



**DEPARTMENT OF FOREIGN AFFAIRS  
AND TRADE**

**s 47E(d)**

I, Jan Adams, Secretary, Department of Foreign Affairs and Trade, make the following Determination pursuant to section 24(1) of the *Public Service Act 1999*.

Dated: 20 March 2024

A handwritten signature in black ink, appearing to read 'Jan Adams'.

Jan Adams AO PSM  
Secretary  
Department of Foreign Affairs and Trade

## PART A — PRELIMINARY

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### 1 Citation

#### 1.1 s 47E(d)

### 2 Commencement

#### 2.1 This Determination commences on **1 March 2024**.

### 3 Application

3.1 This Determination applies to Dr Kevin Rudd AC (the Employee) who is employed by the department on behalf of the Commonwealth at the Senior Executive Service (SES) **Band 3** level.

3.2 The Employee is employed in the Australian Public Service pursuant to section 22 of the *Public Service Act 1999*.

### 4 Interaction with other instruments

4.1 All previous determinations made pursuant to section 24(1) of the *Public Service Act 1999*, both collective and individual, which applied to Employees are hereby revoked.

4.2 This Determination is intended to supplement the Employee's entitlements and provide greater benefits than those enjoyed by the Employee under the National Employment Standard (NES) set out in the *Fair Work Act 2009*. To the extent that any part of this Determination reduces the benefit to the Employee of any individual term or condition applicable to the Employee under the NES, the terms of the NES shall prevail.

4.3 Nothing in this Determination prevents the Secretary from setting out other terms and conditions of employment by way of another Determination made pursuant to section 24(1) of the *Public Service Act 1999* that will apply to individual Employees in addition to those set out in this Determination.

### 5 Period of Operation

5.1 This Determination continues in force until it is replaced by:

5.1.1 another determination made pursuant to section 24(1) of the *Public Service Act 1999* which applies to the Employee and which revokes this Determination;

5.1.2 a written common law contract of employment made between the Secretary and the Employee; or

5.1.3 a statutory enterprise agreement that covers the Employee.

## **6 Delegation**

- 6.1** The Secretary may delegate any or all of her or his powers and functions under this Determination, including this power of delegation, and may do so subject to conditions.

## **7 Relationship to Policies, Guidelines and Legislation**

- 7.1** The Human Resources Manual (HRM), Performance Management Framework (PMF) and any other policies or guidelines, as amended from time to time, referred to in this Determination are not incorporated into and do not form part of this Determination. If there is any inconsistency between the HRM, PMF or other policies or guidelines and the express terms of this Determination, the express terms of this Determination will prevail to the extent of any inconsistency unless contrary to legislation or common law.
- 7.2** This Determination comprehensively sets out the terms and conditions of employment of the Employees covered by this Determination, other than terms and conditions applying under Commonwealth law (including other determinations made pursuant to section 24(1) of the *Public Service Act 1999*).
- 7.3** Employment in the department is in accordance with the provisions of legislation, including related regulations, directions, rules or instruments as may be amended from time to time.

## **PART B — REMUNERATION AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT**

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### **8 Duties**

- 8.1** Subject to clause 8.2, the Employee will perform the duties assigned by the Employee's immediate supervisor and/or other senior managers from time to time. The Employee must comply with all lawful and reasonable directions and instructions given in connection with his or her duties.
- 8.2** The Employee must perform his or her duties in accordance with the *Public Service Act 1999*.

### **9 Obligations**

- 9.1** The Employee must observe and encourage others to observe the APS Values, the APS Employment Principles and the APS Code of Conduct as set out in the *Public Service Act 1999*. The Employee will also observe in his or her day to day conduct the *Public Service Regulations 1999*, the *Australian Public Service Commissioner's Directions 2016*, the Commonwealth Lobbying Code of Conduct and the department's procedures and policies as varied from time to time.
- 9.2** If the Employee is travelling overseas on official business, including on a long-term posting, he or she must also comply with the department's Code of Conduct for Overseas Service.

### **10 Performance Management**

- 10.1** The Employee is subject to a performance management system as set out in the PMF and HRM as amended from time to time.
- 10.2** The Departmental Executive is the key decision-maker in performance ratings.

### **11 Working Arrangements**

- 11.1** The department supports flexible working arrangements. The Employee's pattern of hours is generally to be agreed between the Employee and their supervisor, taking into consideration the operational needs of the department, client service requirements and bearing in mind the Employee's personal commitments.
- 11.2** The standard hours of work for full time Employees will be 7 hours, 30 minutes per day, or 150 hours over a four week period.
- 11.3** Employees may request flexible work arrangements. Access to flexible work arrangements in Canberra and state and territory offices should be presumed suitable, unless there are operational reasons as to why this may not be possible.
- 11.4** Where Employees work part-time hours, remuneration and other benefits will be calculated on a pro rata basis while working part-time hours unless otherwise specified.

- 11.5** Flexible or part-time work arrangements must be approved in advance by the Employee's supervisor and these arrangements should be reviewed every twelve months.

## **12 Remuneration and Allowances**

### **12.1 Salary and Other Benefits**

- 12.1.1 The Employee is an SES Band 3.3 employee. On engagement, the salary at this pay point was **s 47E(d)**. The Employee will also receive an allowance of **s 47E(d)** in lieu of a vehicle in accordance with the department's Executive Vehicle Scheme.
- 12.1.2 The Employee will receive the annual salary applicable to his or her pay point as set out in the following table, reflecting an increase of four per cent effective from 17 October 2023.

<b>SES Band 3 pay point</b>	<b>Salary as of 17 October 2023 (4%)</b>
SES 3.3	<b>s 47E(d)</b>

- 12.1.3 Employees who are receiving a parliamentary pension (however described), or have availed themselves of the benefit of a parliamentary pension, shall come to an arrangement with the Secretary on any adjustment to their salary that may be required as a result of receiving a parliamentary pension.
- 12.1.4 The Employee's annual salary reflects the skills and responsibilities required in the Employee's job.
- 12.1.5 Where the Employee is absent from work without approval all salary and entitlements provided to the Employee will cease until the Employee resumes duty or is granted leave. Any absence deemed to be unauthorised will not count as service for any purpose.

### **12.2 Salary for Superannuation Purposes**

- 12.2.1 The department will make compulsory employer contributions as required by the applicable legislation and fund requirements.
- 12.2.2 If the Employee is not a member of the Commonwealth Superannuation Scheme, Public Sector Superannuation Scheme or the Public Sector Superannuation accumulation plan (PSSap), he or she will have superannuation contributions paid to a fund of his or her choice in accordance legislative requirements.
- 12.2.3 Employer contributions to the PSSap will be 15.4 per cent of the employee's fortnightly contribution salary. Employer contributions for employees in other accumulation schemes will be at the same rate as for employees in PSSap, applied to their fortnightly contribution salary. Employer contributions will not be reduced by any other contributions made through salary sacrifice arrangements. This clause does not apply where a superannuation fund cannot

accept employer superannuation contributions (e.g. unable to accept contributions for people aged over 75).

- 12.2.4 Employer superannuation contributions will not be paid on behalf of employees during periods of unpaid leave that do not count as service, unless otherwise required by legislation.
- 12.2.5 The Secretary may choose to limit superannuation choice to complying superannuation funds that allow employee and/or employer contributions to be paid through fortnightly electronic funds transfer using a file generated by the department's payroll system.
- 12.2.6 Employees who are aged 70 years or older are entitled to superannuation contributions, at the relevant rate, if the contributions are accepted by the Employee's superannuation fund.
- 12.2.7 The Employee will receive an 'in-lieu-of-superannuation' allowance where the following conditions are satisfied:
- (a) the Employee is aged 70 years or older; and
  - (b) the department is not permitted under any Commonwealth law to pay all or part of an employer contribution to the Employee's superannuation fund in respect of the employee.
- 12.2.8 The in-lieu-of-superannuation allowance that is payable to the Employee is equivalent to the amount that the department would have paid as a superannuation contribution if the Employee was under 70 years of age and was a member of PSSap, less any contribution amount accepted by the employee's superannuation fund.
- 12.2.9 The in-lieu-of-superannuation allowance will be paid as a taxable allowance in the Employee's taxable fortnightly salary.
- 12.2.10 Employees who are currently members of the Public Sector Superannuation Defined Benefit Scheme, and seek financial advice on becoming a member of PSSap, will be eligible for reimbursement for that financial advice up to \$500.

### **12.3 Higher Duties Allowance**

- 12.3.1 Where the Employee is selected to temporarily perform duties at a higher band or broadband (including higher level SES duties) and the role needs to be filled for 2 or more working weeks, higher duties allowance will be paid to any employee temporarily occupying the role acting at a classification level higher than their substantive classification level.
- 12.3.2 The Employee will be paid the difference between the employee's current salary and the salary that would be payable if they were

promoted to the higher classification level, or a higher amount determined by the Secretary.

- 12.3.3 Where the employee is found to be eligible for salary progression at their acting classification level they will receive an appropriate increase in the rate of higher duties allowance. The employee's salary level will be retained for all future periods of acting regardless of elapsed time.
- 12.3.4 Where an employee is assigned only part of the higher duties, the Secretary will determine the amount of allowance payable.
- 12.3.5 The Employee will be paid higher duties allowance while an employee is acting at a higher classification level as part of a job sharing arrangement where the duration of the arrangement is at least 2 working weeks.
- 12.3.6 The Secretary may shorten the qualifying period for higher duties allowance on a case-by-case basis.
- 12.3.7 If the Employee acts as Chargé d'Affaires at an overseas post and the role needs to be filled for 2 or more working weeks, they will be paid at a salary point nominated by the Assistant Secretary, People Division or their delegate.

#### **12.4 Executive Vehicle**

- 12.4.1 The Employee's salary specified in 12.1 incorporates an amount that would otherwise be payable with respect to a vehicle.

#### **12.5 Other Allowances**

- 12.5.1 Where eligible, Employees will be paid the following allowances:
- (a) workplace responsibility allowance;
  - (b) motor vehicle allowance;
  - (c) out-of-hours parliamentary, media, protocol, humanitarian and consular duties allowance;
  - (d) language proficiency allowance;
  - (e) community language allowance; and
  - (f) remote localities allowance.

Further information is contained in the HRM.

#### **12.6 Incremental Advancement**

- 12.6.1 Subject to clause 12.6.2 below, on 1 April each year, the Employee (except casual employees) who has been at their current pay point or acting at a higher classification level for a period of at least 100 working days during the performance cycle (including any periods of paid or unpaid parental leave, other paid leave and/or unpaid

leave that counts as service) will be entitled to advance to the next pay point within their classification if they have been rated at least 'On Track' at the end of their most recent annual performance management cycle.

- 12.6.2 SES employees who receive a performance rating of 'developing' or 'not on track' will not be entitled to salary advancement.
- 12.6.3 The Employee will only be eligible to advance to the next pay point within their classification on one occasion during a period of unpaid parental leave, irrespective of the length of that unpaid parental leave.
- 12.6.4 Employees who are acting at a higher classification and satisfy the above eligibility criteria at the higher classification will be eligible for salary progression at both their substantive classification and the higher classification.
- 12.6.5 SES employees at the top pay point of their classification will not be entitled to any other performance payment.

## **12.7 Salary Packaging**

- 12.7.1 Employees may elect to sacrifice salary for non-monetary benefits. Any Fringe Benefits Tax and administrative costs incurred as a result of their salary packaging arrangements will be met by the Employee. The Employee's salary for all purposes other than tax liability will be calculated as if the salary packaging arrangement had not been in place. Further information is contained in the HRM.

## **13 Leave**

### **13.1 Public Holidays and Additional Holidays**

- 13.1.1 Employees are entitled to a minimum of 14 days holiday each calendar year consisting of public holidays, additional holidays and any days taken in lieu of a public holiday or additional holidays.
- 13.1.2 Employees based in Australia are entitled to the following holidays each year as observed at their normal work location in accordance with the FW Act:
  - (a) 1 January (New Year's Day);
  - (b) 26 January (Australia Day);
  - (c) Good Friday and the following Monday;
  - (d) 25 April (Anzac Day);
  - (e) the King's birthday holiday (on the day on which is celebrated in a State or Territory or a region of a State or Territory);
  - (f) 25 December (Christmas Day);
  - (g) 26 December (Boxing Day); and



- (h) any other day, or part-day, declared or prescribed by or under a law of a State or Territory to be observed generally within that State or Territory, or a region of the State or Territory, as a public holiday, other than a day or part-day, or a kind of day or part-day, that is excluded by the *Fair Work Regulations 2009* from counting as a public holiday.
- 13.1.3 If a public holiday falls on a Saturday or Sunday, and if under a State or Territory law, a day or part day is substituted for one of the public holidays listed in clauses 13.1.2 (a) to 13.1.2 (h) then the substituted day or part day is the public holiday.
- 13.1.4 Employees at overseas posts are entitled to the same number of public holidays and additional holidays as the public holidays and additional holidays determined for Canberra. Due to operational requirements, the specific dates on which these holidays will be taken is to be determined by the HOM or HOP at each post.
- 13.1.5 The Secretary and the Employee may agree on the substitution of a day or part-day that would otherwise be a public holiday, having regard to operational requirements.
- 13.1.6 The Secretary and Employee may agree to substitute a cultural or religious day of significance to the employee for any day that is a prescribed holiday. If the employee cannot work on the prescribed holiday, the employee will be required to work make-up time at times to be agreed. This substitution does not impact or reduce an employee's entitlement to First Nations ceremonial leave, NAIDOC leave or cultural leave.
- 13.1.7 Where a public holiday falls during a period when an employee is absent on leave (other than annual leave, paid personal/carer's leave or defence service sick leave) there is no entitlement to receive payment as a public holiday. Payment for that day will be in accordance with the entitlement for that form of leave (e.g. if on long service leave on half pay, payment is at half pay.)
- 13.1.8 If under a law of a State or Territory every Sunday is declared or prescribed by or under that law to be a public holiday, there is no entitlement to receive payment as a public holiday if the employee would have worked, or does perform work, on that day. In these circumstances, payment will only be made at the public holiday rate if the employee performs work on that day, and the Sunday would otherwise be a public holiday under clauses 13.1.2 (a) to 13.1.2. (h).
- 13.1.9 Where a full time employee, including but not limited to employees on compressed hours, has a regular planned day off which would fall on a public holiday, the Secretary may allow the employee to

change their planned day off so that it does not fall on a public holiday.

### **Christmas closedown and additional holidays.**

- 13.1.10 Employees in Australia are entitled to be absent from employment on the following additional holidays as determined by the Secretary:
- (a) three days observed around 25 December (Christmas Day) and 1 January (New Year's Day); and
  - (b) such other additional holidays as are necessary to give effect to clause 13.1.1.
- 13.1.11 An employee who is absent from their employment on a day or part-day that is a public holiday or additional holiday is entitled to payment of their salary as if that day were not an additional holiday and the employee had ordinarily worked on that day.

## **13.2 Annual Leave**

- 13.2.1 Employees are entitled to four weeks and two days (22 days) paid annual leave per year of service, accruing daily, credited at least monthly. Annual leave accrual will be pro-rated for:
- (a) Part-time employees; and
- employees accessing leave without pay which does not count for service.
- 13.2.2 Employees undertaking shift work where:
- (a) shifts are continuously rostered 24 hours a day, 7 days a week;
  - (b) the Employee is regularly rostered to work these shifts; and
  - (c) the Employee regularly works on Sundays and public holidays;
- are entitled to an additional five days paid annual leave per year of service.
- 13.2.3 Annual leave may be taken at any time, subject to operational requirements and approval.
- 13.2.4 Subject to clause 13.2.5, annual leave may be taken at half-pay unless the Secretary determines otherwise because:
- (a) an employee has an excess leave balance; or
  - (b) of operational requirements
- 13.2.5 An employee cannot take annual leave at half-pay if they:
- (a) are posted overseas (including for language training); or
  - (b) are en route to or from an overseas posting.

- 13.2.6 Excessive leave will be managed in accordance with the HRM.
- 13.2.7 Where annual leave is cancelled or the employee is recalled to duty, the employee will be reimbursed travel costs not recoverable from insurance or other sources. Evidence of cost may be required.
- 13.2.8 Employees will receive payment in lieu of any untaken annual leave upon separation from the APS.

#### **Cashing out leave**

- 13.2.9 The Secretary may offer an employee the opportunity to cash out an amount of the employee's accrued annual leave credits.
- 13.2.10 Any cashing out arrangement must:
- (a) be recorded in a written agreement between the department and the employee;
  - (b) not result in the employee's annual leave credits being less than 22 days (pro-rata for part-time employees) after the cash out; and
  - (c) provide the employee with the full amount that would have been paid had the employee taken the entitlement as leave.

#### **Management of excess leave**

- 13.2.11 Subject to clause 13.2.14 employees with annual leave balances over 35 days (or pro-rata equivalent for part-time employees) on 1 July each year will be directed to take annual leave before 1 March of the next year in order to reduce their balance to a maximum of 28 days (pro rata for part-time employees).
- 13.2.12 If on 1 March of that next year an employee still has an annual leave balance of more than 28 days (or pro-rata equivalent for part-time employees) they will again be directed to take leave to reduce their balance to a maximum of 28 days (or pro-rata equivalent for part-time employees) by 1 July that year.
- 13.2.13 Where an employee has been directed to take annual leave the employee and manager will develop a plan to ensure compliance with the annual leave limits specified in clauses 194 and 195.
- 13.2.14 In exceptional circumstances, the Secretary may defer the direction to take annual leave due to operational reasons. Applications to defer such a direction must be supported by the Employee's supervisor.

### **13.3 Additional Hardship Leave**

- 13.3.1 Additional hardship leave (AHL) applies to some hardship posts overseas and remote localities within Australia. Details on access and accrual of AHL are in the HRM.
- 13.3.2 AHL credits are expected to be used in the year that they accrue. Employees with over twelve months' worth of AHL credits on 1 July each year will be directed to take AHL for a period equal to the excess credit.

#### **13.4 Personal/Carer's Leave**

**13.5** Ongoing Employees will be entitled to up to 20 days paid personal/carer's leave for each year of service with the department in accordance with clause 13.4.2 below. Employees transferred or promoted from another Commonwealth government agency will receive PCL upon their promotion or transfer in accordance with clause 13.15.

**13.6** Personal/carer's leave will be credited and accrue in the following way:

- (a) Ongoing employees (except those with an entitlement to have personal/carer's leave recognised in accordance with the portability of leave clauses) will be credited with 20 days' personal/carer's leave upon being engaged pursuant to section 22 of PS Act in the APS (pro-rated for part-time employees). After 12 months of service in the APS, or from the employee's commencement with the department where the employee has an entitlement to have personal/carer's leave recognised in accordance with the portability of leave clauses, employees will accrue 20 days' personal/carer's leave (pro-rated for part-time employees) for each year of service which will accrue daily and be credited at least monthly.
- (b) Non-ongoing employees (except those with an entitlement to have personal/carer's leave recognised in accordance with the portability of leave clauses) will be credited with 20 days' personal/carer's leave upon commencement with the department, pro-rated based on the employee's initial contract period if it is less than 12 months (pro-rated for part-time employees). After the initial contract period or 12 months (whichever is the shorter), or from the employee's commencement with the department where the employee has an entitlement to personal/carer's leave recognised in accordance with the portability of leave clauses, employees will accrue 20 days' personal/carer's leave (pro-rated for part-time employees) for each year of service which will accrue daily and be credited at least monthly.

**13.7** The Secretary may approve an employee taking paid personal/carer's leave at half pay.

**13.8** A casual employee may:

- (a) be absent without pay when they are not fit for work due to personal illness or injury; and
- (b) access 2 days' unpaid carer's leave per occasion, consistent with the NES.

13.8.2 There is no limit on the amount of PCL Employees can accrue.

13.8.3 The Employee may use personal/carer's leave for the following reasons:

- (a) due to personal illness or injury;
- (b) to attend appointments with a registered health practitioner;
- (c) to manage a chronic condition; and/or

- (d) to provide care or support for a family, or household member or a person they have caring responsibilities for, because:
    - (i) of a personal illness or injury affecting the other person; or
    - (ii) of an unexpected emergency affecting the other person.
- 13.8.4 For the purposes of clause 13.4.6 above, caring responsibilities may include an employee having responsibility to provide care to a person because they:
  - (a) have a medical condition, including when they are in hospital;
  - (b) have a mental illness;
  - (c) have a disability;
  - (d) are frail or aged; and/or
  - (e) are a child, not limited to a child of the employee.
- 13.8.5 If an employee uses personal/carer's leave of more than:
  - (a) 3 consecutive days; or
  - (b) 8 days without evidence in a calendar year,the Secretary may request the employee to provide evidence to support that leave, including:
  - (c) a certificate from a registered health practitioner;
  - (d) a statutory declaration; and/or
  - (e) another form of evidence approved by the Secretary.
- 13.8.6 A certificate from a registered health practitioner may be used as evidence of a chronic condition for up to 12 months for both personal and carer's leave.
- 13.8.7 Employees may, under certain circumstances, donate up to two days per annum of accrued paid personal/carer's leave credits to the Serious Illness Register. The Secretary may grant an employee additional paid personal/carer's leave entitlements from available credits accumulated in the Serious Illness Register.

## **13.9 Compassionate Leave**

- 13.9.1 Employees will be eligible for 3 days paid compassionate leave on each occasion when:
  - (a) a member of their family (including a member of their household) or someone they have a close personal relationship with contracts, develops or sustains a life-threatening illness or injury; or
  - (b) the employee or their partner has a miscarriage.

- 13.9.2 An employee may be asked to provide evidence to support their absences on compassionate leave.
- 13.9.3 Compassionate leave for an occasion may be taken as 3 consecutive days or in separate periods totalling 3 days. This can include part days.
- 13.9.4 For casual employees, compassionate leave is unpaid.

### **13.10 Bereavement Leave**

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

### **13.11 Parental Leave**

- 13.11.1 For the purposes of the parental leave clause, the following definitions apply:
  - (a) Primary caregiver - pregnant employee with an entitlement under the ML Act, or an employee other than a casual employee who has primary care responsibility for a child who is born to them or who is adopted or in long-term foster care as per the clauses on adoption and long-term foster care in this agreement.
  - (b) Secondary caregiver -an employee, other than a pregnant employee or casual employee, who has secondary care responsibility for a child who is born to them, or for a child who is adopted or in long-term foster care as per the clauses on adoption and long-term foster care in this agreement.
  - (c) ML Act - the *Maternity Leave (Commonwealth Employees) Act 1973* as amended from time to time and any successor legislation.
- 13.11.2 An employee who is a primary caregiver or secondary caregiver is entitled to parental leave up until 24 months from the date of the child's birth or placement (parental leave period). For the avoidance of doubt, this is inclusive of all legislated leave entitlements. The

parental leave period does not extend non-ongoing employment where the employment period remaining is less than 24 months. An employee is only eligible for parental leave with pay as either a primary caregiver or a secondary caregiver for the particular parental leave period, and cannot switch roles for the purpose of accessing additional paid leave.

- 13.11.3 For the pregnant employee, the parental leave period starts on commencement of maternity leave as per ML Act requirements, and ceases 24 months from the date of birth. Medical certification requirements for the pregnant employee will be as required by the ML Act.
- 13.11.4 Conditions in this agreement will continue to apply in circumstances where successor legislation to the ML Act does not provide parental leave conditions included in this agreement.

#### **Payment during parental leave**

- 13.11.5 An employee is entitled to parental leave with pay as per clauses 13.7.7 and 13.7.8 below within the parental leave period. Any further parental leave during the parental leave period is without pay. Unused paid parental leave remaining at the end of the employee's parental leave period will lapse. An employee may choose to use their accrued paid leave entitlements in accordance with usage and eligibility requirements in this agreement during the parental leave period that would otherwise be without pay.
- 13.11.6 Employees newly engaged or who have moved to the department from another APS agency are eligible for the paid parental leave in clauses 13.7.7 and 13.7.8 where such paid leave had not already been provided by another APS or Commonwealth employer in the 24 months since the child's date of birth or placement. If the paid leave used by the employee with the previous Commonwealth or APS employer is less than the limits specified in clauses 13.7.7 and 13.7.8, the balance is available to the employee.
- 13.11.7 An employee who is a primary caregiver is entitled to parental leave with pay during the parental leave period to a maximum of 18 weeks as provided in **Table 1** below.

*Table 1: Primary caregivers - circumstances for paid parental leave*

<b>Paid leave entitlement under the ML Act</b>	<b>Additional parental leave with pay under this determination for the primary caregiver</b>
12 weeks' paid maternity leave, including any reduced paid maternity leave period due to ML Act qualifying period rules	Paid leave to bring the total period of paid parental leave to 18 weeks
No ML Act eligibility or coverage	18 weeks



- 13.11.8 An employee who is a secondary caregiver is entitled to parental leave with pay during the parental leave period as provided in **Table 2** below.

*Table 2: Secondary caregivers - circumstances for paid parental leave*

<b>Period which coincides with the parental leave period for the secondary caregiver</b>	<b>Parental leave with pay under this determination</b>
1 March 2024 to 28 February 2025	8 weeks, or top up to 8 weeks where a lesser period of parental leave has already been provided
1 March 2025 to 28 February 2026	11 weeks, or top up to 11 weeks where a lesser period of parental leave has already been provided
1 March 2026 to 27 February 2027	14 weeks, or top up to 14 weeks where a lesser period of parental leave has already been provided
On and from 28 February 2027	18 weeks, or top up to 18 weeks where a lesser period of parental leave has already been provided

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

## **13.12 Adoption and Foster Parent Leave**

- 13.12.1 An employee who is a primary caregiver or secondary caregiver is entitled to parental leave in accordance with this determination for adoption or long-term foster care, provided that the child:
- (a) is under 16 as at the day (or expected day) of placement;
  - (b) has not lived continuously with the employee for a period of six months or more as at the day (or expected day) of placement; and
  - (c) is not (otherwise than because of the adoption) a child of the employee or the employee's spouse or de facto partner.



- 13.12.2 Documentary evidence of approval for adoption or enduring parental responsibilities under formal fostering arrangements must be submitted when applying for parental leave for adoption or long-term foster carer purposes.

### **Stillbirth**

- 13.12.3 Parents of a stillborn child remain eligible for parental leave, except for paid leave for the secondary caregiver which is two weeks.
- 13.12.4 A stillborn child is a child:
- (a) who weighs at least 400 grams at delivery or whose period of gestation was 20 weeks or more;
  - (b) who has not breathed since delivery; and
  - (c) whose heart has not beaten since delivery.

### **Pregnancy loss leave**

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

### **Premature birth leave**

- 13.12.7 In circumstances of a live birth before 37 weeks' gestation a pregnant employee, or an employee whose partner has given birth prematurely, is entitled to paid premature birth leave from the date of the child's birth up to just before 37 weeks' gestation. Parental leave with pay is then available from what would have been 37 weeks' gestation in accordance with parental leave in this agreement, noting the parental leave period commences on the child's date of birth.

### **Transitional provisions**

- 13.12.8 Employees eligible for paid leave under the ML Act are required under legislation to use their paid maternity leave first. In this circumstance, the employee may postpone their paid premature birth leave otherwise payable under clause 13.8.7 until after the legislated paid maternity leave is used.

### **13.13 Long Service Leave**

- 13.13.1 Employees are eligible for long service leave in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976*.
- 13.13.2 The minimum period during which long service leave may be taken is seven calendar days at full pay (or fourteen days at half pay). Long service leave cannot be broken by other periods of leave, except as otherwise provided by legislation.

### **13.14 Miscellaneous Leave (Paid and Unpaid)**

**13.15** The Secretary may grant miscellaneous leave to an Employee or group of Employees to cover a variety of absences from the workplace. Miscellaneous leave may be granted:

- (a) for the period requested, or another period;
- (b) with or without pay; and
- (c) to count as service or not to count as service.

**13.16** Further information about miscellaneous leave arrangements is contained in the HRM.

**13.17** For periods of three days or less, supervisors can grant miscellaneous leave. For periods of miscellaneous leave greater than three days, approval must be sought from the Secretary.

### **13.18 Leave for Cultural, Ceremonial and NAIDOC leave**

#### **NAIDOC leave**

- 13.18.1 First Nations employees may access up to one day of paid leave per calendar year, to participate in NAIDOC week activities.
- 13.18.2 NAIDOC leave can be taken in part days.

#### **First Nations ceremonial leave**

- 13.18.3 First Nations employees may access up to 6 days of paid leave over 2 calendar years to participate in significant activities associated with their culture or to fulfil ceremonial obligations.
- 13.18.4 The Secretary may approve additional leave for cultural or ceremonial purposes as miscellaneous leave, with or without pay.
- 13.18.5 First Nations ceremonial leave can be taken as part days.
- 13.18.6 First Nations ceremonial leave is in addition to compassionate and bereavement leave.

#### **Cultural leave**

- 13.18.7 The Secretary may grant up to 3 days of paid leave per calendar year for the purpose of attending significant religious or cultural obligations associated with the employee's particular faith or culture.
- 13.18.8 The Secretary may approve additional leave for cultural purposes as miscellaneous leave, with or without pay.

- 13.18.9 Cultural leave can be taken as part days.
- 13.18.10 For the avoidance of doubt, this leave does not cover cultural purposes or obligations which are eligible for paid leave under clauses 13.11.3 to 13.11.6.

### **13.19 Effects of Leave Without Pay**

- 13.19.1 Where an Employee takes thirty calendar days or more leave without pay, the whole period of leave without pay will not count as service for any purpose other than where required by legislation. For clarity, this includes leave accruals and eligibility for salary advancement or performance bonuses.
- 13.19.2 Where an Employee takes thirty calendar days leave without pay within an accrual year for PCL purposes, the date of accrual for PCL will be deferred by the number of days leave without pay is taken in that accrual year.

### **13.20 Leave for ADF Reserve and Continuous Full Time Service or Australian Defence Force Cadet Obligations**

- 13.20.1 The Secretary may grant leave (with or without pay) to enable an Employee to fulfil Australian Defence Force (ADF) Reserve and Continuous Full Time Service (CFTS) or Australian Defence Force Cadet obligations. Further information is contained in the HRM.

### **13.21 Purchased Leave**

- 13.21.1 Employees may request to purchase between one and four weeks' additional leave per year. In considering requests for purchased leave, the Secretary will consider the operational needs of the department, client service requirements and the Employee's accrued leave balances.
- 13.21.2 Payments for purchased leave will be deducted from the Employee's salary and be averaged over a period of time of no more than twelve months. Purchased leave will count as service for all purposes.
- 13.21.3 Employees who are posted overseas or who have accessed annual leave at half pay in the same calendar year are not eligible to access any purchased leave.

### **13.22 Portability of Leave**

- 13.22.1 Where an Employee moves (including on promotion or for an agreed period) from another agency where they were an ongoing APS employee, the Employee's unused accrued annual leave and PCL (however described) will be transferred/recognised, provided the break in service is no greater than two months.

- 13.22.2 Where the Employee is engaged as either an ongoing or non-ongoing APS employee immediately following a period of ongoing employment in the Parliamentary Service or ACT Government Service, the Employee's unused accrued annual leave and PCL (however described) will be recognised, provided the break in service is no greater than two months.
- 13.22.3 Where PCL credits (however described) are transferred/recognised under this clause and the previous employer's accrual arrangements differed to those provided in this Determination, PCL credits will be adjusted on commencement to align with this Determination.
- 13.22.4 Where a former non-ongoing Employee in the department is engaged as an ongoing Employee immediately after the cessation of the non-ongoing employment period, the Employee may request that unused accrued annual leave and PCL credits be recognised. Any recognised annual leave will exclude any leave credits paid out on separation.

### **13.23 Family and Domestic Violence**

- 13.23.1 The department will provide support for employees affected by family and domestic violence, depending on the employee's circumstances.
- 13.23.2 The department recognises that a holistic approach should be taken to support the employee, appropriate for the employee's individual circumstances.
- 13.23.3 Family and domestic violence support provisions, including paid leave, are available to all employees.
- 13.23.4 An employee experiencing family and domestic violence support is able to access paid miscellaneous leave. Reasons an employee experiencing family and domestic violence may access this leave include, but are not limited to:
- (a) illness or injury affecting the employee resulting from family and domestic violence;
  - (b) providing care or support to a family member (including a household member) who is also experiencing family and domestic violence, and is ill or injured as a result of family and domestic violence;
  - (c) providing care or support to a family member (including a household member) who is also experiencing family and domestic violence, and is affected by an unexpected emergency as a result of family and domestic violence;
  - (d) making arrangements for the employee's safety, or the safety of a close relative;
  - (e) accessing alternative accommodation;
  - (f) accessing police services;

- (g) attending court hearings;
  - (h) attending counselling; and
  - (i) attending appointments with medical, financial or legal professionals.
- 13.23.5 This entitlement exists in addition to an employee's existing leave entitlements and may be taken as consecutive days, single days or part days and will count as service for all purposes.
- 13.23.6 Given the emergency context in which leave may need to be accessed, employees can proceed to take the leave and seek approval at a later date, as soon as practicable.
- 13.23.7 These provisions do not reduce an employee's entitlement to family and domestic violence leave under the NES.
- 13.23.8 Paid miscellaneous leave available under this clause is paid for ongoing and non-ongoing employees at their full rate as if they were at work.
- 13.23.9 Paid leave for casual employees under this clause is paid at their full pay rate for the hours they were rostered to work in the period they took leave.
- 13.23.10 Evidence may be requested to support the department in approving leave. In most cases, this will not be required. Where it is required, this will be discussed with the employee and a statutory declaration is the only form of evidence the department will require, unless the employee chooses to provide another form of evidence.
- 13.23.11 An employee may also choose to provide other forms of evidence, including a medical certificate, or document issued by the Police Service, a Court, a Doctor, district Nurse, a Family Violence Support Service or Lawyer.
- 13.23.12 The department will take all reasonable measures to treat information relating to family and domestic violence confidentially. The department will adopt a 'needs to know' approach regarding communication of an employee's experience of family and domestic violence, subject to steps the department may need to take to ensure the safety of the employee, other employees or persons, or mandatory reporting requirements.
- 13.23.13 Where the department needs to disclose confidential information for purposes identified in clause 319, where it is possible the department will seek the employee's consent and take practical steps to minimise any associated safety risks for the employee and/or privacy breaches.
- 13.23.14 The department will not store or include information on the employee's payslip in relation to the employee's experience of family and domestic violence; any leave accessed for the purposes of family and domestic violence; or support(s) provided by the employer, unless otherwise required by legislation.

- 13.23.15 Other available support may include, but is not limited to, flexible working arrangements, additional access to the Employee Assistance Program, changes to their span of hours or pattern of hours and/or shift patterns and/or location of work where reasonably practicable.
- 13.23.16 The department will acknowledge and take into account an employee's experience of family and domestic violence if an employee's attendance or performance at work is affected.
- 13.23.17 Further information about leave and other support available to employees affected by family and domestic violence may be found in the HRM.

## **14 Travel**

### **14.1 Domestic and Overseas Travel**

- 14.1.1 The Employee is entitled to fly business class both within Australia and overseas while on official business, with the exception of travel between Canberra and Sydney, and between Canberra and Melbourne, which will generally be limited to discount economy class in accordance with the department's travel policy. The department's policy intention is that all Employees will use business class for international travel wherever it is available.
- 14.1.2 The Employee may use an approved corporate credit card to charge, in accordance with the guidelines in the HRM, reasonable expenses in relation to accommodation and meal costs incurred while travelling on official business both within Australia and overseas.
- 14.1.3 Frequent flyer points accrued at the department's expense should not be used for personal travel or private purposes.

### **14.2 Spouse Travel**

- 14.2.1 An annual amount which may be applied, at the Employee's discretion, towards spouse-accompanied travel is included in the Employee's salary specified in clause 12.1. However, additional funding for spouse travel may be approved if it is deemed appropriate for a spouse to accompany the Employee for official representational purposes.

### **14.3 Overseas Conditions of Service**

- 14.3.1 The Secretary may determine conditions of service for Employees working overseas on long-term posting.
- 14.3.2 The conditions regarding the official recognition of de facto relationships for the purposes of conditions of service apply regardless of sexual orientation, gender identity, or intersex status.

## **15 Child Care**

- 15.1** The department may reimburse additional childcare costs where Employees are required by management to increase their hours of work to cover emergency situations or to meet short term work commitments, including short term missions. Further details are provided in the HRM.
- 15.2** Access to childcare facilities on the department's premises will be provided to Employees where property leases and operational requirements allow. Where provided, departmental employees will have priority over other organisations or individuals in these centres.
- 15.3** Families of Employees returning unexpectedly from post for operational reasons and at the department's initiative will receive higher priority access as determined by the Secretary. Further information is contained in the relevant centre's policies.

## **16 Relocation within Australia**

- 16.1** If the Employee is recruited or transferred at the department's initiative within Australia, he or she will receive reasonable relocation expenses as determined by the Secretary.

## **17 Additional Terms and Conditions of Employment**

### **17.1 General**

- 17.1.1** Any benefits provided to the Employee as detailed under this clause are binding on the department only for as long as the Employee remains in the employment of the department.
- 17.1.2** The Employee may use his or her officially-provided mobile phone and other home office facilities for incidental private purposes subject to the department's guidelines.

### **17.2 Mobile Telephone**

- 17.2.1** It is a condition of the Employee's employment that he or she must be reasonably able to be contacted during periods when absent from his or her usual workplace. In consideration of this requirement, the Employee will be provided by the department with a mobile telephone for both work and reasonable personal use. All costs associated with the supply of the mobile telephone will be met by the department on presentation by the Employee of the supporting documentation/receipts requested by the department. The Employee is required to meet the cost of personal calls in excess of the reasonable personal use limit, as defined by departmental guidelines issued from time to time.

### **17.3 Airport Lounge Membership**

- 17.3.1 The Employee may take out membership of one airline club lounge, the annual cost of which will be met by the department. The annual cost of a second airport lounge membership, which may be taken out at the Employee's discretion, has been included in the Employee's salary specified in clause 12.1.

### **17.4 Fuel Card**

- 17.4.1 Where Employees on overseas assignments are provided with a fuel card it is solely for use with respect to a vehicle provided to the Employee under the Executive Vehicle Scheme pursuant to clause 12.4. The fuel card may be used for all fuel purchases and commercial car wash services in respect of the vehicle. Consistent with the *Public Governance, Performance and Accountability Act 2013*, an amount representing the personal contribution for private benefit accruing from the use of the fuel card during leave and non-leave periods has been included in the employee's salary specified in clause 12.1. The Employee will provide the department with supporting documentation/receipts requested by the department.

### **17.5 Study and Professional Development Expenses**

- 17.5.1 The Employee is not eligible for any study leave provisions available to other employees of the department. An annual amount which, at the Employee's discretion, may be applied towards professional development activities has been included in the Employee's salary as specified in clause 12.1.
- 17.5.2 An annual amount which, at the Employee's discretion, may be applied towards membership of professional associations has been included in the Employee's salary as specified in clause 12.1.

## **18 Termination of Employment**

- 18.1.1 Subject to, and consistent with, the terms of the *Public Service Act 1999*, the *Fair Work Act 2009* and other relevant laws, the Secretary may terminate the employment of the Employee.
- 18.1.2 The Employee may terminate his or her employment with the department by giving at least two weeks' notice.
- 18.1.3 Nothing in this Determination prevents the Secretary from terminating the employment of the Employee for serious misconduct, without further notice or payment in lieu in accordance with section 123(1)(b) of the *Fair Work Act 2009*, subject to compliance with the procedures established by the Secretary for determining whether the Employee has breached the APS Code of Conduct under section 15 of the *Public Service Act 1999*.



- 18.1.4 The sole and exhaustive rights and remedies of the Employee in relation to termination of employment are those that the Employee enjoys under:
- (a) the *Fair Work Act 2009*;
  - (b) other Commonwealth laws (including the Constitution); and
  - (c) at common law.
- 18.1.5 A decision to terminate employment cannot be the subject of the dispute resolution procedures outlined in clause 19.
- 18.1.6 A current security clearance is an essential qualification for performing duties in the department and is also a condition of employment in the department. If the Employee loses his or her security clearance, or the level of the Employee's security clearance (except for operational reasons) is reduced, then the Secretary may terminate the Employee's employment in accordance with section 29(3)(b) and/or (f) of the *Public Service Act 1999*.

## **19 Dispute Resolution Procedures**

### **19.1 Resolution of disputes**

- 19.1.1 The parties to a dispute must genuinely attempt to resolve the dispute at the workplace level.
- 19.1.2 If a matter in dispute cannot be resolved at the workplace level, a party to a dispute may submit the dispute to mediation in accordance with, and subject to, the Institute of Arbitrators & Mediators Australia's Mediation and Conciliation Rules.

### **19.2 Conduct during disputes**

- 19.2.1 If the Employee is a party to a dispute, the Employee must, while the dispute is being resolved:
- (a) continue to work in accordance with his or her terms and conditions of employment, unless the Employee has a reasonable concern about an imminent risk to his or her health or safety; and
  - (b) comply with any reasonable direction given by the Secretary to perform other available work, either at the same workplace or at another workplace.
- 19.2.2 In directing the Employee to perform other available work, the Secretary must have regard to:
- (a) the provisions of the laws of the Commonwealth or of a State or Territory dealing with work health and safety that apply to the Employee or that other work; and
  - (b) whether that work is appropriate for the Employee to perform.

## **20 Diversity**

- 20.1 As a department representing Australia to the world, DFAT is committed to supporting and promoting a diverse and inclusive workplace through a wide set of initiatives designed to value, draw upon and utilise the different backgrounds, experiences and perspectives of its workforce.

## **21 Recovery of Outstanding Debts**

- 21.1 In accordance with section 324(1)(b) of the *Fair Work Act 2009*, an Employee who permanently separates from the department will have any final payments reduced by the amount of any monies owed to the department by the employee.
- 21.2 This includes, but is not limited to, where the Employee resigns, retires, transfers to another department or whose employment is terminated.