



**Australian Embassy
Washington DC**

**Terms and Conditions
of Employment
for
Locally-Engaged Staff**

July 2010



I, Kim Beazley, Head of Mission at the Embassy of Australia, Washington DC, exercising the delegation provided to me in Administrative Circular P0316, approve these terms and conditions of employment for locally-engaged staff in Washington effective from 1 July 2010.

These terms and conditions result from a review of the previous terms and conditions, and are presented on the recommendation of the Joint Consultative Group which is comprised of representatives of all Agencies and Staff as follows:

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EMBASSY VALUES

The Embassy strives to:

- i. perform its functions in an effective and efficient manner;
- ii. value and reward performance on the basis of fairly assessed outcomes;
- iii. make employment decisions on the basis of merit and equity;
- iv. provide a workplace that is free from discrimination and recognises and utilises the diversity of the community it serves;
- v. maintain and deliver high ethical standards;
- vi. be fully accountable for its actions;
- vii. deliver services fairly, effectively, impartially and courteously;
- viii. foster high quality leadership;
- ix. establish workplace relations that value communication, consultation, cooperation and input from staff on all matters that affect their workplace;
- x. provide a fair, flexible, safe and rewarding workplace; and
- xi. provide opportunity for a fair review of decisions taken in respect of staff.

PART 1 – PURPOSE AND OBJECTIVES

PURPOSE

- 1.1 To provide terms and conditions of employment for staff employed by the Embassy of Australia, Washington DC, under the provisions of Section 74 of the Public Service Act (1999) (the Act) of the Commonwealth of Australia.

APPLICABILITY

- 1.2 In accordance with Administrative Circular P1030A Prime Minister's Directive – Guidelines for Management of the Australian Presence Overseas (21 April 2010), all Locally Engaged Staff (LES) engaged under the Act are engaged by the department responsible for managing the post. In the case of the Embassy in Washington, the legal employer, regardless of the funding agency and the agency for which the staff member performs work, is the Department of Foreign Affairs and Trade (DFAT). Accordingly, these terms and conditions apply to all LES engaged by DFAT with the exception of AusAID and Austrade employees. AusAID manages the salaries and conditions of employment of its own overseas-based staff and Austrade's overseas engaged employees are not engaged under the Public Service Act.

DELEGATE FOR APPROVING LES TERMS AND CONDITIONS OF EMPLOYMENT

- 1.3 In accordance with Section 78 of the Public Service Act (1999) and DFAT Administrative Circular P0316 (2 March 2001), the delegate for approving these terms and conditions is the Head of Mission, i.e. the Ambassador.

DELEGATE FOR THE ENGAGEMENT OF LES

- 1.4 In accordance with Section 78 of the Public Service Act (1999), the delegation for engaging locally-engaged staff is held by the Ambassador. In Washington the delegation has been passed to the Minister/Counsellor (Management) and Consul-General. This delegation may also be further passed to the Counsellor (Management) and Consul if this position is held by an officer of at least the EL2 level.

STATUS OF LES WHO ARE ON LEAVE WITHOUT PAY FROM THE AUSTRALIAN PUBLIC SERVICE

- 1.5 In accordance with Section 7 of the Public Service Act (1999), LES are not Australian Public Service (APS) employees. LES who are on Leave Without Pay (LWOP) from the APS will thus be considered LES for the duration of their employment at the Embassy. Such staff members are covered by these terms and conditions in their entirety, and not the terms and conditions applicable to APS employees of the Agency from which they are on LWOP. Staff on leave from the APS must obtain permission from their Agency to work as an LES prior to commencing in a position at the Embassy.

DURATION

- 1.6 These terms and conditions apply from 1 July 2010.
- A review of these terms and conditions for compliance with relevant laws, DFAT policies and guidelines, and any Embassy recommendations shall be undertaken every three years, with capacity to make revisions earlier as needed.

VARIATION

- 1.7 These terms and conditions will not be varied unless:
- i. required by local labour law;
 - ii. directed by the Department of Foreign Affairs and Trade, Canberra; or
 - iii. agreed, after appropriate consultation with staff and Agency management representatives, by the Delegate for approving the terms and conditions of employment.

TERMS AND CONDITIONS OF EMPLOYMENT FOR LES (TACOE), JULY2010

- 1.8 These terms and conditions replace and succeed in their entirety the provisions of the TACOE, October 2001, and revisions up to July 2004, including updates of July 2005.

OBJECTIVES

- 1.9 These terms and conditions of employment for LES are designed to provide terms and conditions that foster efficiency and effectiveness, and support, develop and encourage staff to perform at their best through:
- i. smarter work practices;
 - ii. effective work/life balance;
 - iii. an achievement-oriented culture and performance-based rewards;
 - iv. quality management of resources;
 - v. operational efficiency and streamlined administrative processes;
 - vi. observance of requirements concerning workplace diversity, conduct and occupational health and safety; and
 - vii. staff development through individually-focused training.

PRINCIPLES

- 1.10 The key principles of these terms and conditions are:
- i. fairness and equity;
 - ii. affordability – all terms and conditions must be financially sustainable;
 - iii. consultation – with staff and Agencies; and

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- iv. natural justice – that due process and procedural fairness will be afforded to all decisions made in relation to these terms and conditions.

APPLICABLE LAWS

- 1.11 To the extent reasonably practicable, the Embassy of Australia will comply with all applicable US immigration and labour laws in regard to the engagement of LES, and all applicable international diplomatic and consular conventions and agreements in regard to the work undertaken by LES at the Embassy of Australia. Additionally, the Embassy will comply with all Court Orders properly served on the Embassy pending approval from DFAT Canberra, including on whether diplomatic immunity will be asserted.
- 1.12 To the extent reasonably practicable, the Embassy seeks to comply with Australian and United States employment laws, including but not limited to the following:
- i. Age Discrimination in Employment Act (ADEA)[USA];
 - ii. Americans with Disabilities Act (ADA)[USA];
 - iii. Australian Income Tax Assessment Act 1936 [Australia];
 - iv. Choice of Superannuation Fund Arrangements [Australia];
 - v. Civil Rights Act, Title VII [USA];
 - vi. District of Columbia Family and Medical Leave Act [DC];
 - vii. District of Columbia Human Rights Act [DC];
 - viii. District of Columbia Parental Leave Law [DC];
 - ix. District of Columbia Pregnancy Antidiscrimination Act [DC];
 - x. Employee Retirement Income Security Act (ERISA) [USA];
 - xi. Equal Pay Act (EPA) [USA];
 - xii. Fair Labor Standards Act (FLSA) [USA];
 - xiii. Family and Medical Leave Act (FMLA) [USA] including updates;
 - xiv. Federal Rehabilitation Act [USA];
 - xv. Health Insurance Portability and Accountability Act (HIPAA)[USA];
 - xvi. Occupational Safety and Health Act (OSH Act)[USA];
 - xvii. Public Service Act (1999)[Australia];
 - xviii. Superannuation Guarantee (Administration) Act 1992 [Australia]
 - xix. Superannuation (Productivity Benefit) Act 1988 [Australia];
 - xx. Uniformed Services Employment & Reemployment Rights Act (USERRA)[USA]; and
 - xxi. White Cane Act [USA].

JOINT CONSULTATIVE GROUP (JCG)

- 1.13 A JCG consisting, wherever possible, of an equal number of Australia-based and LES representatives (including one management and one LES representative for each of the following: DFAT, Defence, DIAC and Small Agencies) oversees and facilitates staff/management consultation on any issues which may arise from these terms and conditions.
- 1.14 LES representatives will be elected by the Locally-Engaged Staff Association (LESA).
- 1.15 The JCG will meet as needed, but no less than once every six months.

DEFINITIONS

- 1.16 The following definitions apply:
- i. *A-based staff* – Australian Public Service employees of Australian Government Departments or Agencies who have been posted by their Department or Agency to the Australian Embassy in Washington DC;
 - ii. *Agency/Agencies* – Department(s) or Agency(ies) of the Commonwealth of Australia which have representation in the Embassy;
 - iii. *Agency Head* – the senior representative of a Department or Agency of the Commonwealth of Australia represented at the Embassy;
 - iv. *All staff* - A-based employees, LES and temporary employees;
 - v. *Ambassador* – The Ambassador of Australia to the United States of America;
 - vi. *Annual salary* – the annualised base salary for LES published in job vacancies, duty statements, payslips etc (see also Base salary);
 - vii. *Attached Agencies* – any Australian Government Agency or Department employing LES in the Embassy;
 - viii. *Base salary* – the annualised salary on which fortnightly pay is based prior to any applicable allowances, loading, or overtime payments (see also Annual salary);
 - ix. *Cut-off date* – 30 June each year. All excess leave is to be used by this date;
 - x. *Delegate (for the Engagement of LES)* – Minister/Counsellor (Management) and Consul-General to whom the authority to engage LES on behalf of DFAT has been delegated (beyond the Ambassador);
 - xi. *Department(s)* – Agency(ies);
 - xii. *Embassy* – The Embassy of Australia, Washington DC;

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- xiii. *Employing authority* – The Department of Foreign Affairs and Trade (as designated by the Prime Minister’s Directive of 2007);
 - xiv. *Exempt* – Staff considered exempt from the Fair Labor Standards Act, i.e. BB2s and above.
 - xv. *Grandfathering* – the preservation of an existing condition of employment;
 - xvi. *Hourly rate* – hourly pay rate determined by dividing the fortnightly pay by the number of fortnightly work schedule hours;
 - xvii. *Hours worked* – in accordance with the Fair Labor Standards Act, any time staff were required to be on duty at the Embassy or at any other prescribed place of work, as well as any other time staff were permitted to work will be considered as hours worked. Public holidays, leave and other paid days off are not “hours worked”, even though they are “hours paid” and may count towards service;
 - xviii. *LES* – Locally Engaged Staff - staff engaged by the Embassy in an ongoing capacity;
 - xix. *LESA* – the Locally-Engaged Staff Association of the Embassy of Australia, Washington DC;
 - xx. *Local labour law* – all applicable United States or District of Columbia laws concerning the employment of workers;
 - xxi. *NAPS* – North American Pension Scheme;
 - xxii. *Next level manager* – Supervisor’s supervisor;
 - xxiii. *Non-Exempt* – Staff considered non-exempt from the Fair Labor Standards Act, i.e. some BB1s;
 - xxiv. *Post* – Embassy of Australia, Washington DC;
 - xxv. *Post Management* – DFAT Senior Management responsible for the management of Embassy operations;
 - xxvi. *PPS* - Principal Pension Scheme;
 - xxvii. *PSA* – Commonwealth of Australia Public Service Act (1999);
 - xxviii. *Settlement period* – two fortnightly pay periods reported in one attendance period, i.e. four weeks;
 - xxix. *Staff* – LES;
 - xxx. *Supervisors* – LES or A-based staff with a responsibility for managing or supervising LES. Supervisors are to be usually at least one broadband higher than the staff they are supervising; and
 - xxxi. *Temporary employees* - employees who are employed in a short-term, non-ongoing capacity of usually no more than 12 months to fill an LES vacancy or to provide short term staffing assistance on a temporary basis. Temporary employees are locally-engaged staff employed under alternate temporary staff terms and conditions of employment provided with the offer of employment.

STAFF NOTICES

- 1.17 The Embassy will post in conspicuous places applicable notices concerning US Federal and District of Columbia law, as well as notices of other applicable human resources policies and practices.

ADVICE ON THESE TERMS AND CONDITIONS

- 1.18 Human Resources will provide advice and guidance in these terms and conditions as needed.

PART 2 – CLASSIFICATION AND REMUNERATION

BROADBANDS

- 2.1 All LES positions are classified against the Embassy broadband (BB) scale, which consists of five bands, each representing a different “work value”.
- 2.2 A broadband provides flexibility for work to evolve and change over time, in response to work demands and other pressures, and as staff develop and broaden their skills and experience to achieve more valuable work outcomes.
- 2.3 The Embassy broadband scale is at Annex A.

WORK LEVEL STANDARDS

- 2.4 The Embassy Work Level Standards (WLS) define the work value of each broadband; provide guidance on the level of skills, knowledge and experience appropriate to each broadband; and form the basis of all classification and reclassification assessments. Further information on classification assessments is available in the Classification Guidelines (available from Human Resources).

EXEMPT/NON-EXEMPT STATUS

- 2.5 Some BB1s are considered *non-exempt* from the overtime protection of the Fair Labor Standards Act on account of the nature of the work performed and the amount of discretion they may exercise in the fulfilment of assigned tasking.
- 2.6 Non-exempt BB1s will be identified by position description and in consultation with Agency Heads.
- 2.7 All BB2s and above are considered *exempt* from the overtime protection of the Fair Labor Standards Act yet will be eligible for overtime payment for approved additional duty in accordance with these Terms and Conditions of Employment.

SALARY SCALE

- 2.8 The annual salary range for each broadband is provided at Annex A. The Salary Scale will be updated and disseminated whenever a General Salary Scale Adjustment is made (see 2.9).

GENERAL SALARY SCALE ADJUSTMENT (GSSA)

- 2.9 With the exception of NAPS members (see 2.10), the salary scale and base salaries of all LES and temporary staff will be adjusted annually, effective from 1 July, using the IMF-based cost of living adjustment supplied by DFAT Canberra.
- 2.10 The base salaries of NAPS members will be adjusted annually by the locality-adjusted US Cost of Living Adjustment (COLA), effective from the first pay period in January.
- 2.11 Post Management will monitor local labour market conditions on an ongoing basis to ensure the continued competitiveness of LES salaries and other working terms, benefits and conditions.

PAYMENT OF SALARY

- 2.12 Salary will be paid twice-monthly by electronic funds transfer into personal US bank accounts or equivalent US financial institutions of the staff member's choice. Up to three additional allotment accounts may be nominated in addition to a staff member's main bank account.

PAY FORMULA

- 2.13 Twice-monthly pay will be calculated and paid in accordance with the following formula:

$$\text{Twice-monthly pay} = \text{annual (base) salary} \div 24$$

- 2.14 The formula provides the most accurate division of an annual salary. Pay days will be the first and fifteenth day of each month.

ANNUAL SALARY

- 2.15 The annual salary is the gross, annualised salary published in vacancy notices, indicated on LES payslips or offered in employment contracts without any personalised deductions or allowances.

BASE SALARY ON CONTRACT COMMENCEMENT

- 2.16 Base salary on contract commencement will usually be at the minimum of the relevant broadband salary range. The Agency Head may recommend to the Delegate for the engagement of LES a higher base salary having regard to: the skills, knowledge and experience of the individual, agency budget, local labour market conditions, Embassy-wide trends, and any other relevant factors.
- 2.17 Base salary on contract commencement is to be approved by the Delegate and confirmed by a formal contract offer of employment.

BASE SALARY ON CONTRACT RENEWAL

- 2.18 Base salary on contract renewal (i.e. for the staff member's current position) will be no lower than the staff member's current base salary.
- 2.19 Base salary on contract renewal must be approved by the Delegate and confirmed by a formal contract offer of employment.

ADJUSTMENTS TO BASE SALARY

- 2.20 Base salary adjustments are not rewards for past performance. They are recognition of an increase in the work value required of the position and the incumbent's capability to deliver the higher work value needed.
- 2.21 The broadband system accommodates growth in the role and duties of the position during the course of a staff member's employment in the position and staff paid at the higher end of a broadband range will be expected to deliver outcomes that are of higher work value than those staff at the lower end of the broadband.

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- 2.22 Agency Heads may generally only recommend an adjustment to base salary on contract renewal in recognition of the ongoing need for higher work value in the position.
- 2.23 A request for base salary adjustment is to be submitted, in writing, to the Agency Head, by, or on the behalf of, an individual staff member. Any request for salary adjustment must have strong supervisor support. It is the responsibility of the requestor to put forward a case justifying the adjustment.
- 2.24 An adjustment to base salary will be implemented through the provision of a new fixed-term employment contract to be approved and signed by the Delegate for the engagement of LES.
- 2.25 Further information on base salary adjustments is provided in the LES Employment Contract Guidelines (copies available from Human Resources).

PERFORMANCE RATINGS AND PAY

- 2.26 Staff are eligible for performance pay if they have performed the duties of the position for at least six months of the current performance management cycle and are employed in the Embassy on the last day of the performance cycle (31 July). Temporary employees are not eligible for performance pay.
- 2.27 Staff who have been appointed into a new position within the performance cycle, but have not yet performed the duties of the new position for at least six months, are eligible for performance pay in the previous position if they performed the duties of that position for six months or more of the current performance management cycle and remain employed in the Embassy on 31 July.
- 2.28 Staff who have performed the duties of the position for less than twelve months, but more than six months of the performance management cycle, will be paid performance pay on a pro-rata basis determined by the number of whole months they have worked in the position as a proportion of twelve months. This includes existing staff appointed to new positions within the performance cycle.
- 2.29 Performance pay may be paid either as:
- i. a full cash bonus (which will not adjust base salary) pro-rated for the length of service in the performance cycle beyond the minimum requirement of 6 months; or
 - ii. for staff who have not reached the maximum salary of their broadband, a base salary increase equivalent to half the performance bonus pro-rated for the length of service beyond the minimum requirement of 6 months up to 12 months.
- 2.30 Staff who have reached the top of their broadband or who have been appointed into a new position in the current performance cycle may be paid their performance pay as a cash bonus only.
- 2.31 Where the option of a base salary increase has been chosen and the increase exceeds the maximum of the broadband, staff will receive a salary increase up to the maximum of the broadband and will be paid the remaining amount of the half rate base salary increase as a lump-sum cash payment.

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- 2.32 Performance pay will be paid in accordance with the rating achieved by the staff member in the end-of-cycle performance appraisal process (see Part 7).
- 2.33 The percentage of performance pay associated with each performance rating is identified initially as a range, rather than a fixed percentage. The actual percentage payable for each rating will be determined each year by the indicative performance ratings for staff applied against agency performance pay budgets. The rating percentages will be applied consistently across all agencies. Percentages may not necessarily be whole numbers.
- 2.34 The performance pay percentage may vary from year to year but the minimum and maximum percentage identified for each rating will not be breached.
- 2.35 The following ranges of performance pay will apply:
- i. *Outstanding*: 6 – 8% of base salary paid as a bonus OR 3-4% paid as a base salary increase;
 - ii. *Superior*: 4 – 6% of base salary paid as a bonus OR 2-3% paid as a base salary increase;
 - iii. *Fully Effective*: 2 - 4% of base salary paid as a bonus OR 1-2% paid as a base salary increase;
 - iv. *Effective*: 0 - 2% of base salary paid as a bonus OR 0-1% paid as a base salary increase; or
 - v. *Unsatisfactory*: 0% of base salary.
- 2.36 Performance pay will be based on the staff member's base salary in their usual position as at 31 July or on the last day of their employment in a previous position if they have been appointed to a new position within the performance cycle and are not eligible for performance pay in the new position. Any salary increase or bonus payment due will apply from 1 August. Performance pay will not be payable to staff whose employment is terminated prior to 31 July.
- 2.37 Performance pay will be prorated accordingly for those on a part time work schedule.
- 2.38 Staff on approved leave during the performance cycle are eligible for full performance pay for absences up to and including eight weeks. For any period of leave in excess of eight weeks during the performance cycle, performance pay will be pro-rated.
- 2.39 Temporary employees are not eligible for performance pay. However an LES who occupies the same position in which they have worked temporarily may count the time they worked in the position on a temporary basis towards eligibility for performance pay.

GARNISHMENTS

- 2.40 The Embassy will comply with all garnishment orders notified through official court orders that have been properly served on the Embassy or the staff member. Human Resources will advise the staff member of the garnishment requirement.

OVERPAYMENTS

- 2.41 The Embassy may deduct any monies owed to the Embassy from a staff member's regular fortnightly pay. Recovery of monies owed must be made in full in the next pay period wherever possible. Repayment by instalments will only be approved in extreme hardship cases with Agency Head approval.

INCOME TAX

- 2.42 Payment of income tax is the obligation of the individual staff member. The Embassy does not withhold tax from LES salaries or offer advice on taxation matters.
- 2.43 In accordance with the Australian Income Tax Assessment Act and Administrative Circular P0573 (7 July 2004), the Embassy will report to the Australian Tax Office (ATO) at the end of the Australian financial year (i.e. 30 June) the earnings of all staff the Delegate for the engagement of LES deems to be Australian residents for taxation purposes. (See also 5.13.)
- 2.44 Staff deemed Australian residents for taxation purposes will be required to complete and provide to Human Resources, within 14 days of employment commencement, a Tax File Number Declaration for forwarding to the ATO.
- 2.45 The Embassy does not report earnings to the ATO for those staff who provide acceptable evidence that they are not Australian residents for taxation purposes. A Private Ruling from the ATO or completion of the taxation questionnaire indicating a status of non-resident for taxation purposes is required.
- 2.46 Spouses of A-based officers and current members of certain Australian government superannuation schemes will remain Australian residents for taxation purposes throughout their tenure as LES.

U.S. SOCIAL SECURITY CONTRIBUTIONS

- 2.47 Upon application and the provision of proof of tax filing, the Embassy will reimburse eligible staff members the employer's share of the FICA and FUTA taxes which is half of the United States Social Security Payment provision paid in advance by the staff member.

STATEMENT OF EARNINGS

- 2.48 The Embassy will provide staff with an annual statement of earnings in January or July in accordance with the relative tax status of the staff member.

PART 3 – SAFE AND HEALTHY WORK LIFE

SAFE AND HEALTHY WORK CULTURE

- 3.1 The Embassy is committed to building a work culture that values the safety, health and well-being of staff, and encourages a healthy work and personal life balance.

WORKING SMARTER

- 3.2 The Embassy's greatest assets are staff members who are committed to improving work practices and productivity. Supervisors and staff have a responsibility to apply working smarter principles in their day-to-day work through:
- i. Managing time and workloads effectively so that staff may operate in a manner that is sustainable and responsive in achieving work objectives;
 - ii. embracing the qualities of high performance and productivity, good judgment, and sound organisation, delegation, and prioritisation, while maintaining a balanced work and personal life; and
 - iii. nurturing a collective capacity to identify and deal with emerging issues and problems.

STANDARD WORKING HOURS

- 3.3 Standard working hours for full-time staff, except security guards, are 7 hours 30 minutes each *standard working day* (see 3.8), amounting to a 75 hour fortnight.
- 3.4 Standard working hours for full-time security guards are 8 hours each *standard working day* (see 3.8), amounting to an 80 hour fortnight.
- 3.5 Breaks totalling 30 minutes or more during a standard working day do not count towards hours worked.
- 3.6 Subject to operational requirements and the agreement of supervisors (with the exception of security guards who work defined shifts), the fortnightly complement of hours may be worked at any time between 7am and 7pm each *standard working day* (see 3.8).
- 3.7 Work areas may determine operating times which must be observed by staff. Staff may work within the 7am to 7pm standard working time band, subject to operational requirements and the agreement of their supervisor, in order to achieve work outcomes in a balanced and effective manner. Time worked beyond the standard working hours and approved time band must be required and approved in advance by the supervisor.

STANDARD WORKING DAY

- 3.8 Except for security guards, a standard working day is Monday to Friday, not including public holidays.

BREAKS

- 3.9 Staff are strongly encouraged to take adequate breaks throughout their day in the interest of working smarter (see 3.2.) and occupational health and safety (see 3.69 – 3.73). All staff are entitled to a break of at least 30 minutes after each period of 5 hours worked. However, all breaks (including, but not limited to, morning tea, afternoon tea, lunch, rest periods, exercise periods, smoking breaks, time spent on personal calls and browsing the internet for personal use, or on any other non-work related activity) should be totalled and noted. Daily break totals of 30 minutes or more must be recorded on the staff member's attendance record. Breaks of 30 minutes or more do not count as hours worked.

FLEX-TIME

- 3.10 The Embassy provides a system of flexible working hours (flex-time), which enables work attendance patterns during the standard working time band to be varied in order to meet fluctuating operational and personal requirements, and assist staff in achieving work-life balance. However, flex-time is always subject to operational requirements and the agreement of supervisors.
- 3.11 Flex-time may be fully utilised by exempt BB1s, BB2 and BB3s. Flex-time may also be used by non-exempt BB1s with restrictions (see 3.27).
- 3.12 Remuneration for higher broadband positions (BB4 and BB5) provides a measure of compensation for additional and varying hours of duty in response to operational requirements. Staff at the BB4 and BB5 levels are therefore expected to balance their workloads in a responsible manner, and are not eligible to access flex-time provisions.
- 3.13 Flex-time may be utilised by eligible part-time staff with supervisor agreement. Hours worked in addition to specified part-time hours need not be compensated by overtime pay, but may count as flex-credits with the supervisor's approval. However, part time work schedules should be carefully reviewed for appropriateness if additional hours are regularly worked.
- 3.14 Where there is insufficient excess work or a performance-related issue exists, supervisors may require that staff not access flex-time provisions or accrue flex-credits.
- 3.15 Where staff fail to comply with flex-time provisions, supervisors may remove access to flex-time.

FLEX-CREDIT

- 3.16 Staff may bank any hours worked in excess of 7.5 hours per day in the standard working time band (7am to 7pm) as flex-credits which may be taken later as "flex-leave".
- 3.17 Staff may carry over flex-credits of one settlement period into the next settlement period to a maximum of 40 hours flex-credit. Any credit in excess of 40 hours in one settlement period will be forfeited immediately at the commencement of the next settlement period.

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- 3.18 Supervisors have a responsibility for ensuring that staff do not accrue excessive flex-credits unnecessarily, or continue to build excessive flex-credits without the opportunity to take flex-leave, and that workloads remain balanced.
 - 3.19 Flex-credits are not transferable between positions and will not be paid out on termination of employment.
 - 3.20 Staff will not be required to accrue flex-credits in preference to payment for additional duty. However payment of additional duty is always subject to advance approval (see 3.49 – 3.53).

FLEX-LEAVE

- 3.21 Flex-leave must be taken from accrued flex-credits (see 3.16 – 3.20).
- 3.22 Wherever possible, supervisors should allow staff to take flex-leave in the same settlement period in which the flex-credit was accrued. It is the responsibility of staff and supervisors to monitor and manage working times, and not allow excessive flex-credits to accrue.
- 3.23 There is no restriction on the number of flex-leave days staff may take in a given settlement period. All flex-leave must be approved in advance by the supervisor and is to be managed in ways that do not adversely impact on the staff member's subsequent working time, as well as on other staff and/or work unit operations. To that end, staff may take no more than two consecutive working days as flex-leave.

FLEX-DEBIT

- 3.24 Staff may accrue a “flex-debit” of up to and including 15 hours at any given time.
- 3.25 Supervisors should ensure that staff do not carry over flex-debits to consecutive settlement periods, i.e. a flex-debit from one settlement period must be made up in the next settlement period.
- 3.26 The value of any outstanding flex-debit will be deducted from a staff member's final pay upon termination of employment or employment in a new position if a staff member changes positions within the Embassy.

FLEX-TIME FOR NON-EXEMPT BB1S

- 3.27 Some BB1s will be considered non-exempt from the FLSA overtime provisions and so are not entitled to the full flex-time provisions. Those BB1s however, may accrue flex-credits for any hours worked between 37.5 and 40 hours in the work week and may use the flex-credits in accordance with the regular flex-time provisions. Those BB1s defined as non-exempt must have any hours worked in addition to 40 hours in the fortnight paid as overtime. See 3.43 to 3.48 for further details.

RECORD OF ATTENDANCE

- 3.28 All staff will be required to record their work attendance on the prescribed Embassy work attendance sheet regardless of their participation in the flex-time system or their broadband level.
- 3.29 For each standard working day, staff must record:
- i. the time they started work;
 - ii. the time they ceased work;
 - iii. break times totalling 30 minutes or longer; and
 - iv. leave taken.
- 3.30 Staff are to submit their work attendance record to their supervisor at the end of each settlement period.
- 3.31 Supervisors are responsible for checking and signing the work attendance record and retaining it for one year. By signing the work attendance record each settlement period, supervisors are confirming they have approved all applicable leave requests and noted hours worked. To ensure compliance, Human Resources will undertake periodic audits of work attendance records.

PART-TIME WORK

- 3.32 Part-time work is any work totalling less than 37.5 hours per work week. Agency Heads may approve part-time work hours for defined periods where deemed appropriate.
- 3.33 Staff working in a part-time capacity must have appropriate work authorisation. Staff who are principal A class visa holders, on the basis of their employment at the Embassy, are not eligible to work part time.
- 3.34 Salary and conditions, including performance pay, will be calculated and paid on a pro-rata basis in accordance with the hours agreed by the Agency Head should part time work be approved. A contract amendment will be issued to record appropriately the altered work schedule for the agreed period.

SHIFT WORK

- 3.35 Shift-workers, including security guards, may be rostered for duty at any time, on any day of the year, including weekdays, weekends, public holidays and at times when the Embassy is closed.
- 3.36 Shift-workers work a standard shift of 8 hours per day amounting to a 40 hour work week and are considered non-exempt from the overtime protection of the Fair Labor Standards Act.
- 3.37 To compensate for irregular, longer and required standard hours, including during reduced staffing circumstances (see 4.38 – 4.39 and 5.18 – 5.19), shift workers will be paid salary loadings of:

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- i. 10% for rostered Monday – Saturday shifts *worked* (including Embassy observed public holidays); and
 - ii. 25% for rostered Sunday shifts *worked*.
- 3.38 Shift allowance is not payable for paid time off (such as leave, rostered days off and public holidays not worked). Shifts worked in addition to those rostered will be paid as overtime. Overtime pay will be based on time and one half of the regular hourly rate of pay plus the applicable shift allowance (see 3.39).
- 3.39 From time to time, guards and shift-workers may be required to work more than their rostered 8 hour day or 40 hour week. To compensate for the additional hours worked, shift-workers will be paid overtime at a rate of time and one-half for:
- i. all ‘non-rostered’ shifts *worked*;
 - ii. all *hours worked* in excess of an 8 hour work day; and
 - iii. all *hours worked* in excess of 40 hours per week.
- 3.40 Any additional hours worked are to be approved in advance by the shift-worker’s supervisor.
- 3.41 Shift-workers, including guards, are entitled to the Embassy-observed public holidays each year. Shift-workers who work on an observed public holiday will be paid an additional single time for the actual *hours worked* (equating to double-time for public holiday work) plus the applicable shift allowance on the basis that the public holiday is already compensated in the regular fortnightly wage.

OVERTIME PAY FOR NON-EXEMPT BB1S

- 3.42 Some BB1s are considered non-exempt from the FLSA and are required to be paid for overtime in accordance with the requirements of the Act (see 2.5 – 2.7).
- 3.43 Overtime will be paid at a rate of time and one half for all *hours worked* in excess of 40 hours per week.
- 3.44 Non-exempt (BB1) staff who work a 37.5 hour week may accrue flex-credits for any hours worked in addition to 37.5 hours and up to 40 hours (see 3.27).
- 3.45 Overtime is to be approved in advance by the supervisor.
- 3.46 Overtime will be paid in the pay period after it was worked (after submittal of the approved overtime claim form by the staff member concerned) and will be based on the staff member’s hourly rate of pay including any applicable shift allowance.
- 3.47 Non-exempt staff may not take time off in lieu of overtime.

ADDITIONAL DUTY PAY FOR EXEMPT BB1S, BB2S AND BB3S

- 3.48 Flex-time provides for additional hours to be worked within a standard working day (i.e.: 7am – 7pm, Monday – Friday excluding public holidays, and other

approved Embassy closure days) in order to meet workload priorities, peaks and troughs. However, in order to meet pressing operational requirements, staff may, on occasion, be required to work extraordinary hours outside a standard working day.

- 3.49 In such instances, exempt BB1s, BB2s and BB3s may be eligible to be paid additional duty pay. Salaries for higher broadband staff already include compensation for additional hours, and non-exempt BB1s are paid overtime for additional hours worked in excess of 40 hours per week (see 3.43 - 3.48).
- 3.50 Additional duty pay will be at time and one half for all hours worked in addition to a 7.5 hour work day which have been *required* in order to meet extraordinary operational requirements and have been *approved in advance* by the supervisor.
- 3.51 Except when otherwise approved by the Agency Head, staff who work additional hours without prior approval will not be paid at overtime rates for the additional hours worked. Any hours worked will be regarded as standard working time or flex-time.
- 3.52 Supervisors have a responsibility to minimise the extent to which staff are required to work additional hours as this can have serious consequences for health, morale and productivity. Productivity is not to be measured in hours worked. Where staff are consistently required to work additional hours, the supervisor is to review workloads and task allocations. If supervisors are unable to address ongoing excessive hours, this is to be raised with the Agency Head.

TIME OFF IN LIEU (TOIL) OF ADDITIONAL DUTY PAY

- 3.53 Staff eligible for payment of additional duty pay, may opt to take TOIL instead. TOIL is subject to the same approval provisions as additional duty and any time taken as TOIL is to be recorded by staff and verified by the supervisor.
- 3.54 TOIL is calculated at the same rate as pay for additional duty (i.e.1.5 hours time off for every 1 hour of additional hours worked).
- 3.55 Staff will not be required to take TOIL in preference to payment for additional duty pay.
- 3.56 Non-exempt BB1s are not eligible for TOIL. These staff must be paid overtime for hours worked in excess of 40 hours per week (see 3.43 – 3.48).

PUBLIC HOLIDAYS

- 3.57 Public holidays are approved each year by the Ambassador in consultation with Agency Heads and after due consideration of DFAT instructions, the operational requirements of the Embassy and relevant local factors.
- 3.58 The Embassy will observe fourteen public holidays each year. The list of public holidays for the forthcoming year will be determined and circulated prior to the commencement of that year. However, from time to time, the Ambassador may require a change to the approved public holidays to meet pressing, Embassy-wide operational requirements.

WORKPLACE DIVERSITY

- 3.59 All staff are required to observe and foster the principles of workplace diversity, as provided in the Embassy's Personnel Policies Handbook (available from Human Resources).

REASONABLE ACCOMMODATIONS

- 3.60 The Embassy will provide reasonable accommodations, as far as practicable, to qualified persons with a physical or mental impairment that substantially limits one or more major life activity, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment as long as the provision of an accommodation will not cause undue hardship for the Embassy, and the disability is disclosed.
- 3.61 Human Resources will work with Agency Heads and the Delegate for the engagement of LES to identify what reasonable accommodations, if any, may be provided.

WORKPLACE VIOLENCE

- 3.62 The Embassy has a zero-tolerance policy on workplace violence. No type of violent behaviour, including but not limited to intimidation, threats, and violent acts will be tolerated. Any violent incident will invoke the procedures for managing breaches of the Code of Conduct (see Annex E).
- 3.63 Any staff member who has been subject to actual or perceived violence is to contact Human Resources immediately.

WORKPLACE HARASSMENT AND DISCRIMINATION

- 3.64 The Embassy has a zero-tolerance policy on any form of workplace harassment, discrimination and hostility, including physical, mental, verbal, or visual abuse in either a direct, indirect or retaliatory manner.
- 3.65 The Embassy will maintain a network of Harassment Contact Officers (identified in the Embassy telephone book and on notice boards) whom staff may approach for advice and guidance, and to whom all incidents are to be reported.
- 3.66 Any staff member who is a victim of, or witness to, harassment, discrimination or hostility by any staff member, client, vendor or other party with which the Embassy does business, is to contact promptly an identified Embassy Harassment Contact Officer to report the incident. The Harassment Officer is to report the incident to the Minister/Counsellor (Management), and, if necessary, conduct a prompt, thorough and impartial investigation of the claim along with any recommendations for action. The Delegate will take immediate and appropriate action where it has been determined that harassment or discrimination has occurred.
- 3.67 Any act of workplace harassment or discrimination will invoke the procedures for managing breaches of the Code of Conduct (see Annex E).

OCCUPATIONAL HEALTH AND SAFETY (OH&S)

- 3.68 All staff are required to observe and foster the principles and guidelines of Occupational Health and Safety (OH&S) as provided in the Embassy's Personnel Policies Handbook (available from Human Resources).
- 3.69 The Embassy will maintain an Occupational Health and Safety Committee consisting of a Post Management representative as well as staff representatives from each floor of the Chancery. The OH&S committee shall meet quarterly to discuss matters concerning OH&S.
- 3.70 Staff or their supervisors are requested to report incidents, accidents and near misses to the Chief OH&S Officer (Director, Human Resources) on the appropriate form as soon as possible. Other health and safety concerns should be reported to an OH&S Committee representative for logging and resolution.
- 3.71 A network of volunteer, qualified First Aid Officers is maintained within the Embassy. The Embassy will provide annual in-house training for staff interested in acquiring and/or maintaining first aid qualifications. Staff who undergo Embassy sponsored first aid training are automatically listed and charged with the responsibility of acting as an Embassy First Aid officer when called on.
- 3.72 In case of sudden and serious illness or an accident, assistance should be sought from a qualified Embassy First Aid Officer immediately. The First Aid Officer will take appropriate steps to administer first aid and request professional attention from Emergency/First Response Services where appropriate. Staff requiring Emergency/First Response Services should make the request through Security.

WORKER'S COMPENSATION

- 3.73 Worker's compensation insurance for all staff at the Embassy is provided by Comcare, the Australian Government provider. All incidents or accidents resulting in possible or actual illness or injury should be reported to Comcare in the event a future claim for worker's compensation is made. See Human Resources for additional information.

PERSONAL HEALTH AND WELLNESS

- 3.74 The Embassy is committed to facilitating staff access to programs and tools that promote personal health and wellness (such as the Chancery gym, health and wellness classes, and health fairs).

INFLUENZA VACCINATIONS

- 3.75 The Embassy will provide an annual free influenza vaccination clinic in the Chancery for all staff who wish to receive an influenza shot. From time to time other free vaccinations will be offered in response to local conditions.

SICK/CARER'S ROOM

- 3.76 A sick/carer's room is provided for the use of staff during working hours. It is located on the northern end of the 3rd floor. Any staff member who wishes to make use of the sick/carer's room in case of illness or injury should advise a First Aid Officer of their intention so that they may be suitably monitored and the injury or illness reported as appropriate.

EMPLOYEE ASSISTANCE PROGRAM

- 3.77 Free access is provided to all staff and their families to professional and confidential external counselling services to assist with personal, family or work-related issues. See Human Resources for additional information.

DRUGS AND ALCOHOL

- 3.78 The Embassy has a zero-tolerance policy on illegal drugs in the workplace and staff are prohibited from the use or possession of illegal drugs or controlled substances whilst at work.
- 3.79 Staff are not to be excessively affected by alcohol at work or at Embassy-sponsored social events such that they are unable to perform effectively the functions of their job, are intoxicated or their behaviour affects others.
- 3.80 Supervisors are to report to Human Resources immediately and discreetly any inappropriate action by a staff member that may relate to the use of illegal or controlled substances or alcohol.
- 3.81 In circumstances where it is believed that a staff member is under the influence of illegal drugs, controlled substances or alcohol at work, they may be subject to drug or alcohol testing procedures to comply with the Embassy's policy, which may include removal from the workplace and mandatory referral to counselling services. Human Resources is to be consulted in such cases.

SMOKING AND TOBACCO

- 3.82 Smoking and tobacco use is prohibited inside the Chancery and Embassy vehicles. Smoking is permitted on Chancery grounds only in the areas identified by Post Management. Smokers and tobacco users are expected to keep smoking areas litter free and must comply with work attendance policies, including the recording of breaks totalling more than 30 minutes per day.

PART 4 - LEAVE

RECREATION LEAVE

- 4.1 Staff are entitled to 22 days paid recreation leave each year, which will accrue and be credited monthly on the anniversary of the staff member's commencement date at the Embassy. Staff working less than a full time work schedule will accrue the pro rata equivalent.
- 4.2 Recreation leave is an essential ingredient in a healthy working life. Staff are strongly encouraged to take their full entitlement of recreation leave each year. Failure to take leave is bound to have an adverse impact on an individual's well being and productivity. Carrying over and taking large accumulations of leave at one time can have an adverse effect on the operations of the work unit and the productivity of other staff.
- 4.3 Staff may carry over up to 44 days recreation leave each year. Staff who have more than 44 days recreation leave credits by 30 June each year (the "cut-off date") will be deemed to be on leave for the period until which the excess leave credits have been exhausted.
- 4.4 Supervisors are to balance planned staff absences in their sections, but not to decline staff recreation leave requests without good reason. Where leave is refused, the supervisor is to work with the staff member to identify a suitable alternate leave period.
- 4.5 Recreation leave credits, up to a maximum of 44 days (pro rata for part time staff), will be transferred upon movement to another Agency within the Embassy or paid out on termination of employment from the Embassy. In instances where a staff member is terminated with a negative leave balance, the value of that leave will be deducted from owed salary or other payments.

PERSONAL LEAVE

- 4.6 Staff are entitled to 18 days paid personal leave each year, which will accrue and be credited monthly, without carry-over limitation. Staff working less than a full-time work schedule will accrue the pro-rata equivalent.
- 4.7 The purpose of personal leave is to provide time off to deal with medical/health concerns, caring or parental responsibilities or short-term emergencies.
- 4.8 Staff may be required to provide appropriate evidence or supporting documentation *in any instance* in which personal leave is requested or used.
- 4.9 The circumstances in which personal leave may be used are provided at Annex B.
- 4.10 Personal leave credits will be transferred upon movement to another Agency within the Embassy but will not be paid out on termination of employment. In instances where a staff member is terminated with a negative leave balance, the value of that leave will be deducted from owed salary or other payments.

ADVANCED PERSONAL LEAVE

- 4.11 Supervisors may approve up to five days advanced paid personal leave in a staff member's first year of employment if the staff member has an insufficient balance to cover personal illness, caring responsibilities or short-term emergencies.

FAMILY AND MEDICAL LEAVE ACT (FMLA)

- 4.12 Subject to certain conditions as prescribed under the Federal and DC Family and Medical Leave Acts (FMLA), staff who have worked for at least 12 months for the Embassy and for a minimum of 1000 hours in the preceding 12 month period, will be provided up to 16 weeks job-protected Family leave and up to 16 weeks job-protected Medical leave in a 24 month period, commencing from the first date on which the Family/Medical Leave is taken, for one or more of the following approved reasons:
- i. For the birth, adoption or placement for foster care of a child of the employee;
 - ii. To care for an immediate family member (spouse, parent, sibling, child or other close family member related by blood or marriage) with a serious health condition; or
 - iii. To take medical leave when the employee is unable to work because of their own serious health condition.
- 4.13 The 12 weeks protected leave period in 12 months allowed under the Federal FMLA will count towards the 16 weeks job protected leave.
- 4.14 Leave covered under FMLA will ordinarily be first deducted from accrued personal leave balances then recreation leave then LWOP. All periods of LWOP are to be approved by the Agency Head with regard to any provisions under the FMLA.
- 4.15 Where both parents or multiple care providers are employed by the Embassy, the job-protected leave benefit for the birth, adoption or placement for foster care of a child or for the care of a family member is shared amongst the Embassy employees. That is, a total of 16 weeks leave in 24 months may be taken between both or all employees, not each.
- 4.16 Leave for the birth, adoption or placement for foster care of a child is to be taken all at once within 12 months of the birth, adoption or placement for foster care.
- 4.17 Leave taken for the care of a family member or for an employee's own serious illness may be taken all at once or intermittently on a reduced leave basis.
- 4.18 The Embassy will continue to pay the employer contribution to the Embassy's medical plan for all leave, including LWOP, taken under FMLA.
- 4.19 Staff taking pregnancy-related leave are covered under FMLA on account of their own serious medical condition.

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- 4.20 Staff taking family leave to care for a pregnant spouse and/or new child (by birth or adoption) are covered under FMLA for up to 12 months from the birth or adoption of the child.
 - 4.21 Staff may be approved up to an additional 36 weeks leave per year (to be taken from accrued personal or recreation leave balances or LWOP) to care for a new child (by birth or adoption), for a total absence of up to 52 weeks. However any periods of leave during this additional leave period will not be job protected, are subject to operational requirements, and the staff member will be required to pay the Employer contribution if they wish to maintain membership in the Embassy's medical plan.
 - 4.22 In order for leave to be considered under the FMLA, evidence of the reason for leave must be provided. Absences for leave not covered under FMLA remain at the discretion of the supervisor or Agency Head as appropriate.

COURT APPEARANCE/JURY DUTY LEAVE

- 4.23 Staff required to appear in court as a federal, state or local government witness or to serve jury duty will be excused from their normal duties on full pay for the duration of their service. The staff member is to provide their immediate supervisor with as much notice as possible of the required court service, and court papers relating to the service are to be provided to Human Resources.
- 4.24 If staff receive compensation from the court in instances where paid leave to appear in court was granted, such payment is to be endorsed over to the relevant Agency within one week of returning to work minus any deductions for required expenses.
- 4.25 Staff required to appear in court for any other reason, such as in the capacity of a plaintiff or defendant in a civil case, are to use personal leave for the absence from work.

MILITARY LEAVE

- 4.26 In accordance with the Uniformed Services Employment and Reemployment Act (USERRA), staff will be entitled to a maximum of 5 years LWOP to perform military service in the regular or reserve components of the US Army, Navy, Marine Corps, Air Force, Coast Guard, commissioned corps of the Public Health Service or any other category of persons designated by the President of the USA in time of war or emergency.

LEAVE WITHOUT PAY (LWOP)

- 4.27 Subject to operational requirements, the Agency Head may approve LWOP. A sampling of the circumstances under which approval may be granted is provided at Annex C.
- 4.28 All accrued paid leave credits, as applicable, are to be exhausted prior to LWOP being used.

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- 4.29 LWOP will not count as service for any purpose, except when it is taken as part of FMLA entitlements (see 4.12 – 4.22).

STUDY LEAVE

- 4.30 Staff who are undertaking approved formal courses of study relevant to their work at the Embassy may apply for Study Leave in accordance with the provisions set out in the Study Leave Guidelines.

CANCELLATION OR RECALL FROM LEAVE

- 4.31 Staff whose leave is cancelled or who are recalled from leave will be entitled to reimbursement of all reasonable and verifiable travel expenses incurred for themselves and their immediate family (ie - spouse/partner and children).

UNAUTHORISED ABSENCES

- 4.32 Where a staff member is absent from duty without approval, the staff member will be deemed to be on recreation leave until the supervisor is informed of the circumstances of the absence or the staff member resumes duty.
- 4.33 In circumstances where recreation leave credits have been exhausted, and the staff member remains on unauthorised absence, the staff member will be placed on LWOP.
- 4.34 Where leave has been deemed as recreation leave for absences which are subsequently found to be covered under FMLA or personal leave provisions, recreation leave credits will be re-credited after approval of personal leave has been obtained.
- 4.35 Depending on the circumstances of the absence, the Delegate for the engagement of LES may commence action to terminate the employment of staff who are absent from duty without approval.

LEAVE TO COUNT AS SERVICE

- 4.36 Any periods of paid leave will count as service for all purposes. Periods of LWOP covered under FMLA will also count as service (see 4.12 - 4.22).

LEAVE NOT TO COUNT AS SERVICE

- 4.37 Periods of unpaid leave will not count as service for any purpose, other than where they have been taken as part of FMLA entitlements (see 4.12 - 4.22).

EMBASSY OPERATING STATUS

- 4.38 Staff are to observe the Embassy's operating status policy, as amended from time to time.

ESSENTIAL STAFF

- 4.39 Consistent with the Embassy's operating status policy, Agency Heads will designate and pass to Human Resources by 31 December the prior year, a list of

“Essential” staff for the following year. Agency Heads may vary their list of Essential Staff at any time by providing updated advice to Human Resources.

PART 5 – BENEFITS AND ALLOWANCES

HEALTH INSURANCE PLANS

- 5.1 Staff employed for a continuous period of at least three months, who work a minimum of 24 hours per week, are eligible to join the Embassy's health insurance plans.
- 5.2 The Embassy will pay a contribution towards the medical plan for the duration of a staff member's employment with the Embassy, including for periods of LWOP of less than 22 continuous working days.
- 5.3 Information on the health insurance plans is available from Human Resources.

PRINCIPLE PENSION SCHEME (PPS)

- 5.4 Staff who have satisfactorily completed their *initial* trial period (see 6.21) and are not members of the North American Pension Scheme (see 5.9 – 5.12) or any Australian superannuation scheme towards which the Embassy is already contributing the employer portion are eligible to join the Principal Pension Scheme.
- 5.5 Staff may opt to contribute up to 20% of their salary (including HDA) to this scheme.
- 5.6 Agencies will match the member's contribution up to a maximum of 5% of annual salary (including HDA).
- 5.7 There are no vesting periods of any kind applying to membership of this scheme.
- 5.8 Further information on the PPS is available from Human Resources.

NORTH AMERICAN PENSION SCHEME (NAPS)

- 5.9 The NAPS scheme was closed to new members on 30 June 1998. Existing members are entitled to maintain their membership.
- 5.10 Members are required to contribute 7% of their annual salary (including HDA) to this scheme.
- 5.11 Agencies will contribute 2.4% of an eligible staff member's annual salary (including HDA) to the fund to contribute to plan administration costs. This may be adjusted from time to time in accordance with directions from the Department of Foreign Affairs and Trade.
- 5.12 Under clause 2.10, locality-adjusted US COLA, instead of the cost of living adjustment supplied by DFAT Canberra, shall apply to salaries of those members of the NAPS as applicable under the annual General Salary Scale Adjustment (see 2.9 – 2.11).

SUPERANNUATION

- 5.13 In accordance with Administrative Circular P0573 (7 July 2004), staff who are deemed to be Australian residents for taxation purposes are entitled to receive

the Superannuation Guarantee Contribution (SGC). SGC payments must be made by the Embassy for the period the staff member is considered to be an Australian Resident for taxation purposes. (See also 2.43.)

HIGHER DUTIES ALLOWANCE (HDA)

- 5.14 With the approval of the Agency Head, HDA is payable to staff who are temporarily assigned to an LES position in a higher broadband, or an A-based officer position, for a period of at least five working days.
- 5.15 Payment will be from the first day from which higher duties are performed and will usually be at the minimum of the higher broadband level. In exceptional cases, Agency Heads may approve a pay rate above the minimum of the higher broadband.

ON-CALL ALLOWANCE

- 5.16 Staff who are required to be available on a stand-by basis outside standard working hours will be paid an allowance of:
- i. US\$10.00 per day for each standard working day they are on-call; and
 - ii. US\$12.00 per day for each weekend day, non-working day and/or Embassy observed public holiday they are on-call.
- 5.17 These rates will be periodically reviewed and updated as necessary.
- 5.18 The Agency Head is responsible for approving positions with on-call responsibilities and approving on-call allowance payment.

ESSENTIAL STAFF ALLOWANCE

- 5.19 Those staff who are designated as “Essential staff” (see 4.39) and who attend work during “Reduced staffing” situations, as described within the Embassy’s operating status policy, will be compensated by an Essential Staff Allowance payable at an hourly rate of 10% of base salary for standard hours worked (see 3.3 – 3.7).
- 5.20 Those staff in receipt of shift allowance (see 3.37) do not receive the Essential Staff Allowance.

EXTRAORDINARY PAYMENTS AND ALLOWANCES

- 5.21 In rare and extraordinary circumstances, the Ambassador may authorise special payments or allowances to be paid to individual staff members for a defined period. The amount or rate to be paid will be determined on a case by case basis, in consultation with Human Resources

TRAVEL FOR WORK PURPOSES

- 5.22 When locally-engaged staff travel on official business, the standard of travel and accommodation will be the same as that applicable for non-SES DFAT A-based staff at the time of travel, subject to agency practice and funds availability.

TRAVEL INSURANCE

- 5.23 A staff member who is travelling on official duty outside the USA will be covered for travel insurance by Comcover as outlined in the insurance policy for Official Travel Outside Home Country or Country of Assignment.
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PART 6 – EMPLOYMENT ARRANGEMENTS

EMPLOYER

- 6.1 In accordance with the Prime Minister’s Directive on Management of the Australian Presence Overseas 2007, all LES at the Embassy are engaged by DFAT, regardless of the Agency for which the staff member works and which is responsible for funding the staff member’s salary and on-costs (see 1.2).

FIXED-TERM CONTRACT EMPLOYMENT

- 6.2 All LES vacancies are filled on fixed-term employment contracts. Agencies have the discretion to offer contracts up to a maximum of three years, although the usual length of an LES contract is two years.

EMPLOYMENT AT WILL

- 6.3 Current staff not employed under a fixed-term employment contract arrangement are considered to be employed *at will* and may have their employment terminated at any time, in accordance with the provisions outlined in these terms and conditions.
- 6.4 Staff employed *at will* may choose, at any time, to enter into a fixed-term employment contract. Such staff should approach their supervisor who is to contact Human Resources to arrange for a contract to be prepared.
- 6.5 Staff who are employed at will, will not be required to enter into fixed-term contract employment unless they are selected for an LES vacancy, move LES positions or accept a base salary adjustment (not including salary increases resulting from the performance appraisal process).

EXPIRY OF FIXED-TERM CONTRACTS

- 6.6 Where fixed-term employment contracts expire and are not subsequently renewed, staff will be entitled to have any accrued recreation leave credits, up to the maximum allowable, paid out (see 4.5).

RENEWAL OF FIXED-TERM EMPLOYMENT CONTRACTS

- 6.7 Fixed-term employment contracts will usually be renewed where:
- i. the position is to be retained;
 - ii. the position can still be funded;
 - iii. the duties of the position remain substantially unchanged; and
 - iv. the staff member is performing to at least an ‘Effective’ level (see 7.19).
- 6.8 Staff and their supervisors share the responsibility for ensuring that discussion about the future of a staff member’s employment contract occurs well in advance of completion of the current contract. Supervisors should inform staff

no later than three months prior to the contract expiration date as to whether their contract will be renewed.

EARLY INVOLUNTARY TERMINATION OF FIXED-TERM CONTRACTS

- 6.9 Contracts may be involuntarily terminated prior to the fixed-term contract end date for a variety of reasons (identified at 8.3).
- 6.10 Contracts *involuntarily* terminated prior to the contract end date will not be 'paid out'; however staff will be entitled to the Embassy's involuntary termination provisions (see 8.3 – 8.20).
- 6.11 All years of continuous service in the Embassy prior to early contract termination will be counted as service for the purposes of severance calculations (see 8.12 – 8.16).

RECRUITMENT AND SELECTION

- 6.12 Agencies are responsible for the selection of Agency LES, however, DFAT has overall responsibility for the recruitment process and for the appointment of all LES as an outcome of recruitment and selection activities.
- 6.13 All vacancies will be filled through open and competitive merit selection processes as provided in the Embassy's Recruitment Guidelines (copies available from Human Resources).

FIT AND PROPER PERSON

- 6.14 The nature of work in the Embassy is such that all staff are required to be seen as "fit and proper" persons.
- 6.15 Depending on the nature of the conviction and the related circumstances, the Delegate for the engagement of LES may commence action to terminate the employment of any staff member who is convicted of a crime during their Embassy employment, or is subsequently found to have been previously convicted of a crime. In making such a decision, the Delegate will consider:
- i. the length of time since the conviction;
 - ii. the nature of the crime;
 - iii. the relationship between the job to be performed and the crime committed;
 - iv. the number of convictions;
 - v. rehabilitation efforts; and
 - vi. employment history.

BACKGROUND CHECK

- 6.16 All staff joining the Embassy for the first time or being reemployed after a separation of more than one month (not including leave) will be required to undergo a background check.

TRIAL PERIOD

- 6.17 All staff commencing in an LES position (for any reason) are required to complete a “trial period” of up to four months.
- 6.18 Supervisors are to ensure that staff commencing in an LES position are provided with a performance agreement for the trial period, within four weeks of the staff member’s commencement.
- 6.19 During and at the conclusion of the trial period, the supervisor is to provide feedback to the staff member on their initial performance in the new position.
- 6.20 If the staff member has not met the required performance standards by the end of the trial period, the Agency Head may approve an extension of the trial period or request the Delegate for the engagement of LES (Minister/Counsellor, Management) to commence action to terminate the staff member’s employment.
- 6.21 If, during the trial period, a recommendation is made to terminate the employment of the staff member on the basis of the staff member’s failure to perform to an effective level of performance, the Agency Head shall have the right to terminate the staff member’s employment upon thirty (30) days notice. The Agency Head shall also have the right to elect to pay the staff member thirty (30) days salary in lieu of the expiration of said notice.

INITIAL TRIAL PERIOD

- 6.22 Staff joining the Embassy for the first time, or rejoining after a break in employment of more than 1 month (not including after approved leave), will be required to undertake an *initial* trial period. During this period, staff are not eligible to participate in the Embassy’s pension scheme and are ineligible for involuntary termination provisions.

OTHER EMPLOYMENT

- 6.23 Staff are not to engage in any form of outside employment without the agreement of the Agency Head. This includes work performed for the Embassy in addition to the staff member’s regular job.
- 6.24 Other employment will only be declined in instances where such employment is seen to be in conflict with, or have the potential to adversely affect, the staff member's regular work in the Embassy.
- 6.25 Where other employment has been approved, it is not to interfere with the ability of the staff member to maintain performance standards, and meet work attendance and operational requirements.

ETHICS AND CONDUCT

- 6.26 All staff are required to observe the Embassy’s Values (see page 1) and comply with the Embassy’s Code of Conduct (see Annex D). Failure to do so will be subject to the provisions at Annex E.

INTELLECTUAL PROPERTY

- 6.27 The Embassy retains ownership of all intellectual property created by all staff, including, without limitation, all patents, trademarks and copyrights created by staff while acting within the scope of their Embassy employment.

WORKPLACE PRIVACY

- 6.28 The Embassy retains ownership of all work spaces and tools including telephones, voicemail networks and email systems, and reserves the right to monitor their use or search them, at any time, for business needs or to protect the safety of other staff.

DRESS AND BEARING

- 6.29 Staff are to be cognisant that whilst performing official duties, be it in the Chancery or outside, they are representing the Embassy and Australia and at all times are to present a professional, business-like image to clients and the public.
- 6.30 Staff are to dress in a professional, business-like manner as appropriate to the work situation (i.e. no overly casual, novelty, suggestive or untidy attire).
- 6.31 On certain occasions, staff may be permitted to wear more casual attire; however staff are still expected to present a neat appearance and conduct themselves appropriately.

WORK AREA

- 6.32 Staff are responsible for maintaining an orderly and professional work area and are to observe the Embassy policy and direction on security matters, including the “Clear Desk” policy.

PART 7 – PERFORMANCE MANAGEMENT AND DEVELOPMENT

PURPOSE

- 7.1 Effective performance management and development are essential drivers in recognising and rewarding performance, and ensuring that Embassy goals are met. The Embassy achieves this through the performance management and development scheme (PMADS).

OBJECTIVES OF THE PMADS

- 7.2 The PMADS:
- i. fosters an outcomes-oriented work ethic;
 - ii. clarifies objectives and performance standards;
 - iii. links financial reward to performance; and
 - iv. identifies and meets individual development needs.

PMADS PRINCIPLES

- 7.3 The PMADS is based on the following principles:
- i. *agreement* - staff and supervisors are to reach agreement on each aspect of the PMADS process;
 - ii. *two-way communication* – staff and supervisors are to maintain ongoing two-way communication and feedback throughout the PMADS process;
 - iii. *fairness, equity and consistency* – Human Resources and Agency Heads are responsible for ensuring that all PMADS processes are conducted fairly, equitably and consistently;
 - iv. *participative management* – staff are to be actively involved in all aspects of the PMADS process; and
 - v. *joint responsibility* – both staff and supervisors are jointly responsible for all aspects of the PMADS.

PMADS ASPECTS

- 7.4 The PMADS comprises three main aspects:
- i. *planning* - where objectives, priorities and performance indicators are agreed;
 - ii. *development* – where current and future skills needs are identified and catered for; and
 - iii. *appraisal* – where staff performance against agreed objectives and performance indicators are assessed.

PMADS CYCLE

- 7.5 The PMADS cycle is from 1 August to 31 July.

PARTICIPATION

- 7.6 All staff are required to participate in the PMADS, regardless of their eligibility for performance pay. Supervisors are to ensure that staff have a performance agreement in place within four weeks of the commencement of the PMADS cycle or following commencement in a new position.
- 7.7 It is the joint responsibility of staff and supervisors to ensure that performance agreements remain up-to-date and correctly reflect current objectives and priorities.
- 7.8 New supervisors are to review staff performance agreements, and make any necessary adjustments, within four weeks of commencing supervisory responsibilities.
- 7.9 The PMADS may also be used to assist in the management of temporary employees, although temporary employees are not eligible for performance pay.

SUPERVISOR

- 7.10 A supervisor, for the purposes of the PMADS, should be the person best placed to manage, support and provide ongoing feedback to the staff member. He/she should have a good understanding of the staff member's work tasks and responsibilities, and will usually be at least one broadband higher than the staff members being supervised.

PERFORMANCE APPRAISAL

- 7.11 All staff are to be appraised against their performance agreement.
- 7.12 The appraisal process involves:
- i. *regular, constructive two-way feedback* – including both day-to-day informal feedback and scheduled formal feedback at regular intervals throughout the performance cycle as agreed between staff and their supervisors;
 - ii. *formal staff reviews* – including a mid-cycle review and an end-of-cycle appraisal; and
 - iii. *upwards appraisal* - of all staff with supervisory responsibilities.

MID-CYCLE REVIEW

- 7.13 A mid-cycle review is to be undertaken:
- i. in February each year;
 - ii. prior to the departure of a staff member's supervisor; and
 - iii. prior to a staff member proceeding on long-term leave.

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- 7.14 The purpose of the review is to:
- i. provide feedback on work performance and outcomes so far;
 - ii. ensure that agreements are up-to-date and reflect current objectives and priorities;
 - iii. discuss the effectiveness of the working relationship and make adjustments where necessary;
 - iv. check progress against development plans; and
 - v. identify the level of performance so far and what, if anything, could be done to improve it.
- 7.15 Outgoing supervisors are to ensure that a copy of the mid-cycle performance appraisal is provided to incoming supervisors.

END-OF-CYCLE APPRAISAL

- 7.16 All staff are to be assessed against their performance agreement at the end of the performance cycle each year. The purpose of the appraisal process is to:
- i. review and assess achievements against objectives over the full performance cycle; and
 - ii. identify a performance rating (see 7.19) which best represents the staff member's achievements against identified objectives.
- 7.17 Except where a supervisor has been supervising a staff member for a short time (i.e. – less than 3 months), the current supervisor will be responsible for completing the performance appraisal. Otherwise, the appraisal is to be completed by the outgoing supervisor and provided to the new supervisor.
- 7.18 A copy of the appraisal is to be forwarded to Human Resources for secure filing and any necessary associated action (i.e. – performance pay, under-performance procedures), if applicable.

RATING SCALE

- 7.19 Staff are to be assessed against a five-point rating scale as follows:
- i. *Outstanding* - continually *exceeds all* objectives in a substantial way;
 - ii. *Superior* – has *exceeded most* objectives in a substantial way, including those identified as being important, and *met* the remainder;
 - iii. *Fully Effective* – Has *met* all objectives and has *exceeded some*, including those identified as being important, in a substantial way;
 - iv. *Effective* – has *met all* objectives; or
 - v. *Unsatisfactory* – has not *met* all objectives.

UNSATISFACTORY PERFORMANCE

- 7.20 Staff rated as 'Unsatisfactory' are to be managed through the under-performance management process provided at Annex F.

AGENCY HEAD QUALITY CHECK

- 7.21 For consistency and equity purposes, Agency Heads will undertake a quality check of the ratings supervisors intend to provide to staff, approximately two months prior to the end of the performance cycle. Supervisors are **not** to allocate end-of-cycle ratings until they have been informed by the Agency Head that this check has been completed.

UPWARDS APPRAISAL

- 7.22 All staff with supervisory responsibilities will be subject to a confidential upwards appraisal process (as outlined in the Upwards Appraisal Guidelines – available from Human Resources).
- 7.23 Upwards appraisal of each supervisor's performance is an essential requirement of the performance management system. It underlines the importance of productive and continuing interaction between supervisors and staff and provides the next level manager with an essential insight into the supervisor's management performance.
- 7.24 Upwards appraisals are to occur prior to supervisors undertaking end-of-cycle downward appraisals of their staff.
- 7.25 Upwards appraisals may be prepared collectively or individually by those who are being supervised and are to be provided directly to the next level manager who will take this into account in determining the supervisor's performance rating.
- 7.26 In order to protect staff confidentiality, the next level manager is not to show or *directly* discuss the upwards appraisal report with the supervisor concerned, unless agreed by the staff who undertook the appraisal. Feedback is to be provided in general terms as part of the next level manager's overall appraisal. Individual staff and their specific comments are not to be disclosed.

CONFIDENTIALITY

- 7.27 The appraisal is a confidential two-way process between the staff member and their supervisor. However, in assessing the staff member's performance, a supervisor may approach other staff, such as colleagues, internal and external clients in determining a staff member's performance.
- 7.28 Only those with a genuine need to know, as approved by the Delegate for the engagement of LES, are to be provided access to performance agreements and appraisal outcomes.

DOCUMENTATION

- 7.29 Staff and supervisors are responsible for the preparation, retention and maintenance of performance agreements. The staff member is to retain the original performance agreement and the supervisor is to retain a copy, in a secure location.
- 7.30 Agencies are to provide Human Resources with a copy of mid-cycle and end-of-cycle performance appraisals as requested.
- 7.31 No copies of the performance agreement and appraisals are to be kept by other parties, without the approval of the staff member concerned.

DISAGREEMENTS

- 7.32 Any disagreements in the performance management process that cannot be resolved directly between the staff member and the supervisor are to be addressed through the Complaints and Disagreements process (see Part 9).

TRAINING

- 7.33 It is expected that all staff will undertake at least 5 days of work-related training and development per year. At the discretion of Agency Heads, this can include on-the-job training, attendance at seminars and workshops, and formal learning opportunities, including those that assist job-specific, career and/or personal development relevant to the workplace. Human Resources will work with Agencies to identify and provide such learning opportunities. Additionally, Human Resources will monitor staff members' participation in said training.

STUDY ASSISTANCE SCHEME

- 7.34 Agency Heads may grant financial assistance and/or up to three hours time off (which may be banked) each semester week for the undertaking of relevant tertiary studies in accordance with the Study Assistance Guidelines (available from Human Resources) (see also 4.30).

SECONDMENT

- 7.35 To facilitate staff development, the Embassy may seek expressions of interest from internal staff, in the first instance, for secondments to fill temporary vacancies of at least three months in duration.
- 7.36 Release to undertake a secondment will be subject to operational requirements and approval of the relevant Agency Head.
- 7.37 Staff seconded to a position in the same broadband will continue to be paid at their current salary. Staff seconded to a position in a higher broadband will be paid HDA at the minimum of the relevant higher broadband.

PART 8 – CEASING EMPLOYMENT

RESIGNATION

- 8.1 Staff are to provide at least four weeks notice of their intention to resign from a position at the Embassy in writing to their supervisor and Human Resources.

RETIREMENT

- 8.2 There is no mandatory retirement age at the Embassy. Staff intending to retire should provide their supervisor and Human Resources with at least four weeks written notice of this intention.

INVOLUNTARY TERMINATION

- 8.3 A staff member's employment may be involuntarily terminated prior to the contract expiration date on the following grounds:
- i. serious breaches of the Code of Conduct (see Annex D and E);
 - ii. sustained under-performance or non-performance of agreed duties (see Annex F);
 - iii. continuing incapacity following the expiration of applicable leave covered under FMLA (see 4.12 - 4.22) - where the staff member is incapable of performing the essential functions of his or her position and there is no reasonable accommodation available to permit the continuation of employment within the meaning of the Americans with Disabilities Act;
 - iv. being convicted of a crime, where the offence could have a seriously detrimental effect on the person's work in the Embassy and/or cause damage to the reputation of the Embassy (see 6.14 – 6.15); or
 - v. being excess to requirements (see 8.6).
- 8.4 All cases of possible termination will be subject to careful and open scrutiny with the staff member concerned.

DELEGATES FOR THE INVOLUNTARY TERMINATION OF LES EMPLOYMENT

- 8.5 As per DFAT Administrative Circular PO328 of 18 April 2001, the delegates for terminating LES employment are the First Assistant Secretary, Corporate Management Division and Assistant Secretary, Staff Development Branch, in DFAT, Canberra.

EXCESS STAFF

- 8.6 Staff will be "excess" to requirements where:
- i. their position is no longer required;
 - ii. the duties of their position have substantially changed; or

-
- iii. the position can no longer be funded.

NOTICE PERIOD

- 8.7 Staff will be provided at least three months written notice (the “notice period”) of their excess status prior to their employment being involuntarily terminated.
- 8.8 Agency Heads may not require staff to work out the notice period and may approve payout of any part of the notice period *in lieu* of notice.
- 8.9 Where a notice period is paid out in lieu, the date of termination of employment will be the last day of the notice period.
- 8.10 During the notice period, excess staff are encouraged to apply for any Embassy vacancies which may arise. However, selection decisions will be based solely on merit.

REDUNDANCY

- 8.11 An excess staff member who, at the end of the notice period, has been unable to secure alternate employment in the Embassy, will have their employment terminated on redundancy grounds.

SEVERANCE PAYMENT

- 8.12 Staff who are made redundant, and who have completed at least one year of continuous service immediately preceding being made redundant, are entitled to a severance payment equal to:
 - i. one week's salary for each year of employment at the Embassy; and
 - ii. one additional week's salary for each year of employment at the Embassy in excess of 10 years; up to
 - iii. a maximum of one year's *actual* annual salary (i.e. - the staff member's *actual* salary at the time of redundancy, as adjusted for any part-time hours worked).
- 8.13 Any additional periods of employment less than a complete year will be pro-rated when calculating the severance payment referred to at 8.12.
- 8.14 Severance payment will be calculated on the basis of the annual *actual* base salary of the staff member at the date of redundancy.
- 8.15 Severance payment will be calculated on a monthly pro-rata basis for any period where the staff member has worked part-time hours.
- 8.16 Any absences from work which are not counted as service will not be counted as employment for severance calculations.
- 8.17 Severance pay is not payable to staff whose contracts have expired or whose employment has been voluntarily terminated.

**RESTRICTION ON EMPLOYMENT OF STAFF WHO HAVE RECEIVED
A REDUNDANCY PAYMENT FROM COMMONWEALTH EMPLOYMENT**

- 8.18 In accordance with DFAT Administrative Circular P1015 (20 November 2009), except in exceptional circumstances, an exclusion period based on the level of redundancy payment received will apply to those staff who have received a redundancy benefit from an Australian Government agency or department before they may be engaged as LES.

REDUNDANCY FOR NAPS MEMBERS

- 8.19 In accordance with the provisions of the NAPS, staff who are entitled to an immediate annuity on redundancy, will not be entitled to a severance payment.

FINAL PAYMENT OF SALARY ON TERMINATION OF EMPLOYMENT

- 8.20 In accordance with DC law, staff who are *involuntarily* terminated, will receive their final salary payment no later than the next working day after termination.
- 8.21 Staff who resign will be paid their final salary the following payday or within 7 days from the termination date, whichever is earlier.

EXIT SURVEY

- 8.22 Staff ceasing employment with the Embassy are requested to complete an exit survey.

DEATH

- 8.23 If a staff member dies, or may be legally presumed to have died, outstanding payments due to the staff member may be made to their designated next of kin or nominated beneficiary – subject to appropriate legal advice from the legal representative of the surviving family. Any such payment will be reduced by amounts owed to the Embassy by the deceased staff member.

PART 9 – COMPLAINTS AND DISAGREEMENTS

INFORMAL RESOLUTION

- 9.1 Complaints and disagreements may arise for a variety of reasons, be it a single incident or the result of patterns of behaviour over a period of time. Most issues should be able to be addressed quickly, in a low key, informal, manner through effective day-to-day communication between staff and supervisors.
- 9.2 It is incumbent on all staff that complaints and disagreements be raised and addressed at an early stage and not left to develop in a way that is detrimental to the harmonious and efficient operation of the Embassy.
- 9.3 No complaint is “unofficial” or “off-the-record” and action should be taken by the supervisor to document, properly investigate and resolve the complaint, within a reasonable timeframe and all associated documentation is to be placed on the relevant staff member’s personnel file.
- 9.4 Managers are encouraged to explore informal dispute resolution procedures, including mediation, in the first instance. In all circumstances, the principles of natural justice should be the key to the resolution of complaints.

FORMAL RESOLUTION

- 9.5 Where all informal resolution avenues have been exhausted, staff may submit a formal complaint or disagreement in the form of a minute to the Delegate for the engagement of LES (Minister/Counsellor (Management)).
- 9.6 If the complaint or grievance involves the Delegate or has been made regarding an administrative procedure or action, staff should submit the minute to an alternative A-based staff member at the mission.
- 9.7 Within five working days of the receipt of the advice, the Delegate (or alternative A-based) will arrange and chair a mediation meeting involving the parties concerned. Other parties may be present at this meeting upon prior agreement of the parties concerned. In the event that the complaint or grievance relates to an administrative process and not a specific individual, the Delegate will represent Post Management in the matter.
- 9.8 If the issue is not resolved through mediation, the Delegate (or alternative A-based) will refer the matter to the Ambassador. The Ambassador will appoint a committee of two staff - one A-based and one LES, both of whom have had no prior involvement in the matter - to investigate the complaint or grievance. The committee will provide a report with recommendations to the Ambassador within five working days.
- 9.9 Following receipt of the committee's report, the Ambassador will take a final decision within ten working days. A written outcome will be provided to the staff member and also to any party that may have been the subject of the complaint or grievance.

Where a Complaint or Disagreement Involves the Ambassador

- 9.10 Where a complaint or disagreement involves the Ambassador, should submit a written minute detailing the issue to the Delegate (Minister/Counsellor (Management)).
- 9.11 Within five working days of the receipt of the advice, the Delegate will arrange and chair a mediation meeting involving the parties concerned. Other parties may be present at this meeting upon prior agreement.
- 9.12 If the issue is not resolved through mediation, the Delegate (or alternative A-based) will refer the matter to First Assistant Secretary, Corporate Management Division (FAS CMD). The latter will appoint an appropriate individual, or if considered necessary, a committee of two people to look into the matter and provide a report with recommendations to FAS CMD within five working days.
- 9.13 Following receipt of the report and recommendations, FAS CMD will take a final decision within ten working days. A written outcome will be provided to the staff member and also to the Ambassador.
- 9.14 Where a complaint or grievance involves a staff member engaged by DFAT but working for and funded by an attached agency, the same procedures outlined above should be followed as DFAT remains the legal employer of LES working overseas (apart from Austrade and AusAID employees).
- 9.15 Where complaints or grievances involving such LES are brought to the attention of the Ambassador, the committee investigating the complaint or grievance should consult with the Agency Head of the attached agency, provided they are not the subject of the complaint or grievance. Where complaints or grievances involving such LES are referred to FAS CMD, the latter will inform the relevant agency in Canberra, and invite it to work closely with DFAT in addressing the grievance before taking a final decision.

OTHER REMEDIES

- 9.16 While the mechanisms outlined in this section do not preclude an aggrieved staff member from approaching an outside body, they provide staff with a formal process for addressing a complaint or grievance within a familiar environment.

STAFF REPRESENTATION

- 9.17 Staff may opt to have a co-worker of their choosing sit in on any meeting which the staff member reasonably believes may result in disciplinary action. Such a request must be made by the staff member involved.
- 9.18 Staff do not, however, have the right to include legal representation in interviews unless charges have been filed with local law enforcement authorities.

HUMAN RESOURCES ROLE

- 9.19 Human Resources may be consulted for advice by any party at any stage of the process.

ANNEX A – BROADBAND BASE SALARY SCALE

(As at 1 July 2010 - incorporating 2.79% CPI increase)

Broadband	Definition	Minimum Salary	Maximum Salary
BB1	Basic, routine support or process oriented roles performed under general supervision and in accordance with clearly defined and established priorities, practices, processes and precedents.	31 584	40 389
BB2	Specialist, administrative and/or operational support roles performed under general direction. Work involves a wide variety of interrelated and standard procedural tasks, the resolution of a range of standardised problems and some basic decision-making authority. Experience or knowledge/skills as relevant to the position is usually required.	40 521	53 438
BB3	Manages a sub-section; provides complex technical/specialist expertise; or provides liaison and research functions for an Agency or functional area. Works under limited direction and reports to a Director/Branch Head. Work involves the undertaking of a variety of complex projects. Significant experience or knowledge/skills as relevant to the position is required.	54 223	71 446
BB4	Director of a Section or highly specialised professional or technical expert with a high level of responsibility within an Agency. Demonstrated significant expertise and experience is required as relevant to the position is required. Works under broad direction and regularly reports to and provides advice to senior Post management.	73 990	110 004
BB5	Very highly specialised, senior technical or professional expert or Branch manager with a key role in delivering core Post functions. Work is performed under very broad direction and positions are expected to make a major contribution to the Embassy, Agency or more broadly. Positions are expected to demonstrate initiative in developing and implementing innovative work practices or processes and are expected to maintain a clear understanding of the impacts of work on the Agency and its clients. Exceptional professional or technical expertise and experience as relevant to the position is essential.	110 526	141 451

ANNEX B – PERSONAL LEAVE

- B.1 Staff may be eligible to take personal leave in the following circumstances:
- i. to recover from an illness or injury which inhibits a staff member from performing the functions of his/her job or which attendance at work would put other people at risk (i.e. contagious illness);
 - ii. to care for a close family member (i.e. spouse, parent, child or other dependant) who is sick or recovering from an illness;
 - iii. to care for a dependant in an emergency situation when there is no other reasonable option but to stay home (for example, school or childcare facility is closed at short notice; baby-sitter cancels at short notice etc);
 - iv. in emergency situations covered under the Embassy's operating status policy, where flex and recreation leave credits have been exhausted;
 - v. for doctor, dentist or specialist appointments;
 - vi. for hospitalisation, to undergo surgery or treatment;
 - vii. to move house;
 - viii. to attend school related activities as a parent;
 - ix. to manage an emergency situation (e.g. water pipes burst, fire etc);
 - x. to mourn and/or make arrangements after the death of a close family member (see B.1.ii);
 - xi. in conjunction with approved FML; or
 - xii. to observe religious holidays important to an individual which are not observed by the Embassy but which are recognised generally within the community.
- B.2 Personal Leave is not an additional form of recreation leave. It may not be used for planned days off such as (but not limited to):
- i. to participate in any recreational activity;
 - ii. to renew a driver's or other licence;
 - iii. to care for a non-close family member (see B.1.ii);
 - iv. to mourn and/or make arrangements after the death of a non-close family member (see B.1.ii);
 - v. to participate in an event, as a representative or support staff (such as a sporting event, musical performance, theatrical production, television appearance etc);
 - vi. to accompany or support a family member or friend to an event;
 - vii. to await a delivery or cable or other home installation; or
 - viii. to undertake non-emergency renovations or repairs.

ANNEX C – LEAVE WITHOUT PAY (LWOP)

- C.1 After flex and/or recreation leave has been exhausted, LWOP could be granted in the following circumstances:
- i. for any absence covered by the Family and Medical Leave Act;
 - ii. for religious or ceremonial purposes not observed by the Embassy;
 - iii. to accompany a spouse on a short-term posting;
 - iv. to undertake a medical rehabilitation program;
 - v. to perform military or emergency community services duty;
 - vi. to attend to extensive damage to one's house or contents;
 - vii. war service sick leave;
 - viii. secondment to an international organisation;
 - ix. to participate in major sporting events; or
 - x. other circumstances approved by the Agency Head.

ANNEX D – CODE OF CONDUCT

- D.1 In the course of their duty with the Embassy, all staff are to:
- i. behave honestly and with integrity;
 - ii. act with care and diligence;
 - iii. treat others with respect, courtesy, and without coercion or harassment of any kind;
 - iv. comply with all applicable Australian and local labour law;
 - v. comply with any lawful and reasonable direction given by an authorised person;
 - vi. maintain appropriate confidentiality with regard to information obtained during the course of their Embassy employment;
 - vii. disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with their employment;
 - viii. use Embassy resources in a proper manner (including not spending unreasonable amounts of work time on personal calls or emails);
 - ix. not provide false or misleading information in response to a request for information that is made for official purposes;
 - x. not make improper use of information or their duties, status, or authority in order to gain, or seek to gain, a benefit or advantage for themselves or for any other person; and
 - xi. at all times behave in a way that upholds the values, integrity and good reputation of the Embassy.

ANNEX E - PROCEDURES FOR MANAGING BREACHES OF THE CODE OF CONDUCT

- E.1 These procedures apply to conduct in and outside the workplace where there is a real connection between the conduct and its effect on the Embassy.
- E.2 These procedures also apply when a staff member's conduct has been assessed as unsatisfactory for reasons or causes within their control. For example, if a staff member's persistent failure to comply with instructions is due to under-performance, the staff member is to be dealt with under the under-performance provisions. If, however, a staff member is unwilling or refuses to comply with authorised and reasonable instructions, these procedures will apply.
- E.3 Human Resources may be consulted by any party to the alleged breach at any stage throughout the process.

INFORMAL RESOLUTION

- E.4 Not all alleged breaches of the Code of Conduct may need to be dealt with formally.
- E.5 In cases of minor infringement, it may be sufficient for the supervisor to meet with the parties to the allegation in the interest of mediating a suitable and amicable outcome. In such cases, the supervisor should take care to refer to the Code of Conduct to ensure that the parties are aware of the importance of compliance and the value of the informal mediation process.
- E.6 The aspects of behaviour which allegedly breached the Code of Conduct are to be discussed candidly and, where appropriate (ie - where infringement is indicated), the staff member concerned should be warned that further infringements could lead to formal action. The supervisor should make a note of the incident and the discussion which is to be provided to Human Resources for filing on the staff member's personnel file.

FORMAL RESOLUTION

- E.7 The formal resolution process is to be commenced where informal resolution has failed or where the delegate (Minister/Counsellor (Management)) determines an alleged breach is sufficiently serious to warrant an immediate formal inquiry process.
- E.8 All serious alleged breaches should be reported to the Minister/Counsellor (Management) within 5 days of their occurrence, however there is no limit on when this may occur.
- E.9 The staff member against whom the allegation has been made will be informed of the details within 5 days of the report to the Minister/Counsellor (Management). The staff member will be provided 5 days to make a statement, orally or in writing, in relation to the alleged breach. In the case of an oral

statement, a written record is to be made and signed by the parties to the statement.

- E.10 A staff member who does not make a written statement in relation to an alleged breach is not, only for that reason, to be taken as having admitted committing the breach.

APPOINTMENT OF INQUIRY OFFICER

- E.11 In cases where the Minister/Counsellor (Management) is satisfied that a breach of the Code of Conduct may have occurred, and cannot be amicably settled, he or she will appoint a suitable staff member within 7 days to inquire into the allegation.
- E.12 The Minister/Counsellor (Management) will ensure that the inquiry officer has not had previous knowledge of, or involvement with, the circumstances of the allegation. Nor will the officer have had a direct working relationship with any of the parties to the allegation.

INQUIRY OFFICER ROLE

- E.13 The role of the inquiry officer will be to consider the facts relating to the alleged breach in order to determine whether a breach has occurred. He or she will conduct a level of inquiry suitable to the circumstances of the allegation and provide a written report and recommendation to the Minister/Counsellor (Management) within 5 days.

DETERMINATION

- E.14 The Minister/Counsellor (Management) and the inquiry officer will advise the parties of the outcome of the inquiry, both orally and in writing.

INFORMATION TO BE MADE AVAILABLE

- E.15 All relevant documents that pertain to the substance of the alleged breach (formal written submissions, e-mails etc) are to be made available to the inquiry officer by the Minister/Counsellor (Management). The inquiry officer may also request or accept from concerned parties written accounts of events surrounding the alleged breach and may speak with any party relevant to the alleged breach.

CONFIDENTIALITY

- E.16 Complete confidentiality of information disclosed during an investigation can not be guaranteed, however information will only be shared with those who have a legitimate need to know.

STAFF REPRESENTATION

- E.17 In accordance with Weingarten Rights, staff may opt to have a co-worker of their choosing sit in on any meeting in which the staff member may reasonably believe may result in disciplinary action. Such a request must be made by the staff member involved.

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- E.18 Staff do not, however, have the right to include legal representation in interviews unless charges have been filed with local law enforcement authorities.

CONSEQUENCES OF A BREACH BEING DETERMINED

- E.19 If it has been determined that a breach of the Code of Conduct has occurred, the Minister/Counsellor (Management) may take one or more of the following actions:
- i. counsel the staff member concerned – formally or informally;
 - ii. issue a formal reprimand;
 - iii. re-assign the staff member to other duties; or
 - iv. commence action to terminate the staff member's employment.
- E.20 When deciding on an appropriate action, the staff member's past behaviour may be taken into account. If, for example, the staff member's behaviour has been without blemish, this may mitigate the action to be taken. If an instance of *properly recorded* counselling report/s indicate that the breach represents a pattern of unacceptable and unadjusted behaviour, the action determined may be more severe. Assessments of past behaviour may only relate to formal records which have been properly kept (ie with the complete and evident knowledge of the person concerned). There is no place in this process for vague recollections, rumour or innuendo.
- E.21 If the staff member concerned is employed by an Agency other than DFAT, the Minister/Counsellor (Management) will consult the relevant Agency Head in determining an appropriate action.
- E.22 The Minister/Counsellor (Management) will advise the staff member, in writing, of the sanction(s) imposed and the reasons for them without delay.

APPEALS

- E.23 Staff who wish to appeal a determination are entitled to do so in accordance with the provisions of the Complaints and Disagreements process (see Part 9).

SUSPENSION OR TEMPORARY RE-ASSIGNMENT OF DUTIES

- E.24 In circumstances involving allegations such as theft, fraud or assault, the Minister/Counsellor (Management) may, depending on the strength of the information supporting the allegation, and subject to the outcome of a preliminary inquiry directly involving the parties to the allegation, suspend (on full pay) or temporarily re-assign a staff member pending a full inquiry and determination of the allegation.

CRIMINAL OR CIVIL OFFENCES

- E.25 If a staff member is convicted under US, District or State law of an offence and the offence could have a seriously detrimental effect on the person's work in the

Embassy and/or cause damage to the reputation of the Embassy, the Embassy's Code of Conduct inquiry procedures will be applied.

EFFECT OF RESIGNATION

- E.26 If a staff member resigns during the course of an inquiry into an allegation against them, the inquiry will be closed.

ANNEX F – MANAGING UNDER-PERFORMANCE

- F.1 The objective of managing under-performance is to restore, within a reasonable period (usually three months), the performance of the staff member concerned to an “Effective” level (see 7.19) in a fair and supportive manner.
- F.2 Every effort should be made to resolve performance problems and issues informally, openly and amicably. Honesty and candour can save situations from developing to a point where the parties concerned have to resort to a formal process.
- F.3 Staff and supervisors have a mutual obligation to disclose all information which may be affecting under-performance. Where it might be related to matters outside the supervisor's expertise, assistance should be sought from Human Resources who will be able to provide advice on appropriate practice and procedure, training programs, or access to other professional assistance, including those related to skills development, which could assist in the recovery of performance.

FORMAL PROCESS

- F.4 Should a formal process be required, the following guidelines are to be observed.
- F.5 The supervisor is to inform Human Resources of the situation prior to commencement of under-performance management procedures and then at regular intervals throughout the performance improvement period.

Step 1 – Performance Improvement Agreement (PIP)

- F.6 The parties to the process, i.e. the supervisor and staff member, are to devise and document a clear and agreed action plan for improving performance (the “Performance Improvement Plan”). The plan is to identify:
- i. the agreed performance improvement period (usually three months);
 - ii. formally agreed objectives, outcomes and timelines;
 - iii. development requirements; and
 - iv. progressive assessment and feedback arrangements.
- F.7 The PIP is to be agreed and signed by both parties and a copy is to be provided to Human Resources. The supervisor is to keep the next level manager or Agency Head and Human Resources informed of progress.

Step 2 - Review during the Performance Improvement Period

- F.8 During the performance improvement period, the supervisor is to meet with the staff member at least fortnightly to review and agree on progress and make adjustments wherever they are required.
- F.9 The outcomes of the meeting are to be recorded, agreed and signed by both parties.

Step 3 - Completion of the Performance Improvement Period

- F.10 At the end of the agreed performance improvement period, the supervisor will forward to Human Resources, through their next level manager, an assessment of whether the staff member has met the agreed performance requirements and is now performing to at least an 'Effective' level. The report is to include all documentation associated with the process.

Step 4 - Action

- F.11 If the report concludes that the staff member has met the agreed level of performance, no further action will be taken.
- F.12 If the report concludes that the staff member has not met the agreed level of performance, and if the report, supported by the Agency head, concludes that the services of the staff member should be terminated, the Minister/Counsellor (Management) will, within 14 days of receiving the report, formally ask the staff member concerned to show cause as to why his or her employment should not be terminated.
- F.13 The staff member will be required to respond to this request within 14 days of the date of the request.
- F.14 Should the staff member not be able to show sufficient cause for review or denial of the recommendation, the Minister/Counsellor (Management) will commence action to terminate the staff member's employment.

APPEALS

- F.15 The staff member concerned may appeal this recommendation or decision through the Complaints and Disagreements process (see Part 9).