DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Victoria Legal Aid T/A Victoria Legal Aid
(AG2021/5147)

VICTORIA LEGAL AID ENTERPRISE AGREEMENT 2020-2024

State and Territory government administration

DEPUTY PRESIDENT YOUNG MELBOURNE, 2 JUNE 2021

Application for approval of the Victoria Legal Aid Enterprise Agreement 2020-2024.

[1] Victoria Legal Aid T/A Victoria Legal Aid (the Employer) has made an application for approval of an enterprise agreement known as the *Victoria Legal Aid Enterprise Agreement 2020-2024* (the Agreement) pursuant to s 185 of the *Fair Work Act 2009* (the Act). The Agreement is a single-enterprise agreement.

[2] The Employer has provided written undertakings. A copy of the undertakings is attached at Annexure A. I am satisfied that the undertakings will not cause financial detriment to any employee covered by the Agreement and the undertakings will not result in substantial changes to the Agreement. The undertakings are taken to be a term of the Agreement.

[3] Subject to the undertakings referred to above, and on the basis of the material contained in the application, and the accompanying statutory declaration and the additional information provided by the Employer, I am satisfied that each of the requirements of ss 186, 187, 188 and 190 as are relevant to this application for approval have been met.

[4] The Community and Public Sector Union (CPSU), being a bargaining representative for the Agreement, has given notice under s 183 of the Act that it seeks to be covered by the Agreement. In accordance with s 201(2) and based on the statutory declaration provided by the organisation, I note that the Agreement covers the organisation.

[5] The Agreement was approved on 2 June 2021 and, in accordance with s 54, will operate from 9 June 2021. The nominal expiry date of the Agreement is 1 December 2024.

DEPUTY PRESIDENT

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Annexure A

IN THE FAIR WORK COMMISSION

FWC Matter No.:
AG2021/5147

Applicant:
Victoria Legal Aid T/A Victoria Legal Aid

Section 185 – Application for approval of a single enterprise agreement

Undertaking – Section 190

I, Louise Glanville, Chief Executive Officer, have the authority given to me by Victoria Legal Aid T/A Victoria Legal Aid to give the following undertakings with respect to the Victoria Legal Aid Enterprise Agreement 2020–24 ("the Agreement"):

1. Notwithstanding clause 28.5.1, all accrued personal/carer's leave may be taken as carer's leave.

2. Notwithstanding clause 43.5, the employer and an individual employee may agree to substitute another day for any prescribed in clause 43.

3. Notwithstanding that the Agreement does not provide for work value levels as set out in the *Victorian State Government Agencies Award 2015* ("the Award"):

   a. Every employee engaged under the classification VLA 1 or VLA 3 will be paid at least the minimum Award rate for the relevant classification grade and work value level under the Award plus $1.

   b. Every employee engaged under the classification VLA 1 or VLA 3, will be eligible to progress to the next work value level in accordance with clause 9.6 of the Award. This will not apply to those employees at the maximum work value level for their respective grade under the Award.

4. In relation to the stand-by allowance:

   a. Notwithstanding the table at clause 26.15.7 the following amounts of stand-by allowance will be paid:

Date payable	Payable	Amount
1 December 2020	Per night	$24.92
1 December 2021	Per night	$25.42

1 December 2022	Per night	$25.93
1 December 2023	Per night	$26.45
1 December 2020	Per 24-hour period (day and night)	$49.84
1 December 2021	Per 24-hour period (day and night)	$50.84
1 December 2022	Per 24-hour period (day and night)	$51.86
1 December 2023	Per 24-hour period (day and night)	$52.90

b. Furthermore, for the life of the Agreement the stand-by allowance paid under clause 26.15.7 will be at least equivalent to the stand by allowance at clause 15.1 of the Award.

5. In relation to excess travelling time, for the life of the Agreement, the employer will apply clause 15.3(c) of the Award.

6. In relation to motor vehicle allowance:

   a. Notwithstanding that clause 20.6 provides for reimbursement of kilometre costs based on the rates determined by the Australian Taxation Office, the employer will reimburse the kilometre costs at $0.80 per kilometre.

   b. For the life of the Agreement the motor vehicle allowance paid under clause 20.6 will increase by 2% on 1 December each year. Provided that the motor vehicle allowance paid under clause 20.6 will at all times be at least equivalent to the motor vehicle allowance paid under clause 15.1 of the Award.

7. In relation to higher duties allowance provided at clause 20.2:

   a. When the number of consecutive working days in terms of clause 20.2.1 is five or more, any public holiday(s) or authorised absence within the period or immediately following such period of higher duties, will be included for payment when calculating the allowance to be paid.

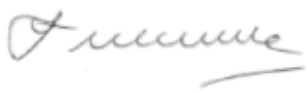
   b. In addition to clause 20.2.4, in the event where an employee who has been performing a higher duties position for 20 or more consecutive days proceeds upon annual leave, but does not return to the higher duties position upon return from leave, the employee will be paid the higher duties allowance for the entire period of annual leave.

8. Notwithstanding the reference at clause 12.1.5 to trainees, for the life of the Agreement, no employee shall be engaged as a trainee under the Agreement.

9. Notwithstanding clause 26.1.3, a part-time employee will be entitled to payment of overtime, or equivalent time-off, in accordance with clauses 26.1.5 and 26.1.6, where they are required to work outside their ordinary hours of work (i.e. their fixed working hours).

10. In relation to the shift allowances at clause 25.3, a Monday to Friday – evening shift is for the period finishing after 6.30pm and at or before midnight.

These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.



Louise Glanville
Chief Executive Officer
Victoria Legal Aid

28 May 2021

Date

Victoria Legal Aid Enterprise Agreement 2020–24

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

Acknowledgement of country

This Agreement was written on the land of the Wurundjeri and Boon Wurrung people of the Kulin Nation. We acknowledge and pay our respects to Aboriginal and Torres Strait Islander peoples and Traditional Custodians throughout Victoria, including Elders past and present. We also acknowledge the strength and resilience of all First Nations people who today are still arrested and imprisoned at rates far higher than other Australians.

Contents

Part 1 – Application and operation

Preamble

Victoria Legal Aid's (VLA's) **vision** is to promote a fair and just society where rights and responsibilities are upheld.

Our purpose is to make a difference in the lives of our clients by:

- resolving and preventing legal problems; and
- encouraging a fair and transparent justice system.

The vision and purpose is supported by our **values** of **fairness, care** and **courage**:

- **fairness** is where we stand up for what is fair and aim to be fair when making choices about which people we help and how we help them;
- **care** embraces care about our clients and looking out for and taking care of each other;
- **courage** is where we act with courage backed by evidence about what is best for clients and the community and to act with courage to be the best we can be.

VLA promotes teamwork, open communication, and effective knowledge sharing. VLA is committed to lifting its profile in the public arena and to building partnerships with other organisations in the justice system. VLA will, as far as practicable, provide a safe and fulfilling workplace for employees.

VLA's mandate is to protect legal rights with an emphasis on the marginalised and economically disadvantaged. VLA provides high quality and cost-effective legal representation, advice and information and adheres to strict public standards of financial accountability and responsibility.

1. Title

This Agreement is the Victoria Legal Aid Enterprise Agreement 2020–2024.

2. Commencement and transitional

2.1. This Agreement will commence to operate seven days after it is approved by the Fair Work Commission (the Commission) and will have a nominal expiry date of 1 December 2024.

2.1.1. Alterations to the conditions of employment provided for in this Agreement will apply with effect from the commencement date of the Agreement except where otherwise provided.

2.1.2. This Agreement aims to set out processes for determining, the terms and conditions of employment of employees covered by the Agreement for the period from the date of commencement of this Agreement until its nominal expiry date.

2.1.3. This Agreement operates to the exclusion of all previous awards and orders of the Commission and its predecessors and replaces all previous agreements in respect of the employees. However, any beneficial entitlement accrued by an individual under any such previous agreement will not be affected.

2.2. Renegotiation period

2.2.1. With the aim of avoiding protracted negotiations for a new Agreement, the CPSU and VLA agree to a renegotiation period. The renegotiation period shall be from 1 June 2024 to 1 November 2024. The aim of the renegotiation period is to permit a new Agreement to be reached by the nominal expiry date.

2.2.2. To meet this objective, the CPSU and VLA agree that:

a) Each will provide any proposals for change to the Agreement by 1 June 2024.

b) They will meet regularly to progress negotiations in good faith. In this connection, small working groups may be established to examine particular areas of disagreement.

c) The person/s responsible for negotiating will bring with them the necessary authority to finalise an Agreement.

d) Where agreement is not reached by 1 November 2024, the parties will discuss whether they should seek the assistance of a mutually agreed conciliator or the Commission. This does not prevent the parties seeking assistance, by agreement, on any individual issue which is creating an impasse.

e) Should conciliation be sought, then the parties to the conciliation may agree to an extension to the negotiation period.

f) During this period, the CPSU and VLA will not act in a manner that is designed to frustrate good faith bargaining.

3. Definitions and interpretation

3.1. In this Agreement, unless the contrary intention appears:

Agreement means Victoria Legal Aid Enterprise Agreement 2020–2024.

Casual employee means an employee who is engaged to perform work covered by this Agreement for the purpose of meeting particular and short-term needs of the employer. Such employment shall be by the hour.

Commission means the Fair Work Commission.

CPSU means the Community and Public Sector Union.

Employee means employee of Victoria Legal Aid.

Employer means Victoria Legal Aid (VLA).

Fair Work Act means the *Fair Work Act 2009* (Cth).

Gender Equality Commissioner means the Commissioner for Gender Equality in the Public Sector.

Immediate family or **household** means a spouse or former spouse, de facto partner or former de facto partner, child (including an adopted child), parent, grandparent, grandchild or sibling of an employee, or a child, parent, grandparent, grandchild or sibling of an employee's spouse or de facto partner. It includes step-relations (e.g. step-parents and step-children) as well as adoptive relations, foster children, and members of the immediate household. Other extended family and kinship arrangements will be considered on a case-by-case basis.

Manager means any person who is responsible for the managing of one or more employees.

OHS Act means the *Occupational Health and Safety Act 2004* (Vic).

Ordinary pay means the 'employee's ordinary weekly or fortnightly pay for hours normally worked excluding overtime payments or shift penalties.

PAA means the *Public Administration Act 2004* (Vic).

Reproductive Treatment Act means *Assisted Reproductive Treatment Act 2008* (Vic).

Shift work – VLA will employ staff who may be rostered to undertake duties outside ordinary hours and who will be remunerated according to the shift work provisions in clause 25 of this Agreement.

VPS means the Victorian Public Service.

Workplace Injury Act means the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic).

Registered Practitioner means one of the following: Aboriginal and Torres Strait Islander health practitioner, Chinese medicine practitioner, Chiropractor, Dental care practitioner, Medical practitioner, Medical Radiation Practitioner, Nurse practitioner, Midwife, Occupational Therapist, Optometrist, Osteopath, Pharmacist, Physiotherapist, Podiatrist, Psychologist or any other profession registered under the *Health Practitioner Regulation National Law (Victoria) Act 2009*.

In this Agreement, references to all Acts are to include any amendments made to those Acts from time to time, or any successor to those Acts.

4. Coverage

4.1. This Agreement is made under s172(2) of the Fair Work Act and is binding on:

a) VLA;

b) All employees of VLA, excluding executive officers; and

c) The CPSU, State Public Service Federation (SPSF) Group, Victorian Branch.

5. Individual flexibility arrangement

5.1. An employee and the employer may enter into an individual flexibility arrangement pursuant to this clause in order to meet the genuine needs of both the employee and the employer. An individual flexibility arrangement must be genuinely agreed to by both parties.

5.2. An individual flexibility arrangement may vary the effect of clause 24 (Ordinary hours of work) and clause 25 (Shift work).

5.3. An employee may nominate a representative to assist in negotiations for an individual flexibility arrangement.

5.4. The employer must ensure that the terms of the individual flexibility arrangement:

a) are about permitted matters under section 172 of the Fair Work Act;

b) are not unlawful terms under section 194 of the Fair Work Act; and

c) result in the employee being better off overall than the employee would be if no arrangement were made.

5.5. The employer must ensure that an individual flexibility arrangement is in writing and signed by the employee and the employer. If the employee is under 18 years of age, the arrangement must also be signed by a parent or guardian of the employee.

5.6. The employer must give a copy of the individual flexibility arrangement to the employee within 14 days after it is agreed to.

5.7. The employer must ensure that any individual flexibility arrangement sets out:

a) which terms of this Agreement will be affected or varied by the individual flexibility arrangement;

b) how the individual flexibility arrangement will vary or affect the terms of this Agreement;

c) how the employee will be better off overall in relation to the terms and conditions of their employment as a result of the individual flexibility arrangement;

d) the day on which the individual flexibility arrangement commences; and

e) that the individual flexibility arrangement may be terminated:

(i) by either the employee or the employer giving a specific period of written notice, with the specified period being not more than 28 days; or

(ii) at any time by written agreement between the employee and the employer.

5.8. Right to request flexible working arrangements

5.8.1. In accordance with section 65 of the Fair Work Act, an employee may request a change in their working arrangements on the basis of the following circumstances:

a) the employee is the parent, or has responsibility for the care of a child who is of school age or younger;

b) the employee is a carer (within the meaning of *the Carer Recognition Act 2010* (Vic));

c) the employee has a disability;

d) the employee is 55 years of age or older;

e) the employee is experiencing violence from a member of the employee's family;

f) the employee 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.

Note: examples of changes in working arrangements include changes in hours of work, changes in patterns of work and changes in location of work.

6. Agreed statement on respect at work

6.1. The employer, the CPSU and staff respect and value the diversity of the workforce by helping to prevent and eliminate behaviours that lead to bullying, sexual harassment, or discrimination on the basis of race, colour, sex, sexual preference, gender, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction, social origin, or any other attributes protected by antidiscrimination legislation.

6.2. The employer, the CPSU and staff are committed to working together to reduce bullying, sexual harassment, discrimination, and occupational violence, so far as practicable in the workplace. The employer will address instances of alleged bullying, discrimination, and sexual harassment in accordance with the relevant VLA policy and the misconduct provisions of this Agreement.

Part 2 – Consultation and dispute resolution

7. Implementation of change

7.1. Where the employer has developed a proposal for major change likely to have a significant effect on employees, such as a restructure of the workplace, the introduction of new technology or changes to existing work practices of employees, the employer will advise the affected employees and the CPSU or any nominated representatives of the proposed changes as soon as practicable after the proposal has been made.

The employer will advise the affected employees, the CPSU or any nominated representatives of the likely effects on the employees' working conditions and responsibilities.

The employer will advise of the rationale and intended benefits of any change, including improvements to productivity, if applicable.

7.2. For the purpose of this clause, a major change is likely to have significant effects on employees if its results in:

a) the termination of employment of employees;

b) major changes to the composition, operation or size of the employer's work force or to the skills required of employees;

c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure);

d) the alteration of hours of work or shift work rosters;

e) the need to retrain employees;

f) the need to relocate employees to another workplace;

g) the restructuring of jobs.

7.3. The employer will regularly consult with affected employees, the CPSU or any nominated representatives and will give prompt consideration to matters raised by the employees, the CPSU or any nominated representatives, and where appropriate, provide training for the employees to assist them to integrate successfully into the new structure.

7.4. In accordance with this clause, the affected employees the CPSU or any nominated representatives may submit alternative proposals which will meet the indicated rationale and benefits of the proposal. Such alternative proposals must be submitted in a timely manner so as not to lead to an unreasonable delay in the introduction of any contemplated change. If such a proposal is made the employer must give considered reasons to the affected employees, the CPSU or any nominated representatives if the employer does not accept its proposals.

7.5. Indicative reasonable time frames are as follows:

Step in process	**Number of working days in which to perform each step**
Employer advises employees, the CPSU or any nominated representatives	As soon as practicable after the proposal has been made
Response from employees, the CPSU or any nominated representative	5 days following receipt of written advice from employer
Meeting convened (if requested)	5 days following request for meeting
Further employer response (if relevant)	5 days following meeting
Alternative proposal from employees, the CPSU or any nominated representatives (if applicable)	10 days following receipt of employer response
Employer response to any alternative proposal	10 days following receipt of alternative proposal

7.6. Consultation on changes to rosters or hours of work

7.6.1. This clause applies if the employer proposes to introduce a change to the regular roster or ordinary hours of work of employees. The employer must notify the relevant employees of the proposed change. The relevant employees may appoint a representative for the purposes of the procedure in this clause if:

a) a relevant employee or employees appoint a representative for the purposes of consultation; and

b) the employee or employees advise the employer of the identity of the representative.

7.6.2. The employer must recognise the representative.

7.6.3. As soon as practicable after proposing to introduce the change, the employer must:

a) discuss with the relevant employees and/or their nominated representative/s the introduction of the change, including the nature of the change and the likely effects on employees; and

b) invite the relevant employee/s to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities). However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.

7.6.4. The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.

7.6.5. The employer must display a roster for shift workers in a convenient area 14 days prior to the effective date.

7.6.6. The employer may change the shift work roster without written notice, if the employer is of the reasonable opinion that an emergency exists.

7.6.7. A shift worker may request the employer approve a change to rostered shift work times by giving to the employer 48 hours' written notice of the proposed change.

7.7. Any dispute concerning the parties' obligations under this clause will be dealt with in accordance with clause 8 (Resolution of disputes).

8. Resolution of disputes

8.1 For the purposes of this clause, a dispute includes a grievance.

8.2 Unless otherwise provided for in this Agreement, a dispute about a matter arising under this Agreement or the National Employment Standards set out in the Fair Work Act, other than termination of employment, must be dealt with in accordance with this clause. For the avoidance of doubt, a dispute about termination of employment cannot be dealt with under this clause.

8.3 This clause does not apply to any dispute regarding a matter or matters arising in the course of bargaining in relation to a proposed enterprise agreement.

8.4 The CPSU may raise a dispute, and be a party to a dispute, in its own right or in a representative capacity for an employee or group of employees.

8.5 A person covered by this Agreement may choose to be represented at any stage by the CPSU or any nominated representative.

8.6 Obligations

8.6.1 The parties to the dispute and their representatives 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.

8.6.2 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 a reasonable concern about an imminent risk to their health or safety, has advised the employer of this concern and has not unreasonably failed to comply with a direction by the employer to perform other available work that is safe and appropriate for the employee to perform.

8.6.3 No person covered by this Agreement will be prejudiced as to the final settlement of the dispute by the continuance of work in accordance with this clause.

8.7 Agreement and dispute settlement facilitation

8.7.1 For the purposes of compliance with this Agreement (including compliance with this dispute settlement procedure) where the chosen employee representative is another employee of the employer, they must be released by the employer from normal duties for such periods of time as may be reasonably necessary to enable them to represent employees concerning matters pertaining to the employment relationship including but not limited to:

a) investigating the circumstances of a dispute, or an alleged breach of this Agreement;

b) endeavouring to resolve a dispute arising out of the operation of this Agreement; or

c) participating in conciliation, arbitration, or any other agreed alternative dispute resolution process.

8.7.2 The release from normal duties referred to in this clause is subject to the proviso that it does not unduly affect the operations of the employer.

8.8 Discussion of dispute

8.8.1 The dispute must first be discussed by the aggrieved employee/s with the immediate manager of the employee/s.

8.8.2 If the dispute is not settled, the aggrieved employee/s can require that the dispute be discussed with another representative of the employer appointed for the purposes of this procedure.

8.9 Internal process

8.9.1 If any party to the dispute who is covered by this Agreement refers the dispute to an established internal dispute resolution process, the matter must first be dealt with according to that process, provided that the process is conducted as expeditiously as possible and:

a) is consistent with the rules of natural justice;

b) provides for mediation or conciliation of the dispute;

c) provides that the employer will take into consideration any views on who should conduct the review; and

d) is conducted with as little formality as a proper consideration of the dispute allows.

8.9.2 If the dispute is not settled through an internal dispute resolution process, the matter can be dealt with in accordance with the processes set out below.

8.9.3 If the matter is not settled, either party to the dispute may apply to the Commission to have the dispute dealt with by conciliation.

8.10 Disputes of a collective character

8.10.1 The parties acknowledge that disputes of a collective character concerning more than one employee may be dealt with more expeditiously by an early reference to the Commission.

8.10.2 No dispute of a collective character may be referred to the Commission directly unless there has been a genuine attempt to resolve the dispute at the workplace level prior to it being referred to the Commission.

8.11 Conciliation

8.11.1 Where a dispute is referred for conciliation, a member of the Commission shall do everything that appears to the member to be right and proper to assist the parties to the dispute to agree on settlement terms.

8.11.2 This may include arranging:

a) conferences of the parties to the dispute presided over by the member; and

b) for the parties to the dispute to confer among themselves at conferences at which the member is not present.

8.11.3 Conciliation before the Commission shall be regarded as completed when:

a) the parties to the dispute have reached agreement on the settlement of the dispute;

b) the member of the Commission conducting the conciliation has, either of their own motion or after an application by a party to the dispute, satisfied themselves that there is no likelihood that, within a reasonable period, further conciliation will resolve in a settlement; or

c) the parties to the dispute have informed the Commission member that there is no likelihood of agreement on the settlement of the dispute and the member does not have substantial reason to refuse to regard the conciliation proceedings as completed.

8.12 Arbitration

8.12.1 If the dispute has not been settled when conciliation has been completed, a party to the dispute may request that the Commission proceed to determine the dispute by arbitration.

8.12.2 Where a member of the Commission has exercised conciliation powers in relation to the dispute, the member shall not exercise, or take part in the exercise of, arbitration powers in relation to the dispute if a party to the dispute objects to the member doing so.

8.12.3 Subject to appeals below, the determination of the Commission is binding upon the persons covered by this Agreement.

8.12.4 A determination of a single member of the Commission made pursuant to this clause may, with the permission of the Full Bench of the Commission be appealed.

8.13 General powers and procedures of the Fair Work Commission

Subject to any agreement between the parties in relation to a particular dispute and the provisions of this clause, in dealing with a dispute through conciliation or arbitration, the Commission may conduct the matter in accordance with Subdivision B of Division 3 of Part 5-1 of the Fair Work Act.

Part 3 – Types of employment, termination of employment and related matters

9. Workforce mobility and flexibility commitment

9.1. The parties agree to interpret and apply the Agreement consistently with the following principles aimed at promoting workforce mobility and flexibility:

a) The work required of VLA may change over the life of the Agreement, due to factors such as new government priorities, changing practices in the justice system, population growth, the pace, and scale of technological advancement, changing community service delivery expectations and the need to respond to public policy problems or crises.

b) Embracing these changing priorities is essential to providing secure, flexible employment at VLA. Within the framework of secure employment (clause 10.1) and individual flexibility (clause 5), the parties acknowledge the importance of ensuring that employees can be responsive to service demand changes.

c) VLA is a professional organisation that offers a career path that can offer employment careers beyond a fixed role within a specific business unit. VLA employees will be supported and encouraged to gain relevant, diverse, and evolving skills and experiences across VLA, appropriate for facilitating delivery of government priorities as they change over time.

d) Nothing in this clause removes the requirement to consult where major change is likely to have significant effects on employees as prescribed by clause 7.2.

9.1.1. The parties agree that the principles set out above will be operationalised over the life of the Agreement, through a range of changed workplace practices, modes of work and services delivery. These may include:

a) reduction of operational and mobility barriers between VLA roles and business units, including reviewing and updating role statements in the context of the above principles;

b) facilitation of greater mobility, including through the enhancement of development opportunities that align with role type, skill development, career aspirations and job demand trends;

c) introducing extended customer service opening hours and services, and creating new rosters and positions; and

d) increasing the use of technology to enable VLA to better respond to the increasing digitalisation of the justice system and to better enable employees to work flexibly. This may include digital and tech innovations and enhanced online ways of working such as remote duty lawyer services, Help Before Court and Legal Help WebChat.

9.1.2. The parties acknowledge that the workforce mobility measures are not intended to adversely affect employees' overall employment security within VLA or otherwise disadvantage employees in their employment. In particular:

a) VLA will not require an employee to physically relocate beyond agreed areas without appropriate consultation and supports as provided for in clause 7 (Implementation of change);

b) an employee may report to a number of different managers for projects or work activities. The line manager may consult with the employee's different project or work activity managers in assessing an employee's performance. The employer will designate a line manager for personal development, wellbeing, performance assessment and related support. The designated line manager will ensure an employee's reporting arrangements are clear;

c) an eligible employee's participation in workforce mobility and flexibility measures will be regarded favourably and not place that employee at a disadvantage for the purposes of performance development and progression;

d) VLA will at all times apply the appropriate classification level, and where applicable, higher duties allowance, to work performed by an employee;

e) VLA will comply with its obligations under the Agreement (see clause 5.8 (Right to request flexible working arrangements)) and section 65 of the Fair Work Act regarding flexible work arrangements and will ensure that an employee's need for flexible work arrangements is taken into account in implementing deployment measures;

f) VLA will comply with its obligations under the Agreement and the OHS Act when implementing mobility measures; and

g) mobility measures will not disadvantage an employee in their terms and conditions of employment.

9.1.3. In recognition of the need to work more flexibly and adapt to the post COVID-19 environment, the parties agree to consult on the introduction of a Flexible workforce deployment framework to support these principles during the first six months of this Agreement.

9.2. Mobility and flexibility payment

9.2.1 Employees will be paid an annual lump sum mobility payment:

a) in recognition of the parties' commitment to the mobility principles outlined in clause 9 (Workforce mobility and flexibility commitment) of the Agreement;

b) in recognition of the fact that the work required of a modern VLA is not static but always changing;

c) to acknowledge employees are committed to ensuring they can be responsively deployed to support changing government priorities, and

d) to encourage employees to gain relevant, diverse, and evolving skills and experience across VLA to support their capability and career development.

9.2.2 The mobility and flexibility payment will be made as a once off lump sum payment on the dates specified in Table 1 (pro rata for part-time employees).

9.2.3 To be eligible for payment of this allowance employees must be employed with VLA on the date of the scheduled payment of this allowance. Anyone employed after the date of the scheduled payment will be deemed ineligible and will not be eligible to receive payment of the allowance until the next scheduled payment as outlined in Table 1.

Table 1 – Schedule for payment of mobility and flexibility payment

Classification	1 December 2020	1 July 2021	1 July 2022	1 July 2023
VLA1–VLA6 (inclusive)	$1000	$1020	$1040	$1061

10. Types of employment

10.1. Secure employment

10.1.1. The employer acknowledges the positive impact that secure employment has on employees and the provision of quality services to the Victorian community.

10.1.2. The employer will give preference to ongoing forms of employment over casual and fixed term arrangements wherever possible.

10.1.3. Where the CPSU or affected employee/s identify fixed-term or casual employment that is considered not to meet the criteria at clauses 10.4 (Fixed term employment) or 10.5 (Casual employment), the CPSU or affected employee/s will refer the

matter to the employer. If the parties cannot resolve the matter, it will be dealt with under clause 8 (Resolution of disputes).

10.2. Full-time employment

A full-time employee is one who is engaged to work 38 hours per week as their ordinary hours of work in accordance with clause 24 (Ordinary hours of work) of this Agreement and is paid on a fortnightly basis.

10.3. Part-time employment

10.3.1. A part-time employee is an employee engaged in regular and continuing employment for less than 38 hours per week and paid on a fortnightly basis.

10.3.2. A part-time employee will receive all the provisions of this Agreement on a pro rata basis in accordance with the number of hours worked, subject to the provisions of the higher duties, overtime and travelling time and expenses clauses. No alteration to the fixed and constant working hours of a part-time employee will be made without consultation with that employee.

10.3.3. Part-time employment is for not less than three hours daily except by agreement between the employee and employer.

10.4. Fixed term employment

10.4.1. A fixed term employee is an employee engaged for a specific purpose on a maximum term contract on a full or part-time basis.

10.4.2. Employees employed under this clause will, except where otherwise provided, be subject to the provisions of this Agreement.

10.4.3. The employer will not use fixed term contract positions for the purpose of undermining the job security or conditions of full-time or part-time ongoing employees.

10.4.4. In accordance with the principle set out in clause 10.4.3, the use of fixed term employment in all areas covered by this Agreement is limited to:

a) replacement of employees proceeding on approved leave;

b) meeting fluctuating client and employment needs and unexpected increased workloads;

c) undertaking a specified task, which is funded for a specified period;

d) filling a vacancy resulting from an employee undertaking a temporary assignment or secondment;

e) temporarily filling a vacancy where, following an appropriate selection process, a suitable ongoing employee is not available; or

f) filling a vacant role while a review of the area is undertaken, provided that such appointment does not exceed a period of 12 months.

10.4.5. In other than exceptional or unforeseen circumstances, fixed term appointments to a specific position shall be for a maximum of three years, subject to clause 35 (Parental leave).

10.5. Casual employment

10.5.1. A casual employee will be ready, willing and available to work such hours as are required from time to time by the employer.

10.5.2. A casual employee will receive an additional 25 per cent of the appropriate ordinary hourly rate for each hour during which the casual is employed.

10.5.3. The 25 per cent loading is in lieu of all paid leave and public holidays not worked and to compensate for the nature of casual employment.

10.5.4. The employer will not use casual labour for the purpose of undermining the job security of ongoing employees, for the purpose of turning over a series of casual workers to fill an ongoing employment vacancy or as a means of avoiding obligations under this Agreement.

10.5.5. In accordance with the principle set out in clause 10.5.4, the employment of casuals in all areas covered by this Agreement is limited to meeting short term work demands or specialist skill requirements, which are not continuing and would not be anticipated to be met by existing employee levels.

10.5.6. Casual employment will be for not less than three consecutive hours in any day worked except:

a) where the employee works from home by agreement with the employer; or

b) with the agreement of the employee.

11. Probation

11.1 The employer may appoint a new employee on a probationary basis. The period of probation will be a reasonable period having regard to the nature of the position but will normally be no more than three months.

11.2 During the probationary period and where appropriate, the relevant manager may counsel the employee informally or verbally with respect to any performance issues that may become apparent and will provide a written record of such counselling. The employer may extend the probationary period by a period of not more than three months to allow the employee to address the performance issues.

11.3 Extension of the probationary period under clause 11.2 of this Agreement must not occur without prior written notification being provided to the employee before the end of the initial three-month probation period.

11.4 During the probationary period, or at the end of the probationary period, the employer may terminate a probationary employee by giving two weeks' notice, subject to the employer's right to make a payment in lieu of notice where it deems this appropriate. If the employee has committed any act of serious misconduct, the employer may terminate the employee without notice.

11.5 Unless the employment is terminated during or at the end of the probationary period, the employer will confirm the employee's appointment at the end of the period of probation. However, if the employee's conduct or performance during the probationary period is unsatisfactory, the employer may terminate the employment by giving two weeks' notice.

11.6 A person initially employed on a fixed term basis whose employment becomes permanent immediately following the cessation of the fixed term, will have the fixed term employment taken into account in the determination of any probationary period.

12. Termination of employment

12.1 Notice of termination by employer

In order to terminate the employment of a full-time or part-time employee the employer will give to the employee the period of notice specified in the table below:

Period of continuous service	Period of notice
1 year or less	2 weeks
Over 1 year	4 weeks

12.1.1 In addition to this notice, employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service, are entitled to an additional week's notice.

12.1.2 Payment in lieu of the notice will be made if the appropriate notice period is not required to be worked. Employment may be terminated by the employee working part of the required period of notice and by the employer making payment for the remainder of the period of notice.

12.1.3 In calculating any payment in lieu of notice, the wages an employee would have received in respect of the ordinary time they would have worked during the period of notice had their employment not been terminated, will be used.

12.1.4 The period of notice in this clause shall not apply in the case of dismissal for conduct that justifies instant dismissal, including serious and wilful misconduct.

12.1.5 Notwithstanding the foregoing provisions, trainees who are engaged for a specific period of time will, once the traineeship is completed and provided that the trainees' services are retained, have all service including the training period counted in determining entitlements. In the event that a trainee is terminated at the end of their traineeship and is re-engaged by the same employer within six months of such termination, the period of traineeship shall be counted as service in determining any future termination.

12.1.6 The employer must, upon receipt of a request from an employee whose employment will cease or has ceased, provide a written statement specifying the period of their employment and the classification of or the type of work performed by the employee.

12.1.7 Where the employer terminates an employee's employment, the employer must, at the employee's request, provide a written statement of the reasons for dismissal.

12.2 Notice of termination by an employee

Period of continuous service	Period of notice
1 year or less	2 weeks
Over 1 year	4 weeks

12.3 Time off during notice period

Where an employer has given notice of termination to an employee, an employee will be allowed up to one day's 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 employer.

13. Employment related legal costs

13.1. If an employee is required to attend or participate in a proceeding, hearing, examination, inquiry or investigative process on matters which arise from the performance of the employee's duties, the employer must meet the employee's reasonable legal costs relating to the employee's appearance and legal representation in the matter. This includes, but is not limited to, a matter before a Royal Commission, Independent Broad-based Anti-Corruption Commission, Ombudsman's or a Coronial inquest.

13.2. Where legal proceedings are initiated against an employee as a direct consequence of the employee legitimately and properly performing their duties, the employer will not unreasonably withhold agreement to meet the employee's reasonable legal costs relating to the defence of such proceedings.

13.3. Where, as a direct consequence of the employee legitimately and properly performing their duties, it is necessary to obtain an intervention order or similar remedy against a person, the employer will not unreasonably withhold agreement to meet the employee's reasonable legal costs in obtaining the order or other remedy.

13.4. An employee's immediate manager must ensure that an application to meet reasonable legal costs will be referred to the appropriate person or body to enable the application to be decided expeditiously.

14. Performance development and review

14.1. The employer's annual performance cycle, VLA and Me, is 12 months (1 July to 30 June).

14.2. VLA and Me mandates a series of meetings throughout the year to set objectives and monitor progress against objectives. The aim of the program is to provide clarity about work expectations, set achievable and realistic targets and support staff in their development.

14.3. The approach and templates for the online VLA and Me system are accessed via VLA online systems.

14.4. All employees must participate in VLA and Me, including the drafting of objectives and participation in review meetings and comply with the stated timelines.

14.5. All employees should expect informal and formal feedback about their performance throughout the performance cycle to supplement VLA and Me discussions.

14.6. A final review is undertaken at the end of each performance cycle. An assessment is made by the manager as to whether the employee has met the work and development objectives as stated in the plan. Employees must meet the elements of their individual plan to be eligible for progression payment or a top of band payment.

Final assessments must be concluded and logged in the on-line portal by 1 August each year for employees to be eligible for progression payments (clause 18.2 - Progression within a classification range—eligibility).

Employees at the top of their band classification will be eligible for a performance payment in accordance with the provisions in sub-clause 18.3 (Top of band performance payment).

15. Limits of salary on transfer or promotion

15.1. An employee transferred to any position at the same classification shall be paid salary not less than that which such employee was receiving immediately before such transfer, provided that the salary payable is within the range for that classification.

15.2. An employee promoted to position at a higher classification shall be paid a salary not less than 5per cent more than such employee was receiving immediately before such promotion.

15.3. Notwithstanding the provisions of this clause, the employer may determine that an employee may commence employment at any level within a classification if suitably qualified and/or experienced, or in cases of recruitment difficulty.

15.4. Progress between classifications will be by way of promotion or reclassification.

16. Management of unsatisfactory work performance

16.1. The purpose of this clause is to:

a) support employees with unsatisfactory work performance to improve their performance to the required standard;

b) ensure that unsatisfactory work performance is addressed expeditiously;

c) reflect the public sector values of integrity, impartiality, accountability and respect, with the aim of ensuring that employees are treated fairly and reasonably; and

d) provide a fair and transparent framework for action to be taken where an employee continues to perform below the employer's expected standard.

16.2. Application

16.2.1. Subject to applicable Victorian and federal legislation, action taken by the employer in relation to unsatisfactory work performance will be consistent with this clause.

16.2.2. This clause applies to all employees except casual employees and employees subject to a probationary period of employment.

16.3. Referred unsatisfactory work performance matters

The employer may at any time elect, where there is reasonable cause, to manage the employee's work performance in accordance with clause 17 (Management of misconduct). Once an election has been made by the employer under this clause, any matters that have arisen under the process in this clause may be considered in the process pursuant to clause 17.

16.4. Meaning of unsatisfactory work performance

An employee's work performance is unsatisfactory if the employee fails to behave in the ways described in the Code of Conduct for Victorian Public Sector employees issued under section 61 of the Public Administration Act 2004 or perform to the required standards or expectations of their role.

16.5. Procedural fairness to apply

16.5.1. The process for managing unsatisfactory work performance will be consistent with the principles of procedural fairness.

16.5.2. All parties involved in the process will commit to completing it as quickly as practicable.

16.5.3. Before commencing a formal unsatisfactory work performance process, the employer must:

a) tell the employee the purpose of the meeting;

b) provide the employee with a copy of the formal unsatisfactory work performance process to be followed as outlined below (First stage – Formal counselling);

c) provide a reasonable opportunity for the employee to seek advice from the CPSU or any nominated representatives before the unsatisfactory work performance process commences; and

d) allow the employee the opportunity to provide details of any mitigating circumstances.

16.5.4. The employer must take into account any reasonable explanation of any failure by the employee to participate before making a decision under this clause.

16.6. Employee representation

An employee is entitled to be represented by the CPSU or any nominated representative of their choice at any stage of the formal review meetings of the unsatisfactory work performance management process.

16.7. Prior to commencing process:

The employer must:

a) consider organisational or personal factors that play a role in the employee's unsatisfactory work performance and consider alternatives to the unsatisfactory work performance process to address the problem; and

b) have a reasonable expectation that the employee is capable of meeting the required level of performance. Where the employer and employee agree that

the employee is not capable of meeting the required level of performance the employer may transfer the employee to a suitable alternative position where reasonably practicable.

16.8. Commencing the formal unsatisfactory work performance process

Where the employer considers that informal attempts to address an employee's unsatisfactory work performance have been unsuccessful, the employer may proceed to formally manage the employee's unsatisfactory work performance in accordance with, but not limited to, all or some of the following measures:

a) increased supervision;

b) changes to the employee's performance plan;

c) mentoring;

d) training and professional development;

e) increased feedback;

f) coaching; and

g) performance improvement plan.

16.9. First stage – formal counselling

16.9.1. The first stage of formal management of unsatisfactory work performance is formal counselling of the employee. The employer must:

a) advise the employee of the unsatisfactory work performance and confirm the commencement of the formal counselling stage;

b) outline the standard required of the employee;

c) provide the employee with an opportunity to respond within a reasonable timeframe; and

d) provide the employee with an opportunity to improve within a reasonable timeframe.

16.9.2. The employee will be advised of the consequences of not improving their performance within a reasonable period of time and of engaging in any further unsatisfactory work performance.

16.9.3. A record of the formal counselling session will be placed on the employee's personnel file. The formal counselling record must indicate:

a) the standard expected of the employee;

b) where and how the employee is not meeting this standard; and

c) the consequences if the employee fails to improve their performance, including that continued or repeated unsatisfactory work performance may result in termination of the employee's employment.

16.9.4. If the employer determines that the employee has met the required standard of performance during the reasonable timeframe referred to above the employer will notify the employee that:

a) the formal unsatisfactory work performance process has been completed; and

b) no further action will be taken by the employer unless the employee engages in continued or repeated unsatisfactory work performance, in which case, the formal unsatisfactory work performance process may continue to the next stage.

A copy of this notification will be placed on the employee's personnel file.

16.10. Second stage – formal written warning

16.10.1. The employee will be given a formal written warning by the employer, if:

a) the employee's performance has not improved within the reasonable period following formal counselling as above; and/or

b) the employee engages in further unsatisfactory work performance.

16.10.2. The employer must:

a) advise the employee of the unsatisfactory work performance;

b) outline the standard required of the employee;

c) provide the employee with an opportunity to respond within a reasonable timeframe; and

d) provide the employee with an opportunity to improve within a reasonable timeframe.

16.10.3. The formal written warning must indicate:

a) the standard expected of the employee;

b) where and how the employee is not meeting this standard; and

c) the consequences if the employee fails to improve their performance, including that continued or repeated unsatisfactory work performance may result in termination of the employee's employment.

16.10.4. The written warning will be placed on the employee's personnel file.

16.10.5. If the employer determines that the employee has met the required standard of performance during the reasonable timeframe referred to above, the employer will notify the employee that:

a) the formal unsatisfactory work performance process has been completed; and

b) no further action will be taken by the employer unless the employee engages in continued or repeated unsatisfactory work performance, in which case, the formal unsatisfactory work performance process may continue to the next stage.

A copy of this notification will be placed on the employee's personnel file.

16.11. Third stage – final warning

16.11.1. The employee will be given a final written warning by the employer if:

a) the employee's performance has not improved within the reasonable time period following receipt of a formal written warning as above; and/or

b) the employee engages in further unsatisfactory work performance.

16.11.2. The employer must:

a) advise the employee of the unsatisfactory work performance;

b) outline the standard required of the employee;

c) provide the employee with an opportunity to respond within a reasonable timeframe; and

d) provide the employee with an opportunity to improve within a reasonable timeframe.

16.11.3. The final written warning must indicate:

a) the standard expected of the employee;

b) where and how the employee is not meeting this standard; and

c) the consequences if the employee fails to improve their performance, including that continued or repeated unsatisfactory work performance may result in termination of the employee's employment.

16.11.4. The final written warning will be placed on the employee's personnel file.

16.11.5. If the employer determines that the employee has met the required standard of performance during the reasonable timeframe referred to above, the employer will notify the employee that:

a) the formal unsatisfactory work performance process has been completed; and

b) no further action will be taken by the employer unless the employee engages in continued or repeated unsatisfactory work performance, in which case, the formal unsatisfactory work performance process may continue to the next stage.

A copy of this notification will be placed on the employee's personnel file.

16.12. Determination of unsatisfactory work performance outcome

16.12.1. In the event that the employee's performance has not improved within the reasonable time period following the process set out above and on receipt by the employee of the final written warning as above, the employer will advise the employee of the employee's continued or repeated unsatisfactory work performance and provide the employee with a reasonable opportunity to respond.

16.12.2. After considering the employee's performance and response (including any failure to respond), the employer will determine the unsatisfactory work performance outcome that is to apply to the employee.

16.12.3. The possible outcomes are:

a) assignment of the employee with or without their agreement to a role at a classification level lower than the employee's current classification level; or

b) termination of the employee's employment.

16.12.4. The employer will advise the employee of the unsatisfactory work performance outcome in writing and a copy will be placed on the employee's personnel file.

16.13. Disputes

Any dispute arising under this clause may only be dealt with in accordance with clause 8 (Resolution of disputes) when any of the following are placed on the employee's personnel file in accordance with this clause (this may include whether procedural fairness has been complied with in the employer coming to a decision):

a) a record of formal counselling;

b) a formal written warning;

c) a final written warning;

d) a notification given to the employee pursuant to the effect that the employee had met the required standard; or

e) a record of unsatisfactory work performance outcome.

17. Management of misconduct

17.1. The purpose of this clause is to:

a) establish procedures for managing misconduct or alleged misconduct of an employee;

b) provide for employee alleged misconduct to be investigated and addressed expeditiously and with minimal disruption to the workplace;

c) reflect the public sector values of integrity, impartiality, accountability and respect with the aim of ensuring that employees are treated fairly and reasonably; and

d) manage the employee's performance in accordance with this clause (instead of clause 16 (Management of unsatisfactory work performance)) where the employer determines that it would be more appropriate.

17.2. Application

17.2.1. Subject to applicable Victorian and federal legislation, action taken by the employer in relation to misconduct will be consistent with this clause.

17.2.2. This clause applies to all employees except casual employees and employees subject to a probationary period of employment.

17.3. Meaning of misconduct

For the purposes of this clause, misconduct includes:

a) a contravention of a provision of the PAA, the regulations to that Act, a binding code of conduct or a provision of any statute or regulation that applies to the employee in the employee's employment;

b) improper conduct in an official capacity;

c) a contravention, without reasonable excuse, of a lawful direction given to the employee, as an employee, by a person authorised to give that direction;

d) an employee making improper use of their position for personal gain; or

e) an employee making improper use of information acquired by virtue of their position to gain personally, or for anyone else, financial, or other benefits or to cause detriment to the employer or the public sector.

17.4. Referred matters under clause 16, Management of unsatisfactory work performance

Any matters that have arisen under the management of unsatisfactory work performance process in clause 16 may be considered in the misconduct process pursuant to this clause.

17.5. Employee representation

An employee is entitled to be represented by the CPSU or any nominated representative at any stage of the misconduct process.

17.6. Procedural fairness to apply

17.6.1. The process for managing employee misconduct will be consistent with the principles of procedural fairness.

17.6.2. All parties involved in the misconduct process will commit to completing it as quickly as practicable.

17.6.3. The employer will:

a) advise the employee the purpose of any meeting;

b) provide the employee with a copy of the formal process to be followed;

c) provide a reasonable opportunity for the employee to seek advice from the CPSU or representatives of their choice at any stage of the misconduct process; and

d) allow the employee the opportunity to provide details of any mitigating circumstances.

17.6.4. The employer must take into account any reasonable explanation of any failure by the employee to participate before making a decision under this clause.

17.7. Directions

17.7.1. Where employee misconduct is alleged, the employer may do any of the following:

a) make an initial assessment of the alleged misconduct before commencing the formal process to determine if an investigation is required in accordance with clause 17.8 (Investigation of alleged misconduct);

b) determine that it is appropriate to immediately commence an investigation of the alleged misconduct in accordance with this clause;

c) direct the employee to proceed immediately to perform alternative duties or work at an alternative place of work;

d) direct the employee not to speak to other employees of the employer about the matter or not to visit certain places of work; and/or

e) suspend the employee with pay.

17.7.2. In the event that the employer suspends the employee with pay under clause 17.7.1(e), the employer will:

a) review this decision no later than a date which is four weeks after the commencement of the suspension; and

b) confirm whether the suspension is to continue or is no longer necessary.

The employer will continue to review any decision regarding an employee's suspension every four weeks thereafter, until the end of the misconduct process in accordance with this clause.

17.7.3. Advising the employee

a) As soon as practicable after an allegation of misconduct has been made and the employer has determined in accordance with clause 17.7.1(a) or clause 17.7.1(b) that an investigation is required, the employer will advise the employee of the alleged misconduct in writing.

b) The written advice will contain the allegation/s of misconduct made about the employee. Relevant information will only be withheld where it is necessary to withhold that information in order to protect the personal privacy of any other person consistent with federal or state legislation.

17.7.4. Admissions by employee

The employee may at any stage elect to admit the alleged misconduct. If the employee admits the alleged misconduct, the employer may;

a) determine that further investigation is required (for example to investigate partial admissions, mitigating circumstances or other relevant issues); or

b) proceed immediately to the determination of the misconduct in accordance with clause 17.10 (Determination of discipline outcome) by advising the employee of the proposed discipline outcome and giving the employee a reasonable opportunity to respond to the findings in accordance with clause 17.9 (Opportunity for response by employee).

17.8. Investigation of alleged misconduct

17.8.1. Where an investigation is required, the employer will appoint a person to conduct an investigation into the alleged misconduct. Where appropriate, the investigation may be conducted by the employee's immediate manager. The appointed person must not have any prior personal involvement in the matter.

17.8.2. The employer will provide the employee with an opportunity to speak to the investigator if the employee wishes to do so.

17.8.3. The investigation may include:

a) collecting any relevant materials;

b) speaking with the employee;

c) speaking with any relevant witnesses;

d) providing the employee with specific particulars to allow the employee to properly respond to the alleged misconduct;

e) seeking an explanation from the employee; and

f) investigating any explanation made by the employee for the purposes of verifying the explanation so far as possible.

17.8.4. In relation to each allegation of misconduct, the investigator will make findings as to whether:

a) the allegation is substantiated; or

b) the allegation is not substantiated.

17.8.5. Where the investigator makes a finding that an allegation is not substantiated, which is accepted by the employer, the misconduct process will conclude in relation to any such allegation and the employee will be informed accordingly.

17.8.6. Where the investigator makes a finding that the allegation is substantiated, the employer will consider this information and propose a discipline outcome.

17.9. Opportunity for response by employee

17.9.1. As soon as practicable after the investigator has made a finding that any allegation of misconduct is substantiated, the employee will be provided with the findings of the investigator and the proposed discipline outcome. The employee will be provided with sufficient information to allow them a reasonable basis on which to be able to respond.

17.9.2. The employee will be given a reasonable time to respond to the findings or the material and the recommended discipline outcome. Any response must be provided within the above reasonable time.

17.10. Determination of discipline outcome

17.10.1. The employer will consider:

a) the findings of the investigator;

b) the recommendations as to the appropriate disciplinary outcome;

c) any response of the employee (including any admission of misconduct under clause 17.7.4 (Admissions by employee)); and

d) any prior disciplinary outcomes

and then determine the discipline outcome that is to apply to the employee. The discipline outcome must not be disproportionate to the seriousness of the matter.

17.10.2. The possible discipline outcomes are:

a) no action;

b) performance management;

c) formal counselling;

d) formal warning;

e) final warning;

f) assignment of the employee with or without their agreement to a role at a classification level or value range lower than the employee's current classification level;

(i) where no suitable positions are available at the employee's existing work location the disciplinary outcome may also include a transfer of the employee to a different work location;

(ii) where the disciplinary outcome includes a transfer of the employee to a different work location at the employee's current classification level, this will not preclude the employee being entitled to payment of any applicable relocation allowance;

g) transfer of the employee with or without their agreement to a different work location at the employee's current classification level (which will not preclude the employee being entitled to payment of any applicable relocation allowance); or

h) termination of employment.

17.10.3. In order to avoid a more severe discipline outcome being applied to an employee, the employer may apply the discipline outcomes listed in clause 17.10.2(b) to 17.10.2(g) together to form a single disciplinary outcome.

17.10.4. The employer will advise the employee of the discipline outcome in writing and a copy will be placed on the employee's personnel file.

17.11. Informing employee who raised allegation of misconduct

If a process was conducted in accordance with this clause because of an allegation of misconduct by another employee, the employer must advise that employee that the allegation has been dealt with in accordance with this clause and may provide the employee with other information as is reasonably practicable.

17.12. Disputes

Any dispute arising under this clause may only be dealt with in accordance with clause 8 (Resolution of disputes) when any of the following are placed on the employee's personnel file in accordance with this clause (this may include whether clause 17.6 (Procedural fairness) has been complied with in the employer coming to a decision):

a) a record of formal counselling;

b) a formal written warning;

c) a final written warning; or

d) a record of discipline outcome.

17.13. Potential criminal conduct

Where alleged misconduct that is the subject of a process in accordance with clause 17 (Management of misconduct) is also the subject of a criminal investigation or criminal proceedings, the employer is not required to delay or cease the management of misconduct process under clause 17 (Management of misconduct) but the employer may exercise its discretion to do so.

Part 4 – Wages and related matters

18. Salary rates

18.1. Employees employed by the employer at or after the date of commencement of this Agreement will receive the following salary increases within the salary bands set out at **Schedule 1**.

Date of effect	Percentage increase
1/12/2020	1.00%
29/04/2021	1.00%
29/10/2021	1.00%
29/04/2022	1.00%
29/10/2022	1.00%
29/04/2023	1.00%
29/10/2023	1.00%
29/04/2024	1.00%

18.2. Progression within a classification range – eligibility

18.2.1. Progression within a classification range will be through performance pay.

18.2.2. Employees eligible for progression and performing to requirements as set out in the employees 'VLA and Me' receive an annual increase in salary through progression pay, except those employees at the top of the salary band for their classification, as outlined in clause 18.3 of this Agreement.

18.2.3. An employee will be eligible to access progression if they are rated as having met VLA and Me objectives and have been in their role for six months or more, except in the following circumstances:

a) has completed a formal underperformance process or is subject to one as at 30 June, or

b) is subject to proven misconduct during the course of the performance cycle.

18.2.4. An eligible employee, as defined in clause 18.2.3 of this Agreement, and who is absent for reasons of parental leave, will be eligible for progression pay for the first 12 months of the period of parental leave.

18.2.5. Performance pay for employees who are currently acting in a higher duties arrangement for a period less than six months will receive progression pay based on salary at their substantive level, as outlined in clause 20.2.5 of this Agreement.

18.2.6. Managers must inform People and Culture (P&C) of any employees receiving formal performance counselling for underperformance by 30 June each year and these staff will not receive progression pay.

18.2.7. Performance pay will be calculated for each classification level at two per cent per annum.

18.3. Top of band performance payment

An employee at the top of their band of classification is eligible to receive a top of band payment where the employee is assessed at their annual performance review as meeting the 'criteria for progression'.

The top of band performance payment will be equal to one per cent of the employee's salary as at 30 June of the relevant performance cycle.

18.4. Progression between classifications – job evaluation

Classification decisions shall be based upon a documented position description and classifications will be determined using the following methods where possible:

a) an agreed job evaluation methodology, including:

b) comparison of the position description with the position description(s) of positions which are comparable or which the position reports to or manages.

18.5. Classification/reclassification process

18.5.1. Any position description that has changed significantly requires evaluation using one of the methods outlined in 18.4.1.

18.5.2. Position descriptions must accurately reflect the accountabilities and requirements of the position.

18.5.3. Approved position descriptions must be lodged with the evaluation panel co-ordinator.

18.5.4. If a job evaluation methodology is required, a panel will be created with staff members trained in evaluation and reclassification. Two panel members (one P&C staff member and one staff member) will conduct the evaluation using a job evaluation methodology.

18.5.5. Evaluation takes up to three weeks. The relevant director is advised of the outcome.

18.5.6. Employees can seek to have their position reclassified to a higher classification where duties, accountabilities and requirements of their position accord with a higher classification. Such requests must be made in writing and be supported by the employee's manager. As part of this process, the position description will be revised and updated to reflect the higher responsibilities of the new role.

18.6. Position description

The employer will provide all employees with a position description for the position held, which shall contain information relevant to the duties and responsibilities of that position.

18.7. Remuneration salary packaging

Employees may access salary packaging benefits in line with the employer's policy. The employer's policy will comply with statutory changes to Fringe Benefits Tax and will allow salary packaging to the limit prescribed in legislation.

19. Gender equality

19.1. Gender pay equity principles

The provisions of this agreement are to be interpreted consistently with the following gender pay equity principles:

a) establishing equal pay for work of equal or comparable value: equal or comparable value refers to work valued as equal in terms of skill, effort, responsibility and working conditions. This includes work of different types;

b) freedom from bias and discrimination: employment and pay practices are free from the effects of unconscious bias and assumptions based on gender;

c) transparency and accessibility: employment and pay practices, pay rates and systems are transparent. Information is readily accessible and understandable;

d) relationship between paid and unpaid work: employment and pay practices recognise and account for different patterns of labour force participation by workers who undertake unpaid and/or caring work;

e) sustainability: Interventions and solutions are collectively developed and agreed, sustainable and enduring; and

f) participation and engagement: workers, unions and employers work collaboratively to achieve mutually agreed outcomes.

19.2. Meaning of 'Pay'

In this clause, 'pay' refers to remuneration including but not limited to salary, bonuses, overtime payments, allowances and superannuation.

19.3. Commitment to collaborative approach to achieving gender pay equity

The employer will work collaboratively with employees and the CPSU to identify, support and implement strategies designed to eradicate the gender pay gap, gender inequality and discrimination across the workplace.

19.4. Claims relating to systemic gender equality issues

19.4.1. A systemic gender equality issue means an issue of a systemic nature within VLA, which adversely affects a class or group of employees of the employer relating to:

a) the gender composition of any or all workforce levels of the employer;

b) the gender composition of governing bodies;

c) equal remuneration for work of equal or comparable value across any or all workforce levels of the employer, irrespective of gender;

d) sexual harassment in the workplace;

e) recruitment and promotion practices in the workplace;

f) availability and use of terms, conditions and practices in the workplace relating to family violence leave, flexible working arrangements and working arrangements supporting employees with family or caring responsibilities; or

g) gendered workplace segregation.

19.4.2. The CPSU and/or a class or group of employees (claimant/s) may seek resolution of a dispute relating to a systemic gender equality issue (claim) in accordance with this clause.

19.4.3. A claim or claims under this clause must be made in writing to the employer.

19.4.4. In the first instance the claim should include sufficient detail for the employer to make a reasonable assessment of the nature of the claim, the employees impacted by the claim and any proposals to resolve the claim.

19.4.5. The employer must meet and discuss the claim with the claimant prior to responding to the claim.

19.4.6. The employer must respond to the claim in writing to the claimant, within a reasonable time, including enough details in the response to allow the claimant to understand the employer's response to each element of the claim, including reasons why the claim is accepted or rejected.

19.4.7. If the claim is unable to be resolved between the employer and the claimant/s, either the claimant/s or the employer may refer the claim to the Gender Equality Commissioner to deal with.

19.4.8. In dealing with a claim, the Gender Equality Commissioner:

a) must consider the gender pay equity principles;

b) must be objective and free from assumptions based on gender;

c) must acknowledge that current pre-existing views, conclusions or assessments of comparable worth or value may not be free of assumptions based on gender;

d) must ensure that skills, responsibilities, effort and conditions that are commonly undervalued such as social and communication skills, responsibility for wellbeing of others, emotional effort, cultural knowledge and sensitivity are considered;

e) must ensure that dispute resolution outcomes consider current or historical gender-based discrimination and do not further promote systemic undervaluation;

f) must deal with the claim in a manner that is independent of the employer or the claimant;

g) must consider evidence that the claim may not be isolated to the employer subject to the claim but may affect employees from multiple VPS employers or other public sector employers not covered by this agreement;

h) may jointly deal with a claim and any other dispute which has been referred to the Gender Equality Commissioner, which relates to the same or similar systemic gender equality issues;

i) must consider the views of the claimant prior to jointly dealing with multiple claims or disputes; and

j) may otherwise deal with the claim in any way the Gender Equality Commissioner considers appropriate, consistent with the requirements of the *Gender Equality Act 2020* (Vic). This can include mediation, conciliation, making recommendations or offering opinions.

19.4.9. If a claim is unable to be resolved by the Gender Equality Commissioner, either the claimant or the employer may refer the claim to the Gender Equality Commissioner as a dispute of a collective character for resolution pursuant to clause 8.10 (Disputes of a collective character) or 8.11 (Conciliation).

19.4.10. This clause does not apply to any dispute regarding a matter or matters arising in the course of bargaining in relation to a proposed enterprise agreement.

19.4.11. A claimant may choose to be represented at any stage by a representative, including a CPSU representative or employer's organisation.

19.4.12. The claimant and employer and their representatives must genuinely attempt to resolve the dispute through the processes set out in this clause and must cooperate to ensure that these processes are carried out expeditiously.

19.4.13. While a claim 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 a reasonable concern about an imminent risk to their health or safety, has advised the employer of this concern and has not unreasonably failed to comply with a direction by the employer to perform other available work that is safe and appropriate for the employee to perform. No party will be prejudiced as to the final settlement of the claim by the continuance of work in accordance with this clause.

19.5. Gender equality action plans

The employer will consult with the CPSU in the preparation of Gender equality action plans under the *Gender Equality Act 2020* (VIC).

20. Allowances

20.1. First aid allowance

Where an employee, in addition to their normal duties, agrees to be appointed by the employer to perform first aid duties:

a) the employee must hold a first aid certificate issued by the St John Ambulance Australia or an equivalent qualification;

b) the employee will be paid an annual allowance payable in fortnightly instalments; and

c) the allowance will be as follows:

Effective date	Amount per annum
1 December 2020	$647
1 December 2021	$660
1 December 2022	$673
1 December 2023	$686

d) The employer must reimburse any additional costs incurred by the employee in obtaining and maintaining the first aid qualification.

20.2. Higher duties allowance

20.2.1. An allowance will be paid where an employee is required to undertake all or part of the duties of a higher classified position for a period of at least five consecutive working days.

20.2.2. The level of allowance will be in proportion to the extent of the higher duties performed, and will be:

a) calculated on the base salary of the higher classified position; or

b) in instances where the base of the higher classified position is less than a five per cent salary increase, a five per cent increase will be applied.

20.2.3. The manager must decide to what extent the employee is expected to fulfil the full range of responsibilities and duties, on either a 100 per cent, 75 per cent, 50 per cent or 25 per cent basis. Where a manager determines that less than 100 per cent of higher duties are to be performed, a reason must be provided to People & Culture and to the employee.

20.2.4. Paid leave taken during a higher duties assignment will be paid inclusive of the allowance, provided the employee resumes the duties of the higher duties position on return from leave.

20.2.5. Where the employee has been acting in a position for more than six months, performance pay will be allocated on the basis of performance in the higher position. Performance pay is applied to the employee's ongoing salary at their substantive level. If the differential between the new substantive salary and the base salary of the higher classification level is reduced to less than five per cent, the higher duties allowance will be adjusted to maintain the five per cent minimum.

20.2.6. All higher duties assignments longer than six months must be filled through a competitive selection process unless exceptional circumstances apply.

20.2.7. Where an employee is temporarily assigned duties in the same band, but which comprise a significant supervision component, a same level 'higher duties' allowance of up to ten per cent of salary may be paid at the manager's discretion.

20.3. Language allowance

Where the employee, in addition to their normal duties, agrees to use their skills in a second language to assist members of the public who have low English proficiency:

a) the employee must hold a current accreditation from the National Accreditation Authority for Translators and Interpreters (NAATI); and

b) the employee will be paid an annual allowance payable in fortnightly instalments according to the government rate, as follows:

Date of effect	**1 December 2020**	**29 April 2021**	**29 October 2021**	**29 April 2022**	**29 October 2022**	**29 April 2023**	**29 October 2023**	**29 April 2024**
Language aide accreditation	$1109	$1120	$1131	$1143	$1154	$1166	$1177	$1189
Paraprofessional interpreter accreditation	$1526	$1541	$1557	$1572	$1588	$1604	$1620	$1636
Interpreter accreditation or higher	$2081	$2101	$2122	$2144	$2165	$2187	$2209	$2231

c) The employer will pay the cost of the NAATI pre-testing workshop and test up to two times per year.

d) The employee must apply annually for renewal of the allowance.

e) The employer will assess the employee's renewal application to determine whether the employer still requires the employee to perform interpreting duties.

20.4. Private mobile and home phone use

An employee required to use their private mobile phone or home phone will be reimbursed for work related calls. The employee must submit an itemised statement of the calls made and their cost.

20.5. Travelling and expenses allowances

Receipts for meal related expenditure must be collected and presented to Finance for reimbursement via Electronic Funds Transfer.

20.6. Reimbursement for motor vehicle expenses.

If an employee has received prior approval to use their private motor vehicle, the employer will reimburse their kilometre costs and any other reasonable motor vehicle reimbursement expenses based on the rates determined by the Australian Tax Office. Reimbursement is subject to completion of the appropriate mileage reimbursement form.

21. Accident pay

21.1. In the case of a WorkCover claim, the employer will pay the difference between compensation benefits under the Workplace Injury Act and the employee's salary for a period of up to 52 weeks, or an aggregate period of 261 working days (working days means day or days when the employee would normally be required to work and includes public holidays), or an aggregate of 1984 hours, unless employment ceases.

21.2. The employee may utilise accrued leave credits for absences during and beyond the period for which compensation is made. Leave without pay may be granted where entitlements to paid leave have ceased.

21.3. Payments under this clause will cease on, whichever comes first:

a) the date on which the employee is fit to resume full duties;

b) the date on which the employee receives a disability benefit from a superannuation scheme; or

c) the date on which a lump sum redemption is received.

21.4. The employee granted leave without pay under this clause does not accrue any right, benefit or entitlement under this agreement and must not be granted sick leave so long as they receive weekly compensation.

21.5. The employee is obliged to:

a) immediately notify the employer in writing of any claim for civil damages; and

b) refund the make-up pay received if a settlement is received in a civil claim that specifically compensates the employee for make-up payments.

22. Payment of salaries

22.1. Salaries, allowances, penalty or overtime payments due to an employee must be paid by the employer by fortnightly electronic direct credit to a bank account, credit union or building society account nominated by the employee. In exceptional circumstances, including significant delays in payment of salary, the employer will make provision for off-line payments.

22.1.1. Where a normal payday falls on a public holiday, the direct credit to the employee's nominated account must be made no later than the last working day prior to the public holiday.

22.1.2. Employees must be provided either in writing or electronically, with details of each pay regarding the make-up of their remuneration and any deductions.

22.1.3. By agreement with the employer, the employee may authorise deductions from salary for forwarding to superannuation funds.

22.2. In the event of an overpayment of salary, allowance, loading or other payment, the employer must advise the employee. Similarly, the employee must advise the employer if they know there has been an overpayment. Where agreement cannot be reached on a repayment arrangement, the employer may recover the overpayment by instalments to be paid in accordance with the *Financial Management Act 1994* (Vic).

23. Superannuation legislation

23.1. Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth), deals with the superannuation rights and obligations of employers and employees. Under superannuation legislation individual employees generally have the opportunity to choose their own superannuation fund. If an employee does not choose a superannuation fund, any superannuation fund nominated in the Agreement covering the employee applies.

23.2. The rights and obligations in these clauses supplement those in superannuation legislation.

23.3. Employer contributions

The employer must make such superannuation contributions to a superannuation fund for the benefit of an employee, regardless of age, as will avoid the employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that employee.

23.4. Voluntary employee contributions

23.4.1. Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 23.3 (Employer contributions).

23.4.2. An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.

23.4.3. The employer must pay the amount authorised under clauses 23.4.1 or 23.4.2 no later than 28 days after the end of the month in which the deduction authorised under 23.1 or 23.4.2 was made.

23.5. Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 23.3 (Employer contributions) to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 23.3 (Employer contributions) and pay the amount authorised under clauses 23.4.1 or 23.4.2 to one of the following superannuation funds:

a) the employer's default superannuation fund;

b) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund and is a fund that offers a MySuper product or is an exempt public sector superannuation scheme; or

c) a superannuation fund or scheme which the employee is a defined benefit member of.

23.6. Employer contributions in respect of Primary caregiver parental leave

23.6.1. An employee is entitled to have superannuation contributions made in respect of the period of the employee's primary caregiver parental leave, which occurs on or after 1 December 2020.

23.6.2. The employer will pay the superannuation contributions as a lump sum to the employee's fund as provided for in clause 23.5 (Superannuation fund).

23.6.3. The lump sum payment will be made on or before the first superannuation guarantee quarterly payment due date following the employee's return to work at the conclusion of their primary caregiver parental leave.

23.6.4. The quantum of superannuation contributions payable under this clause will be calculated based on:

a) the number of weeks of primary caregiver parental leave taken by the employee, capped at 52 weeks;

b) the employee's weekly pay calculated in accordance with clause 35.25 of this Agreement; and

c) the applicable contribution rate under the *Superannuation Guarantee (Administration) Act 1992* (Cth) at the time the payment is made.

Part 5 – Hours of work and related matters

24. Ordinary hours of work

24.1. The ordinary hours of work for each employee, except for casual and part-time employees, will average 76 (exclusive of meal breaks), to be worked over an average of no more than ten days per fortnight, Monday to Friday between the spread of hours of 7 am and 7 pm. The business hours are 8.45 am to 5.15 pm.

24.1.1. This clause does not apply to shift workers whose ordinary hours of work are set out in clause 25 (Shift work).

24.1.2. Spread of hours

24.1.3. The actual days and hours of work will be agreed between the employer and employee. Either party may seek to alter the days or hours of duty. Agreement to such alteration shall not be unreasonably withheld, taking into account the personal/family circumstances of the employee and the work requirements of the employer. In the absence of an agreement, the aggrieved party may utilise the disputes and grievance procedure in clause 8 (Resolution of disputes).

24.2. Flexitime

24.2.1. All employees have the option of participating in VLA's Flexitime scheme subject to individual agreement with their manager, and operational requirements.

24.2.2. Part-time staff have access to flexible work arrangements, including flexitime, through individual agreement with their manager and subject to operational requirements.

24.3. Excessive flexitime

24.3.1. Up to five days accrued excessive flexitime may be used during the period 1 December to 31 January, in addition to the ordinary entitlements to flexitime. Staff will be directed, by their manager, to use any remaining or unused excess flexitime during the period 1 February to 31 March of each year.

24.3.2. Any remaining excessive flexitime will be deleted in April.

24.4. Recording of hours

VLA5 and VLA6 staff will not be required to record their hours of work but can work flexible hours and take flexi days off subject to agreement with their manager and operational requirements.

24.5. Meal breaks

24.5.1. The employer will grant meal breaks between 12 pm and 2 pm at times suitable to operational requirements, taking into account the wishes of the employee. The number and starting and finishing times of meal breaks will be specified.

24.5.2. Except where otherwise permitted by this clause, the employee will not be required to work for more than five hours without an unpaid meal break unless the employee and the employer otherwise agree. The length of the meal interval must be at least thirty minutes. Where work on any day continues for more than two hours beyond

the period of normal working hours, a second meal break will be taken of no less than 20 minutes.

24.5.3. If for operational or emergency reasons the employee is required to remain on duty, they may arrange to take meals during their hours of duty without a specific meal break.

24.5.4. Where agreement cannot be reached as specified in clause 24.5.2 and the employee is required by their manager to work through their meal break in accordance with clause 24.5.3, time in lieu or payment for overtime will be approved in accordance with this Agreement.

24.5.5. If for operational reasons it is impractical for all employees within a work group to observe the same time for the taking of a meal break, meal breaks may be staggered.

25. Shift work

25.1. What is shift work?

25.1.1. Shift work is when an employee is required to perform rostered ordinary hours of work averaging 76 hours per fortnight over a roster cycle which must include:

a) a Saturday;

b) a Sunday;

c) a Public Holiday; or

d) an evening shift.

25.2. A part-time employee may be rostered to perform shift work where the employee's part-time work arrangements is the equivalent of a full-time shift. The employee will be remunerated according to the relevant shift allowance outlined in clause 25.2.

25.3. Shift work allowances

An employee rostered to work in accordance with a shift roster will be paid the following loadings in addition to their ordinary rate of pay:

Shift	Period	Loading	Total payment rate
Monday to Friday – evening shift	Finishing after 6.30 pm	15%	115%
Saturday	All hours on Saturday	50%	150%
Sunday	All hours on Sunday	100%	200%
Public holiday	All hours on a public holiday	150%	250%

25.4. Rostered weekend work for Weekend Remand Court and the Bail and Remand Court will be considered as part of the standard shift roster arrangement and remunerated according to the relevant shift allowances outlined in clause 25.2.

25.5. Other than in exceptional circumstances, an employee must not be required to perform:

a) a further period of overtime duty;

b) a period of ordinary duty;

c) a further period of scheduled stand-by duty, if

(i) either the employee has not been provided with a 10 hour rest period between the time of completion of one period of duty and the commencement of the next; or

(ii) the employee has not been provided with a 10 hour rest period within the preceding 24 hours from the time of the commencement of the stand-by duty.

25.6. Bail and Remand Court shift provisions

25.6.1. The following provisions relate to employees who prior to the commencement of the Agreement were covered by the Victoria Legal Aid Enterprise Agreement 2016-2020 and required to perform under a shift work arrangement to service the Bail and Remand Court.

25.6.2. Employees who prior to the Agreement were covered by the Victoria Legal Aid Enterprise Agreement 2016-2020 and were required to perform under a shift work arrangement as outlined in clause 25.5.1 of this Agreement will continue to receive shift duty payments in accordance with the following arrangements for work performed on a Saturday:

Shift	Period	Loading	Total payment rate
Saturday	All hours on Saturday	100%	200%

26. Overtime and penalty rates

26.1. Overtime

26.1.1. The employer may require an employee to work reasonable overtime. Overtime means any hours an employer requires an employee to work that are additional to the employee's ordinary hours of work.

26.1.2. Where an employee is required to work outside ordinary hours of duty, they will be entitled to receive a payment (or time off). Overtime applies only when the manager states that they require additional hours to be worked.

26.1.3. A part-time employee will be entitled to payment of overtime, or equivalent time-off, in accordance with clauses 26.1.5 and 26.1.6, where hours worked exceed 7.6 hours on any day, Monday to Friday or outside the ordinary spread of hours stated in clause 24.1. In all other instances, extra work performed in excess of the fixed number of working hours of a part-time employee in a fortnightly pay period, will be at the ordinary hourly rate.

26.1.4. The manager's authorisation for overtime payment or overtime leave must be given (on the appropriate form).

26.1.5. When overtime is required by a manager it may be paid or, on the request of the employee, taken as overtime leave.

26.1.6. Where overtime is offered on a voluntary basis, the manager may determine whether the offer is for paid overtime or overtime leave. An employee classified at VLA5 or VLA6 is not eligible for overtime pay but may take overtime leave in accordance with clause 26.8 (Overtime leave).

26.1.7. An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:

a) any risk to the employee's health and safety;

b) the employee's personal circumstances, including family responsibilities;

c) the needs of the workplace

d) the notice (if any) given by the employer of overtime and by the employee of their intention to refuse it; and

e) any other relevant matter.

26.2. The employer recognises that its staff are client focused and have a commendable desire to provide services of a very high quality. This at times leads to some work outside of standard hours and even to the taking on of workloads that are higher than expected. To accommodate this, the employer has developed a range of flexible work policies.

26.3. The employer has a responsibility to manage planning processes to ensure targets and outputs are based on available resources and staffing levels. The employer also has a responsibility to be aware of the nature and quality of the work performed by staff so that the work is balanced by an appropriate level of flexibility.

26.4. The employer acknowledges the benefits to both the organisation and individual employee gained through employees having a balance between their professional and personal life. Work which requires the employee to work beyond their ordinary hours of work will not be routinely allocated.

26.5. Where an individual or group of individuals believe that there is an unreasonable allocation of work leading to staff being overloaded with work, the individual or group of individuals can seek to have the allocation reviewed by the employer to address the staff concerns.

26.6. Calculation of overtime

26.6.1. The hourly rate for overtime shall be calculated in accordance with the following table:

For overtime work on	Overtime rate (% of ordinary hourly rate)
Monday to Friday – first three hours	150%
Monday to Friday – after 3 hours	200%
Saturday and Sunday – in all cases except public holidays	200%

For overtime work on	Overtime rate (% of ordinary hourly rate)
Public holiday or substituted day	250%

26.6.2. An employee will be paid overtime based on their actual annual salary.

26.7. VLA5 and VLA6 employees are not eligible for paid overtime but may take overtime leave.

26.8. Overtime leave

26.8.1. The employer may, on the application of an employee, grant time off in respect of overtime performed by that employee. No time off shall be granted in respect of any work for which payment has been made.

26.8.2. According to the employer's flexitime scheme, a manager may authorise an employee to work outside the regular span of hours where it is necessitated by work requirements. The time worked accrues within the flexitime scheme as time in lieu, which is separate to regular flexitime.

26.8.3. This overtime clause provides for time off (Overtime leave), at the manager's discretion, if requested by an employee offered work outside of the flexitime span of hours. Overtime leave is accrued and taken according to this clause and is separate to the flexitime scheme and time in lieu accrued under that scheme. This does not affect time in lieu accrued under the flexitime system.

26.8.4. Overtime leave may accumulate to a maximum of 38 hours. An employee who has accumulated 38 hours of overtime leave must be paid overtime for any additional overtime hours worked. By agreement, the employee may convert 38 hours of accrued overtime leave to one additional week of annual leave to be taken at a time of mutual agreement. In this case, overtime leave may continue to accrue.

26.8.5. Upon termination for any reason, the employee will be paid out any overtime leave accrued to their credit as if it were time worked.

26.8.6. Where an employee is granted overtime leave for overtime worked the time will accrue on the following basis:

a) in the case of overtime worked Monday to Friday – on an hour for hour basis; and

b) in the case of overtime worked on weekends or public holidays – two hours of time of overtime leave per hour worked.

26.9. Voluntary overtime

At the time that voluntary overtime is offered, the relevant manager must indicate to the employee whether the overtime is to be paid or to be taken as overtime leave. Overtime leave is to be taken at a time of mutual agreement. The manager will endeavour to permit the employee to take overtime leave at a time of the employee's choosing.

26.10. Rest period after overtime

26.10.1. Other than in exceptional circumstances, overtime duty should be arranged so that an employee has at least ten consecutive hours off duty between the work of successive days or shifts.

26.10.2. Where a period of rest relief is granted that permits an employee to return to duty later than the time rostered for commencement, appropriate overtime payments in accordance with this clause are to be made where continuation on duty is required beyond the normal finishing time applying to that shift.

26.11. Transport of employees

When an employee, after having worked approved overtime, finishes work at a time when reasonable means of transport is not available, the employer shall provide transportation to the employee's home.

26.12. Meal expenses

Where overtime is performed (subject to clause 26.1.2), an employee will be eligible for reimbursement of meal expenses when required to work a period of overtime which:

a) immediately follows or immediately precedes a scheduled period of ordinary duty and is for a period of not less than two hours;

b) does not immediately follow or immediately precede a scheduled period of ordinary duty;

c) includes a meal break of not less than 20 minutes taken prior to the completion and not less than four hours after the commencement of the overtime; or

d) where the taking of a meal break is precluded by reason of safety requirements is not less than four hours.

26.13. Childcare Arrangements

Where an employee is required to work outside their ordinary hours of work and where less than 24 hours' notice of the requirement to perform such overtime work has been given by the employer, the employee will be reimbursed for reasonable childcare expenses incurred. Evidence of expenditure incurred by the employee must be provided as soon as possible after the working of such overtime.

26.14. Minimum payments on recall

An employee who, due to an emergency or other unforeseen circumstance, is recalled to perform overtime duty shall be paid for a minimum of three hours work at the appropriate overtime rate prescribed in this clause. An employee recalled to work within three hours of starting work on a previous recall shall not be entitled to any additional payment for the time worked within a period of three hours from the time of commencement of duty on the previous recall. The provision of this clause shall not apply where overtime duty is continuous, or separated only by a meal break, with the completion or commencement of ordinary hours of duty.

26.15. Stand-by allowance

26.15.1. The employer may require an employee to be on stand-by outside the ordinary hours of duty of the employee to perform work away from their usual place or places of work.

26.15.2. The employer will, in consultation with the employee, establish a roster for stand-by duty.

26.15.3. The employee may refuse to be on stand-by where this may result in the employee working hours which are unreasonable having regard to:

a) any risk to the employee's health and safety;

b) the employee's personal circumstances including family responsibilities;

c) the needs of the workplace;

d) the notice (if any) given by the employer of the stand-by and by the employee of their intention to refuse it; and

e) any other relevant matter.

26.15.4. An employee on stand-by:

a) must be able to be contacted immediately by an agreed means of communication;

b) must be able to travel to their usual place or places of work within a reasonable time;

c) will, if required to be recalled to work, be provided by the employer with appropriate transport or be reimbursed travel expenses; and

d) must be fit for duty.

26.15.5. The standby allowance will constitute total compensation for any intermittent limited response to a telephone call or email for up to a total of one hour's duration. An employee who is required to return to work when on stand-by will, after the first hour, be compensated for each hour or part hour worked, in accordance with the overtime provisions of this Agreement.

26.15.6. The stand-by allowance does not apply where stand-by is incorporated into total remuneration or is otherwise compensated.

26.15.7. The employer must pay the following indexed amounts as stand-by allowance:

Date payable	Payable	Amount
1 December 2020	Per night	$24.37
1 December 2021	Per night	$24.86
1 December 2022	Per night	$25.36
1 December 2023	Per night	$25.86
1 December 2020	Per 24-hour period (day and night)	$48.84
1 December 2021	Per 24-hour period (day and night)	$49.8
1 December 2022	Per 24-hour period (day and night)	$50.81

Date payable	Payable	Amount
1 December 2023	Per 24-hour period (day and night)	$51.83

26.15.8. The allowance provided under clause 26.15.4 applies to VLA classifications 4 and below.

26.15.9. If recalled to perform a stand-by duty, an employee must not be required to perform:

a) a further period of overtime duty;

b) a period of ordinary duty;

c) a further period of scheduled stand-by duty; or

d) If either:

(i) the employee has not been provided with a 10-hour rest period between the time of completion of one period of duty and the commencement of the next; or

(ii) the employee has not been provided with a 10-hour rest period within the preceding 24 hours from the time of the commencement of the stand-by duty.

Part 6 – Leave and public holidays

27. Annual leave

The employer recognises the importance of employees taking annual leave to ensure employee wellbeing. Employees will be actively encouraged to take leave. The employer and the employee will work together to develop a strategy to ensure annual leave is taken and that excessive leave is not accrued.

27.1. Leave entitlement

Every employee (other than a casual) will be entitled to four weeks (152 hours) paid annual leave after each year of service or on a pro rata basis for any period of employment which is less than one year.

27.2. Calculation of service

In calculating service for the purposes of this clause, all periods of paid leave, including public holidays, will be counted as service; periods of unpaid leave of less than 12 months for which compensation is payable under Act/s of Parliament relating to accident compensation shall be counted as service.

27.3. Leave to be taken

27.3.1. Annual leave is subject to operational requirements and will be taken within two years of falling due unless otherwise agreed between the employee and employer. This is to avoid situations where an employee accrues a leave balance in excess of eight weeks.

27.3.2. If accruals are in excess of eight weeks, the employer and employee will work together to take all reasonable steps to reduce the annual leave balance. If all genuine attempts fail to reach agreement on an appropriate plan to manage excess annual leave, the employer will require the employee to take a period of paid annual leave to reduce the balance. The employer will communicate this requirement in writing.

27.3.3. The taking of excessive leave will be required by the employer, where reasonable. In assessing reasonableness, the following factors are relevant:

a) the needs of the employee and the employer's client service needs;

b) an agreed arrangement with the employee;

c) custom and practice of the employer;

d) timing of the requirement to take leave; and/or

e) the length of the period of notice given.

27.3.4. No payment will be made or accepted in lieu of annual leave, unless under the provisions for leave on termination or accident pay.

27.4. Leave on termination

Any employee who, upon retirement, resignation, dismissal or termination of services or employment has accrued leave of absence for recreation, must be paid in lieu of absence for recreation, such amount being the salary and allowances the employee would have received if leave of absence for annual leave had been granted.

27.5. Accident pay and annual leave

An employee granted leave of absence under clause 21 (Accident pay) who has accrued annual leave of absence:

a) may elect during the 52 weeks of such leave to be paid in lieu of taking annual leave; and

b) must be paid in lieu of annual leave of absence if an election is not made.

The employer undertakes that any annual leave paid in lieu as per clause 27.5 of this Agreement will not result in the employee's remaining accrued entitlement to paid annual leave being less than four weeks.

27.6. Leave loading

27.6.1. An employee will, in respect of annual leave, be entitled to a loading of 17.5 per cent of the remuneration of the employee for the period of annual leave. Annual leave loading will be paid on a fortnightly basis.

27.6.2. For the purposes of calculating this allowance, remuneration is deemed to be the employee's salary at the first day of January each year or salary at the date of the commencement of employment and will not exceed the top of VLA3.

27.7. Purchased leave

27.7.1. Employees, with the agreement of the employer, may work between 44 and 51 weeks per year. Access to this entitlement may only be granted on application from an employee and cannot be required as a precondition to employment. Where both parties agree to a reduction in the number of working weeks, the employee will receive additional annual leave as follows:

Proportion of annual salary applicable under Schedule 1	Number of additional weeks of purchased leave	Total amount of leave (purchased and annual leave)
44/52 weeks	additional 8 week's leave	total of 12 weeks
45/52 weeks	additional 7 week's leave	total of 11 weeks
46/52 weeks	additional 6 week's leave	total of 10 weeks
47/52 weeks	additional 5 week's leave	total of 9 weeks
48/52 weeks	additional 4 week's leave	total of 8 weeks
49/52 weeks	additional 3 week's leave	total of 7 weeks
50/52 weeks	additional 2 week's leave	total of 6 weeks
51/52 weeks	additional 1 week's leave	total of 5 weeks

27.7.2. The employee will receive a salary equal to the period worked (e.g. 46 weeks, 49 weeks) which will be spread over a 52-week period and accrual of sick leave and long service leave shall remain unchanged.

27.7.3. An employee may revert to ordinary 52-week employment by giving the employer no less than four week's written notice. Where an employee does this, appropriate pro rata salary adjustments will be made.

27.7.4. As an alternative, employees may request that any week of their annual leave entitlement be converted to two weeks leave at half pay.

27.7.5. Where an employee, with an excessive annual leave accrual, wishes to make an application under this clause, the extent of the employee's excessive annual leave accrual and any plans the employee has to take some or all of their accrued annual leave entitlements in conjunction with any approved purchased leave arrangement, will be considered by the employer in assessing the employee's application for purchased leave.

28. Personal/carer's leave

The provisions of this clause apply to full-time and part-time employees on a pro rata basis, but do not apply to casual employees.

28.1. Paid personal/carer's leave

Paid personal/carer's leave will be available to an employee when they are absent because of:

a) personal illness or injury (sick leave);

b) personal illness or injury of an employee's immediate family (carer's leave), household member, or an assistance animal that requires the employee's care and support;

c) an unexpected emergency affecting an employee's immediate family, household member or assistance animal who requires the employee's care and support (carer's leave);

d) providing ongoing care or support and attention to another person who is wholly or substantially dependent on them, provided that the care and attention is not wholly or substantially on a commercial basis (carer's leave);

e) attendance at a medical appointment with a registered practitioner (sick leave).

28.2. Amount of paid personal/carer's leave

28.2.1. Seventeen days personal/carer's leave is available per annum on a pro rata basis.

28.2.2. This leave entitlement accrues on a daily basis.

28.2.3. Unused personal/carer's leave accumulates from year to year.

28.3. Immediate family or household

28.3.1. The entitlement to use personal leave for the purposes of personal leave, carer's or compassionate leave is subject to the person being either:

a) a member of the employee's immediate family (see clause 3 (Definitions and interpretation)); or

b) a member of the employee's household (see clause 3 (Definitions and interpretation)).

28.4. Evidence requirements for personal leave

28.4.1. For any period of sickness exceeding three days continuous absence, an employee shall furnish either a satisfactory certificate by a registered practitioner or a statutory declaration setting out the cause of such absence. Provided that:

a) In respect of an absence of three days or less, the employee may be required by the employer to furnish at the option of the employee either a certificate by a registered practitioner or a statutory declaration setting out the cause of such absence. If the number of days during which an employee is absent in any one year of service without a certificate by a registered practitioner exceeds five days in aggregate, the number of days absence in

excess of five shall not be granted as personal leave but may be deducted from their annual leave or be granted as leave without pay, on the employee's election.

b) Provided further that the employer may, prior to the granting of annual leave or leave without pay under this clause, require the employee to furnish a statutory declaration setting out the cause of the absence.

28.4.2. Where an employee is absent from duty on account of an illness or injury which required or requires attendance upon a registered dentist, registered physiotherapist, registered chiropractor, registered osteopath, registered optometrist, or a psychologist in clinical practice who is a member of the board of the clinical branch of the Australian Psychological Society, or is eligible for membership of such board, the employee may be granted leave out of the employee's sick leave entitlement, leave of absence for a period not exceeding one week in the aggregate (in respect of any one or a combination of such practitioners) in any 12 month period. Provided that the employee furnishes the employer with a satisfactory certificate from such registered dentist, physiotherapist, chiropractor, osteopath, optometrist, or psychologist, as the case may be.

28.5. Evidence requirements for carer's leave

28.5.1. An employee is entitled to use up to 17 days of the employee's personal leave entitlement each year for carer's leave.

28.5.2. The employee shall, if required, establish by production of a medical certificate or statutory declaration, the illness of the person concerned or evidence from a registered veterinary practitioner in the case of an assistance animal. The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

28.5.3. Where an employee's personal leave entitlements have been exhausted, an employee may take two days of unpaid carer's leave on each occasion when a member of the employee's immediate family, or the employee's household requires care or support.

28.6. Further documentary evidence

28.6.1. The employer may require that an employee provide a further medical certificate from an independent registered practitioner from a relevant specialisation where an employee has been on personal leave for at least six weeks and has a medical certificate indicating ongoing need for personal leave.

28.6.2. The employer may require that an employee provide further documentary evidence to the satisfaction of the employer where an employee has been on carer's leave for at least two weeks, including evidence stating that the condition of the person concerned requires the continued care or support of the employee.

28.7. Casual carer's leave

28.7.1. Casual employees are entitled to be unavailable to attend work or to leave work:

a) if they need to care for members of their immediate family or household who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child: or

b) if a member of the employee's immediate family or a member of the employee's household contracts or develops a personal illness that poses a serious threat to their life; or dies.

28.7.2. The employer and the employee will agree on the period for which the employee will be entitled to be unavailable to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for two days per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

28.7.3. A casual employee must comply with the notice and evidence requirements outlined in this clause.

29. Compassionate leave

29.1. Amount of compassionate leave

29.1.1. An employee, other than a casual employee, is entitled to three days paid compassionate leave on each occasion when a member of the employee's immediate family or household, or a member of an Aboriginal kinship or family structure:

a) contracts or develops a personal illness that poses a serious threat to their life;

b) sustains a personal injury that poses a serious threat to their life; or

c) dies;

each of which constitutes a permissible occasion for the purpose of this clause.

29.1.2. An employee of Aboriginal or Torres Strait Islander descent is entitled to one additional day (four days in total) of paid compassionate leave on each occasion.

29.1.3. An employee may take compassionate leave if the leave is taken:

a) to spend time with the member of the employee's immediate family or household who has contracted or developed a personal illness or sustained a personal injury; or

b) after the death of a member of the employee's immediate family or household.

29.1.4. An employee is not required to take compassionate leave consecutively.

29.1.5. Compassionate leave will not accrue from year to year and will not be paid out on termination of the employment of the employee.

29.2. Payment for compassionate leave (other than for casual employees)

An employee, other than a casual employee, who takes paid compassionate leave, is entitled to be paid at their salary for ordinary hours of work in the period in which the compassionate leave is taken.

29.3. Unpaid compassionate leave

29.3.1. Any employee may take unpaid compassionate leave by agreement with the employer.

29.3.2. In addition to the other provisions of this clause, Aboriginal or Torres Strait Islander employees may be granted both paid and unpaid ceremonial leave in relation to the death of a member of their immediate or extended family in accordance with clause 34.3 (Leave to attend Aboriginal community meetings).

29.4. Notice and evidence requirements

29.4.1. An employee who is taking compassionate leave under this clause must give notice to the employer 'as soon as practicable' (which may be at a time after the compassionate leave has started) and must advise the employer of the period, or expected period, of the compassionate leave.

29.4.2. To be eligible for compassionate leave, an employee must provide the employer with satisfactory evidence to support the compassionate leave, where requested by the employer. This may include a medical certificate from a registered practitioner, a statutory declaration or other relevant documentary evidence to the reasonable satisfaction of the employer.

29.5. Other significant family or personal connections

29.5.1. An employee may, at the discretion of the employer, be granted compassionate leave with or without pay when a person with a significant family or personal connection to the employee (but who is not a member of the employee's immediate family or household), dies or sustains a personal illness or injury that poses a serious threat to that person's life.

29.5.2. An employer will not unreasonably withhold compassionate leave for an extended family member with whom the employee has a close connection.

30. Long service leave

30.1. Basic entitlement and accrual

30.1.1. Long service leave is paid leave accrued during continuous employment with the employer or an employer within the VPS (as per clause 30.8 -– Previous employment which counts toward continuous employment) or service with other employers (as per clause 30.9 – Service with other employers that counts towards continuous employment).

30.1.2. Employees accrue long service leave based on the number of ordinary hours worked. Part-time employees accrue long service leave on a pro rata basis. Casual employees are entitled to accrue long service leave as provided for in this clause.

30.1.3. The basic entitlement for each 10 years' full-time continuous employment is set out in the table below:

Average ordinary hours of work	Entitlement after 10 years full time continuous employment	Approximate leave accrual per hour
Employee whose ordinary hours of work average 76 hours per fortnight	495.6967 hours (3 months)	0.0250 hours per hour
Employee whose ordinary hours of work average 80 hours per fortnight	521.786 hours (3 months)	0.0263 hours per hour

30.2. When can long service leave be accessed?

30.2.1. An employee is entitled to take long service leave on a pro rata basis after seven years of continuous employment, and at any time after that in accordance with clause 30.3 (Taking long service leave).

30.2.2. An employee with seven or more years of continuous employment is entitled to be paid out any unused long service leave accrual on the date their employment ends.

30.2.3. Despite clause 30.2.2, an employee with four or more years of continuous employment is entitled to be paid out any unused long service leave accrual only in the following circumstances:

a) on account of age or ill health the employee retires or is retired;

b) the employment of the employee is terminated; or

c) the employee dies.

30.3. Taking long service leave

30.3.1. Long service leave will be taken at a time convenient to the needs of the employer and employee.

30.3.2. An employee and employer may agree that the whole or any part of their entitlement is paid:

a) at the current time fraction they work, or

b) at a different time fraction to that currently worked.

30.3.3. Long service leave may be taken for any period of not less than one day.

30.3.4. A public holiday falling within a period of approved long service leave is not regarded as part of the long service leave. An employee is entitled to take and be paid for a public holiday falling within a period of approved long service leave.

30.3.5. On return from leave, the employee will revert to the time fraction they worked immediately prior to going on leave, unless otherwise agreed by the employer and the employee.

30.4. Payment of long service leave

30.4.1. While on long service leave the employer will continue to pay the employee using the same method and frequency as if the employee was not on long service leave.

30.4.2. Payment to an employee for, or in lieu, of long service leave includes:

a) salary;

b) salary maintenance if the employee is receiving salary maintenance;

c) any additional payment payable for a temporary assignment where the assignment has continued for a period of at least 12 months before the commencement of the leave; and

d) any annual allowance payable to the employee, which the employer determines should be included other than:

(i) any payment of overtime, commuted overtime or shift work allowances;

(ii) any travelling or transport allowance; and

(iii) any allowance which is a reimbursement of an expenditure.

30.5. Periods of continuous employment in which long service leave accrues

Long service leave continues to accrue during the following absences from work:

a) an absence on paid leave;

b) from 1 January 2019, an absence after birth or adoption of a child (other than in the case of a casual employee) on unpaid parental leave which, in combination with any period of paid parental leave, totals 52 weeks or less;

c) an absence of 52 weeks or less when the employee is in receipt of weekly payments of compensation under the Workplace Injury Act or any predecessor;

d) an absence of 52 weeks or less during which a pension under section 83A(1) of State Superannuation Act 1988 (Vic) (or similar provision applying to employees of a declared authority) was paid; or

e) an absence on unpaid leave for which the employer expressly authorises long service leave to accrue.

30.6. Periods of continuous employment in which long service leave does not accrue

30.6.1. Long service leave does not accrue for the following periods:

a) a gap between engagements of a casual employee of less than three months;

b) an absence on unpaid leave, other than as provided for in clause 30.5 (Periods of continuous employment in which long service leave accrues);

c) an absence from duty in excess of 12 months when the employee was in receipt of weekly payments of compensation under the Workplace Injury Act or any corresponding previous enactment; or

d) a period of service which followed the date on which a pension under the *State Superannuation Act 1988* (Vic) (or similar provision applying to employees on the staff of a declared authority) became payable by reason of retirement on the ground of disability.

30.6.2. The periods at clause 30.6.1 do not break continuous employment and may be periods of recognised service for the purposes of long service leave.

30.7. Absences which break continuous employment

Continuous employment will be broken by the following:

a) any gap between engagements in continuous employment by a casual employee of more than three months;

b) any absence from employment due to the dismissal of the employee for disciplinary reasons;

c) receipt of a Voluntary departure package from any VPS employer; or

d) any gap or break in service or absence not provided for in clause 30.5 (Periods of continuous employment in which long service leave accrues), clause 30.6 (Periods of continuous employment in which long service leave does not accrue) or clause 30.8 (Previous employment which counts towards continuous employment).

30.8. Previous employment which counts towards continuous employment

30.8.1. Service in previous employment in the VPS or any employer referred to in clause 30.9 counts towards continuous employment where the service concluded within 12 months of the commencement or re-commencement of employment in the VPS.

30.8.2. Despite clause 30.8.1, service in previous employment in the VPS or with any employer referred to in clause 30.9 counts towards continuous employment where:

a) the service concluded within three years of retirement occasioned by disability, or

b) the service concluded within two years of the commencement of employment in the VPS and the employer considers special circumstances exist.

30.8.3. An employee is not entitled to long service leave (or payment for long service leave):

a) for a period of service for which the employee was entitled to receive long service leave (or payment for long service leave) from a different employer or for previous employment; or

b) where the employee has received long service leave (or a payment in respect of long service leave) from a different employer or for previous employment.

30.8.4. Clause 30.8.3 does not apply if funds have been transferred to the employer to cover long service leave.

30.8.5. Clauses 30.6 (Periods of continuous employment in which long service leave does not accrue) and 30.7 (Absences which break continuous employment) apply to service in previous employment.

30.9. Service with other employers that counts towards continuous employment

30.9.1. The following service will be recognised as continuous employment for the purposes of long service leave:

a) any service with a State, Commonwealth or Territory of Australia government department or public service authority;

b) any service with a public entity under the PAA;

c) any service with a local government authority that is established by or under a law of Victoria; or

d) any service with a community legal centre.

30.9.2. In addition, the employer may recognise service with:

a) a public sector authority; or

b) a local governing authority of the Commonwealth, a State other than Victoria or a Territory of Australia.

30.9.3. For the purposes of clause 30.9.1 and 30.9.2, authority means an authority, whether incorporated or not, that is constituted:

a) by or under a law of a State, the Commonwealth or a Territory of Australia; and

b) for a public purpose.

30.9.4. Where an employee believes they have service with other employers which should be counted towards continuous employment, the employee should make application to the employer seeking this service be counted towards the employee's period of continuous employment within six months of an employee's starting date with the employer. The employer will take reasonable steps within this period to ascertain from the employee whether the employee has prior service.

30.9.5. Clauses 30.6 (Periods of continuous employment in which long service leave does not accrue), 30.7 (Absences which break continuous employment) and 30.8 (Previous employment which counts towards continuous employment) apply to service in previous employment.

31. Infectious diseases

Upon report by a medical officer of health that, by reason of contact with a person suffering from an infectious disease and through the operation of restrictions imposed by law in respect of such disease an employee is unable to attend for duty, the employer may grant the employee special sick leave with pay. Leave of absence shall not be granted for any period beyond the earliest date at which it would be practicable for the employee to resume duty, having regard to the restrictions imposed by law.

32. Dangerous medical condition

32.1. If the employer has reason to believe than an employee is in such a state of health as to render such employee a danger to their fellow employees, the employer may require such employee to be examined by, and to obtain and furnish a report, as to their condition from a duly mutually agreed qualified medical practitioner.

32.2. Upon receipt of this medical report, the employer may direct the employee to be absent from duty for a specified period, or, if already on leave of absence, direct such employee to continue on leave for a specified period, and the absence of such employee shall be regarded as absence on leave owing to illness and be paid as having been worked.

33. Leave without pay

33.1. An employee may apply for leave without pay (LWOP) for any reason. Approval of LWOP will be at the discretion of the employer, in consideration of the relevant manager's recommendation and subject to operational requirements.

33.2. Unless there are exceptional circumstances, paid leave, with the exception of long service leave, will be used prior to LWOP being approved.

33.3. The period of approved LWOP will generally be limited to a maximum of 52 weeks.

33.4. Unless otherwise provided for in this agreement, LWOP under this clause will not break the employee's continuity of employment, but it will not count as service for leave accrual or other purposes.

34. Cultural and ceremonial leave

34.1. The employer embraces cultural diversity and recognises the community benefits of granting leave for events that are of cultural significance to employees.

34.1.1. The employer may grant an employee accrued annual or other leave to attend an event or celebration that is of cultural significance to that employee.

34.1.2. Employees may access up to three days unpaid ceremonial leave per year for attendance or observance of events of a religious, cultural or ceremonial nature.

34.2. National Aboriginal and Islander Day Observance Committee (NAIDOC) week leave.

34.2.1. An employee of Aboriginal or Torres Strait Islander descent is entitled to one day of paid leave per calendar year to participate in NAIDOC week activities and events.

34.2.2. NAIDOC week leave will not accrue from year to year and will not be paid out on termination of the employment of the employee.

34.3. Leave to attend Aboriginal community meetings

The employer may approve attendance during working hours by an employee of Aboriginal or Torres Strait Islander descent at any Aboriginal community meetings, except the Annual General Meetings of Aboriginal community organisations at which the election of office bearers will occur.

34.4. Leave to attend Annual General Meetings of Aboriginal community organisations.

The employer may grant an employee of Aboriginal or Torres Strait Islander descent accrued annual or other leave to attend Annual General Meetings of Aboriginal community organisations at which the election of office bearers will occur.

34.5. Ceremonial leave

34.5.1. Ceremonial leave will be granted to an employee of Aboriginal or Torres Strait Islander descent for ceremonial purposes:

a) Sorry Business (bereavement) connected with the death of a member of the immediate family or extended family (provided that no employee shall have an existing entitlement reduced as a result of this clause); or

b) for other ceremonial obligations under Aboriginal and Torres Strait Islander lore.

34.5.2. Where ceremonial leave is taken for the purposes outlined in clause 34.5.1, up to three days in each year of employment will be with leave with pay. Paid ceremonial leave will not accrue from year to year and will not be paid out on termination of the employment of the employee.

34.5.3. Ceremonial leave granted under clause 34.5 is in addition to compassionate leave granted under clause 29 (Compassionate leave).

35. Parental leave

35.1. Application

35.1.1. Eligible employees are entitled to parental leave under this clause if the leave is associated with:

a) the birth of a child of the employee, the employee's spouse or the employee's legal surrogate or the placement of a child with the employee for adoption; and

b) the employee has or will have a responsibility for the care of the child.

35.1.2. An employee currently on parental leave (excluding an employee on extended family leave under clause 35.33.1) is not required to return to work in order to access a further period of parental leave under this clause.

35.2. Definitions

For the purpose of this clause:

35.2.1. Eligible employee means:

a) a full-time or part-time employee, whether employed on an ongoing or fixed term basis, or

b) a long-term casual employee who has, but for accessing parental leave under this clause, a reasonable expectation of continuing employment by the employer on a regular and systematic basis.

35.2.2. Continuous service is work for the employer on a regular and systematic basis (including any period of authorised leave) and any period of recognised prior service (as defined in clause 35.2.5).

35.2.3. Child means:

a) in relation to birth-related leave, a child (or children from a multiple birth) of the employee or the employee's spouse or the employee's legal surrogate; or

b) in relation to adoption-related leave, a child (or children) who will be placed with an employee, and:

(i) who is, or will be, under 16 years of age as at the day of placement, or the expected day of placement;

(ii) has not, or will not have, lived continuously with the employee for a period of six months or more as at the day of placement, or the expected day of placement; and

(iii) is not (otherwise than because of the adoption) a child of the employee or the employee's spouse.

35.2.4. Primary caregiver means the person who takes primary responsibility for the care of a newborn or newly adopted child. The primary caregiver is the person who meets the child's physical needs more than anyone else. Only one person can be a child's primary caregiver on a particular day.

35.2.5. Recognised prior service means any service immediately prior to the employee's employment with the employer, where the employee was employed:

a) by a public entity under the PAA;

b) under Part 6 of the PAA; or

c) as a parliamentary officer or electorate officer under the *Parliamentary Administration Act 2005* (Vic);

35.2.6. Secondary caregiver means a person who has parental responsibility for the child but is not the primary caregiver.

35.2.7. Spouse includes a de facto spouse, former spouse or former de facto spouse. The employee's de facto spouse means a person who lives with the employee as husband, wife or partner on a bona fide domestic basis, whether or not legally married to the employee.

35.3. Summary of parental leave entitlements

The entitlements summarised in the table below apply to a period of parental leave commencing on or after 1 December 2020:

Table 1 – Parental leave entitlements (commencing on or after 1 December 2020)

Primary caregiver

Length of service	Paid leave	Unpaid leave	Total
More than 3 months continuous service	16 weeks	Up to 36 weeks or up to 88 weeks (on application for extended leave under clause 35.23.2)	104 weeks
Less than 3 months continuous service	0	Up to 52 weeks	52 weeks
Long term casual employee	0	Up to 52 weeks	52 weeks

Secondary caregiver

Length of service	Paid leave	Unpaid leave	Total
More than 3 months continuous service	4 weeks	Up to 48 weeks	52 weeks
More than 3 months continuous service and takes over the primary responsibility for the care of the child within first 78 weeks	An additional 12 weeks	Up to 36 weeks or up to 88 weeks (on application for extended leave under clause 35.23.2)	104 weeks
Less than 3 months continuous service	0	Up to 52 weeks	52 weeks
Long term casual employee	0	Up to 52 weeks	52 weeks

Pre-natal leave

Length of service	Paid leave	Unpaid leave	Total
Pregnant employee	38 hours	By agreement	38 hours
Spouse	7.6 hours	By agreement	7.6 hours

Pre-adoption leave

Length of service	Paid leave	Unpaid leave	Total
More than 3 months continuous service	2 days	By agreement	Minimum 2 days

Parental bereavement leave

Length of service	Paid leave	Unpaid leave	Total
Where pregnancy terminates after 20 weeks (if 3 months continuous service)	16 weeks	Up to 36 weeks or up to 88 weeks (on application for extended leave under clause 35.23.2	104 weeks

Permanent care leave

Length of service	Paid leave	Unpaid leave	Total
More than 3 months continuous service	16 weeks	up to 36 weeks	52 weeks
Less than 3 months continuous service	0	up to 52 weeks	52 weeks

Grandparent leave

Length of service	Paid leave	Unpaid leave	Total
N/A	0	Up to 52 weeks	Up to 52 weeks

35.4. Parental leave – primary caregiver

An eligible employee, who has, or will have, completed at least three months paid continuous service and who will be the primary caregiver at the time of the birth or adoption of their child, is entitled to up to 52 weeks parental leave, comprising:

a) Sixteen weeks paid parental leave; and

b) up to 36 weeks unpaid parental leave.

35.4.1. An eligible employee who will be the primary caregiver, who has not completed at least three months paid continuous service at the time of the birth or adoption of their child, or a long-term casual employee, is entitled to up to 52 weeks unpaid parental leave.

35.4.2. Only one parent can receive primary caregiver parental leave entitlements in respect to the birth or adoption of their child. An employee cannot receive primary caregiver parental leave entitlements:

a) if their spouse is, or will be, the primary caregiver at the time of the birth or adoption of their child;

b) if their spouse has received, or will receive, paid parental leave, primary caregiver entitlements, or a similar entitlement, from their employer;

c) if the employee has received, or will receive, secondary caregiver parental leave entitlements in relation to their child.

35.5. Parental leave – secondary caregiver

35.5.1. An eligible employee who has, or will have, completed at least three months paid continuous service and who will be the secondary caregiver at the time of the birth or adoption of their child, is entitled to up to 52 weeks parental leave, comprising:

a) four weeks paid parental leave;

b) twelve weeks additional paid secondary caregiver parental leave, subject to the conditions in clause 35.6 (Additional paid leave for secondary caregiver), and

c) unpaid parental leave to bring the total available paid and unpaid leave to 52 weeks.

35.5.2. An eligible employee who will be the secondary caregiver and has not completed at least three months paid continuous services at the time of the birth or adoption of their child, or a long-term casual employee, is entitled to up to 52 weeks unpaid parental leave.

35.5.3. Only one parent can receive secondary caregiver parental leave entitlements in respect to the birth or adoption of their child.

35.5.4. An employee cannot receive secondary caregiver parental leave entitlements where the employee has received primary caregiver parental leave entitlements in relation to their child.

35.6. Additional paid leave for secondary caregiver

35.6.1. A secondary caregiver is entitled to up to an additional 12 weeks' paid leave within the first 78 weeks of the date of birth or adoption of the child provided that:

a) the secondary caregiver assumes primary responsibility for the care of a child by meeting the child's physical needs more than anyone else; and

b) the secondary caregiver's spouse is not concurrently taking primary responsibility for the care of the child or receiving paid parental leave, primary caregiver entitlements or a similar entitlement from their employer.

35.6.2. To access additional paid leave, the employee must have been eligible for paid secondary caregiver leave at the time of birth or adoption of their child, irrespective of when the employee elects to take the paid leave under this clause.

35.7. Prenatal leave

35.7.1. A pregnant employee will have access to paid leave totalling up to 38 hours per pregnancy to enable the employee to attend routine medical appointments associated with the pregnancy.

35.7.2. An employee who has a spouse who is pregnant will have access to paid leave totalling up to 7.6 hours per pregnancy to enable the employee to attend routine medical appointments associated with the pregnancy.

35.7.3. The employee is required to provide a medical certificate from a registered medical practitioner confirming that the employee or their spouse is pregnant. Each absence on pre-natal leave must also be covered by a medical certificate.

35.7.4. The employer should be flexible enough to allow the employee the ability to leave work and return on the same day.

35.7.5. Paid pre-natal leave is not available to casual employees.

35.8. Pre-adoption leave

35.8.1. An employee seeking to adopt a child is entitled to two days paid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure.

35.8.2. An employee seeking to adopt a child may also access further unpaid leave. The employee and the employer should agree on the length of any unpaid leave. Where agreement cannot be reached, the employee is entitled to take up to two days unpaid leave.

35.8.3. Where accrued paid leave is available to the employee, the employer may require the employee to take such leave instead of taking unpaid leave under this clause.

35.8.4. The employer may require the employee to provide satisfactory evidence supporting the leave.

35.8.5. The employer should be flexible enough to allow the employee the ability to leave work and return on the same day.

35.8.6. Paid pre-adoption leave is not available to casual employees.

35.9. Permanent care leave

An employee will be entitled to access parental leave in accordance with this clause at a time agreed with the employer if they:

a) are granted a permanent care order in relation to the custody or guardianship of a child pursuant to the *Children, Youth and Families Act 2005* (Vic) or a permanent parenting order by the Family Court of Australia, and

b) will be the primary or secondary caregiver for that child.

35.10. Grandparent leave

An employee, who is or will be the primary caregiver of a grandchild, is entitled to a period of up to 52 weeks' continuous unpaid grandparent leave in respect of the birth or adoption of the grandchild of the employee.

35.11. Access to parental leave for an employee whose child is born by surrogate

An employee whose child is born through a surrogacy arrangement which complies with Part 4 of the Reproductive Treatment Act, is eligible to access the parental leave entitlements outlined in clause 35 (Parental leave).

35.12. Continuing to work while pregnant

35.12.1. The employer may require a pregnant employee to provide a medical certificate stating that the employee is fit to work their normal duties where the employee:

a) continues to work within a six week period immediately prior to the expected date of birth of the child; or

b) is on paid leave under clause 35.14.2.

35.12.2. The employer may require the employee to start parental leave if the employee:

a) does not give the employer the requested certificate within seven days of the request; or

b) gives the employer a medical certificate stating that the employee is unfit to work.

35.13. Personal/carer's leave

A pregnant employee, not then on parental leave, who is suffering from an illness whether related or not to the pregnancy, may take any paid and/or unpaid personal/carer's leave in accordance with clause 28 (Personal/carer's leave).

35.14. Transfer to a safe job

35.14.1. Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at their present work, the employee will, if the employer deems it practicable, be transferred to a safe job with no other change to the employee's terms and conditions of employment until the commencement of parental leave.

35.14.2. If the employer does not think it to be reasonably practicable to transfer the employee to a safe job, the employee may take no safe job paid leave, or the employer may require the employee to take no safe job paid leave immediately for a period which ends at the earliest of either:

a) when the employee is certified unfit to work during the six-week period before the expected date of birth by a registered medical practitioner; or

b) when the employee's pregnancy results in the birth of a living child or when the employee's pregnancy ends otherwise than with the birth of a living child.

35.14.3. The entitlement to no safe job paid leave is in addition to any other leave entitlement the employee has.

35.15. Parental bereavement leave

Where the pregnancy of an employee not then on parental leave terminates other than by the birth of a living child, the employee may take leave for such periods as a registered medical practitioner certifies as necessary, as follows:

a) where the pregnancy terminates during the first 20 weeks, during the certified period/s the employee is entitled to access any paid and/or unpaid personal/carer's leave entitlements in accordance with clause 28 (Personal/carer's leave); or

b) where the pregnancy terminates after the completion of 20 weeks, during the certified period/s the employee is entitled to paid Parental bereavement leave not exceeding the amount of paid parental leave available under clause 35.4 (Parental leave – primary caregiver) and thereafter, to unpaid parental bereavement leave.

35.16. Notice and evidence requirements

35.16.1. An employee must give at least 10 weeks written notice of the intention to take parental leave, including the proposed start and end dates. At this time, the employee must also provide a statutory declaration stating:

a) that the employee will become either the primary caregiver or secondary caregiver of the child as appropriate;

b) the particulars of any parental leave taken or proposed to be taken or applied for by the employee's spouse; and

c) that for the period of parental leave the employee will not engage in any conduct inconsistent with their contract of employment.

35.16.2. 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 employer of any changes to the notice provided in clause 35.16.1), unless it is not practicable to do so.

35.16.3. The employer may require the employee to provide evidence which would satisfy a reasonable person of:

a) for birth-related leave, the date of birth of the child (including without limitation, a medical certificate stating the date of birth or expected date of birth); or

b) for adoption-related leave, the commencement of the placement (or expected day of placement) of the child and that the child will be under 16 years of age as at the day of placement or expected day of placement.

35.16.4. An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement or the placement occurring earlier than the expected date or in other compelling circumstances. In these circumstances, the notice and evidence requirements of this clause should be provided as soon as reasonably practicable.

35.17. Commencement of parental leave

35.17.1. An employee who is pregnant may commence primary caregiver parental leave at any time within 16 weeks prior to the expected date of birth of the child. In all other cases, primary caregiver parental leave commences on the day of birth or placement of the child.

35.17.2. Secondary caregiver parental leave may commence up to one week prior to the expected birth or placement of the child. Where a secondary caregiver takes additional paid leave in accordance with clause 35.6 (Additional paid leave for secondary caregiver), the additional leave will commence on the date the employee takes on primary responsibility for the care of a child.

35.17.3. The employer and employee may agree to alternative arrangements regarding the commencement of parental leave.

35.17.4. The period of parental leave for the purpose of calculating an employee's maximum entitlement to paid and unpaid parental leave will commence from the date parental leave commences or otherwise no later than the date of birth of the child, irrespective of when the employee elects to use any paid entitlements they may have under this clause.

35.18. Rules for taking parental leave entitlements

35.18.1. Parental leave is to be available to only one parent at a time, except parents may take up to eight weeks leave concurrently with each other, comprising any paid leave to which the employee may be eligible for under clause 35.3 (Summary of parental leave entitlements) or unpaid, in connection with the birth or adoption of their child (Concurrent leave).

a) Concurrent leave may commence one week prior to the expected date of birth of the child or the time of placement in the case of adoption.

b) Concurrent leave can be taken in separate periods, but each block of concurrent leave must not be less than two weeks, unless the employer otherwise agrees.

35.18.2. While an employee's eligibility for parental leave is determined at the time of birth or adoption of the child, the employee and employer may agree to permit the employee to use the paid leave entitlements outlined in this clause at any time within the first 52 weeks of parental leave, or where an extension is granted under clause 35.23.1(b), within the first 78 weeks where clause 35.6 (Additional paid leave for secondary caregiver) is invoked or otherwise the first 104 weeks.

35.18.3. Parental leave does not need to be taken in a single continuous period. The employer and employee will agree on the duration of each block of parental leave. The employer will consider their operational requirements and the employee's personal and family circumstances in considering requests for parental leave in more than one continuous period. Approval of such requests will not be unreasonably refused.

35.19. Using other accrued leave in conjunction with parental leave

An employee may, in lieu of or in conjunction with parental leave, access any annual leave or long service leave entitlements which they have accrued subject to the total amount of leave not exceeding 52 weeks or a longer period as agreed under clause 35.23.2.

35.20. Public holidays during a period of paid parental leave

Where a public holiday occurs during a period of paid parental leave, the public holiday is not to be regarded as part of the paid parental leave and the employer will grant the employee a day off in lieu, to be taken by the employee immediately following the period of paid parental leave.

35.21. Effect of unpaid parental leave on an employee's continuity of employment

Other than provided for in clause 30 (Long service leave), unpaid parental leave under clauses 35.4 (Parental leave – primary care giver), 35.5 (Parental leave – secondary caregiver), 35.23 (Extending parental leave) and 35.29 (Commonwealth paid parental leave) shall not break an employee's continuity of employment but it will not count as service for leave accrual or other purposes.

35.22. Keeping in touch days

35.22.1. During a period of parental leave, the employer and employee may agree to perform work for the purpose of keeping in touch in order to facilitate a return to employment at the end of the period of leave.

35.22.2. Keeping in touch days must be agreed and be in accordance with section 79A of the Fair Work Act.

35.23. Extending parental leave

35.23.1. Extending the period of parental leave where the initial period of parental leave is less than 52 weeks:

a) An employee, who is on an initial period of parental leave of less than 52 weeks under clause 35.4 (Parental leave – primary caregiver) or 35.5 (Parental leave – secondary caregiver), may extend the period of their parental leave on one occasion up to the full 52 week entitlement.

b) The employee must notify the employer in writing at least four weeks prior to the end date of their initial parental leave period. The notice must specify the new end date of the parental leave.

35.23.2. Right to request an extension to parental leave beyond the initial 52 week period to a maximum of 104 weeks:

a) An employee who is on parental leave under clause 35.4 (Parental leave – primary caregiver) or 35.5 (Parental Leave – secondary caregiver) may request an extension of unpaid parental leave for a further period of up to 52 weeks immediately following the end of the current parental leave period.

b) In the case of an employee who is a member of a couple, the period of the extension cannot exceed 52 weeks, less any period of parental leave that the other member of the couple will have taken in relation to the child.

c) The employee's request must be in writing and given to the employer at least four weeks before the end of the current parental leave period. The request must specify any parental leave that the employee's spouse will have taken.

d) The employer shall consider the request having regard to the employee's circumstances and, provided the request is based on the employee's parental responsibilities, may only refuse the request on reasonable business grounds.

e) The employer must not refuse the request unless the employer has given the employee a reasonable opportunity to discuss the request.

f) The employer must give a written response to the request as soon as practicable, and no later than 21 days after the request is made. The response must include the details of the reasons for any refusal.

35.24. Total period of parental leave

35.24.1. The total period of parental leave, including any extensions, must not extend beyond 104 weeks.

35.24.2. In the case of a couple, the total period of parental leave for both parents combined, including any extensions, must not extend beyond 104 weeks. The employee's entitlement to parental leave under clause 35.4 (Parental leave – primary caregiver) or 35.5 (Parental leave – secondary caregiver) will reduce by the period of any extension taken by a member of the couple under clause 35.23 (Extending parental leave).

35.25. Calculation of pay for the purposes of parental leave

35.25.1. The calculation of weekly pay for paid parental leave purposes will be based on the employee's average number of ordinary hours over the past three years from the proposed commencement date of parental leave (averaging period).

35.25.2. Where an employee has less than three years of service the averaging period will be their total period of service in the VPS.

35.25.3. The calculation will exclude any of the following periods which fall during the averaging period:

a) periods of unpaid parental leave;

b) any time worked at a reduced time fraction in order to better cope during pregnancy;

c) authorised unpaid leave for an unforeseen reason beyond the employee's control; and

d) time worked at a reduced time fraction on returning to work after a period of parental leave under clause 35.30.3.

35.25.4. For the purposes of clause 35.25.3(c), an 'unforeseen reason beyond the employee's control' may include, for example, a personal illness or injury suffered by the employee, or the care or support of an ill or injured immediate family or household member by the employee but would not include leave taken for lifestyle or personal reasons, career breaks or leave to undertake other employment.

35.25.5. The average number of weekly hours, determined in accordance with clause 35.25.1, will be then applied to the annual salary applicable to the employee's classification and salary point at the time of taking parental leave to determine the actual rate of pay while on parental leave.

35.26. Half pay

The employee may elect to take any paid parental leave entitlement at half pay for a period equal to twice the period to which the employee would otherwise be entitled.

35.27. Employer superannuation contributions in respect of primary caregiver parental leave

An employee who returns to work at the conclusion of a period of primary caregiver parental leave will be entitled to have superannuation contributions made in respect of the period of the employee's primary caregiver parental leave, subject to requirements in clause 23 (Superannuation legislation).

35.28. Effect of parental leave on progression for primary caregivers

An employee who returns to work at the conclusion of a period of primary caregiver parental leave may be entitled to progression steps or amounts forgone as a result of being on parental leave in accordance with clause 18.2 (Progression within a classification range—Eligibility).

35.29. Commonwealth paid parental leave

Paid parental leave entitlements outlined in this clause are in addition to any payments which may be available under the Commonwealth paid parental leave scheme.

35.30. Returning to work

35.30.1. Returning to work early

a) During the period of parental leave, an employee may return to work at any time as agreed between the employer and the employee, provided that time does not exceed four weeks from the recommencement date desired by the employee.

b) In the case of adoption, where the placement of an eligible child with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.

35.30.2. Returning to work at conclusion of leave

a) At least four weeks prior to the expiration of parental leave, the employee will notify the employer of their return to work after a period of parental leave.

b) Subject to clause 35.30.2(c) an employee will be entitled to the position which they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to clause 35.14 (Transfer to a safe job), the employee will be entitled to return to the position they held immediately before such transfer.

c) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

35.30.3. Returning to work at a reduced time fraction

a) To assist an employee in reconciling work and parental responsibilities, an employee may request to return to work at a reduced time fraction until their child reaches school age, after which the employee will resume their substantive time fraction.

b) Where an employee wishes to make a request under clause 35.30.3(a), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

35.31. Lactation breaks

35.31.1. Employees cannot be discriminated against for breastfeeding, chestfeeding or expressing milk in the workplace.

35.31.2. An employee who wishes to continue breastfeeding or chestfeeding after returning to work from a period of parental leave or keeping in touch days, may take reasonable time during working hours without loss of pay to do so.

35.31.3. Paid lactation breaks are in addition to normal meal and rest breaks provided for in this Agreement.

35.32. Consultation and communication during parental leave

35.32.1. Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

a) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and

b) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

35.32.2. The employee shall take reasonable steps to inform the employer 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.

35.32.3. The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with 35.32.1.

35.33. Extended family leave

35.33.1. An employee who is the primary caregiver and has exhausted all parental leave entitlements may apply for unpaid extended family leave as a continuous extension to their parental leave taken in accordance with this clause. The total amount of leave, inclusive of parental leave taken in accordance with this clause cannot exceed seven years from the commencement date of parental leave.

35.33.2. The employee must make an application for extended family leave each year.

35.33.3. An employee will not be entitled to paid parental leave while on extended family leave.

35.33.4. Upon return to work the employer may reallocate the employee to other duties.

35.34. Replacement employees

35.34.1. A replacement employee is an employee specifically engaged or temporarily acting on higher duties or transferred as a result of an employee proceeding on parental leave.

35.34.2. Before the employer engages a replacement employee, the employer must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

35.34.3. The limitation in clause 10.4 on the use of fixed term employment to replace the employee does not apply in this case.

35.35. Casual employees

The employer must not fail to reengage a casual employee because the employee has accessed parental leave in accordance with this clause. The rights of the employer in relation to engagement and reengagement of casual employees are not affected, other than in accordance with this clause.

35.36. Surrogacy leave

35.36.1. Entitlement to leave

An employee (excluding a casual employee) who has completed at least three months paid continuous service, who enters into a formal surrogacy arrangement on or after 1 December 2020, which complies with Part 4 of the *Assisted Reproductive Treatment Act 2008* (Vic), as the surrogate, is entitled to access the following leave entitlements:

a) pre-natal leave in accordance with clause 35.7, and

b) six weeks of paid leave.

35.36.2. Continuing to work while pregnant

a) A pregnant employee acting as the surrogate as part of a formal surrogacy arrangement wanting to work during the six weeks before the birth may be asked to provide a medical certificate stating they are fit for work and whether there are any risks in connection to their duties.

b) An employee who fails to provide a requested medical certificate within seven days or provides one which states they are unfit for work may be required to commence surrogacy leave.

35.36.3. Transfer to safe job

a) If an employee provides a medical certificate stating they are fit for work but it is inadvisable for the employee to continue in their present duties because of risks or illness, the employee is entitled to be transferred to an appropriate safe job that has the same, or other agreed ordinary hours of work with no other changes to the employee's terms and conditions.

b) If no appropriate safe job is available, the employee is entitled to take paid or unpaid (if not eligible for parental leave) no safe job leave.

35.36.4. Commencement of surrogacy leave

a) An employee who is pregnant as a result of acting as a surrogate may commence paid surrogacy leave at any time within six weeks prior to the expected date of birth of the child. Otherwise, the period of parental leave must commence no later than the date of birth of the child, unless agreed with the employer.

b) Unless otherwise agreed, any entitlement to paid surrogacy leave will be paid from the date of commencement of surrogacy leave.

35.36.5. Surrogacy leave and other entitlements

An employee may access, in conjunction with surrogacy leave, any other paid or unpaid entitlements available under this agreement with the approval of the employer.

35.36.6. Personal/carer's leave

A pregnant employee, not then on surrogacy leave, who is suffering from an illness whether related or not to the pregnancy, may take any paid and/or unpaid personal/carer's leave in accordance with clause 28.

35.36.7. Special surrogacy leave

Where the pregnancy of an employee not then on parental leave terminates other than by the birth of a living child, the employee may take leave for such periods as a registered medical practitioner certifies as necessary, as follows:

(i) where the pregnancy terminates during the first 20 weeks, during the certified period/s the employee is entitled to access any paid and/or unpaid personal/carer's leave entitlements in accordance with clause 28;

(ii) where the pregnancy terminates after the completion of 20 weeks, during the certified period/s the employee is entitled to paid special surrogacy leave not exceeding the amount of paid surrogacy leave available under clause 35.36.1.

35.37. Public holidays during a period of paid surrogacy leave

Where a public holiday occurs during a period of paid surrogacy leave, the public holiday is not to be regarded as part of the paid surrogacy leave and the employer will grant the employee a day off in lieu, to be taken by the employee immediately following the period of paid surrogacy leave.

35.38. Notice and evidentiary requirements

An employee must provide 10 weeks' written notice to the employer of their intention to take surrogacy leave. The notification should include a statutory declaration which specifies:

a) the intended start and end dates of the leave;

b) if known, any other leave the employee seeks approval to take in conjunction with their surrogacy leave;

c) for the period of surrogacy leave, the employee will not engage in any conduct inconsistent with their contract of employment.

d) The employer may also require the employee to provide documentary evidence confirming:

(i) the expected date of birth of the child, and

(ii) the formal surrogacy arrangement, which complies with Part 4 of the Reproductive Treatment Act.

e) The employee must confirm these details at least four weeks prior to the commencement of the proposed period of surrogacy leave.

35.39. Foster and kinship care leave

35.39.1. An employee who provides short-term foster or kinship care as the primary caregiver to a child who cannot live with their parents as a result of an eligible child protection intervention, is entitled to up to two days paid leave on up to five occasions per calendar year, to be taken at the time the placement of the child with the employee commences.

35.39.2. For the purposes of this clause, foster and kinship care includes:

a) Foster caring, which is the temporary care of a child of up to 18 years of age on a short-term basis by an employee who is an accredited foster carer.

b) Kinship care, which is temporary care provided by an employee who is a relative or a member of the child's social network when the child cannot live with their parents.

c) Aboriginal kinship care, which is temporary care provided by an employee who is a relative or friend of an Aboriginal child who cannot live with their parents, where Aboriginal family and community and Aboriginal culture are valued as central to the child's safety, stability, and development.

35.39.3. Eligible child protection interventions include emergency respite and short-term or long-term placements on a non-permanent basis, as issued by the Victorian Department of Families, Fairness and Housing (DFFH), the Children's Court or other similar federal, state or judicial authority.

35.39.4. Subject to the approval of the employer, the paid leave provided in this clause may be used in conjunction with any other paid or unpaid leave entitlements the employee may be eligible for under this Agreement.

35.39.5. In the case of foster carers, one occasion totalling up to two days duration may be used for accreditation purposes, including attending compulsory interviews or training.

35.39.6. The employer may require the employee to provide reasonable evidence to satisfy themselves of the employee's entitlement to leave under this provision.

36. Gender transition leave

36.1. The employer encourages a culture that is supportive of transgender and gender diverse employees and recognises the importance of providing a safe environment for employees undertaking gender transition.

36.2. Gender transition refers to the process where a transgender employee commences living as a member of another gender. This is sometimes referred to as 'affirming' their gender. This may occur through medical, social, or legal changes.

36.3. Employees may give effect to their transition in a number of ways and are not required to be undergoing specific types of changes, such as surgery, to access leave under this clause.

36.4. Amount of gender transition leave

An employee (other than a casual employee) who commences living as a member of another gender is entitled to gender transition leave for the purpose of supporting the employee's transition. Gender transition leave will comprise:

a) up to four weeks (20 days) paid leave for essential and necessary gender affirmation procedures, and

b) up to 48 weeks of unpaid leave.

36.4.1. The gender transition leave entitlements outlined in clause 36.4 (Amount of gender transition leave) are available to be taken by the employee within the first 52 weeks after they commence living as a member of another gender.

36.4.2. Essential gender affirmation procedures may include:

a) medical or psychological appointments;

b) hormonal appointments;

c) surgery and associated appointments;

d) appointments to alter the employee's legal status or amend the employee's gender on legal documentation; or

e) any other similar necessary appointment or procedure to give effect to the employee's transition as agreed with the employer.

36.4.3. An employee who is entitled to unpaid gender transition leave may, in conjunction with all or part of that leave, utilise accrued annual or long service leave provided that the combined total of all paid and unpaid leave taken does not exceed 52 continuous weeks.

36.4.4. Gender transition leave may be taken as consecutive, single, or part days as agreed with the employer.

36.4.5. Leave under this clause will not accrue from year to year and cannot be paid out on termination of employment.

36.5. Gender transition leave – casual employees

Casual employees are entitled to access unpaid leave of up to 52 continuous weeks duration for gender transition purposes.

36.6. Notice and evidence requirements

36.6.1. An employee seeking to access gender transition leave must provide the employer with at least four weeks' written notice of their intended commencement date and expected period of leave, unless otherwise agreed by the employer.

36.6.2. An employee seeking to access gender transition leave may be required to provide suitable supporting documentation or evidence of their attendance at essential gender affirmation procedures. This may be in the form of a document issued by a registered practitioner, a lawyer, a state or territory or federal government organisation, statutory declaration or other suitable supporting documentation.

36.6.3. For the purpose of this clause, registered practitioner has the same meaning as set out in clause 3 (Definitions and interpretation).

37. Leave to participate in the First Peoples' Assembly of Victoria

37.1. An employee who is a member of the First Peoples' Assembly of Victoria is entitled to up to 10 days paid leave per calendar year to fulfil their official functions during their term of office.

37.2. Leave will be available to attend sessions of the First Peoples' Assembly of Victoria, participate in constituent consultation relevant to their role or for any other ancillary purpose as agreed with the employer.

37.3. Where in any calendar year an employee exhausts their entitlement under this clause, the employee may be granted further paid or unpaid leave to support the employee's representative functions. Approval of any further leave under this clause will be at the discretion of the employer.

37.4. The employee may also utilise flexible working arrangements, in addition to leave provided in this clause, to help support their representative functions with the agreement of the employer.

37.5. Leave under this clause will not accrue from year to year and cannot be paid out on termination of employment.

38. Blood donation leave

Leave may be granted to an employee without loss of pay to visit the Red Cross Blood Bank as a donor once every three months.

39. Eligible community service leave

39.1. An employee who engages in an eligible community service activity is entitled to be absent from their employment without loss of pay for a period if the period consists of one or more of the following:

a) time when the employee engages in the activity;

b) reasonable travelling time associated with the activity;

c) reasonable rest time immediately following the activity; and

d) unless the activity is jury service, the employee's absence is reasonable in all the circumstances.

39.2. Each of the following is an eligible community service activity:

a) jury service (including attendance for jury selection) that is required by or under a law of the Commonwealth, a State or a Territory;

b) a voluntary emergency management activity, see clause 39.3; or

c) an activity prescribed in regulations made for the purpose of clause 39.4.

39.3. An employee engages in a voluntary emergency management activity if, and only if that activity involves dealing with an emergency or natural disaster and:

a) the employee engages in the activity on a voluntary basis (whether or not the employee directly or indirectly takes or agrees to take an honorarium, gratuity or similar payment wholly or partly for engaging in the activity);

b) the employee is a member of, or has a member-like association with, a recognised emergency management body; and

c) either:

(i) the employee was requested by or on behalf of the body to engage in the activity; or

(ii) no such request was made, but it would be reasonable to expect that, if the circumstances had permitted the making of such a request, it is likely that such a request would have been made.

39.4. A recognised emergency management body is:

A body, or part of a body, that has a role or function under a plan that:

a) is for coping with emergencies and/or disasters; and

b) is prepared by the Commonwealth, a State or a Territory; or

c) a fire-fighting, civil defence or rescue body, or part of such a body; or

d) any other body, or part of a body, a substantial purpose of which involves:

(i) securing the safety of persons or animals in an emergency or natural disaster;

(ii) protecting property in an emergency or natural disaster;

(iii) otherwise responding to an emergency or natural disaster; or

(iv) a body, or part of a body, prescribed by the regulations but does not include a body that was established, or is continued in existence, for the purpose or for purposes that include the purpose, of entitling one or more employees to be absent from their employment under this clause.

39.5. Notice

39.5.1. An employee who wants an absence from their employment to be covered by this clause must give their employer notice of the absence.

39.5.2. The notice:

a) must be given to the employer as soon as practicable (which may be a time after the absence has started); and

b) must advise the employer of the period, or expected period, of the absence.

39.6. Evidence

An employee who has given their employer notice of an absence under clause 39 (Eligible community service leave), must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the absence is because the employee has been or will be engaging in an eligible community service activity.

39.7. Compliance

An employee's absence from their employment is not covered by this clause unless the employee complies with this section.

40. Workplace training leave

40.1. Health, and safety training leave

40.1.1. An employee, upon election as a health and safety representative (HSR), shall be granted up to five days' paid leave, as soon as practicable after election, to undertake initial health and safety representative training at a training provider approved by WorkSafe Victoria, having regard to course places and the employer's operational requirements. The employer shall meet any reasonable costs incurred. Leave under clause 40.1.1 must only be granted to an employee on one occasion and is additional to any other leave granted under this provision.

40.1.2. Additional paid leave will be approved for HSRs and deputy HSRs to attend annual refresher training in accordance with the OHS Act.

40.2. Union training leave

In order to encourage cooperative workplace relations and facilitate the operation of this Agreement, an employee who is a CPSU delegate and who makes a request to the employer to attend a designated trade union training course may, with the employer's approval, be granted up to five days' paid leave per annum for attendance at such training, provided that the granting of such leave will not unduly affect the employer's operational requirements. The employer will not unreasonably refuse the granting of such training leave.

41. Family violence leave

41.1. General principle

41.1.1. The employer recognises that employees sometimes face situations of violence or abuse in their personal life that may affect their attendance or performance at work. Therefore, the employer is committed to providing support to staff that experience family violence.

41.1.2. Leave for family violence purposes is available to employees who are experiencing family violence, and also to allow them to be absent from the workplace to attend counselling appointments, legal proceedings and other activities related to, and as a consequence of, family violence.

41.2. Definition of family violence

41.2.1. The *Family Violence Protection Act 2008* (Vic) defines family violence as behaviour by a person towards a family member that is:

a) physically, sexually, emotionally, psychologically or economically abusive, threatening, coercive or in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of themselves or another person, or;

b) behaviour by a person that causes a child to hear or witness, or otherwise be exposed, to the effects of the behaviour.

41.2.2. Family relationships include people who are related to one another through blood, marriage or de facto partnerships, adoption and fostering relationships. They include the full range of kinship ties in Aboriginal and Torres Strait Islander communities, extended family relationships, and constructs of family within Lesbian, Gay, Bisexual, Transgender, Intersex or Queer (LGBTIQ) communities.

41.3. Eligibility

41.3.1. Leave for family violence purposes is available to all employees with the exception of casual employees.

41.3.2. Casual employees are entitled to access leave without pay for family violence purposes.

41.4. General measures

41.4.1. Evidence of family violence may be required and can be in the form an agreed document issued by the police service, a court, a registered health practitioner, a family violence support service, district nurse, maternal and health care nurse or lawyer. A signed statutory declaration can also be offered as evidence.

41.4.2. All personal information concerning family violence will be kept confidential in line with the employer's policies and relevant legislation. No information will be kept on an employee's personnel file without their express written permission.

41.4.3. No adverse action will be taken against an employee if their attendance or performance at work suffers as a result of experiencing family violence.

41.4.4. The employer will identify contact/s within the workplace who will be trained in family violence and associated privacy issues. The employer will advertise the name of any family violence contacts within the workplace.

41.4.5. An employee experiencing family violence may raise the issue with their immediate manager, family violence contacts, CPSU delegate or nominated People and Culture contact. The immediate manager may seek advice from People and Culture if the employee chooses not to see the People and Culture or family violence contact.

41.4.6. Where requested by an employee, the People and Culture contact will liaise with the employee's manager on the employee's behalf and will make a recommendation on the most appropriate form of support to provide in accordance with clause 41.5 (Leave) and clause 41.6 (Individual support).

41.4.7. The employer will develop guidelines to supplement this clause, which details the appropriate action to be taken in the event that an employee reports family violence.

41.5. Leave

41.5.1. An employee experiencing family violence will have access to 20 days per year of paid special leave following an event of family violence and for related purposes such as medical appointments, legal proceedings and other activities related to family violence (this leave is not cumulative, but if the leave is exhausted consideration will be given to providing additional leave). This leave will be in addition to existing leave entitlements and may be taken as consecutive or single days, or as a fraction of a day, and can be taken without prior approval.

41.5.2. An employee who supports a person experiencing family violence may utilise their personal/carer's leave entitlement to accompany them to court, to hospital, or to care for children. The employer may require evidence consistent with clause 41.4.1 from an employee seeking to utilise their personal/carer's leave entitlement.

41.6. Individual support

41.6.1. In order to provide support to an employee experiencing family violence and to provide a safe work environment to all employees, the employer will approve any reasonable request from an employee experiencing family violence for:

a) temporary or ongoing changes to their span of hours or pattern or hours and/or shift patterns;

b) temporary or ongoing job redesign or changes to duties;

c) temporary or ongoing relocation to suitable employment;

d) change to their telephone number or email address to avoid harassing contact; or

e) any other appropriate measure including those available under existing provisions for family friendly and flexible work arrangements.

41.6.2. Any changes to an employee's role should be reviewed at agreed periods. When an employee is no longer experiencing family violence, the terms and conditions of employment may revert to the terms and conditions applicable to the employee's substantive position.

41.6.3. An employee experiencing family violence will be offered access to the Employee Assistance Program (EAP) and/or other available local employee support resources. The EAP shall include professionals trained specifically in family violence.

41.6.4. An employee that discloses that they are experiencing family violence will be given information regarding current support services.

42. Alcohol, drug or problem gambling addiction leave

42.1. An employee, other than a casual employee, may be granted leave with or without pay to undertake an approved rehabilitation program where the employer is satisfied that:

a) the employee's work performance is adversely affected by the misuse of drugs or alcohol or problem gambling;

b) the employee is prepared to undertake a course of treatment designed for the rehabilitation of persons with alcohol, drug or gambling related problems; and

c) in the case of an alcohol or drug addiction, a registered practitioner has certified that in their opinion the employee is in need of assistance because of their misuse of alcohol or drugs and that the employee is suitable for an approved rehabilitation program; or

d) in the case of problem gambling the employee satisfies the eligibility criteria for entry into an approved problem gambling rehabilitation program.

42.2. On production of proof of attendance at an approved rehabilitation program in accordance with clause 42.1, an employee may be granted leave as follows:

a) An employee who has completed two years' continuous or aggregate service and who has exhausted all other accrued leave entitlements may be granted leave with pay as follows:

Years of service	First year of program	Subsequent years of program
2 years	20 days	15 days
3 years	27 days	20 days
4 years	33 days	25 days
5 or more years	40 days	30 days

b) An employee who has completed less than two years' continuous or aggregate service and who has exhausted all other accrued leave entitlements may be granted leave without pay for the purposes of attending an approved rehabilitation program.

43. Public holidays

43.1. An employee, other than a casual, will be entitled to the following days without loss of pay: New Year's Day; 26 January; Labour Day; Good Friday; Easter Saturday; Easter Sunday, Easter Monday; Anzac Day; Queen's Birthday; Friday before the AFL Grand Final, Melbourne Cup Day; Christmas Day; and Boxing Day.

43.1.1. When Christmas Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 27 December.

43.1.2. When Boxing Day is a Saturday or a Sunday, an additional holiday will be observed on 28 December.

43.2. When New Year's Day is a Saturday or Sunday, an additional holiday will be observed on the next Monday.

43.3. When 26 January is a Saturday or Sunday, a holiday in lieu will be observed on the next Monday.

43.4. Where in the whole or part of the State of Victoria additional or substituted public holidays are declared or prescribed on days other than those set out above, those days will constitute additional or substituted holidays for the purpose of this Agreement for employees who have their place of principal employment in a municipality to which the additional or substituted public holiday applies.

43.5. An employer and the majority of affected employees may agree to substitute another day for any prescribed in this clause. Such an agreement will be recorded in writing and be available to every affected employee.

43.6. Where, outside the Melbourne metropolitan area, a public holiday is proclaimed in that municipality for the observance of local events, that day will be observed as a public holiday in lieu of Melbourne Cup Day. Employees who have their principal employment in a municipality where Melbourne Cup Day is not observed as a public holiday, or in a municipality where a public holiday is not proclaimed for the observance of local events, will be granted one day's leave in lieu of Melbourne Cup Day, to be taken on a day to be agreed between the employees concerned and their manager.

Part 7 – Health, safety and wellbeing, and union related matters

44. Section 1 – Union related matters

44.1. The employer recognises the protections for members and/or officers of industrial organisations/unions as stated in section 346 of the Fair Work Act.

44.2. On request, an accredited representative of the CPSU shall be released by the employer from normal duties for such periods of time as may be reasonably necessary to enable them to carry out their representative functions including, but not limited to:

a) investigating any alleged breach of this Agreement;

b) endeavouring to resolve any dispute arising out of the operation of this Agreement;

c) participating in any bargaining, conciliation or arbitration process conducted under the provisions of the Fair Work Act; or

d) facilitating resolution of employee matters.

44.2.1. Such release:

a) will not be unreasonably withheld; and

b) must not unduly affect the operations of the employer.

44.3. Right to representation

44.3.1. Employees are entitled to be represented by the CPSU, or their nominated representative, in relation to matters arising under this Agreement.

44.3.2. The CPSU, and/or alternate nominated representatives, may post or distribute written or electronic material in the workplace that is relevant to the workplace or relates to matters arising under this Agreement (provided this complies with the employers' Code of conduct).

44.3.3. Employees are entitled to reasonable time and access to electronic communication devices to facilitate communication between employees, the CPSU, and their nominated representative (provided such communication complies with the employer's Code of conduct and does not unduly affect the employer's operational requirements).

44.4. Union attendance at workplace induction

VLA will provide the employee with a copy of this Agreement and information regarding the role of the CPSU and/or CPSU delegates under the terms of this Agreement. VLA will ensure that an induction process is developed and maintained for the purpose of educating new employees about its structures and policies. VLA will ensure that the CPSU is included in the induction process and are provided with an opportunity to explain their role, functions and processes provided for under this Agreement.

45. Section 2 – Health, safety and wellbeing

45.1. Objectives

45.1.1. This Agreement acknowledges and supports the rights of employees to work in an environment, which is, so far as is practicable, safe and without risks to health. The parties are committed to the promotion of a joint and united approach to consultation and resolution of occupational health and safety (OH&S) issues.

45.1.2. The Agreement commits the parties to improving health and safety with a view to improving workplace efficiency and productivity. This will be accomplished through the ongoing development, in consultation with employees and their health and safety representatives, of management systems and procedures designed to, so far as is practicable to:

a) identify, assess and control workplace hazards;

b) reduce the incidence and cost of occupational injury and illness;

c) identify and appropriately manage work and work practices which impact on OH&S;

d) provide a rehabilitation system for employees affected by occupational injury or illness;

e) consider the impact of changes to work practices and staffing on occupational health and safety; and

f) ensure that HSRs can exercise their powers to the extent provided for in the OHS Act and the *Occupational Health and Safety Regulations 2017* (Vic).

45.1.3. OH&S statutory requirements, including regulations and codes of practice/ compliance codes, are minimum standards and will be improved upon where practicable.

45.2. OH&S consultation

45.2.1. Consultative mechanisms will be established to address OH&S issues. Such mechanisms will be:

a) in accordance with the Victorian OHS Act;

b) established in consultation with employees and their HSRs; and

c) consistent with the employer's agreed issue resolution procedures and the rights and functions of HSRs, consistent with the OHS Act.

45.2.2. Where an OH&S committee is established, at least half the members shall be employees, including HSRs.

45.2.3. The OH&S committee will operate within the requirements of the OHS Act and their terms of reference.

45.2.4. A CPSU workplace representative may attend OH&S committee meetings (by giving notice) from time to time.

45.3. OH&S training

45.3.1. Workplace training programs, including induction and on-the-job training will outline relevant details of OH&S policies and procedures.

45.3.2. The contents of OH&S training programs will outline the OH&S roles and responsibilities of employees and managers, OH&S policies and procedures, particular hazards associated with their workplaces, control measures applicable to each hazard, and how to utilise OH&S systems to identify hazards and instigate preventative action.

46. Rehabilitation and return to work

46.1. The employer has an obligation to monitor employee health and is committed to a proactive approach to help employee rehabilitation and return to work from illness or injury irrespective of whether this is work related. Where an employee is absent on sick leave for a period of more than one month, the employer expects that the employee will notify their manager of any significant factor(s) that may require some workplace adjustment to return to their full duties.

46.2. Where adjustment is needed, the employer will work cooperatively with the employee's treating medical practitioner to develop a return-to-work program. This may mean that the employee will have to provide their consent to allow their medical practitioner to provide details of their medical condition and/or any physical limitations to the employer. This will assist in developing an effective rehabilitation strategy to ensure a successful return to work that does not exacerbate or aggravate any existing medical condition. Where an employee is

absent on sick leave for repeated periods that accumulates to three months or more in the last 12 months, the manager may request the employee's consent for the employer's Return to work coordinator to speak to the employee's treating practitioner.

46.3. The purpose of this discussion will be to develop any appropriate rehabilitation and return to work strategies that minimise the risk of work aggravating or exacerbating any existing medical condition and confirm the expected duration of the absence so that arrangements can be made, if required, to staffing and workload levels.

47. Critical incident response

47.1. Employee support and debriefing

47.1.1. The employer will provide support and debriefing to employees who have experienced a critical incident during the course of the work that results in personal distress or psychological trauma. The employer is committed to assisting the recovery of employees experiencing distress or trauma following a critical incident with the aim of returning employees to their pre-incident level of functioning, as soon as possible.

47.1.2. A critical incident is defined as an event outside the range of usual human experience, which has the potential to easily overcome a person's normal ability to cope with stress. It may produce a negative psychological response in an employee who was involved in or witnessed, or otherwise deals with and/or is exposed through the course of their duties, to the details of such an incident.

47.1.3. Critical incidents in the workplace environment include, but are not limited to:

a) aggravated assaults;

b) robbery;

c) suicide or attempted suicide;

d) murder;

e) sudden or unexpected death;

f) hostage or siege situations;

g) discharge of firearms;

h) vehicle accidents involving injury and/or substantial property damage;

i) acts of self-harm by persons in the care of others;

j) industrial accidents involving serious injury or fatality;

k) accounts of sexual violence;

l) accounts of child abuse and domestic violence; and

m) any other serious accidents or incidents.

48. Designated work groups

48.1. The employer will consult with staff and the CPSU on designated work group (DWG) structures.

48.2. Each elected HSR will be provided with reasonable access to facilities such as email, telephone, fax, office, and computer access, where available. An employee will be granted reasonable time release or paid time (including time in lieu) to attend to their functions as a HSR, including but not limited to regularly inspecting workplaces (as defined by their DWG), consulting with employees in their DWGs, OH&S representatives and other persons involved in the organising of employees' health, safety and welfare.

48.3. The employer will publish and maintain, current in each workplace, the names of elected HSRs for identified DWGs for the regular attention of all employees working in the workplace.

48.4. The employer will maintain a current register of staff elected as HSRs and the DWGs they represent. This register will be published on the employer's intranet and regularly brought to the attention of all employees.

48.5. To monitor the maintenance of effective OH&S structures and training delivery the employer will maintain a central register of DWG's and their HSRs.

48.6. Information from the updated register will be provided periodically (quarterly) in electronic format to the CPSU. The information provided will be in accordance with the Privacy and Data Protection Act 2014 (Vic). Where possible, this information will include:

a) a description, including the location, of each DWG within each workplace;

b) the name of each elected HSR; and

c) the date the HSR was appointed.

Signatories

Signed by:

Louise Glanville

Chief Executive Officer

Victoria Legal Aid

Level 9, 570 Bourke Street

MELBOURNE VIC 3000

Date: 10 May 2021

Karen Batt

Branch Secretary

Community and Public Sector Union

SPSF Group, Victorian Branch

Level 4, 128 Exhibition Street

MELBOURNE VIC 3000

Date: 12th MAY 2021.

Schedule 1: wage increases (2% increase each year)

Classification	01/12/2020	29/04/2021	29/10/2021	29/04/2022	29/10/2022	29/04/2023	29/10/2023	29/04/2024
VLA 1 (min)	42,917	43,346	43,780	44,217	44,660	45,106	45,557	46,013
VLA 1 (max)	52,414	52,938	53,467	54,002	54,542	55,088	55,638	56,195
VLA 2 (min)	52,415	52,939	53,469	54,003	54,543	55,089	55,640	56,196
VLA 2 (max)	71,283	71,996	72,716	73,443	74,177	74,919	75,668	76,425
VLA 3 (min)	71,284	71,997	72,717	73,444	74,178	74,920	75,669	76,426
VLA 3 (max)	92,246	93,169	94,100	95,041	95,992	96,952	97,921	98,901
VLA 4 (min)	92,247	93,170	94,102	95,043	95,993	96,953	97,922	98,902
VLA 4 (max)	115,307	116,460	117,624	118,801	119,989	121,188	122,400	123,624
VLA 5 (min)	115,308	116,461	117,625	118,802	119,990	121,190	122,401	123,625
VLA 5 (max)	146,754	148,222	149,704	151,201	152,713	154,240	155,782	157,340
VLA 6 (min)	146,755	148,223	149,705	151,202	152,714	154,241	155,783	157,341
VLA 6 (max)	168,813	170,502	172,207	173,929	175,668	177,425	179,199	180,991

IN THE FAIR WORK COMMISSION

FWC Matter No.:

AG2021/5147

Applicant:

Victoria Legal Aid T/A Victoria Legal Aid

Section 185 – Application for approval of a single enterprise agreement

Undertaking – Section 190

I, Louise Glanville, Chief Executive Officer, have the authority given to me by Victoria Legal Aid T/A Victoria Legal Aid to give the following undertakings with respect to the Victoria Legal Aid Enterprise Agreement 2020–24 ("the Agreement"):

1. Notwithstanding clause 28.5.1, all accrued personal/carer's leave may be taken as carer's leave.

2. Notwithstanding clause 43.5, the employer and an individual employee may agree to substitute another day for any prescribed in clause 43.

3. Notwithstanding that the Agreement does not provide for work value levels as set out in the *Victorian State Government Agencies Award 2015* ("the Award"):

    a. Every employee engaged under the classification VLA 1 or VLA 3 will be paid at least the minimum Award rate for the relevant classification grade and work value level under the Award plus $1.

    b. Every employee engaged under the classification VLA 1 or VLA 3, will be eligible to progress to the next work value level in accordance with clause 9.6 of the Award. This will not apply to those employees at the maximum work value level for their respective grade under the Award.

4. In relation to the stand-by allowance:

    a. Notwithstanding the table at clause 26.15.7 the following amounts of stand-by allowance will be paid:

Date payable	**Payable**	**Amount**
1 December 2020	Per night	$24.92
1 December 2021	Per night	$25.42

1 December 2022	Per night	$25.93
1 December 2023	Per night	$26.45
1 December 2020	Per 24-hour period (day and night)	$49.84
1 December 2021	Per 24-hour period (day and night)	$50.84
1 December 2022	Per 24-hour period (day and night)	$51.86
1 December 2023	Per 24-hour period (day and night)	$52.90

b. Furthermore, for the life of the Agreement the stand-by allowance paid under clause 26.15.7 will be at least equivalent to the stand by allowance at clause 15.1 of the Award.

5. In relation to excess travelling time, for the life of the Agreement, the employer will apply clause 15.3(c) of the Award.

6. In relation to motor vehicle allowance:

a. Notwithstanding that clause 20.6 provides for reimbursement of kilometre costs based on the rates determined by the Australian Taxation Office, the employer will reimburse the kilometre costs at $0.80 per kilometre.

b. For the life of the Agreement the motor vehicle allowance paid under clause 20.6 will increase by 2% on 1 December each year. Provided that the motor vehicle allowance paid under clause 20.6 will at all times be at least equivalent to the motor vehicle allowance paid under clause 15.1 of the Award.

7. In relation to higher duties allowance provided at clause 20.2:

a. When the number of consecutive working days in terms of clause 20.2.1 is five or more, any public holiday(s) or authorised absence within the period or immediately following such period of higher duties, will be included for payment when calculating the allowance to be paid.

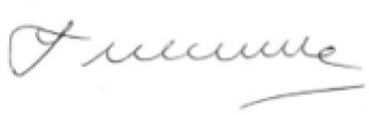
b. In addition to clause 20.2.4, in the event where an employee who has been performing a higher duties position for 20 or more consecutive days proceeds upon annual leave, but does not return to the higher duties position upon return from leave, the employee will be paid the higher duties allowance for the entire period of annual leave.

8. Notwithstanding the reference at clause 12.1.5 to trainees, for the life of the Agreement, no employee shall be engaged as a trainee under the Agreement.

9. Notwithstanding clause 26.1.3, a part-time employee will be entitled to payment of overtime, or equivalent time-off, in accordance with clauses 26.1.5 and 26.1.6, where they are required to work outside their ordinary hours of work (i.e. their fixed working hours).

10. In relation to the shift allowances at clause 25.3, a Monday to Friday – evening shift is for the period finishing after 6.30pm and at or before midnight.

These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.



Louise Glanville
Chief Executive Officer
Victoria Legal Aid

28 May 2021

Date