

Where applicable, employees are to claim on their private health insurance before claiming reimbursement for reasonable costs from the FMC.

65.5 Visual correction that is recommended for general use, such as reading and driving, will not be reimbursed.

66. Health and Wellbeing of staff

66.1 The FMC recognises that staff who are in good health are likely to be more productive in the workplace. The FMC will support a health and wellbeing program for FMC employees, with the objective of:

- maximising the health of employees; and
- minimising the number of days lost through illness and injury.

66.2 Reimbursement under this scheme is available for health lifestyle items/activities such as:

- (i) sports membership (e.g. training or competition fees);
- (ii) fitness programs (e.g. fitness or health club membership);

- (iii) sports equipment;
- (iv) sports apparel (not fashion/general clothing);
- (v) quit smoking programs;
- (vi) health checks;
- (vii) stress management programs;
- (viii) weight loss programs;
- (ix) healthy life seminars; and
- (x) health related services (e.g. therapeutic massage or physiotherapy).

66.3 The maximum reimbursement available is a one-off payment of \$100 per financial year; or if a claim is not made in one financial year, a one-off payment of \$200 in the next financial year covering any two years within the agreement, i.e. 2006-2007, 2007-2008, 2008-2009

66.4 Once per year the FMC will arrange, at its own expense, for staff who wish to receive an annual onsite influenza vaccination. Where this is impractical the cost of an influenza vaccination will be reimbursed.

67. Use of Taxis After Hours

67.1 Where an employee is directed to work after 7:00pm, and subject to prior approval of the person authorising work after 7.00pm, the FMC will meet the cost of taxi travel for the journey home of that employee where public transport has ceased to operate or it would be inappropriate or unsafe to travel by public transport.

68. Consultative Arrangements

68.1 The FMC values the contribution of all employees and is committed to communicating and consulting in a timely manner and in a spirit of cooperation with employees on significant workplace issues.

68.2 In addition to the informal consultative mechanisms, a Staff Consultative Committee (SCC) will continue to meet regularly through which all employees and, where requested, their representatives will have the opportunity for direct input.

68.3 The SCC will undertake a consultative and reporting function. It will consult, review and report to the CEO on the progress and implementation of initiatives identified in the Agreement including but not limited to:

- Workplace Diversity, OHS and related policies
- Implementation of technological initiatives
- The training and development needs of staff
- Enhancements to the Performance Management scheme
- The development of work level standards

68.4 The SCC will provide the reports and resultant recommendations to the CEO for consideration and, where the CEO considers appropriate, action.

69. Work Level Standards and Classification Review

69.1 The Court will establish a project team in consultation with the Staff Consultative Committee (SCC), within 12 months of lodgement, to finalise the Court's Work Level Standards. The team will include employee(s) chosen by staff, and as part of its terms of reference, will ensure that all areas of the court have the opportunity for input into, and to influence, the outcome of the project. The project team will present a draft to the first meeting of the SCC by its first meeting after lodgement of this agreement with a view to finalising the Work Level Standards by June 2007.

69.2 The project team will also recommend to the SCC a process to ensure consistency of application of the Work Level Standards across the court, a process for reviewing jobs against the classification levels, a mechanism for the independent review of decisions requested by employees and a mechanism for monitoring and updating the Standards regularly.

70. Dispute Settlement

70.1 The FMC and its employees are committed to working cooperatively to resolve any disagreements over matters covered by this Agreement, Managers and employees will:

- promptly address disagreements as they arise in accordance with the procedures set out below;
- discuss those disagreements in an open and constructive way; and
- seek to resolve those disagreements wherever possible at a local level.

70.2 Where disagreements arise over the interpretation or implementation of this Agreement, work will continue in accordance with established custom and practice at the workplace while the procedure below is followed. Where the issue is one of safety, employees will not be expected to work in an environment which is genuinely considered to be unsafe, but will undertake suitable alternative work until the issue is resolved.

70.3 The following procedures for the resolution of a dispute relating to enforcement of this agreement will apply. The following procedures do not apply, or will cease to apply, in the event that an employee seeks review of the same disagreed matter under section 33 of the Public Service Act.

- The employee will discuss the matter in dispute with their immediate manager.
- If the matter is not resolved at that level, further discussions will be arranged involving the CEO the employee and the immediate manager.

- The employee(s) and the CEO may agree to appoint a mutually acceptable person to mediate or review and determine the matter. The FMC would meet all reasonable associated costs.
- If the matter remains unresolved, either party to the dispute may refer the matter to the AIRC in accordance with the provisions of the *Workplace Relations Act 1996*. If the matter is referred to the AIRC, the AIRC is empowered to mediate, conciliate, make a binding determination, arbitrate or exercise a combination of these powers.
- The decision of the AIRC will bind the FMC and the employee, subject to either of them exercising a right to appeal against the decision.

70.4 It is the responsibility of managers and employees to take reasonable and genuine internal steps to prevent or settle disputes by early and timely discussion and consultation.

70.5 At any time, an employee may choose to be assisted or represented by a person of his or her choice, eg an employee representative.

70.6 Where a matter is considered to finality under this clause and the employee subsequently seeks review of the same matter under section 33 of the Act, the CEO may adopt the procedures undertaken under this clause, and any outcomes that they may have generated, as his or her primary review of action for the purposes of the Public Service Regulation 5.27.

71. Review of Disputed Action

71.1 An employee may, at any time, refer to the CEO any issue or concern about any action or decision that relates to their employment.

71.2 An employee may, at any time, apply for review in accordance with the Public Service Regulations of an action that relates to their employment. Where such an application is made it will be considered in accordance with those regulations.

PART G – WORKFORCE PLANNING AND ADJUSTMENT

72. Responding to changing circumstances

72.1 Employees and the FMC recognise the need for ongoing review of the FMC's organisational structures to respond to changing responsibilities and circumstances, including funding, government initiatives and strategic priorities.

73. Excess Employees

73.1 The provisions of this clause apply to all employees, with the exception of employees on probation and non-ongoing employees. Employees on probation and non-ongoing employees for whom productive work is no longer available, may be subject to termination of employment.

73.2 An excess employee is one who:

- is substantively classified at a level where there is a greater number of employees than is necessary for the efficient and economical working of the FMC;
- cannot be effectively used because of changes in the work methods of the FMC or changes in the nature, extent or organisation of the functions of the FMC; or
- in situations where the duties usually performed by the employee at their locality are to be performed at a different locality and the employee is not willing to perform duties at the different locality and the CEO has determined that the excess employee provisions of this Agreement apply.

74. Consultation with excess employees

74.1 Where it is likely that any employee will become excess to requirements, the CEO will advise the employee either in discussion or in writing of the situation. Discussions with potentially excess employees will be held to consider redeployment opportunities and whether voluntary retrenchment might be appropriate. Following these discussions, or at the end of one month, whichever is the earlier, or a longer period as determined by the CEO, the CEO may, in writing:

- invite the potentially excess employee to elect for voluntary retrenchment, or
- declare the employee excess.

74.2 The CEO may invite employees who are not potentially excess to express interest in voluntary retrenchment, where those retrenchments would provide for the redeployment of employees who are potentially excess. Any 'swaps' with employees seeking retrenchment will be subject to the ability of the excess employee to undertake the relevant duties to a satisfactory standard within a reasonable time.

75. Voluntary Retrenchment

- 75.1 Where the CEO has invited an excess employee to elect for voluntary retrenchment, the employee will have one month to make such an election. If the employee declines voluntary retrenchment, they may be declared excess.
- 75.2 An employee who has been invited to elect for voluntary retrenchment will be provided with details of:
- the amount of severance pay, pay in lieu of notice and unused leave credits;
 - the amount of accumulated superannuation contributions;
 - superannuation options available to the employee;
 - the taxation rules applying to the various payment; and
 - financial assistance up to a maximum of \$400 for financial and/or career counselling.

76. Period of Notice

- 76.1 Where the employee agrees to the offer of voluntary retrenchment, the CEO can approve the employee's termination and give the required Notice of Termination, under section 29 of the *Public Service Act 1999*. The period of notice will be four weeks, or five weeks in the case of employees who are over 45 years of age with at least five years of continuous service. Such period of notice shall also apply to employees who are to be involuntarily retired. Specified periods of notice will as far as practicable be concurrent with the retention periods.
- 76.2 The employee may choose or the CEO may direct an earlier termination date within the notice period. Where an employee retires or is retired at the commencement of, or within, the notice period, they will receive payment in lieu of notice for the unexpired portion of the notice period.

77. Severance Benefit on Voluntary Retrenchment

- 77.1 Employees accepting voluntary retrenchment whose employment is terminated by the CEO under section 29 of the *Public Service Act 1999* on the grounds that the employee is excess to the requirements of the Agency are entitled to be paid a severance benefit equal to two week's salary for each completed year of service, plus a pro rata payment for completed months of service since the last completed year of service. The minimum severance sum payable will be four week's salary and the maximum will be 48 week's salary. This severance benefit will be calculated on a pro rata basis for any period where the employee has worked part time hours during their period of service and they have less than 24 years full time service. Where part time staff have undertaken periods of full time work during their service, those period(s) of full time work will be taken into consideration in the calculation of any severance benefit.
- 77.2 Service for severance pay purposes means, subject to the following subclauses:
- service in the FMC;

- Government service as defined in section 10 of the *Long Service Leave (Commonwealth Employees) Act 1976*;
- service with the Commonwealth (other than with a joint Commonwealth-State body corporate in which the Commonwealth does not have a controlling interest) which is recognised for long service leave purposes;
- service with the Australian Defence Forces;
- APS service immediately preceding deemed resignation under the repealed section 49 of the *Public Service Act 1922* if the service has not been previously recognised for severance pay purposes; and
- service in another organisation where the employee was transferred from the APS to that organisation with a transfer of function or the employee engaged by that organisation on 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.

77.3 For earlier periods of service to count there must be no breaks between the period of service, except where:

- the break in service is less than one month and occurs where an offer of employment with the FMC was made and accepted by the employee before ceasing employment with the preceding employer; or
- the earlier period of service was with the APS and ceased because the employee was deemed to have resigned from the APS on marriage under the repealed section 49 of the *Public Service Act 1922*.

77.4 Any period of service which ceased:

- through termination on the following grounds, or on a ground equivalent to any of the following grounds:
 - the employee lacks, or has lost, an essential qualification for performing his or her duties;
 - non-performance, or unsatisfactory performance, of duties;
 - inability to perform duties because of physical or mental incapacity;
 - failure to satisfactorily complete an entry level training course;
 - failure to meet a condition imposed under subsection 22(6) of the *Public Service Act 1999*; or
 - a breach of the Code of Conduct; or
- on a ground equivalent to a ground listed in subparagraph (a) above under the repealed *Public Service Act 1922*; or
- through voluntary retirement at or above the minimum retiring age applicable to the employee; or
- with the payment of a redundancy benefit or similar payment or an employer-financed retirement benefit will not count as service for severance pay purposes.

77.5 Absences from work which do not count as service for any purpose will not count as service for severance pay purposes.

- 77.6 Salary for the calculation of the severance benefit will be determined by:
- the employee's salary;
 - the salary of the higher position where the employee had been acting in a higher position for a continuous period of at least twelve months immediately preceding the date on which they were given the Notice of Termination; and
 - other allowances in the nature of salary, including shift penalties.

78. Retention Periods

- 78.1 Unless the employee agrees, an excess employee who does not accept an offer of voluntary retrenchment will not be involuntarily terminated by the CEO under section 29 of the *Public Service Act 1999* until the following retention periods have elapsed:

- 13 months where the employee has 20 or more years of service or is over 45 years of age; or
- 7 months for others.

- 78.2 The retention period will commence on the earlier of the following:

- the day the employee is advised in writing by the CEO that they are an excess employee, or one month after the day on which the CEO invites the employee to elect to be retired.

- 78.3 During the retention period, the CEO:

- will take reasonable steps to find alternative employment for the employee; and/or
- may, with four weeks notice, reduce the excess employee's classification as a means of securing alternative employment for the excess employee. Where an excess employee is reduced in classification before the end of the appropriate retention period, the employee will continue to be paid at their previous level for the balance of the retention period.

- 78.4 During the retention period, the employee:

- will take reasonable steps to find alternative employment; and
- actively participate in learning and development activities, trial placements or other arrangements agreed to, to assist in obtaining a permanent placement.

- 78.5 The excess employee may, in seeking alternative employment, be provided with assistance in meeting reasonable travel and incidental expenses incurred and reasonable paid leave where these are not met by the prospective employer.

- 78.6 Where the CEO believes:

- that there is insufficient productive work available for the excess employee during the retention period; and
- after a reasonable period, usually not more than three months, the employee has not been redeployed within the FMC or within the APS,

the CEO may terminate the employee's employment under section 29 of the *Public Service Act 1999* on the grounds that the employee is excess and pay the balance of the retention period as a lump sum.

- 78.7 An excess employee will not have their employment involuntarily terminated under section 29 of the *Public Service Act 1999* if they have not been invited to elect to be retired, or have elected to retire within the previous twelve months but the CEO has refused to approve it.
- 78.8 The CEO will not involuntarily terminate any employee if there remains any employees engaged in that work or at that level, in that location, who have elected to be retired, have been refused, and still wish to accept voluntary retrenchment.

79. Review of Decisions to Terminate Employment

- 79.1 The sole and exhaustive rights and remedies of an employee in relation to termination of employment are those that the employee enjoys under:
- Division 4 of Part 12 of the *Workplace Relations Act 1996*;
 - other Commonwealth laws (including the Constitution); and
 - at common law.
- 79.2 Termination of, or a decision to terminate employment, cannot be reviewed under the dispute prevention and settlement procedures/review of action procedures addressed in clauses 70 and 71 of this Agreement.
- 79.3 Nothing in this Agreement prevents the CEO from imposing a sanction of termination, with immediate effect, in cases where a determination has been made (in compliance with procedures established by the Secretary under section 15(3) of the *Public Service Act 1999*) that an employee has breached the APS Code of Conduct.

80. Managing Misconduct

- 80.1 Misconduct is a breach of the APS Code of Conduct. Misconduct will be managed in accordance with procedures established under section 15(3) of the *Public Service Act 1999*.

81. Advice to Employees

- 81.1 Where in this Agreement, reference is made to written notice or advice being provided to an employee, such notice will be deemed to have been given when delivered in person, or if sent by mail, the working day following the date of postage by registered post.

PART H – AGREEMENT TITLE, SCOPE AND DEFINITIONS

82. Title

82.1 This Agreement will be known as the *Federal Magistrates Court Collective Agreement 2006 – 2009*.

83. Duration

83.1 This Agreement commences on the date of lodgement with the Office of the Employment Advocate and has a nominal expiry date of 30 June 2009.

84. Parties Bound

84.1 This Agreement will apply to and be binding upon the Attorney-General and employees, other than SES employees, employed under the *Public Service Act 1999* in the Federal Magistrates Court, but does not apply to APS employees in the FMC who are parties to an AWA made before, on or after the date of this Agreement.

84.2 Only persons employed under the *Public Service Act 1999* will be subject to this agreement and the employer is bound only in respect of employees employed under that Act.

85. Australian Workplace Agreements

85.1 The CEO may enter into Australian Workplace Agreements (AWAs) with employees covered by this agreement.

86. Protected Award Conditions/Australian Fair Pay Conditions Standard.

86.1 This workplace agreement is a comprehensive agreement, and excludes the protected award conditions (as defined in the *Workplace Relations Act 1996*, as amended from time to time).

Note: the protected award conditions are award conditions that are excluded from the Agreement, that would, but for this Agreement, have effect in relation to the employment of employees under this Agreement and related to the following matters; rest breaks, incentive based payments and bonuses, annual leave loadings, public holidays, monetary allowances, loadings from working overtime for shift work, penalty rates, outworker conditions; and any other award conditions specified as protected award conditions in Regulations made under the Act.

86.2 The Australian Fair Pay and Conditions Standard underpins the *Workplace Relations Act 1996* and applies irrespective of any terms in this Agreement that provide less favourable entitlements.

87. Definitions and Interpretation

87.1 Wherever the following terms appear in this Agreement, they mean:

Act	means the <i>Public Service Act 1999</i> , as amended from time to time
Agreement	means the Federal Magistrates Court Collective Agreement 2006-2009
AIRC	means the Australian Industrial Relations Commission
APS	means the Australian Public Service
APS Values	means the APS values in section 10 of the <i>Public Service Act 1999</i> .
AWA	means Australian Workplace Agreement
CEO	means the Chief Executive Officer of the FMC, any acting Chief Executive Officer or any person authorised by them to act on their behalf
Chambers	means a work area of the FMC comprising a Federal Magistrate (including the Chief Federal Magistrate) and the Federal Magistrate's personal staff
APS Code of Conduct	means the APS Code of Conduct in Section 13 of the <i>Public Service Act 1999</i> .
Employee	means a person employed in the FMC, whether full time or part time, irregular/intermittent under and within the meaning of the <i>Public Service Act 1999</i> , but does not include an officer of the Federal Magistrates Court, or a member of the staff of the Federal Magistrates Court, who is also: <ul style="list-style-type: none"> a) an officer of the Federal Court or the Family Court; or b) a member of the staff of the Federal Court or the Family Court.
Family	means a person who is related by blood, by adoption, by fostering or by marriage (including a bona fide de facto relationship without discrimination as to sexual preference) to an employee and a child, adopted child or foster child of a person to whom the employee is so married. Consideration will be given to cases where a staff member believes conditions relating to family members should be extended to a person with whom they claim a strong affinity.

Federal Magistrate	means a Federal Magistrate (including the Chief Federal Magistrate) who holds office under the <i>Federal Magistrates Act 1999</i> .
FMC	means the Federal Magistrates Court (which is also known as the Federal Magistrates Court of Australia).
Irregular/ Intermittent employee	means a person employed in the FMC, under and within the meaning of the <i>Public Service Act 1999</i> , whose hours of work are irregular or intermittent and generally less than full time
Manager	means a Federal Magistrate (including the Chief Federal Magistrate) or an employee who is authorised under this agreement or by the Chief Federal Magistrate or Chief Executive Officer, or otherwise to provide other employees with directions relating to their work and work practices.
Non-ongoing employee	means an employee engaged under sub-section 22 (2) (b) of the <i>Public Service Act 1999</i>
Salary	means the employee's rate of salary/pay (in accordance with the salary rates at Attachment 1A) will be salary for all purposes. Specifically, where salary sacrifice arrangements are in place, the employee's salary for purposes of superannuation, severance and termination payments will be determined as if the salary sacrifice arrangement had not been entered into.
SES	means the Senior Executive Service of the Australian Public Service
SCC	means the Staff Consultative Committee, and comprises a group of staff representatives elected or nominated to that committee and management representatives.

88. Closed Agreement

- 88.1 This agreement exhaustively states the terms and conditions of employment of the employees covered by this agreement other than terms and conditions applying under a Commonwealth law.

During the period starting on the date this agreement starts operating and ending on the nominal expiry date, no further claims may be pursued in respect of terms and conditions of employment by a party to the agreement or an employee whose employment is subject to the agreement, whether or not those terms and conditions relate to a matter that is expressly covered by this agreement.

89. Variations to This Agreement

- 89.1 Any variations to this Agreement will be made pursuant to Part 8, Division 8 of the *Workplace Relations Act 1996*.

90. Allowances Based on Australian Taxation Office (ATO) Rates

- 90.1 Allowances that are based on rates published by the ATO will be updated consistent with changes in those rates unless the CEO determines otherwise. The allowances based on the ATO rates do not form part of this Agreement.
- 90.2 If the ATO ceases to provide this service in the life of the agreement, the CEO will determine any revised allowances in consultation with the SCC, as established under Clause 68.

91. Delegation of powers under this Agreement

- 91.1 The CEO and the Executive Director, Operations may delegate any of his, her or their powers under this agreement by written instrument including any conditions applying to the use of those powers.

Formal Acceptance of the Agreement

This agreement is made and approved under section 327 of the *Workplace Relations Act 1996*. Accordingly, it is an agreement between the employer and the employees whose employment is subject to this agreement.

Employer

Signed for, and on behalf of, the Attorney General, by the CEO:

Signed.......... Date.....12/12/06.....

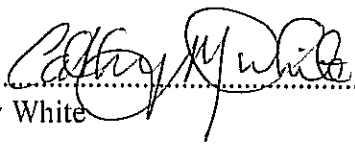
Name: Mr John Mathieson
Agency: Federal Magistrates Court

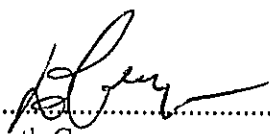
Employee Representatives

Signed for, and on behalf of, employees covered by this Agreement, by the representatives on the Staff Negotiating Team:

Signed.......... Date.....12/12/06.....

Name: Sally Mashman

Signed..........Date. 12/12/06.
Name: Cathy White

Signed..........Date. 12/12/06.
Name: Elizabeth Cooper

FMC CLASSIFICATIONS AND SALARY RATES

Increments	Date of lodgement	July 1, 2007	July 1, 2008
		4.3%	4.3%
APS 3	42,400	44,223	46,125
3.1	43,625	45,501	47,457
3.2	44,850	46,779	48,790
3.3	46,075	48,056	50,123
3.4	47,300	49,334	51,455
%3 Bonus	48,719	50,814	52,999
APS 4	49,000	51,107	53,305
4.1	50,025	52,176	54,420
4.2	51,050	53,245	55,535
4.3	52,075	54,314	56,650
4.4	53,100	55,383	57,765
%3 Bonus	54,693	57,045	59,498
APS 5	54,000	56,322	58,744
5.1	55,025	57,391	59,859
5.2	56,050	58,460	60,974
5.3	57,075	59,529	62,089
5.4	58,100	60,598	63,204
%3 Bonus	59,843	62,416	65,100
APS 6	58,500	61,016	63,639
6.1	59,252	61,800	64,457
6.2	60,550	63,154	65,869
6.3	61,575	64,223	66,984
6.4	62,600	65,292	68,099
%3 Bonus	64,478	67,251	70,142
EL 1	74,800	78,016	81,371
1	75,825	79,085	82,486
2	76,850	80,155	83,601
3	77,875	81,224	84,716
4	78,900	82,293	85,831
%3 Bonus	81,267	84,761	88,406
EL 2	86,200	89,907	93,773
1	90,200	94,079	98,124
2	96,700	100,858	105,195
3	99,500	103,779	108,241
4	99,850	104,144	108,622
%3 Bonus	102,846	107,268	111,881

Note: additional 3% bonus payable at top of range under performance management program.

ADDITIONAL SALARY RATES INFORMATION**Payment of salary**

1.B.1 The fortnightly rate of pay will be based on the following formula:

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

Overtime formula

1.B.2 The hourly rate for overtime payments will be calculated using the following formulas:

Time and a half rate:

$$\frac{\text{Annual salary}}{313} \times \frac{6}{\text{Prescribed weekly hours before overtime is payable}} \times 3$$

Double time rate:

$$\frac{\text{Annual salary}}{313} \times \frac{6}{\text{Prescribed weekly hours before overtime is payable}} \times 2$$

Double time and a half rate:

$$\frac{\text{Annual salary}}{313} \times \frac{6}{\text{Prescribed weekly hours before overtime is payable}} \times 5$$

1.B.3 For the purpose of calculating the formula, prescribed weekly hours before overtime is payable will be 37 hours 55 minutes.

SUPPORTED WAGE PAYMENTS FOR EMPLOYEES WITH A DISABILITY

Employees Eligible for a Supported Wage

1. These provisions define 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. In the context of these provisions, the following definitions will apply:

supported wage system: means the Commonwealth Government system to promote employment for people who cannot work at full wages because of a disability, as documented in 'Supported Wage System: Guidelines and Assessment Process'.

accredited assessor: means a person accredited by the managing unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.

disability support pension: means the Commonwealth pension scheme to provide income security for persons with a disability as provided for under the *Social Security Act 1991*, as amended from time to time, or any successor to that scheme.

assessment instrument: means the form 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.

Eligibility Criteria

2. Employees covered by these provisions will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this Agreement, because of the effects of a disability on their productive capacity and who meet the impairment criteria test for a Disability Support Pension.
3. These provisions do not apply to any existing employee who has a claim against the FMC which is subject to the provisions of worker's compensation legislation or any provision of this Agreement relating to the rehabilitation of employees who are injured in the course of their employment.

4. These provisions also do not apply to employers in respect of their facility, program, undertaking, service or the like which receives funding under the *Disability Services Act 1986* and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or who are eligible for a Disability Support Pension, except with respect to an organisation which has received recognition under sections 10 or 12A of the *Disability Services Act 1986*, or if a part only has received recognition, that part.

Supported Salary Rates

5. Employees to whom these provisions apply will be paid the applicable percentage of the salary prescribed by this Agreement for the class of work which the person is performing according to the following schedule:

Assessed Capacity (para. 6)	Percentage (%) of Prescribed Salary
10%*	10
20%	20
30%	30
40%	40
50%	50
60%	60
70%	70
80%	80
90%	90

(Provided that the minimum amount payable shall not be less than \$62 per week)

* note - where a person's assessed capacity is 10%, they will receive a high degree of assistance and support.

Assessment of Capacity

6. For the purpose of establishing the percentage of the salary rate to be paid to an employee under this Agreement, the productive capacity of the employee will be assessed in accordance with the Supported Wage System and documented in an assessment instrument.

Lodgement of Assessment Instrument

7. All assessment instruments under the conditions of these provisions, including the appropriate percentage of the Agreement wage to be paid to the employee, will be:
- lodged by the FMC with the Australian Industrial Registry of the AIRC; and
 - agreed and signed by the parties to the assessment

Review of Assessment

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

Other Employment Conditions

9. Where an assessment has been made, the applicable percentage will apply to the wage only. Employees covered by these provisions 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

10. Where a person is employed under these provisions, the CEO will take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

Trial Period

11. In order for an adequate assessment of the employee's capacity to be made, the CEO may employ a person under these provisions for a trial period not exceeding 12 weeks, except that in some cases, additional work adjustment time (not exceeding four weeks) may be needed.
12. During that trial period the assessment of capacity will be undertaken and the proposed wage rate for a continuing employment relationship will be determined.
13. The minimum amount payable to the employee during the trial period will be no less than \$62 per week.
14. Where the CEO and the employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of the assessment under paragraph 6.