



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

National Centre For Vocational Education Research Ltd T/A Never Ltd
(AG2023/5292)

NATIONAL CENTRE FOR VOCATIONAL EDUCATION RESEARCH LTD ENTERPRISE AGREEMENT 2022-2025

Educational services

DEPUTY PRESIDENT BOYCE

SYDNEY, 2 FEBRUARY 2024

Application for approval of the National Centre for Vocational Education Research Ltd Enterprise Agreement 2022-2025

[1] An application has been made for approval of an enterprise agreement to be known as the *National Centre for Vocational Education Research Ltd Enterprise Agreement 2022-2025* (**Agreement**). The application was made pursuant to s.185 of the *Fair Work Act 2009* (**Act**). It has been made by National Centre For Vocational Education Research Ltd Trading As Never Ltd (**Employer**). The Agreement is a single enterprise agreement.

Application brought out of time

[2] The Agreement was lodged with the Commission on 19 December 2023. Section 185(3) of the Act provides that an enterprise agreement must be lodged with the Commission for approval within 14 days of it being made (i.e. approved by relevant employees), or within such time as the Commission allows if it considers it fair to extend the time period for lodgement. Given the Agreement was made on 4 December 2023, it ought to have been lodged by 18 December 2023. The Employer has made submissions that detail the circumstances as to why the Agreement was lodged one day outside of the 14 day period. In the circumstances of this Application, and having regard to the circumstances outlined by the Employer, I do consider it fair to extend the period in which this Application (for approval of an enterprise agreement) was lodged with the Commission to 19 December 2023.

Undertakings

[3] The Employer has provided written undertakings dated 19 January 2024. Those undertakings are attached at **Annexure A** to this decision and become terms of the Agreement. I am satisfied that the undertakings will not cause financial detriment to any employee covered by the Agreement (as compared to the relevant provisions of the *Clerks – Private Sector Award 2020*), and that the undertakings will not result in substantial changes to the Agreement.

Coverage of employee organisation

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

Conclusion

[5] Subject to the undertakings referred to above, I am satisfied that each of the requirements of ss.186, 187, 188, 190, 193 and 193A of the Act, as are relevant to this application for approval, have been met.¹

[6] I am satisfied the more beneficial entitlements of the NES will prevail where there is an inconsistency between the Agreement and the NES.

[7] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 9 February 2024. The nominal expiry date of the Agreement is 30 June 2025.



DEPUTY PRESIDENT

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¹ The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 (Amending Act)* made a number of changes to enterprise agreement approval processes in Part 2-4 of the *Fair Work Act 2009 (FW Act)*, that commenced operation on 6 June 2023. Under transitional arrangements, amendments made by Part 14 of Schedule 1 to the Amending Act in relation to *genuine agreement* requirements for agreement approval applications apply where the *notification time* for the agreement was on or after 6 June 2023. The genuine agreement provisions in Part 2-4 of the FW Act, as it was just before 6 June 2023, continue to apply in relation to agreement approval applications where the notification time for the agreement was before 6 June 2023. The notification time for this Agreement was before 6 June 2023. Under transitional arrangements, amendments made by Part 16 of Schedule 1 to the Amending Act in relation to the *better off overall test* requirements for agreement approval applications apply where the agreement was *made* on or after 6 June 2023. This Agreement was made after 6 June 2023.

Annexure A

NCVER Ref: #232837

IN THE FAIR WORK COMMISSION

FWC Matter No.: AG2023/5292

Applicant: National Centre for Vocational Education Research Ltd

Section 185 – Application for approval of a single enterprise agreement

Undertaking- Section 190

I, Simon Walker, Managing Director for National Centre for Vocational Education Research Ltd give the following undertakings with respect to the *National Centre for Vocational Education Research Ltd Enterprise Agreement 2022-2025* ("**the Agreement**"):

1. I have the authority given to me by National Centre for Vocational Education Research Ltd to provide this undertaking in relation to the application before the Fair Work Commission.

Contract of employment (Clause 15), Hours of work (Clause 23), Part-time arrangements (Clause 24)

2. Part-time and casual employees will be provided with a minimum of 3 hours of work (or equivalent payment) for each day they are scheduled to work.

Flexibility (Clause 17.5 (termination of flexibility agreements))

3. The Managing Director or employee may terminate the individual flexibility arrangement:
 - a. by giving no more than 28 days written notice to the other party to the arrangement, or
 - b. if the Managing Director and employee agree, in writing at any time.

Long Service Leave (Clause 50)

4. For an employee to whom the *Long Service Leave Act 1955 (NSW)* applies, the reference to seven (7) years' continuous service in clause 50.4.3 will be taken to be five (5) years continuous service.

Compassionate Leave (Clause 53)

5. An employee is also entitled to a period of up to two (2) days compassionate leave where:
 - a) a child is stillborn, where the child would have been a member of the employee's immediate family, or a member of the employee's household, if the child had been born alive; or
 - b) the employee, or the employee's spouse or de facto partner, has a miscarriage.

Redundancy (Clause 68)

6. Clause 68.1.1 (d) will be read as follows:

 (d) the duties usually performed by the employee are to be moved to an interstate location and the employee does not wish to be redeployed to the new location.
7. Clauses 68.1.4(d) and 68.1.4(e) will have no effect.
8. No provision of this Agreement will result in an employee being entitled to a lower redundancy pay entitlement than they would be entitled to under the NES.

Part-Time Employees and Overtime (Clause 40)

9. Any part time employee who works additional hours in any fortnight will have the payment received under the Agreement reconciled with what would have been paid under the Award. Should the reconciliation result in the employee being paid less than they would have been under the Award, a payment equivalent to the shortfall plus an additional \$10 will be paid in the next pay period.
10. These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application for approval before the Fair Work Commission.

A handwritten signature in black ink, consisting of a stylized 'l' followed by a horizontal stroke.

Signature
19 January 2024

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

Enterprise Agreement 2022 - 2025

National Centre for Vocational Education Research Ltd

This Agreement shall be known as the:

**National Centre for Vocational Education Research Ltd
Enterprise Agreement 2022-2025**

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Part A – Agreement formalities

1 Agreement purpose

1.1 Purpose

- 1.1.1 It is the purpose of this Agreement to document the conditions under which employees are employed at NCVER.

1.2 Principles

- 1.2.1 NCVER aims to provide a safe, secure and supportive environment that enables employees to contribute to its strategic goals.
- 1.2.2 The following principles underpin provisions in this Agreement:
- a. Providing a safe, secure and fair work environment, free from discrimination and harassment.
 - b. Fostering mutual respect and professionalism.
 - c. Safeguarding the health and wellbeing of employees.
 - d. Respecting and valuing diversity.
 - e. Providing opportunities to develop skills.
 - f. Providing work arrangements that balance work and family obligations.

2 Coverage

2.1 This Enterprise Agreement covers:

- a. NCVER.
- b. All employees of NCVER, except those employed in the position of Managing Director, General Manager, or any other position at or above the level of General Manager.
- c. CPSU, the Community and Public Sector Union, if the Fair Work Commission notes in its decision to approve this Agreement that it covers that union.

3 Date and period of operation

- 3.1 This Agreement will come into effect seven (7) days after the Fair Work Commission approves the Agreement and shall nominally expire on 30 June 2025.

4 Attachments

- 4.1 Attachments referred to throughout this document form part of this Agreement. Following are attachments to this Agreement:
- a. Attachment A – Rates of pay
 - b. Attachment B – Guidelines for individual salary advancement
 - c. Attachment C – Job Evaluation Advisory Committee Terms of Reference

- d. Attachment D – Workplace Consultative Committee Terms of Reference
- e. Attachment E – Guidelines for managing underperformance

5 Policies and relevant support documentation

- 5.1 The operation of this Agreement is supported by NCVER policies, procedures and guidelines (relevant support documentation).
- 5.2 Any such policies and relevant support documentation do not form part of this Agreement and may be amended from time to time by the Managing Director.
- 5.3 Consultation with the Workplace Consultative Committee will take place prior to any amendments being made to, or new Corporate HR policies being introduced.
- 5.4 NCVER policies and relevant support documentation cannot reduce the entitlements provided for in this Agreement.
- 5.5 Disputes over the content, application or interpretation of any policies and/or relevant support documentation which support the operation of this Agreement will be subject to the dispute resolution procedures of the Agreement. Refer to *Clause 13 Dispute resolution procedure*.
- 5.6 Policies and relevant support documentation referred to in this Agreement can be found on NCVER's intranet under Policies & Guidelines.

6 National Employment Standards (NES)

- 6.1 This Agreement will be read and interpreted in conjunction with the NES. Where there is an inconsistency between this Agreement and a term of the NES, and the NES term provides a greater benefit to the employee, the NES term will apply to the extent of the inconsistency.

7 Definitions

- 7.1 'Agreement' refers to the National Centre for Vocational Education Research Ltd Enterprise Agreement 2022-2025.
- 7.2 'Anniversary date' means the anniversary of an employee's commencement with NCVER.
- 7.3 'Australian Privacy Principles' are part of the privacy protection framework in the Privacy Act 1988 with which NCVER must comply.
- 7.4 'Board' means the Board of Directors of NCVER.
- 7.5 'Casual employee' means a person who is employed on an hourly basis and as required, as set out in *Clause 15 Contract of employment*.
- 7.6 'Company' means the National Centre for Vocational Education Research Ltd.
- 7.7 'Company contributions' refers to the statutory superannuation guarantee contribution, plus an NCVER supplementary amount, if applicable. Refer to *Clause 37 Superannuation*.
- 7.8 'CPSU' means the Community and Public Sector Union (PSU Group).
- 7.9 'Diversity' means involving or including people from a range of different social and ethnic backgrounds.

- 7.10 'Employee' means employee, whether full-time, part-time, ongoing, fixed-term or casual, employed under and within the conditions of service as specified in this Agreement.
- 7.11 'Executive' means anyone occupying the position of Managing Director, General Manager, Executive Manager.
- 7.12 'Executive Committee' means the committee comprising of the Managing Director, General Managers, Executive Manager, Manager Finance & Governance, and Manager HR & Business Services.
- 7.13 'Fair Work Commission' the independent national workplace relations tribunal.
- 7.14 'Family' or 'Immediate Family' of an employee means:
- a spouse or partner (including a former spouse or partner);
 - a child, parent, grandparent, grandchild or sibling of the employee (including step relatives);
 - a child, parent, grandparent, grandchild or sibling of the employee's spouse or partner (including step relatives);
 - a person whom a parental or care order in the employee's favour applies from either a State, Territory or Commonwealth jurisdiction;
 - a member of an employee's household; and
 - traditional kinship where there is a relationship or obligation, under the customs and traditions of the community or group to which the employee belongs.
- "Partner" means a person who, regardless of gender, is in a genuine domestic relationship, although not legally married to the employee.
- "Child" in relation to a person includes an adopted child, a foster child, a step child (someone is a stepchild of the person if he/she would have been a stepchild except that the person is not legally married to the partner), an ex-nuptial child and a child of a person within the meaning of the Family Law Act 1975.
- The Managing Director may apply the definition of 'Immediate family' to other individuals, on a case by case basis, and shall take into account cultural differences.
- 7.15 'Family and Domestic Violence' is any violent, threatening or other abusive behaviour by an individual against a member of the individual's family or household (current or former). Refer to *Clause 57 Family and domestic violence leave and support* for full definition.
- 7.16 'Fixed-term employee' refers to an employee engaged for a specified period of time and is not an ongoing employee.
- 7.17 'Flexitime' where an employee alters start and finish times from the standard, as set out in *Clause 23 Hours of work*.
- 7.18 'Flexi-leave' where an employee works less than their nominated regular hours on any day and is not on another form of leave as set out in *Clause 23 Hours of work*.
- 7.19 'HR' means Human Resources.
- 7.20 'HR Manager' means the position responsible for the Human Resources function at NCVER.

- 7.21 'JEAC' means Job Evaluation Advisory Committee. Refer to *Attachment C – Job Evaluation Advisory Committee Terms of Reference*.
- 7.22 'Manager' refers to a position within NCVER that generally manages a branch or function, and is responsible for the overall management and leadership of employees within that area.
- 7.23 'Major change' refers to any change that will affect employees in a significant way.
- 7.24 'Mature age employee' is an employee who is 55 years of age or older.
- 7.25 'NCVER' means the National Centre for Vocational Education Research Ltd.
- 7.26 'NES' means the National Employment Standards, which set out the minimum employment entitlements.
- 7.27 'Ordinary hours' means an employee's normal and rostered hours of work, which do not attract overtime rates.
- 7.28 'Ongoing employee' refers to an employee engaged on a permanent basis.
- 7.29 'Parties' means NCVER, the employees covered by this Agreement and the CPSU.
- 7.30 'Policy' is a document that sets out rules and/or principles relating to an area of operation for which NCVER and employees are required to comply with.
- 7.31 'Support documentation' refers to other varying forms of documentation related to NCVER policies. These may include, but are not limited to, procedures, processes, guides, guidelines, forms and templates.
- 7.32 'Team leader' refers to a position with supervisory responsibilities for a team of people within an NCVER branch.
- 7.33 'TOIL' is time off in lieu of receiving payment as compensation for additional hours worked.
- 7.34 'Trainee' means an employee who has been engaged under the conditions of the Australian Traineeship Scheme or a similar structured training arrangement.
- 7.35 'Variable leave' is a purchased leave arrangement whereby employees exchange salary over a 12-month period in exchange for additional leave.
- 7.36 'WCC' means the Workplace Consultative Committee. Refer to *Clause 9 Workplace Consultative Committee* and *Attachment D – Workplace Consultative Committee Terms of Reference*.

8 Delegations

- 8.1 To ensure that decision making is more efficiently made at the level more knowledgeable of business needs and closest to the area affected, the Managing Director may delegate any powers or approval rights regarding matters contained within this Agreement, to Manager level.

9 Workplace Consultative Committee

- 9.1 The Workplace Consultative Committee (WCC) provides a consultative mechanism in relation to workplace matters that have consequences for employees. Workplace matters

include HR policies, redundancies, dispute resolution, the introduction of change and where agreed, ongoing review and provision of feedback on these matters.

- 9.2 A new Committee will be operational within the first two (2) months of this Agreement being ratified by the Fair Work Commission. The term of the incumbent Committee aligns with the term of this Agreement.
- 9.3 The WCC is not a decision-making Committee, however it is a body responsible for and committed to open discussion and direct consultation with employees on workplace matters. Such matters will be discussed in a spirit of cooperation and trust to ensure that employees have an opportunity to raise workplace concerns, to receive sufficient information on matters that affect them, to have an opportunity to contribute their views on those matters and to have meaningful involvement in decision making. The WCC will consider and consult with employees, in a timely manner on matters that have consequences for employees before being implemented.
- 9.4 Refer to *Attachment D – Workplace Consultative Committee Terms of Reference* for full terms of reference for the WCC and *Clause 11 Consultation* for further details.

10 Implementation and monitoring

- 10.1 NCVER is committed to ensuring the successful implementation of this Agreement. Information sessions will be delivered to all employees with responsibility for implementation of this Agreement to ensure that the application and interpretation of the provisions contained within are applied consistently and in the spirit in which they were intended.
- 10.2 The WCC is responsible for monitoring the implementation of this Agreement and a review of the operation of this Agreement will be undertaken on an annual basis by the WCC.

11 Consultation

11.1 Commitment to consult on workplace matters

- 11.1.1 Recognising that genuine and effective consultation is sound management practice, NCVER is committed to putting in place measures that support to the greatest extent practical, genuine consultation about workplace matters that affect employees. 'Genuine Consultation' means giving employees and their representatives relevant information in a timely manner, a genuine opportunity to provide feedback in order to influence a decision or implementation of a decision, and advising them on how their feedback was considered in the decision making process.
- 11.1.2 Where a relevant employee or employees appoint a representative for the purposes of consultation, and NCVER is advised of the identity of such representative, NCVER must recognise the representative.
- 11.1.3 Parties to this Agreement recognise that final decisions on matters, particularly those that are significant, will continue to rest with the Managing Director.
- 11.1.4 Parties to this Agreement also recognise that not all circumstances that give rise to change are within the control of NCVER and as such it may not be practical or realistic for NCVER to consult with employees on such matters prior to change being decided. In these

circumstances, NCVER will consult with employees and their representatives on the implementation of such change.

11.2 Consultation requirements for major change or changes to regular roster or ordinary hours of work

11.2.1 This clause applies if NCVER:

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

11.3 Major change

11.3.1 For a major change referred to in subclause 11.2.1 a.:

- a. NCVER must notify the relevant employees of the decision to introduce the major change; and
- b. subclauses 11.3.2 to 11.3.8 apply.

11.3.2 The relevant employees may appoint a representative for the purposes of the procedures in this term.

11.3.3 If:

- a. a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - b. the employee or employees advise NCVER of the identity of the representative
- NCVER must recognise the representative.

11.3.4 As soon as practicable after making its decision, NCVER must:

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

11.3.5 However, NCVER is not required to disclose confidential or commercially sensitive information to the relevant employees.

11.3.6 NCVER must give prompt and genuine consideration to matters raised about the major change by the relevant employees.

- 11.3.7 If a term in this Agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of NCVER, the requirements set out in subclause 11.3.1 a. and subclauses 11.3.2 and 11.3.4 are taken not to apply.
- 11.3.8 In this term, a major change is likely to have a significant effect on employees if it results in:
- a. the termination of the employment of employees; or
 - b. major change to the composition, operation or size of NCVER's workforce or to the skills required of employees; or
 - c. the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
 - d. the alteration of hours of work; or
 - e. the need to retrain employees; or
 - f. the need to relocate employees to another workplace; or
 - g. the restructuring of jobs.
- 11.4 **Change to regular roster or ordinary hours of work**
- 11.4.1 For a change referred to in subclause 11.2.1 b.:
- a. NCVER must notify the relevant employees of the proposed change; and
 - b. subclauses 11.4.2 to 11.4.6 apply.
- 11.4.2 The relevant employees may appoint a representative for the purposes of the procedures in this term.
- 11.4.3 If:
- a. a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - b. the employee or employees advise NCVER of the identity of the representative
- NCVER must recognise the representative.
- 11.4.4 As soon as practicable after proposing to introduce the change, NCVER must:
- a. discuss with the relevant employees the introduction of the change; and
 - b. for the purposes of the discussion – provide to the relevant employees:
 - i. all relevant information about the change, including the nature of the change; and
 - ii. information about what NCVER reasonably believes will be the effects of the change on the employees; and
 - iii. information about any other matters that NCVER reasonably believes are likely to affect the employees; and
 - c. invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- 11.4.5 However, NCVER is not required to disclose confidential or commercially sensitive information to the relevant employees.

- 11.4.6 NCVER must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- 11.4.7 In this term relevant employees means the employees who may be affected by a change referred to in subclause 11.2.1.
- 11.5 **Review of major change**
- 11.5.1 Where agreed between Executive, relevant employees and their representatives, a post-implementation review of major change will be undertaken and shared with Managers and the WCC, and include recommendations to address any issues raised by affected employees.

12 Employee representation

- 12.1 In any matter arising under this Agreement, an employee may have an employee representative, including a union representative, assist or represent them, and all relevant persons will deal with any such representative in good faith. To avoid doubt, this assistance includes acting as an advocate.
- 12.2 The parties recognise that the arrangements regarding consultation, cooperation, participation and exchange of information under this Agreement place considerable obligations, duties and responsibilities on workplace representatives.
- 12.3 To assist in meeting these obligations, duties and responsibilities, NCVER will provide reasonable paid time and facilities having regard to the operational requirements of NCVER and resource requirements associated with the provision of such facilities.
- 12.4 For the purposes of this provision, reasonable access will be provided to office equipment (including photocopying facilities), communications systems (including email and access to 'all employee' email addresses), and accommodation (including storage facilities). Release to attend reasonable training will also be provided.

13 Dispute resolution procedure

- 13.1 Except for a decision to terminate employment for misconduct or performance, if a dispute relates to:
- a. a matter arising under the Agreement; or
 - b. the NES; or
 - c. Workplace Health and Safety (WHS); or
 - d. a matter arising under an NCVER policy, procedure or guideline; or
 - e. any other matter pertaining to the relationship between the employer and the employees or the employer and the Union; or
 - f. any other workplace grievance
- this term sets out procedures to settle the dispute.
- 13.2 An employee who is a party to the dispute or NCVER may appoint a representative for the purposes of the procedures in this clause, at any stage of the process. Representatives will be recognised and dealt with in good faith.

- 13.3 In the first instance, where the employee(s) feel(s) comfortable, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the employee(s) and relevant Team Leaders and/or Managers, or HR Manager. As soon as practicable, the parties shall meet and confer on the matter.
- 13.4 If the matter is not resolved at such a meeting, the employee(s) with the grievance or the Manager and/or any other appropriate party shall arrange for further discussions between the employee(s) and relevant Executive.
- 13.5 If the matter is not resolved through this process the employee(s) may request that the Workplace Consultative Committee (WCC) consider the matter. If this request occurs, the following must occur in a timely manner:
- a. The employee(s) or their representative must notify the WCC of the substance of the grievance and the remedy sought.
 - b. The WCC may set up a Conciliation Committee and establish a process that provides for procedural fairness and as best as possible at 'arms-length' from the matter to be resolved. The Managing Director will not form part of the Conciliation Committee.
 - c. The Conciliation Committee may include persons other than members of the WCC (e.g. Human Resources, Executive or external expert/or independent parties) as appropriate.
 - d. The Conciliation Committee will make written recommendations to resolve the dispute to the Managing Director for consideration. If the Managing Director approves the recommendation, they will communicate it to the relevant employee(s) for their consideration.
 - e. All persons involved in the WCC conciliation process must maintain confidentiality of all matters and recommendations as far as it is reasonably practicable to do so.
- 13.6 If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to the Fair Work Commission (FWC).
- 13.7 The FWC may deal with the dispute in two (2) stages:
- a. the FWC will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
 - b. if the FWC is unable to resolve the dispute at the first stage, the FWC may then:
 - i. arbitrate the dispute; and
 - ii. make a determination that is binding on the parties.
- 13.8 Note: If FWC arbitrates the dispute, it may also use the powers that are available to it under the Fair Work Act 2009 (Cth).
- 13.9 A decision that FWC makes when arbitrating a dispute is a decision for the purpose of Division 3 of Part 5.1 of the Fair Work Act 2009 (Cth). Therefore, an appeal may be made against the decision.
- 13.10 While the parties are trying to resolve the dispute using the procedures in this term:
- a. an employee must continue to perform their work as they would normally unless they have reasonable concern about an imminent risk to their health or safety; and

- b. an employee must comply with a direction given by NCVER to perform other available work at the same workplace, or at another workplace, unless:
 - i. the work is not safe; or
 - ii. applicable occupational health and safety legislation would not permit the work to be performed; or
 - iii. the work is not appropriate for the employee to perform; or
 - iv. there are other reasonable grounds for the employee to refuse to comply with the direction.
- 13.11 The parties to the dispute agree to be bound by a decision made by FWC in accordance with this term.
- 13.12 Disputes arising under the previous Agreement:
- a. Any dispute formally commenced under the NCVER Enterprise Agreement 2021-2022, but not concluded before the commencement of this Agreement shall continue to be dealt with in accordance with the dispute settlement provisions in this Agreement. Any steps already taken in that process will be recognised and accepted by parties and the FWC as steps taken for the purposes of this clause.
 - b. Any dispute which arose under the NCVER Enterprise Agreement 2021-2022 but was not notified before the commencement of this Agreement, may be notified and resolved in accordance with the procedures in this clause.
 - c. For the purposes of this subclause the relevant provisions of NCVER Enterprise Agreement 2021-2022 are deemed to be provisions of this Agreement.

14 No further claims

- 14.1 NCVER, CPSU and employees whose employment is subject to this Agreement shall not pursue further claims for terms and conditions of employment prior to the nominal expiry date of this Agreement, except where consistent with the terms of the Agreement, or as a variation under the Fair Work Act 2009 (Cth).

Part B – Principles of employment

15 Contract of employment

15.1 Employment can be:

15.1.1 Full-time or part-time ongoing

- a. Ongoing employment will be the primary mode of employment unless employment under subclauses 15.1.2 or 15.1.3 within this clause is warranted.

15.1.2 Full-time or part-time fixed-term

- a. where work is of a project nature, with approved contingent funding; or
- b. to specifically replace existing employees on extended leave; or
- c. where the position within the structure has not been deemed to be a permanent requirement.
- d. The duration of fixed-term appointments and their renewal and extension options are subject to the requirements specified in the Fair Work Act 2009 (Cth).
- e. Considering business needs, NCVER may review a fixed-term position and offer to convert an employee to an ongoing employee at any point after 12 months service.

15.1.3 Casual, on an hourly and as required, basis

- a. NCVER can elect to offer work to a Casual employee, and the Casual employee can elect to accept or reject that work.
- b. Casual employees who are paid on an hourly basis receive 25% casual loading on top of the minimum hourly rate otherwise applicable to a full-time or part-time employee. The casual loading is compensation for the fact that, in accordance with the Fair Work Act 2009 (Cth), Casual employees are not entitled to paid annual leave, paid personal/carer's leave, paid compassionate leave, payment for public holidays not worked, payment in lieu of notice or termination and redundancy pay.
- c. Right to casual conversion
 - i. A Casual employee's right to request casual conversion and entitlements are to be offered in accordance with the NES. This clause contains additional provisions.
 - ii. Where an employee has been engaged on a casual basis and the pattern of employment has become regular and systematic for a period of six (6) months, NCVER in consultation with the employee will make a decision as to the ongoing need for the position and fill it on an appropriate basis (fixed-term or ongoing) and in accordance with NCVER's Recruitment and Selection Policy.

16 Probation

16.1 The purpose of a probationary period is to ascertain whether the conduct and work performance of a new employee meets the required standards for the position.

- 16.2 For appointments of 12 months or more duration, every new employee at NCVER shall be appointed on probation for a period of six (6) months.
- 16.3 For appointments less than 12 months in duration, an appropriate probationary period will be agreed in writing prior to the commencement of employment.

17 Flexibility

- 17.1 The Managing Director and an employee covered by this Agreement may, after an employee has commenced employment, agree to make an individual flexibility arrangement to vary the effect of terms of the Agreement if:
- a. the individual flexibility agreement deals with one or more of the following matters:
 - i. arrangements about when work is performed
 - ii. overtime/penalty rates
 - b. the arrangement meets the genuine needs of NCVER and the employee in relation to one or more of the matters mentioned in subclause 17.1 a.
 - c. the arrangement is genuinely agreed to by the Managing Director and employee and is by mutual consent.
- 17.2 The Managing Director must ensure that the terms of the individual flexibility arrangement:
- a. are about permitted matters under section 172 of the Fair Work Act 2009 (Cth);
 - b. are not unlawful terms under section 194 of the Fair Work Act 2009 (Cth); and
 - c. result in the employee being better off overall than the employee would be if no arrangement were made.
- 17.3 The Managing Director must ensure that the individual flexibility arrangement:
- a. is in writing;
 - b. includes the name of NCVER and employee;
 - c. is signed by the Managing Director and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
 - d. includes details of:
 - i. the terms of the Agreement that will be varied by the arrangement;
 - ii. how the arrangement will vary the effect of the terms;
 - iii. how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
 - iv. states the day on which the arrangement commences.
- 17.4 The Managing Director must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- 17.5 The Managing Director or employee may terminate the individual flexibility arrangement:
- a. by giving at least 28 days written notice to the other party to the arrangement, or
 - b. if the Managing Director and employee agree in writing, at any time.

18 Job Evaluation and Remuneration Framework

- 18.1 Positions within NCVER are evaluated and assigned to an appropriate position level within the NCVER Job Evaluation and Remuneration Framework.
- 18.2 The Framework seeks to facilitate a consistent, systematic, fair and transparent approach to position sizing and position level assignment.
- 18.3 The NCVER Job Evaluation and Remuneration Framework Guide can be found on NCVER's intranet under Policies & Guidelines.
- 18.4 Modifications to wording within the Framework Guide may occur during the life of this Agreement. Any modifications will be to provide better clarification of contents only and will not result in material differences in job sizing or remuneration of positions.
- 18.5 A new Job Evaluation Advisory Committee will be established for the term of this Agreement, and this Committee and the Workplace Consultative Committee will be consulted regarding any proposed changes to the Framework Guide.
- 18.6 Employees who are paid above the top of the salary range for their position will continue to receive annual company-wide salary increases as per *Clause 31 Increases in rates of pay*, however will not be eligible to apply for individual salary review until such time that they change positions and/or their salary falls below the top of the level, subject to extenuating circumstances, for example, matching markets rates for critical functions.

19 Progression through job levels

- 19.1 Employees may apply to have their position re-classified. Generally, applications are accepted during the period January – mid February each year. A timetable with precise dates will be released on a yearly basis.
- 19.2 An appropriately evidenced application may be submitted by the employee or relevant Manager to the HR Manager for consideration by the Executive Committee.
- 19.3 **Progression through Job Matrix**
 - 19.3.1 For positions that offer graduated progression opportunities and appear within a progression cluster (as indicated on the NCVER Job Matrix), an employee may apply to be re-classified to the next level position within that cluster.
 - 19.3.2 Application may be made if the following criteria are satisfied:
 - a. the employee must be being paid at least at midpoint for their current level, and;
 - b. the employee must be assessed as already performing at a level commensurate with all the higher job evaluation factors as outlined in the next level position description, as determined by their Manager, and;
 - c. the employee must have attained the relevant knowledge and qualifications for the higher-level position, and;
 - d. the Manager must be able to demonstrate that there is enough work available requiring the higher-level capability to justify a reclassification of the position to the next level.

19.4 Personal re-classification

- 19.4.1 In exceptional circumstances, an individual may be performing at a sustained higher level than their position requires, but there are limited opportunities to progress to a higher-level position. In the interests of providing career progression and employee retention, individuals in this situation may apply for personal re-classification. Application may be made if the following criteria are satisfied:
- a. the employee must be assessed as already performing at a level commensurate with higher level job evaluation factors, as determined by their Manager and supported by evidence, and;
 - b. the Manager must be able to demonstrate that the higher-level contributions are required, and being applied and utilised on an ongoing basis.
- 19.4.2 The final determination will be at the Managing Director's discretion and will take into account the alignment of the individual's higher-level outputs with the company's strategic objectives.
- 19.4.3 If an individual is successful in achieving a personal re-classification, their personal position level will be adjusted, however their position title will remain unchanged. The position level within the NCVER Job Matrix will remain unchanged.
- 19.4.4 If there is a requirement for a position to be formally recognised and occupied within the structure, then Managers should put forward a case to have a new position created, and it will be filled in line with NCVER's Recruitment and Selection Policy.

19.5 Newly created positions

- 19.5.1 All newly created positions within the NCVER Job Matrix (that is newly introduced positions, or those appearing on the matrix but unoccupied) will be advertised in line with NCVER's Recruitment and Selection Policy.

20 Membership of professional associations

- 20.1 All employees are encouraged to belong to appropriate professional associations.
- 20.2 Employees will be eligible for membership to one (1) professional association at the cost of NCVER. Such membership will be at the Managing Director's approval.
- 20.3 Additional membership funded by NCVER may be available at the Managing Director's discretion.
- 20.4 Nominated employees are also given membership of AVETRA.

21 Support and wellbeing – Employee Assistance Program

- 21.1 An employee is entitled to four (4) NCVER-funded confidential counselling visits per financial year with NCVER nominated service providers. This counselling may be related to personal, work-related or family issues.

22 Site transfers

- 22.1 Employees and their representatives will be consulted at the earliest practicable stage of any proposal to move employees to a new site. Consultation will include:
- a. An explanation of, and opportunity to discuss, the business case for the move.
 - b. Discussion of alternative options if the proposed move is likely to cause significant inconvenience to those affected.
 - c. The selection of functions to be moved.
 - d. The process for selection of employees to move so that to the fullest extent practicable the movement of employees will be on a voluntary basis if not all functions are moving.
 - e. Hardship factors which will be considered in selecting employees to move if not all functions are moving.

Part C – Working arrangements

23 Hours of work

23.1 Ordinary hours of work

23.1.1 This clause applies to employees other than Casuals.

23.1.2 Full-time employees:

- a. Full-time employees are engaged to work a standard 7.5 hour day, Monday - Friday, totalling 37.5 ordinary hours per week or 75 ordinary hours per fortnightly attendance record period.

23.1.3 Part-time employees:

- a. Part-time employees are engaged to work fewer ordinary hours than 37.5 per week, and must agree in writing to:
 - i. the days of the week on which they will work, and
 - ii. the number of hours to be worked on each of those days.
- b. Changes to a part-time employee's days and hours of work can be varied by written agreement between the employee, their Manager and HR.

23.1.4 Standard hours for a 7.5 hour day are 8.45am to 5.00pm with a 45 minute lunch break.

23.1.5 Normal span of ordinary hours of work:

- a. The normal span during which ordinary hours may be worked is between 7.30am and 6:30 pm Monday to Friday.

23.1.6 An employee's pattern of ordinary hours of work can, by agreement between the employee and their Team Leader and/or Manager, be worked flexibly within the normal span of ordinary hours of work at subclause 23.1.5 above.

23.1.7 A Team Leader, Manager or Executive, with reasonable notice, may require an employee to be available for work, during standard hours to meet business requirements.

23.1.8 Where agreement cannot be reached on the pattern of ordinary hours, the issue should be raised with the next level Manager. Where agreement cannot be reached on the pattern of ordinary hours, the employee will work a standard 7.5 hour day as per subclause 23.1.4.

23.2 Breaks

23.2.1 Employees must take an unpaid meal break of at least 30 minutes to commence no later than five (5) hours following the commencement of ordinary hours of work for the day.

23.2.2 For employees who work six (6) hours or less in a day, the requirement to take an unpaid meal break may be waived by mutual consent between the employee and their Team Leader and/or Manager.

23.3 Recording of hours worked

23.3.1 All employees are responsible for maintaining an accurate record of their attendance in fortnightly attendance recording periods via NCVER's nominated attendance recording system.

23.4 Variation to ordinary hours of work

23.4.1 This section relates to variations to ordinary hours of work that fall outside the normal span of ordinary hours.

23.4.2 Short-term variation to ordinary hours of work:

- a. From time to time, an employee may request a short-term variation to their ordinary hours of work so that a portion of their ordinary hours can be worked outside of the normal span of ordinary hours of work in subclause 23.1.5 (7.30am and 6.30pm Monday to Friday).
- b. The employee's Manager may approve such a request, taking into consideration the employee's needs and the business needs of NCVER.
- c. In cases where the request is approved, the time worked outside of the normal span of ordinary hours for work will be classed as ordinary hours and will not be paid as overtime.

23.4.3 Long-term variation to ordinary hours of work:

- a. Where an employee seeks to make a long-term variation to their ordinary hours of work so that a portion of their ordinary hours are worked outside the normal span of ordinary hours in subclause 23.1.5 (7.30am and 6.30pm Monday to Friday), they must seek to enter into a formal Individual Flexibility Agreement. Refer to *Clause 17 Flexibility* for further details.

23.5 Flexitime

23.5.1 Flexitime is available to all employees in Levels 1-9, in discussion with their immediate Manager.

23.5.2 For employees who were employed by NCVER prior to 1 July 2018, and were in Band 3 under the previous framework and are in Level 10 under the current Job Evaluation and Remuneration Framework, this arrangement will remain in place until such time they change positions or move to a higher job level.

23.6 Principles of the flexitime system

23.6.1 This flexitime system operates by individual negotiation between an employee and their Team Leader and/or Manager and functions on principles based on effective and flexible NCVER operations.

23.6.2 Consideration must be given to the impact on stakeholders, other members of the branch and the personal needs of the employee, whilst ensuring the operational needs of NCVER are met.

23.6.3 Based on work requirements or non-compliance to the flexitime guidelines a Manager may cause an employee, or group of employees, to revert to standard hours for a period as per subclause 23.1.4, or enter into an agreement to temporarily vary the existing flexitime arrangement.

23.7 Flexitime specifics

23.7.1 Employees accumulate flexitime within the normal span of ordinary hours of work.

- 23.7.2 Employees can only carry forward a maximum of fifteen (15) hours flexi credit to the next fortnightly attendance recording period.
- 23.7.3 Carrying forward flexitime credit in excess of the maximum requires the approval of the relevant Executive.
- 23.7.4 A Manager may require an employee not to work hours in addition to their regular hours where the nature of work and/or workloads do not support this.
- 23.7.5 An employee may only carry forward a maximum of seven and a half hours (7.5) flex-debit to the next fortnightly attendance recording period.
- 23.7.6 If a flexi-debit is carried forward for consecutive periods, a Team Leader and/or Manager may request the employee to work sufficient time to clear the debit.
- 23.7.7 Flexi-leave is where an employee works less than their ordinary hours on a given day and is not on any other form of leave.
- 23.7.8 Prior approval and reasonable notice is required for any flexi-leave where predetermined operational requirements would be affected. The Manager will consider operational requirements and the needs of employees when determining whether or not to approve flexi-leave requests.

24 Part-time arrangements

- 24.1 An employee may request, in writing, part-time employment at any time. Changes to part-time arrangements, including moving to full-time hours may also be requested.
- 24.2 These arrangements may be negotiated on an ongoing or fixed-term basis.
- 24.3 Where part-time arrangements are agreed for a fixed-term, at the end of the fixed term:
 - a. the employee will be entitled to revert to the hours of work that were in place prior to entering into the arrangement; or
 - b. request a continuation of the arrangement or an alternative arrangement, for a further fixed-term period.
- 24.4 Every attempt will be made to accommodate the request having regard to both the personal needs of the employee and the operational requirements of NCVER and will be determined on a case by case basis.
- 24.5 NCVER must provide a written response to a request for part-time employment within 21 days of receiving the request in writing from the employee. The response will outline whether the request is approved or denied. A request may only be denied on reasonable business grounds. If a request is denied, the written response must include the reasons for refusal.
- 24.6 An employee who is part-time should be genuinely considered for promotion and transfer on the basis of merit, but any part-time arrangement will need to be renegotiated in the new position.
- 24.7 For part-time employees, pro-rata conditions will apply for all leave.
- 24.8 Also refer to *Clause 25 Flexible working arrangements and workloads*.

25 Flexible working arrangements and workloads

25.1 Overview of flexible working arrangements

- 25.1.1 NCVER will endeavour to provide workloads and arrangements that allow for a desirable work/life balance that recognises the family and other personal commitments and circumstances of employees. This Agreement and the Working from home policy (as amended from time to time) contain provisions to assist in achieving that balance. Examples of such provisions may include; changes in hours of work, changes in patterns of work, changes in location of work (including working from home).
- 25.1.2 Whilst NCVER will consider requests for flexible working arrangements from any employee, certain employees who have worked with NCVER for at least 12 months have a right to request a change in their working arrangements because of their circumstances, under section 65 (1A) of the Fair Work Act 2009 (Cth). Nothing in this clause operates to diminish or restrict the rights of an eligible employee under those provisions.
- 25.1.3 Employees who may request a flexible working arrangement under section 65 (1A) of the Fair Work Act 2009 (Cth) are those employees who:
- a. are pregnant;
 - b. are the parent, or have responsibility for the care, of a child who is school aged or younger;
 - c. are a carer (under the Carer Recognition Act 2010);
 - d. have a disability;
 - e. are 55 years or older;
 - f. are experiencing family or domestic violence;
 - g. provide care or support to a member of their household or immediate family who requires care or support because the member is experiencing family or domestic violence.
- 25.1.4 Where an employee suffers from a long-term illness which does not permit regular attendance at the workplace, NCVER will undertake, as far as is practicable, to make flexible working arrangements for that employee, having consideration to that employee's role and responsibilities.

25.2 Applying for a flexible working arrangement

- 25.2.1 If an employee seeks an arrangement that differs from any arrangement expressly provided for through this Agreement or the Working from home policy, they must submit an application to the Managing Director. The application must:
- a. be in writing;
 - b. explain what changes are being requested; and
 - c. explain the reasons for the requested change.
- 25.2.2 Prior to a written application being submitted, it is expected that the employee has discussed their request with their Team Leader/Manager or HR Manager in a genuine attempt to find a workable solution, taking into consideration the employee's personal circumstances, and the business needs of NCVER.

25.3 Responding to a flexible working arrangement request

- 25.3.1 The Managing Director must provide a written response to a request for flexible working arrangements within 21 days of receiving the request in writing from the employee. The response will outline whether the request is approved or denied. A request may only be denied on reasonable business grounds. If a request is denied, the written response must include the reasons for the refusal and how they apply to the request, and if other changes that may assist the employee are possible or not.
- 25.3.2 All decisions relating to refusal of a request are subject to the dispute resolution mechanism in this Agreement.

25.4 Modification or cessation of a flexible working arrangement

- 25.4.1 From time to time, the individual or NCVER may require short-term modification to a flexible working arrangement. In this instance, NCVER or the individual are required to give reasonable notice of the modification (at least 48 hours) and will take into account the circumstances of the individual and business.
- 25.4.2 Should NCVER or the employee's circumstances necessitate ongoing modification or termination of the flexible working arrangement, this may occur:
- a. by giving at least 28 days written notice to the other party to the arrangement, or
 - b. if the Managing Director and employee agree in writing, at any time.
- 25.4.3 Termination or ongoing modification to a flexible working arrangement will follow the principles outlined in subclause 25.3.1.

25.5 Workloads

- 25.5.1 Managers should not ordinarily allocate work that cannot reasonably be done within an employee's standard working hours. It is acknowledged that there are periods when it is not possible to comply with this intent and reasonable additional hours may be required. The TOIL or overtime provisions in this Agreement should be utilised for short periods of time where employees are requested to work more than their standard hours.
- 25.5.2 Where excessive workloads are identified these will be reviewed by the Manager with a view to finding ways to achieve the required results without continual reliance on excessive workloads. If a situation remains unresolved, the matter may be escalated through the dispute resolution mechanism in this Agreement.
- 25.5.3 Working hours are to be safe and employee safety is to be considered in questions of overtime, rostering and attendance requirements. An employee may refuse to work hours that are unreasonable.

26 Working from home

- 26.1 NCVER provides the option for all employees to access working from home arrangements in accordance with the Working from home policy (as amended from time to time) and *Clause 25 Flexible working arrangements and workloads*.

27 Public holidays

- 27.1 Declared Public Holidays in the place where an employee is based for work purposes will be observed.
- 27.2 Employees who would normally have had ordinary hours rostered on a declared public holiday will be paid as if they had worked. Casuals, or employees on leave without pay (where the public holiday falls within the period of leave without pay) will not be paid for the public holiday.

28 Christmas shut-down

- 28.1 NCVER will cease its normal operations from close of business on the last working day before Christmas Day, recommencing on the first working day after New Year's Day.
- 28.2 All employees, except those engaged on a casual basis or those on a period of leave without pay that includes the shut-down period, will be provided with time off for the ordinary working days between Christmas Day and New Year's Day (without deduction from leave entitlements) and will be paid in accordance with their ordinary hours of work.

29 Transition to retirement

- 29.1 NCVER supports transition to retirement arrangements for mature aged employees. These include access to:
 - a. individual flexible working arrangements;
 - b. flexible leave arrangements (for example, variable leave without pay, leave without pay, long service leave); and
 - c. part-time working options.
- 29.2 Employees are encouraged to discuss what options may be suitable for their situation with their Manager and/or HR.
- 29.3 Application to enter a transition to retirement arrangement may be made to the Managing Director.
- 29.4 The Managing Director must provide a written response to a request for a transition to retirement arrangement within 21 days of receiving the request in writing from the employee. The response will outline whether the request is approved or denied. A request may only be denied on reasonable business grounds. If a request is denied, the written response must include the reasons for refusal.

Part D – Remuneration

30 Rates of pay

- 30.1 The rates of pay for employees covered under this Agreement shall be those contained in *Attachment A – Rates of pay*.
- 30.2 Where an employee takes up the option of salary packaging, the employee's salary for purposes of superannuation, severance and termination payments, and any other purposes, will be determined as if the salary packaging arrangement had not occurred.
- 30.3 During negotiations for the next Enterprise Agreement, a review of remuneration for similar occupations in similar organisations will be undertaken to assess the relativities with markets rates.

31 Increases in rates of pay

- 31.1 The following increase to rates of pay will apply:
- a. From the first available pay period on or after 1 July 2024, an increase of 3.0% backdated to 1 July 2024.
 - b. Parties to this Agreement recognise that salary indexation is closely aligned with NCVER's contractual and funding arrangements. Parties agree that should contractual and funding arrangements change during the life of this Agreement that salary increases in excess of the provisions of this clause may be granted. Executive, with the WCC and CPSU, will review the quantum of salary increases for the 2024/2025 financial year if there is a change in contractual arrangements or by April 2024.
- 31.2 Parties to this Agreement acknowledge that NCVER made the following payments to employees prior to the commencement of this Agreement:
- a. Employees employed by NCVER as at 2 May 2023, received an increase of 3.0% back paid to 1 July 2022, (or their commencement date with NCVER if that was later).
 - b. In recognition that cost of living increases exceeded NCVER's funding indexation, employees employed by NCVER as at 2 May 2023, received a one-off cost of living payment of \$2,500.
 - c. An increase of 3.0% backdated to 1 July 2023.

32 Method of salary payment

- 32.1 Employee salaries are paid fortnightly by electronic funds transfer to a nominated account(s) with a financial institution of their choice located in Australia.
- 32.2 Changes to the form of payment may be made to accommodate unusual situations or circumstances with prior consultation with the affected employee.
- 32.3 The fortnightly rate of pay is determined by applying the following formula:

$$\text{Fortnightly pay} = \text{Annual salary} \times 12 \div 313$$

- 32.4 The hourly rate of pay is based on a standard day (7.5 hours) and is determined by applying the following formula:

$$\text{Hourly rate} = \text{Fortnightly pay} \div 75$$

33 Salary for part-time employees

- 33.1 Salary for part-time employees will be calculated according to their ordinary hours worked, on a pro-rata basis of a standard fortnight (75 hours).

34 Salary for Trainees

- 34.1 NCVER may choose to appoint Trainees. Trainees will be paid according to the rates set by Schedule E to the Miscellaneous Award 2020 which sets out minimum wage rates and conditions for employees undertaking traineeships.

35 Salary for Graduates

- 35.1 NCVER may choose to appoint employees under its graduate program. Graduates will be paid at the bottom of position Level 5.
- 35.2 Graduates will be consulted prior to placements and upon satisfactory completion of the program may be offered a Level 5 position, with their salary moving to the mid-point of Level 5 at that time.

36 Salary advancement

- 36.1 Each year, during January–mid February, employees will be entitled to submit an application to have their salary reviewed.
- 36.2 Any adjustment to their salary will be above that specified in *Clause 31 Increases in rates of pay*.
- 36.3 Refer to *Attachment B – Guidelines for individual salary advancement* for full details of the process.
- 36.4 Where salaries are deemed to be at an appropriate level for the position within NCVER, and significant contribution above and beyond the usual requirements of the position have occurred, recognition via non-salary related benefits may be considered.
- 36.5 Employees in position Levels 1-4 will be entitled to a 2% salary advancement annually on their anniversary date, subject to satisfactory performance, until midpoint of their salary level is reached. Once employees have reached midpoint, or if they wish to be considered for an increase in excess of 2%, they may apply for a further review in accordance with subclause 36.3.
- 36.5.1 For employees employed by NCVER prior to 1 July 2018, who were previously in Band 1 and have moved to Level 5 under the NCVER Job Evaluation and Remuneration Framework, this arrangement will remain in place until such time they reach midpoint of Level 5, change positions, or change position level.

37 Superannuation

- 37.1 Previous Enterprise Agreements introduced grandfathering arrangements for superannuation contributions. For the life of this Agreement, the grandfathered arrangements will continue as follows:
- a. For employees receiving 16% company contributions, the rate of company contribution will be maintained.
 - b. For employees receiving 13% company contributions, the rate of company contribution will be maintained.
 - c. For employees receiving 12% company contributions, the rate of company contribution will be maintained.
 - d. New ongoing and fixed-term employees will receive 12% company contributions.
 - e. Casual employees will receive company contributions in line with superannuation guarantee (SG) legislation.
- 37.2 Should NCVER company contributions exceed the concessional contributions cap for an employee, the employee may request for the excess amount to be converted to salary.
- 37.3 This clause will not operate in breach of the SG legislation.
- 37.4 Employees may nominate a complying superannuation fund of their choice to which superannuation contributions will be paid. If an employee does not nominate a superannuation fund, NCVER will make contributions to a complying superannuation fund as nominated by NCVER (Default Fund). NCVER will only make contributions into its Default Fund on behalf of the employee in circumstances permitted by legislation. NCVER reserves the right to change the Default Fund from time to time. During the term of this Agreement, NCVER will consult with the WCC regarding any proposed change to the nominated Default Fund.
- 37.5 Superannuation contributions will be made for employees over 70 years of age, conditional upon such arrangements being permitted by the applicable legislation and/or Australian Taxation Office (ATO) rulings.
- 37.6 For all new employees, NCVER will offer a financial superannuation counselling opportunity to the value of \$300 to be taken within the first 12 months of employment. A one-off counselling opportunity will also be available to any employee within two (2) months prior to reaching the minimum preservation age or at any-time after. Paid leave of up to two (2) hours is available for this financial counselling. Financial assistance is accessible as a reimbursement upon production of an eligible receipt.

Part E – Allowances and reimbursements

38 Overtime – Levels 1-8

38.1 Eligibility for overtime

38.1.1 Subject to this clause:

- a. Overtime will only be payable to employees in position Levels 1-8, including Graduates and Trainees, and only with the prior approval of the relevant Manager.
- b. Subject to the operation of NCVER's flexible working-time arrangements, an eligible employee will be paid overtime:
 - i. If a full-time employee – for time worked in excess of the employee's usual daily hours.
 - ii. If a part-time employee – for time worked in excess of 37.5 hours per week, or 7.5 hours per day, or if directed to work in excess of or outside the employee's contracted ordinary hours under *Clause 23 Hours of work*.
 - iii. If a Casual employee – for time worked in excess of 7.5 hours in one (1) day, or 37.5 hours in one (1) week, or outside the span of 7.30am to 6.30pm.

38.2 Overtime rates

Day/Time	Rate
Monday – Saturday: First three (3) hours	Time and one half
Monday – Saturday: After the first three (3) hours	Double time
Sunday	Double time
Public holiday	Double time and one half

38.3 Special provisions for part-time employees

- 38.3.1 All part-time employees will be consulted when additional work is available and, if agreed, can work the additional time over their contracted hours. A 15% loading on their ordinary rate, in lieu of leave entitlements, will apply to the hours worked beyond their contracted hours.
- 38.3.2 An employee who accepts additional hours under this clause is not entitled to overtime under subclause 38.1.1 b. ii. unless ordinary hours exceed 37.5 hours for the week or 7.5 hours for a day.
- 38.3.3 Any part time employee who works additional hours in any week will have the payment received under the Agreement reconciled with what would have been paid under the Clerks – Private Sector Award 2020, with any shortfall paid in the next pay period.

38.4 Work for unplanned out of hours situations

- 38.4.1 From time to time, at short notice, employees may be asked if they are able to work to attend to unplanned out of hours situations (e.g. IT outages). The Manager and employee will agree

prior to the work being performed, how recognition of the time worked will be recognised, using the options within this Agreement.

38.5 Time off in lieu (TOIL) of payment for overtime

38.5.1 An employee and their Manager (through mutual agreement) may allow for the employee to take time off in lieu of payment for overtime. For the purposes of this provision, 'TOIL' will be granted for a period equivalent to the period of overtime worked.

38.6 Meal allowance

38.6.1 Where an employee who is eligible for overtime payment is directed to work overtime for at least three (3) hours outside their ordinary hours, they will be entitled to an overtime meal allowance of \$26.

38.6.2 Where an employee works a further five (5) hours overtime on a Saturday, Sunday or public holiday, they will receive an additional overtime meal allowance of \$26.

38.6.3 Where a group of employees are working overtime, the company may provide a meal in lieu of paying a meal allowance. Employees may choose to be paid a meal allowance instead of being provided a meal.

38.6.4 Meal allowance is only payable for employees working away from their place of residence.

39 Time off in lieu (TOIL) – Levels 9-12

39.1 Subject to the operation of NCVER's flexible working-time arrangements as set out in *Clause 25 Flexible working arrangements and workloads*, those employees who are not eligible for paid overtime (i.e. employees in Levels 9-12), and with prior approval by their Manager, are able to take TOIL for work done in excess of normal daily hours.

40 Higher duties allowance

40.1 An allowance for performing the full duties of a higher position will be paid at no less than the minimum rate applicable to the higher level for a period of acting in that position.

40.2 Where an employee performs some but not all of the duties of the higher position, the duties to be performed together with the residual duties will be noted and a rate for the partial higher duties will be agreed.

40.3 Generally, no allowance is payable for periods of less than ten (10) consecutive working days.

40.4 However, the Managing Director may grant a discretionary allowance in circumstances where an individual has performed higher level duties for multiple short-term periods within a calendar year.

40.5 Approval of higher duties allowance is given by the Managing Director on the recommendation of the relevant Manager.

41 First aid and HSR allowance

41.1 Where an employee possesses a current Senior First Aid certificate and is appointed as a First Aid Officer for a period of three (3) years for NCVER, then that employee will be paid an

allowance for this responsibility. For the life of this Agreement, this amount will be \$30.00 per fortnight.

- 41.2 The amount will be paid on a pro-rata basis, based on the portion of full-time hours (37.5 hours per week) that the employee notionally works in the office and is therefore available to fulfill their obligations as a First Aid Officer.
- 41.3 An employee who has been appropriately trained and officially appointed to the position of Health and Safety Representative (HSR) with SafeWork SA will receive an allowance of \$30.00 per fortnight.

42 Travel and accommodation

42.1 Travel and accommodation expenses

- 42.1.1 Overseas and domestic air travel will be at economy standard unless otherwise specified in project contracts.
- 42.1.2 Travel and accommodation expenses for work-related travel approved by the relevant Manager are reimbursed as informed by the Australian Taxation Office (taxation determination regarding reasonable travel and meal allowance expense amounts).
- 42.1.3 The conditions applicable to the payment of travel allowance are:
- a. employees will be paid an appropriate meal allowance for their period of absence;
 - b. incidentals allowance is payable at the rate of one allowance per each overnight absence (not payable for day trips);
 - c. where meals are provided to an NCVER employee as part of conference/seminar proceedings or otherwise provided by a third party at no cost to the NCVER employee, meal allowance is not payable by NCVER in respect of that meal.
- 42.1.4 Variations to accommodation allowances may be approved by the Managing Director or HR Manager in special circumstances.
- 42.1.5 All overseas travel is subject to prior approval by the Managing Director.

42.2 Travel time

- 42.2.1 Employees in position Levels 1-8*:
- a. required to travel for business outside of normal rostered hours are entitled to claim travel hours as working time. This includes travel time to/from the airport from/to their normal place of residence, workplace or booked accommodation.
 - b. who have agreed to a request by an Executive to attend, as a representative of NCVER, an NCVER or external stakeholder function outside of normal rostered hours are entitled to record these hours, including travel time, as working time.
 - c. have the option (subject to discussion and prior approval from their Manager) to:
 - i. record additional working hours as flexitime. Refer to *Clause 23 Hours of work*.
 - ii. be paid overtime or take time off in lieu. Refer to *Clause 38 Overtime*.

42.2.2 Employees in position Levels 9-12:

- a. if official travel time outside of normal rostered hours is considered excessive or burdensome, employees may negotiate with their Manager, on a case by case basis, recognition of such hours via accessing time off in lieu. Refer to *Clause 39 Time off in lieu (TOIL) – Levels 9-12*.

43 Work-related expenses

- 43.1 In addition to reimbursements expressly provided by this Agreement, NCVER will meet reasonable requests for the reimbursement of expenses incurred by employees in performing their duties provided that the expenses are authorised in advance and receipts, or other evidence is provided.
- 43.2 Laptop computers and mobile telephones will be available from a company pool for the work use of employees requiring such equipment when travelling for work purposes.

44 Relocation expenses

- 44.1 An ongoing or fixed-term employee with a contract of 12 months minimum, who is moving from interstate to take up the appointment, or a current employee who is required to move interstate to fulfil NCVER business needs, may be eligible for reimbursement of relocation expenses at the discretion of the Managing Director. These expenses may cover the following:
 - a. Either:
 - i. the reasonable cost of relocating household effects, on the provision in advance of three (3) written quotes from different removalists; or
 - ii. a one-off contribution towards the cost of relocation. Such contribution may be as a reimbursement of selected expenses (subject to receipts being provided) or taken as an allowance payment (subject to applicable taxes).
 - b. Either:
 - i. a motor vehicle allowance at ATO rates if the employee drives from one site to the other; or
 - ii. an economy airfare for each family member who already resides with the employee prior to the decision to relocate and is relocating to reside with the employee in the new location.
 - c. Travel and accommodation expenses as prescribed by *Clause 42 Travel and accommodation*.
- 44.2 NCVER may require the employee to enter into a Repayment Agreement in accordance with this clause. Under a Repayment Agreement, should an employee who has received relocation assistance resign within 12 months of commencing employment, a pro-rata amount of the value specified in the Repayment Agreement will become a debt owing to NCVER. In deciding whether recovery of this debt will be pursued, NCVER will consider the personal circumstances of the employee.

45 Reunion visits

- 45.1 An employee who:
- a. as a consequence of their employment by NCVER, is required to temporarily reside in a place other than the locality in which their principal place of residence is located for a minimum of three (3) months, and
 - b. is provided by NCVER with assistance in the provision of that temporary residence
- will be entitled to receive support to facilitate periodic reunion with family.
- 45.2 Such support will be negotiated with the employee as part of the temporary relocation arrangements and will consider their personal preferences and circumstances.

46 Childcare support

- 46.1 NCVER will contribute to the cost of school holiday care for primary school children of employees in accordance with this clause.
- 46.2 The allowance is payable when:
- a. an employee requests leave during a school holiday period and for business reasons their application for leave is denied; and
 - b. the child is a family member of the employee for whom the employee has caring responsibility; and
 - c. all usual care options are unavailable.
- 46.3 Where both carers work for NCVER, the allowance will only be paid when both are at work.
- 46.4 On production of receipt from an approved school holiday program provider, NCVER will reimburse up to \$50 per child per day to a maximum of \$500 per family per school holiday period.
- 46.5 Where an employee has caring responsibilities and NCVER requires that employee to travel, NCVER will compensate for reasonable costs incurred when alternative care arrangements are required and notified to NCVER in advance.

47 Flu vaccinations

- 47.1 NCVER will make available to all employees covered under this Agreement free flu vaccinations. Should an employee not be on-site on the specified date, NCVER will reimburse the cost of out of pocket expenses charged by the employee's private physician or accredited healthcare professional.

48 Wellbeing payment

- 48.1 A payment of up to \$110 per financial year will be allocated to each employee to contribute to personal items that assist them to participate in healthy lifestyle activities.

- 48.2 All or part of the payment will be accessible as a reimbursement upon production of a receipt issued for an eligible item. Multiple items up to the value of the payment may be claimed but employees can only claim on one (1) occasion per year.
- 48.3 Submissions for payment must be made by 20 June, approved by a person who has appropriate expense authorisation delegation.
- 48.4 Eligible items include, but are not limited to:
- a. weight loss programs;
 - b. substance abuse management;
 - c. initial and diagnostic health check-ups (i.e. dental, eyesight, cholesterol, etc);
 - d. massage sessions;
 - e. meditation sessions;
 - f. fitness classes;
 - g. gym membership;
 - h. relaxation sessions;
 - i. 'self' training (e.g. positive thinking, self-esteem, emotion management, etc);
 - j. alternative therapies (not otherwise covered by the individual's health fund);
 - k. sporting activities/instruction (leisure courses);
 - l. sporting/health equipment;
 - m. to purchase equipment to setup and/or maintain a home office environment compliant with NCVET and WHS requirements.

Part F – Leave

49 Annual leave

- 49.1 Annual leave provides employees with the opportunity to take a break from work and pursue personal interests. This provision aims to promote the general wellbeing of employees and to create a reasonable balance between work and life.
- 49.2 Managers are responsible for managing leave by organising workloads.
- 49.3 Employees are responsible for giving reasonable notice that they wish to take annual leave.
- 49.4 Applications for annual leave of more than six (6) weeks duration, or where combined with other leave, the total absence is greater than six (6) weeks, are to be approved by the Managing Director or delegate. Leave for periods less than these amounts may be approved by the relevant Manager or delegate.
- 49.5 A full-time employee is entitled to 20 working days (150 hours) of annual leave for each year of service. Part-time employees receive a pro-rata entitlement.
- 49.6 Annual leave accumulates progressively according to the employee's ordinary hours.
- 49.7 Leave may be taken as accrued and can be taken in more than one period.
- 49.8 Where a public holiday falls on a weekday, such public holidays will not be counted as annual leave.

49.9 Excessive annual leave accrual

- 49.9.1 Where an employee has accrued the equivalent of eight (8) weeks or more annual leave, NCVER may request a meeting with the employee in order to genuinely try to agree upon steps that will be taken to reduce or eliminate the employee's excessive leave accrual.
- 49.9.2 If agreement cannot be reached under subclause 49.9.1, NCVER may, by giving an employee at least eight (8) weeks' notice in writing, direct the employee to take annual leave (of no less than one (1) week), provided that the direction does not result in the employee's remaining accrued entitlement to annual leave being less than six (6) weeks.
- 49.9.3 An employee to whom a direction has been given under this clause may make a request to take paid annual leave as if the direction had not been given. NCVER is not to take the direction into account in deciding whether to agree to such a request, and will not unreasonably refuse to agree to the request.
- 49.9.4 If leave is agreed after a direction is issued and the direction would then result in the employee's remaining accrued entitlement to paid annual leave at any time being less than six (6) weeks, the direction will be deemed to have been withdrawn.

49.10 Cashing out of annual leave

- 49.10.1 An employee may apply to cash out their annual leave at any time subject to the following:
 - a. Any cash out of paid annual leave is subject to the agreement of NCVER at its discretion.

- b. Paid annual leave must not be cashed out if the cashing out would result in their remaining accrued entitlement to paid annual leave being less than the equivalent of four (4) weeks leave.
 - c. Each cashing out of a particular amount of paid annual leave must be made by a separate agreement in writing between NCVER and the employee.
 - d. The employee shall be paid at least the full amount that would have been payable to them had they taken the leave that they have cashed out.
- 49.10.2 An employee's accrued entitlement to annual leave will reduce by the amount of leave cashed out.

50 Long service leave

50.1 Long service leave is provided by the State or Territory legislation. This clause contains additional provisions, which will not operate to contravene the applicable State or Territory legislation.

50.2 Amount of long service leave

50.2.1 A full-time employee is entitled to the following amount of long service leave:

- a. After seven (7) years continuous service: 45.5 working days leave on full pay, or 91 days on half pay; and
- b. for each continuous year of service thereafter: 6.5 working days on full pay or 13 days on half pay, subject to subclause 50.2.1 c.
- c. Employees who already had continuous employment at NCVER for a period greater than ten (10) years as at 6 February 2003, and whose service has been continuous since, are entitled to 10.7 working days leave on full pay or 21.4 days leave on half pay for the sixteenth year of service and each year thereafter, instead of the entitlement in subclause 50.2.1 b.

50.2.2 Part-time employees will receive the above entitlements on a pro-rata basis according to their ordinary hours of work.

50.3 Continuous service

50.3.1 For the purpose of long service leave, a break in service that is not more than 60 days in duration will not break service but the duration of the break from work is not to be taken into account in calculating the period of the employee's service.

50.4 Payment for long service leave

50.4.1 An employee who takes long service leave will be paid at their ordinary rate of pay for the number of hours they would have worked on that day, or at half that amount if they take long service leave at half pay.

50.4.2 An employee who has completed at least seven (7) years of service may request to be paid out part or all long service leave credits. If permitted by State or Territory legislation, an individual agreement to that effect may be made between the employee and NCVER, and recorded in writing.

- 50.4.3 If an employee with not less than seven (7) years' continuous service resigns before taking long service leave, a pro-rata lump sum payment in lieu of leave will be made.
- 50.5 **Taking long service leave**
- 50.5.1 Where a public holiday falls on a weekday, such public holidays will not be counted as long service leave.
- 50.5.2 If an employee on long service leave wishes to convert to personal leave or special leave this will be at the discretion of the Managing Director.
- 50.5.3 Long service leave taken at half pay can only be taken in periods of two calendar weeks or greater.

51 Variable leave without pay (48 in 52)

- 51.1 Variable leave provides employees with the opportunity, subject to negotiations with their Manager and approval by the Managing Director, to take leave in addition to their normal weeks of available annual and entitled long service leave. This provision allows greater flexibility for employees who wish to address personal issues of work/life balance, and for employees who wish to extend their leave options for other personal reasons.
- 51.2 Application for variable leave should be made on the Variable Leave Agreement form and intended dates for use of variable leave should be given together with an indication of when other forms of leave will be taken. This forms the basis of the Variable Leave Agreement for a 12-month period.
- 51.3 Under this provision an employee may access up to four (4) weeks variable leave per year, to be taken in addition to available annual and long services leave, by being paid a reduced salary for 52 weeks.
- 51.4 On average there are 365.25 days per year of which 5/7 are weekdays, therefore weekdays = 260.89 days. There are 13 public holidays (including 3 NCVER holidays) and we allow 20 days per year annual leave, therefore $260.89 - 13 - 20 = 227.89$.
- 51.5 The formula for calculating reduced salary is below and ensures horizontal equity against other forms of flexible working practices.

Adjustment to salary of an employee working VLWOP	
Number of potential working days in a year:	227.89*
*The formula for calculating the pay rate for an employee on variable leave is: <div style="text-align: center;"> $\frac{\text{Potential working days in year (227.89)} - \text{variable leave days}}{\text{Potential working days in year (227.89)}}$ </div>	

Number of weeks VLWOP (full-time equivalent (FTE))	% of FTE salary paid during VLWOP year
1 week (5 days / 37.5 hours)	97.8%
2 weeks (10 days / 75 hours)	95.6%
3 weeks (15 days / 112.5 hours)	93.4%
4 weeks (20 days / 150 hours)	91.2%
*If part-time, the number of weeks VLWOP requested above will be pro-rated.	

- 51.6 Variable leave becomes available to the employee as soon as they begin to work under the reduced salary.
- 51.7 Employees are responsible for giving reasonable notice that they wish to take variable leave. Prior to each individual period of variable leave taken within the agreement year, a leave entry must be submitted in the system and authorised by the employee's Manager.
- 51.8 This form of leave does not lead to loss of any other entitlements, apart from the specified salary variation and a corresponding reduction in superannuation contributions.
- 51.9 If employment is terminated, a reconciliation of payment received and variable leave without pay taken will be made and the employee's final payment will be adjusted to take into account any over or under payments.

52 Personal/carer's leave

52.1 Entitlement

- 52.1.1 Full-time employees are entitled to personal/carer's leave on full pay of 20 working days (150 hours) for each year of service.
- 52.1.2 Personal/carer's leave accrues progressively according to ordinary hours of work.
- 52.1.3 Full-pay credits of personal/carer's leave may be converted to half-pay credits by written agreement between the employee and NCVER.
- 52.1.4 NCVER may, subject to approval by the Managing Director, on application by the employee:
- advance the employee personal/carer's leave credits; and/or
 - grant to the employee special paid or unpaid leave.
- 52.1.5 Where such request at subclause 52.1.4 a and/or 52.1.4 b is denied, the employee will be provided with written reasons for the decision, within 21 days of the application.
- 52.1.6 Part-time employees will receive the above entitlements on a pro-rata basis according to their ordinary hours of work.

52.2 Transitional accrual arrangements

- 52.2.1 An employee who:
- commenced employment prior to the commencement of this Agreement; and

- b. was granted, in accordance with the previous Enterprise Agreement, personal/carer's leave at the commencement of their employment or at the commencement of a subsequent year of service (i.e. in advance of a year of service)

will not commence progressive accrual of personal/carer's leave under this Agreement until 12 months after their most recent grant of personal/carer's leave.

52.3 Use of personal/carer's leave

52.3.1 Subject to this clause, an employee is entitled to take personal/carer's leave:

- a. because the employee is not fit for work because of a personal illness, or personal injury, affecting the employee;
- b. to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because of a personal illness, or personal injury, affecting the member; or for an unexpected emergency affecting the member;
- c. to assist family members with legal and medical appointments that could not be made outside of working hours;
- d. for bereavement leave for a family member (in excess of compassionate leave entitlement);
- e. to move house;
- f. to respond to any emergency considered appropriate by their Manager; or
- g. for pre-natal appointments.

52.4 Unpaid carer's leave

52.4.1 All employees, including Casual employees are entitled to two (2) days unpaid carer's leave each time a member of their immediate family or household requires care and support due to illness, injury or unexpected emergency. Unpaid carer's leave is only available for full-time and part-time employees once paid personal/carer's leave entitlements have been exhausted.

52.5 Leave for moving house

52.5.1 One (1) day per calendar year may be taken for the purpose of moving house. This leave is deducted from an employee's personal/carer's leave entitlement.

52.6 Certification requirements

52.6.1 An employee must provide medical certification or other evidence for personal/carer's leave absences of more than two (2) consecutive scheduled working days.

52.6.2 A Manager or an Executive may request medical certification or other evidence for any absences if there is a pattern of recurring and/or frequent absences, or there is reasonable doubt that personal/carer's leave is not being taken in a manner consistent with the purposes for which it is intended. Any request for certification or evidence must be made in advance and not retrospectively.

53 Compassionate leave

- 53.1 An employee is entitled to a period of up to two (2) days compassionate leave for each occasion when a member of the employee's immediate family or household member:
- a. contracts or develops a personal injury or illness that poses a serious threat to his or her life, or
 - b. dies.
- 53.2 This leave is separate to personal/carer's leave (including extended compassionate/bereavement leave) provided for in *Clause 52 Personal/carer's leave*.

54 Special leave

- 54.1 Additional special leave may be approved on a paid or unpaid basis at the discretion of the Managing Director on the recommendation of the relevant Manager. This may include paid or unpaid ceremonial/religious leave for employees of Aboriginal or Torres Strait Islander descent, for any other recognised religious holidays or bereavement, or to deal with an emergency situation.

55 Leave without pay

- 55.1 Request for leave without pay (LWOP), other than that referred to in *Clause 51 Variable leave without pay (48 in 52)*, may be granted by the Managing Director for any period. Where the request for LWOP is denied, the employee will be provided with written reasons for the decision within 21 days.
- 55.2 How a period of LWOP counts for service, including for leave accrual purposes, is determined by the Fair Work Act 2009 (Cth) and the relevant long service leave legislation.
- 55.3 Where an employee has approved LWOP for a period of six (6) months or longer (except if the leave without pay is part of a period of parental leave), the employee may be required to return to a position at the same salary level, performing commensurate duties to those prior to going on leave, but is not guaranteed the particular position they held prior to going on leave.
- 55.4 Where a period of LWOP includes a declared public holiday or the Christmas shut-down period, the employee will not be paid for those days. Refer to *Clause 27 Public Holidays* and *Clause 28 Christmas shut-down*.

56 Parental leave

56.1 Unpaid parental leave

- 56.1.1 An employee with at least 12 months continuous service shall be able to access unpaid parental leave in accordance with the NES, if the leave is associated with:
- a. the birth of a child of the employee, the employee's spouse, or the employee's de facto partner, or
 - b. the adoption of a child under 16 by the employee.

- 56.1.2 Eligible employees can take a period of up to 12 months of unpaid parental leave. Employees may request additional unpaid parental leave of up to 12 months and will receive a written response to their request within 21 days. Where the request for additional unpaid parental leave is denied, the employee will be provided with written reasons for the decision.
- 56.1.3 Where both parents are employees of NCVER and choose to share unpaid parental leave, each parent can take a separate period of up to 12 months. The combined leave cannot be for more than 24 months.
- 56.2 **NCVER paid parental leave**
- 56.2.1 An employee, other than a Casual, who is entitled to unpaid parental leave referred to in subclause 56.1.1 is also entitled to NCVER paid parental leave in accordance with subclauses 56.3 and 56.4.
- 56.3 **Primary carer leave**
- 56.3.1 The primary carer is entitled to 15 weeks NCVER paid parental leave within the 12-month unpaid parental leave period.
- 56.3.2 Employees have the option of taking their paid leave entitlements (which may be made up of annual leave and long service leave in addition to the 15 weeks NCVER paid parental leave) at half pay.
- 56.3.3 Each paid leave type (parental, annual, long service leave) is to be taken in a block and is exclusive of any public holidays and Christmas shut-down days that fall during the period.
- 56.4 **Supporting partner leave**
- 56.4.1 A supporting partner is entitled to three (3) weeks paid supporting partner leave where they are not the primary carer to a dependent child and:
- the employee or the employee's partner is the parent of a newly born child;
 - the employee or the employee's partner is the adoptive parent of a newly adopted child under 16 years of age.
- 56.4.2 Supporting partner leave is available within three (3) months of the birth or date of adoption placement, is to be taken in a block and is exclusive of any public holidays that fall during the period.
- 56.5 **Returning to work**
- 56.5.1 An employee is entitled to return to:
- their pre-parental leave position, or
 - an available position for which they are qualified and suited, which is nearest in status and pay to their pre-parental leave position, if their pre-parental leave position doesn't exist anymore.
- 56.5.2 Additionally, an employee returning to work from parental leave has the right to request flexible working arrangements, including part-time employment. Refer to *Clause 25 Flexible working arrangements and workloads* and *Clause 24 Part-time arrangements*.
- 56.5.3 Where the returning employee seeks part-time employment, the employee's previous duties must be considered for conversion initially and, if this is not practical, the employee may be transferred to an alternative role, suitable for part-time employment.

- 56.5.4 Where the request for part-time employment is denied, the employee will be provided with written reasons for the decision within 21 days.

57 Family and domestic violence leave and support

- 57.1 NCVER acknowledges that employees may face situations of violence or abuse in their personal life that may affect their attendance or performance at work. NCVER is committed to providing support to employees that experience family and domestic violence.

57.2 Definition of family and domestic violence

- 57.2.1 For the purpose of this clause, family and domestic violence is defined as any violent, threatening or other abusive behaviour by an individual against a member of the individual's family or household (current or former). To avoid doubt, this definition includes behaviour that:

- a. is physically or sexually abusive; or
- b. is emotionally or psychologically abusive; or
- c. is economically abusive; or
- d. is threatening; or
- e. is coercive; or
- f. in any other way controls or dominates the family or household member and causes that person to feel fear for their safety or wellbeing or that of another person; or
- g. causes a child to hear or witness, or otherwise be exposed to the effects of, such behaviour.

- 57.2.2 The individual could be:

- a. an employee's close relative;
- b. a member of an employee's household; or
- c. a current or former intimate partner of an employee.

- 57.2.3 A close relative is:

- a. an employee's:
 - i. spouse or former spouse;
 - ii. de facto partner or former de facto partner;
 - iii. child;
 - iv. parent;
 - v. grandparent;
 - vi. grandchild;
 - vii. sibling;
- b. an employee's current or former spouse or de facto partner's child, parent, grandparent, grandchild or sibling; or

- c. a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.

57.3 **Paid family and domestic violence leave**

57.3.1 Employees who are experiencing family and domestic violence can take up to ten (10) days per year family and domestic violence leave to deal with the impacts of family and domestic violence where it is not practical to do so outside their work hours. This may include:

- a. attending legal proceedings, counselling, appointments with medical, financial or legal professionals;
- b. making arrangements for their own or a family member's safety (including relocation); or
- c. other activities associated with the family and domestic violence.

57.3.2 For full-time or part-time employees, family and domestic violence leave will be paid at the employee's full rate of pay for the hours they would have worked had they not taken leave.

57.3.3 Casual employees will be paid at their full rate of pay for the hours they were rostered to work in the period they took leave.

57.3.4 This leave will be in addition to existing leave entitlements, and employees can access the full amount of leave from the day they start work.

57.3.5 An employee's leave balance renews each year on their anniversary date but doesn't accumulate from year to year if it isn't used and is not paid out at separation.

57.3.6 The leave can be taken as single or multiple days, or as part days by agreement.

57.4 **Access to additional leave**

57.4.1 Employees can access their personal leave entitlements (sick and carers) if they have a personal illness or injury, or need to provide care or support to a member of their immediate family or household who is affected by an unexpected emergency, illness or injury, where this is caused by family and domestic violence.

57.4.2 In addition to paid family and domestic violence leave, employees can make reasonable use of, and NCVER will provide reasonable access to, any available annual and long service leave entitlements and flexible working arrangements to assist them in dealing with issues arising from such situations.

57.4.3 Upon application to the Managing Director, up to five (5) days paid special leave may be granted for the purposes of dealing with domestic violence issues.

57.5 **Notice and evidentiary requirements**

57.5.1 Employees must advise as soon as possible if they need to access family and domestic violence leave. It is recognised that sometimes this may not be until after the leave has started.

57.5.2 An employee may advise their Team Leader, Manager, an Executive or HR. The person with whom the issue has been raised may seek advice from HR if the employee chooses not to see HR.

57.5.3 If requested, the employee must provide reasonable evidence that the leave is for the purpose as set out in this clause. Such evidence may include a document issued by the

police service, a court, a health professional, a family violence support service, a lawyer, a financial institution, an accountant or a statutory declaration.

- 57.5.4 NCVER will take all reasonable measures to ensure that any personal information provided by the employee regarding family and domestic violence is kept confidential. Information will not be kept on the employee's personnel file.

57.6 Individual support

- 57.6.1 In order to provide a safe working environment to all employees, NCVER will consider any reasonable request from an employee experiencing family violence for:
- a. changes to their span of hours or pattern of hours;
 - b. job redesign or changes to duties, where suitable alternatives are able to be identified;
 - c. relocation to suitable employment or alternative work location within NCVER where suitable alternative is able to be identified;
 - d. a change to their work telephone number or email address to avoid harassing contact;
 - e. any other appropriate measure including those available under existing individual flexibility arrangements and flexible work arrangements.
- 57.6.2 Such alternatives may be agreed on a temporary or permanent basis, on a case by case basis.
- 57.6.3 An employee who discloses that they are experiencing family and domestic violence will be offered access to professionals trained specifically in family and domestic violence through the Employee Assistance Program (EAP).

58 Defence services leave

- 58.1 Any employee who is a member of the reserve defence forces is entitled to be absent on defence service during any period that they are rendering defence service.
- 58.2 The employee may access their leave entitlements for this period, but will not be required to do so. Any period of absence where paid leave entitlements are not accessed will be unpaid.

59 Emergency services leave

- 59.1 An employee (except Casuals) engaged in a voluntary emergency management activity with a recognised emergency management body, is entitled to be absent from employment for the time that they are engaged in the activity, including reasonable travelling time associated with the activity, and reasonable rest time immediately following the activity.
- 59.2 NCVER will provide up to ten (10) days leave with pay per calendar year for this purpose. Any additional absences will be unpaid. This leave doesn't accumulate from year to year if it isn't used and is not paid out at separation.
- 59.3 Employees must notify NCVER as soon as practicable of their absence, including the period or expected period of absence, and if requested, evidence to support their absence.

60 Jury service

- 60.1 Leave of absence with full pay will be granted to enable an employee (except Casuals) to attend Court as a juror.

61 Blood donation leave

- 61.1 Any employee will be granted leave with pay for a maximum of four (4) visits each year for a period of 1.5 hours each time to donate blood.
- 61.2 Application for leave for organ donation may be made through personal leave provisions of this Agreement.

Part G – Performance and capability

62 Career path

- 62.1 On an ongoing basis, NCVER commits to promoting career development opportunities that are consistent with business needs by:
- highlighting job opportunities as they arise within NCVER;
 - identifying the scope of career development on a NCVER wide basis;
 - encouraging lateral as well as upward career moves, including mentoring/coaching, succession planning and job rotations;
 - promoting employee development opportunities as outlined in the Personal Development Policy.

63 Performance development cycle

- 63.1 NCVER is committed to a collaborative, transparent and consistent approach to managing performance development, through regular, open and constructive conversations between employees and their Team Leader/Manager.
- 63.2 This approach requires an equal and balanced assessment of an employee's past performance as well as consideration of future performance and opportunity, giving support as needed to both informal learning and formal professional development, and taking into account both the employee's and NCVER's needs.
- 63.3 Performance measures must be realistic, measurable, and within the control of the employee.
- 63.4 NCVER encourages employees to undertake personal development to enhance skills and personal effectiveness, develop new skills to advance career, or in response to organisational change.
- 63.5 Where NCVER has introduced changes to business practices that impact employee functions and roles, employees will receive NCVER supported training and development opportunities to manage this change.
- 63.6 NCVER supported personal development may occur through avenues such as study assistance (financial assistance and/or study leave), training, work experience or mentoring.
- 63.7 Training and personal development that is required to effectively perform the duties of a position will be provided for on paid time.
- 63.8 Approval of such support will consider personal development plans and NCVER's strategic and operational needs.
- 63.9 The NCVER Performance Development Cycle (PDC):
- will align individual and shared objectives with strategic objectives and provide a joint consensus of where we are going, and importantly how we will do it;
 - will help build relationships through respectful and timely conversations that establish and build trust;

- c. will establish accountability for, and ownership of, outcomes;
- d. will provide opportunity for review, reflection and learning on actual outcomes compared with planned objectives;
- e. will identify opportunities for improvement focus and future development opportunities;
- f. acknowledges that 'how' we do things (that is our commitment to behaving in a manner consistent with NCVER values), is as important as 'what' we achieve;
- g. should be applied equitably but allow suitable flexibility to cater for individual needs.

64 Underperformance

- 64.1 This clause applies to underperformance for employees who have completed more than six (6) months service and does not apply to misconduct. Refer to *Clause 65 Misconduct* for further details.
- 64.2 Underperformance refers to the persistent failure of an employee to perform the duties of their position to a standard which would be reasonably expected, given the nature, purpose and level of the position within NCVER, without sufficient mitigating factors being present.
- 64.3 NCVER is committed to working with underperforming employees and their Managers to attain and sustain the standards required, including providing access to training and development to address identified skill gaps if they exist.
- 64.4 Refer to *Attachment E – Guidelines for managing underperformance* for more detail regarding the informal and formal stages of managing underperformance.

Part H – Workforce management

65 Misconduct

- 65.1 An employee who exhibits:
- unsatisfactory behaviour including any breach of NCVER's Code of Conduct;
 - behaviour in a private capacity that adversely and seriously reflects on NCVER; or
 - serious misconduct
- may become liable to disciplinary action.
- 65.2 Where allegations regarding any of the above are made against an employee, the employee shall at any time be entitled to assistance or representation from anyone of their choice.
- 65.3 Where an employee may be liable to disciplinary action:
- The disciplinary allegation may be dealt with and determined by the employee's immediate Manager who, after affording the employee a reasonable opportunity to respond in writing or orally, shall, if applicable, counsel and convey to the employee the standards expected of that employee. A written record of such counselling shall be made. The employee will be shown the written record and will have the opportunity to comment on its contents whether in writing or orally.
 - An employee or the employee's immediate Manager may require a disciplinary allegation to be referred to the Managing Director to be dealt with and determined in accordance with the provisions of this clause.
 - The employee shall be informed by the Managing Director in writing of the alleged behaviour or omission and shall be given reasonable opportunity to respond in writing or orally to each allegation.
 - If it is alleged that the behaviour or omission constitutes serious misconduct:
 - the employee shall, on receipt of the written notice of the allegation(s), be entitled to take not more than seven (7) days special leave with pay and shall provide a written response to the allegation within seven (7) days;
 - the Managing Director shall refer the allegation(s) and the employee's response to an appropriate person or committee formed for the purpose, or external counsellor/consultant who shall investigate and provide a report to the Managing Director within seven (7) days;
 - the Managing Director shall have regard to the report and shall determine, on the balance of probabilities, whether the employee is liable to disciplinary action and shall so advise the employee.
- 65.4 Where the Managing Director determines that an employee is liable to disciplinary action or termination:
- the Managing Director shall so inform the employee and provide the employee with a reasonable opportunity to respond (either orally or in writing) as to what, if any, disciplinary action should be taken if that issue has not previously been addressed by the employee; and

- b. if the Managing Director determines that disciplinary action should be taken, they may do any one, or more, of the following:
 - i. counsel the employee as to the standard of work or behaviour expected of the employee;
 - ii. reprimand the employee;
 - iii. suspend the employee without remuneration for a period not exceeding four (4) weeks;
 - iv. if the employee has been the subject of previous disciplinary action, terminate the employee's employment on giving four (4) weeks' notice or making payment in lieu thereof;
 - v. if the employee is guilty of serious misconduct, terminate the employee's employment with or without notice.

65.5 Appropriate written records shall be kept at each step of the disciplinary action.

65.6 Except where the outcome is termination of employment, an employee may appeal in writing against any disciplinary finding, action or both to the Chair of the NCVER Board, and have access to dispute resolution mechanisms provided for in this Agreement.

65.7 The Managing Director may delegate to another person any part or the whole of the Managing Director's participation in the disciplinary and/or appeal process.

65.8 All employees who are material to the investigation must take part in internal investigations if reasonably required by the employer.

66 Termination of employment

66.1 Resignation

66.1.1 NCVER requires employees to give a reasonable period of notice of intention to resign from their employment. A minimum period of two (2) weeks' notice is required unless otherwise indicated by the Managing Director. Four (4) weeks' notice is required for employees within position Levels 10-12, and key individuals within NCVER.

66.1.2 All employees will receive notification of applicable notice period in enterprise-wide salary adjustment letters each year. Thereafter, the applicable notice period for employees will be specified in the letter of offer at the time of employment or change in role.

66.1.3 Annual and long service leave cannot be taken during the notice period.

66.1.4 If an employee fails to give the required notice, the amount equal to the wages for the notice period not given becomes a debt owing to NCVER. By agreement, the employee may repay the amount owing to NCVER. The employee may agree in writing that the amount owing to NCVER may be deducted from any wages owed to the employee. If agreement is not reached on repayment, NCVER may initiate proceedings to recover the amount by lawful means.

66.1.5 The Managing Director and employee may mutually agree a notice period arrangement that differs from the requirements in subclauses 66.1.1, 66.1.3 and 66.1.4.

66.2 Notice of termination by NCVER

66.2.1 Subject to this clause, NCVER shall not terminate an employee's employment unless NCVER has given the employee written notice of the day of the termination (which cannot be before the day the notice is given).

66.2.2 NCVER shall not terminate the employee's employment unless:

- a. the time between giving the notice and the day of the termination is at least the period (the minimum period of notice) as provided in this clause; or
- b. NCVER has paid the employee payment in lieu of notice of at least the amount NCVER would have been liable to pay the employee at the full rate of pay for the hours the employee would have worked had the employment continued until the end of the minimum period of notice. This rate of pay includes any amount that would have been paid to the employee in respect to the ordinary hours that the employee would have worked.

66.2.3 The minimum period of notice shall be worked out as follows:

Employee's period of continuous service with NCVER at the end of the day the notice period is given	Period of Notice
Not more than one (1) year	One (1) week
More than one (1) year but not more than three (3) years	Two (2) weeks
More than three (3) years but not more than five (5) years	Three (3) weeks
More than five (5) years	Four (4) weeks
The period shall be increased by one (1) week if the employee is over 45 years old and has completed at least two (2) years of continuous service with NCVER at the end of the day the notice is given.	

66.3 Exclusions from obligation to provide notice of termination

66.3.1 The entitlement to notice of termination does not apply to the following employees:

- a. a fixed-term employee as defined in this Agreement (but only in the event that the employee's fixed-term contract has reached its nominated expiry date);
- b. a Trainee as defined in this Agreement (but only in the event that the employee's Training Contract has reached its nominated expiry date);
- c. a Casual employee;
- d. an employee prescribed by the Fair Work Act 2009 (Cth) or the Regulations of the Act as an employee to whom notice does not apply; or
- e. an employee who is dismissed for serious misconduct justifying summary dismissal.

67 Payment on death

67.1 Upon the death of an employee, any payments that the employee was entitled to upon cessation of employment shall be paid to the employee's estate.

68 Redundancy and retrenchment

68.1 Definitions and applicability

68.1.1 Redundancy is where a position is no longer required to be performed as a result of:

- a. the closing down or reorganisation of the whole or part of NCVER's operations or by amalgamation of NCVER's operation with another organisation;
- b. the adoption of changed business practices;
- c. technological change, changes to business levels;
- d. the duties usually performed by the employee are to be moved to an interstate location and the employee is unable to perform the duties at the new location.

68.1.2 When a position or number of positions are identified as being redundant, the Managing Director or representative of, will at the earliest practicable time:

- a. advise in writing, the employee(s) directly affected of the situation, the reasons for the decision, and the reasons for not pursuing alternative options;
- b. hold discussions with the employee(s) and, if they choose, their representatives.

68.1.3 Retrenchment occurs where an employee who occupied a position that has been made redundant has their employment terminated. A retrenchment payment will be paid to eligible employees.

68.1.4 An employee shall not be eligible for retrenchment if:

- a. immediately prior to termination the employee is employed on a casual or fixed-term basis;
- b. immediately prior to termination the employee is employed on a fixed-term basis and the termination occurs on the expiry of the fixed-term;
- c. the employee has voluntarily retired under provisions of a pension or superannuation scheme;
- d. the employee is offered suitable alternative employment on the same site;
- e. the closure is attributable to war, earthquake, or civil disturbance.

68.2 Principles of retrenchment

68.2.1 Before determining that an employee will be retrenched, NCVER will consider re-deployment options, including transfer, redeployment, reduction in hours and job swaps. An employee whose position has been made redundant will be considered first for any vacant positions at or below level, provided they can reasonably satisfy the requirements of the vacant position following a reasonable period of re-training.

68.2.2 Where selection for retrenchment is necessary, because the number of employees in like positions needs to be reduced, selection will be based on merit, with consideration given to the knowledge, skills and experience requirements of the ongoing positions. Where possible, NCVER will also consider the preferences of affected employees.

68.3 Retrenchment notice periods and payments

68.3.1 The following periods of notice period will apply:

Notice period	
Employees under 45 years of age, or Employees 45 years of age and over with less than two (2) years continuous service	Five (5) weeks' notice, or payment in lieu of notice
Employees 45 years of age and over with at least two (2) years continuous service	Six (6) weeks' notice, or payment in lieu of notice

68.3.2 In addition to the prescribed period of notice above, employees will also be entitled to the following payment:

Payment for years of service
Two (2) weeks salary for each year (or part year) of service for the first six (6) years, then three (3) weeks salary for each year (or part year) beyond six (6) years.

68.3.3 The maximum entitlement under this clause shall be payment equivalent to a total of 52 weeks salary.

68.3.4 Any part year of service will be counted as a full-year for the purposes of calculating years of service payment. Broken periods of service, where the break is up to 60 days in duration, will be accumulated.

68.3.5 The amount of payment will be calculated using the employee's base rate of pay for their ordinary hours of work.

68.3.6 NCVER will provide the affected employee(s) with the following:

- a. financial information regarding the amount of severance pay (including pay in lieu of notice, any pro-rata annual leave or pro-rata long service leave), taxation rates applicable to various payments, and any options in relation to superannuation;
- b. assistance with access to counselling/outplacement services.

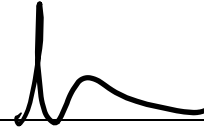
68.4 Involvement of the Workplace Consultative Committee (WCC)

68.4.1 The Managing Director will consult with the WCC where major change to the company's operating environment may result in significant employee changes including redeployment and/or redundancies is being considered or has been decided. Refer to *Clause 11 Consultation* for further details.

Part I – Formal acceptance and signatories

The **National Centre for Vocational Education Research Ltd Enterprise Agreement 2022-2025** is made and approved under the Fair Work Act 2009 (Cth). It is an Enterprise Agreement between the National Centre for Vocational Education Research Ltd and those of its employees whose employment is subject to this Agreement.

Signed for and on behalf of the National Centre for Vocational Education Research Ltd by its authorised signatory:



Signature of authorised signatory

Simon Walker

Full name of authorised signatory

Managing Director

Position of authorised signatory

11/12/2023

Date

Signed for and on behalf of **employees**:



Signature of bargaining representative

Kelly Frazer

Full name of bargaining representative

11/12/2023

Date

Signed for and on behalf of **employees** by the Community and Public Sector Union's authorised signatory:



Signature of authorised signatory

Melissa Payne

Full name of authorised signatory

Deputy National President

Position of authorised signatory

18/12/23

Date

Address for the Managing Director and all bargaining representatives, except for the Community and Public Sector Union, is Level 5, 60 Light Square, Adelaide SA 5000.

Address for the Community and Public Sector Union is 1/40 Brisbane Avenue, Barton ACT 2600.

Attachment A – Rates of pay

The following rates of pay apply under this Agreement.

Notwithstanding the rates of pay specified below, NCVER may negotiate with an existing or prospective employee an individual remuneration package. This is provided that the components of the package to be negotiable are subject to aggregate value remaining constant had the employee not agreed to the package, and includes all other conditions in this Agreement.

NCVER full-time equivalent annual pay rates and pay increases

Job Level	Scale	@ 1 July 2022 New salaries 3% increase	@ 1 July 2023 New salaries 3% increase	@ 1 July 2024 New salaries 3% increase
Trainee	Trainee wages will be set according to rates set by Schedule E to the Miscellaneous Award 2020			
3	Bottom	\$ 50,004	\$ 51,504	\$ 53,049
	Mid-point	\$ 55,525	\$ 57,191	\$ 58,907
	Top	\$ 61,045	\$ 62,876	\$ 64,762
4	Bottom	\$ 55,958	\$ 57,637	\$ 59,366
	Mid-point	\$ 62,128	\$ 63,992	\$ 65,912
	Top	\$ 68,297	\$ 70,346	\$ 72,456
Graduates	Graduates will be paid at the bottom of Level 5 for the duration of their participation in the Graduate Program			
5	Bottom	\$ 64,548	\$ 66,484	\$ 68,479
	Mid-point	\$ 71,684	\$ 73,835	\$ 76,050
	Top	\$ 78,819	\$ 81,184	\$ 83,620
6	Bottom	\$ 70,137	\$ 72,241	\$ 74,408
	Mid-point	\$ 77,930	\$ 80,268	\$ 82,676
	Top	\$ 85,723	\$ 88,295	\$ 90,944
7	Bottom	\$ 80,636	\$ 83,055	\$ 85,547
	Mid-point	\$ 89,619	\$ 92,308	\$ 95,077
	Top	\$ 98,603	\$ 101,561	\$ 104,608
8	Bottom	\$ 92,759	\$ 95,542	\$ 98,408
	Mid-point	\$ 103,040	\$ 106,131	\$ 109,315
	Top	\$ 113,324	\$ 116,724	\$ 120,226
9	Bottom	\$ 106,720	\$ 109,922	\$ 113,220
	Mid-point	\$ 118,518	\$ 122,074	\$ 125,736
	Top	\$ 130,424	\$ 134,337	\$ 138,367
10	Bottom	\$ 119,168	\$ 122,743	\$ 126,425
	Mid-point	\$ 132,373	\$ 136,344	\$ 140,434
	Top	\$ 145,578	\$ 149,945	\$ 154,443
11	Bottom	\$ 133,131	\$ 137,125	\$ 141,239
	Mid-point	\$ 148,284	\$ 152,733	\$ 157,315
	Top	\$ 163,436	\$ 168,339	\$ 173,389
12	Bottom	\$ 149,365	\$ 153,846	\$ 158,461
	Mid-point	\$ 165,601	\$ 170,569	\$ 175,686
	Top	\$ 181,836	\$ 187,291	\$ 192,910

Attachment B – Guidelines for individual salary advancement

Salary advancement

In January – mid February each year, following finalisation of the previous year's Performance Development Cycle (PDC) process, employees may apply for a review of their salary, above that allowed for via the enterprise-wide salary increase, using the following guidelines.

To facilitate a corporate perspective on negotiations

1. The employee and Manager should discuss the merits of applying for a salary review during the 12-month PDC conversation and note the outcome of this conversation on the PDC form.
2. By mid-February each year (exact date will be advised yearly by the Executive Committee), employees are to put their request for a salary review, in writing, using the salary advancement template. The template should be passed to their Manager.
3. The template will pass through the employee's Manager to the HR Manager.
4. The HR Manager will meet, and facilitate discussions, with the Executive Committee on all applications submitted. If required, the Managing Director, or other member of the Executive Committee, when considering the request, will consult with relevant informed parties, including, as required, the employee submitting the request.
5. The employee will receive a written response to their request. All employees submitting a request for a review in salary will have the option of a personal meeting with the Managing Director to discuss the outcome.
6. Salary negotiations will be completed in a timely manner and approved adjustments will take effect from 1 April each year.
7. Employees may seek a review of their salary through their Manager outside the yearly window for reviews when there are sustained changes in complexity and responsibility in their job.
8. The application process, as well as the outcomes, will recognise and respect both confidentiality of the request and the employee, including any consultation.

Factors in remuneration negotiation

A number of factors will be taken into consideration in the negotiation. These are:

1. The relative performance of the employee against the competency requirements for their position and demonstrated increase in skills and knowledge.
2. Demonstration of sustained increase in skills, knowledge and expertise, deeper and broader problem-solving capability, increased strategic input and contribution, amongst other relevant areas applicable to their position.
3. Changes in market value (using benchmarks with similar positions elsewhere in the labour market).
4. NCVER business needs and financial capacity.

Where salaries are deemed to be at an appropriate level for the position within NCVER and the skills and knowledge of the individual, recognition via non-salary related areas may be considered.

Noting that the main salary increase across NCVER will be the annual enterprise-wide adjustment and that under budget constraints additional salary costs should be within an average of 1% per annum across the organisation.

Attachment C – Job Evaluation Advisory Committee Terms of Reference

Purpose

The purpose of the Job Evaluation Advisory Committee (JEAC) is to provide an impartial and objective review of newly created positions and provide recommendation to the Managing Director and relevant Executive as to the placement of positions within the NCVER Job Evaluation and Remuneration Framework (excluding Managers and Executive level positions).

The Committee is involved in the determination of job evaluation for base-line positions, but not the placement of individuals.

Confidentiality

The JEAC members agree that all matters relating to job evaluation remain confidential to the Committee and information is not discussed, copied or disseminated outside of the Committee.

Membership

- Chair (HR Manager or a delegate nominated by them)
- Two (2) Employee Representatives, nominated and (if required) voted for by employees
- Two (2) Employee Union Representative/s, nominated and (if required) voted for by CPSU Members
- Administrative support (provided by HR)

JEAC members are appointed for the life of this Agreement.

Responsibilities of HR

- To co-ordinate, organise and facilitate meetings.
- To provide appropriate training on the evaluation process to Committee members.
- To advise job evaluation outcomes.
- To facilitate the appointment process for new Committee members.

Process

1. The JEAC will meet on an as needs basis.
2. All newly created permanent and fixed-term NCVER positions will be considered by the JEAC. Casual and temporary contract staff may be appointed outside of the framework on an as needs basis.
3. If a position already exists within the framework, it does not need to be re-evaluated prior to appointing incumbents to the position, unless material changes that may affect the evaluation of the position have occurred. If material changes have occurred, the JEAC will undertake an evaluation of this position.
4. Only the position is evaluated, not the position incumbent or their placement.
5. The information on which the position is evaluated is contained within the position description. Where clarification is required, HR or a nominated Committee member will gather further information from the applicable Manager or request the Manager meet with the Committee to discuss.

6. The JEAC compare the alignment of the evaluation with the proposed level provided by the Manager. Where the outcome is different, the evaluation should be revisited to check for accuracy. Where a re-check does not change the JEAC result, the HR Manager will discuss with the relevant Manager.
7. Agreement on evaluations will be by consensus. Where the Committee cannot reach agreement, and has received all information required, the Chair may ask the Committee to consider putting the matter to a vote.
8. The HR Manager will put forward the final recommendation of the Committee to the Managing Director and relevant Executive for review and final approval.

Documentation

Each Committee member will receive the NCVER Job Evaluation and Remuneration Framework and the Position Description to be evaluated. Documentation provided is to be used only by the JEAC and must not be made available outside of the Committee.

Communication of outcome/s

There will be no communication of outcomes from the JEAC to other employees. All communication regarding outcomes will be made by the HR Manager.

Disputes

Disputes will be referred to the Managing Director for resolution.

Attachment D – Workplace Consultative Committee Terms of Reference

Purpose and Function

The Workplace Consultative Committee (WCC) provides a consultative mechanism in relation to workplace matters that impact employees. Workplace matters include HR policies, redundancies, dispute resolution, the introduction of change and where agreed, ongoing review and provision of feedback on these matters.

The WCC is not a decision-making committee, however it is a body responsible for and committed to open discussion and direct consultation with employees on workplace matters. Such matters will be discussed in a spirit of cooperation and trust to ensure that employees have an opportunity to raise workplace concerns, to receive sufficient information on matters that affect them, to have an opportunity to contribute their views on those matters and to have meaningful involvement in decision making. The WCC will consider and consult with employees in a timely manner, on matters that have consequences for employees before being implemented.

The WCC:

- a. will act as a representative group of all employees covered by this Agreement;
- b. is responsible for monitoring the implementation of this Agreement;
- c. will undertake tasks, as needed, in support of its advisory work including consulting with affected employees on relevant issues and provide feedback to the Committee;
- d. will receive a verbal or written report of all decisions taken by the Managing Director and the Executive Committee relating to HR policies, redundancies and the introduction of change of significant consequence to employees. This information will be documented in meeting papers;
- e. will be consulted prior to any amendments being made to, or new Corporate HR policies introduced;
- f. will play a consultative role in major change within NCVET in accordance with *Clause 11 Consultation*;
- g. will receive a bi-annual report summarising activity for the previous period at the first meeting of each calendar year and financial year. The report will include information on:
 - i. the use of flexibility agreements;
 - ii. salary advancement outcomes, including automatic salary advancement limits for Level 1-4 positions;
 - iii. employer superannuation contributions;
 - iv. the use and nature of contracted employees, including term of appointment;
 - v. other issues as agreed by members of the WCC.

Membership

- Managing Director
- One (1) representative elected by Managers

- Two (2) – four (4) representatives elected by all other remaining employees, as determined by employees
- One (1) nominee of CPSU members
- Secretariat (nominated by the HR Manager)

The Chair of the WCC will be nominated and agreed upon by WCC representatives. WCC representatives may choose to chair meetings on a rotational basis. At the request of WCC representatives, the WCC may at times decide to meet without the presence of the Managing Director.

The term of appointment for representatives will be for the duration of this Agreement. Where any work has been started by WCC members prior to formation of a new committee, a suitable cross-over period with new appointed members will be negotiated.

In undertaking their responsibilities, new WCC members and members of ad-hoc sub committees must be provided with appropriate support, including training as soon as practicable and within reasonable time, to ensure they are able to adequately perform their duties.

Conflict of interest

WCC members are required to bring to the Chairs' attention any conflict of interest or potential conflicts they may have with any item on the Committee's agenda.

Sub-committees and additional/alternative representation

When required the WCC can form temporary sub-committees or working groups on topics where wider input is required.

The term of these sub-committees will be time bound and limited to the resolution of the issue.

Terms of Reference of ad-hoc committees shall be approved by the WCC.

Any members of such committees are also subject to 'Conflict of interest' as above.

Ad-hoc committees may include, but are not limited to, issues that require consultation processes to assist with conflict resolution.

Consultation processes in issues of dispute or conflict resolution

The WCC provides a supportive role and has the following specific procedures in the event of helping resolve employee conflicts or disputes that are raised for example with WCC members.

- In cases of conflict resolution, the WCC may set up a Conciliation Committee of appropriately skilled employees not involved in the dispute brought before it. The Managing Director will not form part of the Conciliation Committee.
- The Conciliation Committee may include persons other than members of the WCC (e.g. HR representative, an Executive or external expert and/or independent parties) as deemed appropriate.
- The WCC will establish a process that provides for procedural fairness and independence ensuring both chairing and membership of any Conciliation Committee is as best as possible 'arms-length' from the matter to be resolved.
- The Conciliation Committee should allow any employee to be heard in accordance with 'procedural fairness'. If a committee member is deemed to have a real or perceived conflict of interest in a matter being considered, the member will be excused from committee discussions on the matter.

- e. An employee may ask and give reasonable reason for any member of the 'Conciliation Committee' to be excused from participating in a dispute they have under consideration where a conflict of interest is real or perceived.
- f. The Conciliation Committee will make written recommendations to resolve the dispute to the Managing Director for consideration and approval. The Managing Director will communicate by means appropriate the approved recommendation(s) to the relevant employee(s) for their consideration.
- g. In all actions and reports the Conciliation Committee and Managing Director must abide by Australian Privacy Principles (available at www.oaic.gov.au) and keep confidential all matters requested by employees, including as appropriate recommendations.
- h. The Managing Director is subject to the above and where appropriate will be excluded for reason of conflict and other independent arrangements will be made.
- i. Nothing in this process precludes an employee's right to pursue resolution of a workplace issue through the processes outlined in *Clause 13 Dispute Resolution*.

Frequency of meetings

The WCC will meet every six (6) weeks and more frequently if required.

Agenda and meeting papers

All agendas and meeting papers will be circulated electronically to WCC members. An email will be sent to employees notifying them of the forthcoming meeting and how to raise matters with WCC members; this email will include a link to the WCC page on the intranet.

Minutes

Minutes of meetings will be in the form of a record of important issues and comments raised by members together with key decisions and actions. Minutes will be distributed electronically to WCC members and made available to all employees via the intranet.

Training

WCC members and members of ad-hoc sub committees will be provided training to help members perform their duties (e.g. negotiation, prevention of bullying, mediation, effective dispute resolution, anti-discrimination, equal opportunity, privacy).

Attachment E – Guidelines for managing underperformance

1. Principles of managing underperformance

- a. Underperformance issues should be addressed as soon as possible, and not raised for the first time during a 6 or 12 monthly performance development meeting.
- b. Principles of procedural fairness will underpin all actions when managing unsatisfactory performance, with a commitment to completing the process as quickly as practicable by all involved.
- c. When a complaint about performance is raised by a third party, the substance of the complaint will be verified and evidence-based, as far as reasonably practicable, before any action is taken on the matter.
- d. The process for managing underperformance will be fair and transparent (whilst maintaining appropriate confidentiality), and be based on valid, evidence-based reasons and objective data.
- e. The employee is entitled to seek assistance from, or be accompanied by, a support person of their choice (including a union representative) at any meetings related to the performance issue/s.
- f. The employee will be provided specific examples of the performance issue/s identified.
- g. Reasonable time will be given for the employee to respond to the issue/s raised, and to raise other matters they believe relevant.
- h. Achievable and measurable goals will be set in writing, with reasonable time allocated for the employee to rectify the identified performance issue/s, in order to provide an objective process that will indicate success or failure.
- i. Appropriate records of discussions, decisions made and actions taken throughout each stage will be kept and shared with the employee.

2. Stages of managing underperformance

Managing underperformance will follow a staged process.

Stage 1 – Informal performance management

- a. Where a Team Leader or Manager has concerns about the performance of an employee, the Team Leader and/or Manager will meet with the employee as soon as is reasonably practicable to:
 - i. discuss the specific deficiencies in the employee's performance;
 - ii. establish any appropriate development assistance required to address the issue/s;
 - iii. communicate the performance standards required;
 - iv. establish achievable and measurable goals to rectify the identified performance issue/s;
 - v. establish a four (4) week informal review period;

- vi. communicate the likely next steps should the issue/s not be resolved within the review period.
- b. Appropriate records of the conversation and outcomes will be kept and shared with the employee.
- c. Regular review meetings will be held during the informal review period and summaries of these discussions will be provided to the employee.
- d. Following the informal review period:
 - i. Where the employee has attained the effective performance and sustained that level of performance for a further period of six (6) weeks, the process will cease.
 - ii. Where the employee has not attained the level of performance required but has shown good progress and a reasonable expectation is that full performance will be achieved within a reasonable period, a further review period may be established.
 - iii. Where an employee has not attained and/or sustained or made reasonable progress towards attaining the required level of performance, the process will move to Stage 2 – Formal performance management.

Stage 2 – Formal performance management

- a. The Manager will consult with HR and the relevant Executive to manage the underperformance issue/s.
- b. A formal meeting between the employee, Manager, relevant Executive and/or HR will occur to develop and agree upon a Performance Improvement Plan. The Plan will:
 - i. clearly specify the continuing deficiencies in the employee's performance;
 - ii. clarify the actions to be taken by the employee and the Team Leader and/or Manager;
 - iii. establish any further development assistance required to address the issue/s;
 - iv. establish reasonable and measurable goals, to facilitate an objective process that will indicate success or failure;
 - v. establish an eight (8) week formal review period:
 - set out a reasonable schedule of regular performance review meetings throughout the review period;
 - advise the consequences of not successfully improving performance to the required level.
- c. After each performance review meeting, an overview of the conversation will be provided to the employee in writing, along with an updated Performance Improvement Plan.
- d. Following the formal review period;
 - i. Where the employee has attained the effective performance and sustained that level of performance for a further period of six (6) weeks, the process will cease.
 - ii. Where the employee has not attained the level of performance required but has shown good progress and a reasonable expectation is that full performance will be achieved within a reasonable period, a further review period may be established.

- iii. Where an employee has not attained and/or sustained or made reasonable progress towards attaining the required level of performance, the process will move to *Stage 3 – Termination of employment or modification of position*.

Stage 3 – Termination of employment or modification of position

Where the required level of performance has not been achieved following the first two stages, the process will move to the third and final stage.

- a. The relevant Executive and HR Manager, in consultation with the Manager, will provide a written report to the Managing Director.
- b. The employee will be given sufficient time to provide any information they believe relevant to the Managing Director's determination.
- c. The Managing Director will consider the circumstances, the evidence, and any mitigating circumstances.
- d. The Managing Director may consider:
 - i. terminating employment on the grounds of underperformance;
 - ii. taking some other action, which may include transfer of position and/or reduction of job level if this is practicable in the circumstances.
- e. If the Managing Director determines further action is necessary, they and the relevant Executive and/or HR Manager will provide details of the action being considered via a meeting with the employee, and in writing.
- f. The employee is entitled to no less than five (5) working days to provide a written response.
- g. Should the employee's employment be terminated, they will receive the appropriate notice or payment in lieu of notice, in accordance with the Fair Work Act 2009 (Cth) and provisions in *Clause 66 Termination of employment*.

NCVER Ref: #232837

IN THE FAIR WORK COMMISSION

FWC Matter No.: AG2023/5292

Applicant: National Centre for Vocational Education Research Ltd

Section 185 – Application for approval of a single enterprise agreement

Undertaking- Section 190

I, Simon Walker, Managing Director for National Centre for Vocational Education Research Ltd give the following undertakings with respect to the *National Centre for Vocational Education Research Ltd Enterprise Agreement 2022-2025* ("**the Agreement**"):

1. I have the authority given to me by National Centre for Vocational Education Research Ltd to provide this undertaking in relation to the application before the Fair Work Commission.

Contract of employment (Clause 15), Hours of work (Clause 23), Part-time arrangements (Clause 24)

2. Part-time and casual employees will be provided with a minimum of 3 hours of work (or equivalent payment) for each day they are scheduled to work.

Flexibility (Clause 17.5 (termination of flexibility agreements))

3. The Managing Director or employee may terminate the individual flexibility arrangement:
 - a. by giving no more than 28 days written notice to the other party to the arrangement, or
 - b. if the Managing Director and employee agree, in writing at any time.

Long Service Leave (Clause 50)

4. For an employee to whom the *Long Service Leave Act 1955 (NSW)* applies, the reference to seven (7) years' continuous service in clause 50.4.3 will be taken to be five (5) years continuous service.

Compassionate Leave (Clause 53)

5. An employee is also entitled to a period of up to two (2) days compassionate leave where:
 - a) a child is stillborn, where the child would have been a member of the employee's immediate family, or a member of the employee's household, if the child had been born alive; or
 - b) the employee, or the employee's spouse or de facto partner, has a miscarriage.

Redundancy (Clause 68)

6. Clause 68.1.1 (d) will be read as follows:

 (d) the duties usually performed by the employee are to be moved to an interstate location and the employee does not wish to be redeployed to the new location.
7. Clauses 68.1.4(d) and 68.1.4(e) will have no effect.
8. No provision of this Agreement will result in an employee being entitled to a lower redundancy pay entitlement than they would be entitled to under the NES.

Part-Time Employees and Overtime (Clause 40)

9. Any part time employee who works additional hours in any fortnight will have the payment received under the Agreement reconciled with what would have been paid under the Award. Should the reconciliation result in the employee being paid less than they would have been under the Award, a payment equivalent to the shortfall plus an additional \$10 will be paid in the next pay period.
10. These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application for approval before the Fair Work Commission.

A handwritten signature in black ink, consisting of a large, stylized 'l' followed by a horizontal stroke that curves upwards at the end.

Signature
19 January 2024