

SECTION 2: PEOPLE AND PERFORMANCE MANAGEMENT

10. Performance management

10.1 The following requirements apply:

- (a) on an annual basis, a performance agreement will be established for each employee in May, and will be reviewed in November;
- (b) a performance agreement will be established within four weeks for employees commencing with, or returning to, the department. Where non-ongoing employment or a temporary assignment extends beyond 12 weeks, the same requirement applies;
- (c) supervisors and managers will engage in regular two-way feedback with employees on their individual work performance and with work teams on their performance in meeting the section's or committee secretariat's work objectives;
- (d) written assessment of individual performance will be provided in October and April each year, along with the provision of written feedback to the supervisor by each team member or jointly with other team members; and
- (e) the overall performance standards for the Scheme will be "effective or better", "requires development" and "unsatisfactory".

10.2 Further details are set out in the relevant departmental guidelines.

11. Managing underperformance

Performance that requires development

11.1 Where an employee's overall performance is assessed as "requires development" the employee's supervisor will monitor his or her performance over the ensuing eight-week period (four weeks in the case of non-ongoing employees) or another period deemed appropriate by the Clerk. During this period the supervisor will implement development strategies to assist the employee to achieve an "effective or better" performance assessment.

Unsatisfactory performance

11.2 Where an ongoing employee receives an overall performance assessment of "unsatisfactory", or where an ongoing employee is assessed as "requires development" and does not achieve an overall performance assessment of "effective or better" by the end of the period specified in clause 11.1, the Clerk may commence a performance management process. This may include:

- (a) advising the employee in writing as soon as practicable that his or her performance has been found unsatisfactory and state why; and
- (b) initiating a review of the employee's performance over a specified time period.

11.3 If at the end of the performance review period under clause 11.2(b), the employee's overall performance is assessed as "unsatisfactory", the Clerk will issue a notice of intention to:

- (a) extend the review period by a further period as deemed appropriate by the Clerk, but in any event of no more than eight weeks; or
 - (b) reduce the employee's classification; or
 - (c) assign the employee other duties; or
 - (d) terminate the employee's employment.
- 11.4 The employee will have at least seven days from the date of the notice given by the Clerk to show cause, in writing, why the action notified in the notice should not be taken.
- 11.5 At the end of the time period referred to in clause 11.4, the Clerk, having considered any representations submitted by the employee, may implement the intended action. If the performance review period is extended under subclause 11.3(a), at the completion of the extended performance review period, clauses 11.3 and 11.4 again have effect.
- 11.6 Where a non-ongoing employee does not achieve an overall performance assessment of "effective or better" at the end of the four-week monitoring period (as described in clause 11.1), the employee's employment may be terminated.
- 11.7 The department may terminate the employment of a non-ongoing employee whose overall performance is assessed as "unsatisfactory" at any stage during his or her employment period.
- 11.8 Further details are set out in the relevant departmental guidelines.

12. Learning and development

- 12.1 Employees will have a target number of hours of 21 hours of work-related learning activities to complete each 12-month performance period.

Studybank

- 12.2 The Clerk may approve the grant of assistance to an ongoing employee to a maximum of:
- (a) 40 hours paid leave per university unit (or equivalent) per semester (up to a maximum of 80 hours per semester or six month period), to attend classes, undertake examinations or for other agreed study purposes, which, with the agreement of the supervisor, can be accumulated over the semester and taken as a block of time; and
 - (b) \$1,000 per unit, or equivalent, for reimbursement of course fees, paid for upfront, and/or related costs.

- 12.3 Further details are set out in the relevant departmental guidelines.

13. Consultation term

Consultation

- 13.1 This term applies if the Clerk:

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

Major change

- 13.2 For a major change referred to in subclause 13.1(a):
- (a) the Clerk must notify the relevant employees of the decision to introduce the major change; and
 - (b) clauses 13.3 to 13.9 apply.
- 13.3 The relevant employees may appoint a representative for the purposes of the procedures in this term.
- 13.4 If:
- (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - (b) the employee or employees advise the Clerk of the identity of the representative;
- the Clerk must recognise the representative.
- 13.5 As soon as practicable after making the decision, the Clerk must:
- (a) discuss with the relevant employees:
 - (i) the introduction of the change; and
 - (ii) the effect the change is likely to have on the employees; and
 - (iii) measures the Clerk is taking to avert or mitigate the adverse effect of the change on the employees; and
 - (b) for the purposes of the discussion – provide, in writing, to the relevant employees:
 - (i) all relevant information about the change including the nature of the change proposed; and
 - (ii) information about the expected effects of the change on the employees; and
 - (iii) any other matters likely to affect the employees.
- 13.6 However, the Clerk is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 13.7 The Clerk must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- 13.8 If a term in this Agreement provides for a major change to production, programs, organisation, structure or technology in the department, the requirements set out in clauses 13.2(a), 13.3 and 13.5 are taken not to apply.
- 13.9 In this term, a major change is *likely to have a significant effect on employees* if it results in:
- (a) the termination of the employment of employees; or

- (b) major change to the composition, operation or size of the department's workforce or to the skills required of employees; or
- (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
- (d) the alteration of hours of work; or
- (e) the need to retrain employees; or
- (f) the need to relocate employees to another workplace; or
- (g) the restructuring of jobs.

Change to regular roster or ordinary hours of work

- 13.10 For a change referred to in subclause 13.1(b),
- (a) the Clerk must notify the relevant employees of the proposed change; and
 - (b) clauses 13.11 to 13.15 apply.
- 13.11 The relevant employees may appoint a representative for the purposes of the procedures in this term.
- 13.12 If:
- (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - (b) the employee or employees advise the Clerk of the identity of the representative;
- the Clerk must recognise the representative.
- 13.13 As soon as practicable after proposing to make the change, the Clerk must:
- (a) discuss with the relevant employees the introduction of the change; and
 - (b) for the purposes of the discussion – provide to the relevant employees:
 - (i) all relevant information about the change, including the nature of the change; and
 - (ii) information about what the Clerk reasonably believes will be the effects of the change on the employees; and
 - (iii) information about any other matters that the Clerk reasonably believes are likely to affect the employees; and
 - (c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- 13.14 However, the Clerk is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 13.15 The Clerk must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- 13.16 In this term:
- relevant employees* means the employees who may be affected by a change referred to in clause 13.1.

14. Workplace Consultative Committee

- 14.1 There is to be a Workplace Consultative Committee, chaired by a program manager, and comprising one other program manager if nominated by the Program Manager Group, and employee representatives nominated or elected by employees.
- 14.2 Members of the Workplace Consultative Committee will review the terms of reference of the Workplace Consultative Committee from time to time.
- 14.3 The Workplace Consultative Committee is a forum for consultation with employees regarding the implementation of this Agreement.

15. Workplace support

- 15.1 To assist in mitigating workplace injury and illness the department will reimburse the cost of medical treatments, generally up to the value of \$400 within a 12-month period, for reported incidents of work-related injuries. This course of action does not remove or restrict an employee's entitlement to claim workers' compensation.
- 15.2 Further details are set out in the relevant departmental guidelines.
- 15.3 The department will also provide employees with access to a confidential, professional counselling service, at no cost to employees. Employees may have unlimited access to the service for support in resolving work-related matters and generally up to three sessions for support in resolving personal matters.

16. Excess employees

- 16.1 The following provisions will apply to ongoing employees who are not on probation.

Consultation

- 16.2 Where the Clerk considers there is likely to be a need to identify employees as excess, the Clerk will, as soon as practicable, advise the affected employees of the situation and discuss the situation with the employees including:
- (a) actions that might be taken to reduce the likelihood of the employees becoming excess;
 - (b) redeployment opportunities for the employees within the department at or below the employees' classifications; and
 - (c) whether voluntary retrenchment might be appropriate.

An employee may choose to be represented in any such discussion.

- 16.3 Where the Clerk is undertaking a consultation process in accordance with clause 13 in relation to the situation, the discussions in clause 16.2 may be undertaken at or around the same time as the discussions contemplated in clause 13.2 to 13.9.
- 16.4 During the discussions referred to in clause 16.2, the Clerk may invite employees who are not potentially excess to express an interest in voluntary retrenchment, if that would allow for redeployment of potentially excess employees.

Voluntary retrenchment

- 16.5 Where the Clerk decides that an employee is excess, the Clerk will:
- (a) advise the employee in writing of the decision and may invite the employee to elect for retrenchment with the payment of a redundancy benefit;
 - (b) ensure the employee is provided, as soon as is practicable, with information on the entitlements they would be eligible to receive if terminated, including superannuation options and taxation treatment of entitlements; and
 - (c) reimburse the employee up to \$400 for expenses incurred in seeking financial advice.

Consideration

- 16.6 Where the Clerk invites an excess employee to elect for retrenchment with a redundancy benefit, the employee will have four weeks in which to notify the Clerk of his or her decision (the consideration period). Where the employee elects for retrenchment the Clerk may decide to retrench the employee but will not give notice of termination before the end of the consideration period without the agreement of the employee. Only one invitation to elect for retrenchment with the payment of a redundancy benefit will be made to an excess employee.
- 16.7 The consideration period can be reduced by agreement between the employee and the Clerk.

Redundancy benefit

- 16.8 An employee who elects for retrenchment with a redundancy benefit and whose employment is terminated by *Parliamentary Service Act 1999* on the grounds that the employee is excess is entitled to payment of a redundancy benefit of an amount equal to two weeks' salary for each completed year of continuous service, plus a pro-rata payment for completed months of service since the last completed year of service, subject to any minimum amount the employee is entitled to under the NES.
- 16.9 The minimum sum payable will be four weeks' salary and the maximum will be 48 weeks' salary.
- 16.10 For the purpose of calculating a redundancy benefit, salary will include:
- (a) the employee's salary at his/her substantive classification; or
 - (b) the salary of the higher classification, where the employee has been assigned to the higher classification for a continuous period of at least 12 months immediately preceding the date on which the employee is given notice that his/her employment is to be terminated; and
 - (c) a weekly average of shift penalties where an employee has undertaken shift work and has received shift penalties for 50% or more of the pay periods in the 12 months preceding the notice of retirement; and
 - (d) allowances in the nature of salary which are paid during periods of annual leave and on a regular basis, excluding allowances which are a reimbursement for expenses incurred, or a payment for disabilities associated with the performance of duty.

- 16.11 The redundancy benefit will be calculated on a pro-rata basis for any period where an employee has worked part-time hours during the employee's period of service and the employee has less than 24 years' full-time service, subject to any minimum amount the employee is entitled to under the NES.

Notice of termination

- 16.12 Where the employment of an excess employee is to be terminated on the basis that the employee is excess, the Clerk will give written notice of termination of four weeks (or five weeks for an employee over 45 with at least five years of continuous service).
- 16.13 The Clerk can direct, or the employee may request, an earlier termination date within the period of notice. Where an employee's employment is terminated at the beginning of, or within, the notice period, the employee will receive payment in lieu of notice for the unexpired portion of the notice period.

Retention period

- 16.14 An excess employee who does not agree to be retrenched with the payment of a redundancy benefit will be entitled to a seven month retention period. If an employee is entitled to a redundancy payment under the NES, the retention period is reduced by the number of weeks redundancy pay that the employee will be entitled to under the NES on termination of employment, as at the expiration of the retention period (as adjusted by this clause).
- 16.15 The retention period will commence on the day the Clerk advises the employee in writing that they are an excess employee.
- 16.16 During the retention period the Clerk:
- (a) will continue to take reasonable steps to find alternative employment for the excess employee; and
 - (b) may, with four weeks' notice, reassign duties at a lower classification to the excess employee. Where this occurs before the end of an employee's retention period, the employee will receive income maintenance to maintain his or her salary at the previous higher classification for the balance of the retention period set out in clause 16.14.
- 16.17 It is the excess employee's responsibility to take all reasonable steps to identify and apply for suitable vacancies during the retention period. The excess employee must actively participate in learning and development activities, trial placements or other reasonable arrangements designed to assist the employee in obtaining alternative employment.

Termination of employment at the conclusion of the retention period

- 16.18 The Clerk may involuntarily terminate the employment of an excess employee at the end of the retention period. An excess employee's employment will not be involuntarily terminated without being given notice of termination under

clause 16.12. Wherever possible, this notice period will be concurrent with the retention period.

16.19 Where the Clerk is satisfied that there is no reasonable prospect of redeployment or that there is insufficient productive work available for the employee during the retention period, the Clerk may terminate the employee's employment.

16.20 Where the Clerk terminates an employee's employment in accordance with clause 16.19, the employee is entitled to be paid:

- (a) for the balance of the retention period (as reduced by the employee's entitlement to a redundancy payment under the NES) as a lump sum, with this payment being taken to include payment in lieu of notice of termination; and
- (b) redundancy pay, in accordance with the NES.

Definition of excess

16.21 For the purposes of this Agreement, an employee is excess to the requirements of the department if:

- (a) the employee has a classification at which there is a greater number of employees than is necessary for the efficient and cost-effective operations of the department; or
- (b) the services of the employee cannot be effectively used because of technological or other changes in the work methods of the department or changes in the nature, extent or organisation of the functions of the department.

Service for redundancy benefit purposes

16.22 Service for redundancy benefit purposes means:

- (a) service in the department;
- (b) Government service as defined in section 10 of the *Long Service Leave Act 1976*;
- (c) service with the Commonwealth (other than service with a Joint Commonwealth-State body corporate in which the Commonwealth has a controlling interest) which is recognised for long service leave purposes;
- (d) service with the Australian Defence Forces;
- (e) service in the Australian Public Service immediately preceding deemed resignation under repealed section 49 of the *Public Service Act 1922*, if the service has not previously been recognised for severance pay purposes; and
- (f) service in another organisation where:
 - (i) an employee was transferred from the Australian Parliamentary Service or the Australian Public Service to that organisation with a transfer of function; or
 - (ii) an employee engaged by that organisation on work within a function is transferred, as a result of the transfer of that function, to the Australian Parliamentary Service or the Australian Public Service;and such service is recognised for long service leave purposes.

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

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

16.24 Service does not count as service for severance benefit purposes if it ceased:

- (a) through termination on a ground set out in subsections 29(3)(b)-(h) of the *Parliamentary Service Act 1999*;
- (b) through termination on the basis of a breach of the Australian Public Service Code of Conduct; or
- (c) through voluntary retirement at or above the minimum retiring age applicable to the employee; or
- (d) with the payment of a redundancy benefit or similar payment, or an employer-financed retirement benefit.

16.25 Absences from duty which do not count as service for long service leave purposes will not count as service for severance benefit purposes.