

**Northern Territory Public Sector  
Frances Bay Marine Facility  
Port Service Workers**

**2018 - 2022**

**Enterprise Agreement**

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## Part 1 Application and Operation of Agreement

### 1 Title

This Agreement will be known as the *Northern Territory Public Sector Frances Bay Marine Facility Port Service Workers 2018 - 2022 Enterprise Agreement*.

### 2 Period of Operation

This Agreement will come into effect seven days after the approval from the Fair Work Commission and will remain in force until 30 June 2022.

### 3 Definitions

For the purposes of this Agreement:

- (a) **By-law(s)** - means subordinate legislation so described, as varied from time to time, made under the PSEM Act.
- (b) **call back** - means the procedure in which an employee is recalled to work immediately and without prior notice.
- (c) **CEO** - means the Chief Executive Officer of the Department of Infrastructure, Planning and Logistics.
- (d) **Commissioner** - means the Commissioner for Public Employment in the Northern Territory.
- (e) **continuous service** – in relation to a period of service by an employee, means a period of service with the employer during the whole of the period, including any period of authorised paid leave, or any period of authorised unpaid leave that is expressly stated as counting as service by a term or condition of employment, or by a law of the Commonwealth, or the Northern Territory.
- (f) **day** - means the 24 hours from midnight one day to midnight the following day.
- (g) **DIPL** - means the Department of Infrastructure, Planning and Logistics.
- (h) **employee** - means a person, employed by DIPL under the PSEM Act, who is covered by this Agreement.
- (i) **employer** – means the Commissioner for Public Employment in the Northern Territory.
- (j) **Fair Work Commission** - means the body established under the *Fair Work Act*.
- (k) **FW Act**- means the *Fair Work Act 2009* (Commonwealth) as amended from time to time or any successor to that Act.
- (l) **National Employment Standards** – means the minimum employment standards applying under Part 2-2 of Chapter 2 of the *Fair Work Act*.
- (m) **NTPS** - means the Northern Territory Public Sector.
- (n) **on call** - means being available at home to commence duty without delay or within a reasonable time, before the next ordinary commencing time for that employee.
- (o) **pay cycle** - means the pay period of one fortnight's duration.

- (p) **PSCC** means the Public Sector Consultative Council.
- (q) **PSEM Act** - means the *Public Sector Employment and Management Act* as amended from time to time, and includes the Regulations, By-laws, Employment Instructions and Determinations as varied from time to time, made under that Act.
- (r) **union** - means the Maritime Division of the Construction, Forestry, Mining, Maritime and Energy Union (CFMMEU).
- (s) **week** - means a week of ordinary hours, pursuant to clause 26 of this Agreement.
- (t) **year of service** - means a calendar year that is not broken by any period of leave without pay. Any period of leave without pay will extend the calendar year by the equivalent number of working days.

#### **4 Parties Covered by this Agreement**

This Agreement covers:

- (a) the Commissioner;
- (b) the Department of Infrastructure, Planning and Logistics;
- (c) the Union;
- (d) Port Service Workers employed at the Frances Bay Marine Facility who are members or are eligible to become members of the union.

#### **5 No Extra Claims and Negotiation of Replacement Agreement**

- 5.1 This Agreement constitutes a final settlement of the parties' claims, and together with the PSEM Act, is intended to set out, or set out processes for determining, all the terms and conditions of employment of the employees who will be subject to this Agreement, until its expiry.
- 5.2 Subject to clause 5.3, the parties agree that they will not for the period from the commencement of this Agreement until its nominal expiry date, make claims for the making of a further agreement, whether in relation to matters dealt with in this Agreement or otherwise.
- 5.3 Negotiations for a replacement agreement will commence four months prior to the nominal expiry date of this Agreement, or earlier or later by agreement between the parties.

#### **6 Operation of PSEM Act, By-laws and Determinations**

- 6.1 The Parties acknowledge the long established and continuing role of the PSEM Act as an instrument regulating NTPS conditions of employment. This Agreement will be read and interpreted in conjunction with the PSEM Act and will prevail over the PSEM Act to the extent of any inconsistency. For the avoidance of doubt, the PSEM Act is not incorporated into the Agreement.
- 6.2 The Commissioner undertakes that for the term of this Agreement, general employment conditions specified in the PSEM By-laws or relevant Determinations will not be unilaterally varied without consultation with the affected parties prior to the formalisation of an amendment.
- 6.3 This clause will not operate, in any way, to diminish the Commissioner's statutory powers under the PSEM Act.

## **7 National Employment Standards**

The provisions of this Agreement are to be read in conjunction with the National Employment Standards to the extent that if this Agreement provides a lesser entitlement than the National Employment Standards; the National Employment Standards will apply.

## **8 Intention, Commitment and Objectives**

8.1 It is essential to the success of DIPL that safe, efficient and effective port and marine services are provided to meet current and future demands and that work practices continue in a safe manner at all times.

8.2 Objectives of Agreement

The parties agree that continuous improvement strategies will contribute to the efficiency and productivity of the NTPS and it is the intention of the parties to build upon and enhance the human resource reforms contained in the PSEM Act through:

- (a) improved human resource practices;
- (b) staff development;
- (c) management and professional development programs; and
- (d) other programs of continuous improvement.

8.3 The parties acknowledge the need to examine jointly and consider all options when pursuing improvement strategies to ensure the achievement of the most cost effective and productive outcomes and that the consultative mechanisms referred to in clause 12 – Management of Change, will be employed by the parties for this process.

8.4 While recognising that reorganisation and changes to staff numbers arising from various factors are occurring within the NTPS, the parties agree that there will be no involuntary redundancies and no job losses arising directly from the implementation of this Agreement.

8.5 The parties agree that this Agreement provides a basis for enabling employees to balance their work and family commitments.

## **9 Productivity and Efficiency**

9.1 The parties to this Agreement recognise the skills, energy and cooperation of employees in increasing productivity and efficiency across the NTPS and that these improvements are integral to enhanced client service delivery and the career satisfaction and development of employees. Increasing productivity and efficiency is an ongoing and evolutionary process which takes place within the context of changing government priorities in policy and service delivery, new client demands, the introduction of new technology, more efficient and effective management and work practices, and ongoing skills development of the workforce.

9.2 As with former NTPS agreements, the past, present and future contribution of employees in increasing productivity and efficiency is recognised through improved terms and conditions of employment which arise from the introduction of this Agreement.

9.3 The parties acknowledge that this Agreement recognises productivity and efficiency improvements occurring during the life of this Agreement.

- 9.4 Without limiting the scope of this clause, productivity and efficiency will be enhanced with employee commitment to implement the policies and initiatives of the government of the day.

## **10 Consultative Committees**

- 10.1 In relation to matters of general interest to the NTPS, the parties to this Agreement agree to utilise the PSCC established under the PSEM Act.
- 10.2 A CEO may establish consultative committees within their agency.
- 10.3 In relation to workplace issues, parties to the Agreement can request that the CEO establish a consultative committee as a forum for consultation.

## **Part 2 Procedural Matters**

### **11 Dispute Settling Procedures**

- 11.1 The Parties are committed to avoiding industrial disputation about the application of this Agreement. Subject to clauses 11.2 and 11.3 this clause sets out procedures to settle a dispute that relates to:
- (a) a matter arising under this Agreement; or
  - (b) the National Employment Standards.
- 11.2 This clause does not apply in relation to disputes about:
- (a) refusals of requests for flexible work arrangements on reasonable business grounds under clauses 50 and 41.19(e) of this Agreement, and section 65(5) of the FW Act;
  - (b) refusals of requests for extended parental leave on reasonable business grounds under clause 41.20, and under section 76(4) of the FW Act.
- 11.3 This clause does not prevent an employee who is aggrieved in relation to the matters referred to in clause 11.2 from instead seeking review under section 59 of the PSEM Act.
- 11.4 General
- (a) Subject to the requirements of the FW Act, a party to a dispute may appoint the union or another person, organisation or association to accompany or represent them at any stage of the dispute.
  - (b) The parties to a dispute must genuinely attempt to resolve the dispute through the processes set out in this clause and must co-operate to ensure that these processes are carried out expeditiously.
  - (c) While a dispute is being dealt with in accordance with this clause, work must continue in accordance with usual practice. Provided that, this does not apply to an employee who has reasonable concerns about imminent risk to their health and safety, has advised the CEO of this concern and has not unreasonably failed to comply with a direction by the CEO to perform other available work that is safe and appropriate for the employee to perform.
  - (d) Subject to any agreement between the parties in relation to a particular dispute, it is agreed that the provisions of FW Act will be applied by Fair Work Commission with respect to the exercising of its functions and powers under this clause.

- (e) Any decision or direction that Fair Work Commission makes in relation to the dispute shall be in writing.
- (f) Subject to the right of appeal under clause 11.7(d) of this Agreement, any direction or decision of the Fair Work Commission, be it procedural or final, will be accepted by all affected persons and complied with by the parties.

#### 11.5 Internal Resolution

- (a) In the event of a dispute, the parties will, in the first instance, endeavour to resolve the matter internally as follows:

Stage 1: The employee will refer the matter to their immediate supervisor for resolution, who may request that the employee provide written details of the matter; provided that, where the dispute concerns alleged actions of the immediate supervisor, the employee may by-pass this stage.

Stage 2: If the matter cannot be resolved under stage 1, it will be referred in writing to the relevant manager for resolution.

Stage 3: If the matter cannot be resolved under stage 2, it will be referred in writing to the CEO for resolution.

Stage 4: If the matter cannot be resolved under stage 3, it will be referred in writing to the Commissioner for resolution.

- (b) Where reasonably practicable, attempts to resolve the matter under each stage of the process referred to in this clause will begin within 48 hours of and be completed within five working days of the referral relating to that particular stage.

#### 11.6 Conciliation

- (a) If the dispute remains unresolved after the parties have genuinely attempted to reach a resolution in accordance with clause 11.5(a), any party may refer the dispute to the Fair Work Commission, for resolution by conciliation.
- (b) Provided the requirements of clauses 11.4 and 11.5 have been met by the parties to the dispute, it is agreed that jurisdiction will not be raised by any party at conciliation.
- (c) Conciliation before the Fair Work Commission will be regarded as completed when:
  - (i) the parties have reached agreement on the settlement of the dispute; or
  - (ii) the member of the Fair Work Commission conducting the conciliation has either of their own motion or after application by any party, satisfied themselves that there is no likelihood that further conciliation will result in a settlement within a reasonable period.

#### 11.7 Arbitration

- (a) If a dispute remains unresolved at the completion of conciliation, either party may refer the dispute to the Fair Work Commission for determination by arbitration, subject to any jurisdictional submissions.
- (b) Where a member of the Fair Work Commission has exercised conciliation powers in relation to the dispute, that member will not be the member responsible for conducting the arbitration if any party to the dispute objects to that member doing so.

- (c) Subject to clause 11.7(d), the determination of the Fair Work Commission is final and binding.
- (d) A party may appeal an arbitrated decision of a single member of the Fair Work Commission, with leave of the full bench, provided that such appeal is lodged within 21 days of the decision being made.

## **12 Management of Change and Consultation**

12.1 This clause applies if the CEO:

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

### *Major change*

12.2 For a major change referred to in clause 12.1(a):

- (a) the CEO must notify the relevant employees of the decision to introduce the major change; and
- (b) clauses 12.3 to 12.9 apply.

12.3 The relevant employees may appoint a representative for the purposes of the procedures in this clause.

12.4 If:

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

the CEO must recognise the representative.

12.5 As soon as practicable after making a decision, the CEO must:

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

- 12.6 However, the CEO is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 12.7 The CEO must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- 12.8 If a term in this Agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the CEO, the requirements set out in clause 12.2(a) and clauses 12.3 and 12.5 are taken not to apply.
- 12.9 In this clause, a major change is likely to have a significant effect on employees if it results in:
- (a) the termination of the employment of employees; or
  - (b) major change to the composition, operation or size of the CEO's workforce or to the skills required of employees; or
  - (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
  - (d) the alteration of hours of work; or
  - (e) the need to retrain employees; or
  - (f) the need to relocate employees to another workplace; or
  - (g) the restructuring of jobs.

*Change to regular roster or ordinary hours of work*

- 12.10 For a change referred to in clause 12.1(b):
- (a) the CEO must notify the relevant employees of the proposed change; and
  - (b) clauses 12.11 to 12.15 apply.
- 12.11 The relevant employees may appoint a representative for the purposes of the procedures in this clause.
- 12.12 If:
- (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
  - (b) the employee or employees advise the CEO of the identity of the representative;
- the CEO must recognise the representative.
- 12.13 As soon as practicable after proposing to introduce the change, the CEO must:
- (a) discuss with the relevant employees the introduction of the change; and
  - (b) for the purposes of the discussion — provide to the relevant employees:
    - (i) all relevant information about the change, including the nature of the change; and
    - (ii) information about what the CEO reasonably believes will be the effects of the change on the employees; and

- (iii) information about any other matters that the CEO reasonably believes are likely to affect the employees; and
  - (c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- 12.14 However, the CEO is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 12.15 The CEO must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- 12.16 In this clause:
- relevant employees** means the employees who may be affected by a change referred to in clause 12.1

### **13 Individual Flexibility Arrangements**

- 13.1 The CEO and an employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of this Agreement if the arrangement:
- (a) deals with one or more of the following matters of this Agreement:
    - (i) arrangements about when work is performed within the span of hours;
    - (ii) payment for overtime taken as pay or time off in lieu of payment
    - (iii) commuted salaries or allowances.
  - (b) meets the operational needs of the agency;
  - (c) is genuinely agreed to by the CEO and employee;
  - (d) is about matters that would be permitted matters if the arrangement were an enterprise agreement;
  - (e) must not include a term that would be an unlawful term if the arrangement were an enterprise agreement; and
  - (f) results in the employee being better off overall than the employee would have been if no individual flexibility arrangement were agreed to.
- 13.2 Arrangements are to be in writing and:
- (a) signed by the CEO and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee;
  - (b) includes details of:
    - (i) the terms of the agreement that will be varied by the arrangement;
    - (ii) how the arrangement will vary the effect of the terms;
    - (iii) how the employee will be better off overall in relation to the terms and conditions of their employment as a result of the arrangement; and
  - (c) states the period of operation of the arrangement.

- 13.3 To take effect, the individual flexibility arrangement must be approved by the Commissioner and implemented via a Determination or other appropriate instrument and the CEO must give the employee a copy of the Determination or other appropriate instrument within 14 days of the Commissioner's approval.
- 13.4 The Commissioner will not approve an individual flexibility arrangement unless the Commissioner is satisfied that the requirements of this clause have been met.
- 13.5 The CEO or employee may terminate the individual flexibility arrangement:
- (a) by giving written notice of not more than 28 days (or in accordance with FW Act requirements) to the other party to the arrangement; or
  - (b) if the CEO and employee agree in writing – at any time.
- 13.6 An employee may choose to be represented by their nominated representative in relation to the development and implementation of individual flexible arrangements.

## **14 Union Delegates and Training**

### **14.1 Union Representation**

- (a) The Employer recognises the legitimate right of the Unions to represent those employees who are members, or eligible to become members.
- (b) An employee appointed as a Union delegate in the agency in which the employee is employed will, upon notification to the CEO, be recognised as the accredited representative of the Union. Subject to the prior approval of the CEO, an accredited Union delegate shall be allowed reasonable time during working hours to consult with members or employees eligible to become members on employment matters affecting employees.

### **14.2 Union Training Leave**

- (a) For the purpose of assisting employees to understand their rights and entitlements under this Agreement and improving industrial relations, the CEO shall, subject to the provisions of this clause, provide an employee who is an accredited Union delegate or nominated employee representative with up to five days' paid leave per annum to attend union training courses conducted by the Union or approved by the Union.
- (b) The approval for an employee to attend a training course shall be subject to the operational requirements of the agency.
- (c) An employee seeking to take training leave under this clause must:
  - (i) unless agreed by the CEO, have completed at least 12 months' continuous service prior to taking training leave; and
  - (ii) have been nominated by the Union to attend the course for which the training leave is sought.
- (d) The employee will only be paid for the period of training leave if:
  - (i) the employee provides evidence satisfactory to the CEO of their attendance at the course for which training leave was sought; and

- (ii) unless agreed by the CEO, the CEO has received not less than four weeks' written notice of nomination from the Union, setting out the time, dates, content and venues of the course.
- (e) Leave granted under this clause will be on ordinary pay, not including shift and penalty payments or overtime.
- (f) Leave granted under this clause will count as service for all purposes.

#### 14.3 Communications

For the purpose of assisting employees to understand their rights and entitlements under the Agreement, the CEO shall, where practicable, make available facilities to assist the Union to display notices that are relevant to employment matters on general staff notice boards.

### 15 Use of Contractors

#### *Introduction*

- 15.1 The DIPL affirms its support for the ongoing security of employment of DIPL employees to perform work at the Frances Bay Marine Facilities.
- 15.2 Various forms of contractor arrangements are a normal part of DIPL's operations including the use of contractors to do the work otherwise performed by DIPL employees.
- 15.3 Security of employment of employees at DIPL will not be impaired by the use of contractors. In particular, DIPL does not intend to utilise contractors to reduce its commitment to training of on-going employees.
- 15.4 Where operational decisions result in substantial change in the workplace that affect DIPL employees, the change management provisions in this agreement apply and where necessary, clause 46 (Security of Employment, Redeployment and Redundancy) will apply.

#### *Guiding management principles*

- 15.5 The following guiding management principles will apply in relation to any decision to engage contractors:
  - (a) how can we do it best using DIPL employees;
  - (b) how can we do the work in the most cost effective manner; and
  - (c) how can we best meet operational requirements.
- 15.6 The parties recognise and accept that there may be a requirement to utilise outside contractors to perform DIPL work from time to time. In addition, there may be some projects where the above guiding management principles are best achieved by a combination of DPC employees and contractors.

#### *Agreed arrangements*

- 15.7 The objective of these arrangements is to describe the basis and process for the use of contractors in the context of the introduction statement and the guiding management principles as expressed above.
- 15.8 DIPL employees will be used to perform all work:
  - (a) which can be carried out in an efficient and effective manner;

- (b) which can be done by DIPL employees in the necessary timeframe; and
- (c) where DIPL employees have the necessary skills to perform the work.

- 15.9 The DIPL, its employees and unions will participate in restructuring where deemed appropriate to improve the effectiveness and efficiency of services provided. The DIPL will use its best endeavours to utilise all employees in the most cost effective manner.
- 15.10 In an emergency situation DIPL will engage a contractor and advise relevant unions at the earliest opportunity. Normal work will be resumed by DIPL employees once the urgency of the work has been resolved.

#### *Training*

- 15.11 Where the use of contractors is the result of an ongoing need for a particular skill, which employees could reasonably be expected to acquire and use, subject to the operational capacity of the DIPL, the CEO will provide appropriate training to develop an in-house capacity.

#### *Definition*

- 15.12 For the purpose of this clause “contractor” is defined to apply to any person, other than NTPS employees to perform any work for or on behalf of the DIPL.

### **Part 3 Classification, Salaries and Allowances**

#### **16 Classification**

- 16.1 This Agreement covers employees engaged as Port Service Workers at the NTPS Frances Bay Marine Facility.
- 16.2 Duties for a Port Service Worker (PSW) will be specified in a DIPL Job Description.
- 16.3 Subject to clause 16.4, progression for a PSW is dependent upon obtaining the necessary skills and competencies and the availability of a promotional position.
- 16.4 An employee may only progress to PSW2.5 or PSW3.5 provided the CEO is satisfied the employee has attained and demonstrates the application of the necessary skills and competencies for the level immediately above, ie PSW2, PSW3, or PSW4, and the employee periodically performs duties as required for the relevant designation.

#### **17 Salaries**

- 17.1 The salaries for Port Service Workers will be increased as set out below:
- (a) 2.5% effective from 1 July 2018;
  - (b) 2.5% effective from the first pay period to commence on or after 1 July 2019;
  - (c) 2.5% effective from the first pay period to commence on or after 1 July 2020;
  - (d) 2.5% effective from the first pay period to commence on or after 1 July 2021.
- 17.2 Salaries are set out in Attachment A to this Agreement.
- 17.3 Payment of Salaries
- (a) Salaries are paid fortnightly in arrears.

- (b) On separation from the NTPS, all salary and monies owing to the employee will be forwarded within one week of the employee's separation.

## **18 Recovery of Overpayments**

Where an employee who has a financial debt to the Northern Territory Government in relation to their employment (such as an overpayment of salary or allowances), ceases employment before the debt is fully recovered, the balance of the debt owing may, unless otherwise agreed by the CEO, be offset against any final payments due as a result of the cessation of employment.

## **19 Superannuation**

19.1 The subject of Superannuation is dealt with extensively by Commonwealth legislation which governs the superannuation rights and obligations of the Parties.

19.2 The Commissioner must make superannuation contributions on behalf of an employee in order to satisfy Superannuation Guarantee requirements of the governing legislation.

19.3 The Commonwealth Superannuation Scheme (CSS), Northern Territory Government and Public Authorities Superannuation Scheme (NTGPASS) and the Northern Territory Supplementary Superannuation Scheme (NTSSS) are classified as exempt public sector superannuation schemes under the *Superannuation Industry (Supervision) Act 1993*. The superannuation legislation treats exempt public sector superannuation schemes as complying funds for concessional taxation and superannuation guarantee purposes.

*Note: The CSS was closed to new members from 1 October 1986 and both NTGPASS and NTSSS were closed to new members from 10 August 1999. Employees employed before these dates may be members of the CSS, NTGPASS and NTSSS*

19.4 Employees who commenced after 10 August 1999, or who have ceased to be a member of the CSS, NTGPASS or NTSSS, can choose a complying superannuation fund to receive contributions on their behalf.

19.5 Employees who do not nominate a superannuation fund will become members of the current default superannuation fund.

## **20 Salary Sacrifice**

20.1 Salary Sacrifice for Employer Superannuation

Under this Agreement an employee may choose to sacrifice salary for employer superannuation contributions into a complying superannuation fund. The arrangement is available to all employees and participation is at the discretion of an individual employee. Under the arrangement the following conditions apply:

- (a) An employee who currently has their employer superannuation guarantee contributions paid to a Choice of Fund superannuation fund (e.g. employed after 10 August 1999) may salary sacrifice into that fund or another complying superannuation fund.
- (b) An employee who currently contributes 6% to NTGPASS may salary sacrifice into NTGPASS or another complying superannuation fund.
- (c) An employee who currently contributes to the CSS is not able to salary sacrifice into that scheme but can salary sacrifice into another complying superannuation fund.

- (d) While there is no limit to the amount an employee can salary sacrifice to superannuation, the amount sacrificed plus any other employer contributions (whether real or notional), will be assessed against the Commonwealth concessional contribution cap relevant to their age. The employee is responsible for any tax and interest that may be imposed by the Australian Taxation Office or other relevant authority for them exceeding the Commonwealth concessional contribution cap.
- (e) The arrangement operates at no additional cost to the Northern Territory Government, either directly or indirectly.
- (f) The arrangement does not operate to reduce employer superannuation contributions for employees that would ordinarily be payable by the Northern Territory Government in the absence of salary sacrifice arrangements.
- (g) When an employee who is a member of the CSS, NTSSS or NTGPASS enters into a salary sacrifice for employer superannuation arrangement, the employee's annual rate of salary for superannuation purposes will remain at the rate set out in this Agreement (that is, the salary sacrifice arrangement has no effect on the employee's annual rate of salary for superannuation purposes).

## 20.2 Salary Sacrifice Packaging

Under this Agreement an employee may choose to enter in salary sacrifice packaging arrangements in compliance with the Commonwealth taxation legislation and any rules and regulations imposed by the Australian Taxation Office or other relevant authority. These salary sacrifice packaging arrangements meet the full obligations of the employer in relation to salary payments required under this Agreement. Under the arrangement the following conditions shall apply:

- (a) the arrangement operates at no additional cost to the Northern Territory Government either directly or indirectly;
- (b) salary sacrifice arrangements may cease or be modified to reflect any changes to the Commonwealth taxation legislation or rules. Any additional taxation liability arising from these changes will be met by the employee;
- (c) an employee shall meet any administration costs as part of the salary package arrangements, including any Fringe Benefit Tax liabilities that may arise;
- (d) an employee's salary for superannuation purposes and severance and termination payments shall be the gross salary which would have been received had the employee not entered into a salary sacrifice packaging arrangement; and
- (e) an employee shall provide evidence of having obtained or waived their right to obtain independent financial advice prior to entering into a salary sacrifice packaging arrangement.

## 21 Casual Employment

- 21.1 A casual loading of 25% in lieu of recreation, personal leave and public holiday entitlements is payable to a casual employee.
- 21.2 Casual employment is not meant to be used as a substitute for ongoing employment.

## **22 Allowances**

### **22.1 First Aid Allowance**

- (a) Employees designated to act as first aid officers will be required to hold a first aid certificate.
- (b) Designated employees holding a first aid certificate will be paid an allowance, as set out in Attachment A to this Agreement.
- (c) Employees who are required to hold and maintain a first aid certificate for a qualification essential to their position will be paid the allowance
- (d) The allowance will be paid fortnightly in the pay cycle.
- (e) DIPL agrees to make the necessary resources available for an employee who is to be designated as a first aid officer to gain a first aid certificate.

### **22.2 Higher Duties Allowance**

- (a) An employee may be directed to perform work of a classification that attracts a higher salary.
- (b) An employee performing higher duties for a period in excess of four consecutive working days will be paid at the higher rate for the full period.
- (c) An employee may be paid partial higher duties where it can be clearly identified that they are not undertaking all of the duties of the higher position, as assessed by the relevant manager on a case by case basis.
- (d) Notwithstanding clause 22.2(a), an employee may refuse to undertake higher duties.

### **22.3 Meal Allowance**

- (a) An employee entitled to a meal allowance will be paid an allowance, as set out in Attachment A to this Agreement.
- (b) Meal allowance(s) will be paid in each employee's pay cycle.
- (c) A meal allowance for notified or un-notified overtime will only be paid after the employee works five hours of overtime.
- (d) An additional meal allowance will be paid to an employee working overtime after each additional five hours.
- (e) This allowance applies to an operational employee when they work overtime, which qualifies for a Meal Allowance.

### **22.4 On Call Allowance**

- (a) An employee required to be on call is entitled to be paid at the on call rate set out in Attachment A.
- (b) The CEO may direct an employee to hold themselves in readiness to perform overtime.
- (c) The CEO will not approve an application for payment under this clause unless satisfied that the requirements of this clause have been complied with.

- (d) Advice of the requirement to be on call will be given:
  - (i) prior to the duty in question being undertaken, and
  - (ii) before the employee ceases ordinary time duty.

#### 22.5 Northern Territory Allowance

- (a) PSEM By-laws 26 and 49 (Northern Territory Allowance), may apply to an employee subject to the following.
  - (i) the employee must have been in receipt of the allowance on the day prior to the commencement of this Agreement;
  - (ii) the amount of the allowance for a full-time employee will be \$960 per annum; and
  - (iii) the allowance will be paid on pro-rata basis for employees employed on a part-time basis.
- (b) An employee in receipt of the Northern Territory Allowance who ceases to be eligible for the allowance, will not be eligible for the allowance in relation to any future dependency situation.

## **Part 4 Hours of Work, Breaks, Overtime, Public Holiday Work**

### **23 Notification of Work Requirements**

Improved flexibility of work allocation will be necessary to meet the fluctuations experienced in the industry. DIPL will advise employees of work requirements in a timely manner in order to minimise inconvenience, while providing the required level of service to DIPL users.

### **24 Flexibility of Hours**

- 24.1 Employees may be rostered to start early or finish late (within the span of hours), provided their roster does not exceed the maximum number of ordinary hours to be worked per week.
- 24.2 Flexibility allows for employees to be required to start early on one day or finish later on another day.
- 24.3 Flexibility is conditional on notice of changes being provided before finishing duty on the previous day and that the demand for flexibility is not changed every working day in a week.
- 24.4 Where prior knowledge of changing times is available, a roster will be drawn up giving employees advance notice of changes.

### **25 Part-time Employment**

- 25.1 An employee currently employed on a full-time basis will not be required to convert to part-time employment or transfer without their consent to enable part-time employment.
- 25.2 At the time of engagement or of conversion from full-time employment, the CEO and the employee will agree in writing on a regular pattern of part-time work (agreed hours), specifying at least the hours worked each day, which days of the week the employee will work, and the actual starting and finishing times each day.

- 25.3 Changes to hours of work originally established may only be made by mutual agreement in writing between the CEO and the employee.
- 25.4 The span of hours during which a part-time employee may work ordinary hours is the same as that applicable to a full-time employee.
- 25.5 A part-time employee will not be employed for less than 15 hours per fortnight.
- 25.6 An employee may request, and where agreed to by the CEO, may work fewer hours per fortnight than the minimum limit stipulated in clause 25.5.
- 25.7 Overtime will only be paid for work performed:
- (a) Outside the normal span of hours as specified in clause 26; or
  - (b) In excess of ordinary hours of work as specified in clause 26; or
  - (c) As call back under clause 30; or
  - (d) After working in excess of 75 hours per fortnight.
- 25.8 A part-time employee is entitled to all conditions of employment applicable to a full-time employee as specified in this Agreement, on a pro rata basis.
- 25.9 Entitlement to service increments will be on the basis of having worked the same chronological time that entitles a full-time employee to an increment, regardless of the number of hours worked. Prior to implementing new part-time employment arrangements, at the employee's request the relevant union will be advised in writing.
- 25.10 Advice will be given not less than 14 days prior to a final decision being made to implement the part-time arrangement provided that a lesser notice may be agreed with the employee, and the union at the employee's request, in a particular instance.

## **26 Ordinary Hours of Work**

- 26.1 In accordance with clause 24.1 employees may be rostered within the span of hours from 6.00am and 6.00pm.
- 26.2 Ordinary hours of work are 7.5 hours per day or 37.5 hours per week, exclusive of the meal break, worked Monday to Friday, within the span of hours.
- 26.3 Changes to regular rosters will be managed in accordance with clause 12.10.
- 26.4 Ordinary hours will normally be worked from 7.30am to 3.30pm, unless rostered otherwise to meet operational needs.

## **27 Meal and Rest Breaks**

- 27.1 An employee is entitled to two breaks of 55 minutes combined duration.
- 27.2 Meal Break
- (a) Unless authorised to do so, an employee will not work for more than five hours continuously without a meal break of at least 30 minutes.
  - (b) An employee is entitled to an unpaid 30 minute meal break.

**27.3 Rest Break**

- (a) An employee is entitled to a 25 minute rest break.
- (b) DIPL and the employee will determine the timing of breaks, based on the nature of the work at hand.

**28 Requirement to Work Reasonable Additional Hours**

28.1 Subject to this clause, DIPL may require an employee to work reasonable additional hours at the appropriate rate.

28.2 An employee may refuse to work additional hours when working the additional hours would result in the employee working unreasonable hours.

28.3 In determining whether the requirement to work additional hours is reasonable, all relevant factors must be taken into account. Considerations may include, but are not limited to:

- (a) any risk to the employee's health and safety from working the additional hours;
- (b) the employee's personal circumstances (including family responsibilities);
- (c) the operational requirements of DIPL that necessitated the requirement to work the additional hours;
- (d) any notice given by DIPL of any request or requirement to work the additional hours;
- (e) any notice given by the employee of their intention to refuse to work the additional hours;
- (f) whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, working additional hours;
- (g) the nature of the employee's role, and the employee's level of responsibility;
- (h) the usual patterns of work in the industry, or the part of an industry, in which the employee works;
- (i) whether the additional hours fall on a public holiday;
- (j) the employee's hours of work over the four weeks ending immediately before they were required or requested to work the additional hours; or
- (k) any other relevant matter

28.4 No employee will work more than 16 hours (inclusive of normal rostered working hours) within a 24 hour period, other than in exceptional circumstances or emergencies.

**29 Overtime**

**29.1 Notified Overtime**

Advice of notified overtime is:

- (a) during work hours - advice that an employee is required to:
  - (i) work overtime continuous with ordinary time the next day; or
  - (ii) work overtime continuous with ordinary time at some later date; or

(iii) return to work overtime.

(b) after an employee has left DIPL premises - advice of the requirement that is not less than 10 hours before the overtime is due to start.

## 29.2 Approval of Overtime

(a) An employee must obtain approval from the appropriate Manager before working overtime.

(b) Managers may approve overtime in accordance with the DIPL Human Resource Delegations Manual, as varied from time to time.

## 29.3 Payment for Overtime

(a) Subject to the provisions of this clause, overtime is all time worked in excess of ordinary hours or outside the span of ordinary hours.

(b) An employee who works approved overtime is entitled to payment at the rate of double time for the additional hours worked, except for call back, pursuant to clause 30.5.

(c) Overtime commences when an employee arrives at the DIPL facility.

(d) Overtime on a public holiday is paid in accordance with clause 34 – Work on a Public Holiday.

## 29.4 Overtime – part time employees

Overtime for part time employees will be in accordance with clause 25.7.

## 29.5 Minimum Payment

The minimum payment for on call or call back is:

(a) three hours Monday to Friday; and

(b) four hours on Saturdays, Sundays and Public Holidays.

## 29.6 Cancellation or Deferral of Overtime

(a) DIPL may cancel a notice of overtime at any time while the employee is actually working, or up to two hours before the overtime is due to start.

(b) Cancellation of overtime outside the two hours referred to in clause 29.6(b) attracts no additional payment.

(c) Cancellation of overtime inside the two hours referred to in clause 29.6(b) attracts a payment of two hours at double time.

(d) Notified overtime may be deferred up to a maximum period of three hours from the scheduled start of the overtime, or on one occasion only.

(e) Overtime deferral or cancellation penalties require the relevant Manager's approval prior to payment.

(f) If the deferral of overtime exceeds the three hour maximum, the overtime is deemed to be cancelled and a payment in accordance with clause 29.6(c) applies.

## 29.7 Transport of an Employee in Connection with Overtime Attendance

If an employee finishes overtime at a time when reasonable means of public transport is not available, DIPL will:

- (a) provide transport for the employee; or
- (b) reimburse the employee for reasonable expenses incurred in travelling home.

## 30 Call back

- 30.1 Subject to clause 29.1 (Notified Overtime), payment for a call back is made pursuant to clause 29.3 (Payment for Overtime) of this Agreement.
- 30.2 An employee may not be required to work the full minimum paid time if the job the employee was recalled to perform is completed within a shorter period, subject to clause 31.
- 30.3 Clause 29.3 will not apply in cases where it is customary for an employee to return to perform a job outside ordinary working hours, or where the overtime is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time.
- 30.4 Overtime worked on a call back is not regarded as overtime for the purpose of a rest period where the actual total time worked is less than three hours.
- 30.5 Time spent travelling, waiting or standing by will be recorded as time worked for the purpose of calculating the call back overtime.

## 31 Duties During a Call back

DIPL may require an employee to undertake a range of duties in any call back, provided that the duties are within the scope of the employee's skills and training.

## 32 10 Hour Break

- 32.1 Whenever reasonably practicable, DIPL will arrange overtime so that employees have at least 10 consecutive hours off duty.
- 32.2 If overtime prevents an employee from having 10 consecutive hours off duty – between the completion of one day's ordinary hours and commencement of the next day's ordinary hours – the employee will, subject to this clause, be released from duty after completion of the overtime until they have had 10 consecutive hours off duty, without loss of pay for ordinary working hours.
- 32.3 If DIPL requires an employee to either continue working or to resume duty without having had 10 consecutive hours off duty, the employee will be:
  - (a) paid double time until they are released from duty; and
  - (b) entitled to be absent from duty for 10 consecutive hours, without loss of pay for ordinary working hours during that absence.

## 33 Time-off In Lieu of Overtime

- 33.1 Requests
  - (a) An employee who has worked overtime may request time-off in lieu of overtime (TOIL) instead of payment for time worked.

- (b) Requests for TOIL must be addressed in writing to the CEO and approval will not be unreasonably withheld.
- (c) Where TOIL is granted, it will be taken at the ordinary time rate, that is one hour for each hour of additional time worked; and at a time or times agreed between DIPL and the employee.

### 33.2 Accumulation

- (a) The maximum amount of TOIL that can be accumulated is 40 hours.
- (b) TOIL must be used within eight months from the original date of entitlement.
- (c) If time off in lieu is not used within the eight months specified in clause 33.2(b), an employee will receive payment at the appropriate overtime rates calculated in accordance with the employee's salary at the time of actual payment.

## 34 Work on a Public Holiday

- 34.1 Public holiday provisions are in accordance with clause 44 (Public Holidays).
- 34.2 Work on a public holiday must be approved prior to the commencement of such work.
- 34.3 The first 7.5 hours worked on a public holiday during an employee's normal ordinary hours of work are paid at ordinary time plus time and a half, with a minimum four hours payment.
- 34.4 Approved overtime outside an employee's ordinary hours of work is paid at double time and a half.

## Part 5 Leave and Public Holidays

### 35 Recreation Leave

#### 35.1 Relationship with By-laws and other instruments

The provisions of this clause set out all entitlements in relation to recreation leave, and replace all By-law entitlements relating to recreation leave.

#### 35.2 Interpretation

For the purposes of this clause:

- (a) **month** means a calendar month.
- (b) **year** means a calendar year.
- (c) **week** means 37.5 hours or five consecutive working days, depending on the context.

#### 35.3 Recreation Leave

An employee (except for a casual employee) is entitled to:

- (a) four weeks paid recreation leave per year;
- (b) an additional two weeks paid recreation leave per year if the employee commenced with the Darwin Port Corporation or the NTPS before 1 January 2001; or
- (c) an additional one week paid recreation leave per year if the employee commenced with the Darwin Port Corporation or the NTPS on or after 1 January 2001.

#### 35.4 Accrual of Leave

- (a) An employee's entitlement to paid recreation leave accrues progressively during a year of service according to the employee's ordinary hours of work.
- (b) If an employee takes unpaid leave that does not count as service, leave will not accrue for that period.

*(Note: An employee who has taken unpaid leave that does count for service will accrue leave for that period.)*

- (c) A part-time employee will accrue recreation leave on a pro-rata basis in accordance with their agreed hours of work.
- (d) An employee who has worked for only part of a year will accrue recreation leave on a pro-rata basis in accordance with their ordinary hours of work or, agreed hours of work if a part-time employee.
- (e) Recreation leave accumulates from year to year.

#### 35.5 Granting of Leave

The CEO may, on application in writing by the employee, grant leave for recreational purposes, subject to the agency's operational requirements.

#### 35.6 Public Holidays

- (a) Where a public holiday occurs during recreation leave (including recreation leave at half pay), the employee is entitled to their full rate of pay that they would have been paid had the public holiday fallen on a day that the employee was not on recreation leave, and
- (b) the period of the public holiday is not deducted from the employee's recreation leave entitlement.

#### 35.7 Excess Leave

Where an employee has accrued recreation leave entitlements in excess of two years (or three years in the case of a compulsory transferee), the CEO may, in consideration of the employee's circumstances and past leave applications, on giving a minimum of two months notice, direct the employee to take recreation leave and the employee must take that leave within a three month period, or a period agreed between the parties, to reduce the accrued leave balance to the equivalent of two years (or three years in the case of a compulsory transferee) of entitlements.

#### 35.8 Cash-out of Leave

An employee may apply, in writing, to the CEO to cash-out an amount of their available recreation leave provided that:

- (a) the employee's remaining accrued entitlement to paid recreation leave is not less than four weeks;
- (b) each cashing out of a particular amount of paid recreation leave must be by a separate agreement in writing between the CEO and employee;
- (c) the employee must be paid at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone; and

- (d) a minimum of five days to be cashed-out on any occasion.

#### 35.9 Minimum Period of Recreation leave

Unless agreed beforehand and only in exceptional circumstances, the minimum period of recreation leave will not be less than one week.

#### 35.10 Illness During Leave

Where an employee becomes ill during a period of recreation leave and the illness is supported by documentary evidence as set out in clause 39 (Personal Leave), the CEO may grant sick leave and authorise the equivalent period of recreation leave to be re-credited.

#### 35.11 Payment in lieu

- (a) Where an employee ceases employment, other than by death, the employee is entitled to payment in lieu of any available recreation leave entitlement.
- (b) Where an employee dies, or after consideration of all the circumstances the CEO has directed that an employee will be presumed to have died on a particular date, the CEO may authorise payment in lieu of the employee's remaining recreation leave entitlement:
  - (i) to the employee's legal personal representative; or
  - (ii) when authorised by the employee's legal personal representative, to another person or persons at the CEO's discretion.

### **36 Recreation Leave Loading**

#### 36.1 Entitlement

In addition to normal salary payment for recreation leave, an employee is entitled to an recreation leave loading on 1 January each year. The amount of the loading will be the lesser of:

- (a) 17.5% of the value of the recreation leave accrued over the previous year based on the employee's salary, including allowances in the nature of salary; or
- (b) a maximum payment the equivalent of the Australian Statistician's Northern Territory male average weekly total earnings for the June quarter of the previous year.

#### 36.2 Payment of Leave Loading

- (a) An employee may apply for accrued recreation leave loading on periods of recreation leave of at least one week.
- (b) On cessation of employment, an employee is entitled to payment in lieu of any unpaid leave loading, plus a pro rata payment of the leave loading entitlement at 1 January of the year of cessation for each completed month of service.
- (c) Where an employee commenced and ceased employment in the same year, the employee's salary for purposes of calculation of the leave loading at clause 36.1 will be the salary payable had the employee been employed on 1 January of that year.

#### 36.3 Automatic Cash-out of Leave Loading

Where an employee has two or more recreation leave loadings, the following automatic payment provisions will apply:

- (a) the common cash-up date for the automatic payment of recreation leave loading is the second payday in January of each year or in any case by the end of January each year;
- (b) an employee with two accrued recreation leave loadings as at 1 January, will have one recreation leave loading automatically paid on the common cash-up date of that year;
- (c) an employee with three or more accrued recreation leave loadings as at 1 January, will have two recreation leave loadings automatically paid on the common cash-up date of that year;
- (d) recreation leave loadings will be paid in the order of accrual; and
- (e) recreation leave loadings will continue to be taxed in accordance with current ATO taxation legislation applicable to the payment of recreation leave loadings, except that recreation leave loadings automatically paid on the common cash-up date will be fully taxed.

### **37 Recreation Leave at Half Pay**

37.1 An employee may apply to utilise one or more weeks of their recreation leave at half pay, in order to double their period of leave.

37.2 An employee cannot utilise recreation leave at half pay whilst under a purchased leave arrangement.

37.3 Where an employee utilises an amount of recreation leave at half pay:

- (a) leave entitlements will accrue as if the employee had utilised the amount of recreation leave at full pay.

*For example, if an employee utilises two weeks of recreation leave over a period of four weeks at half pay, all leave entitlements will accrue over the first two weeks of leave, as if the employee was on recreation leave with full pay, and no leave entitlements will accrue over the final two weeks of recreation leave on half pay.*

- (b) salary and allowances will be paid at 50% of the usual rate, for the entire period of half pay.

37.4 A period of recreation leave at half pay does not break continuity of service.

37.5 The second half of the period of leave at half pay will not count as service and service based entitlements will be adjusted accordingly.

*For example: If an employee utilises two weeks recreation leave over a period of four weeks at half pay, service based entitlements (e.g. personal leave, long service leave, paid parental leave) will be deferred by two weeks.*

### **38 Purchase of Additional Leave (Purchased Leave)**

38.1 Entitlement to purchased leave

- (a) An employee who has completed 12 months continuous service may, with approval of the CEO, purchase between one to six weeks additional leave per year with a corresponding reduction in the number of working weeks.

*For example:*

*Additional one week of purchased leave = 6 or 7 weeks total leave.*

*Additional two weeks of purchased leave = 7 or 8 weeks total leave.*

*Additional three weeks of purchased leave = 8 or 9 weeks total leave.  
Additional four weeks of purchased leave = 9 or 10 weeks total leave.  
Additional five weeks of purchased leave = 10 or 11 weeks total leave.  
Additional six weeks of purchased leave = 11 or 12 weeks total leave.*

- (a) An employee cannot access recreation leave at half pay whilst under a purchased leave arrangement.

### 38.2 Method of purchase

- (a) Additional leave must be purchased in advance and must be used within 6 months after payment is completed.
- (b) An employee purchasing additional leave will pay an amount equal to salary for the additional leave over a 12 month period. Payments will be deducted from the employee's gross fortnightly salary.

*For example: If an employee earns an annual gross salary of \$47,006 or \$1,802.15 per fortnight and purchases an additional four weeks leave (two fortnightly pays - \$3604.30), their fortnightly deductions over a 12 month period (26 pays) would be:*

- *\$138.80 for the first deduction; and*
- *\$138.62 for the remaining 25 deductions.*

*Note - DCIS payroll is responsible for calculating actual deductions associated with an application for purchased leave.*

- (c) The employee's deductions for purchased leave will be increased in accordance with salary increases applying during the period of the Agreement.
- (d) A period shorter than 12 months for purchasing additional leave may be implemented with the CEO's approval.

### 38.3 Administrative

- (a) For the period over which payments are being deducted from an employee's salary to fund a purchased leave arrangement, compulsory employer superannuation contributions are calculated on the salary that the employee was paid:
- (i) prior to purchased leave deductions being made in the case of NTGPASS and CSS employees; and
  - (ii) after purchased leave deductions being made in the case of Choice of Fund employees.
- (b) Purchased leave counts as service for all purposes.
- (c) Purchased leave does not attract a leave loading.
- (d) Before accessing additional leave, an employee who has purchased additional leave will be required to exhaust all available:
- (i) recreation leave entitlements;
  - (ii) long service leave entitlements, except where the employee has satisfied the conditions of By-law 8.3; and
  - (iii) provided that such requirement is waived in circumstances where the employee endeavours to exhaust available leave entitlements, but is prevented from doing so due to the operational requirements of DPC.

- (e) If an employee does not use their purchased leave within the agreed period, the approved leave lapses and the employee will be reimbursed monies paid.
- (f) Purchased leave must be taken in minimum periods of one week.
- (g) Where a public holiday falls within a period of purchased leave the period of the public holiday is not deducted from the Employee's purchased leave balance.

#### 38.4 Independent Advice

Prior to entering into or ceasing a purchased leave arrangement, an employee should seek, at their own expense, independent advice regarding:

- (a) his or her financial situation;
- (b) the potential impact on taxation; and
- (c) the potential impact on superannuation.

#### 38.5 Agreement

- (a) A purchased leave agreement must be in writing.
- (b) A purchased leave agreement is non-renewable. On the expiry of an existing Agreement, the employee may lodge a new application for approval by the CEO.

#### 38.6 Cessation of purchased leave

- (a) A purchased leave arrangement may cease in the following ways:
  - (i) at the request of the employee on the giving of four weeks written notice to the CEO, provided that approval of the request is at the discretion of the CEO, based on operational and other relevant considerations;
  - (ii) at the initiative of the CEO, on the giving of three months written notice to the employee, along with reasons for the cessation;
  - (iii) the employee ceases employment with the NTPS; or
  - (iv) the employee moves to a new work area within DIPL, or to another agency (unless the new work area or agency agrees to continue the arrangement).
- (b) Where a purchased leave arrangement ceases in accordance with clause 38.6(a), the employee will be reimbursed a lump sum payment of monies paid within two months of the date of cessation. Provided that, where the employee has already commenced the period of purchased leave, they will be reimbursed monies paid on a pro-rata basis, in accordance with the portion of monies relating to the unused period of leave.

### 39 Personal Leave

#### 39.1 Relationship with By-laws and other instruments

The provisions of this clause set out all entitlements in relation to personal leave (sick/carer's leave), and replace all By-law entitlements relating to personal leave (sick/carer's leave).

### 39.2 General

An Employee may, subject to notice and evidence requirements, take personal leave if the leave is:

- (a) because the employee is not fit for work because of a personal illness or personal injury affecting the employee (sick leave); or
- (b) to provide care or support to a member of the employee's immediate family or household who requires such care or support because of:
  - (i) a personal illness or personal injury affecting the member (carer's leave); or
  - (ii) an unexpected emergency affecting the member (carer's leave).

### 39.3 Definitions

For the purpose of this clause:

- (a) **child**: see clause 40.3(a);
- (b) **de facto partner**: see clause 40.3(b);
- (c) **immediate family**: see clause 40.3(c);
- (d) **medical certificate** means a certificate signed by a registered health practitioner;
- (e) **personal leave year** means 12 months service from the anniversary of commencement or 12 months service since receiving the last personal leave entitlement;
- (f) **registered health practitioner** means a health practitioner registered, or licensed, as a health practitioner (or as a health practitioner of a particular type) under a law of a State or Territory that provides for the registration or licensing of health practitioners (or health practitioners of that type); and
- (g) **spouse**: see clause 40.3(d).

### 39.4 Paid Personal Leave Entitlement

- (a) An ongoing full-time employee is entitled to:
  - (i) three weeks paid personal leave on commencement of employment; and
  - (ii) three weeks paid personal leave on each anniversary of the employee's commencement date, subject to clause 39.4(g).
- (b) A fixed period full-time employee is entitled to:
  - (i) two days paid personal leave on commencement of employment;
  - (ii) up to one week of paid personal leave for each period of two months service provided that the total leave does not exceed three weeks within the first 12 months of service; and
  - (iii) three weeks paid personal leave annually on the anniversary of the employee's commencement date.
- (c) Where an employee is appointed on an ongoing basis immediately following a period of fixed period employment, the provisions of clause 39.4(a) will be taken to have

applied from the date of commencement of fixed period employment, and the employee's personal leave record will be adjusted accordingly.

- (d) A part time employee is entitled to paid personal leave on a pro-rata basis in accordance with the employee's agreed hours of work.
- (e) Casual employees are not entitled to paid personal leave.
- (f) Paid personal leave is cumulative.
- (g) An employee's paid personal leave entitlement will be deferred by any period of:
  - (i) personal leave where the absence is without pay and not covered by documentary evidence as required in clause 39.8;
  - (ii) unauthorised absence; or
  - (iii) leave without pay that does not count as service.
- (h) An employee may elect to access personal leave at half pay where the absence is at least one day.

#### 39.5 Unpaid carer's leave – casual employees

- (a) Casual employees are entitled to two days unpaid personal leave for caring purposes for each permissible occasion, subject to the requirements of clauses 39.7 and 39.8.
- (b) Unpaid carer's leave may be taken as a single unbroken period of up to two days or any separate periods as agreed between the employee and the CEO.
- (c) The CEO may grant an amount of unpaid carer's leave in excess of the amount specified in clause 39.5(a).

#### 39.6 Additional Personal Leave

Where paid personal leave credits are exhausted:

- (a) Unpaid carer's leave
  - (i) An employee is entitled to access up to two days unpaid carer's leave on each occasion that the employee requires carer's leave.
  - (ii) Carer's leave may be taken as a single unbroken period of up to two days or any separate periods as agreed between the employee and the CEO.
  - (iii) The CEO may grant an amount of unpaid carer's leave in excess of the amount specified in clause 39.6(a)(i).
- (b) An employee may apply for and the CEO may grant, after considering all the circumstances:
  - (i) additional personal leave on half pay, which cannot be converted to full pay; or
  - (ii) access to recreation leave, where an extended period of absence is involved, provided the period of leave taken will be deemed to be personal leave for all other purposes under the provisions of this clause.
- (c) Additional leave utilised under clause 39.6 is subject to the notice and evidence requirements in clauses 39.7 and 39.8.

### 39.7 Notice Requirements

An employee must make all reasonable effort to advise their manager as soon as reasonably practicable on any day of absence from their employment. If it is not reasonably practicable for the employee to give prior notice of absence due to circumstances beyond the employee's control, the employee will notify their manager by telephone of such absence at the first opportunity of such absence.

### 39.8 Documentation Requirements

- (a) An employee must apply for personal leave in the form required by the CEO as soon as it is reasonably practicable for the employee to make the application.
- (b) Subject to clause 39.8(d) to assist the CEO to determine if the leave taken, or to be taken, was or is for one of the reasons set out in clause 39.2(a) (sick leave), an employee must, as soon as reasonably practicable provide the CEO with the following documentary evidence:
  - (i) a medical certificate from a registered health practitioner; or
  - (ii) if it is not reasonably practicable for the employee to access a registered health practitioner to obtain a medical certificate for reasons that include because they reside in a remote or regional locality or for any other reason approved by the CEO, a statutory declaration may be submitted in writing detailing:
    - A. the reasons why it was not practicable to provide a medical certificate; and
    - B. the reasons for and length of the absence.
- (c) Subject to clause 39.8(d), to assist the CEO to determine if the leave taken, or to be taken, was or is for one of the reasons set out in clause 39.2(b) (carer's leave), an employee must, as soon as reasonably practicable, provide the CEO with
  - (i) evidence which may include a medical certificate from a registered health practitioner stating the condition of the person concerned and that the condition requires the employee's care or support to the extent that they will not be able to attend for duty; or
  - (ii) other relevant documentary evidence stating the unexpected emergency, and that this unexpected emergency required the employee's care or support.
  - (iii) A CEO may request further additional evidence about the requirement to provide care or support where the employee is on personal leave.
- (d) An employee may access personal leave without providing documentary evidence, up to a maximum of five days or the equivalent number of hours of duty per personal leave year, provided that no more than three of those days may be consecutive working days or the equivalent number of hours of duty.

### 39.9 Personal leave whilst on other forms of leave

- (a) Subject to the requirements of clauses 39.7 and 39.8, and the recreation leave and long service leave provisions, an employee may access paid personal leave during periods of recreation and long service leave.
- (b) Where recreation leave or long service leave had been previously approved on half pay, any personal leave granted in lieu shall also be at half pay.

### 39.10 Medical examination at the direction of the CEO

- (a) The CEO may direct an employee to attend an examination by a registered health practitioner where:
  - (i) an employee is frequently or continuously absent, or expected to be so, due to illness or injury;
  - (ii) it is considered that an employee's efficiency may be affected due to illness or injury;
  - (iii) there is reason to believe that an employee's state of health may render the employee a danger to themselves, other employees or the public; or
  - (iv) under Part 7 (Employee Performance and Inability) or Part 8 (Discipline) of the PSEM Act.
- (b) An employee directed to attend a medical examination in accordance with clause 39.10(a) who is:
  - (i) absent on approved sick leave covered by documentary evidence, is entitled to continue on sick leave until the findings of the medical examination are known; or
  - (ii) an employee other than one to which clause 39.10(a)(i) refers, is deemed to be on duty from the time of the direction until the findings of the examination are known;and the grant of sick leave after the date of examination or the employee's return to duty will be subject to the findings of the medical examination.
- (c) The CEO will not grant sick leave where the employee fails to attend a medical examination without reasonable cause, or where illness or injury is caused through misconduct. Under these circumstances the CEO may initiate disciplinary action.

### 39.11 Infectious disease

Where an employee produces documentary evidence that:

- (a) the employee is infected with, or has been in contact with, an infectious disease as defined under the *Notifiable Diseases Act*; and
- (b) by reason of any law of the Territory or any State or Territory of the Commonwealth is required to be isolated from other persons,

the CEO may grant

- (c) sick leave for any period during which the employee actually suffers from illness; or
- (d) recreation leave in relation to any period during which the employee does not actually suffer from illness.

### 39.12 War service

The Commissioner will determine the conditions under which personal leave may be granted to an employee where an illness or injury is directly attributed to the employee's war service, provided satisfactory medical evidence is produced.

### 39.13 Personal leave – Workers Compensation

An employee is not entitled to paid personal leave for a period during which the employee is absent from duty because of personal illness, or injury, for which the employee is receiving compensation payable under Northern Territory workers compensation legislation.

## 40 Compassionate Leave

### 40.1 Relationship with By-laws and other instruments

The provisions of this clause set out all entitlements in relation to compassionate leave, and replace all By-law entitlements relating to compassionate leave.

### 40.2 Except where otherwise stated in this clause, this clause does not apply to employees engaged on a casual basis.

### 40.3 Definitions

For the purpose of this clause:

- (a) **child** means birth, an adopted, step or adult child;
- (b) **de facto partner** means:
  - (i) a person who, although not legally married to the employee, lives with the employee in a relationship as a couple on a genuine domestic basis (whether the employee and the person are of the same sex or different sexes); and
  - (ii) includes a former de facto partner of the employee.
- (c) **immediate family** means:
  - (i) a spouse, de facto partner, child, parent, grandparent, grandchild, or sibling of the employee; or
  - (ii) a child, parent, grandparent, grandchild, or sibling of a spouse or de facto partner of the employee.
- (d) **spouse** includes a former spouse.

### 40.4 Subject to clauses 40.5 and 0 in the event of the death of, or an illness or injury posing a serious threat to the life of an employee's immediate family or household member an employee is entitled to:

- (a) three days paid compassionate leave on each occasion; or
- (b) two days unpaid compassionate leave in the case of a casual employee.
- (c) Such leave may be taken as a block, in broken periods of at least one day, or as agreed between the employee and the CEO.
- (d) The CEO may grant an additional period of unpaid compassionate leave.

### 40.5 Notice Requirements

An employee must provide the CEO with notice of the taking of leave under this clause as soon as practicable (which may be a time after the leave has started), and must advise of the period, or expected period, of the leave.

#### 40.6 Documentation Requirements

The CEO may require an employee to produce documentary evidence of the need for compassionate leave.

### 41 Parental Leave

#### 41.1 Relationship with By-law, National Employment Standards and other instruments.

- (a) This clause sets out all entitlements in relation to parental leave, and replaces all By-law provisions relating to maternity, paternity/partner, and adoption leave.
- (b) This clause is to be read in conjunction with the National Employment Standards to the extent that if this clause provides a lesser entitlement than the National Employment Standards, the National Employment Standards will apply.

#### 41.2 Application

Full-time, part-time and eligible casual employees are entitled to parental leave under this clause if the leave is associated with:

- (a) the birth of a child of the employee or the employee's spouse (includes a child born of a surrogacy arrangement); or
  - (b) the placement of a child with the employee for adoption; and
- the employee has or will have a responsibility for the care of the child.

#### 41.3 Definitions

For the purpose of this clause:

- (a) **appropriate safe job** means a safe job that has:
  - (i) the same ordinary hours of work as the employee's present position; or
  - (ii) a different number of ordinary hours agreed to by the employee.
- (b) **child** means:
  - (i) in relation to birth-related leave, a child (or children from a multiple birth) of the employee or the employee's spouse;
  - (ii) in relation to adoption-related leave, a child (or children) who will be placed permanently with an employee.
- (c) **day of placement** refers to the adoption of a child and means the earlier of the following days:
  - (i) the day on which the employee first takes custody of the child for the adoption;
  - (ii) the day on which the employee starts any travel that is reasonably necessary to take custody of the child for the adoption.
- (d) **de facto partner** means a person who, although not legally married to the employee, lives with the employee in a relationship as a couple on a genuine domestic basis (whether the employee and the person are of the same sex or different sexes); and includes a former de facto partner of the employee.

- (e) **eligible casual employee** means a casual employee engaged by the employer on a regular and systemic basis for a sequence of periods of employment during a period of:
  - (i) at least 12 months; or
  - (ii) less than 12 months, provided that the employee has undertaken a previous engagement with the employer, and
    - A. the employer terminated the previous engagement;
    - B. there was not more than three months break between the two engagements; and
    - C. the length of the two engagements is at least 12 months.
- (f) **employee couple** means a couple who are accessing the benefits of clause 41.14 both of whom are NTPS employees and have completed a minimum of 12 months continuous service and whom are both eligible for paid parental leave whether under primary caregiver parental leave or the partner leave provisions.
- (g) **medical certificate** means a certificate signed by a medical practitioner.
- (h) **medical practitioner** means a person registered, or licensed, as a medical practitioner under a law of a State or Territory that provides for the registration or licensing of medical practitioners.
- (i) **primary caregiver** means the person who is the primary carer of a newborn or newly adopted child at the time of birth or adoption and who continues to be the primary carer immediately following birth or day of placement. The primary carer is the person who meets the child's physical needs more than anyone else. Only one person can be the child's primary carer. In most cases, the primary carer will be the birth mother of a newborn or the initial primary carer of a newly adopted child.
- (j) **spouse** includes a de facto partner or former spouse.

#### 41.4 General Conditions

- (a) Except where otherwise stated in this clause, parental leave is available to only one parent at a time in a single continuous period.
- (b) Weekends, public holidays, programmed days off and rostered days off are part of parental leave and do not extend the period of leave.
- (c) During a period of parental leave relating to the birth or adoption of a child an employee may require parental leave for the birth or adoption of a subsequent child. An employee can elect, subject to notice and evidence requirements, to commence another period of parental leave relating to the subsequent child in accordance with this clause.

#### 41.5 Types of Parental Leave

Parental leave entitlements are summarised in the following table:

	Paid Leave	Unpaid Leave	Total	Refer Clause
<b>Primary Caregiver Parental Leave – commences before or from birth or day of placement</b>				
Less than 12 months continuous service or eligible casual employee	0	52 weeks	52 weeks	41.6(b)
At least 12 months and less than 5 years continuous service	14 weeks (or 28 weeks half pay)	142 weeks	156 weeks (3 years)	41.6(c)(i)
5 or more years continuous service	18 weeks (or 36 weeks half pay)	138 weeks	156 weeks (3 years)	41.6(c)(ii)
<i>Pro rata paid primary caregiver parental leave</i>				
5 years continuous service achieved during first 18 weeks of parental leave	14 weeks + pro rata paid leave applicable after reaching 5 years continuous service (up to 4 weeks)	142 weeks minus any pro rata paid leave	156 weeks (3 years)	41.6(c)(iii)
12 months continuous service achieved during first 14 weeks of parental leave	Pro rata paid leave applicable after reaching 12 months continuous service (up to 14 weeks)	52 weeks minus any pro rata paid leave	52 weeks	41.6(d)
<b>Partner Leave</b>				
<i>Up to 8 weeks leave associated with time of birth/adoption (or in separate periods in first 12 months) where employee's partner is primary carer at time of birth/adoption</i>				
Less than 12 months continuous service or eligible casual employee	0	8 weeks	8 weeks	41.7(b)(i)
At least 12 months and less than 5 years continuous service	1 week (or 2 weeks at half pay)	7 weeks	8 weeks	41.7(b)(ii)
5 or more years continuous service	2 weeks (or 4 weeks at half pay)	6 weeks	8 weeks	41.7(b)(iii)
<i>Longer partner leave: up to 3 years or 12 months – not primary carer – may commence at a time after birth or day of placement – must end within 3 years or 24 months of birth/adoption (whichever is applicable)</i>				
Less than 12 months continuous service or eligible casual employee	0	52 weeks	52 weeks	41.7(c)(i)
At least 12 months continuous service	0	156 weeks (3 years)	156 weeks (3 years)	41.7(c)(ii)

	Paid Leave	Unpaid Leave	Total	Refer Clause
<i>In relation to Partner Leave an employee with at least 12 months continuous service may be eligible for some paid leave during the three year period. (See clauses 41.7(d) and 41.7(e)).</i>				
<b>Pre-Adoption Leave - All employees (including casuals)</b>	-	2 days	2 days	41.9
<b>Special Maternity Leave</b>	Refer clause 41.10			
<b>Paid no safe job leave - Full-time / part-time employees and eligible casual employees</b>	The 'risk period' as per medical certificate	0	The 'risk period' as per medical certificate	41.13(a)
<b>Unpaid no safe job leave - Casual employees</b>	0	The 'risk period' as per medical certificate	The 'risk period' as per medical certificate	41.13(b)

41.6 Primary Caregiver Parental Leave

- (a) Only one parent can receive primary caregiver parental leave entitlements in respect to the birth or the adoption of their child. An employee cannot receive primary caregiver parental leave entitlements:
- (i) if their spouse is, or will be, the primary caregiver at, and immediately following, the time of the birth or day of placement of their child;
  - (ii) if the employee has taken, or is eligible for, partner leave entitlements under clause 41.7 in relation to their child; or
  - (iii) if they are a casual employee, other than an eligible casual employee.

*Note: It is not intended for an employee to access primary caregiver leave where they are providing spousal support in circumstances where their spouse, the birth giver, had a caesarean section. There will be exceptions, for example, where the birth giver suffers a post-natal medically certified condition that prevents them from caring for their new born child, but not where they voluntarily choose not to.*

- (b) An employee with less than 12 months continuous service at the time of commencing parental leave, or an eligible casual employee, who will be the primary caregiver of their child is entitled to up to 52 weeks unpaid parental leave.
- (c) An employee who has completed at least 12 months continuous service at the time of commencing parental leave and who will be the primary caregiver of their child is entitled to up to three years primary caregiver parental leave, comprising:
- (i) where continuous service completed at the time of commencing parental leave is at least 12 months and less than five years: 14 weeks paid parental leave and 142 weeks unpaid parental leave; or
  - (ii) where continuous service completed is five or more years at the time of commencing parental leave: 18 weeks paid parental leave and 138 weeks unpaid parental leave; or
  - (iii) where the employee will achieve five years continuous service (the qualifying period) during the first 18 weeks of their parental leave: the first 14 weeks will be paid and the portion of leave (up to 4 weeks) after the end of the qualifying

period will be paid. Any remaining balance, up to three years, will be unpaid parental leave.

- A. The employee is not entitled to receive more than 18 weeks paid parental leave.
- B. With the exception of any period during which the employee is engaged in outside employment during normal working hours, in the first 18 weeks from commencement of primary caregiver parental leave any unpaid parental leave taken will count as service to enable an employee to access the pro rata paid leave in clause 41.6(c)(iii).

*For example: During their primary caregiver parental leave an employee achieves five years continuous service at the end of week 15. The employee is entitled to paid parental leave for the first 14 weeks, unpaid leave in week 15, and three weeks paid leave in weeks 16 to 18. The balance of 139 weeks primary caregiver parental leave available to the employee will be unpaid.*

- (d) An employee who will achieve 12 months continuous service (the qualifying period) during the first 14 weeks of their parental leave and who will be the primary caregiver of their child is entitled to up to 52 weeks of parental leave, comprising:
  - (i) unpaid parental leave from commencement of parental leave until the time the employee has achieved 12 months continuous service; and
  - (ii) paid parental leave for any period after the qualifying period and up to 14 weeks from the commencement of parental leave; and
  - (iii) unpaid parental leave, up to 52 weeks, for the remaining balance.
  - (iv) The employee is not entitled to receive more than 14 weeks paid leave.
  - (v) With the exception of any period during which the employee is engaged in outside employment during normal working hours, in the first 14 weeks from commencement of primary caregiver parental leave any unpaid parental leave taken will count as service to enable the employee to access the pro rata paid leave in clause 41.6(d).

*For example: During their primary caregiver parental leave an employee achieves 12 months continuous service at the end of week three. The employee is entitled to unpaid parental leave for the first three weeks, 11 weeks paid parental leave in weeks four to 14. The balance of 38 weeks primary caregiver parental leave available to the employee will be unpaid.*

- (e) Commencement of Primary Caregiver Parental Leave
  - (i) An employee who is pregnant may commence primary caregiver parental leave at any time within six weeks immediately prior to the expected date of birth of the child. The period of parental leave must commence no later than the date of the birth of the child.
  - (ii) An employee who is adopting a child may commence primary caregiver parental leave at any time in the two weeks before the day of placement.
  - (iii) In all other cases, primary caregiver parental leave commences on the date of birth or day of placement of the child.
- (f) Where an employee's child dies during a period of primary caregiver leave, the employee may continue on leave for a maximum period of 52 weeks from the date of

commencement of leave, unless the employee elects to resume duty, in which case the provisions of clause 41.19 apply.

- (g) An employee is not entitled to primary caregiver leave unless the notice and evidence requirements in clause 41.8 have been complied with.

#### 41.7 Partner Leave

- (a) Partner leave is available to an employee who will have a parental responsibility for the care of their child but who is not the primary caregiver. Subject to applicable notice and evidence requirements, an employee may access:
  - (i) up to eight weeks partner leave within the first 12 months of the birth or adoption of their child, taken at the same time employee's spouse may be on leave, which can be taken in one block or broken into separate periods (refer clause 41.7(b)); and
  - (ii) where employee requires a longer period of partner leave, up to 12 months or 3 years depending on the employee's years of continuous service (refer clause 41.7(c)).

*Note: The longer period of partner leave must be taken in a single continuous period unless the employee is accessing the combined parental leave provisions.*

#### *Eight Weeks Partner Leave*

- (b) An employee is entitled to up to 8 weeks partner leave, comprising:
  - (i) where continuous service is less than 12 months at the time of commencing partner leave, or an eligible casual employee: eight weeks unpaid partner leave; or
  - (ii) where continuous service completed at the time of commencing partner leave is at least 12 months and less than five years: one week paid partner leave and seven weeks unpaid partner leave; or
  - (iii) where continuous service completed is five or more years at the time of commencing partner leave: two weeks paid partner leave and six weeks unpaid partner leave.
  - (iv) The eight week partner leave entitlements:
    - A. are an exception to the rule that parental leave is to be available to only one parent at a time in a single continuous period;
    - B. are to be taken in the first 12 months from date of birth or day of placement of the child;
    - C. may commence one week prior to the expected date of birth of the child or the time of placement in the case of adoption. The CEO and employee may agree to alternative arrangements regarding commencement of partner leave;
    - D. can be taken in separate periods, but each block of partner leave must not be less than two weeks, unless the CEO agrees otherwise;
    - E. requires the employee to give notice to the CEO at least 10 weeks before first starting the leave, and at least four weeks notice before starting any

subsequent period of leave. If that is not practicable, as soon as practicable, which may be a time after the leave has started; and

F. the notice must specify the intended start and end dates of the leave.

*12 Months or Three Years Partner Leave (Longer Partner Leave)*

- (c) An employee is entitled to a period of longer partner leave as follows:
  - (i) An employee with less than 12 months continuous service at the time of commencing parental leave, or an eligible casual employee, up to 12 months unpaid parental leave, provided such leave must end within 24 months of the date of birth or day of placement of their child.
  - (ii) An employee with at least 12 months continuous service at the time of commencing parental leave up to three years unpaid parental leave, provided such leave must end within three years of the date of birth or day of placement of their child.
  - (iii) Partner leave may commence at a date later than the date of birth or day of placement of their child but must not extend beyond specified limits under this clause.
  - (iv) An employee is not entitled to the longer partner leave unless the notice and evidence requirements in clause 41.8 have been complied with.
- (d) An employee, not entitled to Combined Parental Leave in clause 41.14, may be entitled to have a portion of their unpaid longer partner leave under clause 41.7(c)(ii) paid, subject to the following:
  - (i) the employee's spouse was the primary caregiver at and immediately following the time of the birth or placement of the child; and
  - (ii) the employee's spouse has ceased to be the primary caregiver (eg returned to work) before the child is 14 weeks old or within 14 weeks from placement in the case of adoption;
    - A. The reference to '14 weeks' in clause 41.7(d)(ii) to be read as '18 weeks' where an employee has five or more years continuous service at the time of commencing longer partner leave.
  - (iii) as a consequence of the employee's spouse no longer able to be the primary caregiver (eg returning to work), the employee has taken over caring responsibilities for the child such that the employee is the person who now meets the child's physical needs more than anyone else;
  - (iv) the notice and evidence requirements for taking longer partner leave in clause 41.7(d) have been complied with; and
  - (v) the amount of paid leave available is as per clause 41.7(e).
- (e) An employee eligible for paid longer partner leave under clause 41.7(d) may access a period of paid leave as follows:
  - (i) where continuous service completed at the time of commencing partner leave is at least 12 months and less than five years: the period starting from the date the employee took over caring responsibilities from the employee's spouse up to a maximum of 14 weeks from the birth or placement of the child; or

- (ii) where continuous service completed is five or more years at the time of commencing partner leave: the period starting from the date the employee took over caring responsibilities from the employee's spouse up to a maximum of 18 weeks from the birth or placement of the child.

*For example: An employee's spouse, who is not an NTPS employee, gives birth to a child and is off work for six weeks after the child is born as the primary caregiver. The NTPS employee (the child's other parent) has over five years of continuous service and takes two weeks paid partner leave when the baby is born. When the child is six weeks old the employee's spouse returns to her non-NTPS job and the NTPS employee takes longer partner leave to take over care of the couple's child. NTPS employee would be paid for 12 weeks of the longer partner leave after providing evidence showing that their spouse had ceased to be primary caregiver. This payment covers the period from the seventh to the eighteenth week following the birth of the child.*

#### 41.8 Notice and Evidence Requirements

- (a) An employee must give the CEO the following notice and evidence in relation to parental leave under clause 41.6 (primary caregiver) or clause 41.7(c) (longer partner leave):
  - (i) At least 10 weeks written notice of the intention to take parental leave, including the proposed start and end dates.
  - (ii) At least four weeks before the intended commencement of parental leave, the employee must confirm in writing the intended start and end dates of the parental leave, or advise the CEO of any changes to the notice provided in clause 41.8(a)(i), unless it is not practicable to do so.
    - A. At this time, the employee must also provide a statutory declaration stating that the employee will become either the primary caregiver (relates to primary caregiver leave) or have a responsibility for the care of the child (relates to partner leave), as applicable, at all times whilst on leave.
  - (iii) The employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement or placement occurring earlier than the expected date or in other compelling circumstance. In these circumstances the notice and evidence requirements of this clause should be provided as soon as reasonably practicable.
- (b) An employee who has given the CEO notice of the taking of parental leave must give the CEO evidence that would satisfy a reasonable person:
  - (i) if the leave is birth-related leave – of the date of birth, or the expected date of birth, of the child; or
  - (ii) if the leave is adoption-related leave – of the day of placement, or the expected day of placement, of the child.
- (c) Without limiting clause 41.8(b), the CEO may require the evidence to be a medical certificate.
- (d) An employee applying for paid partner leave under clauses 41.7(d) and 41.7(e) will be required to provide the CEO with evidence that would satisfy a reasonable person that the employee's spouse is no longer able to be the primary caregiver of the couple's child.

#### 41.9 Pre-adoption Leave

- (a) This clause applies to employees, eligible casual employees and casual employees.
- (b) An employee seeking to adopt a child is entitled to up to two days unpaid leave to attend any interviews or examinations required in order to obtain approval for the employee's adoption of a child.
- (c) Such leave may be taken as a block of two days or any separate periods as agreed between the employee and the CEO.
- (d) An employee must provide the CEO with notice of the taking of leave under this clause as soon as practicable (which may be a time after the leave has started), and must advise of the period, or expected period, of the leave.
- (e) The CEO may require the employee to provide satisfactory evidence supporting the pre-adoption leave.

#### 41.10 Special Maternity Leave

- (a) This clause applies where a pregnant employee, including an eligible casual employee, has not yet commenced parental leave and the employee requires special maternity leave because:
  - (i) the employee has a pregnancy-related illness; or
  - (ii) the employee has been pregnant, and the pregnancy ends within 28 weeks of the expected date of birth of the child otherwise than by the birth of a living child.
- (b) Special maternity leave is in addition to any personal leave entitlements available to an employee. An employee may elect to use their paid personal leave entitlements instead of taking unpaid special maternity leave.
- (c) The period of special maternity leave that an employee is entitled to take is such period as a medical practitioner certifies as necessary.
- (d) Special maternity leave must end before the employee starts primary caregiver leave.
- (e) Special maternity leave taken by the employee because the employee has a pregnancy-related illness:
  - (i) will be unpaid;
  - (ii) must end before the employee starts any period of primary caregiver parental leave; and
  - (iii) will not be deducted from the maximum period of primary caregiver parental leave that the employee is entitled to take.
- (f) Special maternity leave taken by the employee in all other circumstances permitted under this clause will be:
  - (i) unpaid if the pregnancy ends more than 20 weeks before the expected date of birth;
  - (ii) unpaid if the pregnancy ended within 20 weeks of the expected date of the birth and the employee has not completed 12 months continuous service, or is an eligible casual employee, at the time of commencing leave; or

- (iii) paid up to a maximum of 14 weeks if the pregnancy ended within 20 weeks of the expected date of birth, provided the employee has completed 12 months continuous service at the time of commencing leave; or
  - (iv) paid up to a maximum of 18 weeks if the pregnancy ended within 20 weeks of the expected date of birth, provided the employee has completed five years continuous service at the time of commencing leave.
- (g) Where an employee's qualifying period of 12 months continuous service referred to in clause 41.10(f)(iii) ends within 14 weeks of the date on which the employee commenced leave, paid leave will only apply for that part of the 14 week period commencing after the end of the qualifying period.
- (h) Where an employee's qualifying period of five years continuous service referred to in clause 41.10(f)(iv) ends within 18 weeks of the date on which the employee commenced leave, the first 14 weeks will be paid and any additional leave (up to four weeks) will only apply for that period of the 18 week period commencing after the end of the qualifying period.
- (i) To be entitled to special maternity leave an employee must as soon as is reasonably practicable, give the CEO a written application stating the date on which the employee proposes to commence the leave and the period of leave to be taken; and
- (i) in the case of special maternity leave taken because of pregnancy-related illness, a medical certificate from a medical practitioner stating that the employee is unfit to work for a stated period because of a pregnancy related illness; or
  - (ii) in the case of special maternity leave taken in all other circumstances permitted under this clause, a medical certificate from a medical practitioner stating that:
    - A. the employee's pregnancy has ended within 28 weeks of the expected date of birth otherwise than by the birth of a living child; and
    - B. the employee will be unfit for work for a stated period.

#### 41.11 Continuing to work while pregnant

- (a) Where an employee continues to work within the six week period immediately prior to the expected date of birth, the employee must provide a medical certificate stating that the employee is fit to work their normal duties.
- (b) The CEO may require the employee to start parental leave if the employee:
  - (i) does not give the CEO the requested medical certificate within seven days after the request; or
  - (ii) within seven days after the request for the certificate, give the CEO a medical certificate stating that the employee is unfit for work.

#### 41.12 Transfer to a Appropriate Safe Job

- (a) Where an employee (including a casual employee) is pregnant and a medical practitioner has certified that an illness or risks arising out of the employee's pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue in their present work for a stated period (the risk period), the CEO will, if there is an appropriate safe job available and if reasonably practicable, transfer the employee to an appropriate safe job during the risk period.

- (b) An employee transferred to an appropriate safe job will have no other change to the employee's terms and conditions of employment until commencement of parental leave.
- (c) During the risk period the employee is entitled to the employee's base rate of pay (for the position the employee was in before the transfer) for the ordinary hours that the employee works in the risk period.
- (d) If the employee's pregnancy ends before the end of the risk period, the risk period ends when the pregnancy ends.

41.13 No Appropriate Safe Job Leave (Paid / Unpaid)

- (a) Paid no appropriate safe job leave

If there is no appropriate safe job available or it is not reasonably practicable to transfer the employee, and

- (i) the employee is entitled to primary caregiver leave; and
- (ii) the employee has complied with the notice and evidence requirements of clause 41.8 for taking parental leave;

then the employee is entitled to paid no appropriate safe job leave for the risk period.

- (b) Unpaid no appropriate safe job leave

If there is no appropriate safe job available or it is not reasonably practicable to transfer the employee, and

- (i) the employee is not entitled to primary caregiver leave; and
- (ii) if required by the CEO, the employee has provided a medical certificate certifying of the pregnancy;

then the employee is entitled to unpaid no appropriate safe job leave for the risk period.

41.14 Combined Parental Leave

- (a) An employee couple (as defined in clause 41.3(f)), provided each satisfies the service requirements, may elect to combine their parental leave entitlements provided that the combined period of paid and unpaid leave, does not extend the maximum period of leave entitlement beyond three years from the commencement of the leave.
- (b) Combined Parental Leave is subject to:
  - (i) compliance with all applicable notice and evidence requirements for taking parental leave under this clause;
  - (ii) the eight week partner leave entitlement (where both employees take parental leave at the same time) being used by the employee couple for a maximum of eight weeks and in accordance with partner leave provisions as set out in clause 41.7(b);
  - (iii) the balance of the combined leave being used by the member of the employee couple who has submitted a statutory declaration in which the employee has stated that they will have a responsibility for the care of the child for the total remaining unpaid leave balance;

- (iv) a maximum of two interchanges of employees sharing the combined parental leave;
- (v) where an employee couple combine their paid parental leave entitlements and one member of the employee couple takes a period of paid leave as part of the combined paid leave balance, the employee shall be paid at their salary for the period of leave; and
- (vi) both employees need to apply for and utilise parental leave.

#### 41.15 Parental Leave at Half Pay

- (a) This clause does not apply to paid longer term partner leave under clause 41.7(d).
- (b) An employee who is entitled to paid parental leave may apply to extend the period of paid leave by taking it at half pay, or a combination of full pay and half pay.
- (c) Where an employee utilises half pay parental leave:
  - (i) leave entitlements will accrue as if the employee had utilised the amount of parental leave at full pay;

For example, if an employee utilises 14 weeks of parental leave over a period of 28 weeks at half pay, all leave entitlements will accrue as if the employee had used 14 weeks at full pay, and no leave entitlements will accrue over the final 14 weeks of parental leave on half pay.

- (ii) salary and allowances will be paid at 50% of the usual rate for the entire period of parental leave at half pay; and
- (iii) the maximum period of parental leave will not be extended.

#### 41.16 Access to Other Leave Entitlements While on Parental Leave

- (a) An employee on unpaid parental leave may access accrued recreation leave and long service leave entitlements.
- (b) Taking other paid leave in conjunction with parental leave:
  - (i) does not break the continuity of the period of parental leave; and
  - (ii) the maximum period of parental leave will not be extended.

#### 41.17 Employment While on Parental Leave

- (a) NTPS employment (other than keeping in touch days)

Where the CEO agrees, an employee on unpaid parental leave may return to duty for any period with the agency, or another agency, to undertake duties for specified periods during the employee's parental leave.

- (b) Keeping in touch days
  - (i) During a period of parental leave an employee may agree to attend the workplace on up to 10 separate occasions (up to one day per occasion) so as to keep in touch with developments in the workplace (for meetings and training etc.) in order to facilitate a return to employment at the end of the period of leave.

- (ii) Payment for keeping in touch days:
  - A. during unpaid leave: an employee will be paid their normal salary for the days (or part days) work is performed; or
  - B. during paid parental leave: an employee will be paid their normal salary for the days (or part days) work is performed and the CEO will authorise the equivalent period of paid parental leave to be re-credited.
- (iii) After considering all the circumstances, including any employment under clause 41.17(a), the CEO may approve an amount of keeping in touch days in excess of 10 days.
- (c) An employee on unpaid parental leave may only engage in outside employment in accordance with the PSEM Act.
- (d) Employment under this clause during a period of parental leave will not:
  - (i) prevent the employee from re-commencing parental leave; or
  - (ii) extend the maximum period of parental leave.

#### 41.18 Consultation and Communication During Parental Leave

- (a) Where an employee is on parental leave and a definite decision has been made to introduce substantial change at the workplace, the CEO will take reasonable steps to:
  - (i) make information available; and
  - (ii) provide an opportunity for the employee to discuss any significant effect the change will have on the status, pay, location or responsibility level of the employee's pre-parental leave position.
- (b) The employee will take reasonable steps to inform the CEO about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis in accordance with clause 41.19(e).

#### 41.19 Returning to Work After a Period of Parental Leave

- (a) An employee who will be, or is, the birth giver and who elects to return to work during the six weeks following the birth of their child must provide a medical certificate stating that the employee is fit for work during that period.
- (b) Returning to work early
  - (i) During the period of parental leave an employee may return to work at any time as agreed between the CEO and the employee.
  - (ii) A written application requesting an early return to work must be made at least:
    - A. four weeks before the employee's preferred date of return where the employee is on parental leave for a period of up to 52 weeks; or
    - B. 12 weeks before the employee's preferred date of return where the employee is on parental leave for a period in excess of 52 weeks.

(iii) Responses to the employee's request must be in accordance with clause 41.21.

(c) Returning to work at conclusion of leave

An employee must notify the CEO in writing prior to the expiration of parental leave that the employee intends to return to work. Notice must be given at least:

- (i) four weeks before the expiration of parental leave where the employee has been on parental leave for a period of up to 52 weeks; or
- (ii) 12 weeks before the expiration of parental leave where the employee has been on parental leave for a period in excess of 52 weeks.

(d) Returning to pre-parental leave position

An employee returning from parental leave is entitled to the position which the employee held immediately prior to commencing leave, or if the pre-leave position no longer exists, to a position of similar pay and status, or in the case of an employee who:

- (i) was transferred to an appropriate safe job under clause 41.12 prior to commencing leave, to the position held immediately prior to such transfer; or
- (ii) was promoted to a new position during the period of parental leave, to the new position.

(e) Returning to work part-time

(i) To assist in reconciling work and parental responsibilities, if agreed between the CEO and the employee, the employee may return to work on a part-time basis to care for the child who is of school age or younger, provided that such a request is not made less than eight weeks prior to the date that the employee is due to return to work.

A. Part-time employment will be facilitated in accordance with clause 25 (Part-Time Employment).

B. Responses to requests will be in accordance with clause 41.21.

#### 41.20 Extend Period of Parental Leave

*Note: An employee who has initially taken three years parental leave (ie the maximum parental leave entitlement), is not entitled to extend their period of parental leave under this clause.*

- (a) In this clause a reference to 'parental leave' means primary caregiver parental leave under clause 41.6 or the longer term partner leave under clause 41.7(c), whichever is applicable.
- (b) If an employee initially requested less than 12 months of parental leave they can extend their leave up to 12 months from time of commencing their leave (eg from six months to 12 months). This extension is a right and cannot be refused by the CEO if written notice of at least four weeks is given by the employee before the employee's expected return to work.
- (c) Any further extension (eg from 12 months to 18 months; from 12 months to 30 months) is by agreement between the CEO and employee, provided that:
  - (i) employees with less than 12 months continuous service at the time of commencing parental leave, or an eligible casual employee, cannot extend

parental leave beyond 24 months after the date of birth or day of placement of their child; or

- (ii) employees with at least 12 months continuous service at the time of commencing parental leave cannot extend parental leave beyond three years after the date of birth or day of placement of their child.
- (d) If an employee, who is eligible for up to three years parental leave, initially requested more than 12 months of parental leave, they can request an extension by giving 12 weeks notice before their expected return to work.
  - (i) If required, an employee may request one more extension up to a total of three years.
  - (ii) An employee cannot extend the period of parental leave beyond three years after the date of birth or day of placement of the child.
- (e) Responses to requests to extend parental leave under this clause will be in accordance with clause 41.21.
- (f) Any additional parental leave granted under this clause will be unpaid.

#### 41.21 CEO's Consideration of Employee's Request

- (a) This clause applies to an employee's request to return to work early (clause 41.19(b)), work part-time (clause 41.19(e)) or extend parental leave (clause 41.20).
- (b) The CEO will consider the request and respond in writing within 21 days having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable business grounds. Reasonable business grounds include, but are not limited to:
  - (i) excessive cost of accommodating the request;
  - (ii) that there is no capacity to reorganise work arrangements of other employees to accommodate the request;
  - (iii) the impracticality of any arrangements that would need to be put in place to accommodate the request, including the need to recruit replacement staff;
  - (iv) that there would be significant loss of efficiency or productivity;
  - (v) that there would be a significant negative impact on customer service.
- (c) The employee's request and the CEO's decision in respect of the request must be recorded in writing.

#### 41.22 Replacement Employees

- (a) A replacement employee is an employee specifically engaged or temporarily promoted or transferred as a result of an employee proceeding on parental leave.
- (b) Before a CEO engages a replacement employee the CEO must inform that person:
  - (i) of the temporary nature of the employment;
  - (ii) of the return to work rights of the employee who is being replaced; and

- (iii) of the rights of the CEO to require the employee taking parental leave to return to work if the employee ceases to have any responsibility for the care of the child.

#### 41.23 Effect of Parental Leave on Service

- (a) A period of parental leave does not break an employee's continuity of service.
- (b) Subject to clause 41.23(c), any period of paid parental leave, including paid leave as a result of access to accrued entitlements under clause 41.16 will count as service.
- (c) Where any employee elects to take paid parental leave at half pay in accordance with clause 41.15, only the first one week, two weeks, 14 weeks or 18 weeks, whichever is applicable, of the period of paid parental leave will count as service.
- (d) Unless otherwise provided in this clause, any period of unpaid parental leave will not count as service.

#### 41.24 Superannuation Contributions During Period of Parental Leave

- (a) This clause applies to an employee who is entitled to at least 14 weeks paid primary caregiver leave and who takes unpaid primary caregiver parental leave during the first 12 months of their parental leave period.
- (b) During the first 12 months of primary caregiver parental leave an employee will continue to receive Employer Superannuation contributions, as per relevant superannuation legislation and superannuation fund rules, on any period of unpaid primary caregiver parental leave taken.
- (c) The maximum amount of employer superannuation contributions provided will be equivalent to the amount of employer superannuation contributions the employee would have received had the employee not been on approved primary caregiver parental leave.

### 42 Long Service Leave

Long Service Leave (LSL) will be utilised in accordance with By-law 8 of the PSEM Act.

### 43 Domestic and Family Violence

- 43.1 The Commissioner recognises that a safe and supportive workplace can make a positive difference to employees who are experiencing domestic and family violence (including sexual violence). Support measures for employees include leave with pay, flexible work options and access to an Employee Assistance Program (EAP) for domestic and family violence purposes. Additional support may be available to these employees through their agency.
- 43.2 Leave with pay is available to an employee who is experiencing domestic and family violence and who requires time off for reasons including, but not limited to:
  - (a) seeking safe accommodation;
  - (b) attending court hearings and police appointments;
  - (c) accessing legal advice;
  - (d) organising alternative care or education arrangements for the employee's children; or
  - (e) other related purposes approved by the CEO.

- 43.3 Domestic and family violence leave is accessed in accordance with By Law 18 – Miscellaneous Leave and is in addition to other leave entitlements. Domestic and family violence leave will count as service for all purposes.
- 43.4 Applications for leave will be dealt with confidentially and sensitively. Evidence to support an application may be requested, will only be sighted once and no copies will be made or recorded.
- 43.5 Reasonable adjustments should be considered to ensure the individual’s safety in the workplace (eg different work locations, removal of phone listing or changes to NTG email addresses).

#### **44 Public Holidays**

- 44.1 A public holiday means a day that is declared to be a public holiday under the *Public Holidays Act* (NT).
- 44.2 If an employee is absent from work, without reasonable cause or the consent of the CEO, on the working day immediately before or after a public holiday, the employee is not entitled to payment for that holiday.
- 44.3 An employee may be required to work on any public holiday.
- 44.4 An employee, other than an employee receiving an annualised salary, is entitled to a day proclaimed or gazetted as a public holiday pursuant to the NT *Public Holidays Act*.
- 44.5 Except for Australia Day, Anzac Day and Easter Saturday – unless gazetted as a public holiday – if a holiday falls on, or is observed on a non-working day, the next working day will be taken in lieu of that day.
- 44.6 Payment for work on public holidays is specified in clause 34.

#### **45 Leave to attend industrial proceedings**

- 45.1 An employee required by summons or subpoena to attend industrial proceedings, or to give evidence in proceedings affecting the employee will be granted paid leave.
- 45.2 Leave to attend industrial proceedings counts as service for all purposes.

### **Part 6 General Conditions**

#### **46 Security of Employment, Redeployment and Redundancy**

- 46.1 DIPL supports certainty of employment through the appropriate application of the merit principle. The use of higher duties and fixed period employment arrangements in DIPL are appropriate in certain circumstances.
- 46.2 The parties agree there will be no involuntary redundancies arising directly from the implementation of this Agreement.
- 46.3 Attachment B - Northern Territory Public Sector Redeployment and Redundancy Entitlements - will apply to employees.
- 46.4 The provisions of Attachment B do not apply in transfer of business or transfer of employment situations where work of the employer is outsourced or transferred to another employer and the employee receives an offer of employment with the second employer:

- (a) on terms and conditions substantially similar to, and considered on an overall basis, no less favourable than the employee's terms and conditions with the employer immediately before the termination; and
- (b) which recognises the employee's service with the employer in relation to redundancy.

## **47 Termination of Employment**

47.1 Notice of Termination by the CEO will be in accordance with the PSEM Act and the FW Act provisions.

47.2 Time off During Notice Period

Where the CEO has given notice of termination to an employee, the employee will be allowed up to one day time off without loss of pay for the purpose of seeking other employment. The time off will be taken at times that are convenient to the employee after consultation with the CEO.

## **48 Mixed Functions**

48.1 An employee may be called upon to temporarily perform the duties of another job provided they are competent to perform such duties.

48.2 An employee will, where necessary, carry out the duties of a job attracting a lower salary, without loss of pay.

48.3 DIPL may direct an employee to carry out such duties that are within the employee's skill, competence and training consistent with the classification structure of the Agreement, provided that such duties are not designed to promote de-skilling and acknowledge the flexibility requirements of clause 8 of this Agreement.

48.4 DIPL may direct an employee to carry out such duties and use such tools and equipment as may be required, provided that the employee has been properly trained.

48.5 Any direction issued by DIPL pursuant to the above clauses will be consistent with the CEO's and employee's responsibility to provide and maintain a safe and healthy working environment.

48.6 When this clause is invoked, the provisions of clause 22.2 (Higher Duties Allowance) will not apply.

## **49 Work-Life Balance**

49.1 Work Life Balance Initiatives

(a) The Commissioner is committed to providing employees with flexibility to assist in balancing work and life commitments. The following initiatives are available in the NTPS, subject to approval, and are recognised as ways to structure work to facilitate work life balance:

- (i) home-based work;
- (ii) job sharing;
- (iii) career breaks;
- (iv) part-year employment;

- (v) short term absences for family and community responsibilities.
- (b) In addition to the above, the following provisions are contained in this Agreement and assist employees to balance work and life commitments. The application and approval process are set out under the relevant clauses:
  - (i) Recreation leave at half pay (clause 37);
  - (ii) Purchase of additional leave (clause 38);
  - (iii) Part-time employment (clause 25).
  - (iv) Individual Flexibility Arrangements (clause 13).
  - (v) Right to request a flexible work arrangement in accordance with the NES (clause 50).

#### 49.2 General Principles in Relation to Work Life Balance Initiatives

- (a) An employee's request to access work life balance initiatives:
  - (i) must be in writing; and
  - (ii) set out details of the change sought and the reasons for the request.
- (b) When considering applications from employees wishing to access the initiatives specified in clause 49.1, the CEO must ensure that:
  - (i) DIPL's operational requirements are taken into account and services to the public are not disrupted;
  - (ii) employees fulfil the criteria outlined in this clause;
  - (iii) fair and reasonable consideration is given to employee applications; and
  - (iv) arrangements can be put in place to ensure that approval of the application will not result in unreasonable increases in the workload and overtime required to be performed by other employees.
- (c) When considering applications from employees wishing to access the leave initiatives in clause 49.1(b)(i) and 49.1(b)(ii), the CEO must consider whether the application is justified in light of available leave credits and should not approve applications in circumstances where employees are likely to have significant accrued leave entitlements at the time of accessing the leave initiatives.
- (d) The CEO must provide written reasons for a decision where an employee's application is refused.
- (e) The CEO may establish internal procedures for assessing an employee's application, which must not be inconsistent with the provisions of this clause.
- (f) Employees accessing the initiatives provided under this clause are to continue to have the same opportunities in relation to access to training and development, information and meetings, as other employees, where possible.
- (g) Employees accessing the initiatives provided under this clause may only engage in paid outside employment in accordance with the PSEM Act.

- 49.3 In addition to the general principles contained in this clause, access to the initiatives described in:
- (a) clause 49.1(a) above must be in accordance with any relevant workplace agreement provisions, guidelines or policies; and
  - (b) clause 49.1(b)(i) (Recreation leave at half pay) and 49.1(b)(ii) (Purchase of additional leave) must be in accordance with the specific requirements of clause 37 and clause 38.

## **50 Request for Flexible Working Arrangements in accordance with the NES**

50.1 In accordance with the FW Act, where an employee, including an eligible casual employee, is making a request to change their working arrangements because certain circumstances, as set out in clause 50.2, apply to them and the employee would like to change their working arrangements because of those circumstances, the requirements of this clause will apply.

50.2 The following are the circumstances, the employee:

- (a) is the parent, or has responsibility for the care, of a child who is of school age or younger;
- (b) is a carer (within the meaning of the *Carer Recognition Act 2010*);
- (c) has a disability;
- (d) is 55 or older;
- (e) is experiencing violence from a member of the employee's family;
- (f) provides care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because the member is experiencing violence from the member's family.

50.3 The employee's request must:

- (a) be in writing; and
- (b) set out details of the change sought and of the reasons for the request.

50.4 The CEO must:

- (a) give the employee a written response to the request within 21 days, stating whether the CEO grants or refuses the request;
- (b) only refuse the request on reasonable business grounds as set out in clause 50.5; and
- (c) if the request is refused, provide details of the reasons for the refusal.

50.5 For the purposes of clause 50.4(b) reasonable business grounds includes, but are not limited to:

- (a) that the new working arrangements would be too costly for the DIPL;
- (b) that there is no capacity to change the working arrangements of other employees to accommodate the request;
- (c) that it would be impractical to change the working arrangements of other employees, or recruit new employees, to accommodate the request;

- (d) that there is likely to be a significant loss in efficiency or productivity;
- (e) that there is likely to be a significant negative impact on customer service.

50.6 An 'eligible casual employee' is defined in clause 41.3(e).

## **51 Training**

51.1 The parties agree to the need for training to achieve:

- (a) the skills necessary for efficient and effective operations; and
- (b) the advancement of career paths for all DIPL employees wishing advancement.

51.2 All training will:

- (a) be in accordance with operational requirements; and
- (b) take into account:
  - (i) the available training budget;
  - (ii) the future needs of DIPL, including any requirements for the introduction of new technology; or new maritime or port management systems;
  - (iii) requirements to maintain essential qualifications or licences, and
  - (iv) the need to maintain and increase employee skills and job satisfaction and enhance their opportunities for career development across DIPL.

51.3 Trainees and apprentices will be engaged in accordance with the *Northern Territory Employment and Training Act*. Trainees and apprentices will be paid in accordance with Determinations, as varied from time to time.

**SIGNATORIES TO THE NORTHERN TERRITORY PUBLIC SECTOR FRANCES BAY MARINE  
FACILITIES PORT SERVICE WORKERS 2018 – 2022 ENTERPRISE AGREEMENT**

.....  
Commissioner for Public Employment

Name: Craig Allen  
Address: GPO Box 4371  
DARWIN NT 0801

Dated:

.....  
Maritime Division of the Construction, Forestry, Mining, Maritime and Energy Union

Name:  
Address:

Dated:

## Attachment A Salaries and Allowances

### Port Service Worker Salaries

	existing	1-Jul-18	1-Jul-19	1-Jul-20	1-Jul-21
<b>PSW 2</b>	\$65,750	\$67,394	\$69,079	\$70,806	\$72,576
	\$66,404	\$68,064	\$69,766	\$71,510	\$73,298
	\$67,069	\$68,746	\$70,464	\$72,226	\$74,032
<b>PSW 2.5</b>	\$68,593	\$70,308	\$72,066	\$73,867	\$75,714
<b>PSW 3</b>	\$70,119	\$71,872	\$73,669	\$75,510	\$77,398
	\$70,823	\$72,594	\$74,408	\$76,269	\$78,175
	\$71,531	\$73,319	\$75,152	\$77,031	\$78,957
<b>PSW 3.5</b>	\$73,164	\$74,993	\$76,868	\$78,790	\$80,759
<b>PSW 4</b>	\$74,799	\$76,669	\$78,586	\$80,550	\$82,564
	\$75,546	\$77,435	\$79,371	\$81,355	\$83,389
	\$76,303	\$78,211	\$80,166	\$82,170	\$84,224
<b>PSW 5</b>	\$79,802	\$81,797	\$83,842	\$85,938	\$88,086
	\$80,600	\$82,615	\$84,680	\$86,797	\$88,967
	\$81,406	\$83,441	\$85,527	\$87,665	\$89,857

### Allowances

	existing	1-Jul-18	1-Jul-19	1-Jul-20	1-Jul-21
<b>First Aid (per annum)</b>	\$578	\$592	\$607	\$622	\$638
<b>Meal Allowance (each)</b>	\$25.30	\$25.93	\$26.58	\$27.25	\$27.93
<b>On call (per hour)</b>	\$1.90	\$2.50*	\$2.56	\$2.63	\$2.69

\* The initial increase to the on call allowance will take effect from the commencement of this agreement

## **Attachment B Northern Territory Public Sector Redeployment and Redundancy Entitlements**

### **B.1. Definitions**

B.1.1. For the purposes of these provisions:

- (a) **potentially surplus employee** means an employee who has been declared by the CEO to be potentially surplus to the requirements of the agency under section 41 of the PSEM Act.
- (b) **service** means a period of continuous service as defined in the FW Act, and which includes service as a compulsory transferee as defined in accordance with By-Law 45.1 of the PSEM Act.
- (c) **suitable employment** means employment within the NTPS that the employee is capable of performing and is competent and qualified to perform, having regard to section 5D(2) of the PSEM Act, which must be considered in the context of reasonable training possibilities.
- (d) **surplus employee** means an employee in relation to whom the CEO has requested that the employer exercise their powers under section 43 of the PSEM Act.
- (e) **union** means a trade union as defined in the FW Act and which is covered by this Agreement.

### **B.2. Consulting Relevant Unions**

B.2.1. The CEO will make reasonable attempts to establish whether a potentially surplus employee is a union member and where union membership is established, must:

- (a) notify the relevant union of the potentially surplus situation and the name of the employee; and
- (b) invite the union to meet with an agency representative in relation to the situation.

B.2.2. The employer and/or CEO will provide relevant unions with the number of potentially surplus employees, their agency and their designation.

### **B.3. Finding of Other Suitable Employment**

B.3.1. The employer and the CEO must make every endeavour to place a potentially surplus employee in other suitable employment.

B.3.2. In addition to any other action the employer and/or the CEO may have taken in the period before notice is given in accordance with clauses B.4 or B.5, the employee and CEO will, during all such periods of notice, make every endeavour to place a surplus employee in other suitable employment.

B.3.3. Where other suitable employment for a potentially surplus employee or a surplus employee is identified the employee will be transferred. Where the transfer is to a lower level designation and salary, the written consent of the employee is required and the income maintenance provisions of clause B.6.3 apply.

#### **B.4. Voluntary Retrenchment**

- B.4.1. Where a surplus employee is unable to be placed in other suitable employment, the employer may offer the employee a voluntary retrenchment.
- B.4.2. The surplus employee will have up to seven days from the date of a written offer of voluntary retrenchment to consider and accept the offer.
- B.4.3. Where the surplus employee accepts a voluntary retrenchment, the employee is entitled to a period of four weeks notice from the date that the offer is accepted, or five weeks notice if the employee is over the age of 45 years.
- B.4.4. The surplus employee may be retrenched at any time within the period of notice under clause B.4.3, at the direction of the CEO or the request of the employee, in which case the employee is entitled to receive payment in lieu of salary for the unexpired portion of the notice period.
- B.4.5. A surplus employee retrenched in accordance with this clause is entitled to be paid a sum equal to the following weeks salary including, where applicable, Northern Territory allowance:
- (a) For an employee with at least one year but less than two years service: four weeks salary;
  - (b) For an employee with at least two years but less than three years service: six weeks salary;
  - (c) For an employee with between three years and three and a half years service: seven weeks salary; and
  - (d) For an employee with greater than three and a half years service: two weeks salary for each year of service plus a pro rata payment for the months of service completed since the last year of continuous service, provided that the maximum payable is 48 weeks salary.
- B.4.6. For the purpose of calculating payment under clause B.4.5:
- (a) where an employee has been acting in a higher designation for a continuous period of at least 12 months immediately prior to the date of notification that the employee is a surplus employee, the salary level is the employee's salary in the employee's higher designation at the date of notification; and
  - (b) where an employee has been paid a loading (ie shiftwork payment) for shiftwork for 50% or more of the 12 months immediately preceding the date of notification, the weekly average amount of shift loading received during that period shall be counted as part of "weeks salary".
- B.4.7. The inclusion of allowances or loadings as salary, other than those specified in clause B.4.6 will be at the discretion of the employer.
- B.4.8. The entitlement under:
- (a) clause B.4.3 constitutes notice for the purposes of section 117 of the FW Act; and
  - (b) clause B.4.5 includes the employee's entitlement to redundancy pay for the purposes of section 119 of the FW Act.

- B.4.9. All accrued recreation leave, long service leave and leave loading entitlements, including pro rata entitlements must be paid out.
- B.4.10. Subject to clause B.4.11, a surplus employee retrenched under this clause is entitled to all reasonable removal and relocation expenses. This entitlement must be used within 90 days after the date of voluntary retrenchment unless otherwise approved by the employer.
- B.4.11. A surplus employee who has a leave airfare entitlement pursuant to the By-laws, is entitled to the use of or payment equivalent to one accrued airfare entitlement for the employee and their recognised dependants. This entitlement is in lieu of removal and relocation expenses in clause B.4.10, and this must be used within 90 days after the date of voluntary retrenchment, unless otherwise approved by the employer.

## **B.5. Notice of Redundancy**

- B.5.1. A surplus employee cannot be given notice under this clause unless the employee has:
  - (a) been offered a voluntary retrenchment and has declined that offer; or
  - (b) has requested a voluntary retrenchment and the employer has refused the request.
- B.5.2. Subject to clause B.5.5, where the employer determines that a surplus employee is unable to be placed in other suitable employment:
  - (a) the employee is entitled to 26 weeks formal notice of redundancy; or
  - (b) where the employee has 20 or more years service or is over the age of 45 years, the employee is entitled to 52 weeks formal notice of redundancy.
- B.5.3. In addition to notice of redundancy under clause B.5.2, a surplus employee must be given four weeks formal notice (or five weeks if the employee is over 45 years) where the relevant period of notice under clause B.5.2 has expired and the employee cannot be placed in other suitable employment and will be terminated.
- B.5.4. The period of notice under clause B.5.3 constitutes notice for the purposes of section 117 of the FW Act.
- B.5.5. The period of notice under clause B.5.2 will be offset by the number of weeks of redundancy pay to which the surplus employee is entitled under section 119 of the FW Act and will be paid on termination.

*Example: A 50 year old employee with four years service has been given notice of redundancy. The employee will receive a total redundancy entitlement of 52 weeks, comprising 44 weeks notice of redundancy and the NES entitlement to eight weeks redundancy pay which will be paid on termination.*
- B.5.6. In accordance with clause B.3.2, during the notice periods referred to in this clause the employer and CEO will continue to make all reasonable endeavours to place the surplus employee into other suitable employment.
- B.5.7. With the approval of the CEO, a surplus employee who has received notice in accordance with clauses B.5.2 or B.5.3 may request that the termination occur before the expiry date of the notice period. The date requested then becomes the date of termination of employment.
- B.5.8. Where the CEO approves a request to terminate employment before the expiry date of the notice period, the surplus employee will be entitled to receive payment in lieu of salary,

including Northern Territory Allowance where applicable, for the unexpired portion of the notice periods set out in clauses B.5.2 and B.5.3.

- B.5.9. A surplus employee who has declined an offer of voluntary retrenchment prior to clauses B.5.2 and B.5.3 being invoked, is not entitled to receive a greater payment under clause B.5.8 than the employee would have been entitled to receive had the employee been voluntarily retrenched.
- B.5.10. For the purpose of attending employment interviews, a surplus employee who has received notice in accordance with clauses B.5.2 or B.5.3 is entitled:
- (a) to reasonable leave with full pay; and
  - (b) to reasonable travelling and incidental expenses necessary to attend an interview where those expenses are not met by the prospective employer.

## **B.6. Transfer to Other Suitable Employment**

- B.6.1. A potentially surplus employee or a surplus employee is entitled to four weeks notice in the case of a transfer to a lower designation. By agreement between the employee and the CEO, the transfer may occur before the expiry of the four week notice period.
- B.6.2. A potentially surplus employee or a surplus employee is entitled to all reasonable expenses associated with moving their household to a new location if, in the opinion of the employer the transfer is necessary to enable the employee to take up suitable employment.
- B.6.3. Where a potentially surplus employee or a surplus employee is transferred to a lower designation and salary the employee will be entitled to income maintenance payments as follows:
- (a) Where the period of notice of redundancy has already been invoked, the greater of:
    - (i) the unexpired portion of the period of notice of redundancy that applies to the surplus employee under clause B.5.2; or
    - (ii) four weeks; or
  - (b) Where the period of notice of redundancy has not yet been invoked, for the period of notice of redundancy that might otherwise have applied to the employee under clause B.5.2.
- B.6.4. Income maintenance payments are calculated as follows:
- (a) an amount equivalent to the difference between the employee's nominal salary on the day immediately preceding the transfer and the nominal salary upon transfer; or
  - (b) where an employee has been acting in a higher designation for a continuous period of 12 months immediately prior to the date on which the employee received notice of the transfer, the difference between the employee's higher duties salary and the lower salary upon transfer.
- B.6.5. The inclusion of allowances or loadings as salary, other than higher duties allowance in accordance with clause B.6.4(b) is at the discretion of the employer.
- B.6.6. An employee who is eligible for the payment of income maintenance is entitled to receive compensation for all other identifiable and quantifiable disabilities, losses and expenses experienced or incurred by reason of the employee's transfer which in the opinion of the employer were brought about by the transfer.

## **B.7. Use of Accrued Personal Leave**

- B.7.1. Subject to clause B.7.2 the periods of notice under clauses B.5.2 and B.5.3 will be extended by any periods of approved personal leave taken during such periods supported by documentary evidence in the form of a medical certificate issued by a registered health practitioner.
- B.7.2. For the purposes of an employee entitled to income maintenance under clause B.6.3, the total extension permitted under clause B.7.1 is capped at six months.

*Example: A 50 year old employee with 10 years service receives notice of redundancy under clause B.5.2(b). Ten weeks into the 52 week period of notice, the employee is transferred to a position of a lower designation and salary. The employee is entitled to income maintenance for 42 weeks. However, during the income maintenance period the employee takes four weeks certificated personal leave, with the result that the total period of income maintenance ends up being 46 weeks.*

## **B.8. Right of Review**

- B.8.1. A surplus employee will have a right of review to the Commissioner against any administrative decision made in relation to the employee's eligibility for benefits under these provisions or in relation to the amount of those benefits.
- B.8.2. This right does not affect the employee's rights under the FW Act.

## **B.9. Substitution or Other Provisions**

Where the employer and the employee (and where requested by the employee, the relevant union) agree, provisions may be applied to a potentially surplus employee which are in addition to, or in substitution for, any or all of the provisions prescribed in this Schedule.

## **B.10. Exemption**

These provisions do not apply to fixed period or casual employees unless otherwise approved by the employer.